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AMNESTY
INTERNATIONAL



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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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1. INTRODUCTION

Amnesty International would like to draw the United Nations (UN) Human Rights Committee's (the Committee) attention to the following information in advance of the adoption of the List of Issues Prior to Reporting (LOIPR) for the United States of America's (USA) fifth periodic report under the International Covenant on Civil and Political Rights (ICCPR).

The USA ratified the ICCPR in June 1992. Nearing three decades later, the USA continues to fail to live up to its human rights obligations on a range of issues. Amnesty International provides documentation on issues in the USA related to the obstacles to implementation at the domestic level; the continued use of the death penalty; the use of lethal force by law enforcement; the prevalence of gun violence and the failure to protect the right to life; the failure to respect sexual and reproductive rights; the "targeted killing" program- violations of the right to life; the failure to protect the right to freedom of expression and peaceful assembly; discrimination and violations based on sexual orientation and gender identity; the failure to protect Indigenous women from gender-based violence and unlawful pushbacks, arbitrary detention, and ill-treatment against asylum seekers by US boarder and immigration authorities.

2. OBSTACLES TO IMPLEMENTATION AT THE DOMESTIC LEVEL (ARTICLE 2)

Amnesty International suggests the Committee again raise the issue of the USA's compliance with the ICCPR to give effect to its provisions at the domestic level raised during the previous review. In its Fourth Periodic report, the USA explained that:

"because the human rights and fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (other than those to which the United States has taken a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant's provisions in domestic law."

The Committee addressed this issue in its concluding observations¹ yet no steps have been taken by the administration towards reviewing or addressing the gaps between the ICCPR and US domestic law, for instance in the continued use of the death penalty, unfair trials for those charged with terrorism-related offenses at the Guantanamo Bay Detention Center, or the failure to hold those accountable for acts of torture and other violations in counter-terrorism actions, among others.

Furthermore, the USA has failed to withdraw the limiting reservations and declarations to the ICCPR. For instance, Article 2(1) of the ICCPR requires the State Party to undertake "to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind". However, the USA has failed to ensure that the ICCPR is fully implemented in US law and applicable to all those subject to its jurisdiction, wherever those individuals may be located – for instance in overseas detention facilities. The USA should cease to invoke, and should publicly disavow, the "global war" doctrine it has used as part of counter-terrorism operations, and fully recognize and affirm the applicability of international human rights obligations to all US counter-terrorism measures.

The USA has continued to fail to provide accountability and effective remedy for torture committed in its counter-terrorism actions. Rather, the US Senate confirmed the nomination of Gina Haspel to the position of Director of the Central Intelligence Agency (CIA) on 17 May 2018 despite the need for an investigation into her alleged role in the CIA's secret detention program in which more than 100 individuals were held between 2002 and 2008.

¹ UN Doc. CCPR/C/USA/CO/4, para. 4(c).

For further reading:

- Amnesty International, *USA: Life, Liberty and the pursuit of human rights, a submission to the UN Human Rights Committee*, 16 September 2013, AI Index: AMR 51/061/2013, <https://www.amnesty.org/en/documents/AMR51/061/2013/en/>
- Amnesty International, UN Human Rights Council: Call by National and International Human Rights Groups for Accountability for the U.S. CIA Torture Program, 24 June 2015, IOR 40/2023/2015, <https://www.amnesty.org/en/documents/ior40/2023/2015/en/>
- Amnesty International, USA: Crimes and Impunity: Full Senate Committee report on CIA detentions must be released, and accountability for crimes under international law ensured, 21 April 2015, AI Index: 51/1432/2015, <https://www.amnesty.org/en/documents/amr51/1432/2015/en/>
- Amnesty International, *USA: 'He Just Disappeared from the Face of the Earth'*, 9 December 2015 AI Index: AMR 51/2992/2015, <https://www.amnesty.org/en/documents/amr51/2992/2015/en/>

3. CONTINUED USE OF THE DEATH PENALTY (ARTICLES 6, 7 & 26)

During the period under review, the USA has seen slight progress towards abolition but also continued violations of its international obligations in regards to the use of the death penalty.

Since the end of 2013, two US states abolished the death penalty – Delaware in 2016 and, most recently, Washington in 2018, when the State Supreme Court ruled the current death penalty statute unconstitutional, on the ground that its application resulted in racial bias. This brought the number of US states outlawing executions to 20. In addition to this, the Governor of Pennsylvania established a moratorium on executions in the state in 2015.

Since 2008, the USA has remained the only country to carry out executions in the Americas region. While there has been a continued relatively downward trend towards executions from year to year with an overall 26% decrease in recorded executions 131 people (including three women) were put to death during the period 2014-2018. A minority of states continue to be responsible for all US executions, with just eight states or fewer accounting for all executions each year. During the same period, 20 people were acquitted or had their charges dropped on the grounds of innocence, bringing the number of people exonerated from death row since 1973 to 164.

Nearly 2500 prisoners face active death sentences in the state and federal systems. Study after study has shown that race – particularly race of victim – has an impact on who receives the death penalty in the USA (Article 26).²

The death penalty in the USA continued to be used in ways that contravened international law and standards, including on people with serious mental disabilities and foreign nationals denied their right to consular assistance after arrest. Among other cases, on 8 November the authorities in Texas executed Rubén Cárdenas Ramírez, in violation of the international obligations of the USA under the UN Vienna Convention on Consular Relations. Rubén Cárdenas Ramírez had not been advised by the Texas authorities of this right as a Mexican national to contact his consulate for assistance “without delay” after his arrest. He was one of the 52 Mexican nationals for whom, in 2004, the International Court of Justice ordered the USA to provide judicial review of their convictions and sentences.

² M. Beardsley, *Disquieting Discretion: Race, Geography & the Colorado Death Penalty in the First Decade of the Twenty-First Century*, Denver University Law Review, 2015, https://www.law.du.edu/documents/denver-university-law-review/Vol92_Issue3_Marceau_08_04_2015_FINAL_PRINT.pdf; J. D. Levinson, et al, *Devaluing death: An empirical study of implicit racial bias on jury-eligible citizens in six death penalty states*, New York University Law Review, 19 February 2013, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2307719

Amnesty International was further concerned about aspects of the trials or sentencing processes of several men who were scheduled to be executed or executed during the reporting period. All too frequently, the merits of such concerns are not addressed by the appeal courts, because of procedural obstacles.

- Ronald Phillips was executed in Ohio on 26 July, the first execution in the state since January 2014. In 2010, a federal judge concluded that the defence lawyer had failed to provide the trial jury with compelling mitigating details of Ronald Phillips' severely violent and abusive childhood, relevant at sentencing. He argued that the case was one of inadequate legal representation, and it deserved further consideration despite the limits placed on federal courts for their review of state court decisions.
- The Governor of Missouri stayed the execution of African-American Marcellus Williams on 22 August 2017, hours before it was due to be carried out, and appointed a Board of Inquiry to consider all evidence in the case. Marcellus Williams was tried before a jury composed of 10 white people and one African American person. His murder conviction was founded on circumstantial evidence, including the testimony of a jailhouse informant. Marcellus Williams' appeal lawyers challenged the credibility of the informant witnesses and highlighted how DNA testing carried out before and after the trial did not link Marcellus Williams to the evidence. In 2010, a federal judge ordered that Marcellus Williams receive a new sentencing hearing, having found that his trial lawyer had failed to present any mitigating evidence of the sexual and violent physical abuse, crime, guns, drugs and alcohol he had been exposed to from a young age. In 2012, the US Court of Appeals for the Eighth Circuit reversed the ruling by two votes to one, in line with the 1996 Antiterrorism and Effective Death Penalty Act which limits federal judicial review of state court decisions.

The issue of courts not considering compelling evidence on its merits during the appeal process because of procedural issues was also relevant to concerns about racial discrimination. For instance, in the case of Joe Nixon in Florida who is African American and was sentenced to death in 1984 for the murder of a white woman. Despite showing systemic racial discrimination in the decision-making in Florida's capital justice system with specific statistics demonstrating disparities on the imposition of the death penalty based on the race of the offender and victim from the county where he was tried, the Florida Supreme Court dismissed the race statistics put to them by Joe Nixon's lawyers, reiterating the US Supreme Court standard that the defendant must prove that "the State acted with purposeful discrimination" in his specific case.³

More recently, on 26 September 2017, the US Supreme Court halted the execution of Keith Tharpe in Georgia three hours before it was due to be carried out. This was to allow the Court time to decide whether to hear the case and consider the claim that racism by a juror affected his 1991 trial, evidence of which emerged only after the trial had concluded. Keith Tharpe's appeal lawyers had interviewed a white former juror who had stated that "there are two kinds of black people in the world – 'regular black folks' and 'n*ggers'." The lawyers also recalled the man reflecting on whether "n*ggers even have souls", and that he "felt that because a black person doesn't have a soul, giving one the death penalty was no big deal". The state court had ruled that written statements outlining this evidence were inadmissible under Georgia law and that procedurally the claim was defaulted as it should have been raised earlier. The federal District Court found that this procedural default could not be overcome; the Court of Appeals for the 11th Circuit upheld this ruling.

Pre-trial proceedings at the US naval base at Guantánamo Bay, Cuba, against the five men charged with plotting the attacks of 11 September 2001, and Abd al-Rahim al-Nashiri who was charged with masterminding an attack on US warship USS Cole in 2000, continued throughout 2018. All six detainees, who could face the death penalty if convicted, had their hearings held before military commissions, whose proceedings do not meet international fair trial standards. The use of this punishment in these cases, after proceedings that do not meet international standards for a fair trial, would constitute arbitrary deprivation of life.

³ Amnesty International, USA: Darkness Visible in the Sunshine State, the death penalty in Florida, 23 August 2018, AI Index AMR 51/8959/2018, at 26, <https://www.amnesty.org/en/documents/amr51/8959/2018/en/>

For further reading, please see:

- Amnesty International, *USA: Darkness Visible in the Sunshine State, the death penalty in Florida*, 23 August 2018, AI Index AMR 51/8959/2018, <https://www.amnesty.org/en/documents/amr51/8959/2018/en/>
- Amnesty International, *Death sentences and executions in 2014*, 1 April 2015, AI Index: ACT 50/0001/2015, <https://www.amnesty.org/en/documents/act50/0001/2015/en/>
- Amnesty International, *Death sentences and executions in 2015*, 6 April 2016, AI Index: ACT 50/3487/2016, <https://www.amnesty.org/en/documents/act50/3487/2016/en/>
- Amnesty International, *Death sentences and executions in 2016*, 11 April 2017, AI Index: ACT 50/5740/2017, <https://www.amnesty.org/en/documents/act50/5740/2017/en/>
- Amnesty International, *Death sentences and executions in 2017*, 12 April 2018, AI Index: ACT 50/7955/2018, <https://www.amnesty.org/en/documents/act50/7955/2018/en/>
- Death Penalty Information Center, *The Death Penalty in 2018: Year end report*, 2018, <https://deathpenaltyinfo.org/documents/2018YrEnd.pdf>

4. USE OF LETHAL FORCE BY LAW ENFORCEMENT (ARTICLES 6, 26)

Hundreds of men and women are killed by law enforcement each year across the USA. The US government does not effectively track how many lives are lost each year. Estimates for 2017 range from the 423 documented by the Federal Bureau of Investigation, to nearly 1000 individuals killed by law enforcement using firearms that has been documented by media outlets. The limited data available suggests that African American men are disproportionately impacted by police use of lethal force.⁴ The Death in Custody Reporting Act, which passed and became law in December 2014, requires the US Department of Justice to create a national system to document and report annually on each death due to interaction by law enforcement. However, the system has yet to be fully implemented more than four years later.

In 2015, Amnesty International reviewed US state laws – where they exist – governing the use of lethal force by law enforcement officials and found that they all fail to comply with international law and standards regarding the use of lethal force which require that lethal force only be used as a last resort and when there is an imminent threat of death or serious injury.⁵ Nine states and Washington, DC currently have no laws on the use of lethal force by law enforcement officers and thirteen states have laws that do not even comply with the lower, more permissive standards set by US constitutional law on use of lethal force by law enforcement officers.⁶

For further reading, please see:

- Amnesty International USA, *Deadly Force: Police use of lethal force in the USA*, 2015, https://www.amnestyusa.org/files/aiusa_deadlyforcereportjune2015.pdf

⁴ For instance, see: *Fatal Force (2018)*, The Washington Post – documenting 995 people shot and killed by police in 2018. According to the data – 210 individuals, or 21 percent, were identified as or black, however African Americans comprise 13.4 percent of the US population. See Washington Post, *Fatal Force (2018)* https://www.washingtonpost.com/graphics/2018/national/police-shootings-2018/?utm_term=.e825fe88b601, and US Census Bureau, Quickfacts, Population Estimates (July 2017), <https://www.census.gov/quickfacts/fact/table/US/PST045217>

⁵ Amnesty International USA, *Deadly Force: Police use of lethal force in the USA*, 2015, https://www.amnestyusa.org/files/aiusa_deadlyforcereportjune2015.pdf

⁶ Nine states and Washington, D.C. have no laws on use of lethal force by law enforcement officers: Maryland; Massachusetts; Michigan; Ohio; South Carolina; Virginia; West Virginia; Wisconsin, Wyoming; and the District of Columbia. Thirteen states have laws that do not comply even with the lower standards set by US constitutional law on the use of lethal force by law enforcement officers: Alabama; California; Delaware; Florida; Mississippi; Missouri; Montana; New Jersey; New York; Oregon; Rhode Island; South Dakota; and Vermont.

- Amnesty International USA, *On the Streets of America: Human rights abuses in Ferguson*, 2014,
- <https://www.amnestyusa.org/wp-content/uploads/2017/04/onthestreetsofamericaamnestyinternational.pdf>

5. PREVALENCE OF GUN VIOLENCE AND THE FAILURE TO PROTECT THE RIGHT TO LIFE (ARTICLES 6, 9 & 26)

The prevalence of gun violence in the USA is a human rights crisis as the government is failing to protect the right to life, the right to security of person, and the right to be free from discrimination. The failure to exercise adequate control over the possession and use of firearms by private actors in the face of clear evidence of persistent firearms violence could be considered a violation under international law. Broadly, States' responsibilities under principles of due diligence to prevent and protect against firearm violence committed by non-state actors require two interrelated approaches:

- restricting access to firearms especially by those most at risk of abusing them; and
- taking effective steps to put in place and implement violence reduction or protection measures where firearms abuse persists.

States must implement legislation and take administrative measures to prohibit the possession of firearms and ammunition by private actors who represent a high level of risk to public safety and protect those most at risk of being victims of gun violence such as children, communities of colour and domestic violence survivors, among others. However, the USA has a patchwork of inconsistent and inadequate federal and state gun control laws and has failed to take all measures necessary to prevent and protect against gun violence. As a result, according to the US Centers for Disease Control and Prevention, in 2016, more than 38,000 people died by gun violence and an additional 116,000 people suffered non-fatal firearm injuries.⁷

For further reading, please see:

- Amnesty International, *USA: In the Line of Fire: Human Rights and the U.S. Gun Violence Crisis* (Full Report), 2018, Index number: AMR 51/9546/2018
<https://www.amnesty.org/en/documents/amr51/9546/2018/en/>
- Amnesty International, *USA: In the Line of Fire: Human Rights and the U.S. Gun Violence Crisis* (Summary Report), 2018, AMR 51/9547/2018,
<https://www.amnesty.org/en/documents/amr51/9547/2018/en/>
- Amnesty International, *USA: In the Line of Fire: Human Rights and the U.S. Gun Violence Crisis* (Executive Summary), 2018, AMR 51/9548/2018,
<https://www.amnesty.org/en/documents/amr51/9548/2018/en/>

⁷ The Centers for Disease Control and Prevention, WISQARS (Web-based Injury Statistics Query and Reporting System), Fatal Injury Data, 2016, <https://www.cdc.gov/injury/wisqars/fatal.html>; The Centers for Disease Control and Prevention, WISQARS (Web-based Injury Statistics Query and Reporting System), Non-Fatal Injury Data, 2016, www.cdc.gov/injury/wisqars/nonfatal.html

6. FAILURE TO RESPECT SEXUAL AND REPRODUCTIVE RIGHTS (ARTICLES 2, 3, 7, 17 & 26)

6.1 GLOBAL GAG RULE

The Global Gag Rule is a U.S. foreign policy that prohibits foreign non-governmental organizations (NGOs) that receive certain U.S. foreign assistance funding from advocating for abortions or providing abortions. Despite that fact that no U.S. money ever goes to abortion services, the Global Gag rule means that organizations that receive U.S. International aid for other reasons-- like maternal health, HIV prevention, or basic health-- cannot even educate their communities on safe abortion. Even though an organization is using non-U.S. funding for such activities, they will lose their U.S. funding if they offer counseling, advocate for legal reform, provide abortions, or even provide referrals at any time.

The Global Gag Rule negates human rights for women—mostly poor and rural women—who depend on international aid-funded clinics, healthcare facilities, and organizations (Article 26). The Global Gag Rule has devastating impacts on women and girls worldwide—from a lack of contraception to an increase of unsafe abortions and maternal death. Having not been in place since 2009 under the Obama administration, President Trump reinstated the Global Gag Rule as one of his first acts in office on 23 January 2017.⁸

For further reading, please see:

- Amnesty International, *Trump's Global Gag Rule a Blow for Women's Rights and Lives*, <https://www.amnestyusa.org/74153-2/>

6.2 CRIMINALIZATION OF PREGNANT WOMEN

Throughout the USA, women become subject to unique forms of regulation when they become pregnant. While pregnant women remain subject to the same laws as anyone else, an additional set of legislation targets pregnant women, particularly those who are marginalized and those who use drugs, based on a belief that they have caused or risked harm to their fetus. Often known as “fetal assault”, “chemical endangerment” or “personhood” laws, these measures have been used to arrest and prosecute women who experience pregnancy complications and conditions such as drug dependence. A patchwork of evolving laws and practices impact women in every region and state.

Laws that discriminate against pregnant women violate the right to equal protection under the law without discrimination. On top of this, these laws tend to be disproportionately enforced against low-income women and women of colour - people who are often already facing multiple levels of discrimination. Amnesty International found that such laws are used to justify non-consensual drug testing and the sharing of information with law enforcement and child welfare authorities, resulting in arbitrary and unlawful interference with privacy and the family (Article 17).

For further reading, please see:

- Amnesty International, *USA: Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA*, 23 May 2017, AI Index: AMR 51/6203/2017, <https://www.amnesty.org/en/documents/amr51/6203/2017/en/>
- Amnesty International, *Body Politics: A Primer on Criminalization of Sexuality and Reproduction*, 2018, AI Index: POL 40/7763/2018, www.amnesty.org/en/documents/pol40/7763/2018/en/

⁸ Presidential Memorandum Regarding the Mexico City Policy, Presidential Memoranda, 23 January 2017, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-mexico-city-policy/>

6.3 CRIMINALIZATION OF ABORTION AND DENIAL OF ABORTION ACCESS

Many US states continue to advance legislation banning abortion earlier and earlier in pregnancy, bans on particular abortion methods, restrictions on funding abortion, mandatory waiting periods, and protections for health care providers who refuse to provide abortion, among other barriers.

General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life confirms “States parties should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion, including barriers caused as a result of the exercise of conscientious objection by individual medical providers.”⁹ Abortion restrictions that jeopardize women and girls’ lives, subject them to physical or mental pain or suffering violate the right to be free from torture and other ill-treatment (Article 7) and right to non-discrimination (Article 26), and are an arbitrary interference with the right to privacy. The Committee explicitly confirms that states should not “apply criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so, since taking such measures compel women and girls to resort to unsafe abortion.”¹⁰

For further reading, please see:

- Amnesty International, *Body Politics: A Primer on Criminalization of Sexuality and Reproduction*, 2018, AI Index: POL 40/7763/2018, www.amnesty.org/en/documents/pol40/7763/2018/en/
- Amnesty International, *Combating Torture and Other Ill-Treatment: A Manual for Action*, 2016, AI Index: POL 30/4036/2016, p.92-95, www.amnesty.org/en/documents/pol30/4036/2016/en/
- Center for Reproductive Rights, *Protect, Defend, Extend: State of the States 2018*, <https://www.reproductiverights.org/State-of-the-States-2018>

7. INDEFINITE AND ARBITRARY DETENTION, UNFAIR TRIALS AT THE GUANTANAMO BAY DETENTION CENTER (ARTICLES 6, 9 & 14)

This offshore prison continues to operate outside the bounds of US law or international law, unlawfully imprisoning men in arbitrary and indefinite detention, and should be closed after more than 17 years in existence. Of the 40 detainees remaining there, eight have been charged with crimes that carry a maximum sentence of death and none is being given a trial by an independent tribunal that meets international fair trial standards. The military commission created at Guantanamo does not meet the due process standards set forth in the ICCPR. Five prisoners have been cleared for transfer out of Guantanamo by the Obama administration, yet remain stuck at Guantanamo and the Trump administration has eliminated the system that had been created by President Obama to arrange for their transfer. Indefinite detention without charge or trial is unlawful. None of the 40 men have access to adequate medical treatment, and those who survived torture by US agents have not been given adequate rehabilitative services.

For further reading, please see:

⁹ UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc CCPR/C/GC/36, para 8.

¹⁰ UN Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, UN Doc CCPR/C/GC/36, para 8.

- Amnesty International, *USA: Legacy Clock Ticking – Impunity, Guantanamo and Double Standards*, 8 January 2016, AI Index: AMR 51/3162/2016, <https://www.amnesty.org/en/documents/amr51/3162/2016/en/>
- Amnesty International, *USA: President Trump Signs Order on Guantanamo and Sets Stage for First New Detainee Arrivals Since 2008*, 2 February 2018, AI Index: AMR 51/7822/2018, <https://www.amnesty.org/en/documents/amr51/7822/2018/en/>
- Amnesty International, *USA: Guantanamo, Impunity, and Global Anti-Torture Day*, 25 June 2017, AI Index: AMR 51/6574/2017, <https://www.amnesty.org/en/documents/amr51/6574/2017/en/>

8. “TARGETED KILLING” PROGRAM – VIOLATIONS OF THE RIGHT TO LIFE (ARTICLE 6)

The US has developed an extensive lethal drone program which it uses to carry out so-called “targeted” killings around the world, including outside recognized conflict zones as part of its global counter-terrorism operations. While many US drone strikes have taken place as part of actual armed conflicts, the US has asserted the right to target and deliberately kill individuals, members of particular groups or those believed to have an association with certain groups, wherever they are, which is often outside situations of recognized armed conflict. Successive US administrations have justified such strikes either as part of a flawed “global war” doctrine, which essentially treats the whole world as a battlefield, or on the basis of a purported right of self-defense to use lethal force across borders against individuals and groups of people who they claim pose a threat. Over the course of the past decade, NGOs, UN experts and the media have documented how potentially unlawful US drone strikes outside of armed conflict have caused significant loss of life, in some cases violating the right to life and amounting to extrajudicial executions.

The USA’s use of armed drones outside areas of recognized armed conflict has also been marked by a lack of transparency around the legal and policy standards and criteria the USA applies to the use of armed drones. This has both impeded an assessment of the relevant facts surrounding drone strikes, including the applicable legal framework, and prevented accountability and access to justice and effective remedies for victims of unlawful US drone strikes and their families.

For further reading, please see:

- Amnesty International, *Trump threat puts European role in lethal US drone strikes under new scrutiny*, 19 April 2018, <https://www.amnesty.org/en/latest/news/2018/04/trump-threat-puts-european-role-in-lethal-us-drone-strikes-under-new-scrutiny/>
- Amnesty International, *USA: Joint Letter on Public Acknowledgement and Investigations of U.S. “Targeted Killings” and Drone Strikes*, 13 May 2015, AI Index: AMR 51/1655/2015, <https://www.amnesty.org/en/documents/amr51/1655/2015/en/>
- Amnesty International, *Pakistan: “Will I be Next?”: US Drone Strikes in Pakistan*, 22 October 2013, AI Index: ASA 33/013/2013, <https://www.amnesty.org/en/documents/ASA33/013/2013/en/>

9. FAILURE TO PROTECT THE RIGHT TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY (ARTICLES 19 & 21)

The demonstrations in Ferguson, Missouri spontaneously grew following the shooting of unarmed Michael Brown by a Ferguson police officer on 9 August 2014. In the weeks after Brown's death, protesters congregated on a street near where the incident took place on a nearly nightly basis, to voice their anger over the shooting and in reaction to policies on policing protests imposed on this community by the Governor of Missouri and relevant law enforcement agencies whose responsibilities were to provide security in Ferguson. While the protests were largely peaceful, there were repeated incidences of bottles being thrown at law enforcement officers at protest sites, several incidences of looting and vandalism of local stores late at night, and incidents of shots being fired in or around protests. The reaction by city, county and state law enforcement and executive officials was to impose policies and procedures on the residents and protesters in Ferguson which affected everyone. Many of these policies caused alarm and confusion among the demonstrators. Although those demonstrations were largely allowed to proceed, actions taken by the Governor and the State Highway Patrol interfered with the exercise of the rights to peaceful assembly (Article 21) and freedom of expression (Article 19). The then United Nations' High Commissioner for Human Rights, Navi Pillay, commented on the police response to the protests at the time by stating: "I condemn the excessive use of force by the police [in Ferguson] and call for the right of protest to be respected. These scenes are familiar to me and privately I was thinking that there are many parts of the United States where apartheid is flourishing."

Similar restrictions on these rights by law enforcement occurred in other cities following similar incidents of police use of force and lethal force that resulted in death or following trials of law enforcement accused of such, such as: the death of Freddie Gray in Baltimore, Maryland in April 2015; the death of Philando Castile near Minneapolis, Minnesota in July 2016; the death of Alton Sterling in Baton Rouge, Louisiana in July 2016; following the acquittal of a former St. Louis Police Officer in the shooting death of Anthony Lamar Smith in St. Louis, Missouri in September 2017.

Amnesty International observed protests against the Dakota Access Pipeline near the Standing Rock Sioux Reservation in North and South Dakota in 2016 where law enforcement and private security prevented protesters from accessing certain sites for protests, used unjustified force against protesters – such as the use of tear gas, rubber bullets and water cannons in subfreezing conditions against largely peaceful protesters, and detained individuals inhumanely – such as conducting strip searches of protesters charged with misdemeanour offenses and holding individuals in what protesters described as dog cages (Article 7).

For further reading, please see:

- Amnesty International USA, On the Streets of America: Human rights abuses in Ferguson, 2014, <https://www.amnestyusa.org/wp-content/uploads/2017/04/onthestreetsofamericaamnestyinternational.pdf>
- Amnesty International USA, Standing Rock (resource page), 2016- 2017, <https://www.amnestyusa.org/standing-rock/>
- Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United States of America, 27 July 2016, <https://www.ohchr.org/en/newsevents/pages/DisplayNews.aspx?NewsID=20317&LangID=E>
- Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United States of America, A/HRC/35/28/ADD.2, 12 June 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/28/Add.2

- Native Americans facing excessive force in North Dakota pipeline protests – UN expert, UN Press Release, 15 November 2016, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20868>

10. DISCRIMINATION AND VIOLATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY (ARTICLES 2, 9, & 26)

The Committee has urged State parties to “guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation”, and welcomed legislation that includes sexual orientation among prohibited grounds of discrimination.

However, individuals in the USA experience excessive violence based on their actual or perceived sexual orientation or gender identity, especially transgender people of colour. Incidents of hate crimes in the USA, including reported hate crimes based on sexual orientation, increased for a third year in a row between 2015-2017.¹¹ While 46 states have laws against bias crimes, only 17 states and Washington, DC have laws that cover crimes where the motivating factor was the victim’s sexual orientation or gender identity, while 16 states have bias crime laws enacted but do not cover either identity. Four states have no law whatsoever. There is lack of standardized non-discrimination protections based on sexual orientation, gender identity and gender expression. A recent movement both within the federal government and at the state level is to enact “religious exemption” laws that function as a license to discriminate on the basis of sexual orientation and gender identity rather than a good faith attempt to protect religious liberty and should be repealed. While the Trump administration has taken target at protections related to sexual orientation in education, the military and other areas of the federal government).

For further reading, please see:

- Tarah Demant, *Mike Pence is covertly weaponizing language against LGBTQ people*, The Advocate, 14 December 2018, <https://www.advocate.com/commentary/2018/12/14/mike-pence-covertly-weaponizing-language-against-lgbtq-people>
- National Center for Transgender Equality, *Trump’s record of Action Against Transgender People*, <https://transequality.org/the-discrimination-administration>
- Human Rights Watch, *All We Want Is Equality: Religious exemptions and discrimination against LGBT people in the United States*, February 2018, https://www.hrw.org/sites/default/files/report_pdf/lgbt0218_web_1.pdf
- E. Waters, et al, *A Crisis of Hate: A report on Lesbian, Gay, Bisexual, Transgender and Queer hate violence homicides in 2017*, National Coalition of Anti-Violence Programs, 2018, <http://avp.org/wp-content/uploads/2018/01/a-crisis-of-hate-january-release-12218.pdf>
- Human Rights Campaign and Trans People of Color Coalition, *Addressing Anti-Transgender Violence*, November 2015, <https://www.hrc.org/resources/addressing-anti-transgender-violence-exploring-realities-challenges-and-sol>

¹¹ E. Waters, et al, *A Crisis of Hate: A report on Lesbian, Gay, Bisexual, Transgender and Queer hate violence homicides in 2017*, National Coalition of Anti-Violence Programs, 2018, at 8, <http://avp.org/wp-content/uploads/2018/01/a-crisis-of-hate-january-release-12218.pdf>

11. FAILURE TO PROTECT INDIGENOUS WOMEN FROM GENDER-BASED VIOLENCE (ARTICLE 2 & 26)

While data on the issue of gender-based violence against Indigenous women generally is often inadequate or incomplete, a recent study documented more than 500 cases of missing and murdered Indigenous women and girls in 71 cities throughout the United States.¹² This is likely a tremendous undercount due to deficiencies in the data of both law enforcement and the media on this issue. Of the 506 cases identified, 128 (25%) of the cases were missing persons cases, 280 (56%) were murder cases, and 98 (19%) had an unknown status. Jurisdictional issues within Indian Country as well as a standardized data collection on gender-based violence against Indigenous women and girls create challenges for the families of victims as well as for the government in addressing these issues. These issues were noted by the UN Working Group on the issue of discrimination against women in law and in practice in its report following its 2015 mission to the USA, noting with concern the disproportionate number of Native American women who are subjected to heightened levels of violence, including rape and sexual violence.¹³

In 2017, the US Senate introduced Savanna's Act which would require the Department of Justice (DOJ) to update the online data entry format for federal databases relevant to cases of missing and murdered Indians to include a new data field for users to input the victim's tribal enrolment information or affiliation. In addition, under Savanna's Act, the DOJ must make standardized law enforcement and justice protocols that serve as guidelines for law enforcement agencies with respect to missing and murdered Indians, develop protocols to investigate those cases that are guided by the standardized protocols, meet certain requirements to consult with Indian tribes, and provide tribes and law enforcement agencies with training and technical assistance relating to the development and implementation of the law enforcement and justice protocols. However, the bill was not passed before the end of the legislative session in December 2018.

For further reading, please see:

- A. Lucchesi and A. Echo-Hawk, *Missing and Murdered Indigenous Women and Girls: A snapshot of data from 71 urban cities in the United States*, Urban Indian Health Institute, 2018, <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>

¹² The Urban Indian Health Institute (UIHI) collected data from Freedom of Information Act requests to law enforcement agencies, state and national missing persons databases, searches of local and regional news media online archives, public social media posts, and direct contact with family and community members who volunteered information on missing or murdered loved ones. The earliest case received. The oldest case UIHI identified happened in 1943, but approximately two-thirds of the cases in UIHI's data are from 2010 to 2018. This suggests the actual number of urban MMIWG cases are much higher than what UIHI was able to identify in this study.

¹³ Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to the United States of America, 4 August 2016, A/HRC/32/44/Add.2, para 79, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/44/Add.2

12. UNLAWFUL PUSHBACKS, ARBITRARY DETENTION, AND ILL-TREATMENT AGAINST ASYLUM SEEKERS BY US BORDER AND IMMIGRATION AUTHORITIES (ARTICLES 2, 6, 7, 9, 23, 24, & 26)

In 2017 and 2018, the United States adopted and implemented increasingly draconian immigration policies to drastically limit access of asylum seekers to asylum procedures, resulting in irreparable harm to thousands of individuals and families.

Among those policies were (1) unlawful mass pushbacks of asylum-seekers at the US–Mexico border, including through the excessive use of force (constituting *refoulement*); (2) the forced separation of thousands of asylum-seeking families, through which the US authorities deliberately and purposefully inflicted extreme suffering on families, ill-treatment which rose to the level of torture in some cases (contrary to Articles 7, 23, and 24); and (3) increasingly arbitrary and indefinite detention of asylum-seekers, without parole, constituting cruel, inhuman or degrading treatment or punishment (contrary to Article 9). Those measures appeared in particular to be targeting asylum seekers from Latin American countries, about whom the US President and members of his cabinet made dehumanizing and disparaging remarks specifically related to the asylum seekers’ nationalities, cultures and other group characteristics, that articulated apparently discriminatory motivations for the human rights violations against them (contrary to Articles 2 and 26).

Public statements by US government officials demonstrated that the aforementioned policies and practices were adopted and implemented in order to deter primarily Latin American asylum-seekers from requesting protection in the United States, as well as to punish and compel those who did seek protection to give up their asylum claims.

Overall, the combination of these policies and practices to deter and punish asylum seekers violate one of the most fundamental principles of international law, the prohibition on *refoulement*, and may have led to violations of both the right to life (Article 6) and freedom from torture and cruel, inhuman or degrading treatment or punishment (Article 7).

US border authorities’ mass pushbacks of asylum seekers, which intensified in 2018, have been the most visible example of US authorities’ direct *refoulement* of asylum seekers. Yet, in another variety of “*refoulement in disguise*”,¹⁴ or “*constructive refoulement*”, designed to coerce asylum seekers into giving up their requests for protection, US authorities deliberately and expressly leveraged the forced separations of thousands of asylum-seeking families, in order to compel them to abandon their asylum claims.

In some cases, the harmful practice of family separations has satisfied the definitions of torture under US and international law (Article 7). The practice of forced family separations also violated Articles 23 and 24, which require States parties to protect families and ensure their unity (see General Comment 19 on Article 23) and ensure the right of all children to special measures of protection (see General Comment 17 on Article 24). Inasmuch as the practice of family separation was intended also to facilitate the indefinite detention of asylum-seeking families, who could not otherwise be indefinitely detained together as families under US law, the practice also violated the right to liberty and security of person, and the corresponding

¹⁴ See, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/37/50 (26 February 2018), available at https://www.ohchr.org/Documents/Issues/Torture/A_HRC_37_50_EN.pdf.

prohibition of arbitrary detention (Article 9), including arbitrary detention based solely on asylum seekers' migration status.

The United States continues to utilize arbitrary and indefinite detention of asylum seekers as a tool to compel them to give up their asylum claims, and to deter others from seeking protection in the United States. Especially in cases of children, women, older people, LGBTI people, and persons with disabilities or acute medical conditions, the arbitrary and indefinite detention of asylum seekers based solely on their migration status has frequently constituted ill-treatment – especially in the cases of those who have already been subjected to forced separations from their family members, and the subsequent trauma resulting therefrom. Some of those asylum seekers have been detained for periods lasting up to several years without actual opportunities to request or receive parole, which have been subject to blanket denials by US immigration authorities. In some cases, those individuals were denied parole despite acute health conditions and needs for specialized care, or following repeated sexual assaults while in detention. Asylum seekers varying in their demographic backgrounds, ages (including children and adults), and sexual orientations and gender identities, have died while being subjected to arbitrary immigration detention in the United States.

For further reading, please see:

- Amnesty International research report, USA: 'You Don't Have Any Rights Here': Illegal Pushbacks, Arbitrary Detention, and Ill-treatment of Asylum-Seekers in the United States (11 October 2018): <https://www.amnesty.org/en/documents/amr51/9101/2018/en>
- Facts & Figures two-pager, accompanying the report 'You Don't Have Any Rights Here' (11 October 2018): <https://www.amnesty.org/en/latest/news/2018/10/usa-facts-and-figures-of-illegal-pushbacks-arbitrary-detention-and-ill-treatment>
- Open letter from Amnesty International to the US Department of Homeland Security, in relation to findings on family separations detailed in the report 'You Don't Have Any Rights Here' (19 October 2018), related to the report: <https://www.amnesty.org/download/Documents/AMR5192802018ENGLISH.pdf>
- Amnesty International report, Facing Walls: USA and Mexico Violations of the Rights of Asylum-seekers (June 2017), on non-refoulement, at pp. 19-22: <https://www.amnesty.org/download/Documents/AMR0164262017ENGLISH.pdf>
- Amnesty International report, Stuck at the Door (November 26, 2018): <https://www.amnestyusa.org/wp-content/uploads/2018/11/STUCK-AT-THE-DOOR-en.pdf>
- Amnesty International, "Americas: US government endangers asylum seekers with unlawful policies" (November 26, 2018): <https://www.amnesty.org/en/latest/news/2018/11/americas-us-government-endangers-asylum-seekers-with-unlawful-policies>

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UNITED STATES OF AMERICA

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

125TH SESSION, 4-29 MARCH 2019, LIST OF ISSUES PRIOR TO REPORTING

This submission highlights Amnesty International's concerns in relation to the implementation of the International Covenant for Civil and Political Rights in the United States of America in advance of the adoption of the List of Issues Prior to Reporting for the fifth periodic report.

Amnesty International provides documentation on issues in the USA related to the obstacles to implementation at the domestic level; the continued use of the death penalty; the use of lethal force by law enforcement; the prevalence of gun violence and the failure to protect the right to life; the failure to respect sexual and reproductive rights; the "targeted killing" program- violations of the right to life; the failure to protect the right to freedom of expression and peaceful assembly; discrimination and violations based on sexual orientation and gender identity; the failure to protect Indigenous women from gender-based violence and unlawful pushbacks, arbitrary detention, and ill-treatment against asylum seekers by US border and immigration authorities.