

Memorandum

To: Members of the U.N. Human Rights Committee

From: Jennifer Daskal, Advocacy Director, U.S. Programs, Human Rights Watch

Re: List of Concerns for the review of the U.S. Second and Third Periodic Report

Date: January 10th, 2006

Human Rights Watch (HRW) has worked closely with the U.S. Civil Society Organizations and Advocates on their collective submission to the committee. Although institutional policies prevented us from being able to officially sign onto the coalition statement, we nonetheless support their important work.

We write separately to underscore the special importance we attach to several of the issues raised in the joint submission. HRW thanks the Committee for consideration of our concerns.

(1) *The Cloak of Federalism*: As an overarching issue, HRW wishes to emphasize our concern about the United States' system of federalism is used to justify the failures to abide by its treaty obligations.

The United States has consistently failed to develop, monitor, or enforce any national standards for law enforcement personnel and treatment of prisoners and detained persons within the United States. The national government has consistently left such practices up to the individual states and localities, with little to no guidance or monitoring.

This failure is reflected in the report itself. Whereas the report cites a long list of court cases and statutes, it fails to provide any description of the reality on the ground; i.e. how these statutes are being implemented and any how violations of the Convention are monitored. The report does not contain such a description because the federal government does not know – it has not established mechanisms to acquire the necessary information. . Moreover, the report heavily emphasizes *federal* statutes and *federal* standards, while stating little about the *state* statutes, standards and enforcement mechanisms – even though law enforcement personnel are almost all state or local, and most prisoners are in state or local facilities.

HRW urges the committee to ask the United States questions about law enforcement and corrections policies and practices within the states, in particular the policies and practices with regard to the treatment of juveniles in the criminal justice system, use of force (including restraint devices and electronic stun devices) by law, sexual abuse of prisoners, the operation of supermaximum prisons, and the treatment of the mentally ill in prison.

(2) *Article 2 – Effective Remedies:* Courts provide the primary vehicle by which individuals in the United States can seek redress of violations of their rights. Over the last ten years the U.S. government has increasingly restricted access to courts for persons who believe public officials have violated their rights to liberty, due process or to be free from torture or other cruel, inhuman or degrading treatment. Of particular concern are the limitations on prisoners, immigrants, and “enemy combatant” detainees’ access to the courts, as highlighted in the coalition’s submission under Article 2.

HRW urges the committee to question the United States about the availability of judicial and other effective remedies available to certain groups of persons, including prisoners, immigrants, and detainees in the so-called “war on terror.”

(3) *Article 6 – Use of the Death Penalty:* The death penalty in the United States is riddled with racial, economic, and geographic disparities, with minorities accused of killing white persons much more likely to be sentenced to death than white persons who kill white persons and indigent persons much more likely to be sentenced to death than persons with sufficient income to afford competent attorneys. The new use of DNA continues to establish the innocence of people who have been waiting on death row for their execution. Yet, despite waning public support for the death penalty, as measured by a number of national polls, Congress is currently considering several pieces of legislation that would significantly expand the reach of the federal death penalty. In 2005, the United States executed its 1,000th individual since the moratorium on the death penalty was lifted in 2006, and the number of executed continues to grow.

HRW urges the committee to question the United States about what steps are being taken to prevent the arbitrary and discriminatory application of the death penalty.

(4) *Article 7 – Freedom from Torture and CIDT:* While HRW endorses the coalition’s submission regarding Article 7, HRW also wishes to raise two additional issues: (i) the abuse of detainees in Guantanamo Bay; and (ii) the use of supermaximum prisons.

(i) In addition to the psychological abuse of Guantanamo Bay detainees described by the coalition’s submission, detainees have also been subjected to physical abuse and abusive interrogations amounting to torture and CIDT. U.S. personnel have bombarded their captives with excruciatingly loud music; subjected them to extremes of hot and cold; kept them in solitary confinement; forced them into contorted positions for long periods; denied them sleep for days; made them howl like dogs and wear women’s underwear on their heads; left them curled up on the floor with their hair pulled out in despair. Of particular concern, recently passed legislation (Section 1005(b) of Public Law 109-148) appears to allow the use of confessions obtained through torture and CIDT when adjudicating whether the detainees brought to Guantanamo Bay are enemy combatants and thereby subject to continued, prolonged, and indefinite detention.

(ii) The United States continues to confine more than twenty thousand prisoners in the United States, nearly two percent of the prison population, housed in special super-

maximum security facilities or units. Prisoners in these facilities typically spend their waking and sleeping hours locked in small, sometimes windowless, cells sealed with solid steel doors. A few times a week they are let out for showers and solitary exercise in a small, enclosed space. Supermax prisoners have almost no access to educational or recreational activities or other sources of mental stimulation and are usually handcuffed, shackled and escorted by two or three correctional officers every time they leave their cells. Assignment to supermax housing is usually for an indefinite period that may continue for years. Although supermax facilities are ostensibly designed to house incorrigibly violent or dangerous inmates, many of the inmates confined in them do not meet those criteria. (See *Out of Sight: Maximum Security Prisons in the United States*, HRW Report, February 2000; available at <http://www.hrw.org/reports/2000/supermax>.)

HRW urges the committee to question the United States about its treatment of detainees in Guantanamo Bay and its use of supermaximum prisons.

(5) *Article 9 – Right to Liberty and Security of Persons*: HRW wishes to underscore the concerns raised in the coalition’s submission regarding the United States compliance with Article 9. HRW urges the committee to question the United States about the designation and ongoing detention of “enemy combatants,” the use of secret prisons, the restrictions on independent court review of detention decisions, and the failure to release individuals from Guantanamo Bay who have been cleared of any wrongdoing and determined to be “no longer ‘enemy combatants.’”

HRW also urges the committee to ask the United States about the use of the material witness law to indefinitely detain persons suspected of connections to terrorism. HRW does not object to the proper use of a material witness statute: to detain key witnesses who pose credible flight risks and whose testimony cannot be secured in any other way. However, since September 11, the federal government has used the material witness statute for a very different purpose – to indefinitely detain, without charges, suspects connected to the so-called “war on terrorism.” HRW has documented that at least seventy such persons have been held as “material witnesses” Over one-third were held for over two months; some for more than six months; and at least for over a year. Their court proceedings were held behind closed doors and they were incarcerated under high security conditions. Because these individuals were never charged with a crime, they were never given an opportunity to defend themselves. It is this misuse of this statute as an end-run around the due process protections of the criminal justice system that violates the right to liberty and security of person. (See *Witness to Abuse: Human Rights Abuses Under the Material Witness Law Since September 11*, ACLU and HRW Report, June 2205; available at: <http://hrw.org/reports/2005/us0605/us0605.pdf>.)

(6) *Article 10 –Treatment of Individuals Deprived of Their Liberty*: HRW wishes to underscore the issues raised by the coalition in this section, and to highlight the concerns about the mistreatment of and failure to provide proper mental health services to prisoners with serious mental illness. We also wish to highlight the prevalence of prisoners with mental illness in supermaximum security facilities – where the conditions of confinement can aggravate their symptoms, and immeasurably increase their suffering

and provoke further psychiatric deterioration. (See *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, Human Rights Watch, Sept. 2003; available at: <http://www.hrw.org/reports/2003/usa1003>.)

(7) *Article 14: Access to Counsel*: HRW wishes to highlight the fact that indigent criminal defendants are obliged to rely on appointed counsel, who, in most states, are underpaid, overworked, and underqualified, and, as a result, fail to mount an effective defense.

HRW also wishes to underscore concerns about the use of secret evidence in the military commissions designed to try detainees in the war on terror. Detainees' civilian lawyers are not guaranteed access to all of the evidence used against their clients, making it exceedingly difficult to mount an effective defense.

HRW urges the commission to question the United States about its indigent defense system and about the military commission rules that allow for convictions based on evidence never shown to defendant's civilian defense counsel.

(8) *Article 22 – Freedom of Association*: HRW has documented the ways in which meatpacking and poultry companies have harassed, intimidated, and retaliated against workers – a large proportion of whom are immigrant workers, including undocumented workers -- who have tried to organize. The importance of organizing in these plants is underscored by the extremely hazardous working conditions the workers face – conditions that put them at high risk of serious injury, and even death. (See *Blood, Sweat, and Fear: Workers Rights in Meat and Poultry Plants*, HRW, Jan. 2005; available at: www.hrw.org/reports/2005/usa0105/index.htm.)

HRW urges the committee to ask the United States about steps that it is taking to ensure that immigrant workers – including those who are undocumented – may exercise their rights of association.

(9) *Article 24 – Juveniles Subject to Life Without Parole*: HRW wishes to highlight the problem of juveniles being subject to sentences of life without parole. As the coalition highlighted, over 2,225 individuals are now serving life sentences without the possibility of release for crimes committed when they were under 18. (See *The Rest of Their Lives: Life Without Parole for Child Offenders*, HRW Report, Oct. 2005; available at <http://www.hrw.org/reports/2005/us1005/restbrochure.pdf>).

HRW urges the committee to question the United States about its use of life without parole sentences for juveniles.