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IHF Focus:

Observance of international safeguards; torture and ill-treatment by law enforcement officials; conditions in prisons and detention facilities; protection of asylum seekers and immigrants; death penalty; intolerance and racial discrimination; women's rights

Police brutality and abuse of prisoners by prison guards were among the most serious problems in the US in 1998. The internationally recognized rights of asylum seekers continued to be drastically curtailed, with asylum seekers (including children) and immigrants being held in detention facilities with common criminals for long periods of time. Toughing anti-crime policies – particularly the "war on drugs" - which enjoyed significant public support, became the vehicle for many of the most serious abuses, including discriminatory criminal justice policies. Such policies also contributed to overcrowding in prisons, with increasing numbers of nonviolent offenders being incarcerated.

Death penalties were handed down at an alarming pace, and minority racial groups continued to be over-represented among those sentenced to death. In violation of international law, the US also continued its practice of sentencing to death and executing juvenile offenders and mentally incompetent individuals.

Policies advocated by various political groups led to the exclusion from full protection of their human rights of unpopular or controversial groups such as convicted criminals, immigrants, and members of certain minorities. In line with that trend, discrimination against gays and lesbians continued.

Observance of International Safeguards

The US has traditionally given low priority to compliance with international human rights treaties, and in 1998 this became increasingly apparent. The US failed to submit reports under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)², both due in November 1995. As of the end of 1998, the US had not ratified a number of other important human rights treaties, including the ICECR, the Convention on the Elimination of All

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The European Roma Rights Center – Human Rights Without Frontiers – Mental Disability Advocacy Center

Forms of Discrimination Against Women, and the Convention on the Rights of the Child. In addition, the administration did not move toward signing or ratifying core International Labor Organization conventions intended to protect basic labor rights.

In 1998 the US continued to exempt itself from its international human rights obligations, particularly in instances in which international human rights law granted protections or redress not available under US law. When ratifying international human rights treaties, the US have typically carved out such protections not provided for by US law by adding reservations and declarations. Even years after ratifying key human rights treaties, the US still failed to acknowledge human rights law as US law.

The three UN special rapporteurs who visited the US in late 1997 and 1998 were met with relative openness at the federal government level, but with much less acceptance at the state level. Officials at the State and Justice Departments made almost no effort to facilitate meetings of the special rapporteur on extrajudicial, summary, or arbitrary executions with local officials or his access to prisons' death rows. The treatment of the special rapporteur on violence against women and to investigate human rights abuses of women in custody, including prisons and detention centers of the US Immigration and Naturalization Service (INS), was better, but officials in the State of Michigan did not allow her to visit prisons in that state. The third special rapporteur visited the United States in February and examined religious intolerance.

Despite its vocal defense of human rights worldwide, the US opposed several initiatives aimed at improving international protection of human rights. It refused to join the 133 nations that had signed the treaty on landmines, it blocked international efforts to ban child soldiers, and – as one of only seven states - voted against the statute creating the International Criminal Court at the Rome Diplomatic Conference in July.

Torture, Ill-Treatment and Misconduct by Law Enforcement Officials 3

Ill-treatment by some members of law enforcement at the local, state and federal level continued, often without adequate reaction on the part of the responsible authorities. It was difficult to estimate how widespread the problem was since the Justice Department failed to compile annual statistics on the use of excessive force by police officers - as Congress had instructed it to do in 1994.

Police resorted to using unnecessary force (including the unjustified use of firearms and beatings), which in some cases resulted in fatal chokings. The lack of adequate civilian review, internal investigations, and criminal prosecutions by federal or state prosecutors virtually guaranteed that officers who engaged in brutality would go unpunished.

On the positive side, the Justice Department did begin to utilize its powers to identify police departments that exhibited a "pattern or practice" of abuse, and required reforms.

Police brutality was often racially or ethnically motivated. The available information indicated that members of minority groups had alleged human rights violations by police officers more frequently than non-minority residents. Incidents involving members of ethnic minorities occurred also in numbers that were far out of proportion to their representation in any given location.

Conditions in Prisons and Detention Facilities

In many jails, prisons, immigration detention centers and juvenile detention facilities, confined individuals suffered from physical ill-treatment, excessive disciplinary sanctions, barely tolerable physical conditions, and inadequate medical and mental health care. Unfortunately, there was little support from politicians or the public for reform.

The prison population in the US was proportionally larger than in any other state except Russia⁴ - the incarceration rate twice as high as it had been a decade before. Fifty-three percent of all inmates in state prisons had been incarcerated for nonviolent crimes. There was a tendency towards longer prison sentences and diminished availability of parole.

Surging prison populations and public reluctance to fund the construction of new facilities resulted in dangerously overcrowded prisons. Violence continued, with inmates being killed by other inmates, and thousands injured seriously enough to require medical care. Extortion and intimidation were commonplace. Most inmates had scant opportunities for work, training, education, treatment or counseling. Mentally ill inmates rarely received adequate monitoring or treatment.

Many local prisons were dirty, unsafe, vermin-infested, and offered no possibilities for inmates to exercise or get fresh air. In some prisons inmates were held in restraining devices longer than regulations allowed and in excess of legitimate safety considerations. Severe overcrowding coupled with inadequate staffing in many facilities, which resulted in fights between inmates, medical emergencies, and escapes.

Administrative segregation and isolation in super-maximum security prisons was an increasingly used method to maintain control. Prisoners deemed particularly disruptive or dangerous were isolated in small, often windowless cells for twenty-three hours a day; more than 24,000 prisoners were kept in this modern form of solitary confinement at any given time.

Reports about abuse by guards were received from many prisons, particularly from super-maximum facilities. Inmates complained of instances of excessive and even clearly illegal use of force.

- In Pennsylvania dozens of guards from the facility SCI Greene were under investigation for beatings, slamming inmates to walls, racial taunting and other ill-treatment of inmates. The state Department of Corrections fired four guards, and 21 others were demoted, suspended or reprimanded.

- Since Corcoran State Prison in California opened in 1988, fifty inmates, most of them unarmed, were shot by prison guards, and seven were killed. In February 1998 federal authorities brought charges against eight Corcoran officers for deliberately pitting unarmed inmates against each other in gladiator-style fights, which the guards would then break up by firing at them with rifles. In July the state announced a new investigation into at least 36 serious and/or fatal shootings of Corcoran inmates.

However, in many other facilities across the country abuses went unaddressed.

Overcrowded public prisons and the tight budgets of corrections agencies fueled the growth of private correction companies. Some 100,000 adults were confined in 142 privately operated facilities. States failed to enact laws setting appropriate standards and regulatory mechanisms for private prisons, signed weak contracts, undertook insufficient monitoring, and tolerated prolonged substandard conditions.

- In less than a year, there were two murders and thirteen stabbings at one privately

operated prison in the state of Ohio.

Abuse of Female Inmates

The number of female prisoners grew rapidly. As a result, women were held in overcrowded prisons, which often provided poor access to basic services such as medical care and substance abuse treatment.

Sexual and other abuse of female inmates in local jails, state and federal prisons, and INS detention centers continued to be a serious problem. Prison guards (most of them men) subjected women prisoners to verbal harassment, unwarranted visual surveillance, abusive pat frisks and sexual assault. In fifteen states there were no criminal laws prohibiting custodial sexual misconduct by guards. In most states, guards were not properly trained about their duty to refrain from sexual abuse of prisoners.

- In Michigan, women reported retaliatory behavior by guards and initiated a civil rights suit citing abuse. They soon faced retaliation that ranged from verbal abuse, intimidation, and excessive and abusive pat frisks, to loss of visitation privileges and "good time" accrued toward early release. 5

Men in prison also suffered from sexual abuse by fellow prisoners. Prison staff often allowed or even tacitly encouraged sexual attacks by male prisoners. Few if any measures were taken to protect the victims and perpetrators were rarely adequately punished by prison officials.

Juvenile Delinquents

As in previous years, increasing numbers of children were incarcerated nationwide, even as the number of violent juvenile offenders fell. Despite the declining percentage of violent juvenile offenders, and in spite of the costs associated with incarceration, most states continued to incarcerate high numbers of children for nonviolent offenses. Between 1992 and 1998, at least 40

states adopted legislation making it easier for children to be tried as adults, and 42 states detained juveniles in adult jails pending trial.

Prompted by a 1996 Human Rights Watch report on human rights abuses in the state of Georgia, the Department of Justice (DOJ) concluded a year-long investigation of

the state's juvenile detention facilities in February 1998. The DOJ identified a "pattern of egregious conditions" that violated children's rights, including overcrowded and unsafe conditions, physical abuse by staff excessive use of disciplinary measures, and inadequate educational, medical and mental health services. In March the state and the DOJ signed an agreement that required the state to make extensive improvements. The DOJ concluded at least two other investigations of juvenile facilities in 1998, finding violations in the county detention centers in Owensboro, Kentucky, and Greenville, South Carolina. In each of these facilities, the DOJ found evidence that staff employed excessive force against juvenile inmates.

Protection of Asylum Seekers and Immigrants

Detention of Aliens

Implementation of the 1996 Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) continued to result in violations of internationally accepted standards regarding asylum seekers and immigrants. Increasing numbers of individuals were held in detention in often inhumane conditions. The IIRIRA's expedited removal proceedings intended to process and deport individuals who enter the US without valid documents as quickly as possible, and imperiled bona fide refugees.

Asylum seekers who prevailed in initial summary procedures at ports of entry were detained pending a so-called "credible fear" interview to determine whether there were grounds for granting asylum. Although asylum seekers who had proven "credible fear" could have been released, they were in most cases held detained throughout the process, and until asylum hearings were completed – a procedure that sometimes takes years.

Due to lack of detention space of its own, in 1998 the INS sent some 9,000 immigrants to local jails to await immigration proceedings. These facilities were under the control of local sheriffs and other jail officials, and there were no guarantees that basic international and national standards would be met. In practice, INS detainees were often mixed with accused and convicted criminal inmates and were sometimes subjected to physical ill-treatment and inadequate conditions of confinement. In short: without serving a criminal sentence or awaiting trial on criminal charges, INS detainees were treated in the same way as any local inmate. They were not provided with basic medical care, were often unable to communicate with jail staff due to

language barriers, and were subjected to severe restrictions on contact with families, friends, and legal representatives. In most cases, INS detainees were not able to obtain legal counsel at all.

The treatment of children held by the INS was alarming. Human Rights Watch investigations⁶ in three states revealed that nearly all children received little or no information about their right to be represented by an attorney in their immigration proceedings. Some unaccompanied minors were housed with juvenile offenders, locked up and made to wear prison uniforms even though they were held for administrative reasons only.

Misconduct by Border Patrol guards

Along the US-Mexican border, US Border Patrol (a part of the INS) guards continued to resort to abuse border crossers, but serious physical abuses such as shootings, beatings, and kickings seemed to decline. Beginning in June, after a Border Patrol agent in southern Arizona was shot dead, Arizona agents opened fire at border crossers at least a half-dozen times over a three-month period, leading to one fatality in September. In addition, along the Californian-Mexican border, Border Patrol agents shot dead two men during shooting incidents in September. All three victims were reportedly holding rocks in a threatening way when agents shot them. Investigations into the deaths were initiated.

Few of the December 1997 recommendations of the Citizens' Advisory Panel (CAP) – created in response to reports of abuse along the border - had been implemented as of October 1998. The CAP's mandate expired in 1998.

Ill-treatment of Migrant Workers

In the Commonwealth of the Northern Mariana Islands (CNMI), a US territory in the North Pacific Ocean, thousands of migrant workers (primarily from China, the Philippines and Bangladesh) working in garment manufacturing plants were ill-treated by company officials. Such abuses occurred because the CNMI authorities were exempt from normal federal immigration, trade, and worker protection regulations. During 1998, legislation to address human rights violations in the CNMI was introduced in Congress and actively supported by the Clinton administration. The Department of the Interior prepared a report that documented the trafficking of Russian and Chinese women for the purpose of prostitution as well as an overall worsening of conditions for foreign workers.

Death Penalty

The United States continued to rely on the death penalty despite the international trend away from its use. In 1998, sixty-eight individuals were executed.⁷ Among those executed were women (the first women executed since 1984), individuals who may have been mentally ill or retarded, juvenile offenders, and foreign nationals.

In April, the UN special rapporteur on extrajudicial, summary, or arbitrary executions released his report on the use of the death penalty in the US. The report criticized the fact that the death penalty was applied in an unfair, arbitrary, and discriminatory manner and stated that imposing the death penalty on juvenile offenders and on mentally retarded or mentally ill persons was "a step backwards in the promotion and protection of the right to life" and violated international human rights standards. The report called for a suspension of executions until significant reforms were implemented to bring the US into compliance with international human rights standards.

At the UN Human Rights Commission, US officials defended the use of the death penalty arguing that the nation had such strict due process standards that the rights of all capital defendants were being protected. However, from 1976 to 1997, seventy-four people were released from death row due to evidence of their innocence, according to the Death Penalty Information Center (DPIC).

Two 1998 studies by the DPIC confirmed the previous reports that race played an important role in the application of the death penalty.

- In the city of Philadelphia, an African-American was four times more likely to be sentenced to the death penalty than a white defendant on similarly severe murder charges and with a similar criminal background.

A study on the race of district attorneys (who decide on whether to seek the death penalty) found that nearly 98 percent of district attorneys in states upholding the death penalty were white, while 1 percent was African-American.

- The US continued to be one of only six countries⁸ to execute persons who were younger than eighteen at the time of committing their crime – an act that violates several international and regional human rights instruments. The US led the list with

nine such executions between 1990 and 1998, one-half of the known worldwide total for the period.

- In Texas the first juvenile offender in the US in five years was executed in 1998.

- In October Dwayne Allen Wright was executed in Virginia. Wright was a juvenile offender and was mentally ill and may have suffered from brain damage.

In violation of the Vienna Convention, US authorities did not notify non-national defendants of their right to contact their embassies.

In April the International Court of Justice called on the US to delay the execution in Virginia of a Paraguayan national, Angel Francisco Breard, until it could examine his case and decide whether the US's failure to notify the defendant of his consular rights had made a difference in his case. The US authorities decided that with or without consular notification, Breard would have been convicted of a capital crime, and executed him.

Intolerance and Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), of which the US is party, defined discrimination more broadly than US law. The CERD deemed discriminatory any practice or policy that was discriminatory in "purpose or effect." Under this standard, policies that were race-neutral on their face but had a persistently adverse impact on a racial group could amount to discrimination. In the US areas of concern in this regard included, among others, the impact of criminal justice policies, such as the "war on drugs," the application of the death penalty, and the widespread disenfranchisement of felons.

Discriminatory Policies in Law Enforcement and Criminal Justice

Black Americans appeared to become primary victims of harsh criminal justice policies. According to the Department of Justice, 8.3 percent African Americans between 25 and 29 years of age were in prison in 1996, compared to 2.6 percent of Hispanic men and 0.8 percent of white men in the same age group. Black Americans constituted a disproportionate share of the prison population: in 1997, 48 percent of state prisoners, 30 percent of federal prisoners, and 42 percent of jail inmates, i.e. in total 8.5 times that of white men. According to a US Department of Justice analysis, if current rates of incarceration continued, one in three of the next generation of black

men would spend time in prison at some point in his life.

The nationwide fight against drugs was one area in which disparate impact on African-Americans was well-documented. Drug control policies emphasized law enforcement in low-income urban areas, contributing significantly to the number and proportion of blacks and Hispanics who were arrested, convicted, and imprisoned. The arrest rate for drug offenses was six times higher for blacks than for whites. More than one-quarter of all black inmates in state prisons were convicted of drug offenses, compared to 13 percent of white prisoners.

Moreover, the US federal courts handed down much harsher sentences for crack offences (more frequent among blacks) than for powder cocaine (more frequent among whites) although the crimes as such were equivalent. Under the CERD, both ethnic groups should have been treated equally for equivalent crimes.

Disenfranchisement of Felons⁹

The US also stripped persons convicted of felonies of their right to vote. In 1998 an estimated 3.9 million US citizens were denied the right to vote, including over one million who had fully completed their sentences. No other democratic country in the world denied the right to vote because of felony convictions to as many people as that.

The racial impact of disenfranchisement laws was particularly egregious. Thirteen percent of African-American men - 1.4 million - were disenfranchised, representing over one-third (36 percent) of the total disenfranchised population. In two states, data published by Human Rights Watch and The Sentencing Project showed almost one in three black men to be disenfranchised.

The report of the Advisory Board to the President's Initiative on Race on the problem of racism was submitted to President Bill Clinton in September 1998. According to Human Rights Watch, it disappointed civil rights leaders and others by failing to make bold proposals. Meanwhile, a long-overdue US compliance report on CERD remained pending.

On the positive side, the federal statute outlawing hate crimes was expanded.

- In June the killers of James Byrd, a black man in Texas, dragged his beaten body behind their pickup truck until he died.

The Homosexuals

National debate on the rights of gays and lesbians often resorted to ugly rhetoric, also by senior politicians of the Republican Party. The legal rights of homosexuals received greater protection at the federal than at the state level, though federal policy on the treatment of gays and lesbians in the military continued to have a discriminatory impact. In some areas, bias crimes against homosexuals increased, while groups espousing "family values" sought to "cure" homosexuality.

- The brutal murder of a young gay man, Matthew Shepard, in Wyoming in October galvanized nationwide concern over hate crimes.

In May President Clinton signed an executive order protecting federal civil workers from discrimination based on sexual orientation, and the House of Representatives voted to uphold the order in August. However, discrimination on the basis of sexual orientation remained a problem in employment, since only ten states had laws prohibiting such discrimination. In seven states, executive orders barred discrimination in public employment based on sexual orientation, and in two, civil service rules prohibited discrimination on the same basis. As a result, in the forty states without comprehensive laws, private employers could "legally" fire, deny promotion, unfairly compensate or decline to hire people because of their - actual or perceived - sexual orientation. The Employment Non-Discrimination Act, a bill that would protect workers in every state from discrimination based on sexual orientation, had not been acted on as the congressional session ended.

Women's Rights

Women were discriminated against in many areas, including employment and education. The judicial system as well as law enforcement officials operated in a biased manner in domestic violence cases. The failure to ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) left women in the US without enhanced human rights protections against sex discrimination.

FOOTNOTES:

1. Based on the US section of the Human Rights Watch World Report and other

Human Rights Watch information.

2. Both ratified by the US as late as 1994.

3. See also *Shielded from Justice: Police Brutality and Accountability in the United States*, Human Rights Watch, 1998.

4. More than 645 prisoner per 100,000 residents in the US.

5. See *Nowhere to Hide: Retaliation against Women in Michigan State Prisons*, Human Rights Watch, 1998.

6. See *Locked Away: Immigration Detainees in Jails and the United States*, Human Rights Watch, 1998.

7. According to the Death Penalty Information Center (DPIC).

8. The others were Iran, Nigeria, Pakistan, Saudi Arabia and Yemen.

9. See *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the U.S.*, Human Rights Watch, 1998.

