

**MINISTRY OF FOREIGN AFFAIRS
OF THE RUSSIAN FEDERATION**

**REPORT
ON THE HUMAN RIGHTS SITUATION
IN THE UNITED STATES OF AMERICA**

Moscow, 2012

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Introduction

The human rights situation in the United States of America has provoked serious concerns within the international community, American NGOs and mass media.

The present report is based upon verified information from authoritative international and national sources and summarizes broad factual information on multiple, including systemic, problems related to the human rights observance that the American society faces.

In the USA, among the most grave challenges are growing social inequality, racial, ethnic and religious discrimination, continuing detention of prisoners without charges presented, partial justice, prisons operating outside the legal field, torturing, governmental authorities influencing judicial processes, weak penitentiary system, restraint of freedom of speech, Internet censorship, legalized corruption, limitation of electoral rights of citizens, racial and ethnical intolerance, infringing children's rights, extraterritorial application of American law which leads to infringing human rights in other countries, kidnapping, "witch-hunt", disproportionate use of force against peaceful manifestations, death penalty applied to underage and mentally disabled offenders, etc.

That being said, international legal obligations of the USA are still limited to participation in three (1965 Convention on the Elimination of All Forms of Racial Discrimination, 1966 International Covenant on Civil and Political Rights, 1984 Convention against Torture) out of nine basic treaties on human rights that provide for control mechanisms. The USA has not yet ratified the 1966 International Covenant on Economic, Social and Cultural Rights, 1979 Convention on the Elimination of All Forms of Discrimination against Women, 1989 Convention on the Rights of the Child, 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2006 Convention on the Rights

of Persons with Disabilities, and 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

Such a situation makes a drastic contrast with the ambitions of the USA to become a global leader in the protection of democratic values, shows the double standard attitude actively used by the USA authorities and requires effective measures to resolve the large-scale problems that exist in the humanitarian and human rights areas in accordance with the international obligations of the USA.

U.S. participation in the international treaties and conventions on human rights

International legal obligations of the USA are still limited to participation only in three (1965 Convention on the Elimination of All Forms of Racial Discrimination, 1966 International Covenant on Civil and Political Rights, 1984 Convention against Torture) out of nine basic treaties on human rights that provide for control mechanisms. The USA has not yet ratified the 1966 International Covenant on Economic, Social and Cultural Rights, 1979 Convention on the Elimination of All Forms of Discrimination against Women, 1989 Convention on the Rights of the Child, 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2006 Convention on the Rights of Persons with Disabilities, and 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

Below you can find an expanded **list of international instruments, to which the USA is not yet a Party**, according to the information provided by the official UN bodies:

1. Convention (No. 29) concerning Forced or Compulsory Labor (28 June 1930);
2. Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize (9 July 1948);
3. UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (2 December 1949);
4. ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (29 June 1951);
5. ILO Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation (25 June 1958);
6. UN Convention against Discrimination in Education (14 December 1960);
7. International Covenant on Economic, Social and Cultural Rights (16 December 1966);

8. Optional Protocol to the International Covenant on Civil and Political Rights (16 December 1966);
9. UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (26 November 1968);
10. ILO Convention (No. 138) on the Minimum Age for Admission to Employment or Work (26 June 1973);
11. UN Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979);
12. UN Convention on the Rights of the Child (20 November 1989);
13. Second Optional Protocol to the International Covenant on Civil and Political Rights (15 December 1989), aiming at the abolition of the death penalty;
14. UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990);
15. Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women (6 October 1999);
16. UN Convention on the Rights of Persons with Disabilities (13 December 2006);
17. International Convention for the Protection of All Persons from Enforced Disappearance (20 December 2006).

Manifestations of racial, ethnic and religious intolerance

In the USA it is noted a dangerous trend towards strengthening racist and xenophobic sentiments. The American law enforcement authorities register progressive increase in the number of extremist groups, significant number of crimes committed on the grounds of racial, religious and ethnic enmity.

According to data of the non-governmental organization Southern Poverty Law Center, currently in the USA there are over one thousand extremist groups, including neo-Nazi (the National Alliance, the National Socialist Movement, the National Socialist Vanguard and the NSDAP/AO), racist and separatist ones. Since 2000, the number of organizations uniting people on the grounds of hatred towards any group of the population has increased by 69 per cent.

The rigid constitutional frameworks seriously complicate the prosecution of the neo-Nazi radicals in the USA. If these persons nevertheless find themselves in the dock, then they are charged, as a rule, with other crimes.

According to the data received by the FBI during the Vigilant Eagle operation carried out in the beginning of 2009 the right-wing extremist groups have intensified their efforts in the country to recruit the supporters, to distribute threatening messages and to buy arms.

In general, according to the FBI's data among the hate crimes committed in the USA more than 80 per cent are motivated by of the racial, religious and ethnic hatred. At the same time among the crimes committed on the grounds of the racial hatred nearly in 70 per cent of cases the Afro-Americans are the victims.

In the USA the manifestations of islamophobia have become more frequent. According to the data announced at the hearings in the Senate Judiciary Committee in March 2011 the number of Islam adherents is less than 1 per cent of the USA population, but they account for 14 per cent of all cases of the religious discrimination.

According to the estimates of the human rights defenders, the USA already has more than 30 organizations promoting the theories of the Islamic Conspiracy. According to the data of the Center for American Progress, they are financed by the private funds and some defense companies. The budget of these organizations, according to some estimates, amounts to about 50 million dollars.

The sociologists believe that 15-20 per cent of the USA population belong to rabid xenophobes. Approximately so many Americans suppose that it is necessary to prohibit the followers of Islam from working in the government.

In 2010 the Anti-Defamation League registered more than 1,200 anti-Semitic incidents in the country (133 of them were registered in New York alone). So, in November of 2011 the unidentified persons attacked the Midwood Brooklyn quarter, where the Orthodox Jews mainly resided. The evil-minded persons set fire to several cars and painted the walls of the houses and benches in the parks with the swastika and Ku Klux Klan emblems.

The anti-Semitic slogans were repeatedly used as well by the members of the Occupy Wall Street movement.

According to the Anti-Defamation League's study issued in 2011, about 15 per cent of the Americans (nearly 35 million people) held the radical anti-Semitic views.

Since the 1990s, in the USA there has been actively growing the anti-government "patriotic" movement that once provoked a series of terrorist attacks in its territory, in particular, set off the explosions in Oklahoma City. According to the data of the organization Southern Poverty Law Center, for the first 3 years of Barack Obama's presidency the number of "patriotic" groups increased by 75 per cent and in 2011 totaled more than 1,200.

Excessive use of force by the police and racial profiling

According to the estimates of the American non-governmental organizations, approximately one police officer in a hundred is implicated in criminal abuses. The sexual harassments, sexual abuses, rapes, including against the minors, are regularly committed by the police officers. There are cases in which the police misconduct led to a fatal outcome. Ultimately only about 30 per cent of the police officers are prosecuted for the committed acts. Numerous complaints of excessive use of force by the police officers are received from the participants of the protest movements opposing social inequality.

In January 2009, the American edition the Emergency Medicine Journal published the results of the survey conducted among the physicians working in the emergency departments. 315 physicians participated in the study and almost 98 per cent of respondents said that at least once during their professional career they had to attend victims of the police brutality.

According to the report of the non-governmental National Police Misconduct Statistics and Reporting Project, only in 2010 there were registered more than 5,000 cases of excessive use of authority by the police officers. Roughly, one officer in a hundred is implicated in the criminal abuses. At the same time the percentage of holding police officers criminally liable for the offenses committed is significantly lower than in general in the country. Only about 30 per cent of the police officers are ultimately prosecuted for the crimes committed. Given that the mentioned non-governmental project uses only the public information sources, mainly the mass media, the cited figures may turn out to be lower than the actual ones.

Various offenses of a sexual nature (sexual harassments, sexual abuses, rapes etc) are regularly committed. According to the data available from the public sources, for example in 2010 618 police officers were implicated in such acts, at the same time in 180 cases the minors became victims of violence. The human rights defenders note that the level of sexual crimes committed by the police officers is significantly higher than the level of those committed by the USA population in general.

According to the data of the non-governmental organization Amnesty International, during the period from 2001 to February 2012 at least 500 people in the USA died from the electric shock weapon used by the police while arresting or taking into custody.

Often the principle of using electric shockers and other "stun" weapons that can be used only in situations where the police officer are in a fatal danger is being violated. According to the report issued in 2008 by the Amnesty International (USA: Stun weapons in law enforcement), in 90 per cent of cases those who died from the electric shocker were unarmed. At the same time towards many of them this weapon was used more than once.

For example, in 2011 a 43-year-old Allen Kephart died after the Californian police stopped him for a traffic violation. His autopsy showed that he had been struck with the electric shocker 16 times, and none of the three police officers were punished.

In November 2011 in North Carolina a 61-year-old hearing-impaired Roger Anthony died of the electric shocker after he had failed to hear the police officers' order to stop while riding his bicycle.

In October 2012 the Oakland authorities agreed to pay US\$ 1.7 million dollars as compensation to the family of Jerry Amaro who died a month after his arrest in 2000 on suspicion of buying drugs. During his detention the police officers broke five ribs of that Latin American and seriously damaged his left lung. For a long time the Oakland police thoroughly concealed what had happened, the medical examiner who made the autopsy informed the family of Jerry Amaro that he had supposedly died after a street fight with drug dealers. However, the investigation carried out by the FBI agents revealed that the young man had received death injuries just from the police officers.

The complaints of excessive use of force by the police officers are also received from the Occupy Wall Street movement's participants who oppose a social inequality. In October 2011 in Oakland, state of California, the police officers fractured the head of a 24-year-old Iraq war participant Scott Olsen, as a result of

what he was not able to speak for some time. In November 2011 in Seattle the police used the tear gas against the crowd of demonstrators, including a 84-year-old activist Dorli Rainey, a priest and 19-year-old pregnant woman, while the police officers, who guarded the California State University, used it against the students who held a peaceful mass meeting on the territory of the University.

In January 2012 in Oakland 400 people were arrested on a charge of the vandalism and refusal to dismiss, though according to the detained persons they were not given the possibility to voluntarily obey the order of the authorities.

The camps of the Occupy Wall Street movement's participants were forcibly eliminated in New York, Boston, Denver, Baltimore, San Francisco, Los Angeles, Philadelphia, Washington and other U.S. cities. As a result, numerous complaints of excessive use of force by the police officers were filed to the courts of these cities.

The American police officers systematically resort to a racial profiling. Thus, for example in New York, where members of the racial minorities constitute approximately a half of the population, they become a subject of 80 per cent of all inspections made by the police officers. At the same time in 85 per cent of cases the Afro- and Hispanic Americans are subjected to a search or inspection of documents. If however the police stop the white-skin people, only 8 per cent of them are subjected to a search.

Immigration policy, human trafficking

About 400 thousand migrants and victims of human trafficking are taken into custody for different periods of time annually in the USA. 4.5 million American children currently have at least one parent residing in the USA illegally (let alone one million illegally residing children). There are cases of immigrants being forced into continuous labor, 16-24 hours per day. Immigrant workers arriving into the USA often become victims of sexual abuse. Human rights activists are especially concerned about the high number of deaths among immigrants attempting to get into the USA illegally.

The U.S. immigration policy is a subject of reasonable criticism of international human rights activists. Annually, about 400 thousand immigrants, including those seeking asylum and victims of human trafficking, are taken into custody for different periods of time in this country. Often they are kept in conditions similar to or even worse than those of criminal prisoners. Minimum detention standards for illegal immigrants adopted by the U.S. administration in September 2008 are not mandatory and, thus, are disregarded on a regular basis.

In the years 2003-2009, over a hundred people died in U.S. immigration centers. In March, 2012 F.Dominguez died from pneumonia in immigration custody in California, after falling ill while waiting for deportation and apparently not receiving proper medical care. According to the official data, it was the sixth death occurring in such U.S. centers since October 2011.

Sexual abuse is not rare in immigration prisons. According to the American Civil Liberties Union, in the years 2007-2011, inmates filed over two hundred official complaints of rape and other types of sexual mistreatment.

The number of deportations of illegal immigrants from the USA has recently risen to 400 thousand people a year. And despite the U.S. claims that primarily habitual criminals undergo deportation, foreigners caught at petty offences often get banished from the country. A lot of immigrants facing deportation do not have access to qualified legal assistance. In such states as Louisiana, Mississippi, and Texas for

every 510 people in immigration custody there is only one attorney specializing in that area of the law.

In the vast majority of cases, neither the duration of stay in the country of the person being deported (according to the Pew Research Center, almost two thirds of illegal immigrants have resided in the USA for more than 10 years, 35 per cent - more than 15 years) nor him or her having an American family (many have spouses and children with American citizenship or permanent residence permit) is taken into account. 4.5 million American children currently have at least one parent residing in the USA illegally. Another million children are illegal residents themselves.

Despite the record deportation numbers, the authorities of the states bordering on Mexico are dissatisfied with the federal authorities' too gentle, in their opinion, policy towards illegal migrants. Since April 23, 2010 the state of Arizona has enacted the law on strengthening the control of illegal immigration that allows policemen to demand identification documents and detain passers-by if they have a reason to suspect that they stay in the USA illegally¹. Moreover, the law enforcement officers are obliged to verify the immigration status of all detainees before releasing them.

According to the report recently published by Human Rights Watch (*No Way to Live: Alabama's Immigrant Law*), similar law in the state of Alabama has already led to the increase in racial profiling and mistreatment toward immigrants by law enforcement authorities, as well as civilians. In addition to that, the Alabama law obliges schools to verify the immigration status of students and prohibits any "business deals" between state authorities and illegal immigrants, including providing them with municipal services, taking their lawsuits for consideration or collecting their real estate taxes.

The report published in August 2012 by the Center for Immigration Studies suggests that foreigners, even those that have spent over 20 years in the country, are significantly behind the Americans born in the USA by all well-being indicators. In 2010, 23 per cent out of forty million immigrants (legal and illegal) and their children

¹ This practice is banned in many major cities, primarily so that illegal immigrants would not be afraid to cooperate with the police in criminal investigations. There is also an economic angle to this policy: economies of the «cities of asylum» largely depend on immigrants' cheap labor.

were below the poverty line, 36 per cent depended on at least one welfare program, 29 per cent did not have a medical insurance, and 13 per cent lived in over-occupied houses.

At least half of the employees in the U.S. agricultural sector are immigrants. They often suffer from exploitation. And it is not just the labor rights of illegal immigrants that get violated, but those of foreigners working in the country legally, too. As NGO Southern Poverty Law Center points out, in order to participate in the federal immigration employment program (Visa H-2A), foreign workers often pay a large contribution to their "recruiters", thus going into debt. Upon arriving in the USA, they do not have the right to change the employer that provided them with visas even if they get exploited. At the same time, they cannot leave the country until they save enough money to pay off the debt.

In June 2012 Wal-Mart retail chain had to suspend the contract with one of its suppliers, Louisiana seafood processing company C.J.'s Seafood, following a scandal that broke out when the National Guestworker Alliance made public eight Mexican workers' statements that they were severely exploited by this company². Particularly, they were locked inside the company's plant and forced to work 16-24 hours a day (up to 80 hours a week) for minimum wage under the threat of physical abuse and harm to their families. The investigation following this case resulted in the U.S. Department of Labor issuing 622 warnings total on violation of labor legislation to 12 out of 18 Wal-Mart's suppliers.

Immigrant workers arriving in the USA often become victims of sexual abuse. In 2008, NGO Southern Poverty Law Center interviewed over two hundred women from Latin American countries working in five southern American states. Almost three fourth said that they suffered from sexual harassment in their workplaces. In 2011, Human Rights Watch conducted a similar survey. Its report *Cultivating Fear* was based on the information provided by 160 interviewees, including female agriculture workers, farmers, law enforcement officials, lawyers, and other experts from eight states. Almost all of them agreed that sexual abuse against labour migrants

² Greenhouse S. Wal-Mart Suspends Supplier of Seafood // New York Times. June 29, 2012.

working in agriculture was a pressing problem. All of the foreign female workers that took part in the survey said that either they or somebody they knew were victims of sexual harassment in the past.

According to the U.S. Department of Justice, only about 40 per cent of rape and sexual harassment victims complain to the police (official statistics suggest that every fifth woman in the USA has at least once been a victim of sexual violence).

Human rights activists are especially concerned about the high number of deaths among immigrants attempting to get into the USA illegally. The tightening of border control makes many of them take high risks and attempt to reach the USA through those sections of the U.S.-Mexican border that are not easily accessible. Experts claim that 150-500 people die every year from dehydration and hypothermia in the Arizona desert (border patrol detected 492 such cases in 2005). According to the data provided by NGO Amnesty International, in the years 1998-2008, the attempts to get to the USA illegally ended in a tragedy for 5.3 thousand people.

The report *Culture of Cruelty*³ issued in 2011 by *No More Deaths* organization claims that the American border patrol that intentionally drives the illegal immigrants into particularly dangerous and not easily accessible areas heighten the risk of them dying. When being detained, illegal immigrants, including children, are often denied water, food, and medical treatment; 10 per cent of the detainees are physically abused. Immigrants also complain of insanitary and highly uncomfortable custody conditions, confiscation of personal belongings, including identity documents, psychological pressure and intentional separation of families.

³ <http://www.nomoredeaths.org/Abuse-Report-Culture-of-Cruelty/View-category.html>

Economic and social rights

In the USA, there are 12.8 million unemployed, 40 million people live without health insurance and 14.5 per cent of families face food shortages. The standard of living for the indigenous population of the country is very low and there are signs of economic segregation. Among the developed countries of the world, the USA has one of the weakest systems to protect workers' rights to organize and bargain collectively. Over the past decade, the USA has failed to ratify any conventions of the International Labour Organization (ILO). That said, lobbying, primarily in the interests of big business and various interest groups, is a widespread phenomenon in the country, and experts view it as just a legalized form of corruption that undermines the U.S. ability to confront various economic, social and political challenges.

The global financial and economic crisis had a serious negative impact on the realization of economic and social rights in the USA. Recent data show that there are 12.8 million unemployed in the country and 5.2 million of those have been without a job for over six months.

According to the U.S. Census Bureau, in 2010, there were more than 46 million Americans (15.1 per cent of the population) who lived in families with annual income below the poverty level (\$23 000 per year for a family of four).

At present nearly 50 million Americans (16.3 per cent of the population) do not have health insurance. In an attempt to solve the problem of ever increasing number of uninsured Americans, in 2010, the U.S. administration adopted the Patient Protection and Affordable Care Act. Human rights organizations considered this Act to be a violation of human rights and freedoms as it obliged the citizens to buy insurance policy.

According to the NGO Institute for Democracy and Cooperation,⁴ current U.S. health care system is just a business model involving insurance companies, banks,

⁴ Human Rights in the United States, the Institute for Democracy and Cooperation, New York, 2012., <http://www.indemco.org/index.php?news=117&language=1>

pharmaceutical corporations, research centers, and healthcare institutions. And ordinary Americans are on the losing side in the majority of cases.

According to the U.S. Department of Agriculture, 14.5 per cent of U.S. households were food insecure in 2010, including 5.4 per cent with very low food security. In 3.9 million families, parents could not provide their children with proper nutrition.

According to the Organization for Economic Cooperation and Development, the income inequality level in the United States is one of the highest. Of the 34 states in which the above-mentioned international organization conducts its research, the U.S. level is only surpassed by Turkey, Mexico and Chile.

According to a statistical study by Sentier Research, in 2008-2010, white Americans, that constituted 64 per cent of the population, received 76 per cent of all incomes, while African-Americans (13 per cent of the population) and Hispanics (16 per cent of the population) accounted for 8 per cent and 9 per cent respectively. According to the Pew Research Center, African Americans welfare level fell by 53 per cent during the recession. In 2009, the average capital of an African-American family was \$5,600.

Numerous studies show an increasing gap in credit ratings between white Americans and African Americans, which de facto leads to economic segregation (even in 2003, during the period of economic prosperity, less than a quarter of African Americans had a high credit rating, compared to 65 per cent of the white Americans).

The level of home ownership also reflects racial disparity: almost three-quarters of white Americans are owners of their houses, while less than 50 per cent African Americans own theirs.

There are still elements of racial segregation in the country. For instance, 20 per cent of African Americans are still living in ghetto.

The life of Native Americans that make up 1.7 per cent of the U.S. population (5.2 million people) remains rather uncomfortable. It is especially true for about 700 thousand of those who still live in reservations. Almost a third of them have incomes

below the official poverty level and unemployment in reservations reaches 50 per cent, and even 80 per cent in some areas (e.g., "Rosebud"). Generally, an Indian family earns half as much as an ordinary American one. According to the official data, a small settlement in South Dakota called Allen (where Indians constitute 96.4 per cent of the population) is the poorest in the country with the average annual per capita income just over \$1,500 and 96 per cent of the population living below the poverty line.

Only 77 per cent of Native Americans over 25 years have completed high school and only 13 per cent have a bachelor's degree (nationwide, these figures are 86 per cent and 28 per cent respectively).

About 46 per cent of Native Americans do not have their own housing, and one in five lives in a house without running water, electricity and a sewage system. Among Native Americans, there is a disproportionately high amount of people suffering from alcoholism, heart diseases, tuberculosis and diabetes, while almost 30 per cent of them do not have health insurance.

According to a survey conducted by the NGO Human Rights Watch, there are massive violations of agricultural workers rights in 11 states of the country.

The situation is worst in the southern states (California, Texas, Arizona). Even according to the official statistics, out of 2 million farm workers in the United States (and more than 3 million in good years), 72 per cent are foreigners, mostly Mexicans. Half of the labor force are illegal immigrants who came to work in the U.S. with the help of dealers (in California – up to 90 per cent).

The most vulnerable participants to the "black" and "gray" labor market are women who make up a quarter of the workforce. Despite the long hours of exhausting labor on the cotton and tobacco plantations and while packing agricultural products, their average annual income is less than \$11,200 (\$16,200 for men).

Among the developed countries of the world, the U.S. has one of the weakest systems to protect workers' rights to organize and bargain collectively. Given that, the country has not ratified any ILO Conventions for the last 10 years. There is no effective system of arbitration if employers do not offer a compromise deal. In March

2011, Wisconsin adopted a law that further restricts the rights of workers to bargain collectively. Similar bills are being prepared in Colorado, Indiana, Iowa, Michigan, New Mexico, Ohio, Oklahoma and Tennessee (in a total of 18 states).

The lobbying is a common practice in the USA and it allows representatives of big business and the various interest groups to promote the adoption of much-needed decisions by the governmental bodies. Despite criticism by some politicians, NGO leaders and journalistic community, lobbying companies continue their successful activities. Due to the so-called practice of "revolving door" when government employees and elected officials leave public service to work in lobbying companies, there exist strong ties between U.S. government agencies and lobbyists that allow lobbying firms and their clients to have constant access to political decision-making process. According to the Washington Post⁵, a good example of such a "symbiosis" is the relationship that existed between the Congress "Super Committee", established to reduce the U.S. budget deficit, and lobbyists working for major U.S. corporations.

Some experts believe that current system of lobbying in the U.S. is, in essence, a legalized form of corruption, which allows elected officials and bureaucrats to use their posts for their own benefit⁶. According to NGO Institute for Democracy and Cooperation, although such a corruption differs from simple bribery, which is more common in most countries of the world, one should not underestimate the danger of the "American corruption" as it violates the rights of American citizens for equal and adequate political representation. This corruption is one of the very reasons that prevent the U.S. from resolving multiple crises in economic, social and political spheres⁷.

⁵ http://www.washingtonpost.com/politics/many-members-of-debt-supercommittee-have-ties-to-lobbyists/2011/08/23/gIQANiLr4J_story.htm

⁶ Human Rights in the United States, the Institute for Democracy and Cooperation, New York, 2012. <http://www.indemco.org/index.php?news=117&language=1>

⁷ Human Rights in the United States, the Institute for Democracy and Cooperation, New York, 2012. <http://www.indemco.org/index.php?news=117&language=1>

Rights of children

Hundreds of thousands of children in the United States are subject to ill-treatment which in some cases (1,600 in 2010) leads to death. Corporal punishment is legal in 19 states, and it is incurred by nearly 7.5 per cent of schoolchildren in some of those states. The United States has educational centers where children receive "treatment" involving electric shock, food deprivation and forced inhalation of ammonia fumes. Violence against adopted children from Russia is still a grave concern. The United States is one of the two States of the world which have not ratified the UN Convention on the Rights of the Child.

According to the report of the U.S. Department of Health and Human Services, the number of children who suffered ill-treatment in this country in 2010 reached 695 thousand, and almost 1,600 of them died (more than 79 per cent of them were killed by their parents). About 80 per cent of children who died were under 4 years. In general, over the reporting period, the U.S. guardianship authorities received about 3.3 million allegations of violence against approximately 5.9 million minors.

The most troubled states and territories in this regard are the District of Columbia (23.4 cases per 1,000 children), New York (17.4), Massachusetts (17), Kentucky (16.8), Iowa (16.8), Arkansas (16.5) and Alaska (15.4). 26.8 per cent of child abuse cases involve violence, including sexual violence (almost a third of all such cases). About 16 per cent of all victims are children with disabilities.

Under the laws of 19 states, predominantly the southern ones, corporal punishment in schools is still legal. According to the U.S. Department of Education, measures of physical coercion were applied to more than 223 thousand schoolchildren in 2005-2006. Such practice is most widely spread in Mississippi (7.5 per cent of all students in this state have been beaten for "educational" purposes), Arkansas (4.7 per cent) and Alabama (4.5 per cent).

In these circumstances, 36 per cent of all students who have undergone corporal punishment are Afro-Americans making up 17 per cent of the student population of the public schools in the United States.

According to Family First Aid organization, about 30 per cent of teenagers in the United States (over 5.7 per cent) experience peer harassment or become involved in such actions themselves.

In the summer of 2012, Juan Mendez, UN Special Rapporteur on Torture, approached the U.S. Government over information about the use of electric shock for treating autism in a "special-needs" school in Massachusetts. The Judge Rotenberg Educational Center in Canton is the only institution for children in the world, where they use the so-called "aversive therapy" (in addition to electric shock, it includes food deprivation, slapping, forced inhalation of ammonia fumes, etc.). Students in the center must 24 hours a day carry special electric shock generators triggered by "care assistants" via remote controls. In 2011, Matthew Israel, founder of the school, ordered to destroy video records of a student receiving "electric shock treatment" 77 times.

Juan Mendez, who himself was tortured with electric shock in a Buenos Aires prison in 1975, expressed extreme concern over such inhuman "treatment" of minors.

The school established 40 years ago has not still been closed, although from 2000 to 2010 it had to spend US\$16 million on lawyers (annual income of the school amounts to US\$56 million as it receives US\$220 thousand annually for each student). Administration of the school was forced to pay compensation to the mother of an 18-year-old Andre McCollins, who was given 31 electric shocks over 7 hours in 2002.

The United States has not still ratified the UN Convention on the Rights of the Child (apart from the United States, only Somalia is not a Party to the Convention) under the pretext that its provisions, allegedly, infringe the rights of parents.

In contravention of its international obligations (since 2002 the United States is a Party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict), the United States keeps teenagers suspected of having links with terrorists and militants in custody without trial for

many years (and previously practiced harsh interrogation techniques against them). Furthermore, according to the report submitted by the United States to the UN Committee on the Rights of the Child, more than 2500 teenagers have passed through U.S. military prisons in Iraq, Afghanistan and Guantanamo since 2002. For many of them it is very hard to resume normal life after having been released.

The Americans adopt children from abroad more often than people in other countries (according to the U.S. Department of State, 9,300 minors were adopted in the United States in 2011). At the same time, the experience of addressing unsuccessful adoptions has shown that radical changes are needed in this area. In the United States a lot of people adopt children using intermediaries or brokers, who do not ensure even a minimal protection of the adopted children.

The laws of the United States do not at all govern the activities of institutions helping the adopters from the United States to get rid of the adopted children without abdicating their parental rights, such as the Ranch for Kids in Montana. Reportedly, among those kept in that institution there are Russian children, whose rights are being violated. However, despite all efforts made by the Children's Rights Ombudsman for the President of the Russian Federation and by the MFA of Russia and in contravention to the bilateral Consular Convention of 1964, the United States, under various pretexts, refuses to provide the Russian representatives with consular access to these children.

Violence against adopted children from Russia is still a grave concern.

One-and-a-half-year-old Ilya Kargyntsev adopted in Russia died on 14 August 2005. His foster father Brian Dykstra charged with his murder was later released on bail. In November 2011, Brian Dykstra convinced the jurors that the injuries, including the head injury, were received by the child as a result of accidental falling down the staircase and was acquitted without having spent even a day in prison.

On 18 November 2011, the Court of York (state of Pennsylvania) passed an unreasonably lenient sentence upon the Cravers couple charged with killing Ivan Skorobogatov, an adopted Russian boy, in August 2009 (the body of the seven-year-old child had about 80 injuries). Although the prosecution called for the capital

punishment, believing that Ivan Skorobogatov died through the fault of his foster parents, the Cravers were released in the courtroom after one and a half year in prison.

Legal proceedings against Michael Grismore charged with the rape of Ksenia Antonova, an adopted Russian minor, continue in the United States. The defense uses various tricks, including forged papers, to excuse the defendant. The lawyers of Michael Grismore, who faces from 25-year to life imprisonment if found guilty, resume their attempts to discredit the girl and to present the case as if what happened to her was caused by "mental illnesses" acquired, allegedly, in the Kemerovo orphan asylum (although in common judicial practice victim's illnesses is treated as aggravating circumstances for a rapist).

On 16 May 2012, the District Attorney's Office of Walworth (state of Wisconsin) brought criminal charges against Martin and Kathleen O'Brien over (in total, 16 cases) premeditated infliction of bodily injuries on six foster children adopted in Russia in 2004 and ill-treatment of them. The American parents had for several years punished those children using such methods as occasional beatings, strangulation and exposure to tear gas. The American couple engaged their own children in such abuses. On being formally charged with violence against minors, the O'Briens were released on bail.

Another incident with an adopted child from Russia happened on 18 July 2012 in Bristow (state of Virginia). The crime was committed against eight-year-old Daniel Sweeney (before the adoption his name was Daniil Krichun). During the preliminary investigation into the case, the police found that the boy had been prompted to run away from home as a result of being beaten repeatedly. Therefore, the law enforcement agencies decided to arrest his foster parents, Amy Kathleen Sweeney and Matthew John Sweeney (both facing criminal charges over child abuse and contributing to the delinquency of a minor as in the United States children are not allowed to leave home without adults at night). However, later they were released on bail.

Voting rights

The USA adopts legislative acts that tighten the rules for accessing polling stations. The existing electoral college system creates a situation when the votes of the citizens residing in some states mathematically have more weight than of those of other states. More than 5.8 million Americans are debarred from voting in view of their previous convictions. During the forthcoming presidential elections, 25 per cent of Americans will vote using electronic ballot scanning devices. In more than 54 per cent of cases the voters will not know how exactly their votes are registered by the device. The USA media reports that such devices can be easily remote controlled. The removal from the voters' list, in particular based on party affiliation and race, is a typical case of violation of voting rights.

The laws that tighten the rules for accessing polling stations were adopted in 2011-2012 in several states (Texas, Wisconsin, South Carolina, Kansas, Alabama, Mississippi, Rhode Island, Pennsylvania, New Hampshire, Virginia, Tennessee and Florida). According to the new rules, the voters are required to show the identity card issued by the state's authorities, the number of days for the straw poll are reduced, the voting rights of persons with previous convictions are further limited and the rules for the group registration of voters are tightened. The new laws are applicable to about five million Americans. Human rights defenders call these developments "attack on democracy" and attempt to derogate the voting rights of minorities and the poorest people in the USA.

The President of the USA is still elected not through direct nationwide elections, but by the electoral college. Many political analysts consider this system to be out-of-date and non-democratic. Under this system, in particular, a vote of a resident of Delaware or North Dakota has much more mathematical weight (measured by the ratio of the number of voters to the number of electors of a particular state) than of a voter in bigger states, for instance, in California or New York. Due to the existing system, a candidate winning fewer votes than his rivals was

elected President three times in the U.S. history (the last one was George Bush Jr. in 2000).

E. Holder, the U.S. Minister of Justice, called the voter registration in the USA "antediluvian". The United States Census Bureau reports that out of 75 million citizens with a right to vote who did not use this right during the presidential election campaign in 2008, 60 million could not do it for the lack of registration which involved a lot of cumbersome procedures.

According to The Sentencing Project organization, more than 5.8 million Americans (2.5 per cent of all potential voters) are not eligible to vote because of previous convictions. While, in general, one in 40 Americans is debarred from voting, among African Americans, it is one in 13 (7.7 per cent of the total number) and in some states, such as Kentucky, Virginia and Florida more that 20 per cent of Black Americans remain outside the electorate.

Persons serving their sentence in places of detention are eligible to vote only in two states, Maine and Vermont. 30 states deny the right to vote to persons under suspended sentence and 35 – to convicts on parole. 11 states debar from voting even those who have completely served their sentence. Therefore, in Alabama, Florida, Kentucky, Mississippi, Tennessee and Virginia, 7 per cent of adult population is debarred from voting.

More than half a million residents of the capital District of Columbia (that nevertheless are tax-payers) still have no voting representatives in both chambers of the U.S. Congress. The bills granting them such a right were submitted once again to the U.S. Senate and the House of Representatives in 2009 but they still remain on the shelf. The issue has not been even brought up in the current Congress. Meanwhile, as early as in December 2003, upon a complaint filed by a resident of Washington T. Cooper, the Inter-American Commission on Human Rights decided that the actual situation led to the infringement of Articles II and XX of the American Declaration of the Rights and Duties of Man which guaranteed that all people were equal before the law and had a right to vote and to take part in government.

In January 2010, Director of the OSCE Office of Democratic Institutions and Human Rights J. Lenarčič expressed concern with the U.S. Supreme Court's ruling on the case "Citizens United v. Federal Election Commission". According to this ruling, the federal legislative provisions which ban business and nonprofit organizations and entities from investing in the dissemination by the media of "independent" (uncoordinated with the candidates and parties) election information 30 days before the primary and 60 days before the general elections run counter to the First Amendment to the U.S. Constitution which guarantees the citizens and their associations, legal entities, the freedom of expression and opinion.

J. Lenarčič considers that this ruling can come into conflict with the two principles of free elections, the necessity to offer voters a real choice between candidates and to offer a real chance to contenders to be elected. The ODIHR experts have many times encouraged the USA to tighten the rules for financing electoral campaigns. In contrast, the ruling made in 2010 puts candidates devoid of solid financial support or personal resources at a more disadvantage and thus impinges on political pluralism.

Denying access to elections and elected positions to independent candidates and the practice of appointing senators as governors in case of an early removal from office provoke concerns of human rights defenders. Noteworthy in this regard is the case of Former Governor of Illinois R. Blagojevich who, in fact, tried to sell the Senate seat of this state which had fallen vacant after B.Obama was elected President of the USA.

The U.S. media reports that at the forthcoming U.S. presidential elections in 2012, 25 per cent of voters will cast their ballots using direct recording electronic voting devices which do not provide the voter with a paper confirmation. It is recognized that these electronic devices are the easiest to be controlled from outside. According to the research data of Argonne National Laboratory (state of Illinois), any evil-minded person who has completed 8 years of secondary school is able to produce the equipment needed for remote control of a direct recording electronic voting device, having spent 26 U.S. dollars.

About 54.5 per cent of citizens who have filled in the ballots for processing by electronic voting devices will not be aware how the provided technical devices have eventually recognized their vote.

Among other violations of the electoral law, there are cases of interfering with the checks of databases, illegal printing of the primary election results before the elections⁸, modifying or deleting profiles, removing voters from the voters' list (in particular, based on party affiliation and race), collecting and storing data on the voters and on how they voted, which is an obvious infringement of the constitutional right of a secret ballot.

⁸ Marck J., Brakey J. Summary of The Four Pima County Cases// Audit AZ.2011. July 16. – <http://auditaz.blogspot.com>

Freedom of speech and press, transparency of government activities

In 2012, international rating agencies dramatically downgraded the freedom of speech level in the USA, due, to a large extent, to the excessively harsh measures taken by U.S. police forces against journalists covering protest actions undesirable for the U.S. Administration. The U.S. journalist community is concerned with the continued toughening up of legislation on mass media, which will result in the impairment of their rights. It is not infrequent either that journalists in the USA lose their jobs because of "politically incorrect" opinions.

In January 2012, non-governmental organization Reporters without Borders brought down by 27 points the U.S. rating in its annual World Press Freedom Index, ranking it 47th (57th taking into account territories under Washington's extraterritorial jurisdiction) after attacks against journalists who were covering the Occupy Wall Street actions. According to this NGO, more than 80 journalists were injured during their coverage of protests due to the use of excessive police force. The research carried out by the Network of Independent Legal Experts (the Protest and Assembly Rights Project) revealed that from September, 2011, through July, 2012, at least 18 accredited reporters were arrested in New York City alone.

On August 4, 2012, New York Times photographer Robert Stolarik was detained when he disobeyed a policeman's order to stop taking photos of the arrest of a teenage girl during an Occupy Wall Street protest. One of the law enforcement officers snatched the journalist's camera and smashed it in his face. The photographer will face a court trial in November 2012 on charges of "disobeying police orders."

In February 2012, Joshua Fox, director of the Oscar-nominated "Gasland" documentary about the environmental dangers of hydraulic fracturing, a controversial method used in the mining industry, was arrested trying to film a hearing of the House of Representatives Subcommittee on Science on the use of that method. Capitol police later charged him with "illegal entry" on the ground that he was not

accredited to the House. Lawmakers had previously denied the ABC and Fox TV channels their right to film the hearings.

In November 2010, correspondent Kaelyn Forde and cameraman Jon Conway of Russia Today were detained while covering a protest outside the Fort Benning military base. The journalists charged with taking part in an unauthorized public meeting and insubordination to the authorities, were released on ransom after 32 hours of custody and paid a \$290 fine each.

The last four years have seen a record number of criminal cases related to leaks of classified information to mass media. 6 persons, including U.S. Army soldier Bradley Manning who passed information to the WikiLeaks web resource, were charged with violating the 1917 Espionage Act.

Before his transfer to the Leavenworth Penitentiary in Kansas in April, 2011, following a petition signed by 295 American legal experts, the soldier was kept in a single cell without bedclothes or personal effects. He was permitted one 45-minute outdoor exercise a day. All his clothes and spectacles were taken away from Manning for the night, allegedly to prevent suicide.

After a series of leaks to the mass media of information on U.S. secret operations, particularly on the raid that killed Osama Bin Laden, and a cyber-attack against Iran's nuclear program, U.S. lawmakers promised to toughen up legislation in this area. The Information Security Oversight Office has reported a record number of more than 92 million classified documents issued throughout 2011.

The journalist community is concerned with the bill providing for the allocation of budgetary funds in 2013 to meet the intelligence needs. It includes a provision prohibiting intelligence officers from passing any operational information to journalists for publication confidentially or anonymously. Furthermore, the bill contains provisions which, as representatives of the mass media fear, would make it easier for the authorities to obtain evidence from them.

Journalists no longer expect U.S. Congress to pass a federal act that would guarantee their right to keep their sources and documents secret (except in some cases when the court finds the disclosure of such information necessary).

More and more often, journalists in the USA lose their jobs because of their "politically incorrect" opinions. Thus, in June 2010, famous journalist Helen Thomas had to retire under the pressure of influential Jewish circles after slamming Israeli actions against the Freedom Flotilla. In July 2010, CNN fired Octavia Nasr, senior editor for the Middle East, who expressed via Tweeter her regrets over the death of religious leader of Lebanese Shiites Sayyed Fadlallah.

In 2011, legendary singer and WWII veteran Tony Bennett had to apologize for his opinion expressed during a TV show that the 9/11 attacks had been provoked by U.S. military operations in the Middle East, for which he was severely criticized.

Internet censorship

The U.S. Administration resorts to indirect pressure on companies that provide the USA with web-content. From July to December 2011 the Google Company alone received 103 per cent more requests for content removal than they did during the last reporting period. From 2004 to 2007 the number of e-mails examined by the U.S. secret services increased by 3,000 per cent.

The content of Internet-communications in the USA is under increasing censorship by the state, private companies and organizations. Therewith taking into account the 1st Amendment to the American Constitution for this kind of regulation one should use back-way.

Congress generally uses its legislative prerogative in budget allocation. According to the Children Internet Protection Act (CIPA), adopted in 2000, the use of web-filters and other technical means for web-content censorship is an obligatory condition for providing schools and libraries with federal discounts on telecommunication services and access to the Internet.

Instead of an Internet-censorship as such, the U.S. Administration resorts to indirect pressure on companies that provide the U.S. with web-content. They are made under threat of litigation to delete web-pages with "undesirable" information.

According to the last report of Google⁹ about company's services availability the number of requests for content removal they received from state authorities from July to December 2011 increased by 103 per cent comparing to the last reporting period. The U.S. law-enforcement authorities demanded the removal of 1.4 thousand videos that "contained insults" from the Youtube videohosting. 6.300 of requests demanded data disclosure about more than 12.2 users of this company's services. 93 per cent of these requests were fulfilled.

The U.S. authorities also require domain name registrars to deny access to foreign web-sites that break U.S. sanctions legislation. In 2008 without prior warning

⁹ www.google.com/transparencyreport/

following the decision of the U.S. Treasury Department around 80 Internet sites that advertised for the Europeans tourist trips to Cuba that is in the "black list" of states with which the U.S. citizens could not conduct business based on the Trading with Enemy Act of 1917, were closed. In a similar way Papel company was obliged to close off an account of German web-site engaged in selling alcohol including Cuban rum and Google was obliged to close access to its applications for Cuban computers.

In relation to voicers of views that are "dangerous" for the USA the U.S. Administration uses the immigration legislation. In January 2012 26-year-old Irishman L. van Brian and 24-year-old Briton E. Banting were refused entry into the U.S. because of their joke in Twitter that they were going to "destroy America" (in British slang that just meant "to go on a bat"). Upon arrival at the Los Angeles airport the couple was carefully inspected and interrogated for 5 hours. Then the handcuffed couple was transported to prison for illegal immigrants and after 12-hour detention in custody they were sent back to their homeland.

According to the amendments to the Communications Assistance for Law Enforcement Act of 1994, operator-companies are obliged to guarantee the compatibility of their technologies with the possibility of special services for e-surveillance. From 2004 to 2007 the number of e-mails examined by the U.S. secret services under that act increased by 3,000 per cent.

The bill "Cyber Intelligence Sharing and Protection Act – CISPA" that is being considered by the Congress according to human rights activists does not limit the abilities of the U.S. government to monitor visits by private users to web-pages.

Internet-users and human rights activists are also concerned with other bills under consideration by the Congress such as "Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act" (PIPA) and "Stop Online Piracy Act" (SOPA). Some human rights activists believe that these legislative initiatives may abuse the freedom of speech and in essence will introduce Internet-censorship. Google chief executive E. Schmidt considers these bills as "a disaster for the freedom of speech". In January 2012, the English portal of Wikipedia closed its content for a day as a protest against these bills. As a result harsh criticism of the bills

and online protests brought Congress to delay their adoption, however, according to the human rights organizations and Internet users there are no guarantees for these bills not to be adopted later.

Americans expressing online their views that don't coincide with the traditional ideological postulates run the risk of being ostracized and even losing their jobs. In July 2010 senior editor of the Middle East department of CNN O.Nasr was fired as soon as she expressed her condolences in Tweeter on the death of the spiritual leader of Lebanese Shiites S. Fadlalla.

The Wikileaks site was targeted by the U.S. Administration in revenge of publishing diplomatic communications. Access to the Wikileaks site was repeatedly blocked following the decision of the county court and requests of some senators. It is forbidden for the staff of the White House, the library of Congress, the Pentagon, the State Department to enter the site of Wikileaks.

According to the joint research of the National Association of religious broadcasters and the American centre for Law and Justice, global Internet companies such as Apple, Google, Yahoo, Facebook and MySpace extensively filter the information, in particular that of religious character. It is done under the pretext of fighting extremism and intolerance. As a result, it is hard for believers to post on the Internet their views on depravity of nontraditional sexual orientation.

In September 2011 the Occupy Wall-Street movement accused Yahoo of the intentional blocking of their messages under the pretext of disclosure of "suspicious activity".

The USA actively uses the Internet to conduct propaganda war. According to the data obtained by the British Guardian newspaper, the United States Central Command concluded a contract with Californian corporation "Ntrepid" on the development of software for manipulating debates in social networks abroad, first of all in countries of the Middle East and Central Asia¹⁰. Its goal is to distribute pro-American propaganda and to block undesirable comments using "sock puppets".

¹⁰ Fielding J., Cobain I. Revealed: US spy operation that manipulates social media// guardian.co.uk, March 17, 2011.

Capital punishment

33 states still have and apply capital punishment. 3,100 prisoners, including 62 women, await execution on death row. 22 juveniles were executed in the USA between 1976 and 2005. According to American human rights activists, an estimated 5 to 10 per cent of all convicts under sentence of death in the USA suffer from serious mental disorders. Manifestations of racial discrimination are noted when death sentences are being passed.

The legislation of 33 states still provides for the death penalty. The USA imposes this type of punishment as often as the countries that it criticizes. 43 executions were carried out in the USA in 2011 (41 – in Yemen, 30 – in North Korea). There are five ways to carry out the death sentence, namely hanging, firing squad, electrocution, gas chamber, lethal injection (95 per cent of all executions) which, contrary to official claims, causes sufferings to the convicts. 37 per cent of all executions are carried out in Texas (483 out of 1300 since the death penalty was restored in the USA in 1976).

A gradual reduction in the number of death sentences passed in the USA is encouraging: it dropped from 312 in 1995 to 78 in 2011. 24 death sentences were carried out for the first 7 months of 2012. The slight reduction in the last two years can be accounted for by the fact that since the spring 2010 Sodium Pentothal – one of the ingredients of the lethal injection (the so-called Texas cocktail) – has not been available in the U.S. pharmaceutical market. As a result, in March 2011 Ohio became the first state where a death sentence was carried out with the substance that had been used by veterinarians for putting animals to sleep.

At the beginning of August 2012 the Inter American Commission on Human Rights called on the states of the region that still use capital punishment to introduce a moratorium on its execution.

Nevertheless, on August 9, 2012, the governor of Pennsylvania ordered for October 3, 2012, the execution of T. Williams, a 48-year-old African American who had been exposed to sexual violence starting from the age of 6 and killed his two offenders at the age of 17 and 18. According to his lawyers, the jury while passing

the verdict was not aware of the T.Williams' experience in childhood. Moreover, the members of the jury were misled on the fact that the convict could seek pardon if given a milder sentence. On June 29, 2012 the Supreme Court of the United States dismissed the request for the verdict revision.

In September 2011, a 42-year-old African American T.Davis was executed in the state of Georgia despite the vigorous efforts by American and international human rights activists, who sought pardon for him as there were certain doubts about his guilt (he was convicted of killing a police officer based on the evidence of nine witnesses, seven of whom changed their testimonies later on).

The total number of death row inmates in the country is over 3,100, including 62 women. Two Russian citizens face the death penalty in the USA: Yu.G.Mihel (convicted by the Californian court in 2007 on charges of complicity in the serial murder) and V.V.Babichev (charged with willful murder).

Until the 2005 Supreme Court decision in the Roper v. Simmons case, juveniles were executed in the USA (22 juveniles since 1976). In violation of an earlier ruling in the 2002 case Atkins v. Virginia, the United States continues to execute mentally retarded persons (at least seven people for the last five years). According to the estimates of the Mental Health America, five to ten per cent of all convicts under death sentence in the USA suffer from serious mental disorders.

It is noteworthy that the imposition of the death penalty is racially discriminatory – 77 per cent of death penalty cases involve crimes against white victims, while African Americans make up half of all homicide victims. Moreover, even though they represent 13 per cent of the population of the country, they make up 42 per cent of those sentenced to death (and 35 per cent of all executions). Since the death penalty was restored in the USA in 1976, 255 African Americans having killed white victims have been executed, with only 18 white persons having been executed for killing African Americans¹¹. The results of the recent study show that in Louisiana the odds of a death sentence are 97 per cent higher for those whose victim is white than for those whose victim is an African American¹².

¹¹ <http://www.deathpenaltyinfo.org/race-death-row-inmates-executed-1976#defend>

¹² <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>

Penitentiary system

The USA remains the country with the highest number of prisoners in the world (2.2 million people, or every 99th adult); more than 60 per cent of American prisoners are representatives of racial and ethnic minorities. The number of persons sentenced to life imprisonment is steadily growing, for example, in 2008 the number of such persons was 140,600 people, of which 6,800 were adolescents. In some states one in twenty prisoners is kept in extreme isolation, e.g. in solitary confinement. Many prisons don't comply with even the minimum standards of detention. Regularly and in large numbers (up to 2 million from 2003 to the present) prisoners are humiliated and even are subjected to sexual assault by prison staff.

The USA remains to be the country with the largest prison population in the world (according to the U.S. Department of Justice, on 31 December 2010 the number of inmates was 2.26 million people, except for about 70,000 prisoners in the juvenile justice system) and with the highest level of prisoners per capita (732 people for 100,000). Every 99th U.S. adult has landed behind bars. Adding all those persons sentenced to probation or parole, the number of American adults put under supervision of correctional facilities is reaching up to 7.1 million people, which is 3 per cent of the population.

Only in California in February 2012 141 thousand people were kept in detention facilities, which almost twice exceeds the ultimate capacity (80,000) of the local prison system. In that state is still practiced the infamous *Three strikes* law, under which the prison sentence doubles with the second criminal conviction, and with the third criminal sentence the prisoner automatically receives life imprisonment. According to statistics, every eighth day in the state one of the prisoners dies due to the lack of adequate health care.

According to the NGO "Sentencing Project", the number of Americans serving life sentences in federal and state prisons has quadrupled since 1984 and in 2008 reached 140,600. Six thousand eight hundred people were imprisoned in their teens, 41 000 (29 per cent) do not have the right to appeal for pardon.

In the USA the "business" involving the prisoners' labour is thriving. Every tenth prisoner in the country is kept in a commercial jail. In 2010 two private prison corporations made a profit of about \$ 3 billion. According to human rights activists and those, who have ever served a prison term in American jails, private correctional facilities mostly don't provide even the minimum standards of detention in custody.

Experts see the main reason for prison overcrowding in continuous and widespread tightening of criminal legislation over the past 40 years. Since the sixties the emphasis has gradually shifted from "correction" towards the maximum isolation of the offenders from society.

Misjudgments are not rare in the USA. Being established in 1998, organization "Center on Wrong Convictions" secured acquittal for 36 people, convicted in the state of Illinois. Among them was H.Rivera, who served two decades in Stateville Correctional Center for the rape and murder he hadn't committed and was released this January.

In all since 1989 the Center together with the University of Michigan Law School has recorded more than 940 cases of cancellation of wrongly imposed sentences. According to the Death Penalty Information Center, 140 prisoners sentenced to death have been acquitted since 1973.

According to the U.S. Bureau of Crime Statistics, more than 60 per cent of American prisoners are members of racial and ethnic minorities. In March 2010 the U.S. Sentencing Commission released a report, according to which for the same crimes black Americans generally receive prison terms which are 10 per cent longer than those for members of white majority.

Approximately 60,000 people in the USA are held in solitary confinement for a long time. Twenty thousand inmates are kept in such prison cells on a permanent basis. For example, in Arizona, according to the report of the "Amnesty International" more than 29,000 people¹³, or every twentieth prisoner, including

¹³ <http://www.mnestvusa.org/researchreports/cruel-isolation-amnestv-international-s-concerns-about-conditions-in-arizona-maximum-security-prison?page=show>

minors are kept under conditions of extreme isolation. This situation, according to numerous reports, often leads to serious mental disorders.

In July 2011 inmates of the Californian high-security prison "Pelican Bay" went on another hunger strike in protest against the inhumane conditions of confinement in jail cells. According to the Center for Human Rights and Constitutional Law, about 11,000 inmates, mostly representatives of racial and ethnic minorities, serve their sentences in solitary confinement cells in that state. In March 2012 400 of them complained of the conditions of their detention to the UN Special Rapporteur on Torture and to the UN Working Group on Arbitrary Detention.

According to the Bureau of Crime Statistics of the U.S. Department of Justice, in 2011 about 216,000 inmates in prisons and correctional facilities for juveniles were subjected to sexual abuse. The total number of victims since September 2003 has increased up to 1.9 million.

In September 2011 the department of the "American Civil Liberties Union" in Southern California released a report about regular abusive actions of policemen against detainees in the prisons of Los Angeles County, including regular beating and the use of tasers ("Cruel and Usual Punishment: How a Savage Gang of Deputies Controls LA County Jails"). With the connivance of deputy sheriffs the prisoners are subjected to physical and sexual violence by their fellow-inmates. At the same time that NGO filed a lawsuit in the federal court against Sheriff L.Bak on behalf of former and current prisoners who had ever been subjected to violence in prison.

Situations with Russian citizens V.A.Bout and K.V.Yaroshenko, who are kept in American prisons, can be viewed as another example of violation of prisoners' rights. They repeatedly complained about inadequate medical care, groundless knocks from the administration of prisons, unlawful placing in single confinement cells, etc. In spite of repeated requests by Russian official representatives and lawyers of Russian citizens, the situation has not changed radically.

Another Russian citizen, Y.G.Mihel, sentenced in 2007 to death, has being kept in solitary confinement without windows for many years. He is not allowed outdoor exercises and communication with other prisoners.

In April 2012, the U.S. Supreme Court ruled that the prison administration was entitled to subject every newly arrived detainee to personal inspection, including inspection of inmates' naked bodies, regardless of the severity of crimes imputed to them. The proceedings were caused by A. Florence, who was twice subjected to humiliating procedure after the wrongful arrest for the allegedly unpaid fine. As it is stated in the dissenting opinion of Judge S. Brayer, according to the materials submitted to the court, U.S. prison authorities sometimes force people, detained for minor offenses such as driving with no lights on or defective muffler, to strip to the buff.

NGOs express a particular concern about the situation of juvenile offenders in the USA. Currently about 7,000 of them are sentenced to life imprisonment, of which 2,500 persons have no right to appeal for pardon. In some states judges are obliged to sentence teenagers to life imprisonment if they have committed certain crimes (not necessarily including murder), excluding mitigating circumstances.

In May 2010, the U.S. Supreme Court declared unconstitutional the sentence of life imprisonment without the right to appeal for pardon for crimes not related to murder (the case "Graham v. Florida"), but this decision affected only 6 per cent of all juveniles convicted to spend the rest of their lives in jail. As regards crimes which resulted in death, in June 2012 the U.S. Supreme Court ruled that juveniles could be sentenced to life imprisonment, but such a severe punishment could not be mandatory, according to the legislation ("Miller v. Alabama" case).

Tracing dissidents and potential terrorists

The current U.S. legislation essentially allows the intelligence community to perustrate totally all electronic communications of foreigners and Americans without a court order. In 2011, the U.S. law enforcement agencies made more than 1.3 million requests to provide information on telephone calls of cellular subscribers. Rights of foreign citizens are particularly vulnerable as they can be subject to electronic surveillance even without any grounds to presume that they are involved in criminal activities. Serious concern is expressed about the FBI's DNA database expanding at an exponential rate.

Recalling the privilege of the executive power to safeguard information deemed sensitive to national security, the White House still prevents the courts from considering the issue of legitimacy of the comprehensive electronic surveillance program, sanctioned by the G. Bush administration. Soon after terrorist attacks of September 11, 2001, G. Bush signed a secret executive order authorizing the U.S. National Security Agency (NSA) to eavesdrop on telephone calls without court order, as well as to inspect electronic and phone messages coming from foreign citizens suspected to have ties with terrorist organizations, even if the second counterpart stays within the USA.

The current U.S. legislation essentially allows the intelligence community to perustrate totally all electronic communications of foreigners and Americans without court order. It also obliges telecommunications companies to assist the government in collecting and safeguarding intelligence information on targets in foreign lands, providing to them immunity from lawsuits arising from their current and potential cooperation with federal law enforcement agencies within the framework of the Terrorist Surveillance Program.

In 2011 the U.S. law enforcement agencies made more than 1.3 million requests to release information on telephone calls of cellular subscribers.

At present the U.S. Congress is considering the Cyber Intelligence Sharing and Protection Act (CISPA) that provides for amending the National Security Act of 1947

to improve information sharing between government agencies and the technology industry. This bill is aimed to facilitate the provision of classified information by the intelligence community and other government agencies to the private sector and at the same time to encourage voluntary submissions by companies about potential cyber threats.

Many big telecommunications companies, including Microsoft, Facebook, IBM, Oracle, Intel and the U.S. Chamber of Commerce, support this bill. However, U.S. human rights organizations severely oppose it as they believe that a cyber espionage act actually removes limits on opportunities the Government has to monitor an individual's web history. Thus, the right to privacy will be violated.

In February 2011, B. Obama signed an act extending provisions of the Patriot Act adopted after the events of September 11, 2001, for the next 4 years. The provisions concerned allow law enforcement agencies and secret services to monitor lone veterans (even without confirmation that they have ties with terrorist organizations), to inspect business reports and to eavesdrop on phone calls made by suspicious telephone subscribers from any number under the cross-country order that is valid throughout the USA.

The FBI still intensively implements its surveillance program targeting Arab and Muslim communities under the pretext of combating terrorism. Secret services offer illegal migrants to legalize them if they agree to follow "suspicious elements" in their church communities and threaten to expel them from the country if they reject this offer. In June 2012, eight Muslim residents from the state of New Jersey filed a lawsuit in the Federal Court, alleging that law enforcement officers violated their constitutional rights in the course of the extensive surveillance program targeting Muslim communities in 2007 (earlier Attorneys-General of the states of New York and New Jersey recognized the program as legitimate).

In compliance with the Electronic Communications Privacy Act (ECPA) of 1986, unlike Americans those foreigners who do not have a green card may be subject to electronic surveillance even when there are no grounds to believe that they are involved in criminal activities.

The police report received by the Associated Press showed that after terrorist attacks of September 11, 2001, the New York police officers regularly monitored the mosque congregation and clients of book stores, bars and other places where Muslims used to gather. Surveillance on Muslim students was carried out even beyond the city, in particular, in the Yale University and the Syracuse University.

In spring 2011, the Council on American-Islamic Relations filed a lawsuit in the Federal Court against the U.S. Department of Justice and the FBI on behalf of Y. Afifi, a college student in California, who found a GPS tracker placed underneath his car as it was being repaired. At first the young man decided that it was a bomb, but after having posted images of the device in Internet, he was visited by the FBI agents who confiscated the device.

In January 2012, the Supreme Court made a decision on the United States v. Jones case, ruling that the police violated the constitutional rights of the suspect by installing a GPS tracking device on his vehicle and tracking all his movements for 28 days without a court order (according to the evidence of V. Herron, a former Maryland police officer, such technical devices are widely used by law enforcement agencies of the states in the course of criminal investigations).

Serious concern is expressed about the FBI's DNA database expanding at an exponential rate. Until April 2009 it contained genetic information of federal convicts, and now it includes samples collected from those awaiting trial and detained illegal migrants (such databases have been created in 15 states). Non-governmental organizations believe that the USA has become a police state keeping files on "potential criminals"¹⁴. It is also noted that the FBI works on a discriminatory basis. For example, about 40 per cent of all DNA samples were collected from African Americans who constitute less than 13 per cent of the country's population.

Human rights activists are also concerned about the avalanche of data being included in the special database on potential terrorists which is maintained by the

¹⁴ In December 2008, the European Court of Human Rights made a decision on the case of S. and Marper v. the United Kingdom, according to which mandatory collection of DNA samples from innocent persons, including under-aged persons, violates Article 8 of the European Convention on Human Rights which ensures the right to privacy.

National Counterterrorism Center (NCTC). It is known that there were a lot of failures when because of similar names law-abiding citizens were denied to enter the country or board an aircraft.

Since the failed terrorist attack at the Detroit airport in December 2009 the list of persons, who are not allowed to fly an American or foreign aircraft passing through the U.S. airspace, has increased 6 times (before December 2009 there were about 3.4 thousand names on it, 2010 – 10 thousand, at present – about 21 thousand, including about 500 American citizens). As a result, some Americans cannot return home from abroad and have to remain in exile. In June 2010, the American Civil Liberties Union filed a lawsuit against the U.S. Government on behalf of 17 American citizens put on this list. Human rights activists suppose that the FBI uses this practice for interrogating persons of interest to secret services overseas without a lawyer.

Indiscriminate use of force in armed conflict zones. Program of targeted killings

According to available data, by August 2012 the conflict in Iraq has claimed the lives of up to 117 thousand civilians, of whom about 14.7 thousand have been killed by the international coalition forces led by the United States (usually as a result of air strikes and the use of unmanned aerial vehicles). In Afghanistan since the beginning of Operation Enduring Freedom around 14.4-17.2 thousand civilians have been killed, of whom up to 9 thousand by the international coalition forces led by the United States. The practice of elimination (and according to human rights activists of extrajudicial killing) of suspected terrorists with drones continues to take place. As a result of these "targeted" strikes, up to 900 civilians have died in Pakistan (175 of them children), up to 150 civilians in Yemen (24–31 of them children) and up to 60 civilians in Somalia (1–3 of them children). Cases of abuse and inhumane treatment on the part of U.S. servicemen, shooting of pregnant women and children, mutilation and dismemberment of corpses are common. Only in the most notorious cases the perpetrators are brought to justice.

The United States draws particular criticism from international organizations for indiscriminate and disproportionate use of military force in armed conflict zones.

Iraq

According to the Iraq Body Count project, by August 2012 the conflict in Iraq has claimed the lives of up to 117 thousand civilians (more than 4 thousand in 2011), of whom approximately 14.7 thousand (13 per cent) have been killed by the international coalition forces led by the United States (usually as a result of air strikes and the use of unmanned aerial vehicles).

In January 2012, the U.S. judicial authorities ruled on the case of Staff Sergeant F. Wuterich of the U.S. Marine Corps, the last of those charged with the "Haditha massacre" in November 2005. Then, as is known, the U.S. Marines shot 24 Iraqi civilians in retaliation for the death of their fellow soldier M. Terrazas, who was killed by an improvised explosive device. In total, eight servicemen had been the

defendants in this case, one of whom was acquitted, while charges against six others were dismissed. Wuterich, who pled guilty to "dereliction of duty", was reduced in rank to Private, but as a result of a plea deal he avoided even a minimum prison term.

In August 2012 the United States Department of Justice terminated the investigation into the attempt by the notorious U.S. private security company "Blackwater" (re-registered as "Xe Services", since 2012 known as "Academi") to bribe the senior officials of Iraq's Ministry of Interior. For a sum of U.S. \$ 1 million this company tried to obtain a license to operate in Iraq and block the investigation into the murder of 17 civilians, including children (with 20 people injured), by its employees in Baghdad in September 2007. The Blackwater contractors escorted the convoy of the U.S. Embassy and under the pretext of providing security they massacred civilians in the Nisour Square. However, the U.S. Department of State stopped using the services of this company only two years after the tragedy.

In this regard, it should be noted that the U.S. court sentenced Viktor Bout, a Russian citizen, to 25 years in prison only for the "intention" (which, moreover, had not been proven) to sell weapons to Colombian rebels, whereas the successor company of "Blackwater" has officially admitted illegal arms transfers to Iraq, Afghanistan and Sudan.

At the same time, the U.S. Defense and State Departments continue to actively use the services of contractors, particularly for carrying out "dirty work" in armed conflict zones. Such an "outsourcing" of state functions to private firms allows the U.S. Government to avoid responsibility for violating international humanitarian law.

The unsettled status of contemporary mercenaries is actively used by their lawyers, who try to block the claims of the families of the Iraqi victims in U.S. courts by referring to "immunity" of employees of private security firms, who had allegedly been operating in Iraq "on behalf of the state". As a result, so far none of those who were involved in the tragic events in the Nisour Square has been prosecuted.

Afghanistan

The total number of civilian casualties since the beginning of Operation Enduring Freedom in Afghanistan is about 14.4-17.2 thousand (up to 37.2 thousand,

if indirect casualties are considered). About 6.2–9 thousand civilians have been killed by the international coalition forces led by the United States.

According to the Afghan authorities, just one U.S. operation in February 2011 in the Kunar Province claimed the lives of 65 civilians, including 22 women and more than 30 children. In March of that year a NATO helicopter shot nine Afghan teenagers aged 7 to 15 "by mistake".

As a result of a NATO air strike on February 8, 2012, in the village of Giawa in the Kapisa Province seven children and one adult were killed. According to the Afghan authorities, the bombing in the Logar Province on June 6, 2012, claimed the lives of 18 civilian Afghans.

The behaviour of U.S. soldiers causes particular resentment among civilian population in conflict zones. In January 2012 a scandal erupted when a video with four U.S. Marines urinating on Taliban corpses appeared on the Internet. The Afghan President H. Karzai called the actions of the soldiers "absolutely inhumane".

In February 2012, when cleaning the prison cells at the Bagram air base, the U.S. soldiers burned dozens of Islamic religious books, including several copies of the Koran, which provoked mass protests.

On March 11, 2012, Staff Sergeant R. Bales of the U.S. armed forces left the base in the Panjwai district of the Kandahar Province and shot 16 Afghan civilians in one of the nearby villages, including nine children and a pregnant woman, and wounded six others. Moreover, according to the version of the Afghan parliamentary commission, other U.S. servicemen could take part in the "Kandahar massacre".

In April 2012, one of the soldiers of the 82nd Airborne Division handed over 18 photographs to the Los Angeles Times which showed his fellow soldiers posing with body parts of killed insurgents.

Only in the most notorious cases the perpetrators are brought to criminal justice. For example, in the summer of 2010 charges were brought against five U.S. servicemen who randomly killed peaceful Afghans "just for fun". Among the victims was a 15-year-old teenager. The members of the "kill team" also collected the fingers of the murdered civilians as trophies and posed for photographs with their bodies.

One of the soldiers, J. Morlock, was sentenced to 24 years in prison after he confessed to murdering three Afghans and promised to testify against his fellow servicemen, while his supervisor, Staff Sergeant C. Gibbs, in November 2011 received a life prison term with the right of pardon in 10 years.

Apart from operating on the battlefield, the CIA is actively pursuing a secret unmanned aerial vehicle program for "targeted" elimination of terrorists abroad.

According to the Bureau of Investigative Journalism, from 2004 to 2012 the CIA launched at least 327 air strikes in Pakistan with such UAVs. As a result, from 2.5 to 3.2 thousand people were killed, including 482-852 peaceful Pakistanis (of them 175 children). An air strike on the village of Datta Khel in March 2011 claimed the lives of more than 40 civilians. Similar operations in Yemen caused the deaths of 58-149 civilians (24-31 children), in Somalia – 11-57 civilians (1–3 children).

Human rights activists express serious concern about this practice, noting that in essence it does not differ from extrajudicial executions prohibited by international law. For example, in May 2010 the UN special rapporteur on extrajudicial executions P. Alston released a report in which the conformity of the U.S. drone program to international humanitarian law and standards for the protection of human rights was questioned¹⁵. According to some opinions, in this case it also violates Executive Order 12333 signed by R. Reagan on December 4, 1981, which forbids the security services to participate in planned political killings¹⁶. Despite that civilian casualties caused by drones are seen by the U.S. administration as quite acceptable "collateral damage".

In September 2011, an Islamic preacher A. al-Awlaki became the first citizen of the United States to be deliberately eliminated by a "targeted" strike that also hit another U.S. citizen, an editor of an Islamist web magazine S. Khan.

¹⁵ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Study on Targeted Killings*, Human Rights Council, 9-11, U.N. Doc. A/HRC/14/24/Add.6 (May 28, 2010), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>.

¹⁶ Executive Order No. 12333 "US Intelligence Activities". The first version of a similar executive order was issued by President G. Ford after the disclosure of the CIA plans for a possible elimination of F. Castro, P. Lumumba, R. Trujillo and other "unfriendly" foreign leaders.

Many legal experts consider that targeted killings of United States citizens abroad violate the Fifth Amendment to the U.S. Constitution, according to which no one can be deprived of his life without a court order.

The special rapporteur on extrajudicial executions of the UN Human Rights Council C. Heyns published an annex to the USA-dedicated annual report for the 20th session of the UNHCR. It contains an analysis of how the U.S. authorities implement the recommendations set forth by the previous special rapporteur following his visit to the United States in June 2008. Of the 25 recommendations only one has been implemented in full and three more – just in part.

Abductions, CIA "black site" prisons, tortures

The problem of CIA "black site" prisons, located in the territory of Poland, Afghanistan, Iraq, Thailand, Morocco, Romania and Lithuania, remains unsolved. American authorities actively practiced abductions of future detainees of these prisons. The U.S. "black site" prisons actively practiced tortures. Those, who are responsible for such crimes, are sheltered by the U.S. judicial bodies. Lawsuits from "black site" prison detainees against U.S. authorities are being dismissed.

In September 2006 G. Bush acknowledged the existence of CIA "black site" prisons. As it became known later, in 2002-2003 special services established about 10 similar detention centers, including in the territory of foreign states – Afghanistan, Iraq, Thailand, Morocco, Djibouti, Romania, Lithuania and Poland, which kept approximately 100 prisoners "in a legal vacuum".

Illegal capture of those suspected of terrorism was deprecated by the international community, including U.S. allies. The UN Working group on arbitrary detention was deeply concerned by the CIA secret program, noting that abductions represent a serious violation of international humanitarian law. Detailed reports, which denounce illegal practice of American special services, were drafted by special commissions of the Council of Europe (published on June 7, 2006) and the European Parliament (approved on February 14, 2007). They report on more than 1200 secret flights, made by the CIA aircraft allegedly to transfer those suspected of terrorism.

Arbitrary arrests and abductions of the Russian citizens in third states affect seriously Russia-U.S. relations. In this context, arrests of Russian citizens V. Bout in Thailand and K. Yaroshenko in Liberia, based on the evidence given by false agents and doubtful evidence, are the most striking examples. Physical and psychological pressure exercised on them casts doubt on the grounds for investigation and the whole judicial process. We consider verdicts of the American court in respect of V. Bout and K. Yaroshenko unjust and politicized. The MFA of Russia will pursue

their return to the homeland through an active use of all legitimate means, including international legal mechanisms.

On April 16, 2009 the U.S. Department of Justice published with considerable omissions four memoranda, drafted by lawyers of this Department in 2002-2005. They justify in detail the legitimate application of harsh interrogation techniques in respect of detainees of CIA prisons in the context of American legislation and international law.

In general, declassified memoranda authorize the use of 14 unconventional interrogation techniques. This includes: forced sleep deprivation for a long time (up to 180 hours together), replacement of normal nutrition by liquid food surrogates, pushing of detainees against elastic wall, face and belly slaps, placing in tight boxes (sometimes with insects), forced long keeping of detainees in positions, which cause muscle pain, forced nudity, including in the presence of female investigators (under minimum 14°C), cold water ablutions (under 5°C) and simulated drowning (the detainee is put on his back, tied up to the board and poured with water over his face). The last method was used by the medieval inquisition to obtain confessions and, in view of medical experts, can cause damage to brain, lungs and lead to fatal outcomes.

It is indicative that according to investigation, carried out by the Senate Select Committee on Intelligence, top U.S. officials gave their principal consent on the use of "alternative" interrogation techniques in respect of CIA "high value" detainees long before these notorious memoranda. In May-July 2002 the use of tortures, including "simulated drowning", was agreed with the Vice-President D. Cheney, the President's National Security Advisor C. Rice, the Attorney General G. Ashcroft, legal advisor of the National Security Council and of the White House J. Bellinger and A. Gonzales respectively and the CIA Director G. Tenet.

The 2006 report of the Working group on arbitrary detention of the UN Commission on Human Rights¹⁷, the confidential report of the International

¹⁷ Doc. E/CN.4/2006/120. 27 February 2006,
www.un.org/Docs/journal/asp/ws.asp?m=E/CN.4/2006/120.C.34.para.°87.

Committee of the Red Cross of February 2007¹⁸, the report of the Swiss senator D. Marty in the Parliamentary Assembly of the Council of Europe of 2007¹⁹ and other similar documents qualify treatment of detainees in the CIA "black sites" as tortures.

Nevertheless, in violation of international legal obligations under the Convention against tortures the U.S. Department of Justice decided not to prosecute neither intelligence officers, who personally practiced harsh interrogation techniques towards suspected terrorists, nor their supervisors, who authorized such tortures. A special prosecutor J. Durham, who in 2009 was tasked to investigate whether the CIA's interrogation techniques were legitimate, recommended to initiate criminal cases only on two violent deaths.

Former officials from the U.S. Department of Justice, who prepared "legal" justification for the use of tortures, have not been punished either. One of the "lawyers" – J. Yoo – is a professor of law at Berkly University in California, the other – J. Bibby – has been appointed a judge of the Federal Court of Appeals in Nevada state.

The U.S. Administration still regularly refers to its prerogative to keep in secret information sensitive for the national security, to insist that the courts stopped considering civil claims from victims of torture. For example, the Administration blocked the consideration of the claim, submitted by the American Civil Liberties Union on behalf of five former CIA prisoners, against the subsidiary of Boeing company, Jeppesen Dataplan, whose aircraft transferred the captives to "black site" prisons.

A. Rahim al-Nashiri, who was kept in American "black site" prisons in Afghanistan, Thailand, and Poland, failed to access justice in the USA. In this regard in September 2010 his lawyers filed a request to the Polish Prosecutor's Office to investigate the detaining of their client in the secret prison in that country. In 2012, the Office of the Prosecutor General of Poland accused the former head of Polish

¹⁸ ICRC Report on the Treatment of 14 "High Value Detainees" in CIA Custody. Report to John Rizzo, Acting General Counsel, CIA. 14^oFebruary 2007. <http://www.nvbooks.com/media/doc/2010/04/22/icrc-report.pdf>. P.5,26.

¹⁹ Marty D. Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report. CoE Doc. 11302 rev. 11 June 2007. http://assembly.coe.int/Documents/WorkinDocs/Doc07/edoc_1302.pdf. para.9.

intelligence services, Z. Siemiatkowski, of abuse of powers and illegitimate imprisonment of prisoners of war in connection of the CIA program of "black site" prisons in this country.

For the same reason, in December 2009 a Yemen national, M. al-Asad, filed to the African Commission on Human and People's Rights a lawsuit against another state with CIA "black site" prison – Djibouti - on its territory (currently the Commission is considering admissibility of the plea).

A. Zubaida's lawyers complain that the U.S. Department of Justice put obstacles while they tried to receive the documents required to protect their client's interests in the European Court of Human Rights, where they filed a lawsuit against Lithuania (one of the "black site" prisons, in which once a Guantanamo prisoner was kept, was located on the territory of this State).

In June 2012, the U.S. Supreme Court denied a request of the American Civil Liberties Union to reconsider the decision of the Federal Court of Appeals for the fourth circuit, which rejected a case filed by the terror convict, the U.S. citizen J. Padilla, against the former U.S. Secretary of Defense D. Rumsfeld. In 2002 J. Padilla was transferred from the New York state prison to a Charleston naval base, South Carolina, where he experienced tortures: sleep and light deprivation, long-term isolation, exposure to extreme temperatures, sexual assault threats, psychotropic substances, stressful positions (which cause muscle pain) etc.

In May 2012, the Federal Court of Appeals for the ninth circuit denied in its turn J. Padilla's symbolic claim for compensation for moral damage in the amount of one dollar against the lawyer, J. Yoo, who authorized tortures in interrogations on the grounds that the law on harsh interrogation techniques had not become conventional at the time when memoranda on tortures were drafted.

In August 2011 the last prisoner on torture case in the Iraqi "Abu Ghraib" prison, superintendent Ch. Graner, was early released (4 years earlier than prescribed by the courts sentence).

In January 2012 the special commission of the Afghanistan government made public new cases of tortures (beatings, sleep deprivation, keeping in tight cells and in

extreme cold) in respect of detainees of the Parwan prison, located in the territory of the American Bagram military base near Kabul (two Afghan prisoners died there in 2002). The handover of this prison to the Afghan security forces was held in September 2012. Meanwhile, the Afghan representatives state that the American side keeps its control over 50 foreign prisoners, whose destiny would be defined later. The transfer under the Afghan jurisdiction of 600 prisoners, captured by international coalition forces even after the handover agreement had been signed in March 2012, is still in process as well.

In March 2012 the Afghan Independent Human Rights Commission in cooperation with G. Soros Fund published a report "Torture, Transfers and Denial of Due Process". It says that the USA, as opposed to International Security Assistance Force, did not suspend transfers of captives to such Afghan prisons even after 2011, when the UN published its report on tortures practiced there. The document gives examples of more than 10 cases, when detainees, transferred by the American military staff, experienced tortures in the Afghan prisons, including beatings and electroshock.

Prison in the territory of the US military base in Guantanamo and indefinite detention

The American black site prison Guantanamo which is notorious for its legal vacuum keeps functioning. There are dozens of prisoners; most of them are under arrest for many years in violation of the international law, they are kept in prison perpetually and without charges. The evidence of prisoners' guilt presented by the U.S. Government is considered to be reliable even if it is based on rumors or on circumstantial evidence. The legislative acts which are adopted nowadays in the USA show that the U.S. Administration has no serious intentions to solve the Guantanamo problem.

In January 2012, the black site prison in the territory of the American NAVY base in Guantanamo (Cuba) celebrated its "tenth anniversary". The U.S. President, Mr. Obama, despite his campaign promises has failed to close the base because of the opposition in Congress.

Only according to the information received from public sources, 779 foreigners have lived through terrors of Guantanamo for the past decade. 8 of them died (6 prisoners committed suicide). As of early August 2012, 168 prisoners from 24 countries remain in prison, including a Russian citizen Mr. Mingazov who was arrested in 2002 in Pakistan and is under arrest and is kept in the conditions of legal vacuum without any charges. Among other prisoners there are 87 people who were admitted to be released by the U.S. Administration itself.

On 31 December 2011, the U.S. President signed The National Defense Authorization Act for Fiscal Year 2012²⁰ which prolonged once again the prohibition on using budget funds for the transfer of Guantanamo prisoners to the U.S. territory and on limits for their extradition to third countries. In essence, it proves the fact that it is impossible to close the prison in the near future.

There are 46 Guantanamo prisoners against whom it is difficult to launch criminal procedure because there is no enough evidence of their guilt or the limitation

²⁰ National Defense Authorization Act for Fiscal Year 2012, P.-L.1 12-81.

period has already expired. In respect of them the U.S. Administration decided to continue the practice of indefinite detention without any charges which contradicts the international law. The same fate is prepared for 30 Yemenis who can be repatriated by the U.S. Government only if safety conditions in their country "become better".

In May 2006 the UN Committee against Torture declared that the U.S. practice of indefinite detention without any charges violates the UN Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

On 7 March 2011, Barack Obama signed executive order No. 13567 which prescribed to carry out periodic verification of expedience of further extra-judicial detention (Periodic Review Boards). The first review was to start no later than in a year after the promulgation of the executive order; however the rules of hearings were issued only in May 2012.

The National Defense Authorization Act for Fiscal Year 2012 legalized officially the authority of the executive power to arrest people indefinitely and without trial (previously Bush and Obama's Administration implemented for this purpose *The Use of Force* act dated 14 September 2001).

In 2008, the international community and human rights organizations were encouraged by the ruling of the U.S. Supreme Court on the "Boumediene v. Bush case". According to it, all Guantanamo prisoners and those who are charged by courts martial irrespective of whether they have U.S. citizenship or not should enjoy basic human right which the U.S. Constitution guarantees including the right to claim the legitimacy of their arrest.

After 2 years since the adoption of this ruling, Guantanamo prisoners won 19 from 34 lawsuits filed by their lawyers to the federal district courts. However, afterwards all decisions about the release were canceled by the District of Columbia Court of Appeals. According to its court practice, if there is no clear proof, the evidence of prisoners' guilt presented by the U.S. Government is considered to be trustworthy, even if it is based on rumors and circumstantial evidence.

The Court of Appeal ignored the fact that according to the report of the Department of Defense declassified in 2002 Guantanamo prisoners were forced to take antipsychotic and other mind-altering drugs before interrogation with an aim to receive confession more easily.

Prisoners' lawyers and human rights activists say that the practice chosen by the District of Columbia Court of Appeals due to this case has absolutely diluted the "Boumediene ruling". In June 2012, the US Supreme Court repelled without assigning any reasons the petition of 7 prisoners about the revision of the decisions concerning them, thereby this turn of events finished their unsuccessful litigations.

According to the rules Guantanamo prisoners who lost the cases connected with the legitimacy of their arrest do not have the right to meet anymore with their lawyers except when it is allowed by the base commander (it was a court ruling which regulated such meetings before). Moreover defenders should sign with the Government a special memorandum of mutual understanding containing many restrictions, especially in relation to information sharing with lawyers of other prisoners.

The National Defense Authorization Act for Fiscal Year 2012 has also expanded powers of the U.S. Army in relation to the confinement of persons (Article 1022). Henceforth, all Al-Qaida members and other its factions captured by Americans during the war time and also persons who participated or planned to organize attacks against the USA or its coalition partners should be kept in custody under the U.S. Army control instead of law-enforcement authorities.