



**Submission to the Universal Periodic Review of the United States of America**

Human Rights Watch

**May 2020**

## Introduction

1. Human Rights Watch submits the following information regarding the United States' implementation of recommendations it accepted through its 2015 Universal Periodic Review (UPR) as well as information about additional international human rights obligations not addressed in the 2015 review.<sup>1</sup> This submission is not a complete review of the implementation of all 260 recommendations either fully or partially supported by the United States, nor is it a comprehensive review of US protection of human rights in the domestic sphere.

2. The United States has failed to implement recommendations from its prior reviews, including those involving criminal justice and policing, treatment of immigrants, access to health care, women's rights, and privacy, as detailed below. The UPR is ineffective if limited to a conceptual exercise, and no country should claim success by accepting recommendations that require no identifiable outcomes or even proof of a deliberative process.

## Lack of commitment to international norms

3. In 2018, the United States withdrew from the United Nations Human Rights Council, representing just one step in the country's steady regression in the protection of human rights. Although maintaining rhetorical support for accountability for serious crimes under international law, the United States announced that it would no longer cooperate with the International Criminal Court (ICC), an essential element of the international architecture devoted to these crimes. It threatened retaliatory measures against ICC staff and countries cooperating with the court, should ICC investigations reach US nationals or the nationals of US allies. In April 2019, the United States revoked the visa of the ICC prosecutor.

4. In its 2015 review, the United States agreed to "consider" ratifying ICESCR, CEDAW, CRC, and CRPD (176.17, 176.21, 176.23, 176.24, 176.25, 176.27, 176.31, 176.32, 176.34, 176.35, 176.38, 176.39, 176.40, 176.41, 176.42, 176.47, 176.48, 176.49, 176.50, 176.56, 176.58); ratifying ILO Conventions Nos. 111 and 189 (176.60 and 176.61); ratifying the Rome Statute of the ICC (176.46); ratifying the Arms Trade Treaty (176.62); signing the Migrant Worker Treaty (176.55, 176.60); lifting reservations to the ICCPR (176.12); and establishing a national human rights institution (NHRI) at the federal level (176.80, 176.81, 176.82, 176.83, 176.84).<sup>2</sup> To date, however, no new human rights treaty has been signed or ratified, no reservations, understandings or declarations have been lifted, and no legitimate NHRI established.

5. In 2019, the Secretary of State announced the creation of the Unalienable Rights Commission with the stated purpose of providing advice to the Secretary on human rights issues. However, the commission threatens the very rights it purports to strengthen. That is because the purpose of the commission is not to uphold all rights, as codified by international treaties, but to pick and choose among them. There is reason to fear that the establishment of the commission is part of an effort to unilaterally rewrite international law according to the administration's views on issues such as reproductive freedom and LGBT rights.<sup>3</sup>

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<sup>1</sup> Additional information on the human rights issues in the United States can be found at Human Rights Watch, *United States – World Report 2019*, <https://www.hrw.org/world-report/2019/country-chapters/united-states>.

<sup>2</sup> All paragraph cites are to United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, A/HRC/30/12 (July 2015). Recommendations accepted by the United States can be found here: [https://www.upr-info.org/sites/default/files/document/united\\_states/session\\_22\\_-\\_may\\_2015/recommendations\\_and\\_pledges\\_usa\\_2015.pdf](https://www.upr-info.org/sites/default/files/document/united_states/session_22_-_may_2015/recommendations_and_pledges_usa_2015.pdf).

<sup>3</sup> Kenneth Roth, "Beware the Trump administration's plans for 'fresh thinking' on human rights," *Washington Post*, July 11, 2019, <https://www.washingtonpost.com/opinions/2019/07/11/beware-trump-administrations-plans-fresh-thinking-human-rights/>.

6. *The United States should:*

- Reengage with the UN Human Rights Council;
- Reconsider its announced policy on the International Criminal Court.
- Disband the Unalienable Rights Commission;
- Ratify core international human rights instruments including but not limited to: CEDAW, CRC, ICESCR, the Rome Statute, and the CRPD.

## **Racial Disparities, Drug Policy, and Policing**

7. During the last two UPR cycles, the United States agreed to work towards “eliminating racial profiling” (176.121, 176.146, 176.148, 176.152) and conduct studies on how race affects the administration of justice (176.276 and 176.277). However, these studies have not been done and racial disparities persist throughout the criminal justice system. For example, Black people comprise 13% of the general population<sup>4</sup> but 23% of those killed by police officers since 2016,<sup>5</sup> 33% of the incarcerated population,<sup>6</sup> nearly 35% of those executed in 2017,<sup>7</sup> and 44% of all children held in juvenile facilities as of 2015.<sup>8</sup>

8. The United States also agreed to take steps to “prevent and punish excessive use of force by law enforcement” (176.139, 176.143, 176.144, 176.214, 176.215, 176.216, 176.219, 176.221, 176.222, 176.287). Between January 1 and September 30, 2019, police have reportedly shot and killed 678 people in the US.<sup>9</sup> Even when live footage provides strong evidence of excessive, often lethal force, officers have usually not been criminally charged or otherwise held accountable.<sup>10</sup>

9. The United States has not followed through on other key opportunities to address excessive use of force and racial profiling. The Justice Department rolled back efforts to investigate local police departments following credible reports of systemic constitutional violations.<sup>11</sup> In the past, the Justice Department used its legal authority to initiate lawsuits targeting local police departments that would be resolved through court supervised agreements, consent decrees, that would mandate implementation of reforms. These investigations and lawsuits are the primary mechanism by which the federal government can force local agencies to address systemic abuses; in their absence, police departments are largely left to govern themselves.

10. During the first UPR cycle, the United States agreed to review “alternative ways to handle petty crime” (92.179), but today nearly half of those incarcerated in state prisons are incarcerated for non-

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<sup>4</sup> United States Census Bureau, “QuickFacts: United States,” July 1, 2018, <https://www.census.gov/quickfacts/fact/table/US/PST045218> (accessed August 28, 2019).

<sup>5</sup> “Fatal Force,” Washington Post, September 30, 2019, <https://www.washingtonpost.com/graphics/2019/national/police-shootings-2019/> (accessed September 30, 2019)

<sup>6</sup> John Gramlich, “The Gap Between the Number of Blacks and Whites in Prison is Shrinking,” *Pew Research Center*, April 30, 2019, <https://www.pewresearch.org/fact-tank/2019/04/30/shrinking-gap-between-number-of-blacks-and-whites-in-prison/> (accessed August 28, 2019).

<sup>7</sup> Tracy L. Snell, “Capital Punishment, 2017: Selected Findings,” Bureau of Justice Statistics, July 2019, <https://www.bjs.gov/content/pub/pdf/cp17sf.pdf> (accessed August 28, 2019).

<sup>8</sup> The Sentencing Project, “Black Disparities in Youth Incarceration,” September 12, 2017, <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/> (accessed September 25, 2019).]

<sup>9</sup> “Fatal Force,” *Washington Post*, September 30, 2019, <https://www.washingtonpost.com/graphics/2019/national/police-shootings-2019/?noredirect=on> (accessed September 30, 2019).

<sup>10</sup> Human Rights Watch, “Get on the Ground!: Policing, Poverty and Racial Inequality in Tulsa, Oklahoma,” September 12, 2019, <https://www.hrw.org/report/2019/09/12/get-ground-policing-poverty-and-racial-inequality-tulsa-oklahoma/case-study-us-law>; Jasmine L. Tyler (Human Rights Watch), “US Police Week and a Lifetime of Fear” dispatch, May 17, 2018, <https://www.hrw.org/news/2018/05/17/us-police-week-and-lifetime-fear>.

<sup>11</sup> Devlin Barrett, “Justice Department Ends Program Scrutinizing Local Police Forces,” *Washington Post*, September 15, 2017, [https://www.washingtonpost.com/world/national-security/justice-department-ends-program-scrutinizing-local-police-forces/2017/09/15/ee88d02e-9a3d-11e7-82e4-f1076f6d6152\\_story.html](https://www.washingtonpost.com/world/national-security/justice-department-ends-program-scrutinizing-local-police-forces/2017/09/15/ee88d02e-9a3d-11e7-82e4-f1076f6d6152_story.html) (accessed August 28, 2019).

violent offenses.<sup>12</sup> A significant proportion of these non-violent offenders have convictions for drug offenses that may have been better addressed through an approach focused on treatment and public health. The government has reinvigorated the war on drugs by rescinding former guidance to keep low-level, nonviolent offenders out of prison, abdicating a federal leadership role on just and effective policing practices put in place to curb excessive drug law enforcement,<sup>13</sup> and even going so far as to call for the death penalty for drug dealers.<sup>14</sup>

11. *The United States should:*

- Commit to passing legislation that aims to reduce incidents of profiling by law enforcement;
- Rescind Attorney General Jeff Session's memo creating barriers to the negotiation of consent decrees, which are crucial tools for addressing the use of force and systemic abuses by police;
- Reduce the role of policing as a response to societal problems largely related to poverty, while investing in direct solutions to those problems that do not involve criminalization. For example, rather than have police arresting homeless people for minor crimes related to their status as unhoused, the US government should be investing in providing affordable housing. It should similarly invest in community economic development, education, mental health care systems, and drug programs. Commit to ending the criminalization of personal use of drugs and possession of drugs for personal use at both the federal and state levels, and instead pursue an approach centered on treatment and public health.

## Migrants' Rights

12. During the second UPR cycle, the United States agreed to "[f]urther improve the rights of immigrants" (176.330). However, Human Rights Watch has documented numerous abuses against migrants: detaining migrants, including children and families, in inhumane conditions;<sup>15</sup> separating children—including infants and toddlers—from their family members;<sup>16</sup> failing to provide adequate medical care to detained migrants;<sup>17</sup> and restricting access to asylum through policies such as returning asylum seekers to Mexico, where they often cannot pay for basic necessities and remain at risk of serious crime, including kidnapping, sexual assault, and violence.<sup>18</sup>

13. The United States further agreed to "consider alternatives to the detention for migrants, particularly children" (176.253). Yet the government has proposed a new rule allowing for the indefinite detention of children despite the fact that it is well documented that detention of children can lead to trauma, suicidal feelings, and exposure to dangerously inadequate medical care.<sup>19</sup> Immigration authorities have

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<sup>12</sup> The Sentencing Project, "Trends in U.S. Corrections," <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

<sup>13</sup> Jasmine L. Tyler (Human Rights Watch), "US Revives its Harmful Drug War" dispatch, January 4, 2018, <https://www.hrw.org/news/2018/01/04/us-revives-its-harmful-drug-war>.

<sup>14</sup> Eli Rosenberg, "Trump is 'Most Excited' About Death Penalty for Drug Dealers. Rights Groups Say It's a Terrible Idea." *Washington Post*, February 15, 2019, <https://www.washingtonpost.com/politics/2019/02/15/trump-again-praises-strongmen-who-execute-drug-dealers-rights-groups-say-its-terrible-idea/> (accessed August 28, 2019).

<sup>15</sup> Clara Long (Human Rights Watch), "US Congress: Stop Funding Cruelty on the Border" commentary, *CNN*, August 7, 2019, <https://www.hrw.org/news/2019/08/07/us-congress-stop-funding-cruelty-border>; Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells*, February 28, 2018, <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

<sup>16</sup> Human Rights Watch, *United States – Family Separation Harming Children, Families*, July 11, 2019, <https://www.hrw.org/news/2019/07/11/us-family-separation-harming-children-families>.

<sup>17</sup> Human Rights Watch, *United States – Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention*, June 20, 2018, <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>.

<sup>18</sup> Human Rights Watch, *United States – "We Can't Help You Here": US Returns of Asylum Seekers to Mexico*, July 2, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

<sup>19</sup> Federal Register, "Apprehension, Processing, Care and Custody of Alien Minors and Unaccompanied Alien Children," August 23, 2019, <https://www.federalregister.gov/documents/2019/08/23/2019-17927/apprehension-processing-care-and-custody-of-alien-minors-and-unaccompanied-alien-children> (accessed September 4, 2019); Julie M. Linton et al.,

continued to seek additional funding to detain more people—including vulnerable populations such as children and pregnant women—in the already-sprawling immigration detention system.

14. The United States also committed to providing “appropriate procedural safeguards in immigration proceedings” (176.339), stating that “[n]oncitizens in the U.S. facing removal receive significant procedural protections,”<sup>20</sup> but Human Rights Watch has documented the pervasive lack of such safeguards. For example, Human Rights Watch found that US immigration officials’ methods for interviewing migrants in expedited removal procedures are seriously flawed, leading to the rapid return to other countries of people who face harm, contrary to US law and international standards.<sup>21</sup> A new rule proposing the expansion of expedited removal would expose thousands more people living in the US to these same flawed procedures, likely separating families through deportation<sup>22</sup> and resulting in asylum seekers erroneously being deported.

15. *The United States should:*

- Expeditiously develop and implement alternatives to immigration detention and ensure accountability for abuses;
- End the use of immigration detention for children, unaccompanied and with families.
- Stop separating child migrants from their family members except where a trained child welfare professional has determined separation is in the child’s best interest;
- End the Migrant Protection Protocols program and ensure broad access to US asylum procedures;
- Guarantee access to adequate medical care for all detained immigrants and ensure effective and appropriate oversight, including public release of investigations into detainee deaths;
- End the use of expedited removal procedures at the border and in the interior of the country.

## Surveillance and Data Protection

16. During the second UPR cycle, the United States agreed to “[f]ully respect and protect the right to privacy” (176.293). Yet, Human Rights Watch has reported that protections for rights in US surveillance and privacy laws remain weak. For example, US authorities have avoided telling people facing criminal charges whether intelligence or other surveillance was employed in their cases, preventing constitutional challenges; they have also developed means of deliberately concealing the origins of evidence by finding alternative ways to re-obtain the same information.<sup>23</sup>

17. Congress has passed legislation that jeopardizes important privacy rights, such as the Clarifying Lawful Overseas Use of Data (“CLOUD”) Act, which allows authorized foreign governments to demand data from US internet companies under standards lower than those required by the US Constitution and then pass this data back to the US, potentially enabling US authorities to evade domestic privacy laws and facilitating rights-violating surveillance activities by governments that may conclude agreements

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“Detention of Immigrant Children,” *Pediatrics*, May 2017, <https://pediatrics.aappublications.org/content/139/5/e20170483> (accessed September 4, 2019).

<sup>20</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, U.N. Doc. A/HRC/30/12/Add.1 (September 14, 2015), para. 18.

<sup>21</sup> Human Rights Watch, *United States – “You Don’t Have Rights Here”: US Border Screenings and Returns of Central Americans to Risk of Serious Harm*, October 16, 2014, <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>.

<sup>22</sup> Human Rights Watch, *United States – The Deported: Immigrants Uprooted from the Country They Call Home*, December 5, 2017, <https://www.hrw.org/report/2017/12/05/deported/immigrants-uprooted-country-they-call-home>.

<sup>23</sup> Human Rights Watch, *United States – Dark Side: Secret Origins of Evidence in US Criminal Cases*, January 9, 2018, <https://www.hrw.org/report/2018/01/09/dark-side/secret-origins-evidence-us-criminal-cases>.



with the US under the act.<sup>24</sup> US legal protections for the privacy of personal data (other than communications and related information) also remain weak and incomplete.<sup>25</sup>

18. *The United States should:*

- Notify all criminal defendants of the use of any intelligence or other surveillance employed as part of the investigations in their cases;
- Refrain from concluding executive agreements with other countries under the CLOUD Act;
- Propose and adopt comprehensive laws requiring the protection of personal data by both private companies and government agencies, including law enforcement bodies.

## **Women's and Girls' Rights**

19. During the second UPR cycle, the United States agreed to “[i]mprove domestic legislation towards a genuine gender equality in the working place” and “[e]nsure that women receive equal pay” (176.114 and 176.115). No new steps have been taken to eliminate the pay gap even though the pay gap remains with women on average making only 82 cents for every dollar a man makes and women of color making even less.<sup>26</sup>

20. The Department of Health and Human Services (HHS) issued a rule in February 2019 to ban organizations providing abortion services in the US from receiving federal family planning money, known as Title X funding, and to eliminate a requirement that doctors give neutral and factual information to pregnant women.<sup>27</sup> In 2017, HHS issued a rule exempting nearly any employer claiming religious<sup>28</sup> or moral<sup>29</sup> objections to birth control from the Affordable Care Act's (ACA) requirement that they provide contraceptive coverage as part of their employee health insurance plans. This is coupled with actions taken at the state level in several jurisdictions to adopt highly restrictive laws on abortion and reproductive health.<sup>30</sup>

21. In 2019, the United States also threatened to veto a UN Security Council resolution on sexual violence in conflict, a successor to the Resolution 1325, because it mentioned women's reproductive health services for victims of rape in war, consistent with human rights norms. The resolution was ultimately adopted without any language on access to reproductive health care.

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<sup>24</sup> Sarah St. Vincent (Human Rights Watch), “US May Give Foreign Governments – and Itself – Easier Access to Data” dispatch, February 13, 2018, <https://www.hrw.org/news/2018/02/13/us-may-give-foreign-governments-and-itself-easier-access-data>.

<sup>25</sup> Human Rights Watch, “US: Police Found to Violate Fellow Officer's Privacy,” June 20, 2019, <https://www.hrw.org/news/2019/06/20/us-police-found-violate-fellow-officers-privacy>.

<sup>26</sup> National Partnership for Women and Families, “America's Women and the Wage Gap,” September 2019, <http://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/americas-women-and-the-wage-gap.pdf>.

<sup>27</sup> Human Rights Watch, “US to Strip Funding from Women's Health Providers: Trump's New Rule Will Hit Poor Women, Women of Color Hardest,” May 22, 2018, <https://www.hrw.org/news/2018/05/22/us-strip-funding-womens-health-providers> (accessed January 6, 2019); Sarah McCammon, “Trump Administration Announces Sweeping Changes to Federal Family Planning Program,” National Public Radio, February 22, 2019, <https://www.npr.org/2019/02/22/690544297/trump-administration-proposes-sweeping-changes-to-federal-family-planning-progra>.

<sup>28</sup> Human Rights Watch, “Comment on Interim Final Rule on Religious Exemptions and Accommodations under the ACA,” December 5, 2017, <https://www.hrw.org/news/2017/12/05/human-rights-watch-comment-interim-final-rule-religious-exemptions-and> (accessed January 6, 2019).

<sup>29</sup> Human Rights Watch, “Comment on Interim Final Rule on Moral Exemptions and Accommodations under the ACA,” December 5, 2017, <https://www.hrw.org/news/2017/12/05/human-rights-watch-comment-interim-final-rule-moral-exemptions-and-accommodations-0> (accessed January 6, 2019).

<sup>30</sup> Guttmacher Institute, “Policy Trends in the States: First Quarter 2018,” April 2018, <https://www.guttmacher.org/article/2018/04/policy-trends-states-first-quarter-2018> (accessed January 6, 2019); see also Amanda Klasing, “Alabama's Abortion Ban is a Dark Day for Women,” May 15, 2019, <https://www.hrw.org/news/2019/05/15/alabamas-abortion-ban-dark-day-women>.

22. *The United States should:*

- Commit to legislation that seeks pay equity and combats discrimination such as the Paycheck Fairness Act;
- Commit to remove barriers preventing access to birth control and abortion services.

## Right to Health

23. During the second UPR cycle, the United States agreed to “strengthen efforts in ensuring equal access to health-care” (176.313 and 176.317) but federal and state authorities continue to take actions to restrict access to health care, targeting changes to the Medicaid program, private insurance subsidies, and other key elements of the 2010 Affordable Care Act (ACA) that will result in greater inequities in access to care and health outcomes.<sup>31</sup>

24. New policies place the health of LGBT people at risk. Such policies include the expansion of religious or moral exemptions for healthcare providers, which can also be applied to women’s reproductive health services,<sup>32</sup> and the refusal to apply the ACA’s anti-discrimination provisions to transgender people.<sup>33</sup>

25. Advances in medical technology have sent cervical cancer mortality rates plummeting yet about 4,200 women in the US will die from cervical cancer – a preventable disease – this year.<sup>34</sup> Racial disparities exist with African American women who are more likely to die from cervical cancer than white women.<sup>35</sup> Human Rights Watch has documented state and federal government efforts to create substantial barriers to comprehensive cervical cancer care leading to the failure to protect women’s rights to health, information, and non-discrimination.<sup>36</sup>

26. In 2017, more than 70,000 Americans died of drug overdose.<sup>37</sup> The government’s response to the continuing crisis was increasingly punitive, as criminal penalties were enhanced for fentanyl sale and distribution. At least 38 states allow civil commitment for substance use, up from 18 in 1991,<sup>38</sup> and in many states, criminal laws block expansion of proven public health interventions, such as syringe exchange programs and supervised consumption sites, which reduce transmission of infectious disease

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<sup>31</sup> Megan McLemore (Human Rights Watch), “Trump’s Actions on Health Threaten Rights” dispatch, October 16, 2017, <https://www.hrw.org/news/2017/10/16/trumps-actions-health-threaten-rights>.

<sup>32</sup> Human Rights Watch, *United States – “All We Want is Equality”: Religious Exemptions and Discrimination Against LGBT People in the United States*, February 19, 2018, <https://www.hrw.org/report/2018/02/19/all-we-want-equality/religious-exemptions-and-discrimination-against-lgbt-people>.

<sup>33</sup> Ryan Thoreson (Human Rights Watch), “Trump’s Health Care Rules a Prescription for Disaster” commentary, *The Advocate*, August 8, 2018, <https://www.hrw.org/news/2018/08/08/trumps-health-care-rules-prescription-disaster>; Megan McLemore (Human Rights Watch), “In the US, the Right to Health is in Peril” dispatch, February 4, 2019, <https://www.hrw.org/news/2019/02/04/us-right-health-peril>.

<sup>34</sup> Human Rights Watch, *United States – It Should Not Happen: Alabama’s Failure to Prevent Cervical Cancer Death in the Black Belt*, November 29, 2018, <https://www.hrw.org/report/2018/11/29/it-should-not-happen/alabamas-failure-prevent-cervical-cancer-death-black-belt>.

<sup>35</sup> Kelly Flannery (Human Rights Watch), “Cervical Cancer Screening Options Expand in the US,” August 22, 2018, <https://www.hrw.org/news/2018/08/22/cervical-cancer-screening-options-expand-us>.

<sup>36</sup> Human Rights Watch, *United States – It Should Not Happen*.

<sup>37</sup> Margot Sanger-Katz, “Bleak New Estimates in Drug Epidemic: A Record 72,000 Overdose Deaths in 2017,” *New York Times*, August 15, 2018, <https://www.nytimes.com/2018/08/15/upshot/opioids-overdose-deaths-rising-fentanyl.html> (accessed August 28, 2019); <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>.

<sup>38</sup> Leo Beletsky and Denise Tomasini-Joshi, “‘Treatment Facilities’ Aren’t What You Think They Are,” September 3, 2019, <https://www.nytimes.com/2019/09/03/opinion/opioid-jails-treatment-facilities.html>.

and prevent overdose.<sup>39</sup> Reduced access to Medicaid threatens to put drug treatment out of reach for millions of Americans.<sup>40</sup>

27. *The United States should:*

- Protect expanded access to health care created by the Affordable Care Act, including the increased access in states that adopted Medicaid expansion;
- Commit to laws and regulations that expressly prohibit discrimination based on sexual orientation and gender identity or reproductive health services in health care, and repeal of sweeping religious exemption laws that allow insurers and providers to deny healthcare services to LGBT people and women seeking reproductive care;
- Commit to legislation aimed at addressing high rates of preventable cervical cancer deaths including racial disparities in mortality rates;
- Support comprehensive harm reduction programs that include access to clean syringes; HIV and hepatitis C prevention information; drug dependence treatment; overdose prevention information; and community-based naloxone distribution. Support states to repeal criminal laws that prohibit or inhibit access to syringe exchange programs.

## Harsh Criminal Sentencing

28. The United States continues to maintain the largest incarcerated population in the world.<sup>41</sup> About 480,000 of those detained in local jails have not been convicted of a crime, but are incarcerated pretrial and cannot afford to pay bail.<sup>42</sup> Pretrial incarceration causes people to lose their jobs, disrupts childcare, leads to missed rent payments and deeper destitution.<sup>43</sup> Pretrial incarceration pressures people to plead guilty regardless of actual guilt, leaving them with criminal records and exposure to future incarceration.<sup>44</sup>

29. During the last two UPR cycles, the United States rejected calls to end the practices of trying children in adult courts and allowing those who commit crimes while under the age of 18 to be sentenced to life in prison without parole. All 50 states continue the practice of sentencing certain children as adults and roughly 32,000 children under 18 are admitted annually to adult jails. Furthermore, approximately 1,300 people are serving sentences of life without parole for crimes they were found to have committed while under 18.<sup>45</sup>

30. Also during the last two UPR cycles, the United States agreed to work to “[i]dentify the factors of racial disparity in the application of the death penalty” and “to develop effective strategies aimed at ending possible discriminatory practices” (92.95 and 176.195). However, the government has not conducted up-to-date studies or developed effective strategies aimed at ending discriminatory practices.

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<sup>39</sup> Human Rights Watch, *United States – A Second Chance: Overdose Prevention, Naloxone, and Human Rights in the United States*, April 27, 2017, <https://www.hrw.org/report/2017/04/27/second-chance/overdose-prevention-naloxone-and-human-rights-united-states>.

<sup>40</sup> Megan McLemore (Human Rights Watch), “While Vowing to Take on Opioid Crisis, Trump Cuts Drug Treatment Options,” October 17, 2017, <https://www.hrw.org/news/2017/10/27/while-vowing-take-opioid-crisis-trump-cuts-drug-treatment-options>.

<sup>41</sup> US Department of Justice, “Jail Inmates in 2016,” February 2018, <https://www.bjs.gov/content/pub/pdf/ji16.pdf>.

<sup>42</sup> *Id.*

<sup>43</sup> “US: Criminal Justice System Fuels Poverty Cycle,” Human Rights Watch news release, June 21, 2018, <https://www.hrw.org/news/2018/06/21/us-criminal-justice-system-fuels-poverty-cycle>.

<sup>44</sup> “Q&A: Pretrial Incarceration, Bail and Profile Based Risk Assessment in the United States,” Human Rights Watch, June 1, 2018, <https://www.hrw.org/news/2018/06/01/q-pretrial-incarceration-bail-and-profile-based-risk-assessment-united-states>

<sup>45</sup> The Campaign for the Fair Sentencing of Youth, “Montgomery Momentum: Two Years of Progress Since *Montgomery v. Louisiana*” January 25, 2018, <https://www.fairsentencingofyouth.org/wp-content/uploads/Montgomery-Anniversary-2018-Snapshot1.pdf> (accessed August 27, 2019).



This is particularly concerning given that in 2019, after a nearly two-decade moratorium, the federal government announced that it would resume executions of those on death row.<sup>46</sup>

31. *The United States should:*

- Commit to substantially reduce pre-trial detention by requiring most people to be released from custody at the arrest stage and issued a citation requiring them to appear in court on a particular date, while bolstering standards and due process rights for the few who are eligible for pretrial detention;
- Amend federal law to eliminate mandatory minimum sentences for drug offenses and apply those changes retroactively;
- Commit to ending the trial of children as adults and ending life-without-parole sentences for crimes committed as children, and implement a second-look process to review all sentences after a specified period of time has been served;
- Commit to ending the death penalty federally and create incentives for states to enact similar bans.

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<sup>46</sup> Nicole Austin-Hillary (Human Rights Watch), “Resuming Executions Puts US on the Wrong Side of History,” July 30, 2019, <https://www.hrw.org/news/2019/07/30/resuming-executions-puts-us-wrong-side-history>.