



General Assembly

Distr.: General
17 March 2011

English only

Human Rights Council

Sixteenth session

Agenda item 6

Universal Periodic Review

Written statement* submitted by Human Rights First, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

U.S. noncompliance with key human rights obligations

1. Introduction

This document is a submission by Human Rights First to the Office of the High Commissioner for Human Rights (OHCHR) for the record during consideration of the Working Group's Universal Periodic Review report on the United States, scheduled for March 17, 2011, at the Sixteenth Universal Periodic Review session. The submission focuses on two issues: (1) refugee protection and (2) human rights and counterterrorism policies.

2. Refugee protection: Arbitrary detention of asylum seekers

Recommendation: The U.S. Departments of Justice and Homeland Security should revise regulatory language to provide arriving asylum seekers and other immigrants with the chance to have their custody reviewed in a hearing before an immigration court as required by Article 9(4) of the International Covenant on Civil and Political Rights (ICCPR).

The United States is a leading voice for the protection of refugees around the world. Not only is the United States a party to the 1967 Protocol Relating to the Status of Refugees¹ ("Refugee Protocol"), but it is also party to the International Covenant on Civil and Political Rights ("ICCPR") and other human rights conventions that protect the rights of all individuals, including refugees and asylum seekers. While the United States has a proud tradition of providing refuge to victims of religious, political, ethnic and other forms of persecution, there are several laws and policies in place in the U.S. asylum system that are inconsistent with this country's human rights commitments and undermine the protection of refugees.

In Human Rights First's submission to the U.S. government "Key Issues and Recommendations for Consideration during the Universal Periodic Review,"² we highlighted that the failure to provide prompt, independent court review of decisions to detain arriving asylum seekers violates U.S. obligations under the Refugee Protocol and the ICCPR. In its draft report submitted to the U.N. Human Rights Council on November 11, 2010, the U.S. government reported that "DHS [the U.S. Department of Homeland Security] issued revised parole guidelines, effective January 2010, for arriving aliens in expedited removal found to have a credible fear of persecution or torture. The new guidelines firmly establish that it is not in the public interest to detain those arriving aliens

¹ The United States acceded to the Refugee Protocol in 1968, and in doing so bound itself to comply with the substantive provisions of the 1951 UN Convention Relating to the Status of Refugees. The United States incorporated those provisions into domestic law through the Refugee Act of 1980. As the U.S. Supreme Court has repeatedly noted, a primary purpose of Congress in passing the Refugee Act "was to bring the United States refugee law into conformance with the 1967 United Nations Protocol." See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436 (1987). See also *Neguisse v. Holder*, 129 S. Ct. 1159 (2009); *INS v. Stevic*, 467 U.S. 407, 416-24 (1984).

² See "Protecting the Persecuted and Abiding by U.S. Commitments under International Human Rights Law: Key Issues and Recommendations for Consideration during the Universal Periodic Review," February 2010; available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-RPP_KeyIssuesUPR_02252010.pdf.

found to have a credible fear who establish their identities, and that they pose neither a flight risk nor a danger to the community.”³

Although the United States did indeed revise the parole policy for arriving asylum seekers in December 2009 and this new policy includes criteria that are more appropriate and consistent with international standards, arriving aliens continue to be barred by regulation from accessing prompt court review of detention as required by Article 9(4) of the ICCPR.

On arrival, asylum seekers are subject to “mandatory detention” under expedited procedures. Subsequent parole assessments are conducted by DHS’s Immigration and Customs Enforcement (ICE), the detaining authority. If ICE denies parole, the asylum seeker cannot appeal to a judge, even an immigration judge. While U.S. immigration judges review ICE custody decisions for other immigrant detainees, they are precluded under regulatory language from reviewing the detention of “arriving aliens.”⁴ While improved parole practices are a good first step, the regulatory language barring arriving aliens from court review still violates Article 9(4) of the ICCPR and, therefore, should be revised. As both Switzerland and Guatemala recommended during the November 5, 2010, session of the Universal Periodic Review, the United States should bring its immigration detention practices into compliance with international human rights standards.⁵

3. Human rights and counterterrorism policies: Ending enforced disappearances

Recommendation: The United States should sign the International Convention for the Protection of All Persons from Enforced Disappearance.

In its draft Universal Periodic Review report, the U.S. government asserted its commitment to comply with all applicable domestic and international law in armed conflicts starting “from the premise that there are no law-free zones, and that everyone is entitled to protection under law.”⁶ Pursuant to this fundamental principle, the U.S. government should accept the recommendation of three countries – France, Netherlands, and Venezuela – made at the November 5, 2010 Universal Periodic Review and sign the International Convention for the Protection of All Persons from Enforced Disappearance (Convention Against Enforced Disappearances).

From 2001 to 2006, the U.S. Central Intelligence Agency (CIA) took at least 100 prisoners into custody without charge, many of whom were held incommunicado in undisclosed detention in secret overseas facilities for years. U.S. government officials have admitted that while in CIA custody, at least three of these prisoners were subjected to cruel interrogation techniques, including waterboarding, demonstrating how holding prisoners in secret invites torture and abuse.

³ Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review,” paragraph 93; available at <http://www.state.gov/documents/organization/146379.pdf>.

⁴ Provisions located mainly at 8 C.F.R. 1003.19 and 212.5, as well as at 208.30 and 235.3.

⁵ Draft Report of the Working Group on the Universal Periodic Review, United States of America,” paragraphs 92.164 and 92.184; available at http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/A_HRC_WG.6_9_L.9_USA.pdf.

⁶ Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review,” paragraph 88; available at <http://www.state.gov/documents/organization/146379.pdf>.

President Barack Obama made significant stride toward ending such “ghost detentions” when he issued Executive Order 13491 on his second full day in office. That Executive Order directs the CIA to close any detention facilities it operated and ensures International Committee of the Red Cross access for all armed conflict detainees in U.S. custody.

By signing the Convention Against Enforced Disappearances, the U.S. government would reinforce Executive Order 13491, strengthening the international prohibition against the practice of enforced disappearances and facilitating constructive engagement of U.S. officials in international fora on advancing the treaty’s object and purpose. Rejecting the recommendation to sign the Convention, on the other hand, would threaten to obscure the U.S. government’s commitment to combat enforced disappearances, bringing into question the durability of current U.S. policies prohibiting practice.
