ICCPR Article 1, Self-Determination and Native Americans[1]

Executive Summary

Due to continuing interference with the self-governance and property rights of Native Americans, the U.S. government is in violation of Article 1 of the ICCPR. The government has engaged in long-term mismanagement of Individual Indian Money (IIM) accounts resulting in major losses from the Indian Trust. The Government continues to attack access and ownership of traditional lands using methods ranging from "gradual encroachment" to harassment via fines and property confiscation. These actions constitute breeches of Indian treaties, violations of violations of indigenous rights to property and culture and violations of Article 1(2) of the Covenant. The United States must recognize Native American property, including rights over traditional lands and resources, according to recognized human rights principles.

The Federal Government has also failed to recognize specific Native American tribes as self-governing peoples. The established process for federal recognition was established by the United States in 1934 under what is referred to as the "Indian Reorganization Act". This process, imposed upon Native communities, oftentimes resulting in direct conflict with long-standing traditional forms of self-government. This has resulted in the creation of significant obstacles to federal recognition that are not easily overcome. Certain federally required criteria cannot be met because of actions taken by the Government and majority factions of the population throughout this country's history.[2] Refusal to recognize Native American peoples or Nations which do not fit certain criteria because of historical actions represents a violation of Article 1(3) of the Covenant.[3] The United States must recognize and respect rights to self-determination and allow for tailoring of any "recognition process" to the needs of the individual tribe and allow for certain deviations from the established process. If the United States continues to insist on formal federal recognition of individual "tribes", the Federal Government must take factors, such as the historical pressure to assimilate into the greater American community into account in decisions for federal recognition.

Three current examples of the failure of the United States to abide by the Covenant follow. The first is the case of the Western Shoshone. This case provides one example of government efforts to extinguish Native American property rights through a discriminatory and unjust agency process. The case also highlights government failure to resolve the matter in good faith after being requested to do so by regional and United

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[1] T. Yvette Soutiere, with contributions by Julie Fishel, Western Shoshone Defense Project, and Lucy Simpson, Indian Law Resource Center.

[2] During the late 1800s and continuing through the early 1900s, the U.S. Government actively supported the use of boarding schools in order to assimilate Native American children into Christian American society. Students were required to conform to European dress and to become "civilized". There was a strict English-only language policy employed in the schools. See http://www.twofrog.com/rezsch.html#Justification for more information. Also during this time, the eugenics movement enjoyed increasing popularity. Many chose assimilation rather than to be targeted as a lesser person by this movement. See http://www.indiancountry.com/content.cfm?id=1096410443.

[3] The example of the Abenaki follows.

Nations human rights bodies, relying instead on the use of retaliatory measures when indigenous peoples assert their rights under the law. The second case, still in U.S. Courts after ten years, is *Cobell v. Norton*. This case involves efforts of Native Americans to receive a full and accurate accounting of the Individual Indian Money trust after years of malfeasance and mismanagement. It also highlights government retaliation when Native Americans assert their rights. The last case demonstrates many of the obstacles indigenous communities face when they seek federal recognition.

In Response to the Second and Third Periodic Reports of
the United States of America:
Shadow Report on U.S. Exceptionalism and Lack of Implementation[4]

EXECUTIVE SUMMARY

The United States has been intrinsically involved in the development of the United Nations from its first incarnation as the League of Nations, to the aftermath of World War II and the development of peaceful diplomacy. The U.S. has also played the role of watchdog for the implementation of human rights around the world. The U.S., however, has faltered in meeting its own international human rights obligations. An example of this is the U.S.'s failure to meaningfully implement the International Covenant on Civil and Political Rights ("ICCPR").

The United States ratified the International Covenant on Civil and Political Rights in 1992. It appears that the signing of the treaty was a ceremonial act, however, rather than a commitment to fully implement and comply with the treaty's provisions. Nearly 15 years after the signing of the treaty, the United States has failed to acknowledge the full extent of the treaty's legal significance and has not taken the active steps necessary to ensure that treaty obligations are enforced as U.S. law. Moreover, when the U.S. signed the treaty, it simultaneously issued broad reservations, understanding and declarations ("RUDs") limiting the scope of its obligations and rendering the treaty unenforceable. In essence, the RUDs strip the ICCPR of all its authority and relevance to the U.S. As such, the U.S.'s RUDs have been criticized both by this Committee and fellow signatory parties to the ICCPR.

This Committee criticized the U.S.'s widely formulated reservations. It noted that the U.S.'s RUDs were "intended to ensure that the United States has only accepted what is already law in the United States."[5] Additionally, 11 fellow signatories and this Committee[6] found the U.S. reservations to Article 6.5

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[4] Penny Venetis, Clinical Professor of Law and Clinical Scholar, Co-Director Constitutional Litigation Clinic, Rutgers School of Law – Newark with the assistance of Cynthia Soohoo and Connie de la Vega and is submitted on behalf of: Human Rights Advocates, Lawyers Committee for Civil Rights Under Law, Washington, D.C., Penal Reform International, UN Working Group of the National Lawyers Guild's International Committee and WILD for Human Rights.

[5] Concluding Observations of the Human Rights Committee: United States of America: March 10, 1995.

[6] Office of the High Commissioner on Human Rights, Concluding Observations of the Human Rights Committee: United States of America, U.N. Doc CCPR/C/79/Add.50,A/50/40, Paragraph 279(1995). U.S. Reservation limiting application of Art. 7 to the extent that cruel, inhuman or degrading treatment prohibited by the 5th, 8th and/or 14th Amendment.

regarding the juvenile death penalty and Article 7 regarding the use of torture and cruel, inhuman and degrading treatment, as inconsistent with the Covenant's object and purpose, and in direct conflict with the non-derogable provision of the right to life under Article 4.2.

Despite the clear statements by this Committee of what the U.S. needs to do to comply with the ICCPR, the U.S. has not taken any of these considerations into account. It continues to stand by its RUDs, even in situations when the U.S. Supreme Court has rendered them unneccessary, as in the case of banning the execution of juveniles.[7]

The U.S. also continues to assert that the treaty is non-self executing and that it cannot be invoked in U.S. Courts to remedy a violation of the human rights guaranteed by the ICCPR. This failure to implement the ICCPR and the continued clinging to RUDs violates the ICCPR on its face. Additionally, the U.S.'s failure to implement the treaty and the U.S.'s failure to ratify Optional Protocol I leaves those whose human rights have been violated with no remedy.

[7] Roper v. Simmons, 543 U.S. 551 (U.S. 2005).

The Lack of Access to the Courts to Enforce Civil Rights in the United States: A Violation of the Right to Effective Remedy Under Article 2(3) of the ICCPR[8]

Executive Summary

- Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) requires the availability of an effective remedy for violations of rights protected by the ICCPR.

- Millions of individuals in the United States do not have the right to remedy violations of federal civil rights laws as a result of Supreme Court opinions that restrict the private right of action of individuals.

- The inability to redress these civil rights violations constitutes a violation of Article 2(3) of the ICCPR.

    a. U.S. Supreme Court decisions that have prevented individuals from obtaining an injunction to stop ongoing discriminatory conduct violate Article 2(3) because under this provision of the ICCPR, remedies must be *accessible* to individuals whose rights are protected.

    b. U.S. Supreme Court decisions that have restricted the ability of individuals to obtain compensatory damages against state actors violate Article 2(3) because the provision requires remedies to be *effective* and the failure to compensate an individual for harms caused by civil rights violations means that the remedy is insufficient and thus inappropriate.

    c. Under the ICCPR, sovereign state immunity cannot be a defense against the imposition of corrective measures aimed to effectuate the requirements of Article 2(3).

    d. The implementation of the effective remedy requirements of Article 2(3) is particularly crucial when the individuals involved are vulnerable persons.

- We recommend that the Human Rights Committee require the U.S. to comply with its obligations under Article 2(3) of the ICCPR to ensure and protect the rights of individuals to an effective remedy.

[8] National Campaign to Restore Civil Rights.

Report on the Death Penalty - Executive Summary

Although we welcome the Second and Third Periodic Report of the United States of America to the United Nations Human Rights Committee, we are troubled by its failure to adequately address human rights violations relating to the administration of the death penalty nationwide.

In its Concluding Observations regarding the United States' initial report under Article 40 of the ICCPR, this Committee noted specific concerns about the way in which death sentences were imposed in this country.[9] In the eleven years that have passed since then, the United States Supreme Court has taken important measures to prohibit the application of the death penalty to juvenile offenders and to the mentally retarded. We applaud those decisions, and welcome the Supreme Court's newfound willingness to consider international law in assessing whether certain aspects of the death penalty violate the Eighth Amendment to the United States Constitution.

At the same time, and contrary to the Committee's specific recommendations in 1995, the United States has failed to take measures to restrict the death penalty to the most serious crimes and has failed to ensure that death sentences are carried out in full compliance with the human rights obligations contained in the Covenant. While the application of the death penalty in the United States raises many troubling questions, this report focuses on only five issues: (1) the arbitrary and discriminatory imposition of death sentences; (2) the application of the death penalty to offenses that do not constitute the "most serious crimes;" (3) the execution of the severely mentally ill; (4) evidence that the practice of executing prisoners by lethal injection amounts to cruel, inhuman or degrading treatment or punishment; and (5) death row conditions and their effects on the mental health of prisoners awaiting execution. These practices violate several provisions of the ICCPR, including Articles 6(1), 6(2), 7, 10, and 26.

First, there is ample evidence that death sentences in the United States are imposed arbitrarily and on the basis of impermissible factors such as race and poverty. These systemic problems are compounded by the poor quality of legal representation routinely provided to indigent defendants facing the death penalty. Moreover, there are no uniform standards to guide the discretion of state prosecutors in seeking the death penalty. As a result, there are enormous geographical disparities in the sorts of crimes for which the death penalty is imposed. The administration of the death penalty in the United States therefore violates Articles 6(1) and 26 of the ICCPR.

Second, the United States continues to impose capital sentences on individuals who have not committed the "most serious crimes," in violation of Article 6(2). The "felony murder" rule allows for individuals to be sentenced to death, even if they did not kill, intend to kill, or even contemplate that another human being would die as a result of their

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[9] Concluding Observations of the Human Rights Committee: United States of America, ¶¶281, 296, U.N. Doc. CCPR/C/79/Add.50, A/50/40 (1995).

actions. And since the United States last appeared before this Committee, it has taken no steps to reduce the number of crimes for which individuals are "death-eligible."[10]

Third, executions of the severely mentally ill are commonplace in the United States, despite a decision from the United States Supreme Court prohibiting the execution of the "insane."[11] In the last ten years, the United States has put to death dozens of prisoners suffering from schizophrenia, bipolar disorder, and other incapacitating mental illnesses. Moreover, the United States has allowed at least one mentally ill prisoner to be forcibly medicated with anti-psychotic medication so that he could be rendered "competent" for execution. These practices constitute cruel, inhuman or degrading treatment or punishment in violation of Article 7.

Fourth, there is mounting evidence that current lethal injection protocols violate Article 7. Lethal injection is the most common method of execution in the United States. While lethal injection was once believed to cause a painless death, experts have testified that death by lethal injection can cause excruciating agony.[12] Prisoners have sought to obtain stays of execution while lethal injection is subjected to further study and analysis, but courts in several states have repeatedly denied them even a temporary reprieve.

Fifth, death row prisoners in states such as Texas and California are routinely subjected to inhumane and degrading treatment in violation of Articles 7 and 10. Of the thirty-eight states that allow for the application of the death penalty in the United States, Texas and California have, by far, the largest number of condemned inmates. The prisons housing death row inmates in these two states have been severely criticized by the federal judiciary for imposing inhumane and degrading conditions of detention, and for failing to provide necessary mental health treatment for incarcerated prisoners. These conditions have had grave effects on death row inmates' mental and physical health.

The conditions of death row confinement cannot be viewed in isolation from the length of time that prisoners spend on death rows awaiting their executions. As several international tribunals have recognized, prisoners forced to anticipate their own deaths face a unique form of mental torment. This Committee has stressed that the mere length of time that a prisoner spends on death row does not give rise to a violation of Articles 7 and 10 of the ICCPR,[13] and we do not quarrel with that conclusion in this report. Rather, we contend that the inhumane conditions on death rows nationwide, coupled with the cumulative effects of those conditions on prisoners who typically spend over a decade awaiting execution, amount to cruel, inhuman or degrading treatment or punishment.[14]

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[10] *See* Concluding Observations at ¶281.

[11] *Ford v. Wainwright,* 477 US 399 (1986).

[12] A declaration from Dr. Mark Heath, describing these problems in detail, has been provided as an exhibit to this report.

[13] *See, e.g., Johnson v. Jamaica*, ¶8.4 (No. 588/1994), U.N. Doc. CCPR/C/56/D/588/1994 (1996).

[14] *Id.* ¶8.5.

We are hopeful that the discussion in this report will assist the Committee in evaluating the United States' record of compliance with the International Covenant on Civil and Political Rights (ICCPR).

Prepared by Sandra L. Babcock
Co-Chair, International Committee
National Association of Criminal Defense Lawyers

UNITED NATIONS HUMAN RIGHTS COMMITTEE

EIGHTY-SEVENTH SESSION

REPORT ON WOMEN'S HUMAN RIGHTS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS[15]

EXECUTIVE SUMMARY

INTRODUCTION

This report is submitted by a coalition of US NGOs that work on issues of gender equality in the United States. It focuses on several areas of concern in which the United States Government has failed to implement the International Covenant on Civil and Political Rights with respect to women's human rights and discrimination. These issues constitute violations under several articles of the Covenant in addition to indicating a lack of implementation of Article 3 and General Comment No. 28.

The Working Group acknowledges that some of these matters were not covered in the List of Issues prepared by the Committee in its eighty-sixth session in March 2006. We respectfully submit that it remains important to offer this record to the Committee, to the international community, and to the American public. Given the human rights record of the United States in recent years, it is understood that some of the concerns indicated in this report are not a priority for the Committee's review in this session. However, the Committee has indicated in its review of the first US report, in reviews of other States, and in General Comment No. 28 that matters such as violence against women and employment discrimination are within the ambit of the Covenant. We offer this information to keep the record up to date as well as to provide US constituencies with material to assist their growing understanding of the international context for their work and to provide them with additional advocacy material.

ARTICLE 2(2) Remedies

The United States' failure to guarantee an effective federal judicial remedy for gender-based violence is the result of two Supreme Court decisions. The absence of a federal remedy is exacerbated by evidence that state courts, as a result of statutory immunities and gender discrimination, often do not provide effective remedies. Notwithstanding the Supreme Court decisions, ***we ask the Committee to explore with the U.S. the available***

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[15] Human Rights Advocates International (New York); International Gender Organization International Women's Human Rights Law Clinic; Queens College, City University of New York; International Women's Rights Action Watch; Human Rights Center, University of Minnesota; Legal Momentum; MASSCEDAW and Prof. Martha Davis, Northeastern University College of Law; National Organization for Women Foundation; National Council of Women's Organizations.

legislative and executive action that would provide such remedies and fulfill the preventive as well as compensatory role they should play.

ARTICLE 3, 2(1) Equality and non-discrimination

The U.S. Constitution does not clearly prohibit sex discrimination. Efforts to add a sex equality amendment had been continuous since 1923, but by a Congressionally-imposed deadline in 1982, when 15 states failed to ratify, the Equal Rights Amendment was defeated.

In the Second and Third Periodic Reports of the United States to the UN Committee on Human Rights, the government. asserts that the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution guarantee equality for men and women. However, the denial of equality under the Constitution, initially understood but unspoken, was made explicit when the Fourteenth Amendment was adopted in 1868 using the words "male citizens" in the second section. Although several decisions of the Supreme Court have overturned particular gender-biased laws based on the Constitution, sex discrimination *per se* is not explicitly unconstitutional in the making, interpreting, and enforcing of U.S. law. Women won the right to vote with passage of the Nineteenth Amendment in 1920 after an unprecedented seventy-two year campaign. Except for the right to vote, there has been no other area in which an amendment has guaranteed women's right to legal parity with men.

The Fourteenth Amendment's equal protection provision has not been consistently interpreted as protecting women from sex discrimination, and it has not been interpreted to require strict scrutiny of sex-based classifications. Instead, the standard ranges from requiring a "rational basis" for sex-based distinctions to requiring an "exceedingly persuasive" justification.
The Fourteenth Amendment has not been interpreted to apply to sexual orientation or gender identity discrimination. Nor does it protect women from discrimination on the basis of pregnancy or childbirth. Further, the amendment has been interpreted to require a demonstration of discriminatory intent; it is not sufficient that a law or policy has a disproportionate impact on one sex. Given this history, the recent additions of John Roberts and Samuel Alito to the Court, and the possibility of future Supreme Court appointments during President George W. Bush's term, reliance on judicial interpretation of the Fourteenth Amendment to accord sex the recognition as a protected class that is accorded to race and national origin classes is not realistic.

U.S. ratification of the Convention on the Elimination of All Forms of Discrimination against Women would fully expose the inequality issue. The treaty was signed by President Jimmy Carter in 1980, but has not been ratified by the Senate in the more than twenty-five years since that time. This international 'Bill of Rights' for women was been ignored, delayed and ultimately blocked from a final floor vote in 1994 and again in 2002.

We request the Committee to recommend to the United States Government:

(1) that it initiate a national dialogue regarding the benefits of an equal rights amendment, including full and fair Congressional hearings on the intent and applicability of a Constitutional amendment assuring equal protection under the law for women and men.

(2) that the U.S. Senate move legislation to a floor vote that would provide for ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), at the same time recommending removal of the Reservations, Declarations and Understandings that have been attached to CEDAW which would limit the application of most of the treaty's provisions.

Violence against women

Violence against women is a violation of Articles 6 (Right to Life), 7 (Torture and Cruel, Inhuman and Degrading Treatment), and 9 (Liberty and Security of Person), as well as of the fundamental principles of equality and nondiscrimination. The federal Violence Against Women Act (VAWA) is a valuable effort to support violence prevention as well as services for women who are survivors of violence. As government and nongovernmental service providers have gained experience, they have refined their understanding of both women's needs and effective approaches. Each round of VAWA renewal provides an opportunity to improve it in light of this experience.

We request that the Committee note the current limitations that remain to be addressed:

(1) The Department of Homeland Security must provide information on use of the self-petition and other processes available to immigrant women, and publicize the availability of those processes, in multiple languages.

(2) The Violence Against Women Act should be amended to provide for protection of battered women from discrimination in housing and employment.

Government institutions and information relating to equality

The substantive equality guaranteed by the ICCPR can be achieved only if governments are aware of, and take steps to remedy, sex-based discrimination. In recent years, the United States government has taken a number of actions to eliminate the official bodies established over a period of decades to monitor and ensure equality between the sexes and to gather information that can be used to examine progress and policy. With the elimination or modification of these offices, women have lost important avenues to enlist the government in ensuring equality and have lost access to valuable (and often otherwise unavailable) information that would enable them to take action themselves and through nongovernmental organizations to address inequality.

For example, the Department of Labor has abolished its Equal Pay Matters Initiative, removed information about narrowing the wage gap from its Web site, refused to use available tools to identify violations of equal pay laws, and adopted regulations that deprive millions of women the right to over time pay. In addition, efforts have been made to eliminate the Department's collection of data on working women, making it more difficult to identify sex discrimination in employment and to measure women's progress – or lack of it – in the labor force. The Department also proposes to stop collecting data on discrimination by federal contractors.

We request that the Committee note:

(1) the fundamental lack of a national human rights institution or any other department or bureau with responsibility for monitoring and promoting women's human rights ;

(2) the dismantling and decommissioning of the bodies that existed, limited as they were, to ensure that equality between the sexes remained an element of government policy; and

(3) the elimination of data collection programs that illuminate discrimination issues.

ARTICLE 7 (Cruel, Inhuman or Degrading Treatment);
ARTICLE 10 (Conditions of Imprisonment)

Of the almost two million people confined in U.S. prisons and jails, about 200,000 are women, of whom 80% have committed non-violent crimes, such as shoplifting, prostitution, illicit drug use, and welfare fraud. Many have been egregiously abused throughout their lives, and they often end up with violent and abusive partners and suffer from a cycle of incarceration and recidivism due to continued drug usage or crimes related to their drug use. In short, these women are victims and continue to be victimized in prison.

Reproductive rights issues loom large for incarcerated women. Approximately five percent of women reportedly arrive pregnant in jail, and approximately 2,000 babies are annually born to U.S. prisoners. They often are shackled while being transported to the hospital, waiting to give birth, during labor and after birth. Female inmates frequently are not provided with the means to exercise their rights to abortion services. The consequences are extreme for both mother and child, as incarcerated women face, at best, uncertain futures, and in some cases the certainty of long prison sentences.

Prisons are patriarchal systems which attempt to restrict women's choices not only about their bodies but also their offspring. After incarcerated women bear children, these offspring are placed in either kinship or foster care. If a child is placed in foster care, mothers often irreversibly lose their children without due process. Even worse, reunification is often at the whim of individual case workers.

We urge the Committee to recommend that the United States Government:

(1) Mandate that all states comply with international standards for treatment of incarcerated women;

(2) Restrict the use of shackles except as a reasonable precaution against escape during a transfer; by order of medical personnel; or if other methods of control fail, in order to prevent a prisoner from injuring herself or others or from damaging property, and do not use them during the third trimester of pregnancy;

(3) Deliver adequate care for pregnant incarcerated women, including access to abortion services;

(4) Protect incarcerated women's reproductive rights, including the right to abortion;

(5) Provide funds for incarcerated women who cannot afford abortions from the Department of Corrections medical budgets in the same ways that the DOC covers prenatal, delivery and post-natal costs;

(6) Repeal the Hyde Amendment as discriminatory against minorities, low-income women and incarcerated women in Federal prisons;

(7) Inform women they can write to a judge and request to be present at any court hearings regarding a child's care, including foster care status hearings and parental termination proceedings.

ARTICLE 13 (Expulsion of Aliens)

U.S. asylum law and practice does not adequately consider or recognize the protection needs of women fleeing gender-specific persecution. By failing to specifically accommodate for gender as a contributing persecution ground, the U.S. stands in violation of its obligations under ICCPR Articles 2(1), 7, 13, and 26, and Refugee Convention Articles 3, 31, and 33 at a minimum. Moreover, the US has increasing limited previously available protections under its asylum law. Where gender-based violence resulting from conflict or personal situations is the cause of women's flight from persecution, the diminishing protections and harshness of the U.S. restrictions on asylum fall disproportionately on women.

The Bush Administration enacts or narrowly interprets laws in the name of fighting terrorism that has the effect of disproportionately denying asylum to female victims of sexual violence, the very victims of terrorists. U.S. imposition of a "material support" bar to asylum or refugee status adversely impacts women because of their status as women. "Material support" provided under threat of violence, physical harm and, *inter*

alia, coercion denies them asylum protection. In conflicts, women become non-combatant victims. They are raped by invading forces for purposes of humiliating their men and their nation, for "ethnic cleansing," or for "recreation." They are compelled by captors to perform chores by day, suffering sexual indignities by night. Although they work under duress, women are denied asylum because the U.S. will not recognize the gender-specific vulnerability of rape or threat of rape as a duress defense.

The US requires that persons seeking protection from persecution file for asylum within one year of entering the United States. This filing bar, even with its narrow exceptions, contravenes U.S. treaty obligations and accepted international legal standards. By refusing to implement a firm rule excepting from the bar women who have experienced and are recovering from trauma-inducing gender-specific violence, the U.S. denies asylum to women who by virtue of their immutable characteristics as a person have been victimized as a group or for their opinion as women. Many of these women cannot immediately upon entry discuss and place in writing with strangers the traumatic gender-specific horrors they have suffered, frequently including sexual violence. The traumatic nature of this gender-specific persecution, causes women to be unable to confront their memories in a timely fashion in order to meet the one-year filing requirement. Failure to recognize that a disproportionate number of women require additional time to adequately deal with their memories and narrate their case, denies the reality of their unique situation and constitutes *de facto* discrimination. This contravenes ICCPR Articles 7, 13 and 26 and strips women of the *nonrefoulement* protections provided for in the ICCPR.

We request the Committee to recommend the following to the U.S. Government:

(1) The Government must educate and sensitize immigration judges and asylum adjudicators on issues relating to women asylum seekers. U.S. adjudicators must continue to be educated about domestic violence as a threat to the life and safety of women just like other forms of violence that are recognized as persecution. Specifically:

- ***The government must provide a program of mandatory, training on the practices that give rise to gender-specific asylum claims (e.g., honor killings, rape and marital rape, forced marriage, etc.), and the effects post-traumatic stress disorder can play during the asylum interview or immigration court hearing.***

- ***Particular attention must also be paid to the special role of women in their societies and the life-threatening consequences of social oppobration and exclusion for women who transgress their society's practices.***

- ***They must also be educated to understand that domestic violence occurring in a marital situation is not a private matter to be marginalized or dismissed as unworthy of international protection. A marital home need not be sanctioned as a torture chamber.***

(2) The United States must provide for a duress and de minimus defense or exception to the "material support" bar for refugees and asylum applicants who involuntarily provide "material support" to alleged terrorist groups, especially as many being excluded or deemed ineligible for protection are women compelled by, inter-alia, violent and repeated sexual assaults to render simple aid to their captors.

(3) The US Government must take immediate steps to remove restrictions and impediments to asylum claims based on the arbitrary one-year filing deadline, including providing gender-sensitive guidelines that recognize the impact and after-effects of gender-specific trauma that many female asylum applicants have suffered.

(4) The United States must more expansively and appropriately define and recognize in practice what the meaning/s of persecution are likely to be within the context of "social group," chiefly in the area of domestic violence occurring to women in what some consider personal conduct or action. In weighing the appropriateness of a "social group" definition the United States must look to the culture and practice of the society a woman is escaping from and consider that her actions may also constitute "political opinion."

ARTICLE 26 (with reference to ARTICLES 2.1 and 3) Equal Protection of the Law

The United States has maintained for many decades one of the strongest and most stable economies in the world, generating significant employment and income growth for much of the population. But despite the country's economic might and unparalleled wealth, gains have not been equitably shared. The confluence of embedded patterns of sex and race discrimination, together with a shift in income distribution, has meant that millions of women and their families bear the brunt of policies producing deep inequality.

Since U.S. ratification of the International Covenant on Civil and Political Rights (ICCPR) in 1992 when the U.S. became obligated to bring its laws and policies into conformance with the Covenant's sex equality provisions, little has been accomplished towards those ends. In fact, in recent years repeated efforts have been mounted by conservative legislators and policy-makers to undermine and repeal laws and policies intended to promote sex equality.

The U.S. government has failed to adopt effective laws to address the problem of persistent and pervasive pay inequity. Both benign neglect and willful government actions have prevented the adoption of legislative and administrative remedies that would

address broad-based wage and salary discrimination disproportionately harming women. Laws against sexual harassment and sex discrimination in employment and education are inadequate and poorly enforced, and there has been a steady stream of attacks on those laws and policies which, if successful, would make conditions even more unequal.

Family support policies are seriously lacking in the U.S., and their absence makes it nearly impossible for women to achieve equality in the workplace. Family and medical leave provisions affecting women and their families are among the most unfriendly of all developed nations, providing only unpaid leave and available to fewer than half of working women.

Lesbians are not protected from sexual-orientation bias in the workplace and suffer from a counter-productive policy of "Don't Ask; Don't Tell" in the military. Other restrictions on women regarding combat and combat-support positions constrain their military careers.

We request that the Committee recommend that the US Government:

- ***Adopt legislation that would strengthen and expand laws against sex-based employment discrimination, in particular addressing the problem of wage discrimination in various occupational categories that exists merely because they primarily employ women and people of color. Strengthen the Equal Pay Act to address comparable work, improving remedies and enforcement provisions.***

- ***Provide more effective enforcement of Title VII of the Civil Rights Act of 1964 and other laws prohibiting sex discrimination in the workplace, including sexual harassment, discrimination in hiring and promotion, and pregnancy discrimination.***

- ***Protect equal education goals of Title IX of the Education Amendments of 1972 from any regulations that would undermine its provisions; adopt an aggressive compliance review schedule for all educational institutions; restore funding and technical assistance to the Title IX coordinator network; restrict conditions under which single sex classes and schools that receive federal aid may operate to reflect the original intent of Title IX; and conduct vigorous enforcement activities, including prompt and thorough investigations of systemic discrimination, adopting sanctions against violators and assisting plaintiffs in Title IX violations litigation – both in the academic and athletic fields.***

Domestic Workers' Rights in the United States:
A report prepared for the U.N. Human Rights Committee
In response to the Second and Third Periodic Report of the United States

EXECUTIVE SUMMARY

Employed in private homes to perform household tasks that historically have been assigned a diminished value, domestic workers frequently face exploitation and abuse, a problem further exacerbated by their association with particular groups (women, minorities, and migrants) who suffer multiple forms of discrimination. Domestic workers experience abuses ranging from verbal abuse and economic exploitation to physical and sexual assault and forced servitude. Although U.S. laws should protect them, domestic workers find that they are often excluded from legal protections or that the laws are not enforced. This reprehensible abuse of domestic workers violates Articles 2, 3, 7, 8, 9, 12, 17, 19, 21, 22, and 26 of the International Covenant on Civil and Political Rights.

Violations of Workers' Rights (Articles 2, 3 ,8, 21, 22, and 26)

Forced Servitude (Articles 8 and 2)
Article 8 prohibits slavery, servitude, or forced labor; yet, many domestic workers suffer these conditions. Trapped in economically abusive employment, domestic workers may receive little pay while working long hours in dangerous conditions. Some employers forbid domestic workers from leaving the house, confiscate their passports, or threaten deportation to keep them imprisoned and financially enslaved in their abusive positions. Without English language skills, contacts in the community, or information about resources, domestic workers are often left without recourse.

Substandard Working Conditions (Articles 8, 2, 3, and 26)
Domestic workers often endure various inhumane work conditions including lack of food, medical care and sleep in violation of Article 8. They have been forced to sleep in rooms without heat, on hard floors, or in moldy basements. At times they use hazardous materials without any safety warnings. Domestic workers are often severely underpaid and without overtime wages. Unfortunately, U.S. laws are inadequate and their enforcement is insufficient, which violates Articles 2, 3, and 26 of the ICCPR.

Right to assembly and association (Articles 21, 22, and 2)
The right to assembly and association are protected under Articles 21 and 22, and are to be read broadly. In contravention of those directives, the United States excludes domestic workers from laws that would protect the right to assemble, associate, and form a union. Domestic workers are excluded from the National Labor Relations Act (NLRA) which is the primary guarantee of workers' right to organize. Any possible contract remedy available to workers has been recognized by the Committee as an insufficient guarantee of these rights.

Violations of Personal Rights (Articles 2, 7, 9, 12, 17, 19)

Domestic Violence (Articles 7, 9, and 2)

Article 7 prohibits cruel, inhuman or degrading treatment while Article 9 guarantees "the right to liberty and security of person." Both Articles are violated when domestic workers suffer psychological, verbal, physical, and sexual abuse. Employers may engage in control tactics, such as regulating the workers' food consumptions or confiscating their passports. Others use verbal abuse, including insults and name-calling. Some domestic workers experience physical and sexual assaults. These abuses are essentially unregulated and often remain unreported.

Limitations on Freedom of Movement (Articles 12 and 7)

Article 12 protects domestic workers' freedom of movement and is applicable to both state and private actors. The State Department requires that employers who are foreign diplomats or the staff of international organizations must sign employment contracts with domestic workers that state that the employee cannot be required to stay on the premises without additional compensation and that her passport cannot be confiscated. Such regulations, however, fail to cover a substantial number of domestic workers, and enforcement and monitoring of those regulations are almost non-existent. Private employers use other means of restricting their workers' freedom of movement including requiring an escort when leaving the premises and misrepresenting U.S. laws, culture, and the dangers of the streets.

Privacy Invasions (Article 17)

Article 17 protects the domestic worker from "arbitrary or unlawful interference with her privacy, family, home or correspondence." Due to the nature of her work, the domestic worker is particularly vulnerable to privacy invasions. Employers have been documented to interfere with workers' rights in a number of different ways, including monitoring phone conversations, restricting access to others, opening mail, and searching the workers' private effects and rooms. Some employers have interfered with domestic workers' families by threatening or harassing the workers' families, often in an attempt to get them to persuade the worker to drop a complaint.

Limitations on Freedom of Expression (Article 19)

Freedom of expression is protected by Article 19. Employers limit a domestic worker's freedom of expression by restricting her communication, limiting her freedom of movement, and threatening deportation or retaliation against her family if she reports abuses. Article 19 also includes the freedom to seek, receive, and impart information and ideas. These rights are denied because the United States has failed to provide adequate access to legal and social services and to create a safe and effective reporting model by which workers can complain of abuses. Without these resources, workers cannot fully realize their rights under Article 19.

Denial of Effective Remedies (Article 2)

Barrier to Effective Remedies: Scope of Protection Under the ICCPR as adopted by the United States

U.S. declarations, reservations and understandings have lessened the protection of domestic workers under the ICCPR. In addition, the United States has failed to ratify the ICCPR's first Optional Protocol. By narrowing of the scope of ICCPR protection and by denying recourse for the individual, the United States has violated the spirit of Article 2 and has hindered individuals, including domestic workers, in their quest to attain justice.

Barrier to Effective Remedies: Diplomatic Immunity (Article 2)

Employers of domestic workers who are protected by diplomatic immunity are not subject to the civil, criminal or administrative jurisdiction of the United States, a protection that denies domestic workers the ability to obtain a remedy against them. U.S. courts have aggravated this problem by interpreting the commercial activity exception contained in Article 31(c) of the Vienna Convention on Diplomatic Relations to exclude domestic workers.

Barrier to Effective Remedies: Immigration Status

The connection between domestic workers' immigration status and her employment is exploited by employers to discourage the reporting of violations. The United States exacerbates this vulnerability by: (1) allowing inquiry into the domestic workers immigration status should she report a violation and (2) failing to provide a vehicle through which domestic workers fired after reporting abuses can obtain another visa and stay in the United States to pursue a remedy.

Barrier to Effective Remedies: Practical Obstacles

The private nature of domestic work means that there is a greater need for an effective monitoring system and for greater access to information. The United States has failed to recognize these unique needs and thus far has not provided either an adequate means of monitoring domestic work nor sufficient access to social or informational services. Thus, domestic workers lack the means to report violations or obtain remedies.

Executive Summary LGBTI Report

Discriminatory animus permeates nearly all categories of human rights violations directed at lesbian, gay, bisexual, transgender and intersex (LGBTI) Americans, whether committed by state or non-state actors. In many cases the discriminatory intent behind other seemingly distinct categories of human rights violation – including deprivations of life, liberty, health and opportunity – may not be easily or even logically separated from the animus that encourages the violation.

In considering the first periodic report of the United States in 1995, the Human Rights Committee noted "the serious infringement of private life in some states which classify as a criminal offence sexual relations between adult consenting partners of the same sex carried out in private, and the consequences thereof for their enjoyment of other human rights without discrimination." Since that last periodic examination, the U.S. Supreme Court has significantly altered the legal framework in the United States through its decisions in the 1996 case of *Romer v. Evans*[16] and the 2003 case of *Lawrence v. Texas*.[17] The failure of the United States to explain such major legal advances in its most recent periodic report is highly unusual and raises some concern over U.S. Government commitments to enforcing the rights protected in those cases and echoed in the ICCPR.

In *Romer v. Evans*, the U.S. Supreme Court struck down a voter-enacted provision that would have permanently prevented lesbian, gay and bisexual residents of the state of Colorado from claiming anti-discrimination protections under state laws. In the more recent decision of *Lawrence v. Texas*, the U.S. Supreme Court overturned one of its earlier decisions by striking down homosexual sodomy statutes in the United States. As in the *Toonen* case before the Human Rights Committee, the U.S. Supreme Court also found a link between privacy rights and equality, noting that "[e]quality of treatment and . . . respect for conduct protected by the substantive guarantee of liberty are linked in important respects, and a decision on the latter point advances both interests."

While the U.S. Supreme Court has now invalidated the country's sodomy statutes, police authorities and prosecutors have in many circumstances selectively made use of other criminal provisions involving morals offenses to target LGBTI individuals. Other discriminatory criminal provisions also seem to have survived after the *Lawrence* decision, raising serious ongoing concerns over the protection afforded to consensual adult sexual activity in the United States.

In addition, the legislative framework for protecting equality in the United States still contains significant gaps that fail to protect non-discrimination rights found in articles 2 and 26 of the ICCPR. At the national level, the United States Congress has yet to pass the Employment Nondiscrimination Act (ENDA), which would make it illegal for private employers to discriminate against employees on the basis of their sexual orientation. This leaves employment non-discrimination provisions to the states, but a study by the

[16] 517 U.S. 620 (1996).
[17] 539 U.S. 558 (2003).

Policy Institute of the National Gay and Lesbian Task Force (NGLTF) estimates that as many as 170 million Americans (62% of the population) have no legislative protection against sexual orientation discrimination when seeking private employment opportunities.[18] And many of the existing state-level employment non-discrimination initiatives are also subject to regular challenge and occasional setback. Until standardized non-discrimination protections based on sexual orientation, gender identity and gender expression are passed into law at the federal level, human rights enforcement in this area will remain highly uneven and arbitrarily subject both to geography and to qualifying employer requirements that differ from state to state if they exist at all.

The U.S. report also failed to reference limited non-discrimination protections that exist for federal employees and federal job applicants. Unfortunately the Bush Administration has created roadblocks to these protections and introduced other limitations affecting LGBTI employees within the federal workforce. At least one influential member of the U.S. Congress has accused the Bush Administration of waging a "covert war" on homosexuals in federal employment.

Violence, torture and extrajudicial killings of persons because of their sexual orientation, whether committed by state authorities or non-state actors, including deaths in prison that may be attributed to the failure of prison officials to adequately protect LGBTI inmates, all raise serious concerns under Articles 6, 7 and 10 of the ICCPR. State acquiescence to private misconduct that results in such severe abuse is described extensively in an Amnesty International report, entitled *Stonewalled, Police Abuses and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.*

According to the federal Hate Crimes Statistics Act of 1990, during 2003, the most recent date for which complete data is available, 7,489 hate crime incidents were reported to the FBI by law enforcement agencies. Of those, 1,239 were reportedly motivated by sexual orientation bias, representing approximately 16.5% of all reported hate crimes that year. While the statistics are almost certainly underestimating the total number of sexual orientation motivated hate crimes committed in the country, the proportion of sexual orientation hate crimes to the total number of all bias motivated crimes is substantial. Unfortunately a bill that would have empowered the federal government to investigate and prosecute hate crimes motivated by sexual orientation bias, as it does with hate crimes motivated by other forms of discrimination, was defeated in a contentious session of the U.S. Senate in May 2006. That leaves protection to state officials, but the National Gay and Lesbian Task Force reports that only twenty-nine states and the District of Columbia have hate crimes statutes that cover real or perceived sexual orientation, and only seven of those states and the District of Columbia cover gender identity. This leaves a significant gap in the protections afforded to LGBTI Americans under articles 6 and 7 of the ICCPR.

Amnesty International's *Stonewalled* report also investigates sexual, physical and verbal abuses committed against LGBTI persons in detention. Abuses carried out under these

[18]Legislating Equality," by Wayne van der Meide for the Policy Institute of the National Gay and Lesbian Task Force.

circumstances constitute intersecting violations of ICCPR provisions. In particular, violations of article 9 are most common when police or custodial officers fail to protect LGBTI persons or deliberately place them in harm's way. Amnesty International has also denounced common police reliance on an individual's "deviance" from stereotypical gender norms as a ground for suspicion or police targeting in a variety of cases.

The compounded impact of discrimination against women because of their sexual orientation requires unique attention, as do the various other intersecting forms of discrimination based on race, disability, health status, gender identity, gender expression and sexual orientation. Within the criminal justice system, for example, lesbian and transgender women face significantly heightened risks of sexual violence from male officers immediately upon arrest and in custodial detention.

The United States generally recognizes asylum claims based on past persecution or likely future persecution as a result of an individual's sexual orientation or gender identity. Nonetheless, U.S. immigration advocates note the difficulty of proving such claims, and the insensitivity of some immigration officials to sexuality-based cases. Asylum applicants must also generally seek protection within one year of arriving in the United States. This short timeline for filing asylum claims can be particularly difficult for LGBTI asylum applicants who may find it difficult to reconcile the extreme persecution they faced in their home communities with the possibility of a more "open" sexual orientation or identity in the United States.

With only a few exceptions, state legislation generally prevents transgender individuals from changing their sex unless they have undergone surgery for genital reattribution. In some cases, pre-operative transgender individuals are also prevented from legally changing their names. As reported by Amnesty International, this difference between personal appearance and the legal name or identified sex of many transgender persons often leads to police abuse during identification procedures.

The "Don't Ask, Don't Tell, Don't Pursue, Don't Harass" policy in the United States is part of a 1993 law banning LGBTI Americans from serving openly in the U.S. military. This constitutes a discriminatory limitation on freedom of expression that was originally intended to loosen federal restrictions by allowing lesbians, gays and bisexuals to serve in the military so long as they did not publicly disclose their sexual orientation. Hundreds of Americans are still discharged every year under this policy.

Surprisingly, in its periodic report the U.S. Government offers as examples of its protection of the right to "expressive association" two highly controversial decisions of the U.S. Supreme Court in *Boy Scouts of America v. Dale*, and *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston.* In both cases the Supreme Court was required to balance freedom of expressive association, which protects the right of individuals to associate freely with those expressing similar political, social or cultural views, with state prohibitions on discrimination based on sexual orientation. The outcome in each of those decisions raises serious non-discrimination concerns, and it is particularly offensive that the U.S. Government's periodic report raises the decisions

within such a positive context and without a more complete discussion of their impact on LGBTI Americans.

The recently re-introduced amendment to the Constitution of the United States to ban same-sex marriage, along with similar initiatives that have been proposed and passed in a variety of states, are having a significantly detrimental impact on a broad range of human rights protections. The periodic report mentions the complexities of the marriage debate, but it fails to consider the debate's acrimonious tone, its discriminatory underpinnings or the potential consequences on the lives of ordinary LGBTI Americans following such a politicized national dialogue. The federal debate also appears to be driving another round of state-level initiatives that seek to ban a variety of legal protections for LGBTI Americans and their families.

The uncertainty of the legal status of transgender people under state law also has a significant impact on family life. As an example, the National Center for Lesbian Rights highlights a 1999 case in which a Texas court invalidated a seven-year marriage between a transgender woman and her deceased husband and refused to recognize damage compensation that was awarded to her for her husband's death in a medical malpractice case.

Discrimination, abuse and misconduct against LGBTI youth remains particularly sever. Several recent human rights reports have documented the prevalence of verbal, physical and sexual violence directed at LGBTI youth in schools, in juvenile detention facilities and in foster care. The government's failure in this context to guarantee adequate protection to LGBTI youth raises serious concerns under article 24 of the ICCPR. LGBTI associations in schools have also come under attack. And an increasing number of children face economic challenges due to the government's failure to recognize same-sex relationships involving their parents, or their same-sex de facto step-parents. If a parental figure is unable to establish a legal relationship, a child is often unable to claim health insurance or social security survivor benefits.

As extensively described by Human Rights Watch and Immigration Equality in a recent report, the refusal of the federal government of legally recognize same-sex couples for U.S. immigration purposes also strains the enjoyment of family life, specially with reference to binational couples.

Executive Summary

"Conditions and Conduct in the California Criminal Justice System: A Report on U.S. Government Compliance with the United Nations International Covenant on Civil and Political Rights (ICCPR)"

California-based WILD for Human Rights, Justice Now, Legal Services for Prisoners With Children, and the Transgender Gender Variant and Intersex Justice Project welcome the opportunity to comment on the 2nd and 3rd Periodic Report of the United States of America to the United Nations Committee on Human Rights concerning its compliance with the International Covenant on Civil and Political Rights (ICCPR), submitted in October 2005. This report will examine identity-based discrimination in the California prison system, the failures of medical care, sexual violence and misconduct, and egregious conditions of confinement facing youth. It will highlight the gravity of human rights concerns facing California's imprisoned populations, as the mistreatment of inmates has resulted in a spectrum of abuses that particularly impact marginalized populations including transgender persons, women[19], the elderly, youth, the disabled, and the mentally ill. This report also demonstrates that prisoners face multiple forms of discrimination and subjection to violence based on their gender and racial identities, economic status, age and sexual orientation. California not only houses a prison population that is 1/10th that of the nation's incarcerated, but historically the state also has influenced the political landscape and social policies of the rest of the country.

Context

Due to the increased imprisonment of drug offenders and other low-level offenders, the dismantling of California's mental health system as well as a trend toward imposing long prison sentences, California's inmate population has swelled to over 500 percent since 1980. The number of institutions has nearly tripled from 12 to 33, currently holding 164,000 inmates. In addition, there are marked racial disparities in sentencing and incarceration in California. The 2000 national census reported that only 6.7% of California's population was African American[20], but African Americans account for more than 29% of California's prison population.[21] In contrast, white persons make up 59.5% of the population, but make up 28.4% of the state's incarcerated[22]. California has also implemented the Three Strikes Law, which incarcerates repeat offenders for a term of 25 years to life for any third felony. Under Three Strikes, where sentencing is solely under the discretion of the prosecutors, this has resulted in a disproportionate number of African Americans sentenced under the law. Of the 7,736 men serving Three Strike 25 years to life sentences, 44% are African American, while only 25% are white.[23]

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[19] For the purposes of this report, "women" also includes transgender women, and all those persons who identify as women whether or not they are biologically female while incarcerated.

[20] See 2000, US Census.

[21] See, *Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations, 2004, supra.*

[22] Ibid.

[23] *Second and Third Strikers in the Adult Institution Population.* December 31, 2005. Department of Corrections and Rehabilitation Offender Information Services Branch Estimates and Statistical Analysis Section Data Analysis Unit.

California prisons are approximately 195% over capacity.[24] Between 15 and 30% of the inmates in the system suffer from mental illness. Another 15 to 30% suffer from substance addiction. And at least another 2/3 are in custody for non-violent offenses. The numbers for women are even more stark; more than 2/3 of women are imprisoned for nonviolent offenses and the majority are the primary caretakers for children under 18. The system operates without the necessary management structure, policy standardization, training and capacity of staff, information technology, health care services and rehabilitative programming to comply with its obligations under the International Covenant on Civil and Political Rights (ICCPR). In addition, individual wardens wield extensive independent authority to determine standards and operating procedures and often act without impunity. This lack of accountability has created a health care system with a more than US$1 billion annual budget with widespread medical malpractice and neglect that results in, on average, at least one needless inmate death every 6 to 7 days. Consequently, the medical system was taken from state control by a federal court as of June 2005. Moreover, Federal courts, state legislators, the Governor of California, auditors, and California Department of Corrections and Rehabilitation (CDCR) officials all concur that the Juvenile Justice system is also broken beyond repair. The system is plagued by excessive violence, overcrowding, and fails to provide imprisoned youth adequate medical and mental health care, safety, or educational and rehabilitative programming.

Systemic Failures to Uphold Human Rights: Priority Concerns Under the ICCPR

The California Department of Corrections is unable to provide a minimum standard for the humane and safe treatment of incarcerated persons. In California prisons, women, including transgender women in men's prisons, experience rape, sexual assault and abuse by both correctional officers and other inmates, and often receive punitive treatment or administrative segregation for filing a complaint. Staff fails to inform women prisoners of correctional policies on sexual misconduct and the processes available to report abuse. In the provision of medical care, women experience sexually inappropriate pat and strip searches, sexualized treatment and assault by medical personnel, and unwarranted invasions of their privacy. Medical personnel delay treatment and medication to elder women and transgender prisoners, thereby obstructing access to adequate care. Incarcerated mothers experience substandard pre and post-natal care, including physically violent treatment such as shackling during labor. Hepatitis C infected prisoners experience negligence and inadequate medical treatment, which too often results in premature deaths. California correctional facilities for youth are overcrowded and marked by excessive violence. Safety concerns have contributed to increasing rates of teen suicides. Youth also lack access to school programs and sufficient mental health treatment and rehabilitative programming, particularly gender-specific programming for young women offenders.

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[24] *Summary Statistics On Adult Felon Prisoners and Parolees, Civil Narcotic Addicts and Outpatients and Other Populations, 2004* Department of Corrections and Rehabilitation, Offender Information Services Estimates and Statistical Analysis Section.

We urge the Human Rights Committee to critically analyze the United States' Periodic Report concerning its compliance to the following articles under the ICCPR, as it pertains to areas of concern in the California criminal justice system:

Article 6—the right to life—is implicated by the high rate of premature deaths of prisoners due to medical neglect and malpractice, and overcrowding;

Article 7—the obligation to protect against torture or cruel, inhuman or degrading treatment or punishment—is implicated by the failure to provide adequate medical care, or a safe environment free of gang violence; the use of excessive force; sexual harassment and violence; verbal degradation and abuse; and the excessive use of administrative segregation (isolation), particularly as punishment for reporting cases of assault or abuse by correctional staff.

Article 9—the right to liberty and security of person—is implicated by the failure to provide due process protections to offenders who are facing parole violations, arbitrary arrests and detentions, and prolonged segregation and isolation.

Article 10—the requirement to treat persons deprived of their liberty with humanity and with respect for their inherent dignity, including the aim to socially rehabilitate and reform incarcerated youth—is implicated by negligence and insensitivity in medical care; sexualized and/or degrading verbal humiliation of transgender people, women, and elder women prisoners; and the failure to ensure incarcerated youth are in a safe and nonviolent environment.

Article 17—the right to privacy—is implicated when women are subjected to inappropriate pat and strip searches, and sexualized treatment and assault by medical personnel, and unwarranted invasions of privacy; and

Article 19—the right to information—is implicated when prisoners are not informed of the available remedies and/or processes to report abuse; the deprivation of medical information; and the failure to train staff in the special needs of prisoners, particularly youth, the elderly, and transgender persons.

Limitations of Domestic Remedies to Address ICCPR Obligations

The United States has ratified the ICCPR in a way that precludes the treaty from having any real effect domestically. Under the "federalism understanding," the U.S. government pledges that it will implement the ICCPR to the extent that it has legislative and judicial jurisdiction, and allow state and local governments to implement the treaty where they have respective jurisdiction. However, the federal government has yet to name the types of matters where state and local governments have unique jurisdiction and therefore specific obligations under the ICCPR treaty. Nor has the federal government taken steps to pass implementing legislation to ensure that all branches of government understand their human rights obligations. Finally, should states and local governments fail to uphold

their obligations under the ICCPR, the federal government has not clarified its authority to ensure the treaty is upheld and enforced.

In direct opposition to its obligations under the ICCPR, U.S. legislation such as the Prison Litigation Reform Act ("PLRA") effectively prevents many prisoners from seeking redress in federal court. Under the PLRA, federal court supervision over prison systems failing to maintain humane conditions in their facilities automatically terminates unless the court can make detailed factual findings of a current and on-going constitutional violation. This drastically reduces the ability of the courts to remedy human rights violations in prisons. In addition, the PLRA caps the attorney fees that can be recovered in cases filed by prisoners and limits the tasks for which fees can be awarded. In effect, this discourages attorneys from representing even prisoners with strong cases. Congressional legislation like the Prison Rape Elimination Act (PREA) of 2003 exists to address sexual violence, however the State of California has not taken action to implement PREA-based recommendations to provide safety in its correctional complex or to hold perpetrators accountable for custodial sexual misconduct.

General Recommendations

This report seeks to support the State of California to take affirmative steps to fulfill its obligations under the ICCPR. Towards that end, this report sets forth the following opportunities for impact:

- **Implement decarceration strategies to address excessive burdening of the correctional system, including but not limited to, the creation of local treatment alternatives and early release for all low risk, disabled and nonviolent prisoners.**
- **Take steps to effectively improve the correctional medical care system, with specific attention to providing appropriate and non-discriminatory care for HCV-positive, transgender, elder and pregnant women prisoners, and rehabilitative treatment for youth.**
- **Improve administrative oversight, employee training and response procedures to effectively address sexual misconduct, violence and abuse in the correctional system.**
- **Establish minimum standards for correctional operations compliant with international obligations by which all prison officials must abide.**
- **Create effective oversight mechanisms to ensure compliance with international obligations.**

Criminalization of Dissent in the United States: A Shadow Report on the United States' Obligations under Articles 19 and 21 of the ICCPR[25]

The right to assembly and expression are protected under Articles19, 21, and are to be read broadly. In contravention of those directives, the United States and other local "law enforcement" agencies which, acting jointly, have participated in illegal tactics to disrupt lawful protest and assembly and unlawfully use mass arrests as a means to sweep political activists off the street and as a tool for mass intelligence gathering operations. Tactics used in these sweeps include collecting fingerprints, identity information, photographs, and information on political associations for all those who are rounded up, which is then placed in the F.B.I.'s files. Such methods employed by the United States on those who lawfully assemble to express their political opinion clearly violate the Covenant's protections of freedom of speech and assembly.

According to a Nov. 23, 2003, *New York Times* report citing a confidential bureau memorandum and several interviews, the FBI has been collecting information on the tactics, training and organization of anti-war demonstrators who have done nothing illegal.[26] Faced with growing opposition to the war and occupation of Iraq, the Bush administration has apparently targeted its political enemies by unleashing the FBI. The memo was circulated to law enforcement agencies on Oct. 15, 2003 ahead of antiwar demonstrations in Washington and San Francisco. It reportedly detailed how protestors have sometimes used "training camps" to rehearse, used the Internet to raise funds, and employed gas masks to defend against police tear gas, according to the report. Peaceful political demonstrators in the United States have been profiled by government agencies based on their political or ideological viewpoints; organizations to which they belong are being infiltrated by local and federal law enforcement; and they are being illegally detained, arrested and sometimes beaten based on their participating in politically expressive activity and/or peaceable assembly.

This chilling criminalization of the right to assembly by the United States, and its lack of adherence to its obligations under Article 19, and 21 ICCPR can be seen in three instances in the past five years at which peaceful protesters have been illegally arrested and interrogated by local and federal agents based on their political opinions: the January 2001 Inaugural protests in Washington D.C., the April 2002 anti-war protests also in Washington, D.C. and the anti-Free Trade Association of the Americas (FTAA) protests held in Miami, Florida in November 2003.

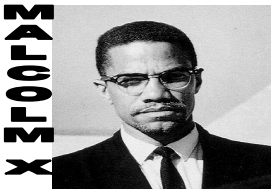
In these three cases, all currently being litigated by the Partnership for Civil Justice and the National Lawyers Guild, local law enforcement has acted in conjunction with the

[25] Criminalization of Dissent in the United States: A Shadow Report on the United States' Obligations under Articles 19 and 21 of the ICCPR, National Lawyers Guild and International Association of Democratic Lawyers prepared by Merrilyn Onisko with pleadings from NLG Mass Defense Committee and Partnership for Civil Justice.

[26] See Eric Lichtblau, "FBI Scrutinizes Anti-War Rallies," *New York Times*, November 23, 2003.

federal government to stifle the right of people to assemble to convey their political opinions and rights of expression under the ICCPR.

This criminalization and stifling of political expression violates Articles 19 and 21 of the International Covenant on Civil and Political Rights. Because of repeated incidents of such violations by the United States, the Human Rights Committee must hold the US accountable and require it to adhere to its obligations under international law, specifically Articles 19 and 21 of the ICCPR.



388 Atlantic Avenue 3rd Flr.
Brooklyn, New York 11217
718.254.8800
mxgmny@hotmail.com

GRASSROOTS MOVEMENT

Submission to the United Nations Human Rights Committee
on the occasion of its review of the
U.S. Government's Second & Third Periodic Report
concerning its compliance with the ICCPR

Political Prisoners in the United States

Introduction

Political prisoners in the United States (U.S.) have been incarcerated for having dissenting political views and being advocates for change on behalf of various oppressed communities. Based on their organizational affiliations, these women and men were targeted in the 1950s to the 1980s by a U.S. government program run by the Federal Bureau of Investigation (F.B.I.) known as the Counter Intelligence Program (COINTELPRO). Many political activists of the time were arrested and tried on fabricated charges and received disproportionately long sentences for crimes they did not commit. Detailed government files were kept on their private and public lives, and their political beliefs and activities were central themes at their criminal trials.

In 1978, a petition to the United Nations filed by the National Conference of Black Lawyers, the National Alliance Against Racist and Political Repression, and the United Church of Christ Commission for Racial Justice exposed the existence of political prisoners in the United States, their political persecution, and the cruel, inhuman and degrading treatment and punishment they suffer in U.S. prisons. Today, there are more than 100 political prisoners in the U.S. Some of these prisoners have been held for over three, and sometimes as long as four decades (Ruchell Cinque Magee, who has served 46 years, is the longest serving political prisoner in the world). Six political prisoners: Richard Williams, Warren Wells, Teddy Jah Heath, Albert Nuh Washington, Merle Austin Africa and Kuwasi Balagoon have died in prison over the last ten years. Eight women continue to be held on politically motivated charges.

This report highlights violations of the U.S. government's obligations under international customary law, the Universal Declaration on Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR). We call on the Human Rights Committee to find that the U.S. government has failed to comply with its obligations to not target citizens for arbitrary arrest, trial, and incarceration for their political views and to not subject any person to torture or to cruel, inhuman or degrading treatment or punishment.

Political Prisoners

Of the 100 political prisoners still languishing in prisons across the United States of America, nearly half were members of Black civil and human rights movements of the 1960s and 1970s. Many had political affiliations with the Black Panther Party and similar groups working towards the right to self determination[27] (article 1, ICCPR) of persons of African descent in the United States, and toward full realization of the rights enshrined in the UDHR including the "right to a standard of living adequate for the health and well-being of [one]self and of one's family,"[28] and the "right to education." In addition to political prisoners of African descent, political activists in the American Indian Movement, a social justice movement established to bring about the full realization of the American Indian peoples' right to self-determination,[29] including the right to practice their religion, use their language, and enjoy their culture as guaranteed by article 27[30] of the ICCPR were targeted for politically-based criminal prosecutions. White anti-imperialists, some of whom were members of Students for a Democratic Society (SDS) and others supporters of the Black Panthers party were also targeted, and many remain in prison today for their political views. Further, three political prisoners who were involved in the Puerto Rican independence movement, Oscar Lopez Rivera, Carlos Alberto Torres, Haydee Beltran Torres, remain incarcerated, despite President Clinton's grant of clemency and conditional release to eleven of fifteen Puerto Rican political prisoners in 2000.

The United States government, in an attempt to silence opposition voices, infringed on the right of these individuals to express their opinions[31] through a systematic, widespread

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[27] **International Covenant on Civil and Political Rights: Article 1 provides, in relevant part, that:**
1. All peoples have the right of self-determination, and by virtue of that right, the right to freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations

[28] **Universal Declaration for Human Rights: Article 25 provides that:**
1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

[29] **International Covenant on Civil and Political Rights: Article 1 provides that:**
1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations

[30] **International Covenant on Civil and Political Rights: Article 27 provides that:**
In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

[31] **International Covenant on Civil and Political Rights: Article 19 provides that:**
1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

policy and practice of “neutralization” of ‘dissident’ groups through COINTELPRO, the illegal precursor to the current Patriot Act I and II.

As a testament to the political nature of their incarceration, several incarcerated political prisoners were rounded up, put in administrative detention - solitary confinement, restricted to their cells for between twenty three to twenty four hours a day - and held incommunicado within hours of the September 11, 2001 attacks on the World Trade Center and Pentagon notwithstanding the fact that no charges or allegations made against them.

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3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.
And, the **Universal Declaration for Human rights: Article 19 provides that**
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

REPORT ON FAILURE OF COMPLIANCE WITH ARTICLE 20 PROHIBITING PROPAGANDA FOR WAR[32]

prepared for the
UNITED NATIONS HUMAN RIGHT COMMITTEE
Eighty-seventh session

for its review of the
Second and Third Periodic Report of the United States of America under the International Covenant of Civil and Political Rights

June 2006

INTRODUCTION

This report regarding United States violations of Article 20, paragraph one, is submitted to the Committee to inform and support its consideration of the paramount issues the Committee requested the United States to address in its written and oral presentation to the Committee in July, 2006. Article 20 of the Covenant on Civil and Political Rights implicitly recognizes that the condition of war jeopardizes the integrity and exercise of all of the political and civil rights elsewhere declared in the Covenant.

The Committee has expressed concern and requested clarification of actions and policies of the United States which are in apparent violation of even the core, non-derogable protections States Parties undertake to assure under the treaty. The US government has sought to justify its actions and policies on the basis of the "war on terror" and the exigencies of its illegal war in Iraq. Because of the pervasive impact of war the propaganda campaign prohibited by Article 20, the fear and xenophobia it stoked, and the resulting illegal war have all contributed to violations, both here and abroad, of many other rights protected by this Covenant including articles 1, 2, 6, 7, 9, 10, 13, 14, 17, 19, 21, 24, 26 and 27.

The non-governmental organizations which have prepared this report regarding US violation of Article 20 are filing it with the Committee in order to bring greater visibility and attention to the full significance and implications of the Covenant's prohibition of propaganda for war. We are women's human rights groups, [peace and justice coalitions, and civil liberties and media advocacy organizations] concerned to insure the democratic imperative: that public discourse relating to

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[32] The International Women's Human Rights Law Clinic of the City University of New York School of Law, Women's International League for Peace and Freedom – United States Section, The Center for Constitutional Rights, Madre, International Federation for Human Rights, Women's Environment and Development Organization, National Lawyers Guild and American Humanist Association.

international conflicts be based on information and knowledge free from distortion by governmental propaganda for war.

SUMMARY

This report discusses the centrality of Article 20, the civil and political rights consequences of the United States violation, the illegality of the war in Iraq, the inapplicability of the United States reservation to Article 20, and the propaganda campaign waged by the United States government that produced the Iraq War. It concludes with recommendations to the Committee suggesting actions the United States government should take to prevent such violations in the future.

To: Members of the U.N. Human Rights Committee
From: Judge Claudia Morcom for the Meiklejohn Civil Liberties Institute and the International Association of Democratic Lawyers.
Date: May 31, 2006

SUMMARY (with citations to paragraphs ¶¶ in attached Report)

Right to self-determination and rights of persons belonging to minorities (Art. 1 and 27); Non discrimination and right of equality before the law and to the equal protection of the law (Art 2 and 26).

1. In 1995 the Committee was interested in determining how the right to self-determination and the rights of persons belonging to minorities could be implemented under U.S. law. (¶ 1). Specifically the Committee was concerned about the blockade against Cuba. Since 1995 this issue has come into clearer focus with the arrest and conviction of five Cuban men (the "Cuban Five"). The "Cuban Five" were charged with conspiracy to commit murder and espionage, using false identity and documents, and being unregistered agents of Cuba. Their trial was held in Miami, Florida, a city where the dominant ideology is anti-Castro. On appeal the question is whether these men were convicted for the crimes with which they were charged or whether the political ideologies of the jurors, the media, and the district attorney led to the jury verdict against them. (¶¶ 2-5). The three judge panel of the U.S. 11th Circuit Court of Appeals reversed their conviction on appeal and ordered a retrial in a venue removed from Miami. The U.S. Government appealed this decision and on February 13th, 2006, the 11th Circuit reheard the argument en banc. In March 2006, the City Council of Detroit, Michigan, unanimously adopted a resolution urging the 11th Circuit to retry the "Cuban Five" in a different venue. The opinion of the 11th Circuit is pending at this time. (¶¶ 6-8)

2. There is another issue of self-determination exemplified in the case of Leonard Peltier, who was convicted in 1977 for killing two FBI agents (which Peltier consistently denies). Numerous NGOs and the American Indian Movement who support the release of Peltier note that even though two FBI officers were killed, the killings occurred in a "war-like atmosphere" in which FBI agents had been terrorizing residents of the Pine Ridge Indian reservation in the wake of the Pine Ridge protest in the early 1970s. In April 2006, the U.S. 8th Circuit Court of Appeals determined that the U.S. District Court where Leonard Peltier was tried had subject matter jurisdiction even though the killings occurred on Native American land and even though Peltier was convicted under statutes that required the crime to take place in special maritime and territorial jurisdiction of the United States, jurisdictions that do not include Native American land. (¶¶ 11-12).

Recommendations: ¶¶ 2, 3, 4, 9, 10, 13, 14, 15

Treatment of persons deprived of liberty (Art. 10); Prohibition of torture and cruel, inhuman or degrading treatment or punishment (Art. 7).

3. Abuse of prisoners in detention is an issue of supreme importance. In its 2d/3d Report the U.S. noted that the government prohibits overcrowding and cruel and unusual punishment. However, disturbing new statistics from the Department of Justice and disturbing new situations indicate that overcrowding in prisons and other acts of abuse are occurring. (¶¶ 16-17). Regarding overcrowding, the U.S. has seen a steady increase in the number of persons placed in prisons in the last 10 years with an increase of 2.6% from June of 2004 to June of 2005. (¶ 18). Regarding cruel and unusual punishment two recent issues have come into focus: (A) out of the five Cuban men arrested in 1998 (see ¶ 1 above) two have wives in Cuba and one has a daughter who is a U.S. citizen. One of these men has not been permitted to see his wife since his arrest in 1998, the other has not been permitted to see

his wife or daughter since 2000 because the U.S. Government refuses to grant visas to these two women. Denying these men contact with their families is contrary to Articles 10, 23, and 24.1 and a long history of U.S. law. (¶¶ 17-19). (B) At the time of the Katrina flooding some of the guards working in prisons threatened and attacked prisoners with police dogs and tasers and forced prisoners to wade through and in some cases remain for days in toxic sewage water without food or potable water. (¶¶ 20-21).

Recommendations: ¶¶ 22, 23, 24

Problems with United States Compliance with the International Covenant on Civil and Political Rights – *Violations of the Rights of Aliens:* A report to the United Nations Human Rights Committee on the Second and Third Report of the United States of America

I. EXECUTIVE SUMMARY

ICCPR General Comment 15 (Twenty-seventh session, 1986) sets forth the position of aliens under the Covenant. The general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Further, Article 13 requires certain due process guarantees for lawfully present aliens who are being removed from the country. ICCPR General Comment 15 also states that States parties should give attention to the position of aliens, both under their law and in actual practice. This report identifies and makes recommendations to address the following violations in U.S. law and practice:

VIOLATIONS OF ARTICLE 13 RIGHT TO DUE PROCESS FOR ALIENS IN REMOVAL PROCEEDINGS

- The U.S. expedited removal procedure does not provide sufficient due process to enable aliens with valid asylum claims to effectively pursue their right against expulsion.
- Immigration inspectors fail to consistently 1) refer asylum seekers for a credible fear review; and 2) inform asylum seekers of their right to credible fear review.
- Detained aliens in expedited removal are not always provided with interpreters.
- Asylum seekers are detained under unsuitable conditions and personnel at the institutions where they are detained are not given adequate training to understand and work with asylum seekers.
- Asylum seeker are denied the right to challenge parole decisions.
- Procedural changes at the Board of Immigration Appeals ("BIA streamlining") has undermined asylum seekers' due process rights and may be leading to denials of meritorious asylum claims.
- Limitations on judicial review deny many aliens the ability to challenge the legality of detention and removal orders.
- Whole categories of aliens (for example, asylum seekers who apply after one year in the U.S.) are denied any access to federal court review based on an array of procedural bars.
- The application of the "Material Support of Terrorism" bar to admissibility violates U.S. obligations to ensure access to refugee protection.
- The closure of public immigration court hearings for "special interest removal hearings" violates articles 14 of the ICCPR.
- The U.S. imposes heightened standards that limit the ability of torture survivors to access protection from *refoulement* under the Convention Against Torture (CAT).
- Legislation such as the IIRARA and REAL ID Act have limited the ability of individuals who may be eligible for CAT relief to avail themselves of protection.

- As implemented in the U.S., CAT Article 3 provides an extremely limited form of protection from *refoulement*.
- Additionally, please note that gender based asylum issues are covered in the "Report on Women's Human Rights in the United States under the International Covenant on Civil and Political Rights."

VIOLATIONS OF ARTICLE 13 RIGHT TO EFFECTIVE REMEDY (ACCESS TO COUNSEL) IN REMOVAL PROCEEDINGS

- The U.S. denies access to counsel in expedited removal proceedings.
- The U.S. provides no meaningful access to counsel for individuals in removal proceedings.
- Faced with prolonged confinement in poor conditions, individuals who have valid asylum claims are effectively forced to stipulate to removal.

VIOLATIONS OF RIGHTS OF JUVENILE ALIENS IN REMOVAL PROCEEDINGS (Articles 10, 13 and 24)

- Children's detention facilities fail to meet the requirements of the ICCPR.
- The manner in which children are detained discourages them from pursuing their right to seek asylum and other forms of relief.
- Juvenile aliens' access to counsel is insufficient.

VIOLATIONS OF THE RIGHTS OF LAWFUL PERMANENT RESIDENTS IN REMOVAL PROCEEDINGS (Articles 13, 17, 23 and 24)

- The expansion of deportable offenses and limitations on discretionary relief violates lawful permanent residents' right to family integrity.
- Mandatory removal violates legal permanent residents' right to individualized review.
- The U.S. failure to consider the interests of any minor children violates the right of the child to special protection.

VIOLATIONS OF THE RIGHTS OF MIGRANT WORKERS (Articles 2, 14, 22 and 26)

- The U.S. discriminates against migrant workers through its exclusion of categories of workers from full protection under its labor laws.
- U.S. Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, has both directly and indirectly affected the rights to equal protection and nondiscrimination for this vulnerable group of migrant workers in irregular status.
- *Hoffman Plastics* has limited judicial remedies for undocumented workers.

The U.S. has failed to protect the existing labor rights of migrant workers on the Gulf Coast following Hurricane Katrina.

Report on Juvenile Criminal Sentences, the Right to Vote, the Right to Life on the Border and Freedom of Association in the United States: A Shadow Report

Executive Summary

Introduction

1. Human Rights Advocates ("HRA"), on its own behalf and on behalf of Minnesota Advocates for Human Rights and the National Employment Law Project, urges the Human Rights Committee to consider the United States' policies regarding four areas of grave concern when examining the periodic report of the U.S. and its compliance with the ICCPR: juvenile sentencing, voting rights, freedom of association, and the right to life along borders. HRA also recommends that the Human Rights Committee take into account how racism permeates each of these areas of concern.

Violation of Juvenile Offenders Rights (Articles 10, 14, and 24)

2. Article 10 requires that juvenile offenders "be accorded treatment appropriate to their age and legal status." Article 14 (4) provides that in the case of juvenile persons, the criminal "procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation." Article 24 bestows children with "the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State." The prohibition on juvenile sentences of life without the possibility of release has risen to the level of a *jus cogens* norm, providing that deprivation of liberty and protection for child offenders be a measure of last resort and that juvenile justice include rehabilitation as its core component. The U.S.'s practice of sentencing juveniles to life without the possibility of release, therefore, is inappropriate to the age or legal status of these juveniles.

3. The number of juveniles serving life without possibility of release sentences began to increase sharply in the 1990's as states enacted legislation enabling juveniles to be tried as adults. Today at least 2,225 child offenders are sentenced to spend the rest of their lives in prison in the U.S.. Forty-two of the 50 states have laws which allow child offenders to be sentenced to life without possibility of release. Ten states set no minimum age, and thirteen states set a minimum of 10 to 13 years of age. Racial minorities are disproportionately represented among juvenile offenders serving life without possibility of release sentences. The U.S.'s sentencing of juvenile offenders violates Articles 10 and 24 of the ICCPR.

Violation of the Right to Vote (Articles 22, 25)

4. The U.S. policy of denying voting rights to convicted criminal offenders violates Article 25's right to vote by universal and equal suffrage, without distinction or unreasonable restrictions. An estimated 3.9 million U.S. citizens are denied the right to vote, including over one million who have fully completed their sentences. Seven states of the U.S. deny the right to vote to all criminal offenders after completion of their sentences, and over 30 states prohibit felony offenders from voting while they are on

parole or probation. Disenfranchisement laws in the U.S. create an impact that is racially disproportionate. African Americans constitute almost one-third (1.4 million) of those disenfranchised based on a previous criminal conviction, yet the group accounts for only 12.8 percent of the U.S. population.

5. Voting rights are also abridged in the U.S. through fraudulent means. For example, in the state of Ohio, political parties may legally challenge individual voters on their citizenship, age, or residency. During the 2004 presidential elections, Republican Party challengers targeted polling stations in largely African-American communities, leading to massive delays and causing those voters to leave polls without casting a ballot.

6. Voting rights were further abridged through the use of electronic voting machines without adequate security, transparency, and true verifiability. During the 2004 presidential elections, for example, an electronic voting machine in Ohio inexplicably added 4,000 votes for George Bush. In the state of North Carolina, more than 4,500 votes were irretrievably lost due to a storage problem with the system. And across the country, reports emerged of systems incorrectly recording their votes. Almost no electronic voting software provides verifiable paper ballots to permit voters to ensure that their votes are being recorded as intended. Most election workers are under-trained regarding potential problems, and vendor technicians frequently have unsupervised access to voting equipment. Local election officials routinely deny attempts to examine electronic voting audit data. Although voting technology continues to improve, the current system remains a fundamentally closed and hidden process that introduces an unacceptable risk of error and manipulation.

Right to Freedom of Association

Right to Assembly and Association (Articles 21, 22, and 23)

7. The right to assembly and association are protected under Articles 21 and 22, and are to be read broadly. The 2002 U.S. Supreme Court case *Hoffman Plastic* violates Article 22's right to freedom of association, including the right to form and join trade unions. *Hoffman* removed the traditional back pay remedy for undocumented workers whose rights have been violated under the National Labor Relations Act, effectively eliminating any association rights for these workers. Without these rights, undocumented migrant workers have little incentive to report workplace abuses, which in turn decreases the accountability of employers who exploit the migrant workforce. Many employers in the United States have attempted to use the *Hoffman* decision as a way to weaken other workplace protections for migrant workers.

8. The Inter-American Court of Human Rights and the ILO's Committee on Freedom of Association have issued opinions stating that the *Hoffman* decision violates the country's international and regional treaty obligations. The General Comments to the ICCPR (VERIFY) have repeatedly stated that "the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality" including migrant workers, "who may find themselves in the territory or subject to the jurisdiction of the State Party."

9. Additionally, twenty-two states in the U.S. have undermined the right to freedom of association by enacting so-called "right-to-work" laws. These laws prevent unions from collecting fees from nonmember employees, while still guaranteeing those employees the benefits of union membership. The result is weaker unions with inadequate resources to represent their members. Consequently, workers in states with so-called "right-to-work" laws have lower wages, fewer people with health care, higher poverty and infant mortality rates, lower workers' compensation benefits for workers injured on the job, and more workplace deaths and injuries.

Right to Life on the U.S. Border

Right to Life (Article 6)

10. The high number of migrant deaths attributed to both the change in U.S. border policy and the violence of vigilante groups violates Article 6's inherent right to life. After the U.S. changed its border policy in 1994, entry points in major cities closed and migrants were forced to cross the U.S.-Mexico border in remote areas such as the Sonoran desert. During the past year alone, the U.S. Customs and Border Protection agency reported that 464 migrants had died as of September 30, 2005, most of whom perished from the extreme temperatures of the Arizona desert. Following the September 11, 2001 terrorist attacks on the U.S., there was an increase in the number of militia-like groups forming along the U.S.-Mexico border, some of which have gained the support of white supremacists. Vigilante groups formed and started hunting, detaining, beating, and sometimes killing immigrants.

IN THE SHADOWS OF THE WAR ON TERROR:
PERSISTENT POLICE BRUTALITY AND ABUSE IN THE UNITED STATES

A report prepared for the United Nations Human Rights Committee
on the occasion of its review of the
The United States of America's Second and Third Periodic Report to the Human Rights Committee
May 2006

Executive Summary

This report was prepared by U.S. non-governmental organizations in response to the USA's Second and Third Periodic Report to the Human Rights Committee (the "Committee") regarding its compliance with the International Covenant on Civil and Political Rights (the "ICCPR" or "Covenant"). It focuses on ongoing and pervasive police brutality and abuse in communities of color across the U.S. which, despite this Committee's previous expression of concern about this issue, continues to take place, in violation of Articles 2, 3, 6, 7, 9, 10, 17, 20, 25, and 26 of the Covenant.

This report focuses exclusively on issues relating to policing in order to highlight the widespread violations of human rights guaranteed by the Covenant which take place *outside* of courts and prisons, on the streets, in patrol cars, and in police precincts across the U.S. Additionally, we emphasize how the persistent and pervasive police abuse and misconduct in the U.S. interferes with the enjoyment of other rights guaranteed by the Covenant. We refer the Committee to reports submitted on "Domestic Criminal Justice Issues and the ICCPR" and the administration of the death penalty for more information on criminal justice issues and violations arising in courts and prisons.

The organizations participating in the preparation of this report are deeply concerned about the torture and cruel, inhuman, and degrading treatment perpetrated and condoned by the U.S. government overseas in the context of the "war on terror" and U.S. occupations of Iraq Afghanistan, and Guantanamo Bay in Cuba, as well as the lack of effective remedies for such abuses.

However, we wish to specifically call the Committee's attention to ongoing and pervasive violations of the Covenant which continue to take place on U.S. soil, in the shadows of the U.S. government's extraterritorial activities, at the hands of local, state, and federal law enforcement agents. We urge the Committee to focus significant attention on abuses of human rights on U.S. soil during its review of the U.S. government's report. We believe that there are significant similarities – in practices, personnel, targets, and rationales – between the U.S. government's human rights abuses overseas and at home. The U.S. government's recent practices overseas did not spring from whole cloth, but rather are rooted in pervasive and systemic patterns of human rights abuses in the U.S.

The overall climate of the U.S. government's "war on terror" has led to considerable abridgment of civil liberties in the US.[1] It has fostered torture and abuse of individuals detained by local and federal law enforcement agencies in the wake of the events of September 11th,[2] as well as ongoing targeting of Arab and Muslim populations in the U.S.[3] It has also created a generalized climate of impunity for law enforcement officers, and contributed to the erosion of what few accountability mechanisms exist for civilian control over law enforcement agencies. As a result, police brutality and abuse persist unabated and undeterred across the country.

The U.S. government refers this Committee the two reports it has submitted to the UN Committee Against Torture (CAT)[4] for information concerning its compliance with Article 7 of the ICCPR[5]. In its report to the CAT, the U.S. government concedes that complaints of police violence and abuse continue to be made, but states

> In a country of some 280 million people with a prison population of over 2 million people it is perhaps unavoidable, albeit unfortunate, that there are cases of abuse.[6]

The organizations who participated in the preparation of this report take issue with the notion that such abuse is unavoidable. Rather, the U.S. lacks both the requisite legislation and the political will to enforce existing laws to prevent such abuse and provide adequate redress to the individuals and communities affected. This report seeks to provide the Committee with a glimpse of the prevalence of police brutality in the U.S., as well as the profound limitations of the remedies cited by the U.S. government in its report to the Committee.

Principal Areas of Concern & Recommendations

- **Persistent and pervasive use of excessive force by police, often with impunity, in violation of Articles 6, 7, 9, 10, 14, 17 and 26**;

Recommendations

- Enact a federal crime of torture and allocate sufficient and impartial resources to document, investigate, and prosecute allegations of torture by local, state, and federal law enforcement officers;
- Adopt national measures to prevent and provide effective redress for acts of torture and cruel, inhuman and degrading treatment by law enforcement agents;
- Develop and mandate national training standards for federal, state and local law enforcement agents.

- **The U.S. government's failure to regulate the use of electroshock weapons (TASERs) by law enforcement agents, in violation of Articles 6, 7, 10, and 26**;

Recommendation

- Impose an immediate moratorium on TASER use by law enforcement officers pending a rigorous, independent and impartial inquiry into their use and effects, or, at a minimum, implement federal regulation of TASERs, restricting their use to instances in which they would substitute for lethal force.

- **The prevalence, as yet undocumented by the U.S. government, of rape and sexual abuse of women, including transgender women, by law enforcement officers outside of prisons and jails, in violation of Articles 3, 7, 10 and 26;**

Recommendations

- Take immediate steps to document, systemically review, and prevent rape, sexual assault, and abusive and unlawful strip searches by law enforcement officers;

- **Failure to collect data on a national level to document, monitor and prevent violations of the Covenant, to provide for thorough and impartial investigation of allegations of violations, to punish officers who commit acts of torture or cruel, inhuman and degrading treatment, and to provide for adequate remedies and redress, in violation of Articles 3, 7, and 25;**

Recommendations

  - Provide adequate funding to allow the U.S. Department of Justice to fulfill its mandate under the Police Accountability Act provisions of the Violent Crime Control and Law Enforcement Act of 1994 to compile, publish and regularly analyze national data on police use of excessive force (including all fatal shootings and deaths in custody, use of force during street encounters as well as traffic stops, and incidents of rape, sexual harassment, and unlawful searches of persons). The reporting should also include comprehensive details of disciplinary actions and prosecutions of excessive force by police officers;
  - Provide adequate resources to the U.S. Department of Justice in order that it effectively and comprehensively pursue and enforce "pattern and practice" actions against police departments engaging in widespread or systematic abuses.

- **Persistent racial and gender profiling by law enforcement officers, in violation of Articles 2, 3, 7, 10 and 25.**

Recommendations

  - Take affirmative steps beyond creating remedies at law at both the federal and state levels to address police brutality and other custodial torture and other cruel, inhuman and degrading treatment that is shown to be occurring in a racially discriminatory manner or in a manner evidencing discrimination based on gender, gender identity, sexual orientation, or some combination of all of these factors;
  - Increase its use of Title VI of the Civil Rights Act of 1964 to eliminate racially discriminatory practices by law enforcement agencies;
  - Enact the End Racial Profiling Act, with amendments providing for tracking and analysis of data by gender and race.

Additionally, throughout this report, we highlight the disproportionate numbers of people of color, immigrants, women, lesbian, gay, bisexual and transgender people, sex workers, and youth who are subjected to violations of civil and political rights and freedoms by law enforcement officers in the U.S., in violation of the Covenant's non-discrimination provisions.

Hurricane Katrina and Violations of ICCPR Articles 6 and 26: A Response to the Third Periodic Report of the United States of America[33]

Introduction

1. Hurricane Katrina ripped through the Gulf Coast area of the United States on August 29, 2005.[34] The resulting floods, deaths, displacement, and humanitarian crisis made this hurricane one of the most devastating the United States has ever experienced. The public watched on their televisions as death and destruction unfolded in New Orleans and its surrounding areas. The question asked by nearly every viewer during those days was, "if the media can get there, why can't any assistance? Why are these people dying?" The fact was that assistance *could* reach the people of New Orleans. It simply didn't.

2. Although death and destruction was inevitable given the magnitude of this hurricane, a great many deaths were a direct result of the State party's failure to provide adequate evacuation plans, evacuation assistance, and humanitarian aid.[35] These failures constitute a violation to the State's obligation under **article 6** of the International Covenant on Civil and Political Rights (the "Covenant") to protect, and fulfill the right to life. Further, the failure of the State party to provide appropriate remedies to the victims of article 6 violations constitutes a separate violation under article 2, paragraph 3 of the Covenant.[36]

3. In addition to violations of the right to life, the State party also violated **article 26** by violating the principle of non-discrimination in the way it prepared for Hurricane Katrina. The State party's evacuation plans discriminated on the basis of property ownership, which resulted in discrimination based on race.[37]

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[33] By Jean Carmalt, Esq; jcarmalt@u.washington.edu for the U.S. Human Rights Network. This response is to the following report: United States of America. *Third Periodic Reports of States Parties due in 2003.* U.N. Doc. No. CCPR/C/USA/3 28 November 2005 (hereinafter "US Report").

[34] Please see Appendix A for a complete timeline of events surrounding Hurricane Katrina.

[35] A bipartisan Congressional report found that the Bush Administration failed to take the needed initiative required for adequate governmental response to Hurricane Katrina. *See* Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina. *A Failure of Initiative: Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*. U.S. House of Representatives 102nd Session (February 2006) (hereinafter "Failure of Initiative"). For a copy of this report and all other sources cited in this Response, please see the enclosed CD-ROM.

[36] International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49 (hereinafter "the Covenant"). *See also* United Nations Human Rights Committee. *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (hereinafter "HRC General Comment 31"): 26/05/2004; CCPR/C/21/Rev.1/Add.13 at paragraph 15.

[37] United Nations Human Rights Committee. *General Comment 18: Non-Discrimination*. (hereinafter "HRC General Comment 18"): 10/11/89.

To: Members of the U.N. Human Rights Committee
From: Rev. Daniel Buford for the Meiklejohn Civil Liberties Institute, International Association of Democratic Lawyers, Peoples Institute, and Allen Temple
Date: May 31, 2006
Re: Update on Issue 16 cited in CCPR/C/USA/Q/3 related to Articles 2 and 26 (and issues 14, 18, and 19 related to articles 7, 6, 2, and 26) concerning facts about Katrina (and Rita) disaster victims not covered in the 2d/3d U.S. Report or the presentation by Rev. Buford at the 2006 March Committee meeting.

SUMMARY (with citations to paragraphs ¶¶ in attached Report)

1. The U.S. Report did not mention that U.S. Pres. Bush within 2 weeks of the Katrina hurricane made a strong pledge to deal with all of the problems created by Katrina, and mentioned specifically the additional effects of poverty and racial discrimination on the victims; he did not mention the underlying U.S. and UN laws requiring such affirmative action. Neither the President, FEMA, Corps of Engineers, Health and Human Services Department, National Guard, nor other federal agencies involved in Katrina have followed up on this pledge by holding conferences in their agencies to discuss relevant U.S. and UN human rights laws, or to listen to victims describe the discrimination they faced -- and continue to face -- based on race, social origin, or age. (¶¶ 1, 3).

Recommendation: ¶ 2

2. Officials and agents of the U.S. federal, state, parish, and city governments have not held conferences to discuss the revisions necessary in many regulations and practices to change the present discriminatory system, nor have they used affirmative action to deal with pending problems. (¶ 1)

Recommendation: ¶ 2

3. Congress member Barbara Lee reported to Congress that Congress members are unfamiliar with ICCPR and Human Rights Committee reporting rules. The federal government has done nothing effective to inform state, parish, and city officials of the law and reporting requirements in the ICCPR so that these bodies are not beginning to enforce many of the rights enunciated in the ICCPR or to file the required reports under the ICCPR. (¶ 4).

Recommendation: ¶ 5

4. Congress member Lee's report was issued as Katrina victims continue to need help in filling out forms for financial assistance to rebuild their homes, in obtaining copies of lost legal documents they need to apply for government assistance (e.g., in paying for rental housing far from their homes), even in obtaining copies of medical prescriptions lost in Katrina. (¶ 6).

Recommendation: ¶ 7

5. During evacuation, many victims suffered humiliation and threats of arrest and shooting, unwarranted arrest and detention, for which virtually no perpetrators have been arrested or tried, and no compensation has yet been paid. At the same time, many Afro-Americans, including juveniles, have been held for long periods without trial or appointment of public defenders. (¶¶ 8, 9, 11, 13).

Recommendations: ¶¶ 10, 12, 14

6. FEMA has yet to deal adequately with the families that were separated in the course of the evacuation. And only 26 of 117 public schools had reopened by May 2006, leaving the lives

of many children empty, and multiplying the problems of their parents, who now must supervise their children 24 hours a day. (¶ 15)

Recommendation: ¶ 16

7. The federal and state governments have not issued press releases to the media condemning racial slurs and incitement to discriminatory actions published by private organizations or issued on the internet or other media. While they have issued press releases describing mistakes they have made, they have not issued any statements as to how or when these mistakes will be corrected in the future. (¶ 17).

Recommendation: ¶ 18

8. The total number of New Orleans registered voters able to vote in the spring 2006 elections was much smaller than ever before. Voters from African American and poor neighborhoods repeatedly expressed frustration at the difficulties they faced in voting by absentee ballots in distant states. (¶ 19).

Recommendation:¶20

Homelessness and United States Compliance with the International Covenant on Civil and Political Rights

Submitted to the Human Rights Committee by the

National Law Center on Homelessness & Poverty

May 31, 2006

Introduction

The National Law Center on Homelessness & Poverty (the "NLCHP") submits the following shadow report to the Human Rights Committee.[38] Established in 1989, NLCHP's mission is to serve as the legal arm of the nationwide movement to prevent and end homelessness in the U.S. Based in Washington, D.C., NLCHP works with thousands of local level advocacy and service provider groups across the country.

Executive Summary

This shadow report focuses on homelessness in the United States. In particular, this report details the failure of the U.S. federal government, over a number of decades, to adequately address the need for affordable housing in this country and the impact that failure has had on the lives of millions of Americans. A number of concerns relevant to U.S. compliance with the International Covenant on Civil and Political Rights (the "Covenant") arise as a result of the federal government's approach to housing and homelessness. These concerns include:

- Article 6 of the Covenant: Right to Life

  Homeless people suffer serious health problems that are directly related to their lack of housing. Being subjected to the elements contributes to illness and death among the homeless population.

- Article 23 of the Covenant: Right of Family

  Without affordable housing, many families are unable to remain together while the federal and state governments have established programs to specifically prevent family separations due to lack of housing. These programs are under-funded and fail to meet the needs of homeless individuals.

- Article 24 of the Covenant: Barriers to Homeless Children's Right to Education

[38] Maria Foscarinis, Executive Director; Tulin Ozdeger, Civil Rights Staff Attorney; Naomi Stern, Domestic Violence Staff Attorney; and Joy Moses, Children's Staff Attorney, contributed to this submission. Assistance was also provided by David Hubb, a Partner at DLA Piper Rudnick Gray Cary US LLP.

Homeless children face many barriers to receiving an education in the U.S. The Department of Education has not taken an active role to ensure that state and local officials remove obstacles such as residency requirements and lack of transportation so that homeless children can attend school and obtain an education.

- Article 25 of the Covenant: Restrictions on the Right to Vote

  Voting requirements established by federal, state, and local authorities effectively deprive homeless people of their right to vote.

- Article 26 of the Covenant: Discrimination Based on Property or Other Status

  Local laws prohibiting sleeping, camping, and sitting in public places discriminate against homeless people based on their status. In addition, without a permanent residence, homeless people find it difficult to obtain identification cards, and therefore, housing, employment, and other services.

- Article 26 of the Covenant: Discrimination Based on Gender

  Domestic violence is a leading cause of homelessness among women. When these women are denied housing or evicted from their residence because of the violent acts of their abusers, it constitutes a form of sex discrimination in housing.

Submission of the Disability Working Group
To the Human Rights Committee
Prepared by Tina Minkowitz and Al Galves, with the assistance of Celia Brown, Myra Kovary and Eve Remba

On behalf of:

New York Organization For Human Rights and Against Psychiatric Assault
Mind Freedom International
Law Project for Psychiatric Rights

ALERNATIVE REPORT ON FORCE DRUGGING, FORCED ELECTROSHOCK AND MENTAL HEALTH SCREENING OF CHILDREN: VIOLATION OF ARTICLE 7

Executive Summary

1. The United States has a double standard on the use of mind-altering drugs. On the one hand, the U.S. understands the intentional infliction of mental suffering by administration of mind-altering drugs on a person as torture; yet on the other hand it condones the practice of force drugging when the victim is a person with psychosocial disabilities.

2. A report by five UN special rapporteurs condemned the force drugging of Guantánamo detainees as a violation of the right to free and informed consent and its "logical corollary, the right to refuse treatment".

3. Force drugging and forced electroshock violate article 7 and article 18 of the Covenant; maintaining separate standards in relation to people with psychosocial disabilities violates article 2. A standard of legal capacity that disqualifies people with psychosocial disabilities from exercising free and informed consent denies equal protection of the law in violation of article 26.

4. Neuroleptic drugs[39] and electroshock inflict severe mental suffering and cause permanent neurological damage. Neuroleptics drugs can cause paralysis of the will along with uncontrollable restlessness. Electroshock leaves many people with irrevocable memory loss and cognitive disability.

5. Gender and racial disparities intersect with disability-based discrimination. Electroshock is administered twice as often to women as it is to men, often under circumstances that demonstrate a gender-related motive. Force drugging in the community by court order is used in New York State disproportionately against people of color, mostly African Americans.

[39] Neuroleptic drugs are a major category of drugs used in psychiatry and are among the most severe in their disruptive effects on consciousness. However, the principles at issue apply to any force drugging.

6. A new model of legal capacity being developed by people with disabilities would eliminate incapacity determinations and instead provide support to all who need it to facilitate their decision-making. The support model is based on choice in a context of interdependence, rather than self-sufficiency, as a paradigm for legal capacity. Since everyone has a will and is capable of making choices, legal capacity is accessible to all on an equal basis, with the applicable standard for children being articulated in CRC article 12, a right to freely express their views, which are to be given due weight in accordance with the child's age and maturity.

7. Adoption of the support model of legal capacity is necessary to eliminate discrimination in the right to free and informed consent, which underlies protection against medical practices amounting to torture or cruel, inhuman or degrading treatment or punishment.

8. Mass screening of children for mental illness with only passive consent by their parents (i.e. parents can opt out but no affirmative consent is required, and there is no requirement of consultation with the children at all), with the result that children are drugged with psychotropics, violates their rights under article 7.

DOMESTIC CRIMINAL JUSTICE ISSUES AND THE ICCPR

Introduction

1. The Criminal Justice Policy Foundation, Open Society Policy Center, Penal Reform International, and The Sentencing Project welcome the opportunity to comment on the periodic report of the United States submitted to the Human Rights Committee in October 2005 report ("Report"),[40] as it pertains to domestic criminal justice issues.

2. The US is a wealthy country that has chosen to commit substantial resources to a prison-centered penal system. Nationally, the United States sentences more than 1 million people to state and federal prison every year, and there are currently 7 million people under correctional supervision, including more than 2 million in prison and jail. Six percent of the American adult population have a felony conviction. As the American criminal justice system continues to expand, its burden has fallen most heavily on the poor and people of color. Their powerlessness and lack of resources make even more urgent their need for human rights protections at trial, at sentencing and while being held in custody. We urge the committee to critically analyze the United States' periodic report regarding its compliance with Articles 7, 10, 14, and 24 of the ICCPR.

Executive Summary

Article 14

3. The rights enumerated under Article 14 are generally supported by United States constitutional jurisprudence. This includes the right to be represented by counsel at trial and, for indigent defendants facing the possibility of imprisonment, to have counsel provided to them. However, this basic requirement of a fair trial is often not met. With three-quarters of criminal cases requiring the public provision of counsel, a system without a vibrant and well-funded indigent defense system is not sufficiently meeting the requirements of guaranteeing counsel. In practice, the United States does not make adequate resources available for indigent defense and there are no mechanisms to ensure that states provide competent counsel.

4. Effective counsel is necessary at all stages of a criminal court proceeding. Ninety five percent of all criminal cases are settled not at trial but through plea bargains. Defendants facing long mandatory sentences determined by legislation or strict sentencing guidelines are very vulnerable to pressure from prosecutors and the assistance of a skilled and knowledgeable attorney during the negotiation process is essential.

5. A competent attorney with the resources to mount an adequate defense can also challenge police interrogation measures, coerced confessions, erroneous eye-witness

[40] Second and Third Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, at § 281 (Oct. 21, 2005).

identification, perjury by police officers and other unjust practices that frequently deny the defendant those aspects of a fair trial required by the ICCPR. Without adequate resources to meet the growing need for effective assistance of counsel for indigent defendants, the US cannot meet its obligations under the ICCPR.

Article 26

6. Article 26 of the ICCPR recognizes that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law." Despite this internationally accepted norm, a double standard of justice has been evident in criminal sentencing in the United States, particularly for drug offenses. The national prison population has more than tripled since 1980, with nearly half of that population being black, although African Americans constitute only 12 percent of the U.S. population. The increase in the prison population is not in response to rising crime and, nor an indication of more criminal activity by blacks. Instead, it is a reflection of more stringent penalties in the form of mandatory minimum sentences, particularly the penalty disparity between crack and powder cocaine.

Articles 7 and 10

7. The United States has more than 2.2 million people in its prisons, jails, immigration detention and juvenile facilities. The rapid growth of the prison population has taken place at the same time as crime and punishment has become deeply politicized, with increasing disrespect for the dignity and humanity of prisoners. As a result, both deliberate policy and inadequate resources have led to increasingly inhuman conditions within the United States prison and jail system that frequently contravene both Article 7 and Article 10 of the ICCPR.

8. Endemic overcrowding leads to greater levels of violence, lack of privacy, excessive noise, inadequate programs and lack of essential services, including healthcare. Especially at risk in these conditions are the large number of mentally ill within prisons and jails. The mentally ill are overrepresented among those sent to super maximum security ("Supermax") prisons. In these prisons, people spend a minimum of 23 hours a day in small cells with almost no interaction with other people, limited activities, sensory deprivation, and harsh security restrictions. Confinement in a supermax can be devastating for anyone, but for the mentally ill it surely constitutes torture.

9. In addition to the inhuman treatment suffered by all prisoners, women are especially at risk for sexual abuse and humiliation, inadequate medical and obstetric care, including shackling during childbirth, and loss of contact with their children. The separation from children and risk of losing parental rights is gravest for those in private, for-profit prisons who are often held in different states from where their families reside making it almost impossible to maintain contact with their children.

10. Confining children within adult prisons and jails not only contravenes Article 14 but also Articles 7 and 10 as their youth and vulnerability make the conditions they face

particularly inhuman and damaging. Children in adult prisons and jails are at increased risk of suicide and sexual and physical abuse by guards and other prisoners. The sentence of life without the possibility of release for children is an extreme form of cruel and inhuman punishment that denies any possibility of rehabilitation.

Articles 14 and 24

11. The United States fails to recognize the right of children in conflict with the law to procedures that take account of their age as required by Article 14 or the more general requirements for the special protection of minors required under Article 24 of the ICCPR. State legislation routinely allows children, in some cases as young as ten years old, to be subject to adult criminal proceedings. Once in the jurisdiction of criminal court, child offenders lose the protections that they would have received in the juvenile court which takes account of their status as children and are eligible for adult sentences including life in prison without the possibility of release.

12. While the number of new commitments of children to adult prisons has declined from its peak, the Department of Justice's latest figures show more than 9,000 children in adult prisons and jails with more than 4,000 children per year entering the adult system, 70% of them youth of color.[41] When the United States ratified the ICCPR, it attached a limiting reservation stipulating that it "reserve[d] the right, in exceptional circumstances, to treat juveniles as adults." Clearly, however, given the numbers involved, the circumstances in which children are treated as adults is far from exceptional. It is a routine and everyday occurrence.

[41] Howard Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report*, (March 2006), US Dept. of Justice, Office of Justice Programs.

Violations of Article 25:
A response to the U.S. Second and Third Periodic Report and to CCPR/C/USA/Q/3
On issues related to the right to vote and participate in public affairs

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Organizations and individuals endorsing this report:

Asian American Justice Center
Terry M. Ao

Jamie D. Brooks, Esq.
National Health Law Program

Global Rights
Margaret Huang

Lawyers Committee for Civil Rights Under Law
Jon Greenbaum

The Sentencing Project
Ryan King

Executive Summary

1. Upon review of the Committee's *List of Issues to be taken up in connection with the consideration of the Second and Third periodic reports of the United States of America*, adopted on March 30, 2006, this update was drafted to address the Committee's priority concerns under Article 25. While we believe that there are other significant concerns about violations of this Article by the U.S. government, in the interests of being concise we have limited this update to the following issues: (1) felony disfranchisement; (2) loss of voting rights for victims of Hurricane Katrina; and (3) lack of voting rights for Washington, D.C., residents.

2. In the United States, felony disfranchisement laws are adopted at the state level and thus have resulted in wide disparities in both the terms and the application of the laws. Serious problems exist in the procedures for removing voters from electoral databases because of a felony conviction, as well as in the education of public officials charged with upholding the laws. There is also significant variance in state determinations of which crimes will result in disfranchisement.

3. *Recommendation:* To respond to this violation of Article 25, the U.S. Government must ensure that local governments are informed about and uphold their obligations under the ICCPR, and it must adopt measures to make reasonable and uniform

throughout the country the procedures for disfranchisement of those who convict a crime, as well as the procedures for restoring the rights of those individuals.

4. In the April elections in Orleans Parish, tens of thousands of voters were denied access to voting because the U.S. Government failed to take actions to accommodate those displaced by Hurricane Katrina. Despite precedents set by the responses to other disasters including the September 11 attacks in New York City, the federal government chose to provide only a fraction of the financial assistance requested by the Louisiana State government to hold these elections. Of particular concern, the impact of the denial of voting rights for the displaced population was racially disparate; a review of the April voter turnout shows a significant drop among African-American voters and an actual increase in the percentage of white voter turnout.

5. *Recommendation:* The U.S. Government must take immediate action to prepare for the national and state elections in the autumn and ensure that the right to vote of all persons displaced by Hurricane Katrina is protected.

6. The residents of Washington, D.C., pay taxes like any other U.S. resident, but they are denied representation in the federal legislature. In December 2003, the Inter-American Commission on Human Rights ruled that the U.S. Government is in violation of international law because Washington, D.C., residents have no representation.

7. *Recommendation:* The U.S. Government should support and enact federal legislation to extend equal voting rights to all citizens residing in Washington, D.C.