Introduction

On September 8, 1992, the United States, after a delay of more than a quarter century, finally became a party to the leading treaty for the protection of civil and political rights, the International Covenant on Civil and Political Rights (ICCPR). The ICCPR is a central part of the International Bill of Human Rights created in the aftermath of World War Two and the Holocaust in an effort to eradicate human rights abuses that threaten international peace and security and undermine the ability of millions of people to live in freedom and dignity. The promotion and protection of human rights were established as central purposes of the United Nations in 1945 in the UN Charter.

The ICCPR enumerates a broad range of civil and political rights that must be respected by every government that becomes a party to the treaty. The basic obligation assumed by all governments that ratify the Covenant is to "respect" and "ensure to all individuals within its territory" the rights recognized in the Covenant.

Most of the rights enumerated in the ICCPR are similar to the rights included in the U.S. Constitution, state constitutions and federal, state and local civil rights legislation.[1] These rights include the right to be free from arbitrary discrimination of all kinds, the right to freedom of expression, conscience, religion and assembly, the right to privacy, and the right to be free from torture and other forms of cruel, inhuman or degrading treatment or punishment. Some of these rights extend freedoms beyond the protections in existing U.S. law. In some cases the rights embodied in the Covenant do not extend as far as existing U.S. law. In other cases, the rights in the ICCPR are identical to the rights protected under U.S. law. Where existing U.S. law is as protective or more protective of civil and political rights, people in this country may rely on those more extensive domestic rights. Where the Covenant bestows greater rights people in this country should have the benefit of these rights and all levels of government have an obligation to make these rights a reality.

After years of hostility among U.S. lawmakers, ratification of the treaty marked an important step toward embracing the international system for the protection of human rights, but it was only a half step. While ratification enhanced Washington's ability to criticize other governments for violating human rights, the

---

[1] For an overview of the relationship between the ICCPR and U.S. law *see* Hurst Hannum & Dana Fischer, editors, *United States Ratification of the International Covenants on Human Rights*, American Society of International Law (1993). *See also* Louis Henkin, editor, *The International Bill of Rights: The Covenant on Civil and Political Rights* (1981).

Bush administration took steps to ensure that the treaty would provide no added protection for the rights of Americans.[2] As the largest domestic civil liberties organization and the largest U.S.-based international human rights organization, the American Civil Liberties Union (ACLU) and Human Rights Watch (HRW) have joined together to issue this report in the hope of breaking this cynical view of international human rights law as a source of protection only for those outside U.S. borders.

The Bush administration used two devices to deny Americans the protection of international human rights law as a supplement and backstop to constitutional protections. First, through a series of reservations, declarations and understandings, it carved out every provision of the treaty that it believed would have granted expanded rights to Americans. Second, it declared the United States in full compliance with the remaining treaty provisions, in an effort to justify not granting Americans the right to invoke the treaty in U.S. courts. Americans would have been able to enforce the treaty in U.S. courts either if it had been declared to be self-executing or if implementing legislation had been enacted to create causes of action under the treaty. The Bush administration rejected both routes. The result was that ratification became an empty act for Americans: the endorsement of the most important treaty for the protection of civil rights yielded not a single additional enforceable right to citizens and residents of the United States.

We issue this report to demonstrate the inaccuracy of the view that Americans do not need the protection of the ICCPR. As we show, the Bush administration was wrong in its assessment that the United States is already complying with all the treaty's obligations, even after the administration nullified some of the rights through its reservations, declarations and understandings. In the areas of racial and gender discrimination, prison conditions, immigrants rights, language discrimination, the death penalty, police brutality, freedom of expression

[2] The ICCPR extends rights to all persons within the territory of the ratifying state. "Americans" as used in this report should therefore be read broadly, to include all persons within U.S. territory, whether they are U.S. citizens, residents, undocumented workers or refugees.

and religious freedom, we show that the United States is now violating the treaty in important respects. As a result, the Clinton administration is under an immediate legal obligation to remedy these human rights violations at home, through specific steps that we outline.

Moreover, to ensure that these remedies are sufficient, we believe the U.S. government is obligated to grant Americans the right to invoke the protections of the treaty in U.S. courts, at least through specific legislation enabling them to do so, but preferably through a formal declaration that the treaty is self-executing, and thus invocable in U.S. courts without further legislation. We also believe that the Clinton administration should break with the Bush administration's determination not to allow international human rights law to add to rights in the United States, by repealing the restrictive reservations, declarations and understandings.

We issue this report now because the Clinton administration is about to issue its own assessment of U.S. compliance with the ICCPR, as required by the treaty one year after ratification. The administration's report, the first time that the United States will have systematically reported on its own human rights record in an international forum, will be reviewed by a committee of international experts established by the ICCPR known as the Human Rights Committee. We hope that our report will encourage the administration to make an honest assessment of U.S. noncompliance with the treaty and, in turn, to take the steps necessary to correct violations.

The scope of this report

This report is not intended as a comprehensive examination of the human rights situation in the United States or of U.S. compliance with the ICCPR. The ACLU and HRW have identified nine substantive areas in which the United States human rights record falls short of international standards. We use these areas as examples of what should be done to bring the U.S. human rights record into compliance with those standards.

There are many areas not covered by this report and many issues in the areas we have addressed that are not covered or are covered only partially. For example, there are many forms of discrimination in the United States that are not covered by the chapters that follow, including discrimination against gay men and lesbians and people with disabilities. We do not mean to imply that the areas covered by this report are more important than areas we have been unable to cover in this first ACLU/HRW joint report on human rights practices in the United States.

This is not a comparative report. But we note that the strength of the U.S.

Bill of Rights, and the panoply of domestic organizations that work in the courts and in other forums to assure that the government adheres to its guarantees, has resulted in a high degree of U.S. compliance with the ICCPR in many areas, particularly freedom of expression and religious freedom. Even in the many other areas, such as race discrimination and prison conditions, where the U.S. record needs substantial improvement, there is reason for optimism that significant human rights advances are possible if the political will is mustered.

We assume and hope that the ratification of the ICCPR and the international examination of the first U.S. report will inspire a wide range of domestic and international human rights organizations to examine every aspect of the U.S. human rights record and to suggest improvements that should be made. The most important part of the enforcement mechanism set up under the ICCPR is the dialogue about human rights compliance it is intended to inspire, both at the international level and within each society that agrees to be bound by this international human rights protection system. The first U.S. report should be the beginning of that process and not the end of it.

If the United States is serious about its international obligations, new legislative proposals and actions on pending legislation should come out of this process. In each section of the Report we have attempted to identify at least some of the legislative or administrative steps that should be taken to achieve compliance with the international standards of the ICCPR.

This report is not intended to be an exercise in legal analysis either regarding existing U.S. law or the meaning of particular provisions of the ICCPR. The Report does contain legal analysis in each area, but the provisions of the ICCPR are still being defined at the international level. The re-examination of human rights issues that should be inspired by the first U.S. report under the ICCPR should go beyond such technical legal analyses and lead to an examination of whether this country has fulfilled the basic values safeguarded by our own laws and in international standards.

Has the United States eradicated all forms of arbitrary discrimination in our public life? Do the conditions in our prisons and jails comport with the guarantees of human dignity that are central to international human rights standards and the ICCPR? Must the United States continue to execute juvenile offenders when it is isolated from the rest of the world in doing so and at odds with a core obligation in the ICCPR?

These are some of the issues considered in this report and which ought to be the subject of real debate in the Clinton Administration and the Congress.

Major findings

Among our findings are the following:

- **Race Discrimination.** Although U.S. legal protection against race discrimination is generally adequate by ICCPR standards, in practice legal safeguards go largely unmet. Educational segregation and unequal conditions of schooling persist at all levels; public and private housing are rife with segregation and discrimination; and in employment, African Americans are three times less likely to be hired than whites with similar qualifications. By failing to adequately redress ongoing racial and ethnic discrimination, the United States stands in violation of Article 2, which requires an *effective* remedy for violation of Covenant rights, and Article 26, which requires "equal and effective protection [i.e., enforcement of the remedy] against discrimination on any ground."

- **Sex Discrimination.** Women in the U.S. face systemic and entrenched discrimination in the workplace in terms of occupational access, conditions of employment, and compensation. They are discriminated against through omission in government-funded medical research. In public schools and universities, girls and women continue to receive less attention and resources than do boys and men, despite Title IX's mandate for equal education. Article 26 not only forbids discrimination; it also requires States parties to provide "equal and effective protection" against discrimination. Even taking into account the limiting understanding imposed by the U.S. on Article 26, its failure to adequately protect against sex discrimination violates that provision.

- **Language Rights.** Minority language speakers in the U.S. face discrimination in health and social services, employment and education, as well as overt hostility as manifested by the "English-only" movement that emerged in the 1980's. Article 26 forbids discrimination based on language. In the U.S., by contrast, constitutional claims alleging such discrimination have received a relatively low level of judicial scrutiny. This low level of scrutiny is protected by the U.S. understanding to Article 26, which purports to allow discrimination when it is "rationally related to a legitimate governmental objective." Erasure of this understanding and implementation of the ICCPR would provide much-

needed protection to language minorities.

- **Immigrants and Refugees.** The interdiction and summary repatriation of Haitian boat people is a flagrant violation of Article 12, which states that "[e]veryone shall be free to leave any country, including his own." It also violates Article 26, which forbids discrimination on the basis of national origin (intercepted Cubans, for example, are not summarily repatriated). Human rights abuses by Border Patrol agents of the Immigration and Naturalization Service violate Article 7 (the right to be free from torture or cruel, inhuman or degrading treatment) and Article 9(1) (the right to liberty and security of the person).

- **Prison Conditions.** The United States routinely violates Article 10 of the ICCPR, which requires that all prisoners and detainees "be treated with humanity and with respect for the inherent dignity of the human person." The U.S. violates this provision by placing prisoners into extremely overcrowded facilities that strip them of their dignity and privacy and endanger their health and safety. Article 10 is also violated by many of the techniques and punishments of "supermaximum security" facilities, where, for example, prisoners may pass years without breathing the outside air or may be forced to eat their meals with their hands tied behind their backs. The anti-discrimination requirement of Article 26 is violated by the unequal treatment of women prisoners, who receive less recreational, vocational, and educational opportunities than their male counterparts.

- **Police Brutality.** The 1991 beating of Rodney King spotlighted police abuse in the United States as one of the most pressing human rights issues facing the U.S. The persistant use of excessive force, often exacerbated by racism, violates the Article 7 prohibition on "cruel, inhuman and degrading treatment or punishment" and the prohibition in Articles 2 and 26 against discrimination. The United States further violates Article 2 by failing to take "the necessary steps" to ensure respect for these basic rights.

- **The Death Penalty.** Article 6 of the ICCPR favors but does not require the abolition of the death penalty. It also limits the circumstances in which the death penalty may be imposed: arbitrary deprivation of life is

forbidden, as is the execution of juveniles; furthermore, the death penalty may be imposed "only for the most serious crimes." The U.S. entered a reservation to the ICCPR that allows it to use capital punishment to the extent permitted under the U.S. Constitution. But for this reservation, the United States would be in violation of all of the above conditions of Article 6.

- **Freedom of Expression.** Although by most measures the U.S. is a leader in the area of free expression, it has fallen short of meeting Article 19 of the ICCPR, which guarantees a right "to seek, receive and impart information . . . regardless of frontiers." The U.S. has violated this right by curtailing the flow of information both into and out of the country: visas have been denied to some controversial speakers; informational materials from certain countries have been excluded by economic embargo laws; and Americans have been restricted in their ability to travel abroad and seek and impart information independently. The U.S. also violated Article 19 by imposing severe and unjustified restrictions on the media during the Gulf War.

- **Religious Liberty.** A 1990 Supreme Court decision, *Employment Division v. Smith*, began a serious incursion by U.S. courts into First Amendment protection for the free exercise of religion. Fortunately, this incursion was halted by the recent passage of the Religious Freedom Restoration Act. The experience of the three intervening years, when protection for religious freedom dwindled in the U.S., underscores the potential importance of the ICCPR as an additional line of defense to this and other fundamental rights.