

# US violates UN human rights on many counts--II

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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 US report should be the beginning strength of that process and 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 US 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 defended at the international level. The re-examination of human rights issues that should be inspired by the first US report under the ICCPR should go beyond such technical legal analyses and lead to an examination 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?

## Major findings:

Among our findings are the following:

\* **Race Discrimination.** Although US 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

crimination based on language. In the US 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 US 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]very one 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 Naturalisation 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 US 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 'super-maximum 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.

\* **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 US. The persistent 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'

crimination, 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 US 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 US on Article 26, its failure to adequately protect sex discrimination violates that provision.

\* Language Rights. Minority language speakers in the US 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 dis-

crimination, 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.'

\* Freedom of Expression. Although by most measures the US 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 frontier.' The US 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 US 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 US 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 US, underscores the potential importance of the ICCPR as an additional line of defence to this and other fundamental rights. — *Concluded*  
*Courtesy 'HRCF Newsletter'*