

NEWLY RATIFIED INTERNATIONAL HUMAN RIGHTS TREATIES AND THE FIGHT AGAINST PROPOSITION 187

ANNE PAXTON WAGLEY†

I. INTRODUCTION

The recent passage of Proposition 187 in California, and its progeny currently looming in other states and Congress, has spurred civil rights activists to find new tools to fight the increasing racial intolerance in the United States.

International human rights laws can provide lawyers and activists in the United States with new opportunities to advance their causes and combat expanding racist policies. While human rights laws have historically played a role in our foreign policy, only since 1992 have people in the United States been given the opportunity to use these laws proactively. Since then, the United States has ratified three major United Nations human rights treaties. While ratified treaties are the “supreme law of the land” under Article VI of the United States Constitution, the treaties are little known and even less understood. Their ratifications were accomplished quietly, almost to the point of secrecy, and they were carefully crafted so as to limit their potential force in domestic courts of law.

However, these recently ratified treaties contain very powerful obligations and duties for which the United States can be held accountable. The United States has committed itself to respect and ensure the rights articulated in these treaties through their ratification. This Article will discuss ways in which these treaties can be used by activists to focus international attention on human rights abuses in the United States, particularly through the treaties’ reporting and monitoring requirements. This Article will call attention to specific sections of the treaties which are violated by Proposition 187. The Article will also discuss how to use the newly-ratified human rights treaties in reporting concerns to the United Nations, and the response of the United Nations

† Staff Attorney, Meiklejohn Civil Liberties Institute. J.D. University of California, Hastings College of the Law, 1994.

Human Rights Committee when these concerns were raised in March 1995.

II. HISTORICAL BACKGROUND

It is a sad commentary on our nation's "progress" that California's Proposition 187 passed just before the United Nations 50th anniversary. As the Republicans' Contract with America was being hammered into place, the United Nations anniversary preparations were underway. Fifty years ago, during the drafting of the United Nations Charter, the United States advocated to the world for the inclusion of the protection and promotion of human rights and fundamental freedoms for all.¹ Concerns for such rights and freedoms arose from the horrors of World War II and the belief that effective international protection of human rights is essential to international peace and progress.

The United Nations Charter refers to human rights and fundamental freedoms in a number of clauses. In the Preamble, United Nations members express their determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women of nations large and small."² Article 55 states:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. Higher standards of living, full employment, and conditions of economic and social progress and development;
- b. Solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.³

In its ratification of the Charter, the United States is bound by these words, and specifically by Article 56, in which "[a]ll Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."⁴

In the late 1940s, the United States actively participated in the drafting of the first major United Nations document on

1. U.N. CHARTER arts. 55, 56. The vote in the U.S. Senate was 89-2 for ratification. 91 CONG. REC. 8190 (1945).

2. U.N. CHARTER pmb., para. 1.

3. U.N. CHARTER art. 55, para. 1.

4. U.N. CHARTER art. 56, para. 1.

human rights and fundamental freedoms, the 1948 Universal Declaration of Human Rights.⁵ While not a treaty, the Universal Declaration of Human Rights provided the basis for the two primary international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR)⁶ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁷ The ICCPR and the ICESCR are intertwined. As treaties, these two documents bind party states to their obligations.⁸ The documents are based on the premise that governments must answer at the international level for the way they treat people, and that all governments must be held to the same international standards.

The ICCPR recognizes the indivisibility of human rights, whether they be civil, political, economic, social or cultural. Its Preamble states that the ideal of free human beings enjoying civil and political freedom, as well as freedom from fear and want, can only be achieved if conditions are created so that everyone may enjoy civil, political, economic, social and cultural rights.

Although the United States played an active role in the drafting of these two treaties, it was not until 1992 that the United States joined 127 other nations and became a party to the ICCPR.⁹ Although President Carter signed the treaty and sent it to the Senate for its advice and consent in 1977, the United States has yet to ratify the ICESCR.

The ICCPR recognizes the right of every human being to life, liberty and security of person; to privacy; to freedom from torture and cruel, inhuman or degrading treatment or punishment; to immunity from arbitrary arrest; to freedom from slavery; to a fair trial; to recognition as a person before the law; to immunity from retroactive sentences; to freedom of thought, conscience and religion; to freedom of opinion and expression; to liberty of movement and peaceful assembly; and to freedom of association.¹⁰

5. Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR 3d Comm., 3d Sess., pt. 1, 183d plen. mtg. at 71, U.N. Doc. A/810 (1948).

6. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976, entered into force for the U.S. Sept. 8, 1992) [hereinafter ICCPR].

7. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

8. Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 46, 1155 U.N.T.S. 331; "Every international agreement in force is binding upon the parties to it and must be performed by them in good faith." RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 321 (1986).

9. ICCPR, *supra* note 6. See also 138 CONG. REC. S4783 (daily ed. Apr. 2, 1992).

10. ICCPR, *supra* note 6, pt. II.

Both the ICCPR and the ICESCR proclaim the rights of all peoples to self-determination, and guarantee the rights they proclaim without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In 1994, the United States completed the ratification process for two other United Nations human rights treaties — the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)¹¹ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹²

III. VIOLATIONS OF HUMAN RIGHTS TREATIES BY PROPOSITION 187

Proposition 187 requires law enforcement personnel, educators, health workers, and social service providers to “demand documentation” of people, including children, “suspected” of being illegal.¹³ Enforcement of Proposition 187 would require using racial stereotypes of physical appearance and language or accent to identify people “suspected” of being without documentation.

The rights covered under the ICCPR, CERD and CAT enhance our existing rights under the United States Constitution and Bill of Rights. Article 2.1 of the ICCPR says that the state parties will “ensure [and enforce] . . . the rights . . . without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁴ This is powerful language for people concerned with economic, language or national origin distinctions, such as those raised by Proposition 187.

11. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter CERD]; U.S. Senate advice and consent, 140 CONG. REC. S7634-35 (daily ed. June 24, 1994) (U.S. entered into force Nov. 20, 1994).

12. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR, 39th Sess., Supp. (No. 51) at 197, U.N. Doc. A/39/46 (1984) (entered into force June 26, 1987) [hereinafter CAT]; U.S. Senate advice and consent, 136 CONG. REC. S17491-92 (daily ed. Oct. 27, 1990) (U.S. entered into force Nov. 20, 1994).

13. “[A]ny person who is arrested if he or she is *suspected* of being present in the United States in violation of federal immigration laws With respect to any such person who is arrested. . . every law enforcement agency shall. . . (1) Attempt to verify the legal status of such person The verification process may include, *but shall not be limited to, questioning the person* regarding his or her date and place of birth, and entry into the United States, *and demanding documentation* to indicate his or her legal status.” CAL. PENAL CODE § 834b(b)(1) (Deering 1995) (originally enacted as Proposition 187 § 4.834(b)) (emphasis added).

14. ICCPR, *supra* note 6, art. 2.1.

In addition, the ICCPR commits the federal and state governments "[t]o ensure that any person whose rights or freedoms . . . are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."¹⁵

The CERD defines racial discrimination to include:

[A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹⁶

By ratifying CERD, the United States also agrees to "condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races . . ."¹⁷

CERD's Article 1.2 details a state's right to make distinctions based on citizenship: "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens."¹⁸ At first glance, it would appear that this Article would permit laws such as Proposition 187. However, a closer examination reveals that this is not the case. Proposition 187 does not make distinctions based on citizenship or non-citizenship. Proposition 187 requires the questioning or examination of people "suspected" of being undocumented. This suspicion will be based on characteristics such as race, language, or ethnicity as a threshold issue, and not on the type of documentation a person may or may not have.

In addition, there are many types of legal status in the United States which are less than full citizenship (e.g., legal permanent resident, refugee, parole, suspension of deportation, temporary protected status, etc.). Proposition 187 requires making distinctions based on these lesser types of legal status, a likely violation of CERD. Proposition 187 would also require the use of racial stereotypes to target "suspected" people, which is exactly what CERD and the ICCPR prohibit.

Building on their review of the reports of many countries, the Human Rights Committee and the Committee on Racial Discrimination periodically issue comments on the substantive pro-

15. ICCPR, *supra* note 6, art. 2.3(a).

16. CERD, *supra* note 11, art. 1.1.

17. CERD, *supra* note 11, art. 2.1.

18. CERD, *supra* note 11, art. 1.2.

visions of each treaty.¹⁹ The General Comments serve a dual purpose of assisting state parties in fulfilling their reporting requirements, and in clarifying what information the Committee is seeking under a particular article. The General Comments are helpful in determining what information the Human Rights Committee would like on the rights of immigrants within the jurisdiction of a state. While the ICCPR is silent as to the specific rights of aliens,²⁰ the Human Rights Committee has issued a General Comment indicating that each State Party must ensure the rights of the ICCPR to "all individuals within its territory and subject to its jurisdiction."²¹ The Human Rights Committee has emphasized, "In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness."²²

Proposition 187 requires law enforcement officers to violate the ICCPR and CAT. Not only does the proposition require the questioning of persons regarding his or her legal status, but it also requires and demands documentation of such legal status. Law enforcement officials must go one step further and subject "suspected" people to degrading treatment in violation of the ICCPR and CAT. The Human Rights Committee has interpreted "degrading treatment" broadly:

The prohibition in [A]rticle 7 [of the ICCPR] relates not only to acts that cause physical pain but also to acts that cause *mental suffering to the victim*. In the Committee's view, moreover, the prohibition must extend to corporeal punishment, including *excessive chastisement* ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that [A]rticle 7 protects, in particular, *children, pupils and patients in teaching and medical institutions*.²³

Proposition 187 requires law enforcement personnel, educators, and health and social service providers to violate their duties to help protect children and families. Questioning children about their documentation status, or the documentation of their siblings and parents, will threaten family units. It will create divisiveness among siblings and parents, particularly in family units

19. *General Comments adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.1 (1994).

20. The term "aliens" is used by the Human Rights Committee and has no derogatory intent.

21. ICCPR, art. 2.1, in *General Comment 15*, 27th Sess., para. 1, HRI/GEN/1/Rev.1 (1994).

22. *Id.* at 19.

23. *General Comments adopted by the Human Rights Committee*, International Human Rights Instruments, 44th Sess., para. 5, HRI/GEN/1/Rev. 1 (1992) (emphasis added).

where members have different immigration status. Children can become outcasts in their schools if it is known that they have been subjected to this questioning. People may also hesitate to seek medical treatment if they fear they will be questioned about the immigration status of either themselves or their family members. Many educators and health care professionals signed a non-compliance petition on Proposition 187, making it clear that they will refuse to engage in racially based discriminatory and degrading treatment of their pupils and patients.

In targeting educational and medical institutions, Proposition 187 disproportionately impacts children. It was estimated that 300,000 undocumented children may be thrown out of the public school system and on to the streets. However, the ICCPR has specific protection for the family and the child: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State,"²⁴ and, "Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, 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."²⁵ Thus, in enforcing Proposition 187, local officials will likely be in violation of the ICCPR.

Implementation of Proposition 187 will have disastrous consequences not only on the health of persons afraid to seek medical attention, but for society at large. Enforcement of Proposition 187 will cause society to face increased risks of untreated tuberculosis, as well as the potential reemergence of other diseases. A measles epidemic that peaked in 1990 killing 41 Californians, 34 of them pre-school aged children, could occur again.²⁶ Enforcement of Proposition 187 could frighten many people from seeking early, preventative medical care, deter parents from seeking medical care for their children, and keep pregnant women from seeking prenatal care.²⁷

IV. REPORTING AS A METHOD OF ENSURING HUMAN RIGHTS

The impetus for the ratification of human rights treaties arose from criticism of the United States' double standard regarding its human rights policies. For years, the United States has issued comprehensive reports detailing other countries' human rights abuses, yet has remained markedly silent regarding

24. ICCPR, *supra* note 6, art. 23.1.

25. ICCPR, *supra* note 6, art. 24.1.

26. Douglas P. Shuit, *Initiative Would Hasten Spread of TB, Study Says*, L.A. TIMES, Oct. 19, 1994, at A1, A27.

27. See Tal A. Ziv & Bernard Lo, *Denial of Care to Illegal Immigrants - Proposition 187 in California*, 332 NEW ENG. J. OF MED. 1095, 1096 (1995).

abuses of its own.²⁸ Non-governmental organizations in the United States have responded with critiques of the United States Country Reports on other countries, noting that the official reports reflect the official foreign policy goals, and perhaps less of the reality of human rights protections. Scrutiny of the United States Country Reports by non-governmental organizations has caused the State Department to include more comprehensive information in the reports, and to be more objective in reporting violations.

The United States is now required to file comprehensive reports on the domestic human rights situation with the United Nations.²⁹ This is a positive obligation, required by each of the recently ratified human rights treaties — the ICCPR, CERD and CAT. Each of the three treaties establishes a Committee, comprised of international human rights experts,³⁰ to oversee the enforcement of the rights in each treaty in the countries party to the treaties. The treaties require that each country submit reports describing the enforcement and protection of the rights in their jurisdiction. Representatives of the countries involved present their reports to the United Nations Committees and answer detailed and pointed questions posed by Committee members. If Committee members consider the report to be inadequate, the country may be asked to submit additional information.

The reports to the United Nations Committees are to be more than mere recitations of a states' statutes and case law regarding civil and human rights. In particular, the United Nations Human Rights Committee, which monitors the implementation of the ICCPR, has indicated that it would like each reporting nation to submit a road map on human rights. These reports should start with the premise that there are problems but should go further and discuss how they are going to resolve the existing problems.³¹

The reports are reviewed by the Committees at public meetings, where questions are posed to the representatives of the state parties. The aim of this review is to enter into a "dialogue"

28. 22 U.S.C. § 2151(n)(d) (1988) (requiring report on foreign relations of the Senate).

29. ICCPR, *supra* note 6, art. 40.

30. Members of the Committees, although nominated and elected by the States party to the treaties, sit on the Committees in their *individual* capacity, and do not speak for the country of which they are a national.

31. The United Nations publishes a guide for countries required to submit reports on human rights. The manual contains article by article comments on the major human rights treaties, as well as background information on the goals of the reporting process from the vantage point of Committee members. *MANUAL ON HUMAN RIGHTS REPORTING*, U.N. Doc. HR/PUB/91/1, U.N. Sales No. E.91.XIV.1 (1991).

with the government representatives, that include questions, as well as requests for responses on omissions in the country's report. The idea of a dialogue is:

[P]remised on the assumptions first that every State is an actual or potential violator of human rights (no matter how good its intentions might be) and second that a degree of routinized international accountability is in the best interests of the State itself, of its citizens, and of the international community.³²

The Committees focus on necessary legislative changes in an attempt to ensure that states conform to treaty provisions. They also recommend changes in policy and practice. Public scrutiny and commentary by a United Nations Committee can be strong medicine for a wayward nation, even though the Committees are neither courts nor quasi-judicial bodies.³³ The Committees report to the General Assembly, publish official Press Releases of their public meetings,³⁴ and issue Final Comments on each country's report and presentation. All of the documents become part of the public record.

V. THE PURPOSES OF REPORTING

Reporting serves numerous functions. During the United Nations reporting process, the United Nations calls on each country to review its domestic law and ensure that it is in compliance with all of its relevant treaty obligations. The subsequent dialogue with the United Nations Committee may reveal additional areas where a country is not in compliance with its treaty obligations. The Committee can provide insight into how laws, or policy and practice, should be changed to bring a country into compliance with the treaty. Thirty-two countries have changed their laws or practices following presentations to and comments by the Human Rights Committee.³⁵

Reporting on legislative developments also serves as a monitoring function because each country is required to ensure that legislative proposals are in compliance with treaty obligations. During the review of the First Report of the United States under the ICCPR in March 1995, the Human Rights Committee expressed its concern with Proposition 187. This concern has put

32. Philip Alston, *The Purposes of Reporting*, MANUAL ON HUMAN RIGHTS REPORTING, at 13, U.N. Doc. HR/PUB/91/1, U.N. Sales No. E.91.XIV.1 (1991).

33. Frank Newman, *The Mobilization of Shame*, in HUMAN RIGHTS DOCKET US 1979 at vii. (Ginger, ed.) (Meiklejohn Civil Liberties Institute 1979).

34. The United Nations Press Releases of the Committee meetings are comprehensive summaries of the testimony of each morning and afternoon session.

35. Cindy A. Cohn, *Early Harvest: Domestic Legal Changes Related to the Human Rights Committee and the Covenant on Civil and Political Rights*, 13 HUM. RTS. Q. 295, 298-316 (1991).

the United States on notice that the United Nations will be monitoring not only the current litigation surrounding Proposition 187, but the proliferation of Proposition 187-type proposals in other states and at the federal level. The Committee has emphasized that in reporting, State parties must cover the position of aliens, "both under their law and in actual practice."³⁶ Furthermore:

The Covenant gives aliens all the protection regarding rights guaranteed therein, and its requirements should be observed by States parties in their legislation and in practice as appropriate. The position of aliens would thus be considerably improved. States parties should ensure that the provisions of the Covenant and the rights under it are made known to aliens within their jurisdiction.³⁷

The reporting process itself can be a catalyst for further change. The public scrutiny and evaluation functions inherent in reporting are significant to civil rights activists. Activists can and should play a role in ensuring that accurate and comprehensive material on human rights violations is included in the official reports. If the government reports are insufficient or inaccurate in any way, activists can submit the same materials to the United Nations Committees before the country's report is reviewed.

Long before the United States issued its First Report under the ICCPR, civil rights groups across the United States were preparing information for submission to the United Nations.³⁸ The American Association for the Advancement of Science held briefings in Washington, D.C. with a number of national organizations on the ratification of human rights treaties and the reporting process. Meiklejohn Civil Liberties Institute in Berkeley, California, held workshops and conferences in San Francisco in 1993 and 1994, and New York in 1995, to encourage the involvement of grassroots organizations in the reporting process. Meiklejohn Civil Liberties Institute compiled a collection of "Issue Sheets," which are short factual summaries of human rights violations in the United States, with a series of questions designed to assist the members of the Human Rights Committee in their questioning of the U.S. Government delegation.

One of the submissions of Meiklejohn Institute to the United Nations Human Rights Committee was specifically on

36. General Comment 15, *supra* note 21, at para. 2.

37. *Id.* at para. 4.

38. Human Rights Watch and the American Civil Liberties Union published a report on the United States compliance with selected articles of the ICCPR. See Human Rights Watch and the American Civil Liberties Union, *Human Rights Violations in the United States* (Dec. 1993) (on file with author).

Proposition 187's violations of the ICCPR.³⁹ Meiklejohn Institute recognized the importance of communicating information on Proposition 187 to the Human Rights Committee. Even though the proposition was passed after the United States issued its First Report, the proposition reflected the growing anti-immigrant sentiment in California and across the nation. The following is the submission of the Meiklejohn Institute Human Rights Reporting Project to the United Nations Human Rights Committee:

ICCPR Articles 2,9,17,23,24,26

Distinctions Based on National Origin: California's Proposition 187 and Parallel Proposals

Facts:

The voters of the State of California recently passed an initiative, Proposition 187, on the November, 1994 ballot, which establishes a "system of required notification to prevent illegal aliens from receiving benefits or public services in the State of California," specifically education and health care.

The law mandates that "every" law enforcement agency is entitled to investigate persons "suspected" of being in the United States without documentation. It allows a verification process "not limited to" "questioning" a person and "demanding documentation." It requires suspected people to tell government agents the immigration status of family members and provides no protections for children against degrading or frightening treatment.

Proposition 187 is reflective of a rising national anti-immigrant hostility and bias, noted by innumerable commentators in the media. Other states are now considering passing similar legislation. The "Personal Responsibility" bill [H.R. 4, Section 401] proposed by the new Republican Congress contains numerous restriction for immigrants to access health and social services.

Questions:

1. What efforts did the U.S. take to publicize the text of the relevant Articles in the ICCPR among the officials in the state of California charged with administering the proposed vote [sic] initiative? Under the U.S. statement of ratification the U.S. indicated that the federal government will ensure compliance on the state level. The Human Rights Committee General Comment No. 3 [13th Sess., 1981] on Article 2 notes "that the obligation under the Covenant is not confined to the respect of human rights," but also ensuring "the enjoyment of these rights to all persons under their jurisdiction" and that the Covenant must be publicized and the State Party should

39. MEIKLEJOHN CIVIL LIBERTIES INSTITUTE, ISSUE SHEETS: FACTS AND QUESTIONS ON THE FIRST REPORT OF THE UNITED STATES ON ENSURING AND ENFORCING THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN THE UNITED STATES (Feb. 10, 1995) (on file with author).

also "give publicity to [its] cooperation with the Human Rights Committee."

2. What efforts are being made by the U.S. Government to ensure that the new California law does not conflict with the prohibition on discrimination that applies to "all individuals within [a State's] territory and subject to its jurisdiction"? Art. 2.1. What steps are being taken at the Federal level to ensure the right to effective remedies in accordance with Arts. 2.2, 2.3(b) and (c)?

3. What efforts are being made by the U.S. Government to ensure that the new state law will not conflict with Art. 9's prohibition on deprivation of liberty and arbitrary detention?

4. What efforts are being made by the U.S. Government to ensure the enforcement of the state law and the notification powers given to providers of federal and state public services, including health and education, do not conflict with Art. 17's protection of privacy, specifically the prohibition on arbitrary interference with family, home and correspondence, or the prohibition on unlawful attacks on a person's honor or reputation?

5. What efforts are being made by the U.S. Government to ensure the protection of the child from arbitrary and degrading questioning in language the child may not understand, in violation of Art. 24? What efforts are being made by the U.S. Government to protect the family from divisive interrogation on immigration status as mandated by Art. 23? What measures are being taken by the U.S. Government to ensure equal protection of all persons as required under Art. 26?

6. Has the U.S. Government appeared in federal and/or state court cases challenging the legality of Prop. 187 to raise issues about 187 not being in compliance with federal and state obligations under the ICCPR, as well as breaching exclusive federal power over immigration?

7. What is being done by the U.S. Government to publicize the relevant articles of the ICCPR among the Attorneys General, Governors, and legislators of the several states considering adoption of legislation patterned after California's Proposition 187?⁴⁰

VI. LITIGATION

In ratifying these treaties, the United States appended a number of Reservations, Understandings and Declarations (RUD). The RUDs indicate how the United States proposes to

40. *Id.* at 56-57.

interpret the treaties as domestic law.⁴¹ The effect of the RUDs is to minimize the impact of the treaties domestically.⁴² One controversial RUD is the declaration that the substantive articles in the treaties are "non self-executing." This means that the substantive provisions in each treaty do not, by themselves, create private rights enforceable in United States courts.⁴³

Despite the non self-executing declaration, the ICCPR's ratification represents a statement of federal policy which courts should find persuasive in interpreting Constitutional arguments. The persuasiveness is particularly important because of United States government statements to the United Nations regarding the intent of compliance with the ICCPR.

The Legal Advisor to U.S. Department of State, Conrad T. Harper, testified to the United Nations Human Rights Committee during the review of the First Report of the United States, under the ICCPR, that existing United States law already contains the rights set forth in the ICCPR as well as numerous mechanisms by which those rights can be protected and asserted.⁴⁴ In other words, although ICCPR rights are not directly actionable

41. The Reservations, Understandings and Declarations form part of the Senate's advice and consent to each treaty. There are numerous scholarly interpretations and analyses of the effect of the RUDs. See *Symposium: The Ratification of the International Covenant on Civil and Political Rights*, 24 DEPAUL L. REV. 4 (1993).

42. The United States also took steps to insulate itself from ratifying international scrutiny in its refusal to ratify the Optional Protocol of the ICCPR. Under the Optional Protocol, individuals whose rights "have been violated by State action" may file complaints to the Human Rights Committee. If the Committee deems the complaint admissible, it brings it to the attention of the state allegedly violating the ICCPR. The State must respond within six months detailing the remedy, if any, that it has taken. The complaints are considered in closed sessions, but the decisions of the Human Rights Committee under the Optional Protocol are made public and published in the Committee's annual report, and submitted to the General Assembly. See *Selected Decisions of the Human Rights Committee under the Optional Protocol*, vol. 1, Human Rights Committee, U.N. Doc. CCPR/C/OP/1, (1985).

43. The non self-executing declaration is of uncertain legal status. The limitation of its use to U.S. "courts" leaves open the possibility of the treaties providing a primary cause of action in administrative cases. The substantive provisions of the treaties can and should be used by defendants in criminal cases. In addition, "[w]hether an international agreement of the United States is or is not self-executing is finally determined as a matter of interpretation by courts in the United States if the issue arises in litigation." RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 154 (1965). See also John Quigly, *Criminal Law and Human Rights: Implications of the United States Ratification of the International Covenant on Civil and Political Rights*, 6 HARV. HUM. RTS. J. 59 (1993); Stefan A. Riesenfeld & Frederick M. Abbott, *The Scope of U.S. Senate Control of the Conclusion and Operation of Treaties*, 67 CHI.-KENT L. REV. 571 (1991).

44. Harper stated that "[e]xisting United States law was consonant with the Covenant. . . . In fact, the Covenant essentially embodied the individual rights and freedoms enjoyed by Americans under their Constitution and Bill of Rights, federal law and the constitutions and laws of the 50 states, territories and dependencies." International Covenant on Civil and Political Rights, Hum. Rts. Comm., 53d Sess., 1401st mtg. at 3, U.N. Doc. CCPR/C/SR.1401 (1995).

in United States courts, their analogues in domestic law can be and are fully adequate for the purposes of the ICCPR.

VII. UNITED STATES COMES BEFORE THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

For the first time in history, the United States came before the United Nations Human Rights Committee in March 1995. The historic occasion was the review of the United States First Report under the ICCPR. The 18 experts of the Committee, the 24 member delegation from the United States, and the over 140 representatives of non-governmental organizations present in the United Nations conference room recognized the importance of the event. Unfortunately, media coverage was sparse, again leaving the public uninformed about the role of international human rights law in the United States.

John Shattuck, Assistant Secretary of State for Democracy, Human Rights and Labor told the Committee in his opening remarks that the United States was a "work in progress" and did not shrink from recognizing and addressing such problems as crime, drugs, poverty, discrimination and violence against women.⁴⁵ Shattuck had written a thoughtful introduction to the First Report of the United States under the ICCPR. His opening remarks were consistent with his frankness and he acknowledged that, "United States had a history of racism, slavery and racial segregation [that] had among other factors posed obstacles to the full and optimal enjoyment by all Americans of the rights reflected in the Covenant."⁴⁶ He added that ratification of the Covenant in 1992 was the beginning, not the end, of a process of constructive dialog with the Human Rights Committee.

The Committee expressed particular concern with the package of RUDs, especially the non self-executing declaration, and the lack of training and information provided to the judiciary on the Covenant.⁴⁷ Concern was also expressed with the continued use of the death penalty in the United States, especially for

45. *Id.* at 2.

46. *Id.* at 2.

47. In their Final Comments the Committee stated "[t]he Committee regrets that members of the judiciary at the federal, state and local levels have not been made fully aware of the obligations undertaken by the State party under the Covenant, and that judicial continuing education programmes do not include knowledge of the Covenant and discussion of its implementation. Whether or not courts of the United States eventually declare the Covenant to be non-self-executing, information about its provisions should be provided to the judiciary." *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant*, COMMENTS OF THE HUMAN RIGHTS COMMITTEE, [re] United States of America, para. 15, U.N. Doc. CCPR/C/79/Add.50 (1995).

juveniles, which is in direct contravention to the ICCPR.⁴⁸ However, the most significant concern for the Committee was what was omitted from the First Report. Reflecting concerns raised in non-governmental submissions, such as those of Meiklejohn Civil Liberties Institute, Human Rights Watch, and the Rural Justice Center, the Committee questioned the United States delegation on discrimination against Latinos. The Committee made particular reference to Proposition 187; the treatment and rights of Cubans and Haitians in Guantanamo, and their forced repatriation; prison conditions, in particular the increasing use of "supermax" prisons; the poverty rate for single parent families headed by women; and case-law upholding "English-only" rules in the workplace.⁴⁹ Julio Prado Vallejo, Human Rights Committee expert from Ecuador, charged that Proposition 187 had created "actual discrimination against Latin American minorities."⁵⁰

The United States delegation responded candidly to the pointed questions of the Committee. Deval Patrick, Assistant Attorney General in the Civil Rights Division of the United States Department of Justice, admitted that discrimination on the basis of race, ethnicity and gender persisted in the United States — not just the effects of past discrimination, but "current, real life, pernicious discrimination of the here and now."⁵¹ Patrick responded directly to the questions on Proposition 187, and "expressed the concern of the Justice Department" that Proposition 187 in California would discriminate against Latinos in that state. He reported that a coalition of advocacy groups had made legal challenges to the initiative on a number of constitutional grounds, and that both federal and state courts had enjoined the majority of measures under the provision.⁵²

48. *Id.* para. 16.

49. See UNITED NATIONS PRESS RELEASES, UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, HUMAN RIGHTS COMMITTEE, *Human Rights Committee Begins Consideration of Initial Report of United States*, HR/CT/400, Mar. 29, 1995; *Human Rights Committee Continues Consideration of United States' Initial Report*, HR/CT/401, Mar. 29, 1995; *Human Rights Committee Continues Examination of United States Report*, HR/CT/404, Mar. 31, 1995; *Human Rights Committee Concludes Consideration of Initial Report of United States: Committee Experts Raise Questions On Use of Death Penalty, Rights of Aliens, Among Others*, HR/CT/404, Mar. 31, 1995 (on file with author).

50. Julia Preston, *U.S. Rebuts U.N. Critics of Human Rights Record; Officials Make First Defense Under '92 Treaty*, WASHINGTON POST, Mar. 30, 1995, at A19.

51. UNITED NATIONS PRESS RELEASES, UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, HUMAN RIGHTS COMMITTEE, *Human Rights Committee Continues Examination of United States Report*, HR/CT/404, Mar. 31, 1995; *Human Rights Committee Concludes Consideration of Initial Report of United States: Committee Experts Raise Questions On Use of Death Penalty, Rights of Aliens, Among Others*, HR/CT/404, Mar. 31, 1995 (on file with author).

52. *Id.*

The Committee also expressed concern that the United States government has not taken steps to ensure state legislation is in compliance with the Covenant's non-discriminatory clauses. Recognizing implementation of the Covenant for the 50 states was an internal matter, the Committee members nevertheless wanted assurances that the federal government was going to bring the states into compliance.⁵³ In their Final Comments, the Committee recommended, "that appropriate inter-federal and state institutional mechanisms be established for the review of existing . . . [as well as] proposed legislation and other measures, with a view to achieving full implementation of the Covenant, including its reporting obligations."⁵⁴

VIII. CONCLUSION

In ratifying these three human rights treaties, the United States has made a commitment to the United Nations that it will honor the human rights and fundamental freedoms which have become standards for all the world. Yet, to its own people, the United States has sent a signal that it will uphold these laws only on its own terms. Civil rights activists, grassroots organizers, lawyers, and all concerned with the protection and promotion of rights must now let our government know that we are not only aware of the obligations of the United States under the United Nations treaties, but that we expect our government to move towards compliance with the substantive articles of the treaties. To do so, we must use these new words in our organizing efforts and in our lobbying efforts. We must ensure that the media give the coverage deserved to the treaties and the public hearings on our compliance with them. We can educate ourselves, our friends and constituencies about the new laws, and the powerful words they contain. We can demand that our elected officials read the treaties and implement programs to train government officials on the substantive provisions of the treaties. We must also ensure that the United Nations receives an accurate picture of human rights abuses in the United States, and we must hold our government accountable for the responses and promises they give to the United Nations.⁵⁵

53. See Comments by Fausto Pocar in UNITED NATIONS PRESS RELEASES, UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, HUMAN RIGHTS COMMITTEE, *Human Rights Committee Begins Consideration of Initial Report of United States*, HR/CT/400, Mar. 29, 1995; *Human Rights Committee Continues Consideration of United States' Initial Report*, HR/CT/401, Mar. 29, 1995 (on file with author).

54. See *supra* note 47, para. 29.

55. Meiklejohn Civil Liberties Institute will assist organizations in presenting materials to the United Nations. For further information, contact The Human Rights Reporting Project, Meiklejohn Civil Liberties Institute, Box 673, Berkeley, CA, 94701.

In the words of Peter Weiss of the Center for Constitutional Rights:

If you are a lawyer, cite these rights in your briefs;
If you are lobbying for legislation, incorporate them in the legislation you are drafting;
If you are organizing, shout them through your megaphones;
Above all, make them your own.
Make them part of your conscience.
Make them part of your culture, and part of your guts.⁵⁶

56. Peter Weiss, Speech at the Meiklejohn Institute's First Emergency Work Session on the Enforcement of the Covenant (Jan. 15, 1993) (on file with author).

APPENDIX

U.N.T.S. No. 14668, vol. 999 (1976), p. 171.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

[excerpts]

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

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-Gov-

erning 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.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

...

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

...

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

...

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

...

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour sex, language, religion, national or social origin, property or birth, 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.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

...

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

U.N.T.S. No. 9464

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL
FORMS OF RACIAL DISCRIMINATION

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of

human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;
- (c) Political rights, in particular the rights to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as access to public service;
- (d) Other civil rights, in particular:

- (i) The right to freedom of movement and residence within the border of the State;
 - (ii) The right to leave any country, including one's own, and to return to one's country;
 - (iii) The right to nationality;
 - (iv) The right to marriage and choice of spouse;
 - (v) The right to own property alone as well as in association with others;
 - (vi) The right to inherit;
 - (vii) The right to freedom of thought, conscience and religion;
 - (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human

Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

...

UN General Assembly RES 39/46, Annex

CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)),

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

Part I
Article 1

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any

kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offenses under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offenses punishable by appropriate penalties which take into account their grave nature.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be in-

volved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be in-

voked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.