

United States of America

Submission to the United Nations Universal Periodic Review Ninth Session of the UPR Working Group of the Human Rights Council

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This individual submission by Meiklejohn Civil Liberties Institute provides information as stipulated under Sections B, C, and D of the General Guidelines for the Preparation of Information under the Universal Periodic Review regarding failures of domestic legislation, policy, and practice, to adequately inform government agents of their responsibilities and the U.S. populace of the human rights guaranteed them under the Universal Declaration of Human Rights and the three human rights treaties that the U.S. government has ratified: the International Covenant on Civil and Political Rights (ICCPR), the Convention Against All forms of Racial Discrimination (ICERD) and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (ICAT).

Meiklejohn Civil Liberties Institute (MCLI) is a non-profit organization in Berkeley, California, that has promoted peace law and human rights in the U.S. since 1965 by researching and drafting “shadow” reports for U.N. treaty bodies, training interns, publishing books and newsletters, presenting continuing legal education programs and public forums, confronting government officials¹, and sending representatives to U.N. human rights committee meetings.

MCLI has spent several years working with the Berkeley Peace and Justice Commission to address the need for the Berkeley City Council to report to the treaty committees on Berkeley’s efforts to comply with the three U.S.-ratified human rights treaties: ICCPR, ICERD and ICAT. In September of 2009, Berkeley became the first (and thus far, the only) U.S. locality to agree to report on local compliance with human rights treaties². The immediate success of the Berkeley resolution lead CA Assembly Member Bill Monning to introduce ACR129 which requires CA to publicize the text of ratified treaties in all state agencies, requires that cities and counties do the same, and requires the state to file reports as required by the treaties ratified by the U.S.³.

Executive Summary

1. This report will focus on the U.S. government’s failure to report on local conditions, and failure to publicize the text of the human rights treaties it has ratified and educate government officials on all levels, as well as civil society, the media, and the public about the rights enunciated in the UDHR and the ratified treaties.

Normative Framework

2. The international obligations which form the backdrop of this report are the Universal Declaration of Human Rights (Article 26(b)) and the three human rights treaties ratified by the U.S.: the International Covenant on Civil and Political Rights (Article 40); the International Convention on the Elimination of all Forms of Racial Discrimination (Article

9) and the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 10, Article 19 (1)).

3. Despite the crucial role played by the U.S. in drafting and approving the Universal Declaration of Human Rights, polls show that only a tiny percentage of the U.S. population is even aware of the existence of the UDHR and even fewer know of the three human rights treaties ratified by the U.S. (ICCPR, ICERD, ICAT).
4. Each of those treaties provides for local publication of the treaty text, and Article 26 of the Universal Declaration of Human Rights states, in its provision guaranteeing the right to education, that “Education shall be directed to the full development of the human personality and *to the strengthening of respect for human rights* and fundamental freedoms”.
5. Clearly, public awareness of the provisions of human rights treaties is essential for treaty implementation, and the understanding of governmental treaty obligations is especially crucial for the government agents entrusted with control over government programs and institutions intended to implement those rights.
6. The U.S. has been consistently criticized by the U.N. treaty committees for failing to report on local conditions and has consistently failed to make use of local human rights organizations and local governmental entities to assist with reporting on local human rights conditions⁴.

I. U.S. FAILURE TO PUBLICIZE TREATY TEXTS AND EDUCATE ITS CITIZENS ON UDHR AND TREATY OBLIGATIONS

7. The U.S. has neither notified its own federal agencies about the treaties nor submitted copies of the treaties to federal agencies for posting and study.
8. The U.S. has neither submitted the treaty texts to state governments nor required them to publish the texts at the state, county and city level.
9. The U.S. has made no effort to publish the treaty texts for the media, for the public or for civil society to reference.
10. The result is that federal, state, and local government agents – from prison guards to social workers – have no idea that there are internationally-recognized human rights obligations that they are obligated to implement in their work.
11. When MCLI Board members attended the UPR consultation in Berkeley and San Francisco on March 25-26, 2010, we learned that even a representative of a U.S. human rights/civil rights section of a federal agency from Washington, D.C. in attendance at the consultation, had neither read nor was aware of the ratified treaties, had never used them in his work, had no understanding of how reports could be made, and why they are important⁵.

II. U.S. FAILURE TO REPORT ON LOCAL CONDITIONS TO TREATY COMMITTEES

12. Despite the Concluding Observations of the Treaty Committees⁶, the U.S. has failed to include local conditions in its reports and has failed to carry out the specific tasks set forth by the deadlines set by the committees – including collection of local data.
13. Serious human rights violations, never mentioned in U.S. periodic reports to the treaty committees, were reported at the UPR consultation sessions in Berkeley and San Francisco on March 25 and 26, 2010. These included:
 - a. Environmental justice violations involving the Bay Area “Toxic Triangle” where the health and environment of low income communities of color in Richmond, West Oakland and San Francisco’s Hunter’s Point, have been impacted by the sitting of oil refineries and chemical companies in their neighborhoods and within blocks of their schools and child care centers⁷;
 - b. The “digital divide” today between those able to fund use of the internet and those students and low income people without such funds⁸;
 - c. Pending litigation challenging city ordinances forbidding improper tactics by U.S. military recruiters in California high schools⁹;
 - d. Failure of the University of California Board of Regents to respond to Berkeley City Council resolution challenging continued employment of Boalt Law Prof. John Yoo charged with war crimes for his legal memos on torture¹⁰;
14. If the U.S. government were to invite and assist local NGOs and governmental entities to report on local compliance with treaty obligations, the periodic reports would be a far more comprehensive picture of U.S. human rights conditions and awareness of human rights obligations would be improved.

III. HOW LOCAL REPORTING WOULD CHANGE AND PROMOTE HUMAN RIGHTS IN THE U.S.

15. Human rights reporting on the local level is essential to implementation and enforcement of human rights, especially in a large and de-centralized country such as the U.S. Until all federal agencies in Washington, D.C. and federal offices throughout the U.S. are fully aware of the content of the U.S.-ratified U.N. human rights treaties and the commitments the U.S. made when it ratified those treaties, the U.S. cannot fulfill its obligations to publicize and to enforce the rights in the treaties.
16. But federal implementation is not enough in a country in which states and local entities are responsible for implementation of most of the programs that serve the people. In order to

fulfill the commitments under the treaties, the rights and duties in the treaties must be enforced at the federal, state, county, and city levels, and **local** publication and reports on implementation are essential. Reports on publicizing and enforcement at the state, county and city levels can only be accurate and complete if prepared at these local levels and submitted to the federal government for inclusion in its report. If the federal government seeks to make useful and accurate reports about national compliance and fails to obtain reports from the local level, the federal reports will continue to be inaccurate, and will not result in enforcement at the local level.

IV. MAJOR RECOMMENDATIONS

17. In order to prevent recurrence of blatant human rights violations such as the ones mentioned above and described below, and because human rights education is essential to the implementation of treaty rights, MCLI is urging:

- a. That the Obama Administration reinvigorate the Interagency Working Group (IAWG from Executive Order 13107) to create a comprehensive national system integrating human rights treaty obligations into federal legislation and policies and fostering implementation at the state and local levels by providing funding for local outreach, staff training and monitoring of local compliance;
- b. That every human rights/civil rights section of every federal agency in Washington, D.C. immediately hold training sessions on the ratified human rights treaties and protocols for all staff members and prepare training materials for all federal agents throughout the country and territories highlighting the particular treaty provisions and articles relevant to the particular agencies;
- c. That the U.S. government publish the text of the ratified treaties and protocols, including the obligation to report to treaty committees, for posting in every government office, state, city and county, throughout the U.S.; and, as promised¹¹ by State Department (DOS) Legal Adviser Harold Koh, solicit the input of state and local human rights commissions for upcoming reports for ICCPR, ICAT and ICERD.

18. MCLI Board members have observed that the ratified U.N. human rights treaties are not being taught in courses in Constitutional Law in high schools, colleges, or law schools, and that International Law courses mention them but do not teach the treaty texts or mention that they require the U.S. to publicize the texts and make periodic reports to the U.N. committees.

V. BASIC CONCLUSIONS

19. If and when the U.S. government undertakes this process of publicizing the U.S. Treaty Reports at federal and local levels, it will make it possible to implement U.S. treaty

obligations and mitigate the accusations of hypocrisy from the nations whose human rights records it criticizes¹².

20. Studying recent U.S. reports to the U.N. Committee on Rights of the Child for Optional Protocols illustrates the need for these proposed changes. U.S. treaty reports fail to include major problems at the local level important to the committees and to the rest of the U.S.¹³.
21. The U.S. having been a founding member of the United Nations and a leading force in the drafting of the UDHR, it is time for the U.S. public to learn about the human rights treaties and benefit from them, and it is time for the U.S. government to carry out its commitments under the treaties it has ratified.
22. At the UPR consultation in Berkeley and San Francisco, MCLI made presentations on the importance of publicizing treaty texts and making local reports as an essential factor for treaty implementation and enforcement. Our presentations were greeted with interest and approval by the other NGOs present at the consultation. We hope that the Human Rights Council will agree and assist us in our domestic efforts.

¹ E.g., see Response by Dept. of State Legal Advisor Harold Koh on April 6, 2010, to queries by MCLI, reporting that the DOS is "in the process of sending out letters to the states, and also to state and local human rights commissions, to solicit their input on our upcoming treaty reports, for the ICCPR, CAT and CERD," in Appendix A.

² City of Berkeley. City Council. Resolution. September 29, 2010. The Commission was successful in obtaining college interns to do most of the work for credit without pay. See Appendix B and <http://www.cityofberkeley.info/ContentDisplay.aspx?id=13054>.

³ State of California. Assembly Concurrent Resolution 129. 2010. See Appendix C.

⁴ All of the most recent Concluding Observations for the U.S. have been concerned with the lack of local reporting; see, e.g., United Nations. Human Rights Committee. 25 July, 2006. Concluding Observations (¶ 4, 38, & 39).

⁵ Universal Periodic Review Listening Session for the State Department, Bancroft Hotel, Berkeley, CA, March 25, 2010. Reps. from the Justice, Homeland Security, State, Education, and Health & Human Services were present.

⁶ See, e.g., United Nations. Committee on Elimination of Racial Discrimination. Concluding Observations on Consideration of Reports Submitted by State Parties Under Article 9 of the Covenant; United States of America. 08 May, 2008. Or United Nations. Committee Against Torture. Concluding Observations on Consideration of Reports Submitted by State Parties Under Article 19 of the Convention; United States of America. 25 July, 2006.

⁷ Meiklejohn Civil Liberties Institute. *Human Rights Now!* September 2008. (p. 1). <<http://www.mcli.org/projects/newsletters/Sept%2008%20NL.pdf>> and Universal Periodic Review Listening Session for the State Department, University of San Francisco. San Francisco, CA, March 26, 2010.

⁸ United Nations. Human Rights Committee. Communication No. 11/1977, ¶ 17. And the American Convention on Human Rights, Art. 13(2). (Advisory Opinion of the Inter-American Court, 13 Nov. 1985, 8 EHHR 165). And see, e.g., McIver, Birdsall, and Rasmussen. "The Internet and the Right to Communicate". (*First Monday*, vol. 8, No. 12 (Dec. 2003), <http://firstmonday.org/issues/issue8_12/mciver/index.html> and *The Right to Communicate: A New Human Right*, Desmond Fisher and L.S. Harms (eds.), Dublin: Boole Press, 1983.)

⁹ See *United States v. Arcata*, No. C 08 5725 SBA, citing the Optional Protocol and the three treaties. Also see: <http://articles.sfgate.com/2009-04-26/news/1719250_1_arcata-military-recruiting>

¹⁰ City of Berkeley. City Council. Resolution. July 7, 2008. See Appendix D and <http://www.cityofberkeley.info/ContentDisplay.aspx?id=13054>.

¹¹ Koh issued a memorandum for state governors that the U.S. is bound to implement U.N. human rights treaties at "federal, state, insular and local" levels, and U.N. treaty committees wish to ensure the treaty texts are publicized throughout the U.S. See Appendix E.

¹² In fact, the DOS writes up annual reports about the status of human rights in other nations, but not in the U.S.

¹³ See notes 7 and 9.