

The Energizing Effect of Enforcing a Human Rights Treaty

Ann Fagan Ginger

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THE ENERGIZING EFFECT OF ENFORCING A HUMAN RIGHTS TREATY

*Ann Fagan Ginger**

I.	SOME PROMISES TO KEEP	1342
	A. <i>Initial Assumptions</i>	1344
	B. <i>United Nations Enforcement Powers</i>	1345
II.	OBSTACLES AND RESPONSIBILITIES	1349
	A. <i>Obstacles to Enforcement</i>	1349
	B. <i>Economic Rights in U.S. Law Ignored</i>	1353
	C. <i>Treaty Power Ignored</i>	1355
	D. <i>What We Know We Cannot Ignore</i>	1356
III.	THE COMMITMENTS IN THE COVENANT	1358
IV.	THE PUBLICIZING REQUIREMENT	1361
V.	THE REPORTING AND MONITORING REQUIREMENTS ..	1363
VI.	THE BASIC REPORTING REQUIREMENT	1368
	A. <i>Core Document</i>	1368
	B. <i>Budgetary Considerations</i>	1371
VII.	THE REPORTING REQUIREMENTS ON SPECIFIC ARTICLES	1371
	A. <i>Rights of Children</i>	1372
	B. <i>Economic Rights</i>	1376
	C. <i>Effective Remedies for Police Misconduct</i>	1380
	D. <i>Minimizing Racism in Jury Trials</i>	1382
	E. <i>Right to Self-determination</i>	1383
VIII.	THE ROLE OF INDEPENDENT EXPERTS, STATES, NGOs, AND A PROJECT	1385

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A. <i>Independent Experts</i>	1385
B. <i>Human Rights Cities and States</i>	1386
C. <i>Participating NGOs</i>	1387
D. <i>A Human Rights Project</i>	1389
IX. AND MILES TO GO	1391
Appendix: Information Needed To Enforce All Rights in the International Covenant on Civil and Political Rights, and Index	

I. SOME PROMISES TO KEEP

We made some promises in 1992 when we signed our name on the dotted line. "We" are the government and the people of the United States, Indian reservations, District of Columbia, Puerto Rico, Guam, Palau, Virgin Islands, and other U.S. territories. The promises are spelled out in the International Covenant on Civil and Political Rights (Covenant or ICCPR),¹ which the U.S. government ratified and deposited with the United Nations.² The first steps in performing this Covenant should have been taken in preparing for its ratification,³ and they should have gotten seriously underway immediately following consent to ratify. The first deadline for performance of this Covenant was September 7, 1993.⁴ The overseers of our performance are the United Nations Committee on Human Rights,⁵ the United Nations Economic and Social Council,⁶ the United Nations General Assembly,⁷ and ultimately the people of the United

1. 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; adopted by the United States Sept. 8, 1992) [hereinafter ICCPR].

2. The U.S. Senate gave its consent to ratification on April 2, 1992. 138 CONG. REC. S4781-4784 (1992). The United States deposited its instrument of ratification at the U.N. on June 8, 1992. 31 I.L.M. 645, 645.

3. See Philip Alston, *The Purposes of Reporting*, in MANUAL ON HUMAN RIGHTS REPORTING at 13, U.N. Doc. HR/Pub/91/1, U.N. Sales No. E.91.xiv.1 (1991) [hereinafter MANUAL] (reviewing domestic law and practice "to ensure that it is in compliance with the obligations contained in the treaty"). The State Department section on Human Rights and Humanitarian Affairs indicates that such a review was made and it concluded that U.S. law already satisfied all of the rights in the Covenant. See *infra* note 169 and accompanying text.

4. The date of performance for the United States is one year after its effective date. ICCPR, *supra* note 1, art 40, 999 U.N.T.S. at 181.

5. See *id.* This Committee of individual experts is accountable to international experts in the relevant disciplines, not to the governments in power in their native countries, which differentiates it from the U.N. Human Rights Commission. See "Think Human Rights" — *the Framework is There . . .*, Ms., Mar./Apr. 1993, at 17, 17 (interview of Justice Elizabeth Evatt of Australia with Robin Morgan).

6. U.N. CHARTER arts. 61-72.

7. *Id.* arts. 9-20.

States and the world.

Although we carefully circumscribed our duties to *enforce* the human rights law in the Covenant, we did, unequivocally, undertake to *publicize, report on, and monitor* the enforcement, and failures of enforcement, of the rights in the Covenant.⁸ Publicizing, reporting, and monitoring may be considered straightforward administrative tasks, but we have certainly learned from preparing income tax and affirmative action reports that such tasks can assume enormous proportions. And they can involve passion as well, which cannot be omitted from a formal law review article on human rights, with more footnotes than poetry. The subject of enforcement conjures up a news photo of a whole row of women elected to the U.S. Senate, of innocent convicts compensated for false imprisonment, and of multicultural galas in public schools across the country. These images are partially overshadowed by the dead bodies and burned buildings of Los Angeles, by the thwarted lives of children of color, by glass ceilings, and by Death Rows.

This Article will leave to others to discuss flaws in the Covenant as written and as ratified (without its partner Covenant on Economic, Social and Cultural Rights⁹), and especially those problems created by the reservations attached by the president and the Senate, including the Senate's statement that the Covenant is not self-executing.¹⁰ This discussion will be limited to what threshold problems must be overcome in order to begin getting this law enforced; what forces were needed to get the job done on time; exactly what is required under the new law at this stage; and what rewards will accrue to those who participate in the work and to the nation as a whole.

Starting with some initial assumptions about law and some little known facts about the enforcement powers of the United Nations,

8. ICCPR, *supra* note 1, art. 40, 999 U.N.T.S. at 181-82. We also unequivocally made it possible for the United States to submit communications to the U.N. Human Rights Committee to the effect that another State Party to the Covenant that has agreed to be bound by Covenant article 41(1) is not fulfilling its obligations under this Covenant, as these other State Parties can submit communications about U.S. failures to fulfill its obligations. *Id.* art. 41(1), 999 U.N.T.S. at 182.

9. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), 6 I.L.M. 360 (1967) [hereinafter ICESCR].

10. SENATE COMM. ON FOREIGN RELATIONS, REPORT ON THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, S. EXEC. REP. NO. 23, 102 Cong., 2d Sess. 19 (1992), *reprinted in* 31 I.L.M. 645, 657 (1992).

we will look at the obstacles and responsibilities attaching to a treaty and what we know in 1993 that must be applied to the task of enforcing the ICCPR. We will consider the commitments in the Covenant to publicize and report on the rights spelled out in Articles 1 through 27 and Article 47, looking specifically at the rights of children, economic rights, and human rights that are not easily reported, including effective remedies for police misconduct, minimizing racism in jury trials, and the right to self-determination. In addition, we will discuss the responsibilities of federal government officials, lawyers, independent experts, local government officials, and nongovernmental organizations (NGOs) to enforce the Covenant, and will describe an innovative Civil Rights Accountability Project to advance the ICCPR.

All of these strands lead to the rope of conviction that words do matter; signing a treaty does matter; and enforcing the International Covenant on Civil and Political Rights will be a step toward the realization of *all* human rights (listed and indexed in the Appendix) for *all people* in this country, which, in turn, will be a step toward peace and development throughout the world.

A. Initial Assumptions

This discussion is based on several assumptions: (1) there is value in *enacting* human rights laws; (2) there is value in *publicizing* human rights laws; (3) there is value in *enforcing* human rights laws; (4) there is value even in enforcing a limited law like the ICCPR, ratified by the United States after 108 other nations had ratified it, signed by the United States with many reservations, and adopted as a non-self-executing document; (5) at any given moment, it may be more important to concentrate on enforcing this limited Covenant than in trying to pass additional strong laws (like the Convention on the Rights of the Child¹¹ and the Convention for the Elimination of All Forms of Discrimination Against Women¹²); but

11. Convention of the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. a/44/736 (1989) (entered into force Sept. 1990), *reprinted in* 28 I.L.M. 1448 (1989).

12. Convention for the Elimination of all Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 14 (entered into force Sept. 3, 1981). During the World Conference on Human Rights in Vienna, U.S. Secretary of State Warren Christopher announced that President Bill Clinton plans to seek Senate consent to treaties signed by President Jimmy Carter, including this Convention on the rights of women; the International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660

(6) failure to pass the other covenants and conventions puts more pressure on the United States to do an effective job of publicizing, reporting, monitoring, and enforcing the Covenant it has finally ratified.

Since there is no way at this time to prove these theses, this Article will simply describe how one such law can be enforced, trusting that in the course of discussion, some new insights may emerge supporting (or disproving) these theses.

Certainly, history teaches us that people *do* somehow learn about the strong language in new laws.¹³ People *do* yearn for enforcement of laws against inequality and injustice when violations are brought to their attention in a clear and direct manner. People finally *will* demand, and they will march to see that promises are kept, that human rights laws are enforced, even at the risk of being imprisoned or dying in the attempt.¹⁴ And, when they are good and ready, they will use their precious power at the polls to hold their officials accountable.

B. United Nations Enforcement Powers

The International Covenant on Civil and Political Rights is one of two basic treaties on human rights prepared by the United Nations to spell out the human rights guarantees that appear in Articles 55 and 56 of the U.N. Charter. The other basic treaty is the International Covenant on Economic, Social and Cultural Rights.¹⁵ The U.N. Human Rights Committee is the organ of independent inter-

U.N.T.S. 195 (entered into force Jan. 4, 1969); ICESCR, *supra* note 9; and the American Convention on Human Rights, O.A.S.T.S. No. 36; Official Records, O.E.A./Ser. K/XVI/1.1, Doc. 65, Rev. 1, Corr. 1 (1970); and to complete U.S. ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by United Nations Dec. 10, 1984, 23 I.L.M. 1027, modified in 24 I.L.M. 535 (entered into force June 26, 1987). Christopher did not mention ratification of the Optional Protocol, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) 59, U.N. Doc A/6316 (1967). Jim Lobe, *Human Rights: Christopher Speaks of 'Moral Imperative,'* June 17, 1993, new @ desks igc.apc.org. in igc.ips. english.

13. The Emancipation Proclamation language was known throughout the South by thousands of people who understood every word instantly, although they could not read because state laws made it a crime to teach slaves to read.

14. See ANN FAGAN GINGER, CAROL WEISS KING: HUMAN RIGHTS LAWYER, 1895-1952, at 114-252 (1993) (recording the struggle for human rights and the deaths in the 1930s). For the 1960s civil rights movement, see books about Martin Luther King, Jr. and other civil rights leaders and activists, Fred Hampton, Malcolm X, James Dombrowski, Fannie Lou Hamer, the Student NonViolent Coordinating Committee, Mississippi Summer, Mississippi Freedom Democratic Party, the Albany Movement, the Black Panthers, etc.

15. ICESCR, *supra* note 9.

national experts established by the United Nations to administer these two Covenants and the Optional Protocol to the ICCPR.¹⁶ It has set high standards in the consideration of country reports regarding the enforcement of the covenants within the U.N. system.¹⁷

The ICCPR requirement that each signatory nation prepare an accurate and comprehensive report on its human rights guarantees and how they are publicized and enforced in practice is parallel to similar reporting requirements in arms control and other treaties drafted by the United Nations and its agencies.¹⁸ Lacking the power to tax and a standing army to enforce its decisions, the United Nations uses the publicizing and reporting requirements¹⁹ and the mobilization of shame to carry out its mandates,²⁰ and it has been remarkably successful.²¹

In fact, the U.N. system is the most successful effort in the history of the world to bring all nations together to work on the world's most common problems. The United Nations has been in operation for almost fifty years, longer than any other body which has included representatives from all major nations and conflicting blocs. The United Nations has as its members almost one-hundred percent of the nations of the world, and it maintains relationships with those nations that are not formal members.²² The United Nations has virtually succeeded in its goal of ending direct imperial control of colonies and trust territories.²³ The United Nations has drafted and passed treaties on the most important problems of the world, and it has obtained the signatures of many nations on these treaties,²⁴ even

16. ICCPR, *supra* note 1, arts. 28-45, 999 U.N.T.S. at 179.

17. See text after note 137.

18. See NOTBURGEE K. GOLLER-CALVO, *THE SALT AGREEMENTS: CONTENT, APPLICATION, VERIFICATION* (1987); see, e.g., Union of Soviet Socialist Republics-United States: Treaty on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, 27 I.L.M. 84 (1988).

19. "Reporting is at the heart of the international supervision of the domestic implementation of treaty obligations. A crucial element for the proper functioning of the process is the submission of timely and comprehensive reports by States parties." *U.N. Centre for Human Rights and U.N. Institute for Training and Research (UNITAR), MANUAL, supra* note 3, at xi.

20. See Frank Newman, *The Mobilization of Shame*, in *PEACE LAW ALMANAC* 24 (Ann Fagan Ginger ed., 1991).

21. See SENATE COMM. ON FOREIGN RELATIONS, *supra* note 10, at 3, *reprinted in* 31 I.L.M. at 649.

22. U.N. CHARTER arts. 4; 11, ¶ 2; 50.

23. *Id.* arts. 1, ¶ 2; 2, ¶ 1; 73; see also *infra* note 249.

24. E.g., Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, (1963) 14 U.S.T. 1313, 480 U.N.T.S. 43 (1963); Treaty on the Non-Proliferation of Nuclear Weapons, (1968) 21 U.S.T. 483, 729 U.N.T.S. 161 (1968); International Convention Against the Taking of Hostages, G.A. Res. 146 (xxxiv 1979), 74 A.J.I.L. 277 (Jan. 1980), 18

as it undertakes to write additional treaties tightening up on language and expanding coverage.²⁵ These treaties all contain provisions for the enforcement and monitoring of the principles stated, and for the calling of conferences after a stated number of years to determine how the signatories can improve the functioning of the treaty power.²⁶

The United Nations has dispatched U.N. peace-keeping forces to several areas of the world and to date, none of them has gotten into a major world war.²⁷ The United Nations has established commissions and committees and has sent rapporteurs to study, discuss, and consider virtually every problem faced by any people (or animal or plant or solar body), insisting on the linkage between human rights, development, and peace.²⁸ The United Nations operates a court to settle disputes between nations on the basis of law rather than military might.²⁹ The U.N. Charter requirement that member nations seek to settle their disputes in their region³⁰ has encouraged the efforts of the Organization of American States (OAS) and was the basis for the Arias Peace Proposal,³¹ which is proving to be one of the most successful efforts at settling long-standing disputes and wars, within and among five Central American countries, as it is slowly playing itself out at the side of the world's stage.³²

I.L.M. 1456 (1979); International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1970), 26 U.S.T. 765 (1970), and human rights treaties mentioned elsewhere in this Article.

25. It is working on an arms trade treaty to supplement its arms testing, arms use, and arms storing treaties.

26. See, e.g., Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, (1971) art. VII, 23 U.S.T. 701, 10 I.L.M. 146, 149 (1971).

27. See 1988 Nobel Peace Prize Awarded to U.N. Peace Keeping Forces: *The Quest for Peace . . . A Universal Undertaking*, U.N. MONTHLY CHRON., Dec. 1988, at 4, 9. This is not to say that U.N. peacekeeping forces were successful in each of their missions or that they did not participate in regional wars.

28. The breadth of coverage, and the interconnections, are exemplified in a new periodical of the U.N. Development Programme, *Choices*, with articles in the first issue discussing: reconstruction in Cambodia, saving the ozone layer, women as peacemakers, the cost of the AIDS syndrome, freedom of the press in Africa, reconsidering human development, Peru's fight against cholera, and Mongolia's road to reform, *Choices: The Human Development Magazine*, U.N. MONTHLY CHRON., June 1992, at 77.

29. U.N. CHARTER arts. 92-95 (referring to the International Court of Justice).

30. *Id.* 33, ¶ 1.

31. *Text of Agreement by 5 Central American Leaders on Peace in the Region*, N.Y. TIMES, Aug. 12, 1987, § A, at 8.

32. A democratic election was held in Nicaragua and power changed hands peacefully. People have laid down their arms in Nicaragua and El Salvador. People have returned to Guatemala after years in exile.

The United Nations has established the principle that all people are entitled to freedom and to a survivable standard of living.³³

As the Charter puts it, the promotion and encouragement of respect for human rights and fundamental freedoms is an undertaking to be carried out *for all*. For too long human rights were, by and large, the attributes of privileged people. They represented an exclusive notion. Most people of colored³⁴ skin, female sex, non-christian faith, or foreign stock were excluded from and deprived of the enjoyment of many human rights. As a matter of principle, the Charter brings all human beings within the scope of human rights³⁵

The United Nations has also established the principle that people, like nations, are individually responsible not to infringe on the rights and survival of others.³⁶ The U.N. Human Rights Committee "has established an impressive record and has become an important element in the U.N. human rights system."³⁷ It has constantly drawn attention to "the close link between human rights, in particular the right to life, and the prevention of war," which takes "the lives of thousands of innocent human beings every year."³⁸

The United Nations has demonstrably improved the health, education, and welfare of many of the children of the world.³⁹ The

33. U.N. CHARTER arts. 55, 56; ICCPR, *supra* note 1, art. 6(1), 999 U.N.T.S. at 174 (right to life).

34. In this Article, the U.S. spelling of "color" and "labor" makes the document *look* North American, which it does not when the English spelling is used.

35. Theo Van Boven, *The International System of Human Rights: An Overview*, in MANUAL, *supra* note 3, at 3.

36. ICCPR, *supra* note 1, art. 5(1), 999 U.N.T.S. at 174; Universal Declaration of Human Rights, art. 29(1), G.A. Res. 217A, U.N. GAOR 3d Sess., Supp. No. 1, at 135, U.N. Doc. A/810 (1948); Resolution (affirming principles recognized by the Charter of the Nuremberg Tribunal), G.A. Res. 95(1), 188 U.N. Doc. A/64/Add. 1 (1946), 1950 U.N.Y.B. 852-57, *reprinted* in EDMUND JAN OSMANCZYK, *ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS* 64 (2d ed. 199) [hereinafter *Nuremberg Principles*].

37. SENATE COMM. ON FOREIGN RELATIONS, *supra* note 10, at 3, *reprinted* in 31 I.L.M. at 649.

38. Van Boven, *supra* note 35, at 5. This close link is one factor leading to establishment of the Commission on Arms Control Education supported by the International Association of University Presidents and the United Nations. The new Commission has undertaken eight projects to develop courses for professional schools and colleges on the relationship between arms control and the other subjects. For example, in medical schools, a module on biological weapons might be used in the microbiology course, while in schools of education, a module on peace culture might be developed for elementary and secondary teachers. Press release, International Association of University Presidents United Nations Commission Launches Global Program for Arms Control Education (Dec. 10, 1992) (on file with the Meiklejohn Institute).

39. *See generally Health for All by the Year 2000*, U.N. MONTHLY CHRON., Sept. 1992, 43-58; *see also* COLE P. DODGE & MAGNE RAUNDALEN, *REACHING CHILDREN IN WAR: SUDAN, UGANDA AND MOZAMBIQUE* (1991); *WHO: What It Is, What It Does*, U.N. CHRON., *supra*, at 47; *Immunization: A "World War" Against Childhood Diseases*, *id.* at 48.

United Nations has given life and renewed hope to millions of women and has afforded an opportunity for economic development to thousands.⁴⁰ It has saved the lives of virtually millions of refugees from political, economic, military, and natural disasters.⁴¹

The United Nations' greatest failure may be its inability, until very recently, to get accurate media coverage of the breadth and strength of its work in facing its gravest threats — nuclear weapons and ecological disaster — while receiving excellent coverage of its many failures.⁴²

II. OBSTACLES AND RESPONSIBILITIES

The United Nations' accomplishments and failures, and our own domestic problems, compel us to carry out our responsibilities under the latest U.N. treaty to become part of U.S. law.

A. Obstacles to Enforcement

Many obstacles stand in the way of the enforcement of the ICCPR that must be faced before we can begin our task. Government officials and all people in the United States are saturated with the U.S. constitutional system. We are proud that our officials swear to uphold the Constitution and the laws of the United States⁴³ and do not swear allegiance to a king, religious leader, or general, as do officials in other nations to this day. We are proud that the people are supposed to select our governmental leaders and that we have taken the time to amend the Constitution twenty-six times in 206 years. We boast about our rights to freedom of expression and religion, affirmative guarantees of negative rights, *i.e.*, that: "Congress

40. See *Women's Commission: Action for Equality, Development, Peace*, U.N. MONTHLY CHRON., June 1992, at 76 (discussing the meeting of Commission on the Status of Women held on March 11-20, 1992); *Women's Health: Tragedy of Gender*, U.N. MONTHLY CHRON., Sept. 1992, at 57 (promoting the Safe Motherhood Initiative).

41. See *Down to Basics: Food, Water, Sanitation*, U.N. MONTHLY CHRON., Sept. 1992, at 56 (discussing winning the war against dracunculiasis); *A Look Back: U.N. Decade of the Disabled (1983-1992)*, U.N. MONTHLY CHRON., Sept. 1992, at 76.

42. Since the failures of the United Nations are obvious and frequently chronicled, they will not be repeated here. See Ernst B. Haas, *Regime Decay: Conflict Management and International Organizations, 1945-1981*, 37 INT'L ORG. 189 (1983); Jonathan Winkelfeld & Michael Brecher, *International Crises, 1945-1975: The UN Dimension*, INT'L STUDIES Q. 28, Mar. 1984, at 45; see also Mark W. Zacher, *The United Nations and International Crises and War*, in INTERNATIONAL CONFLICTS AND COLLECTIVE SECURITY, 1946-77 (1979) (describing the U.N. Security System).

43. U.S. CONST. art. 2, § 1, cl. 8.

shall make no law . . . abridging . . .” these rights.⁴⁴ We boast about our rights to counsel,⁴⁵ bail,⁴⁶ jury trial,⁴⁷ and due process,⁴⁸ affirmative guarantees of an affirmative right, *i.e.*, to have the government provide a fair procedure in deciding questions “of life, liberty, or property,”⁴⁹ We boast about our civil rights, affirmative guarantees of an affirmative right, *i.e.*, to have the government protect the individual on an equal basis, providing “the equal protection of the laws.”⁵⁰

Some of us boast about Cordell Hull’s contributions to the founding of the United Nations⁵¹ and about Eleanor Roosevelt⁵² and the contributions she and other U.S. leaders and lawyers have made to the enumeration of human rights in the Universal Declaration of Human Rights.⁵³ We applaud U.S. policy not to give foreign assistance to countries guilty of “gross violations of internationally recognized human rights”⁵⁴ and study with interest the annual reports by our State Department on the status of human rights in every other country.⁵⁵

But when we travel outside the United States, we learn that the best of us have blind spots not shared by our counterparts in countries that experienced the destruction and fascism of Hitler, Mussolini, and Tojo in World War II first hand. We may have helped write the U.N. Charter. The Senate may have debated its provisions and consented to its ratification by an overwhelming vote (89-2) in 1945.⁵⁶ We may have helped draft the London Agreement and Charter, and the president may have signed it as an executive agree-

44. U.S. CONST. amend. I.

45. U.S. CONST. amend. VI.

46. U.S. CONST. amend. VIII.

47. U.S. CONST. amends. VI, VII.

48. U.S. CONST. amend. V.; *see* U.S. CONST. amend. XIV.

49. U.S. CONST. amend. V.

50. U.S. CONST. amend. XIV.

51. *See Biography of Cordell Hull*, in 3 ENCYCLOPEDIA OF AMERICAN FOREIGN POLICY, at 1046 (Alexander De Conde ed., 1978).

52. For a biography of Eleanor Roosevelt, *see* BLANCHE WIESEN-COOK, ELEANOR ROOSEVELT (1992).

53. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR 3d Sess., Supp. No. 1, at 135, U.N. Doc. A/810 (1948).

54. 22 U.S.C. § 2304(a)(2) (1988) (“[N]o security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.”).

55. These reports are issued under 22 U.S.C. § 2151(n)(d).

56. 91 CONG. REC. 8190 (1945) (statement of the president *pro tempore*) (stating that the Senate voted to consent to ratification on July 28, 1945).

ment⁵⁷ and convinced the U.N. General Assembly to adopt the Nuremberg Principles as part of basic international law.⁵⁸ We may have even convicted Lieutenant Calley for violating these Principles during the Vietnam war.⁵⁹

But very few U.S. government officials, lawyers, legal scholars, law professors, judges, or legal activists have integrated into their basic thought patterns about law and government the concepts at the heart of the U.N. Charter, Nuremberg Principles, and Universal Declaration that are not also in the U.S. Constitution and Bill of Rights. Very few have absorbed the idea that each individual in society has certain legal duties to the community to "recogni[ze] and respect . . . the rights and freedoms of others and [to meet] the just requirements of morality, public order and the general welfare in a democratic society,"⁶⁰ duties set forth explicitly in the Universal Declaration of Human Rights.⁶¹ Few of us practice or teach that each of us has the legal duty not to commit war crimes,⁶² crimes against peace,⁶³ and crimes against humanity,⁶⁴ and not to be complicit in the commission of such crimes⁶⁵ even if acting pursuant to orders of a superior.⁶⁶ Those few activists who have absorbed Nuremberg Principles and live by them prove stalwart as they teach their lawyers this basic law and testify clearly in court about their commitment to these principles.⁶⁷

Although U.S. officials sat on the International Military Tribunal that tried the war criminals at Nuremberg,⁶⁸ this has not translated into a deep understanding that "whenever peaceful relations between human beings, groups of persons, peoples and nations are

57. Charter of the International Military Tribunal, Aug. 8, 1945, 59 Stat. 1546.

58. Nuremberg Principles, *supra* note 36, at 852-57.

59. Calley v. Callaway, 519 F.2d 184 (5th Cir. 1975) (upholding a court martial conviction for the massacre of Vietnamese civilians at My Lai).

60. Universal Declaration of Human Rights, *supra* note 53, art. 29(2).

61. *Id.*

62. Nuremberg Principles, *supra* note 36, princ. VI(b).

63. *Id.* princ. VI(a).

64. *Id.* princ. VI(c).

65. *Id.* princ. VII.

66. *Id.* princ. IV.

67. For example, see California v. Barr, Nos. 5151-6401 (Livermore-Pleasanton Mun. Ct., Alameda County, Cal., J. Dist. 1983), *digested in* ANN FAGAN GINGER, HUMAN RIGHTS AND PEACE LAW DOCKET 1945-1991, at PL-3/86 (1992) [hereinafter DOCKET], for which the author was co-counsel, and West Valley v. Hirshi, No. 891003031-3 (Salt Lake County, Utah, Cir. Ct. 1990), *digested in* DOCKET, *supra*, at PL-400/77, in which the author testified as an expert witness. See also Peace Law Packet: Nuremberg Defense (Meiklejohn Institute 1991).

68. United States v. Goering, 6 F.R.D. 69, 73-74 (1946).

threatened, human rights tend to be jeopardized. Wars and armed conflicts cause per se flagrant and massive violations of human rights."⁶⁹ Participation in the Nuremberg trials has not led us to think about the *collective* human rights protected in U.N. law: the freedom to manifest religion or belief (which can be exercised either individually or in community with others); the rights of the family and trade union freedoms; or the rights of large collectives, including the rights of minorities, and "peoples' rights [which include] the right to self-determination, . . . to development, . . . to peace and security, and the right to a healthy environment."⁷⁰

Participation in the Military Tribunals after World War II has not led us to absorb the difference between "shall not deny" civil liberties,⁷¹ on one hand, and shall provide due process and equal protection and "shall promote" human rights,⁷² on the other hand. It has not committed the majority of us to the broadening of law that has occurred since 1945, although leading lawyers and activists from the African-American, Native American, Latino American, and poverty communities related to the United Nations early, learned U.N. law and frequently use it on behalf of their communities on appropriate issues.⁷³ Most of us still need to move our minds from our eighteenth-century U.S. Constitution to the world's twentieth-century U.N. Charter.

Even as to our own Constitution, few of us recall that the Supreme Court did not seriously consider a claim of free speech until after World War I,⁷⁴ 128 years after the First Amendment became law, and even in that case, reliance on the amendment was rejected by the Court. It took from 1868 until 1925 for the Supreme Court to rule that the Fourteenth Amendment protection of life, liberty, and property against state attacks included attacks on the rights set forth in the First Amendment.⁷⁵ The first time a statute was over-

69. Van Boven, *supra* note 35, at 5.

70. *Id.*

71. See *supra* note 44 and accompanying text.

72. U.N. CHARTER art. 55.

73. See generally LENNOX HINDS, ILLUSIONS OF JUSTICE: HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES (1978); *Human Rights of Minorities: Modern Forms of Slavery are "Great Scandal,"* U.N. MONTHLY CHRON., Dec. 1992, at 72 (discussing various aspects of the International Year for the World's Indigenous Peoples); Constance de la Vega, *Using International Human Rights Law in Legal Services Cases*, 22 CLEARINGHOUSE REV. 1242 (1989).

74. See *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

75. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

turned for violating the First Amendment was 1931.⁷⁶ And it was 1953 before the Supreme Court upheld the conviction of a large Washington, D.C. department store for discriminating against "Negro" customers in violation of the acts of 1872 and 1873 passed by the Legislative Assembly of the District of Columbia.⁷⁷ It was 1968 before the Supreme Court upheld a challenge to the practice of refusing to sell a home to a "Negro" under the law passed in 1866.⁷⁸

This history teaches that we have no reason to assume that the Human Rights Articles 55 and 56 of the U.N. Charter and the Nuremberg Principles have no meaning and are unenforceable because they have gotten short shrift from U.S. courts, administrators, legislators, and the media in their first forty-eight years. We must not assume that the Universal Declaration of Human Rights and its progeny, the two covenants, are mere wishful thinking with no enforcement powers.

B. *Economic Rights in U.S. Law Ignored*

More and more people in the government and in the legal profession in the United States today accept the idea that freedom and bread are inextricably connected, that the right to vote is not likely to be exercised by someone without a home, and that no one is safe or secure in the midst of massive unemployment. Yet the latest constitutional law casebooks do not discuss people's "economic rights," only economic regulation. Since the end of the New Deal, lawyers have not spent much time analyzing the major economic rights inherent in three nineteenth- and twentieth-century amendments: the right not to work without pay as a slave in the Thirteenth;⁷⁹ the right to a (progressive) tax on the income of the rich in the Sixteenth;⁸⁰ and the right to vote without having to pay a poll tax in

76. *Stromberg v. California*, 283 U.S. 359 (1931) (holding unconstitutional a California statute prohibiting the display of a red flag in a public place).

77. *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100 (1953); see Marvin Caplan, *Eat Anywhere*, in 1 WASHINGTON HISTORY 25 (Washington Historical Soc'y ed., 1989). The clause was left out of the District of Columbia Code when it was revised in 1878 (without comment and perhaps accidentally).

78. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 422 (1968) (upholding 42 U.S.C. § 1982 (1988)).

79. "Neither slavery nor involuntary servitude . . . shall exist within the United States, or any place subject to their jurisdiction." U.S. CONST. amend. 13. This carries the correlative power of government to confiscate "property" (in slave ownerships) without compensation.

80. "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived . . ." *Id.* amend. 16.

the Twenty-fourth.⁸¹

Few of us have thought much about the series of Supreme Court decisions on the constitutionality of statutes seeking to protect the economic rights of workers, women, and children in the past century. We have not focused on how long it took for Congress and the Supreme Court to uphold the right to form a labor union, to picket peacefully, and to go on strike.⁸² We have not contrasted the unwillingness of the Supreme Court to uphold a state law protecting the rights of (male) bakers not to have to work all night⁸³ with its willingness to uphold an order of the Interstate Commerce Commission raising railroad rates to increase profits.⁸⁴ We have not talked much about the failed effort to protect children from child labor, first by statute, which the Court declared unconstitutional,⁸⁵ and then by constitutional amendment, which never could summon enough state legislative votes to pass.⁸⁶ During the later Burger Court and recent Rehnquist Court years, it has not been popular to remember that the Court has upheld many economic rights.⁸⁷ The Court upheld a Washington State wage-and-hour regulation for women workers under the Fourteenth Amendment;⁸⁸ held that due process attaches to Aid to Families with Dependent Children (AFDC)⁸⁹; held that residency requirements on indigents deny their right to travel;⁹⁰ and held that Congress cannot deny food stamps or family assistance benefits in violation of the Fifth Amendment.⁹¹

81. "The right of citizens of the United States to vote in any . . . election for President . . . shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." *Id.* amend. 24.

82. *See, e.g.*, *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921) (holding that a union boycott of businesses dealing with a nonunion manufacturer violated antitrust laws); *Coppage v. Kansas*, 236 U.S. 1 (1915) (striking down on due process grounds a state law prohibiting the firing of employees for union membership). Finally, peaceful picketing was upheld in *Thornhill v. Alabama*, 310 U.S. 88 (1940).

83. *Lochner v. New York*, 198 U.S. 45, 53 (1905).

84. *Railroad Comm'n v. Chicago, B. & Q. R.R.*, 257 U.S. 563 (1922).

85. *Hammer v. Dagenhart*, 247 U.S. 251 (1918).

86. GERALD GUNTHER, *CASES AND MATERIALS ON CONSTITUTIONAL LAW* 140 (10th ed. 1980).

87. *See generally* ArLynn Leiber Presser, *Thinking Positive: Do We Need More Rights?*, A.B.A. J., Aug. 1991, at 56.

88. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

89. *Goldberg v. Kelly*, 397 U.S. 254, 261 (1970).

90. *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

91. *United States Dep't of Agric. v. Murry*, 413 U.S. 508 (1973); *United States Dep't. of Agric. v. Moreno*, 413 U.S. 619 (1973); *New Jersey Welfare Rights Org. v. Cahill*, 411 U.S. 619 (1973).

C. Treaty Power Ignored

Few in the United States have taken the treaty power very seriously as a limitation on what we can do after we sign a treaty, as well as a limitation we can impose on other nations after they sign. As a result of our oceans, and our power relationships with our peaceful northern and southern neighbors, few of us have absorbed the fact that we are in range of modern missiles and the cataclysmic fact that we would perish in a nuclear winter after a nuclear exchange. We have been slow to learn the legal rule that the U.S. government and its people are bound by the signature of our president on a treaty even without its being sent to the Senate for its consent.⁹² Few of us have absorbed the legal rule that the U.S. government and its people are not free to violate the terms of a treaty that has been signed by the president and consented to by the Senate merely because the Senate or the Supreme Court announce that the treaty, or some part of the treaty, is not "self-executing" and cannot be enforced in court until the House and Senate pass legislation to execute it.⁹³

None of us have even been required to read the U.N. Charter, the Nuremberg Principles, or any U.N. treaty in order to graduate from law school. None of us have had to master the structure of the Security Council, General Assembly, Economic and Social Council, Secretariat, Trusteeship Council, and International Court of Justice in order to pass the bar examination. We have not had to bone up on what powers each organ has, and how they differ from our U.S. legislative, executive, and judicial branches. We have not had to consider the relationship between the U.S. Department of Defense⁹⁴ and the U.N. Military Staff Committee.⁹⁵

Indeed, few of us who work for the government or were trained as

92. The most famous examples of enforcement of this law are the U.S. observance of the SALT II treaty (signed by President Carter but never consented to by the U.S. Senate), the Treaty on the Limitation of Strategic Offensive Arms, June 18, 1979, U.S.-U.S.S.R., reprinted in U.S. ARMS CONTROL AND DISARMAMENT AGENCY, DOCUMENTS ON DISARMAMENT 1979, at 189, and the continued observance of the SALT I treaty of 1972 after the date of its termination, October 3, 1977, Interim Agreement on the Limitation of Strategic Offensive Arms, U.S.-U.S.S.R., May 26, 1972, 23 U.S.T. 3462, T.I.A.S. No. 7504, reprinted in 11 I.L.M. 791 (1972).

93. See Ann Fagan Ginger, *Enforcing the Hidden U.S. Equal Rights Law*, 20 GOLDEN GATE U. L. REV. 385, 452-58 (1990).

94. Not mentioned in the U.S. Constitution.

95. See U.N. CHARTER arts. 46-47 (establishing the U.N. Military Staff Committee); see also *supra* note 38 (regarding the U.N. Task Force on improving graduate school coverage of U.N. law.)

lawyers are aware that President Jimmy Carter signed⁹⁶ the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights⁹⁷ in 1977 after passage without dissent by the U.N. General Assembly in 1966. Neither the Senate nor the U.S. media has mentioned that on April 2, 1992, the U.S. Senate (by the required two-thirds vote of those present) consented to ratification of the Covenant,⁹⁸ which contains some economic, social, and cultural rights⁹⁹ that are basic to the second covenant. None of the media mentioned that on June 8, 1992, President George Bush had this treaty deposited at the United Nations, making its effective date three months later, on September 8, 1992.¹⁰⁰ To date no high (or low) federal government official has "publicized" the Covenant in order to familiarize the authorities responsible for human rights enforcement with the content of the Covenant.¹⁰¹

D. *What We Know We Cannot Ignore*

We cannot, as government officials and as officers of the court, forget what we know as human beings. This is 1993. After the events in Los Angeles and across the nation in 1992 arising out of the acquittal of clearly guilty police officers in the Rodney King race beating case,¹⁰² we must constantly keep in mind that people of many colors believe in the promises in the Thirteenth, Fourteenth, and Fifteenth Amendments. And these people are very, very angry when they see, once again, that these promises have not been kept;

96. SENATE COMM. ON FOREIGN RELATIONS, *supra* note 10, at 2, *reprinted in* 31 I.L.M. at 649.

97. See ICESCR, *supra* note 9, 993 U.N.T.S. at 3.

98. 138 CONG. REC. S4781, 4783 (daily ed. Apr. 2, 1992).

99. Both 1966 Covenants mention the inter-relationship between the two types of rights, and the ICCPR specifically includes the economic rights discussed in the text *infra* at note 209. It is instructive to study the 1990 contents of A Bill of Rights for A New South Africa, a working document by the African National Congress Constitutional Committee, which include: Personal Rights; Political Rights; Freedom of Speech, Assembly and Information; Rights of Association, Religion, Language and Culture; Workers' Rights; Gender Rights; Disabled Persons; Children; Social, Educational, Economic, and Welfare Rights; Economy, Land and Property; Environmental Rights; Affirmative Action; Positive Action; Limitations; and Enforcements, *reprinted in* 27 NEW ENG. L. REV 287, 305 (1992).

100. 31 I.L.M. 645, 645 (1992).

101. Such publication is required by U.N. International Human Rights Instruments, COMPILATION OF GENERAL COMMENTS AND GENERAL RECOMMENDATIONS, adopted by Human Rights Treaty Body, HRI/GEN/1, at 3 (1992), GE.92-17392/4899B (E).

102. Eva Patterson, *Can't We Just Get Along?*, CAL. LAW., Aug. 1992, at 51 (reflecting on 150 years of legal racism in California).

due process has been denied openly and brazenly, in full view of the television audience. The people were angry enough to rise up in their communities, to burn down buildings where they shop and work.¹⁰³ We know that people of color in the United States demand that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."¹⁰⁴

We cannot forget that women hunger for and increasingly demand "the equal right of men and women to the enjoyment of all civil and political rights."¹⁰⁵ In 1993, we cannot forget the Anita Hill/Clarence Thomas hearings, the many women candidates for public office in the 1992 election, the inability to pass the Equal Rights Amendment, and the threats to the right to choose whether to have an abortion. In 1993, the International Year of the World's Indigenous Peoples, we cannot forget the successful efforts of Native American people in the United States to raise our consciousness about the genocide committed by the U.S. government against every tribe living within the borders we call "ours."¹⁰⁶ In 1993, after the surge in voting by young adults and their increasingly vocal demands for the right to get a job at a living wage in the civilian economy, we cannot ignore that "[e]very Human being has the inherent right to life."¹⁰⁷

This backdrop of law, history, attitudes, habits, and facts leads us to consider the responsibility of the United States "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, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹⁰⁸ This Article focuses on the immediate responsibilities of government officials, the legal profession, and human rights activists arising from U.S. ratification of the ICCPR.

103. Gerald Horne, *Hell in the City of Angels: 1965 and 1992*, 49 NAT'L LAW. GUILD PRACT. 65 (1992) (examining present-day racial unrest in a historical context).

104. ICCPR, *supra* note 1, art. 10(1), 999 U.N.T.S. at 176.

105. *Id.* art. 3, 999 U.N.T.S. at 174.

106. *See infra* note 245 and accompanying text.

107. ICCPR, *supra* note 1, art. 6(1), 999 U.N.T.S. at 174.

108. *Id.* art. 2.1, 999 U.N.T.S. at 174. *See supra* note 44 and accompanying text for a comparison with negative protections in the U.S. Bill of Rights.

III. THE COMMITMENTS IN THE COVENANT

By ratifying the International Covenant on Civil and Political Rights, the United States made a commitment "to respect and to ensure"¹⁰⁹ civil and political rights summarized as:

the rights pertaining to the life, integrity, liberty and security of the human person; the rights with respect to the administration of justice; the right to privacy; the rights to freedom of religion or belief and to freedom of opinion and expression; freedom of movement; the right to assembly and association; and the right to political participation.¹¹⁰

By ratifying the ICCPR, the United States made a commitment to international implementation procedures in the field of human rights, although the commitment was limited by reservations, etc.¹¹¹ These procedures serve a number of purposes, according to the U.N. Centre for Human Rights and the U.N. Institute for Training and Research (UNITAR).

Some procedures may help States¹¹² concerned better to devise national policies aimed at the realization of human rights. Such procedures have an *advisory* function. [Other] procedures that may trigger . . . international action with a view to render material or other forms of assistance to States . . . have an *assistance* function. . . . [O]ther procedures . . . focus on non-compliance with international standards . . . [which have a] *corrective* function [and] a *relief or remedy* function. Most of these procedures have in common that they may prevent certain situations from deteriorating . . . the *preventive* function Much of the effectiveness of these procedures depends on the quality and the expertise of the control mechanisms and on the degree of political will [of the nations] to cooperate in good faith with the mechanisms of international supervision.

The type of supervisory procedure most commonly applied and accepted is the *reporting* system [which] can be considered a *regular supervisory* system. It is mainly noncontentious in nature and based on the method of dialogue.¹¹³

The ICCPR imposes five basic duties on all ratifying countries related to reporting: (1) to "publicize" the Covenant and take steps "to familiarize the authorities concerned with its content as part of their training;"¹¹⁴ (2) to make an accurate first report to the U.N.

109. These are the general rights "counted" in the *Manual* to distinguish them from economic, social, and cultural rights. See Van Boven, *supra* note 35, at 4.

110. *Id.*

111. See *supra* note 10 and accompanying text.

112. States, in this article, are nation-states (i.e., State Parties to a Covenant).

113. Van Boven, *supra* note 35, at 8.

114. See note 101.

Committee on Human Rights on the progress made in the enforcement of these rights by all those concerned within one year;¹¹⁵ (3) to describe the factors and difficulties affecting the implementation of the rights in the Covenant;¹¹⁶ (4) to send knowledgeable representatives to attend the open public Committee meetings considering the report in order to answer questions and to submit additional information as requested;¹¹⁷ and (5) to participate in constructive dialogue with the Committee members and undertake adequate follow-up activities and monitoring within their countries, and to prepare supplemental reports at five-year intervals.¹¹⁸ The basic duty is "to give effect to the rights recognized in the present Covenant."¹¹⁹

These are treaty-based control mechanisms which are only operative as to signatory States who, by ratifying the treaties, "*ipso facto* [agree] . . . to co-operate in good faith with the . . . control mechanisms" defined in the treaties, mechanisms "clearly founded on a legal basis" and having "a permanent character."¹²⁰

Carrying out these five treaty-based responsibilities provides an excellent opportunity to give effect to human rights in the United States today,¹²¹ as collection and publication of reports on the discrimination and segregation in the public schools in the South, North, and West led to the beginning of the end to "separate but equal" education forty years ago, first *de jure*, then *de facto*.¹²² The campaign for equal, integrated, public education sparked the whole civil rights movement, opening the way for the succession of human rights movements of the 1970s and 1980s: for peace, women's

115. ICCPR, *supra* note 1, art. 40, 999 U.N.T.S. at 181-82.

116. *Id.* art. 40(2), 999 U.N.T.S. at 181-82.

117. Fausto Pocar, *The International Covenant on Civil and Political Rights*, in *MANUAL*, *supra* note 3, at 79, 121.

118. Fausto Pocar & Cecil Bernard, *National Reports: Their Submission to Expert Bodies and Follow-Up*, in *MANUAL*, *supra* note 3, at 25, 27.

119. Pocar, *supra* note 117, at 84, 121; see ICCPR, *supra* note 1, arts. 2(2), 2(1), 40, 999 U.N.T.S. at 173-74, 173, 181-82.

120. Van Boven, *supra* note 35, at 9. They are distinguished from charter-based control mechanisms, which arise under the U.N. Charter and form what might be considered the common law of international law.

121. Additional responsibilities will flow from the United States taking the next step: execution of the treaty, which requires the House and Senate to pass and the president to sign an additional statute making the treaty enforceable in U.S. courts, steps already taken by Congress and the president as to the Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260A, U.N. GAOR, 3d Sess., Supp. No. 1, at 174, U.N. Doc. A/810 (1948), through the Genocide Convention Implementation Act, 18 U.S.C. §§ 1091-1093 (1988).

122. See the studies provided by plaintiffs and *amici curiae* in *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

rights, the environment, disability rights, the rights of the child, gay and lesbian rights, Native American and immigrant rights — for peace, jobs, and justice. The investigation, arrest, trial, conviction, and rejection of the appeal of Lieutenant Calley for “wasting” civilians during the Vietnam War at My Lai opened the way for renewed efforts by the U.S. military to teach their personnel that the Nuremberg Principles are part of the laws of war set down in the U.S. Army Field Manual¹²³ and are actually to be obeyed in conflict.¹²⁴

The process of publicizing the ICCPR and making reports on federal and provincial practices to the U.N. Committee on Human Rights has contributed to increased sensitivity to human rights issues in many countries, although few acknowledge that a particular change was due solely to the reporting process. In a carefully documented study of thirty-six nations that have taken part in the reporting process for the second or third time,¹²⁵ thirty-two nations reported changes in their law as a result of the use of Human Rights Committee comments in legislative development or the use of the ICCPR itself.¹²⁶ Eight nations reported use of the Covenant by the courts.¹²⁷

Today, “[i]nformation is power; lack of information is powerlessness,” as Laurie Wiseberg put it so succinctly.¹²⁸ The treaty requirement for publication, collection, and discussion of the law and the facts on enforcement and denial of the many human rights in the United States can empower people and lead to a broad-based and continuing movement to give effect to human rights at home. The U.N. human rights community understands this very well, pointing out in the *U.N. Manual on Human Rights Reporting*:

Human rights have to be implemented first and foremost at national and local levels. The primary responsibility of States to realize human rights is vis a vis the people who live under the jurisdiction of these States. However, with the internationalization of human rights and with the recognition that the protection and promotion of human rights does not fall within the exclu-

123. DEPARTMENT OF THE ARMY, THE LAW OF LAND WARFARE, FIELD MANUAL FM-10, §§ 498-511 (1956).

124. See Steven Keeva, *Lawyers in the War Room*, A.B.A. J., Dec. 1991, at 52, 55.

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

126. *Id.* at 298-316.

127. *Id.* at 316-20.

128. Laurie Wiseberg, *Human Rights Information and Documentation*, in MANUAL, *supra* note 3, at 29, 29.

sive domain of States, the international community can take a legitimate interest in the compliance with internationally recognized standards by . . . every state. . . . [While] no substitute for . . . national implementation of human rights, international procedures have an important subsidiary or supplemental role to play. . . . [They] embody the public interest on the part of the international community in the attainment of conditions in which . . . "the 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."¹²⁹

IV. THE PUBLICIZING REQUIREMENT

In ratifying the Covenant, the Senate made it explicit that "[t]he United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction . . . , and otherwise by the state and local governments . . . ,"¹³⁰ and the federal government "shall take measures appropriate to the Federal system to the end that the competent authorities of the State or local governments may take appropriate measures for the fulfillment of the Covenant."¹³¹

The Human Rights Committee now requires, in its core document for all reports under the Covenant, a section on Information and Publicity, which is given the same significance as the reports on Land and People, General Political Structure, and General Legal Framework. The Committee says:

This section should indicate whether any special efforts have been made to promote awareness among the public and the relevant authorities of the rights contained in the various human rights instruments. The topics to be addressed should include the manner and extent to which the texts of the various human rights instruments have been disseminated, whether such texts have been translated into the local language or languages,¹³² what government agencies have responsibility for preparing reports and whether they normally receive information or other inputs from external sources, and whether the contents of the reports are the subject of public debate.¹³³

129. Van Boven, *supra* note 35, at 10 (quoting the Universal Declaration of Human Rights, pmbl 1, and ICCPR, pmbl 1).

130. 138 CONG. REC. S4784 (Apr. 2, 1992).

131. *Id.*

132. In many areas of the United States, especially Puerto Rico, this should include Spanish, and in some areas Native American languages. Since all U.N. documents are published in six languages, and since many U.S. residents know these languages better than they know English, it would be appropriate for the U.S. Government to disseminate the text of the ICCPR in all of these languages, which would not involve any additional costs for translations.

133. *Report of the Human Rights Committee: Revised Guidelines for the Preparation of State Party Reports*, U.N. GAOR, 46th Sess., Supp. No. 40, at 207, U.N. Doc. A/46/40 (1991).

Since 1981, the Committee has considered it necessary to draw the attention of States to the fact that their obligation under the Covenant

is not confined to the respect of human rights, but that States . . . have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States . . . to enable individuals to enjoy their rights. This is obvious . . . [as to] art. 3, [in which nations undertake] to ensure the equal right of men and women in the enjoyment of all civil and political rights [in the Covenant], but in principle . . . [it] relates to all rights . . . in the Covenant.

In this connection, it is very important that individuals should know what their rights under the Covenant . . . are and also that all administrative and judicial authorities should be aware of the obligations which the State . . . has assumed under the Covenant. To this end, the Covenant should be publicized . . . and steps should be taken to familiarize the authorities concerned with its content as part of their training.¹³⁴

The Catholic Charities and the Coalition for Human Rights in Northern California demonstrated the potency of publicizing the human rights enunciated in the ICCPR in 1992. They were working on a proposed ordinance for Alameda County "to prohibit county funds from being used to carry out the federal duties of the Immigration and Naturalization Service [and] end the jailing of undocumented immigrants and refugees."¹³⁵ When informed of the content of the ICCPR, they quickly incorporated it in their Human Rights Ordinance and added to their list of goals: "Endorse the International Covenant on Civil and Political Rights and Declare Alameda County a Human Rights County."¹³⁶

The publicizing requirement must be met early in the process of preparing a nation's first report if all concerned federal, state, and local agencies are to collect the necessary information for inclusion in the report. This publicizing requirement must certainly be met in order to obtain the cooperation of NGOs, both as to publicizing the content of the Covenant and in collecting and providing information for inclusion in the report.

Jamie Selby Borik, Deputy Legal Advisor in the State Department, says the Department would welcome any suggestions from people as to effective ways to carry out the publicizing function.¹³⁷

134. See note 101.

135. Memorandums from the author to Gregory Kepferle and from the Coalition for Human Rights in Northern California, Dec. 1992 (on file at Meiklejohn Institute).

136. *Id.*

137. Telephone conversation between Jamie Selby Borik and Ann Fagan Ginger (Feb. 12,

V. THE REPORTING AND MONITORING REQUIREMENTS

The first U.S. report was due at the United Nations on September 7, 1993. It shall be a comprehensive report "on the measures . . . adopted [at the federal and state levels] which give effect to the rights [in the ICCPR] and on the progress made in enjoyment of those rights" enumerated in articles 1 through 27 and 47 at the federal, state, and local government levels.¹³⁸ The ICCPR report also "shall indicate the factors and difficulties, if any, affecting the implementation of the . . . Covenant."¹³⁹

Each member of the U.N. Committee will examine the report individually before the first meeting at which the report will be considered. Since members have an opportunity to make comments and to ask questions at the public meetings to study the report collectively, representatives of the United States who are able to answer questions put to them by the Committee members should be present and they should be prepared to submit additional information at the two follow-up meetings. After listening, Committee members may make general observations on the report at another meeting open to the public¹⁴⁰ as part of the Committee's duty to open "a constructive dialogue"¹⁴¹ with representatives of the U.S. government. The Committee will make comments on the report and the dialogue in its annual report to the U.N. General Assembly.¹⁴² Accordingly,

[I]f the Committee expresses its concern with regard to any situation occurring in a particular country, this is reflected in its annual report, which is issued as an official document of the General Assembly and receives the attention of the Third Committee of the General Assembly [on Social, Humanitarian and Cultural Affairs] during its discussion of the Covenant and its implementation.¹⁴³

Since seventy-seven nations have already gone through this procedure once, and thirty-six nations more than once,¹⁴⁴ the United States can have the benefit of their experiences by reading the

1993) (notes of interview on file with author). David P. Stewart reiterated this conversation on May 14, 1993, to Ann Fagan Ginger in a telephone conversation.

138. ICCPR, *supra* note 1, art. 40(1), 999 U.N.T.S. at 181.

139. *Id.* art. 40(2), 999 U.N.T.S. at 181.

140. Pocar, *supra* note 117, at 121-22.

141. *Id.* at 121.

142. *See* ICCPR, *supra* note 1, art. 45, 999 U.N.T.S. at 184.

143. Pocar, *supra* note 117, at 122.

144. *See supra* note 125 and accompanying text.

ICCPR Reports.¹⁴⁵

The United States has never submitted a comprehensive report on the status of human rights in the United States to its people or to any other body,¹⁴⁶ let alone a report on the rights in Articles 1 through 27 and Article 47, which include many more than twenty-eight rights.¹⁴⁷ The federal government has assigned one individual, the Assistant Legal Advisor for Human Rights and Humanitarian Affairs in the State Department, to coordinate the report. As of February 15, 1993, he had had preliminary discussions only with the Department of Justice and had not actually "tasked" any other agencies.¹⁴⁸ At the state level, he contacted only attorneys general. He did not have the resources to do as comprehensive a report as Canada has done, he said on November 11, 1993.¹⁴⁹

Obviously the Department of State has *no* knowledge or responsibility in enforcing human rights *within* the United States, on Indian reservations, or in Puerto Rico, the District of Columbia, Guam, or other territories, all of which must be included in the report. Clearly, the Department of Justice has knowledge and primary responsibility only at the federal level as to the administration of justice.¹⁵⁰ Numerous federal agencies outside State and Justice will have major work to do on the report, including for starters: the Bureau of Indian Affairs and the Department of the Interior¹⁵¹ concerning Native Americans; the Civil Rights Commission;¹⁵² the Department of Health and Human Services;¹⁵³ the Women's Bureau;¹⁵⁴ the Department of Labor;¹⁵⁵ the Department of Educa-

145. U.N. International Human Rights Instruments, *supra* note 101, at 1.

146. *But see* PRESIDENT'S COMMISSION ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968); PRESIDENT'S COMMITTEE ON CIVIL RIGHTS, TO SECURE THESE RIGHTS (1947); GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (1944).

147. See the list and index to rights, *infra*, Appendix.

148. Telephone conversation with Jamie Selby Borik, *supra* note 137.

149. Telephone conversation with David P. Stewart, November 11, 1993 (notes on file with author).

150. ICCPR, *supra* note 1, arts. 2(3), 6-17, 20, 21, 24(3), 26, 27, 999 U.N.T.S. at 173, 174-76, 177, 177, 178, 178, 178. See the list and index of protected rights, *infra*, Appendix. For areas in which U.S. criminal law does not protect rights as well as the ICCPR, see John Quigley, *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).

151. See ICCPR, *supra* note 1, arts. 1, 2(1), 4, 18(4), 26, 27, 47, 999 U.N.T.S. at 173, 173, 174, 178, 179, 179, 185.

152. See *id.*, arts. 1, 2, 4, 999 U.N.T.S. at 173, 173, 174.

153. See *id.* arts. 6(1), 23, 24, 999 U.N.T.S. at 174, 179, 179.

154. See *id.* arts. 2, 3, 6(5), 23, 24, 999 U.N.T.S., at 173-74, 174, 175, 179, 179. For a list of

tion;¹⁵⁶ and the Bureau of the Census in the Department of Commerce, with its Statistical Abstract of the United States.¹⁵⁷ The several states must provide the basic information on compensation for rights violated at the state level in Article 2(3), on registration of babies in Article 24(2), and on people being permitted to participate in public affairs in Article 25.

The federal government needed massive assistance from innumerable federal and state agencies in order to complete its first report by the due date, September 7, 1993. Since no federal or state government agencies collect information on denials of certain rights included in these articles, NGOs and other organizations and institutions will have to supplement the U.S. report in order for it to be comprehensive and accurate.¹⁵⁸

It is necessary for government officials and experts to decide to take seriously their reporting responsibility under this Covenant. They did not take this responsibility seriously under the Conyers Hate Crimes Statistics Act¹⁵⁹ with its voluntary reporting requirement that went into effect in 1991. The FBI could only report federal compliance in thirteen of fifty states and the District of Columbia (i.e., that every law enforcement agency reported). In sixteen states, not a single law enforcement agency participated, and in the populous states, only two out of 770 reported from California and only 120 out of 543 from New York.¹⁶⁰

Thousands of additional state agencies would have had to make reports on how they respect and also ensure all of the human rights enunciated in the ICCPR in order for the United States to file a complete and accurate report by September 7, 1993. They could have been convinced to take this reporting requirement seriously by understanding its history and the several functions it is expected to fulfill.

The reporting system was introduced in the League of Nations by the International Labor Organization (ILO) in its original constitu-

federal statutes on equal rights and affirmative action to redress distinctions on the basis of gender, see Ginger, *supra* note 93, at 412-22.

155. See ICCPR, *supra* note 1, arts. 8, 11, 22(1), 999 U.N.T.S. at 175, 176, 178.

156. See *id.* art. 18(4), 999 U.N.T.S. at 178.

157. For a few types of figures illustrating discrimination against women in the Statistical Abstract, see Ginger, *supra* note 93, at 403-07.

158. See *infra* text at note 265.

159. 28 U.S.C. § 534 (1990).

160. *Klanwatch Intelligence Report*, No. 62, at 7 (1992) (a project of the Southern Poverty Law Center).

tion, where nations party "to international labour conventions are under an obligation to report periodically on the application of the international standards they have accepted. . . . Reports are prepared and submitted by national governments, but national organizations of employers and workers are entitled to make written observations,"¹⁶¹ which are also examined by the Committee of Experts on the Application of Conventions and Recommendations. Their comments are discussed in a tripartite committee of the ILO Conference (representatives of governments, employers' organizations, and workers' organizations), with representatives of the government concerned.¹⁶²

This process worked well in the ILO and is now used in the United Nations. The process

assumes that there is a need for a *constructive dialogue* between the State concerned on the one hand, and an independent international group of experts on the other. Reporting is not something that is imposed upon an unwilling State, nor is it something designed as an adversarial process. Rather it is premised 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.¹⁶³

Philip Alston, in the United Nations' *Manual on Human Rights Reporting* (U.N. *Manual*) maintains that functions served by reporting "can be identified in a more or less chronological order which corresponds to the period from ratification of a treaty through to the consideration of the report by the international monitoring body."¹⁶⁴ The United Nations assumes nations may be expected to carry out the initial review function (i) of their domestic law and practice "to ensure . . . compliance with the obligations contained in the treaty"¹⁶⁵ before it ratifies the treaty, or immediately after.

The monitoring function (ii) requires "a detailed and soundly based review of current developments"¹⁶⁶ in which

[i]solated examples, or anecdotal evidence, will not suffice. Thus, a precondition for effective reporting is the existence of an adequate system for moni-

161. Van Boven, *supra* note 35, at 8.

162. *Id.*

163. Alston, *supra* note 3, at 13 (emphasis added). See the inadequacies in the U.S. approach to the ICCPR prior to ratification, discussed *infra* in text following note 193.

164. Alston, *supra* note 3, at 13.

165. *Id.*

166. *See id.* at 14.

toring the situation with respect to each of the rights on a regular basis. . . . [T]he role of the monitoring function is not to show the government in a bad light. On the contrary, monitoring is an indispensable first step towards identifying and subsequently remedying any human rights problems that might exist. . . . Most of the supervisory bodies have expressly noted their wish to receive statistical information along with the usual narrative description. . . . [and the bodies want] a clear picture . . . of the different regions and groups within the country, as well as of the country as a whole.¹⁶⁷

The policy formulation function (iii) recognizes that some human rights problems

can be resolved merely by amending the relevant legislation, [or] by changing administrative practices. . . . Others, however, are not susceptible of such rapid resolution and require the formulation of a long-term set of policies designed to ensure full and lasting compliance with treaty obligations. For example, efforts to eliminate some aspects of discrimination on the grounds of race or sex might require changes in cultural traditions which cannot be achieved overnight.¹⁶⁸

Here the reporting process "can act as a catalyst" for carefully tailored long-range work. "The supervisory committees will not expect the impossible to be achieved overnight. . . . [b]ut they will expect to see evidence of policies which seem likely to achieve the necessary remedial action within a reasonable period of time."¹⁶⁹

The public scrutiny function (iv) "provides an important occasion for consultation of the appropriate social, economic, cultural and other sectors of society."¹⁷⁰ Some nations have sought input from NGOs on particular issues or have asked them to submit comments on the draft reports. Others have "entrusted the preparation of the reports to a group which includes representatives of the non-governmental sector."¹⁷¹ Some nations have "ensured the widespread dissemination of their reports" for public comment in "an on-going national policy debate."¹⁷²

The evaluation function (v) arises after successive periodic reports have been made. It is outside the purview of this Article.

The function of acknowledging problems (vi) is carried forward

167. *Id.*

168. *Id.* at 15.

169. *Id.* "With all deliberate speed," of *Brown v. Board of Educ.*, 349 U.S. 294, 301 (1955), comes to mind. While this standard did not lead to rapid change in deeply rooted practices of segregation, it did lead to forward motion (often after a period of backwardness and confrontation).

170. Alston, *supra* note 3, at 15.

171. *Id.*

172. *Id.*

when nations list the "‘factors and difficulties’ that have affected the realization of the rights in question."¹⁷³ Alston says:

The frank acknowledgement of problems, even if they are reckoned to be almost intractable . . . , helps to establish the good faith of the government not only in the eyes of the supervisory committee but also of its own citizens. The reality is that a problem must first be diagnosed before a remedy can be found. In that respect human rights problems can be compared to drug addiction. Unless the existence of the problem is acknowledged, it will almost certainly not be solved.¹⁷⁴

The information exchange function (vii) is considered the essential foundation on the basis of which general comments can be elaborated by the supervisory committees to assist in its long-range work toward long-range solutions.

The U.N. *Manual* concludes with a warning: In any situations in which reporting governments do not take seriously their reports as "part of a continuing process, . . . it may be expected that public opinion, combined with the efforts of the relevant supervisory committees, will sooner or later bring about the required change in attitude."¹⁷⁵

VI. THE BASIC REPORTING REQUIREMENT

After studying the initial reports of many signatory nations, the Human Rights Committee has recently prepared a list of basic facts and an outline of information each nation should supply in its initial report under each of the human rights covenants and conventions.

A. Core Document¹⁷⁶

I. Land and People

1. Background statistical information: Main ethnic and demographic characteristics, Per capita income, Gross national product, Rate of inflation, External debt, Rate of unemployment, Literacy rate, Religion, Percentage of population speaking mother tongue, Life expectancy, Infant mortality rate, Maternal mortality rate, Fertility rate, Percentage of population under 15 and over 65 years

173. *Id.*

174. *Id.*

175. *Id.* at 16. Again, see the inadequacies in the U.S. approach to the ICCPR prior to ratification, discussed *infra* note 185 and accompanying text.

176. *Revised Guidelines for the Preparation of State Party Reports*, U.N. GAOR, 46th Sess., Supp. No. 40, at Annex 3, 206, U.N. Doc. A/46/40 (1991) [hereinafter *Revised Guidelines*].

of age, Percentage of population in rural areas and in urban areas, and Percentage of households headed by women.¹⁷⁷

II. General Political Structure

A. System of Government¹⁷⁸

The powers of legislative body
 The powers of executive body
 The powers of judicial body
 Elections
 Political party system

B. The Law¹⁷⁹

Administration of the law
 Criminal courts
 Civil courts
 Appeals
 Trials
 Jury trials
 Administrative tribunals

III. General Legal Framework Within Which Human Rights are Protected

A. Authorities having jurisdiction affecting human rights

B. Remedies, compensation, and rehabilitation for victims of human rights violations; civil compensation for wrongful conviction/

177. These basic questions are to be answered in reports regarding civil and political rights as well as in reports regarding economic, social, and cultural rights. This indicates that the Committee clearly understands the indivisibility of these two types of rights. "The rationale for this division was that the two sets of rights differed in nature — one category . . . was subject to immediate application, whereas the other . . . required progressive realization — and that therefore different implementation measures were called for." Van Boven, *supra* note 35, at 4.

178. This outline, based on the revised guidelines, see *supra* note 176, is modified from the report by the United Kingdom of Great Britain and Northern Ireland, International Human Rights Instruments, HRI/CORE/1/Add.5 (3 June 1992), GE.92-15920/4588B.

179. The United Kingdom report describes the system for England, Scotland, Wales, and Northern Ireland separately. In a later report, the United Kingdom describes the systems in its remaining Crown colonies. Presumably the United States should describe separately the systems for the fifty states, the District of Columbia, Puerto Rico, Guam and other trust territories, and Native Americans living on reservations. See *infra* note 245 and accompanying text.

detention; the position of the victims of crime

C. Protection of human rights in the Constitution and Bill of Rights; provisions for derogation from the protections and in what circumstances

D. Incorporation of human rights instruments into national legislation

E. Enforcement by courts of the U.N. Charter human rights articles and of the provisions of the ICCPR: must they be transformed into internal law/administrative regulations to be enforced?

F. National machinery for implementation of human rights

Equal opportunities

Race relations

Data protection

Complaints against the police

IV. Information and Publicity

The submission of reports to treaty monitoring bodies is a legal obligation incumbent upon the governments of States parties. Since this obligation by its nature requires positive action, the political will to prepare an honest and comprehensive report, and to allocate the necessary resources accordingly is a prerequisite for its realization.¹⁸⁰

The reporting system is also "a way of showing NGOs (nongovernmental organizations) and other interested parties that the government is cooperating with the relevant international procedures and is not seeking to conceal anything."¹⁸¹ However,

[t]he preparation of a report requires time. Staff who are given the responsibility for preparing a report should have their other duties lessened accordingly. Inadequate time dedicated to report preparation will likely produce an unsatisfactory report. This, in turn, will make it difficult to engage in a constructive dialogue with the expert body and will limit the domestic utility of the report as well. It is therefore in the government's best interests to ensure that the necessary time is provided to staff to carry out properly their reporting assignments.¹⁸²

180. Cecil Bernard, *The Preparation and Drafting of a National Report*, in *MANUAL*, *supra* note 3, at 17. For a discussion of publicity and the publicizing requirement, see *infra* note 130 and accompanying text.

181. Bernard, *supra* note 180, at 17.

182. *Id.*

The U.N. *Manual* suggests that governments consider establishing a "high-level interministerial task force, chaired by the Minister of Foreign Affairs or Justice, to signal the importance accorded to the reporting process."¹⁸³ The task force could include representatives of key departments and agencies and representatives of major NGOs and civil groups (labor unions, professional associations, research institutions, etc.)¹⁸⁴

B. Budgetary Considerations

Preparing the U.S. report will cost money. The Congressional Budget Office told the Senate Committee on Foreign Relations: "Ratification of the Covenant would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to ratification."¹⁸⁵ This simply means that the cost of fulfilling the reporting requirements is part of a Department's overhead and is not considered a separate budget item. But it will require a strong commitment to the human rights reporting requirement to allocate sufficient staff time of many government agencies at all levels to do a good job of publicizing the text and to set up procedures to monitor and report on enforcement of all of the rights in the Covenant.

It behooves NGOs and concerned government agencies to consider how best to get sufficient staff assigned to fulfill the ongoing reporting requirements. In the process, it may be appropriate to follow the U.N. Human Rights Committee's suggestion¹⁸⁶ of considering whether a separate agency would be the best structure to do a top-notch job of seeing that all of the aspects of this Covenant are implemented as quickly as possible.

VII. THE REPORTING REQUIREMENTS ON SPECIFIC ARTICLES

Meiklejohn Civil Liberties Institute has prepared a list and index of 160 distinct rights included within the substantive rights in Articles 1 through 27 and Article 47 to simplify the work of notifying NGOs about the rights in the Covenant covering their particular

183. *Id.*

184. *Id.* at 18.

185. Letter from James L. Blum for Robert D. Reischauer to Hon. Claiborne Pell, Chairman, Senate Committee on Foreign Relations (Mar. 20, 1992), SENATE COMM. ON FOREIGN RELATIONS, *supra* note 10, at 21, *reprinted in* 31 I.L.M. at 658.

186. Bernard, *supra* note 180, at 18.

areas of concern.¹⁸⁷ For example, organizations like the NAACP, Legal Defense Fund, Asian Law Caucus, Mexican American Legal Aid & Defense Fund (MALDEF), or Indian Legal Services can find a list of references to “no distinction on the basis of race” in the index under “race,” leading to Articles 2(1), 4(1), 20(2), 24(1), and 26. Organizations concerned with the rights of noncitizens and with national groups in the United States can find references under “nationality” in the index, leading to Articles 2(1), 12, 12(4), 13, 20(2), 24(1), 24(3), and 26. All of these groups can find references under “collective rights,” leading to Articles 1(1), 1(2), 1(3), 5, 20(1), and 20(2). Then they can begin to organize their information on enforcement and denial of these human rights for submission to the U.S. Government under each Article in the Covenant.

The scope of the reporting requirement as to the 160 rights in this Covenant will become clear by focusing on two areas: the rights of children, which are of primary concern to all human rights advocates, and economic rights, which are again becoming paramount in the thinking of concerned people. Further insights can be added by discussing three specific human rights that have been difficult to enforce and are also difficult to document: awards to victims for police misconduct, minimizing racism in jury trials, and the right to self-determination.¹⁸⁸

A. *Rights of Children*

The rights of children and juveniles are found in the Covenant in Articles 10, 14, 23, and 24. The last are the broadest:

1. 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 minor, on the part of his family, society and the State.¹⁸⁹

Article 23(4) requires States Parties to the Covenant, “[i]n the case of dissolution [of a marriage, to make] provision . . . for the necessary protection of any children.”¹⁹⁰

The United States has no comparable provisions in our Constitution or Bill of Rights. Nor do we have a national commitment to the

187. *See infra* appendix.

188. I selected these three narrow issues because of my prior work on each, not because they are any more difficult or important than numerous other human rights issues.

189. ICCPR, *supra* note 1, art. 24(1), 999 U.N.T.S. at 179.

190. *Id.* art. 23(4), 999 U.N.T.S. at 179.

broad concept that "every child shall have . . . the right to . . . protection . . . on the part of his family, society and the State,"¹⁹¹ although we seem to be moving in that direction. These stated rights bring into focus the difference in opinion between the Bush Administration and human rights activists. The former maintained that "[t]he overwhelming majority of the provisions in the Covenant are compatible with existing U.S. domestic law. In those few areas where the two diverge, the Administration has proposed a reservation or other form of condition to clarify the nature of the obligation being undertaken by the United States."¹⁹² The report admits that "[t]his approach has caused concern among some private groups and individuals in the human rights field who argue that U.S. law should be brought into conformance with international human rights standards in those areas where the international standards are superior."¹⁹³

The problem is not only between the activists on this issue and the Bush Administration and Senators on the Foreign Relations Committee. The problem is that the Committee did not list, as one of the provisions not now in U.S. law, the protection of children in Articles 24(1) and 23(4). Certainly our report to the Human Rights Committee will need to address the status of publicizing these rights and enforcing these rights for every child, without any of the distinctions listed in Article 2(1). Later reports should discuss an adequate system for monitoring these rights and should suggest affirmative actions underway to enforce all of these rights.

Article 24, paragraphs (2) and (3) set forth the right of every child to be registered immediately after birth and to have a name and the right to acquire a nationality. Article 18(4) protects the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The other listed rights of children and juveniles relate to their being brought up on criminal charges. "Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication."¹⁹⁴ "Juvenile offenders shall be segregated from

191. *Id.* art. 24, 999 U.N.T.S. at 179.

192. SENATE COMM. ON FOREIGN RELATIONS, *supra* note 10, at 4, *reprinted in* 31 I.L.M. at 650.

193. *Id.*

194. ICCPR, *supra* note 1, art. 10(b), 999 U.N.T.S. at 176.

adults and be accorded treatment appropriate to their age and legal status."¹⁹⁵ They also have rights under the general Article 10(3): "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."¹⁹⁶

Article 14(1) protects the privacy rights of children: "[A]ny judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."¹⁹⁷ Article 14(4) provides that, "[i]n the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation."¹⁹⁸

It will be helpful for U.S. officials to study the discussions in the Human Rights Committee of the reports submitted under the ICCPR by many countries, particularly by Canada and the United Kingdom, which have governmental systems and history related to ours, and whose peoples have lived side by side with us. A study of the third Canadian report, made at the request of the U.N. Secretariat as an update to the second report submitted in July 1989, makes several things clear. 1) The Committee expects, and will insist on, detailed and comprehensive reports on the enforcement of each article in each federal and regional area of a nation. 2) The Committee's comments on problems in one report seem to lead to action in a country, although they may not be the only factor,¹⁹⁹ resulting in the decision to launch pilot projects on questions raised by the Committee,²⁰⁰ to establish official public bodies to study a

195. *Id.* art. 10(3), 999 U.N.T.S. at 176.

196. *Id.* Article 6(5) is not included here because the United States specifically excepted to the provision that sentence of death shall not be imposed "for crimes committed by persons below eighteen years of age." 138 CONG. REC. S4781, S4783 (daily ed.) (Apr. 2, 1992) (statement of the presiding officer). On this point, the Senate Committee said: "[I]t may be appropriate and necessary to question whether changes in U.S. law should be made to bring the United States into full compliance at the international level. However, the Committee anticipates that changes in U.S. law in these areas will occur through the normal legislative process." SENATE COMM. ON FOREIGN RELATIONS, *supra* note 10, at 4, *reprinted in* 31 I.L.M. at 650.

197. ICCPR, *supra* note 1, art. 14(1), 999 U.N.T.S. at 176.

198. *Id.* art. 14(4), 999 U.N.T.S. at 177.

199. Cohn, *supra* note 125, at 297.

200. For example, on child abuse, the United Kingdom reported to the Committee that "[i]n October 1986, the Government launched a central training initiative for the training of managers and practitioners in child abuse work. The initiative consists of seven projects at present." CCPR/C/58/Add.6 ¶ 325.

new approach to protection of a right listed in the Covenant and discussed by the Committee,²⁰¹ or to revise statutes²⁰² or common law.²⁰³ 3) Committee members will ask questions about specific issues that may have been reported in the press but not mentioned in country reports.²⁰⁴

The power of reporting, and discussing reports with the Human Rights Committee, is suggested by the discussion of Canada's representative with the Committee in 1990 on Articles 23 and 24, "replying to question (a) about differences in the status of legitimate and illegitimate children, [saying] that recent provincial and territorial legislation had eliminated all distinctions between children born in and out of wedlock, with a few exceptions, primarily related to cases where it was difficult to establish paternity."²⁰⁵ The report of Great Britain and Northern Ireland made an almost identical statement,

201. "Arrangements have also been made to receive more accurate data about the incidence of child abuse. In July 1987, the Minister of Health announced. . . . [a] pilot study . . . for the period ending 31 March 1988" *Id.* ¶ 326. (This is part of the monitoring function.)

202. In its third periodic report, Great Britain and Northern Ireland described the "wide-ranging review of public child care law in England and Wales" carried out and the subsequent 1985 report and the 1987 Government White Paper on "The law on child care and family services." This was followed by a review of the private law and proposals on guardianship and custody in June 1988. "These proposals . . . formed the basis for major new legislation . . . introduced in Parliament in November 1988. . . . The Children Bill [will represent] a major revision and clarification of the law relating to children and family services" *Id.* ¶¶ 295-296. The report then discusses other legislation on children, including a new framework for adoption in England and Wales, in Scotland, and in Northern Ireland (¶¶ 307-314), and the Criminal Justice Act of 1988, which "makes a number of changes regarding juvenile offenders, and regarding children and young people." *Id.* ¶¶ 314-315. "The Children Bill includes provisions on local authorities' duties and powers to provide day care and supervised activity for children aged under five and not at school, and for school-age children outside school hours." *Id.* ¶ 331.

203. The third Canadian Report went on to discuss Charter cases and cases under the Canadian Human Rights Act and Young Offenders Act involving children's rights under the ICCPR, *supra* note 1, art. 26, 999 U.N.T.S. at 179. See CCPR/C/64/Add. 1 ¶ 35.

204. *E.g.*, In discussing the Canadian report at its Geneva meeting on October 24, 1990, Committee member El-Shafei, referring to protection of the family in Article 18 of the Covenant, pointed out that the problem of minors joining religious cults without the consent of their parents placed the right to freedom of belief and religion in conflict with that of protection of the family and children. He wondered whether section 1 of the Canadian Constitution, which concerned limitations on freedoms and rights, could be used by the authorities to safeguard both those rights.

Mr. Low, for Canada, replied, describing

court rulings in cases where necessary medical attention was not being administered to a child because of religious beliefs. The courts had dealt with those cases by endeavoring to strike a balance between the right of citizens to freedom of religion and the need for the State to protect members of the community, particularly those in a situation of dependence.

CCPR/C/SR. 1012, ¶¶ 18 & 19.

205. *Id.* ¶ 7.

providing more details of its Family Law Reform Act of 1987.²⁰⁶ The United Kingdom also submitted shorter reports for each British territory. The Committee considered the third periodic report of Iraq at its 1080th to 1082d meetings in July 1991, with members requesting information on many specific questions and making clear that even the Kuwait crisis (Gulf War) would not excuse a signatory nation from carrying out its obligations under the ICCPR.²⁰⁷

These reports begin to suggest the thoroughness required to issue an accurate and comprehensive report at the national level. The U.N. Committee's policy formulation function is demonstrated by Canada's statements in its third report as to Article 24, that it had signed the Convention on the Rights of the Child on May 28, 1990, and is currently reviewing legislation and policies for consistency with the Convention with a view to ratifying it as soon as possible. Canada also reported that it is one of six nations which sponsored the World Summit for Children held in New York on September 29-30, 1990.²⁰⁸

B. Economic Rights

It is particularly appropriate to discuss the economic rights enunciated in the ICCPR in the first year of the Clinton presidency which was won on the campaign office slogan, "It's the economy, stupid!"

The Covenant clearly states that 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."²⁰⁹ The Covenant reminds signatory nations

206. CCPR/C/58/Add.6, p. 67 ¶ 305(a)-(d). The Act "creates a presumption that in all future legislation the question whether a person's parents were married to each other at any time will not be relevant. . . . The only exceptions now relate to titles of honour and accession to the Throne." *Id.*

207. *Revised Guidelines*, *supra* note 176, ¶ 623; *id.* ¶¶ 618-656 (concerning Iraq).

208. CCPR/C/64/Add.1, ¶ 31. Newspaper accounts of the recent three-day hearing of the U.N. Committee on Human Rights examining the first report by Ireland after ratifying the ICCPR in 1989 make several things clear: 1) leading NGOs submitted critical reports to the Committee members that they used in the hearings; 2) the Irish government passed legislation and made other changes in laws between submission of its report and consideration by the Committee; 3) the government team told the committee it is committed to making additional changes to bring Irish human rights practices into conformity with the international standards in the ICCPR. Colm Boland, *AG Assures UN Body on Human Rights*, IRISH TIMES, July 13, 1993.

209. ICCPR, *supra* note 1, pmb1 ¶ 3, 999 U.N.T.S. at 173; *see also* Lobe, *supra* note 12 (discussing Secretary of State Christopher's commitment to ratify the International Covenant on Economic, Social and Cultural Rights).

of "the obligation . . . under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,"²¹⁰ that is, *all* human rights, including those mentioned in the previous sentence, and it is important to include the Charter commitment "to promote . . . full employment."²¹¹

Paragraphs (1) and (2) of Article 1 set forth clear, substantive economic rights of all peoples to: "freely pursue their economic, social and cultural development"²¹² and to "freely dispose of their wealth and natural resources In no case may a people be deprived of its own means of subsistence."²¹³

In listing the types of distinctions that cannot be made against individuals, Article 2(1) lists several categories not in previous U.S. law:

Each State Party . . . 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, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*²¹⁴

In the United States, direct economic distinctions are constantly made and enforced as to rights recognized in the Covenant on the basis of social origin, property, birth, and other status, as well as being made indirectly on the basis of race, color, sex, language, and national origin.

One of the tasks of U.S. government officials making the report to the U.N. Human Rights Committee will be to discuss the extent to which these distinctions exist in this country and how they affect the respect for and observance of every one of the rights in the Covenant. These officials specifically will need to address the Los Angeles revolt/riots of 1992, the efforts of governments at all levels to deal with the causes behind these events, the methods for monitoring the success of these efforts, and the extent of the failures.

Article 6(1) provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."²¹⁵ In fact, the right to life is not

210. *Id.* pmb1 ¶ 4, 999 U.N.T.S. at 173.

211. U.N. CHARTER art. 55(a).

212. ICCPR, *supra* note 1, art. 1(1), 999 U.N.T.S. at 173.

213. *Id.* art. 1(2), 999 U.N.T.S. at 173.

214. *Id.* art. 2(1), 999 U.N.T.S. at 173. Italics in this paragraph denote categories and rights not listed specifically in pre-existing U.S. constitutional law.

215. *Id.* art. 6(1), 999 U.N.T.S. at 174.

being protected when people are laid off their jobs, which leads to distinctions based on property and status. Johns Hopkins Professor M. Harvey Brenner has presented statistics to the Joint Economic Committee of Congress proving that unemployment causes a measurable increase in deaths, heart attacks, suicides, homicides, and admissions to mental hospitals and state prisons of people who have lost their jobs and cannot find new positions.²¹⁶

Article 8 covers the most basic economic rights: "No one shall be held in slavery . . ." ²¹⁷ "No one shall be held in servitude."²¹⁸ "No one shall be required to perform forced or compulsory labour."²¹⁹

Article 22 incorporates section 7(a) of the National Industrial Recovery Act and the Wagner National Labor Relations Act of 1935²²⁰ in treaty form: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."²²¹ It is interesting that, after the Senate Committee's hearing, questions were raised as to whether ratification would require any changes in U.S. labor law, according to the Committee report.²²² The Bush Administration said "no" because the rights in Article 22 "are general rights of association similar to those contained in the First Amendment and that nothing in the Covenant would require the United States to alter or amend any labor legislation."²²³

Many local and international labor unions maintain that this ba-

216. A one-percent rise in the unemployment rate leads to the following increases nationwide: 36,887 deaths, 20,240 heart attacks, 495 deaths from cirrhosis, 920 suicides, 648 homicides, 4,227 admissions to mental hospitals, and 3,340 state prison admissions. M. Harvey Brenner, *Influence of the Social Environment on Psychopathology: The Historic Perspective*, reprinted in *The Social Costs of Unemployment: Hearing Before the Joint Economic Comm.*, 96th Cong., 1st Sess. 8 (1979), reprinted in *Starting Over: Presidio of San Francisco Base Closure Survival Guide* (Center for Working Life, Oakland, CA 1990) (on file at Meiklejohn Institute). One current book on distinctions based on property and social origin is CHRISTOPHER E. SMITH, *COURTS AND THE POOR* (1991).

217. ICCPR, *supra* note 1, art. 8(1), 999 U.N.T.S. at 175.

218. *Id.* art. 8(2), 999 U.N.T.S. at 175.

219. *Id.* art. 8(3)(a), 999 U.N.T.S. at 175.

220. 29 U.S.C. § 157 (1988).

221. ICCPR, *supra* note 1, art. 22(1), 999 U.N.T.S. at 179. The draft Bill of Rights for A New South Africa, discussed *supra* note 99, adds to our old Wagner Act protections for workers and unions. Article 6.8 states: "Trade unions shall have the right to participate in lawful political activities." 27 *NEW ENG. L. REV.* 305, 338.

222. SENATE COMM. ON FOREIGN RELATIONS, *supra* note 10, at 5, reprinted in 31 *I.L.M.* at 650.

223. *Id.*

sic right to "form and join trade unions for the protection of his interests"²²⁴ is now under siege in the United States. They demand that this right be read in conjunction with the protection of free speech in Article 19(2) to include protection of free speech on the job, and in conjunction with the right to seek, receive, and impart information in Article 19(3), which must include the right to exchange information at the workplace. Workers who replace strikers are able to retain their jobs after a strike is over in many jurisdictions today. Employers "contract out" work previously performed by workers under union contract, and employers sell out to new employers who do not honor existing union contracts. Clearly, labor unions will supply data on the present situation under Article 22 if requested, and perhaps even if not requested, by the reporting agency of the federal government, particularly since many union members consider this trend to have been started by President Reagan in breaking the strike of the air traffic controllers near the beginning of his term in office.²²⁵

Article 3 enunciates "the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."²²⁶

Articles on families and children set forth protections that must include economic protections in order to be meaningful: "The family

224. ICCPR, *supra* note 1, art. 22(1), 999 U.N.T.S at 178.

225. One gauge of the status of protection of Article 22 rights is the Washington State Compact, proposed by the Washington State Labor Council (AFL-CIO) and passed by the Washington State House of Representatives in 1992 before being defeated in the Senate (1992 engrossed substitute House Bill 1731). The Compact would require all businesses receiving any form of financial assistance from the state (grants, loans, economic development subsidies, or tax deferrals) to meet the following criteria: compliance with all federal and state plant closure and affirmative action laws; recognition of collective bargaining agreements by successor employers; neutrality in union organizing efforts; acceptance of the right of first refusal to workers and community organizations who may want to buy the plant in event of closure or relocation; maintenance of wage levels no less than the state average wage; provision of basic health coverage for all employees; and no permanent replacement of workers who exercise the right to strike. 1993 Washington House Bill 1565, Senate Bill 5468.

226. Adopted in 1966, this simple sentence has been expanded in the Gender Rights proposed for the African National Congress Bill of Rights for A New South Africa, drafted in 1990, which specifically provides in Article 7(1)-(3) for equal rights in "employment, education and within the family," forbids discrimination on "grounds of gender, single parenthood, legitimacy of birth or sexual orientation," and provides that "[p]ositive action shall be undertaken to overcome the disabilities and disadvantages suffered on account of past gender discrimination." Article 7(4): "The law shall provide remedies for sexual harassment, abuse and violence." Article 7(5): "Educational institutions, the media, advertising and other social institutions shall be under a duty to discourage sexual and other types of stereotyping." 27 NEW ENG. L. REV. 305, 339 (1992).

. . . is entitled to protection by society and the State"²²⁷ and "[e]very child shall have . . . 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."²²⁸ This is clear ground for prohibition of all child labor. These articles also support the new Family and Medical Leave Act passed by Congress and signed by President Clinton in the early days of his administration.²²⁹

Peter Weiss, of the Center for Constitutional Rights, argues that an expansive interpretation of the right to life would include the right to subsistence and to health.²³⁰ Weiss asks whether a reduction in funds for AIDS or cancer research constitutes an arbitrary deprivation of life. Similarly, he suggests that much treatment of the homeless and other members of the underclass is inhuman and degrading, and that Article 7 is not limited to treatment of persons jailed or arrested when it provides that: "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."²³¹

C. *Effective Remedies for Police Misconduct*

One difficulty in preparing an accurate and comprehensive report on ICCPR rights is exemplified by the commitment in Article 2(3) to provide an effective remedy for the violation of rights. That commitment is often translated, in the United States, into administrative complaints to police review commissions and lawsuits for police misconduct filed at the state or federal level. The 1992 Los Angeles revolt/riots provide another reminder that the right to be free of police misconduct stands at the top of the list of human rights for many people in this country, along with the right to be compensated when such misconduct occurs. The "civil disorders" in 1967 led to the Report of the National Advisory Commission on Civil Disorders (Kerner Commission), which found that three-tenths of one percent of arrests in slum precincts in three large cities involved the use of "excessive or unnecessary force," for a total of twenty instances of

227. ICCPR, *supra* note 1, art. 23(1), 999 U.N.T.S. at 179.

228. *Id.* art. 24(1), 999 U.N.T.S. at 179.

229. Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (1993).

230. Letter from Peter Weiss, Center for Constitutional Rights, to Ann F. Ginger (Oct. 29, 1992) (on file with author).

231. ICCPR, *supra* note 1, art. 7, 999 U.N.T.S. at 175.

misconduct in 5,339 arrests. Since there were five million arrests annually at that time, at that rate, 15,000 would have involved "excessive or unnecessary force," providing the bases for 15,000 tort actions against the police.²³² With the great increase in arrests in urban (and all other) areas since 1967, the 15,000-cases per year figure is undoubtedly very low in 1993.

An accurate report to the U.N. Human Rights Committee in 1993 would indicate how many complaints of police misconduct were filed with administrative agencies, and of those, how many proved to be valid; how many suits were filed, and how many were actually settled or concluded with the payment of money to the victim or a nonreviewable decision that no violation had occurred, and how many law enforcement agencies tightened their standards in order to cut the number of complaints. Similar statistics would be necessary at the federal level.

On the basis of experience as editor of a series of publications seeking to digest all cases on police misconduct at all government levels since 1955,²³³ I can attest that it is extremely difficult to follow to conclusion even the best publicized cases, like *Monroe v. Pape*,²³⁴ which was won in the U.S. Supreme Court, because the results on remand are not reported in our case reporters although they are significant. (In that case, the jury returned a verdict of \$13,000, which the judge reduced to \$11,000; the children took nothing, and the city paid the judgment.)²³⁵ It is impossible for indi-

232. Report of the National Advisory Commission on Civil Disorders, at 302 (1968). Since racism by whites against African Americans in the United States parallels attitudes by Protestants against Catholics in Northern Ireland, the U.S. officials preparing the U.S. report should be aware that consideration of the United Kingdom report by the U.N. Human Rights Committee in 1991 included specific requests for information "on the number of deaths which had been caused by security forces in Northern Ireland and on the number of cases in which the victims had been unarmed," and related questions. CCPR/C/SR.1048, at 7.

233. CIVIL LIBERTIES DOCKET (1955-1969) reported 285 cases at DOCKET category 304 on Police Misconduct, including the case title, docket number, name of court where filed, facts, legal basis, jury verdict, court decision or other outcome, and name and address of counsel for plaintiff. This list of cases with brief citations appears in HUMAN RIGHTS CASEFINDER 1953-1969: THE WARREN COURT ERA (Ann Fagan Ginger ed., 1972). HUMAN RIGHTS DOCKET 1979 reported eighty-three cases pending in the single year 1978. PEACE LAW DOCKET 1985-1990 and HUMAN RIGHTS AND PEACE LAW DOCKET 1945-1991 did not attempt extensive coverage but reported seven typical cases.

A federal agency, however, could simply require all federal court clerks to keep statistics on suits for damages against law enforcement agencies, including their outcome, and could offer compensation to county clerks keeping similar statistics, as they now keep records on divorces and other legal proceedings.

234. 365 U.S. 167 (1961).

235. See Ann Fagan Ginger & Louis A. Bell, *Police Misconduct Litigation — Plaintiff's Rem-*

vidual experts or NGOs to collect and follow to conclusion less publicized cases without the cooperation of individual attorneys and their staffs and bar association committees, etc. In fact it is a time-consuming job, from clipping accounts of trials in newspapers and organizational periodicals, to finding the names and addresses of counsel, to corresponding with counsel and their secretaries, to obtaining copies of docket entries from court clerks.

If the U.S. report is to be complete, the thinking of the people who collect information for inclusion on this subject will have to move beyond the position stated in the Senate Committee report, which expresses "some concern" that "U.S. law does not, at either the federal or state level, in fact recognize an across-the-board, enforceable right of compensation in all circumstances involving unlawful arrest or detention or miscarriage of justice,"²³⁶ although the report admits that U.S. attempts to amend Articles 9(5) and 14(6) were rejected,²³⁷ and therefore the U.S. report must address any incongruity between current U.S. law and the breadth of the right in Article 2(3).

Publicizing the right to damages for police misconduct clearly results in more suits for damages and therefore more recoveries for victims. There was an explosion of cases after the Supreme Court decision in *Monroe v. Pape*²³⁸ and publication of the first article on the subject in *AmJur Trials*, a service consulted by many practicing lawyers, which listed the amount of damages recovered in fifty-four successful cases, not simply the fact that a judge or jury or appellate court upheld the plaintiff's claim.²³⁹ It is impossible to say whether the suits resulted in fewer instances of misconduct, which is the basic question of concern to victimized and concerned citizens and to the Human Rights Committee.

D. *Minimizing Racism in Jury Trials*

Another difficulty in making a report on enforcement of the rights in the Covenant is exemplified by the problem of trying to minimize racism in jury selection, which is, in turn, a subdivision of the prob-

edies, 15 AM. JUR. TRIALS 555, 583-84 (1968).

236. SENATE COMM. ON FOREIGN RELATIONS, *supra* note 10, *reprinted in* 31 I.L.M. at 655.

237. *Id.*

238. 365 U.S. 167 (1961).

239. See Ginger & Bell, *supra* note 235. The article also supplied the forms needed to file a complaint, prepare interrogatories, etc., the kinds of work-product long provided in tax and other commercial law fields.

lem of trying to minimize racism in all aspects of civil and political life.²⁴⁰ An accurate report on minimizing racism in jury trials is particularly apropos in the first report by the United States to an international body considering the events in Los Angeles that arose out of the ongoing failure to minimize racism in jury selection in the first Rodney King beating case; the ongoing failure to minimize racism in the first trial as a whole; and the failure to minimize racism in the Los Angeles area prior to 1992. Based on my efforts to compile and publicize²⁴¹ many examples of work by distinguished trial counsel to minimize racism and other forms of discrimination in jury selection, I can attest that compiling material for such a report and presenting an accurate picture of racism in the judicial system is an awesome undertaking.²⁴² This work was one step in the long chain of events that led to prohibition of peremptory challenges on the basis of race by the U.S. Supreme Court in *Batson v. Kentucky*.²⁴³

E. Right to Self-Determination

The Human Rights Committee has recently drawn attention to the importance of the right of all people to self-determination, indicating that the commitment in Article 1 also raises difficulties in enforcement and in reporting.²⁴⁴ Article 1, for the United States, touches the rights of Native Americans,²⁴⁵ Hawaiians,²⁴⁶ Puerto Ri-

240. Racism has long been considered the key human rights problem in the United States, from the research and writing of W.E.B. DuBois, *THE SOULS OF BLACK FOLK* (1903) to Gunnar Myrdal, *THE AMERICAN DILEMMA* (1960) to Herbert Aptheker, *ANTI-RACISM IN U.S. HISTORY* (1992). The prohibition of racism in the ICCPR, art. 2(1), parallels the guarantee of equal protection in the Fourteenth Amendment. U.S. CONST. amend. XIV; ICCPR, *supra* note 1, art. 2(1), 999 U.N.T.S. at 173.

241. See Ann Fagan Ginger, *What Can Be Done to Minimize Racism in Jury Trials*, 20 J. PUB. L. 427, 428 (1971) (stating that part of the Proceedings of the Founding Convention of the Judicial Council of the National Bar Association held in Atlanta Aug. 5-7, 1971, focused in particular on thirty-eight trials for the same offense arising out of the same incident in which the jury verdicts were different, due in part to the vigor and skill with which defense counsel raised the issues of racism and First Amendment exercise in jury voir dire and throughout the trials).

242. I Ann Fagan Ginger, *JURY SELECTION IN CIVIL AND CRIMINAL TRIALS* (Law Press 2d ed. (1984)); II Ginger, *supra*, (1985).

243. 476 U.S. 79 (1986) (holding that an equal protection violation may be stated on the basis of the prosecution's racially biased exercise of peremptory challenges in the particular case at bar without the necessity of proving a history or general pattern of such a practice), *overruling in part Swain v. Alabama*, 380 U.S. 202 (1965).

244. *Revised Guidelines*, *supra* note 176, at 11.

245. See generally VINE DELOIRA, *BEHIND THE TRAIL OF BROKEN TREATIES* (1974); U.S. Treaty with The Six Nations, 7 Stat. 15 (1784), with The Kickapoo, 7 Stat. 117 (1809), with The

cans,²⁴⁷ the people of the District of Columbia,²⁴⁸ and of all U.S. territories.²⁴⁹

According to the Human Rights Committee, Article 1(3) is particularly important in that it imposes specific obligations on States Parties, in relation to their own people. In considering the second and third periodic reports of Canada at its Committee meetings in 1990, the Canadian representative discussed at considerable length "the recent events at Oka, Quebec, involving Mohawk Indians, . . . [and] underlined the critical importance of addressing aboriginal issues in Canada effectively and in an open and constructive manner."²⁵⁰ The U.S. representatives can expect similar consideration of this section of the U.S. report by the U.N. Committee.

The Committee went on to say that Article 1(3) is not only important in relation to a nation's own people

but *vis-a-vis* all people which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination. The general nature of this paragraph is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."²⁵¹

The Committee then touched on the subject underlying U.S. bases in Cuba, in the Philippines, and throughout the world:

The obligations [to promote self-determination] exist irrespective of whether

Yakima, 12 Stat. 951 (1955), with The Navajo, 15 Stat. 667, ratified July 25, 1868, proclaimed Aug. 12, 1868. The agony of Native Americans in 1993 underlies every communication from Native American organizations, for example, a request for support from the White Earth Land Recovery Project in White Earth, Minnesota, representing Anishinaabe people seeking private funding for an "ambitious project . . . to build a base for economic growth and cultural survival" by buying back some of the 94 per cent of their original reservation land. "The rest was stolen in a series of swindles in the early part of this century," according to a letter received at Meiklejohn Institute in February 1992 (on file with author).

246. See S.J. Res. 19, 103d Cong., 1st Sess. (1993) (acknowledging the one-hundredth anniversary of the January 17, 1893, overthrow of the Kingdom of Hawaii and offering an apology to native Hawaiians on behalf of the United States for the overthrow. This recognition resulted from a movement among native Hawaiians similar to the recognition sought by Native Americans on the mainland).

247. U.S. CONST. art. IV, § 3.

248. *Id.* art. I, § 8, cl. 17.

249. *Id.* art. IV, § 3; Roger S. Clark, *Correspondence*, 81 AM. J. INT'L L. 927 (1987); U.N. CHARTER arts. 86-90; see *Palau Very Near "A Decisive Choice" About Its Status, Trusteeship Council Told*, U.N. MONTHLY CHRON., Sept. 1992, at 37.

250. *Revised Guidelines*, *supra* note 176, at 11.

251. *Id.*

a people entitled to self-determination depends on a State party to the Covenant or not. It follows that all States parties . . . should take positive action to facilitate realization of and respect for the right of peoples to self-determination [which] must be consistent with the States' obligations under the Charter . . . and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end.²⁵²

The power of the reporting requirement in relation to native people is clear from the Australian report to the U.N. Committee described in its 1987 report. The Australian Law Reform Commission issued a report entitled *Recognition of Aboriginal Customary Laws*, which commented on how the judiciary should apply the ICCPR to aboriginal customary laws.²⁵³ The report noted "the substantive obligations imposed by Article 27 of the Covenant [on cultural rights], citing the Human Rights Committee decision, and it gives a detailed interpretation of the Covenant"²⁵⁴

VIII. THE ROLE OF INDEPENDENT EXPERTS, STATES, NGOs, AND A PROJECT

A. *Independent Experts*

Under the U.N. principle that individuals have responsibilities for the enforcement of human rights law,²⁵⁵ we need to ask whether the legal profession of a ratifying country should assume certain responsibilities on ratification of the ICCPR stemming from our consciousness of the importance of the rule of law based on our profession.²⁵⁶ These responsibilities could include acting as a watchdog or whistleblower to be sure that the federal government carries out the responsibilities discussed above. Concerned, knowledgeable people can offer to confer with the obvious federal agencies as soon as possible, and to help prepare lists of state and city agencies that might agree to cooperate quickly, and of concerned, conscientious NGOs

252. HRI/GEN/1 ¶ 6 (Sept. 4, 1992).

253. Cohn, *supra* note 125, at 320.

254. *Id.*

255. ICCPR, *supra* note 1, pmb ¶ 5, art. 5(1), 999 U.N.T.S. at 173, 174; Universal Declaration of Human Rights, *supra* note 53, art. 29; Nuremberg Principles, *supra* note 36, princ. I, VII.

256. For example, the Hispanic National Bar Association recently issued its fourth annual "Dirty Dozen" list, which singled out law schools with no Hispanic faculty members, such as Columbia, Harvard, and Yale. *Law School Dinosaurs*, *HISPANIC BUS.*, Feb. 1993, at 72.

who may share their information on enforcement and denials of Covenant rights.

Legal scholars and activists can also compile lists of factors affecting implementation of the rights in the Covenant and difficulties regarding implementation. After submission of the first report to the Human Rights Committee, we can obtain copies of the report, publicize, and distribute them to concerned state agencies, institutes, and NGOs, and urge them to publish their own critiques. We can offer to send additional information to the State Department for inclusion in an addendum to the first report that could be issued. People in the legal profession can attend the Human Rights Committee's public meetings at which this report will be taken up. Later we can provide additional information to appropriate federal agencies to answer questions asked by the Committee members at the public meetings and propose a monitoring system.

B. *Human Rights Cities and States*

In this U.N.-declared Decade of International Law, one of the United Nations' stated goals is to incorporate international law into local law.²⁵⁷ This process is similar to the process of getting national law (in the First Amendment, for example) incorporated into state law (through the Fourteenth Amendment, for example,²⁵⁸ and through state constitutions).²⁵⁹

This process of incorporating U.N. law into local law has proved successful in the few instances in which it has been tried. The Berkeley, California City Council incorporated the Human Rights Articles 55 and 56 of the U.N. Charter into a Human Rights Ordinance on the recommendation of the city's Peace and Justice Commission.²⁶⁰ Also, the state of Sao Paulo in Brazil, and many of its municipalities, adopted the Covenant on the Elimination of All

257. U.N. Gen. Assembly A/45/430/Add.2 p. 7 ¶ 13 (Sept. 12, 1990).

258. *Gitlow v. New York*, 268 U.S. 652 (1925).

259. On independent state grounds, see generally, Ann Althouse, *How to Build a Separate Sphere: Federal Courts and State Power*, 100 HARV. L. REV. 1485, 1496-1500 (1987); Note, *The Untenable Non-Federal Ground in the Supreme Court*, 74 HARV. L. REV. 1375 (1961); Stanley Mosk, *The Constitution of California in the Era of the Burger Court and States' Rights*, L.A. DAILY J., Dec. 19, 1973, at 26-29.

260. Berkeley, Cal. Human Rights Ordinance 5985 N.S. (Aug. 16, 1990). The original jurisdiction of this Commission was to enforce the Nuclear Free Zone ordinance passed by initiative, and later the Anti-Apartheid Ordinance and the Socially-Responsible Investment policy of the city. All of these documents are included in the Socially-Responsible Cities Packet (Meiklejohn Institute 1992).

Forms of Discrimination Against Women.²⁶¹ In addition, in Alameda County, California, the Coalition for Human Rights of Northern California has proposed incorporation of the ICCPR in a county Human Rights Ordinance. This proposal is to be introduced in the county's Board of Supervisors.²⁶²

These examples suggest that lawyers and others knowledgeable about international human rights standards can approach cities, counties, and states to discuss their participation in the publicizing, reporting, and monitoring functions under the ICCPR. This is not only desirable, but is also necessary in order to include in the first U.S. report any meaningful information on many of the articles that are primarily the concern of cities, counties, and states rather than of the federal government. For example, most criminal law enforcement is the responsibility of local governments, not the federal government.²⁶³ The same is true of most types of protection of the rights of children.²⁶⁴

In any event, it is certainly desirable to have concerned government officials work with concerned NGOs and experts to collect detailed information about enforcement of many rights in the Covenant. After the filing of the first report, this work will lay the basis for discussions on what changes need to be made in order to meet the high standards set forth in the Covenant, that is, what changes are needed in the written law (statutes and regulations), in the practices of law enforcement and other local agencies, and in the monitoring process.

C. Participating NGOs

The U.N. Centre for Human Rights makes it clear that international and local NGOs have established themselves as major forces in the protection and promotion of human rights. Some are activists; some are watchdogs; some do nonpartisan research and documentation; others participate in civil litigation and empowerment projects.

It seems clear that the early involvement of groups outside the government

261. See Convention for the Elimination of All Forms of Discrimination Against Women, *supra* note 12; International Women's Rights Action Watch, Hubert H. Humphrey Institute of Public Affairs, University of Minnesota (on file with author).

262. Copy on file with author. For current status, contact Coalition for Human Rights in Northern California, 433 Jefferson Street, Oakland, California 94607.

263. ICCPR, *supra* note 1, arts. 2(3), 6, 7, 9, 10, 11, 14, 15, 16, 25-26, 999 U.N.T.S. at 174, 174-75, 175, 175-76, 176, 176, 176-77, 177, 177, 179.

264. *Id.* arts. 14(1), 18(4), 23(4), 24, 999 U.N.T.S. at 176, 178, 179, 179.

in the reporting process offers an opportunity for critical discussion between the government and its citizens, thereby enabling the political leadership to identify more easily situations that constitute violations of human rights, or that represent a "factor or difficulty" in implementing rights contained in a treaty.²⁶⁶

The United States is rich in NGOs on every subject covered in the Covenant, including, for example, organizations concerned about the rights of children;²⁶⁶ women;²⁶⁷ the disabled;²⁶⁸ ethnic and national groups;²⁶⁹ racial minorities;²⁷⁰ labor unions and their members;²⁷¹ the homeless;²⁷² immigrants and refugees;²⁷³ juveniles;²⁷⁴ crime victims;²⁷⁵ indigent criminal defendants;²⁷⁶ seniors;²⁷⁷ conscientious objectors to war;²⁷⁸ and organizations concerned about family life and problems,²⁷⁹ propaganda for war,²⁸⁰ hate crimes,²⁸¹ political repression,²⁸² and environmental hazards.²⁸³ Many of these organizations would undoubtedly welcome an invitation from the federal government to work on the first U.S. report to the U.N. Committee on Human Rights.

The United Nations gives two examples of cooperative effort that the United States might take to heart. Norway established a Government's Advisory Committee on Human Rights, including members of Parliament from various political parties, government offi-

265. Bernard, *supra* note 180, at 21.

266. All organizations listed in notes 266 through 283 are described in HUMAN RIGHTS ORGANIZATIONS AND PERIODICALS DIRECTORY (Ann Fagan Ginger et al. eds., 1993) and are examples selected without prejudice to other equally important organizations (e.g., Children's Defense Fund, *id.* at 33).

267. 9 to 5, National Association of Working Women, *id.* at 1.

268. Disability Rights Education and Defense Fund, Inc, *id.* at 48.

269. Center for Third World Organizing, *id.* at 29; Mexican American Legal Defense and Education Fund, *id.* at 84.

270. National Association for the Advancement of Colored People, *id.* at 89; Indian Resource Law Center, *id.* at 67.

271. Labor Research Association, Inc., *id.* at 79.

272. Hospitality House, *id.* at 65.

273. National Immigration Project, *id.* at 96.

274. National Center for Youth Law, *id.* at 92.

275. Center for Constitutional Rights, *id.* at 25.

276. National Legal Aid and Defender Association, *id.* at 99.

277. Gray Panthers, *id.* at 61.

278. Central Committee for Conscientious Objectors, *id.* at 32.

279. National Center on Women and Family Law, *id.* at 92.

280. Center for War, Peace and the News Media, *id.* at 29.

281. Klanwatch of Southern Poverty Law Centre, *id.* at 133.

282. National Alliance Against Racist and Political Repression, *id.* at 88; National Committee Against Repressive Legislation, *id.* at 93.

283. Sierra Club, *id.* at 129.

cials, NGOs, and researchers. The Committee serves "as a forum for the pooling of information and for consultation and coordination,"²⁸⁴ and it comments on the drafts of human rights reports, which is its mandate. Similarly, Italy established an International Committee on Human Rights to coordinate the contributions of the main governmental agencies in preparing all reports under ratified human rights treaties. "Representatives of the public administration meet periodically to study and examine available information, new laws and court decisions and to prepare draft reports" which the Committee must approve before submission.²⁸⁵

The United Nations makes it clear that members of the Human Rights Committee

have regularly obtained information on an informal basis from a variety of sources, including nongovernmental ones.

Information provided by NGOs has been a valuable asset in the work of the Committees. It also underlines the important functions of NGOs in ensuring to individuals the enjoyment of human rights. . . . NGOs are very well placed for disseminating information on the reporting process among their members and for encouraging public debate. NGOs can take up issues that are of particular importance to them, and appraise the public of specific comments made by a Committee on matters regarding a State's compliance (or non-compliance) with international treaty obligations.²⁸⁶

Any federal report on human rights prepared in Washington will not become effective at the local level until people at the grassroots feel the power of the law and feel their power to publicize its content and to improve its enforcement.

D. *A Human Rights Project*

In order to encourage the U.S. government to move rapidly to carry out its responsibilities under the ICCPR, the School of Humanities at San Francisco State University established the Center for Advancement of the Covenant and joined forces with Meiklejohn Civil Liberties Institute to launch the U.S. Civil Rights Accountability Project (Project) in late 1992. The Project work plan calls for immediate attention to the publicizing, reporting, and monitoring tasks described earlier in this Article. One of the Project directors presented testimony at the San Francisco hearing of the U.S.

284. Bernard, *supra* note 180, at 22.

285. *Id.*

286. Pocar & Bernard, *supra* note 118, at 28.

Commission on Improving the United Nations on how enforcement of the publicizing and reporting provisions of the Covenant by the United States can improve the effectiveness of the United Nations.²⁸⁷

The Project immediately began to contact NGOs and many city, county, and state agencies offering to make available all the information it collects, from both the federal agency charged with making the report and elsewhere, so that NGOs and local governments can participate in the 1993 reporting process and make plans to continue monitoring human rights practices.

The first effort has already proved successful. On April 2, 1993, the Berkeley City Council adopted the Resolution Supporting the International Covenant on Civil and Political Rights proposed by the author through the Peace and Justice Commission. The City

Strongly supports ratification . . . [and] widespread publicizing of the report . . . [and] Will encourage all concerned Berkeley Commissions, including those on Peace and Justice, Women, Labor, Youth, Police Review, to establish a Task Force to work with nongovernmental organizations to prepare reports on the enforcement, and violations, of human rights enunciated in the Covenant within the City, for inclusion in the U.S. report and for study by Berkeley residents; Will inform of the Council action, President Bill Clinton, Hillary Rodham Clinton, . . . and David P. Stewart, Assistant Legal Advisor for Human Rights and Refugees.²⁸⁸

In order to assist "in the formidable (not to say awesome) task of preparing the first U.S. report," the Project submitted digests of 135 recent cases in U.S. courts that "raised significant issues under one or more articles" of the ICCPR. The Project explained that the litigation "provides significant verifiable data that will illuminate the enforcement, and failure to enforce, many human rights in the United States" that are included in the Covenant, as a first step toward the long-term task of preparing statistical data on violations and enforcement of human rights and on the role of the courts and administrative agencies in this process.²⁸⁹

The Project called an Emergency Work Session of NGOs and local government agencies for January 13, 1994, soon after publication of the first report, to critique the report and to provide essential

287. Ann Fagan Ginger, Testimony at the San Francisco Hearing of the U.S. Commission on Improving the United Nations (Feb. 2, 1993) (transcript on file with author).

288. City of Berkeley, California Resolution No. 56,919 N.S. The reports were sent on November 12, 1993 (copy on file with author).

289. Letter to David P. Stewart, July 19, 1993, from author (on file with author).

information to be included in an addendum. Project directors plan to attend the U.N. Human Rights Committee meeting at which the U.S. report is on the agenda.

The Project plans to recruit students at San Francisco State University to produce a videotape on the history and significance of the Covenant, to produce an informational brochure, and to organize speaking engagements to publicize the Covenant and the forthcoming first report among NGOs.

The Project directors have announced plans to involve the media on human rights issues in the United States on a continuing basis. By referring frequently to the 1993 Report and to constitutional and ICCPR standards in the media, international human rights will become as familiar to the general public as First Amendment rights are today.

IX. AND MILES TO GO²⁹⁰

Members of the legal profession in the United States have helped give meaning to the phrase "internationally recognized human rights." We have helped publicize the crime of apartheid and the illegality of international aggression so that people in the United States, like people in other countries, reject both apartheid in South Africa, and also the arrogance of power that leads rulers to ignore U.N. resolutions that condemn their behavior toward some of their own people and toward their neighbors. Now it is incumbent upon us to ensure that the U.S. government faithfully fulfills its limited obligations under the treaty it signed sixteen years ago and ratified last year.

Publicizing the Covenant and making an accurate, comprehensive first report to the U.N. Human Rights Committee will make one profound change in this country, although it will not change any existing U.S. law or practice. It will make clear to all people that we do not hold ourselves above other people or the law of the United Nations that we helped create; we are not hypocrites.²⁹¹

290. See Robert Frost, *Stopping By Woods on a Snowy Evening*, in MODERN AMERICAN POETRY/MODERN BRITISH POETRY 229 (Louis Untermeyer ed., 1942):

The woods are lovely, dark and deep,
 But I have promises to keep,
 And miles to go before I sleep,
 And miles to go before I sleep.

291. See SENATE COMM. ON FOREIGN RELATIONS, *supra* note 10, at 3, *reprinted in* 31 I.L.M. at 649:

In addition, making this first report will make another profound change for our own people. It will make it easy for every person of every viewpoint to see exactly where we *do* stand in enunciating and enforcing human rights, not only in their neighborhood and state, but also on the other side of the tracks and the country. This scorecard can become the next step in overcoming all human rights violations against every group in the United States and its territories.

We are entering a new moment in history. We can make some of the changes promised by President Bill Clinton in his election campaign and supported by a vast number of the people in this country. We can put an end to the mythology of the Cold War and the myth of the sanctity of the FBI, its former director, J. Edgar Hoover, and its record in enforcing all of the law in the United States. We can proudly state our victories for human rights and honestly admit our failures. We can move beyond the lovely woods, so dark and deep, where many of us have whiled away some time in the past. We have promises to keep and miles to go before we sleep in good conscience, as law-abiding inhabitants of a nation united for peace and human rights.

One step beyond our woods will be a commitment by the federal government to carry out its full duties under the International Covenant on Civil and Political Rights, both at the federal level and by familiarizing the authorities at the state, local, and territorial levels of their parallel duties. "The reporting procedures . . . strengthen the principle of international accountability of governments in the area of human rights."²⁹²

The enforcement of this human rights treaty will have an energizing effect on the enforcement of human rights throughout the United States and all U.S. territories and will have a ripple effect on the enforcement of human rights throughout the rest of the world.²⁹³

In view of the leading role that the United States plays in the international struggle for human rights, the absence of U.S. ratification of the Covenant is conspicuous and, in the view of many, hypocritical. The Committee believes that ratification will remove doubts about the seriousness of the U.S. commitment to human rights and strengthen the impact of U.S. efforts in the human rights field.

292. Van Boven, *supra* note 35, at 3.

293. This energizing effect is the opposite of the chilling effect on the exercise of First Amendment rights caused by the Louisiana statute requiring loyalty oaths of people seeking economic or racial change, which Justice William Brennan helped overturn with his memorable phrase in *Dombrowski v. Pfister*, 380 U.S. 479, 487 (1965), "The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure." (citations omitted).

APPENDIX

Information Needed To Enforce All Rights in the International Covenant on Civil and Political Rights, and Index

The following list was prepared for use by the Task Force established by the Berkeley City Council to collect information for submission for inclusion in the first U.S. Report to the U.N. Human Rights Committee in September 1993 under the International Covenant on Civil and Political Rights (ICCPR).

A few rights in the Covenant that are seldom problems in the United States at this time appear at the end of the list, along with rights whose denial is difficult to quantify, and rights to which the United States attached limitations or reservations.

The list is based on the work of the Meiklejohn Civil Liberties Institute to encourage Nongovernmental Organizations to work quickly to assist in compilation of existing human rights laws in their jurisdictions or areas of concern, and of complaints of denials of these human rights.

1. The law, and complaints of violations of the right to self-determination of peoples living in [City of. . .]

e.g., Native Americans Art. 1(1)

2. The law, and complaints of violation of the right to enjoy and utilize and fully and freely dispose of natural wealth and resources in _____ Arts. 1(2), 47

The law, and complaints of violation of the right to have all rights respected and ensured in _____:

3. without distinction as to race Art. 2(1)
4. without distinction as to color Art. 2(1)
5. without distinction as to sex Art. 2(1)
6. without distinction as to language or national origin Art. 2(1)
7. without distinction as to religion Art. 2(1)
8. without distinction as to political or other opinion Art. 2(1)
9. without distinction as to property or social origin Art. 2(1)
10. without distinction as to birth Art. 2(1)
11. without distinction as to other status Art. 2(1)

The law, and complaints that people in _____ whose rights have

been violated:

12. did not have an effective remedy determined by competent judicial, administrative or legislative authorities. Art. 2(3)(a), (b)

13. did not have competent officials to enforce such remedies Art. 2(3c)

The law, and complaints that people in _____ have been denied

14. equal rights of men and women to all civil and political rights

Art. 3

The law, and complaints by people in _____ that they have suffered discrimination during officially proclaimed public emergencies

Art. 4(1):

e.g., 19__ _____ earthquake/hurricane/tornado/flood

15. based on race/color

16. based on national origin/language

17. based on property/social origin

18. based on youth

e.g., 1992 Rodney King verdict events

19. based on race/color

20. based on national origin/language

21. based on property/social origin

22. based on youth

e.g., 19__ _____ fire/flood

23. based on race/color

24. based on national origin/language

25. based on property/social origin

26. based on youth

27. The law, and complaints of violations, by individuals and/or groups that have engaged in activities to destroy the civil and political rights of others. Art. 5

28. The law, and complaints by people in _____ that the death penalty was imposed for less than the most serious crimes Art. 6(2)* and that capital punishment was meted out disproportionately:

29. based on race/color

30. based on national origin/language

31. based on property/social origin

The law, and complaints by people in _____ of:

32. cruel treatment Art. 7

33. cruel punishment Art. 7

34. inhuman treatment Art. 7
35. inhuman punishment Art. 7
36. degrading treatment Art. 7
37. degrading punishment Art. 7
38. forced or compulsory labor Art. 8(3)

The law, and complaints of people in _____ of:

39. lack of liberty Art. 9(1)
40. lack of security of person Art. 9(1)
41. arbitrary arrest or detention Art. 9(1)
42. deprivation of liberty in violation of law Art. 9(1)

The law, and complaints of people in _____ that:

43. someone was not informed at the time of arrest of the reasons for arrest Art. 9(2)
44. someone was not promptly informed of the charges on arrest Art. 9(2)
45. someone was not brought promptly before a judge Art. 9(3)
46. someone did not have a trial within a reasonable time or get released Art. 9(3)

The law, and complaints of people in _____ that someone who was unlawfully arrested:

47. was not ordered released although the detention was not lawful Art. 9(4)
48. did not have an enforceable right to compensation Art. 9(5)

The law, and complaints of people in _____ that due process rights were denied:

49. people deprived of their liberty were not treated with humanity Art. 10(1)
50. accused persons were not segregated from convicted persons Art. 10(2a)
51. the aim of penitentiary system in which someone was placed was not reformation and social rehabilitation Art. 10(3)
52. some one was imprisoned for inability to fulfill a contractual obligation Art. 11

The law, and complaints of people in _____ that youth were denied due process rights Art. 10:

53. accused juvenile persons were not separated from adults Art. 10(2b)
54. accused juvenile persons were not brought as speedily as pos-

sible for adjudication. Art. 10(2b)

55. the aim of penitentiary system in which someone was placed was not reformation and social rehabilitation Art. 10(3)

56. juvenile offenders were not segregated from adults Art. 10(3)

57. juvenile offenders were not treated appropriately to their age and legal status Art. 10(3)

58. the desirability of rehabilitating juvenile persons was not taken into account Art. 14(4)*

59. judgment rendered in a criminal case or in a suit was made public although it involved juvenile persons, matrimonial disputes, or the guardianship of children. Art. 14(1)

The law, and complaints of people in _____ about denial of:

60. their liberty of movement and freedom to choose their residence (except aliens) Art. 12(1)*

61. their freedom to leave this country Art. 12(2)

62. their right to enter their own country Art. 12(4)

63. the right of an alien not to be expelled except in pursuance of a decision Art. 13

64. the right of an alien to have a case reviewed (although national security was not threatened) Art. 13*

The law, and complaints of people in _____ about denial of rights in the judicial system:

65. all persons were not treated as equal before the court Art. 14(1)

66. all persons did not receive a fair and public hearing Art. 14(1)

67. the press and the public were not excluded when the interest of the private lives of the parties so required Art. 14(1)

68. someone charged was not presumed innocent until proven guilty according to law. Art. 14(2)

The law, and complaints by people in _____ about denial of rights in the judicial system:

69. to be informed promptly and in detail in a language which one understands of the nature and cause of the charge against one Art. 14(3a)

70. to adequate time and facilities for the preparation of one's defense Art. 14(3b)

71. to communicate with counsel of one's own choosing Art. 14(3b)

72. to be tried without undue delay Art. 14(3c)

73. to be tried in the presence of legal assistance of one's own choosing and informed of this right Art. 14(3d)

- 74. to have legal assistance assigned to one without payment by one Art. 14(3d)
- 75. to examine the witnesses against one Art. 14(3e)
- 76. to obtain the attendance and examination of witnesses on one's behalf Art. 14(3e)
- 77. free assistance of an interpreter Art. 14(3f)
- 78. not to be compelled to testify against oneself Art. 14(3g)
- 79. not to be compelled to confess guilt Art. 14(3g)
- 80. those convicted did not have a right to conviction and sentence being reviewed Art. 14(5)
- 81. when a conviction was reversed, person was not compensated according to law Art. 14(6)
- 82. someone was tried or punished twice for the same offence Art. 14(7)
- 83. someone was charged under a new law for an act committed before the new law went into effect (no ex post facto) Art. 15(1)
- 84. someone was denied the right to recognition as a person before the law Art. 16

The law, and complaints by people in _____ of:

- 85. arbitrary or unlawful interference with privacy, family, home or correspondence Art. 17(1)
- 86. unlawful attacks on honor or reputation Art. 17(1)

The law, and complaints by people in _____ of denial of the right to religious freedom:

- 87. to freedom of thought, conscience and religion Art. 18(1)
- 88. freedom either individually or in community with others and in public or private to manifest one's religion Art. 18(1)
- 89. to be free from coercion that would impair the freedom to belief of choice Art. 18(2)
- 90. denial of respect for the liberty of parents to decide the religious and moral education of one's children Art. 18(4)

The law, and complaints by people in _____ of denial of:

- 91. the right to hold opinions without interference Art. 19(1)
- 92. the right to freedom of expression through any media of choice Art. 19(2)
- 93. the right to seek, receive and impart information regardless of frontiers, orally, in writing or print, in the form of art, or through any other media Art. 19(2)

The law, and complaints by people in _____ of:

94. propaganda for war Art. 20(1)*
95. advocacy of national hatred Art. 20(2)*
96. advocacy of racial hatred Art. 20(2)*
97. advocacy of religious hatred Art. 20(2)*
98. hate crimes under _____ law based on race
99. hate crimes under _____ law based on gender
100. hate crimes under _____ law based on national origin/
language

The laws, and complaints of people in _____ of denials of free expression rights:

101. the right of peaceful assembly Art. 21
102. the right to freedom of association Art. 22(1)

The law, and reports by people on labor's rights in _____:

103. the right to form and join trade unions for the protection of interests Art. 22(1)
104. number and extent of strikes and lockouts in _____
105. number and extent of contracting out, ending union contracts
106. number of strikes in which replacement workers were retained after strike ended
107. length of time between union winning election and management signing contract
108. number of unions in _____ struggling on women's issues; issues of race, national origin/language
109. number of enterprises moving from _____ to break union contracts

The law, and complaints of people in _____ of denial of:

110. rights of families to protection by society and the State Art. 23(1)
111. equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution Art. 23(4)

The law, and complaints of people in _____ of a governmental commitment to undertake to respect and to ensure that every child:

112. has necessary protection Art. 23(4)
113. has rights without distinction as to race Art. 24(1)
114. has rights without distinction as to color Art. 24(1)
115. has rights without distinction as to sex Art. 24(1)
116. has rights without distinction as to language Art. 24(1)

- 117. has rights without distinction as to religion Art. 24(1)
- 118. has rights without distinction as to national origin Art. 24(1)
- 119. has rights without distinction as to property, or social origin Art. 24(1)
- 120. has rights without distinction as to legitimacy Art. 24(1)

The law, and complaints of people of _____ about equal rights:

- 121. to take part in the conduct of public affairs without regard to gender Art. 25(a)
- 122. to take part in the conduct of public affairs without regard to race, color, national origin/language Art. 25(a)
- 123. to take part in the conduct of public affairs without discrimination based on political opinion Art. 25(a)
- 124. to vote without regard to race, homelessness, property, or social class Art. 25(b)
- 125. to be elected at genuine periodic elections by universal and equal suffrage Art. 25(b)

The law, and complaints by people of _____ about equal rights to access, on general terms of equality, to public service Art. 25(c):

- 126. without regard to race, national origin/language
- 127. without regard to gender
- 128. without regard to property or social origin

The law, and complaints by people in _____ of denial of their right to be equal before the law and to have the law guarantee effective protection against discrimination on any ground:

- 129. without distinction as to race Art. 26
- 130. without distinction as to color Art. 26
- 131. without distinction as to sex Art. 26
- 132. without distinction as to language Art. 26
- 133. without distinction as to religion Art. 26
- 134. without distinction as to political or other opinion Art. 26
- 135. without distinction as to national or social origin Art. 26
- 136. without distinction as to property, birth or other status Art. 26

The law, and complaints by people that in _____ persons belonging to ethnic, religious, or linguistic minorities have been denied the right, as individuals or in groups, to:

- 137. enjoy their own culture Art. 27
- 138. profess and practice their own religion Art. 27
- 139. use their own language Art. 27

[The following rights in the Covenant are seldom problems in the jurisdictions that will be making reports to be included in the United States first report, or they are common problems about which no statistics are currently kept, or the United States specifically reserved the right not to enforce this civil or political right. For these reasons, information needed to enforce these rights is placed at the end of this list.]

The law, and complaints by people that in _____ people were not able to:

- 140. freely pursue economic, social and cultural development Art. 1(1)
- 141. promote the right of self-determination of Non-Self-Governing and Trust Territories Art. 1(3)

The law, and complaints by people that in _____ people were:

- 142. deprived of their means of subsistence Art. 1(2)

The law, and complaints by people that in _____ during officially proclaimed public emergencies:

- 143. people were discriminated against on the basis of sex Art. 4(1)
- 144. people were discriminated against on the basis of religion Art. 4(1)

The U.S. government did not inform the Secretary-General of the UN of:

- 145. the reasons for the failure to protect any human rights in the Covenant Art. 4(3)
- 146. the date of termination of the emergency Art. 4(3)

The law, and complaints by people that in _____ the jurisdiction did not respect or ensure that:

- 147. every human being shall have the inherent right to life Art. 6(1)*
- 148. no one shall be arbitrarily deprived of his life Art. 6(1)*

The law, and complaints by people that in _____

- 149. the crime of genocide, although prohibited by federal treaty and law, has never been charged when the facts warranted Art. 6(3)

The law as to sentence to death, and complaints that in _____:

* For limitations and reservations attached by U.S. Senate, *see supra* text accompanying note 171.

- 150. the right to seek pardon or commutation of sentence was denied Art. 6(4)
- 151. pregnant women were executed Art. 6(5)

The law, and complaints by people that in _____:

- 152. someone was tortured Art. 7
- 153. someone was held in slavery Art. 8(1)
- 154. a slave-trade is operating Art. 8(1)
- 155. people are held in servitude Art. 8(2)

The law, and complaints that:

- 156. the right to marry has been violated Art. 23(2)
- 157. the right to found a family has been violated Art. 23(2)
- 158. intending spouses did not give their free and full consent to the marriage Art. 23(3)
- 159. babies were not registered immediately after birth Art. 24(2)
- 160. children were not permitted to acquire a nationality Art. 24(3)

INDEX TO LIST OF RIGHTS IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (I.C.C.P.R.)

- Access 128
 Accused 50, 53-54
 *Administration of justice 12-13, 28, 32-37, 39-52, 66-86
 African Americans, rights of *see* Race
 Alien 63, 64
 Appeal 80
 Arbitrary arrest 41
 Arrest 43, 44, 48
 Art 93
 Asian Americans, rights of *see* Race
 Assembly, Freedom of 88, 101
 *Association, Freedom of 87-92, 101-103
 *Asylum 61-62
 Belief 89
 Birth 10, 17, 21, 119, 136, 159
 Charges 44, 69
 *Childhood, children 59, 90, 112-129, 159-160
 Choice 89
 Civil Liberties 7-8, 27, 39, 42, 49, 59, 60, 67, 85, 87-93, 97, 101-103, 117, 123, 127, 134, 137, 139-140, 144
 Civil Rights 1-11, 14-27, 29-30, 60-65, 69, 77, 95-100, 103-109, 111, 113-122, 124-126, 128-137, 139-141, 149, 159
 Coercion 89
Collective rights 1-2, 27, 94-97, 110-111, 140-141
 Color 4, 15, 19, 23, 29, 65, 114, 122, 130
 Communication with counsel 71
 Community 88
 Compensation 48, 81
 Compulsory labor 38
 Conscience 87
 Conviction 50, 80, 81, 150-151
 Correspondence 85
 Counsel 11, 71, 73, 74
 Criminal defendants, rights of *see* Due process
 Cruelty 32, 33
 *Culture, Right to enjoy 137, 139, 140
 Death penalty 28-31
 Defense 70
 Degradation 36, 37
 Deportation 60-64
 Deprivation 42, 49
 *Detention, detainees 41, 46-47
 Development 140
 Disabled 11
 *† Discrimination, Prevention of 3-10, 14-27, 65, 95-97, 113-119, 129-136
 Double jeopardy 82
 Due process 11-13, 28, 32-37, 39-55, 65-86, 150-151
 Economic 2, 103-109, 140, 142
 Education 90
 Effective remedy 12
 Elections 124-125
 *Employment policy 103-109
 Environment, protection of 2
 Equal rights 14, 27, 65, 111, 121, 129-136
 Equality before the law 129-136
 Ethnicity 137, 139
 †Evil practices, Fight against large-scale 38
 Ex post facto 83
 Expression 92
 Fair and public hearing 66
 *Family 14, 85, 90, 110-111, 157
 Free assistance 74, 77
 **Freedom of information 59, 93
 Freedom of speech 92-93
 Freedom of thought 87
 Freely dispose 2
 Gender, *see* Sex
 *Genocide 149
 Guardianship 59
 Hate crimes 95-100
 Home 85
 Homosexuality 11
 Honor 86
 Illegitimacy 10, 120, 136, 159
 Immigrants *see* Aliens
 *Imprisonment 52
 Indigenous people 1-2, 6, 137, 139, 141
Individual and collective rights 3-10, 14, 15-27, 32-38, 87-93, 101-103, 121-139
Individual rights 12-13, 27, 28, 39-86, 112-120, 147-160
 Information 93

- Inhuman 34, 35
 Innocence 68
 Interpreter 77
 Juvenile 18, 22, 26, 53-59, 160
 Labor unions 103-109
 Language 6, 16, 20, 24, 27, 30, 69, 77, 108, 116, 126, 132, 139
 Latinos, Mexican Americans, *see* Language, Nationality
 Legal assistance 71, 73, 74
 Legitimacy 10, 120, 136, 159
 Liberty 39, 42, 49, 60, 90
 Life 147, 148
 *Marriage 14, 59, 110-111, 156-158
 Media 92-93
 Migrant workers 60-63
 Movement 60-64
 *Nationality 9, 16, 20, 24, 30, 60-64, 100, 118, 122, 126, 135
 Native Americans, rights of, *see* Race
 Natural wealth and resources 2
 Other status 11, 136
 Pardon 150
 Parents 14, 90, 110-111, 157
 Penitentiary system 51, 55
 Personal injury plaintiffs 12, 40, 48, 81
 Police misconduct 12-13, 32-47, 49, 67, 85, 88
 Political opinion 8, 27, 91, 123, 127, 134
 Pregnant women 151
 Press, Freedom of 59, 67, 91-93
 Presumed innocence 68
 Prisoners 33, 35, 37, 47-48, 51, 55
 Privacy 67, 85, 88
 Propaganda 94-100
 Property distinctions 9, 17, 21, 25, 31, 119, 124, 136
 * Protection of vulnerable persons, groups 1-2, 9-10, 27, 41, 47-48, 59-64, 90, 103-109, 112-128, 137-139, 151, 159-160
 Protest, peaceful, *see* Assembly
 Public affairs 121-123
 Public emergency 15-26, 143-146
 Public hearing 66
 Public service 126-128
 Punishment 33, 35, 37, 51, 55, 150-151
 Race 3, 15, 19, 23, 27, 29, 65, 96, 98, 108, 113, 122, 126, 129
 Recognition 84
 *Refugees 60-64
 Rehabilitation, reformation 58
 Religion or belief 7, 27, 87-90, 97, 117, 144
 Reputation 86
 Resources, Natural 2
 Reversal of conviction 81
 Secretary-General of UN, Inform 145, 146
 Security of person 40
 *Self-determination 1, 141
 Self-incrimination 78, 79
 Sentence 80, 150-151
 Servitude 155
 Sex 5, 14, 27, 59, 65, 99, 108, 111, 115, 121, 128, 131, 143
 Slavery, servitude, forced labor 38, 153-155
 Social origin 9, 17, 21, 25, 31, 119, 124, 135, 159
 Social rehabilitation 51, 55
 Speech, freedom of *see* Freedom of speech
 *Statelessness 60-64, 160
 Status 9, 11, 17, 21, 25, 31, 159
 Subsistence 142
 Suffrage 124, 125
 Surveillance, illegal 85, 88
 Torture 152
 Treatment 32, 34, 36
 Trial 46, 65-79
 Undue delay 72
 Unions 103-109
 Vote 124
 * Vulnerable persons and groups, Protection of 1-2, 9, 10, 27, 41, 47-48, 59-64, 90, 103, 112-128, 137-139, 157-160
 War 94
 Witnesses 75-76
 *Women, Political rights of 14, 121, 125, 128
 Women, rights of *see* Sex
 Workers 60-62, 103-109
 Youth, *see* Juveniles

* Classifications in United Nations Compilation of International Human Rights Instruments (UN 1988).

† Three objectives of special human rights instruments in Manual on Human Rights Reporting, 7 (UN 1991).

Three types of rights, in Manual, *id.*, p. 7.