

# **The Identity Project**

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## **Update for the U.N. Human Rights Committee concerning Executive Order 13107 and complaints and remedies for violations of the ICCPR by the U.S.A.**

The Identity Project (IDP), <<http://www.PapersPlease.org>>, a U.S.-based NGO, submits this update to the U.N. Human Rights Committee concerning the first question on the Committee's list of issues for its review of U.S. implementation of the ICCPR, “(c) whether the State party intends to reinvigorate Executive Order 13107/1998 titled 'Implementation of Human Rights Treaties.’”<sup>1</sup> We thank the Committee for raising this issue, which we raised with the Committee in one of our initial submissions.<sup>2</sup>

In Paragraph 4 of its response to the Committee's list of issues, the U.S. refers to “possible measures to enhance coordination ... on U.S. implementation of human rights obligations.” But the Committee's question was not about “coordination” within the U.S. government. The U.S. does not say whether it has ever implemented, or ever intends to implement, any of the specific actions ordered by EO 13107, which the U.S. has referred to in its previous reports in relation to complaints of violations of the ICCPR.

We regret to inform the Committee that, more than a year after our initial submissions to Committee, (1) the U.S. government still has not responded to our complaints of violations of the ICCPR submitted to the Department of State beginning in 2010; (2) the State Department still has not responded to our 2011 request for any records related to complaints of human rights violations; and (3) no U.S. government department has provided any evidence, in response to our Freedom Of Information Act (FOIA) requests for any such records, that U.S. government agencies have been required to investigate complaints of human rights violations, or that any annual review of the issues raised by such complaints has been conducted, as was directed by EO 13107.<sup>3</sup>

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- 1 Contact for this submission: Edward Hasbrouck, consultant to the Identity Project, <eh@papersplease.org>, telephone +1-415-824-0214.
  - 2 “Handling of complaints of violations of U.S. obligations pursuant to the ICCPR”, <<http://papersplease.org/wp/wp-content/uploads/2013/01/idp-iccpr-issues-1-complaints.pdf>> (December 27, 2012).
  - 3 See details and links to our FOIA requests, responses, and complaints to the Departments of State, Homeland Security, Transportation, and Justice in our original submission to this Committee, note 2, *supra*.

EO 13107 has never been officially revoked. But the non-response to our complaints and requests suggests that EO 13107 has never been implemented. The ability of Executive agencies, nominally subject to Presidential direction, to ignore an explicit Presidential directive regarding their obligation to implement the ICCPR, should be cause for concern by the Committee. And if EO 13107 does not provide any effective remedies for complaints of human rights violations, what – if any – other remedies exist?

This may seem an abstract “meta-issue”. But of course, as the Committee and the ICCPR itself recognize, there are no real “rights” without effective administrative and judicial remedies. And even if EO 13107 were fully implemented, it would provide only administrative remedies which would not be subject to review by any U.S. court.

Accordingly, we encourage the Committee to ask the U.S. whether government agencies are required to log, report, or respond to complaints of human rights violations, and whether mechanisms are in place in the U.S. to ensure “effective remedies” and “possibilities of judicial remedy” as required by Art. 2, Sec. 3 of the ICCPR, particularly when alleged violations of the ICCPR do not constitute violations of U.S. domestic law.<sup>4</sup>

And we encourage the Committee, in its Concluding Observations, to note that:

1. U.S. government agencies are not required to respond to complaints of violations of the ICCPR unless they also allege violations of U.S. domestic law.
2. The ICCPR has not been effectuated by U.S. domestic law. There are no “effective remedies” or “possibilities of judicial remedy” in the U.S. for violations of the ICCPR that do not also constitute violations of U.S. domestic law.
3. The U.S. should give U.S. courts jurisdiction to hear cases arising under the ICCPR, and create a cause of action in U.S. courts for violations of the ICCPR.

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4 The U.S. government continue to argue that it has the authority to derogate from its obligations as a party to the ICCPR through the enactment of domestic statutes. See e.g. “TSA thinks Congress can override international treaties”, <<http://papersplease.org/wp/2014/01/13/tsa-thinks-congress-can-override-international-treaties/>> (January 13, 2014)