



## **The Identity Project**

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14 January 2019

U.N. Human Rights Committee  
Secretariat, Attn: Gabriella Habtom  
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SWITZERLAND  
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**List of issues prior to reporting by the United States of America:  
5th periodic review of implementation by the USA of  
the International Covenant on Civil and Political Rights**

### **Remedies for violations of the ICCPR (ICCPR Articles 2 & 40)**

#### **I. Issue: Remedies for violations of the ICCPR by the USA**

#### **II. Reporting Organizations: The US Human Rights Network (USHRN) and the Identity Project (PapersPlease.org)**

The US Human Rights Network (USHRN) is a national network of organizations and individuals working to strengthen a human rights movement and culture within the United States led by the people most directly impacted by human rights violations.

The Identity Project (IDP), <<https://PapersPlease.org>>, is part of the First Amendment Project, a nonprofit organization (NGO) providing legal and educational resources to protect and promote rights protected by the First Amendment to the U.S. Constitution and corresponding provisions of international human rights treaties.

#### **III. Issue Summary**

The United States has not acceded to the First Optional Protocol to the ICCPR, so individuals cannot bring complaints to the UNHRC. The U.S. does not recognize the ICCPR as "self-effectuating", and has not enacted legislation to allow complaints of

violations of the ICCPR to be a cause of action in U.S. courts. As a result, no remedy is available through the UNHRC or under U.S. law for violations of the ICCPR, unless they also constitute a violation of some specific provision of U.S. domestic law.

#### **IV. Concluding Observations**

In Section 1.C.(4)(c) of its Concluding Observations on the 4th report of the United States of America, the UNHRC said, “The State party should:… Taking into account its declaration that provisions of the Covenant are non-self-executing, ensure that effective remedies are available for violations of the Covenant, *including those that do not, at the same time, constitute violations of U.S. domestic law*, and undertake a review of such areas with a view to proposing to the Congress implementing legislation to fill any legislative gaps. The State party should also consider acceding to the Optional Protocol to the Covenant providing for an individual communication procedure.”

#### **V. U.S. Government Actions Since the Previous Periodic Review**

No implementing legislation has been introduced in the U.S. Congress or proposed to the Congress by the executive branch to create a cause of action under U.S. law for violations of the ICCPR or to fill any of the other ongoing legislative gaps.

The U.S. still has not acceded to the Optional Protocol to the ICCPR.

Executive departments of the U.S. government including the Department of State, Department of Justice, and Department of Transportation (responsible for protection of the right to freedom of movement by common carrier) have indicated, in response to Freedom Of Information Act (FOIA) requests by the Identity Project, that they have no record of any designated point of contact for complaints of violations of the ICCPR.

The Identity Project has received no response whatsoever to complaints of violations of the ICCPR submitted to the Department of State (DOS) as long ago as 2011. The Department of State still has not completed its response to our FOIA request made in 2011 for any records related to the investigation or disposition of these and other complaints of violations of the ICCPR by the DOS. To date, the DOS has provided no records of the number of such complaints, the issues raised by them, whether these complaints were investigated or responded to, or the disposition of these complaints.

#### **VI. Legal Framework**

ICCPR Article 2: "1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant....

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy...”

ICCPR Article 40: "The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights”.

## **VII. Recommended Questions**

(1) What, if any, means are available to an individual or organization to obtain judicial review of a law, regulation, policy, or practice alleged to violate U.S. obligations pursuant to the ICCPR, but not otherwise alleged to violate U.S. law?

(2) What point(s) of contact, if any, have been designated for complaints of violations of the ICCPR by components of the U.S. government or by state or local governments? What, if any, records are kept of complaints of violations of the ICCPR by the U.S. or by state or local governments? To whom, if anyone, are these complaints required to be reported? What, if any, policies or procedures have been adopted for recording, reporting, investigating, or responding to such complaints?

## **VIII. Suggested Recommendations**

(1) The U.S. should enact legislation implementing and effectuating the ICCPR by giving U.S. federal and state courts jurisdiction to hear cases arising under the ICCPR, and creating a federal cause of action for violations of the ICCPR.

(2) The U.S. should consider acceding to the Optional Protocol to the ICCPR.

Sincerely,

### **US Human Rights Network**

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