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**United Nations Human Rights Council
Universal Periodic Review
United States of America
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Executive Summary

The United States is not party to all of the core human rights treaties, but ratification of treaties is not the indispensable condition to the observation and protection of human rights. Many governments boast that they have ratified a treaty or that human rights are enshrined in their constitution and laws, yet routinely and flagrantly violate those rights. The evidence indicates that without an independent judiciary and an ability to enforce civil and political rights, such rights are under constant threat regardless of the number of treaties a state has ratified or the rights provided for under their laws. The U.S. system of representative government, its independent judiciary, its robust civil society, and the principles enshrined in its Constitution represent best practices that all states and stakeholders should emulate in observing and protecting human rights and fundamental freedoms.

1. Human Rights Council resolution 5/1 of June 18, 2007 provides that member states undergoing the Universal Periodic Review (UPR) mechanism shall be reviewed on several bases, including but not limited to (a) The Charter of the United Nations, (b) The Universal Declaration of Human Rights, (c) human rights instruments to which the State is a party, and (d) voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council. Among the objectives of the review process are the “sharing of best practice among States and other stakeholders.”

2. As an initial matter, it should be noted that the United States has fully complied with its obligations under all human rights instruments to which it is a party, including the International Covenant on Civil and Political Rights (ratified in 1992), the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 1994), the International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1994), and the two Optional Protocols to the Convention on the Rights of the Child (both ratified in 2002).

3. Additionally, the legal protections provided to women and children in the United States meet or exceed the provisions of the U.N. Convention on the Rights of the Child² and the Convention on the Elimination of All Forms of Discrimination against Women,³ though the United States is not a party to those conventions.

4. The United States is current on its required reports for all human rights instruments to which it is a party, and all such reports, supplemental documents, and concluding observations are publicly available online.⁴ The United States also frequently hosts representatives of Special Procedures of the Human Rights Council, including visits by the special rapporteurs on

² Jennifer Marshall and Grace Smith, “Human Rights and Social Issues at the U.N.: A Guide for U.S. Policymakers,” The Heritage Foundation, Backgrounder #1965, August 31, 2006, at <http://www.heritage.org/Research/Reports/2006/08/Human-Rights-and-Social-Issues-at-the-UN-A-Guide-for-US-Policymakers>.

³ Grace Melton, “CEDAW: How U.N. Interference Threatens the Rights of American Women,” The Heritage Foundation, Backgrounder #2227, January 9, 2009, at <http://www.heritage.org/Research/Reports/2009/01/CEDAW-How-UN-Interference-Threatens-the-Rights-of-American-Women>.

⁴ U.S. Department of State, Treaty Reports, available at <http://www.state.gov/g/drl/hr/treaties/index.htm>.

extrajudicial, summary or arbitrary executions; freedom of religion or belief; violence against women; migrants; counter terrorism and human rights; racism; and adequate housing.⁵

5. However, U.S. observance of its treaty obligations and its respect for international human rights officials and bodies do not oblige it to accept interpretations and judgments that extend beyond those freely assumed upon ratification of a treaty or other binding legal instrument. Enactment of laws consistent with a treaty, even if they explicitly refer to a treaty, similarly conveys no legal status to the treaty under U.S. law unless they are ratified.

6. Under the U.S. system of government, a treaty is not considered binding until it is signed *and* receives the advice and consent of two-thirds of the Senate. Moreover, the treaty itself is subject to the reservations, understandings, and declarations adopted during the ratification process. The signing of a treaty, by itself, carries no domestic legal weight and the U.S. is under no legal obligation to observe the strictures of the human rights treaties (such as the International Covenant on Economic, Social and Cultural Rights) that it has signed but not ratified, and any attempt to assert such obligations during the UPR is inappropriate.⁶

7. Similarly, voluntary pledges and commitments by U.S. officials that would affect U.S. domestic law carry no legal status without subsequent action by Congress.

8. These facts, while obvious to those familiar to the U.S. system of government, bear stating because resolution 5/1 asserts that countries shall be reviewed on the basis of the human rights instruments to which it is party, while simultaneously instructing that the UPR should “promote the universality, interdependence, indivisibility and interrelatedness of all human rights.” This inconsistency has led past reviews to hold states accountable for the full panoply of human rights—even those codified by treaties to which it is not party.

9. While this is problematic with non-ratified treaties, it is compounded by the predilection of the Council’s mandate holders to interpret and extend human rights beyond generally accepted definitions and norms and to criticize states for failing to comport with their interpretation of human rights obligations even if they are not supported by the text of human rights treaties.

10. Moreover, the record of U.N. human rights treaty bodies in general is replete with examples where they make demands of states parties that fall well outside of the legal, social, economic and cultural traditions and norms of states parties.

11. While resolution 5/1 specifically directs that the UPR “complement and not duplicate other human rights mechanisms,” the record shows that there is considerable overlap and specific criticisms often rely on the comments, reports, and work of the treaty bodies and mandate holders. The UPR should strive to adhere to the strict assessment of the unquestioned human rights obligations a state has indisputably assumed, rather than on the debatable opinions offered by various experts and bodies.

⁵ “Country visits by Special Procedures Mandate Holders since 1998 (N-Z),” Office of the United Nations High Commissioner for Human Rights, available at <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm>.

⁶ For specific responses by the U.S. government to efforts to assert such obligations, see “Observations by the Governments of the United States and the United Kingdom on Human Rights Committee General Comment No. 24 (52) relating to reservations,” U.N. Doc. A/50/40, p. 1, March 28, 1995, available at <http://www.iilj.org/courses/documents/USandUKResponses.pdf>; and “Observations by the United States of America on ‘The Right to Health, Fact Sheet No. 31,’” October 15, 2008, available at http://www.globalgovernancewatch.org/docLib/20081222_Health_USG_Paper.pdf.

Best Practices in the United States

12. The United States' compliance with various treaty commitments and human rights obligations reflects only a minor part of the commitment of the United States to the protection of human rights. That commitment is established and guaranteed not by U.S. ratification of human rights treaties or membership in human rights organizations, but rather by free and fair elections, a representative government, an independent judiciary, a robust civil society, and most importantly the principles enshrined in the Constitution of the United States of America.

13. Together, the U.S. Constitution and the panoply of U.S. laws and institutions protecting human rights and fundamental freedoms represent best practices that all States and stakeholders should emulate.

The Constitution of the United States of America

14. The best practice that the United States holds out to the world is its adherence to the Constitution and the Bill of Rights—the foundational documents which enumerate fundamental civil and political rights and establish a government of limited powers.

15. The Constitution—by dividing political and judicial power between executive, legislative, and judicial branches of government—creates checks and balances on government power, thereby limiting the ability of the government to infringe on the rights of the American people. The power of the government is further limited by the Tenth Amendment, which reserves to the States and to the people all powers not expressly delegated to the federal government.

16. Most of the fundamental rights and freedoms listed in the Universal Declaration of Human Rights (and later in the International Covenant on Civil and Political Rights) were adopted over 200 years ago in the Bill of Rights—the first 10 amendments to the Constitution. Observance of these rights, while continuously improving, has been exemplary on whole.

17. The protections in the First Amendment to the Constitution for the freedom of religion, opinion, expression, and peaceful association are reflected in Articles 18, 19, and 20 of the UDHR. The Fourth Amendment's prohibition against arbitrary arrest and interference with one's home and privacy is reflected in Articles 9 and 12. The Fifth Amendment's protection against deprivation of life, liberty or property without due process of law is reflected in Article 3. Other Constitutional rights such as equal protection under the law, and the prohibition of *ex post facto* laws and cruel or unusual punishment are also found in the UDHR.

18. In addition to civil and political rights, the U.S. federal government has established significant social welfare programs for the benefit of the elderly and the infirm—such as Social Security, Medicare, and Medicaid. Indeed, the provisions of the UDHR dealing with such benefits—including social security (Art. 22), equal pay, union membership (Art. 23), and education (Art. 26)—are provided for throughout the United States through various state and federal programs. These programs more than meet the strictures of the UDHR.

19. However, the U.S. does not generally recognize these programs as “rights” under the Constitution and has consistently declined to ratify the International Covenant on Economic, Social and Cultural Rights which would elevate many of those programs to that stature. This is entirely appropriate as such “rights” are more properly viewed as benefits conferred by law—and, as such, are subject to modification or elimination. Such programs should be considered secondary to the civil and political rights that are vital to an accountable government because they cannot be lawfully withdrawn without threatening the fundamental freedoms of the

citizenry. Ignoring the difference defies the reality that without the institutional guarantees provided by civil and political rights—an independent judiciary, the rule of law, and representative government—all other “rights” are essentially unenforceable.

20. Indeed, many nations of the world boast that civil and political rights are enshrined in their constitution and laws and yet routinely and flagrantly violate those rights. Other nations (usually nations without a strong tradition of protecting civil and political rights) claim that they provide their people with universal social programs and welfare. Without an independent judiciary and an ability to enforce those protections, however, such claims must be viewed with skepticism. A population may possess some ethereal “right to health,” but that right is likely unattainable without an accountable government and accessible judiciary.

Enforcement of Rights

21. Article 8 of the UDHR states that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Adherence to Article 8 is perhaps the most crucial element to the actual enjoyment of human rights and fundamental freedoms by the people of the world.

22. All laws, rights, and welfare programs—whether they be civil, political, economic, social or cultural—are rendered meaningless unless there is an avenue for redress when such rights are violated, neglected, or completely ignored the government.

23. The judicial system in the United States allows all persons within the nation to pursue redress for violations of human rights and discrimination based on race, gender, and disability, and constitutes a best practice. Landmark civil rights laws such as the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, and the Fair Housing Act (to name but a few) are regularly invoked in U.S. courts for the enforcement of civil and political rights.

24. In addition to the ability to bring private lawsuits to protect civil and political rights, the U.S. government actively enforces its civil rights laws. The Civil Rights Division of the U.S. Department of Justice, in particular, enforces U.S. laws prohibiting discrimination on the basis of race, gender, disability, religion, familial status and national origin. The U.S. Equal Employment Opportunity Commission specializes in enforcing discrimination laws regarding employment decisions such as hiring, firing, and promotion. The bipartisan, independent U.S. Commission on Civil Rights investigates, reports on, and refers civil rights violations to government agencies for action.

25. These are just a few government organizations responsible for monitoring and enforcing human rights laws in the United States.

A Representative Government Regularly Chosen through Free and Fair Elections

26. Nations that are party to the UDHR purport to adhere to the principle of popular sovereignty: “The will of the people shall be the basis of the authority of government” (Art. 21). Moreover, nations pledge to give effect to popular sovereignty by holding “periodic and genuine elections which ... shall be held by secret vote or by equivalent free voting procedures.”

27. While fundamental civil and political rights are guaranteed by the Constitution, one dimension of regularly held elections is accountability to U.S. citizens in regard to government social programs. That is, even though economic, social, and cultural “rights” are not recognized

as such under the Constitution, American voters may choose to elect as President and representatives to Congress candidates who will enact and expand social welfare programs. Debates over these issues—such as the recent debate over health care legislation—often engage the entire nation and civil society in discussions regarding the nature of “rights” under the American system of government.

28. Regularly held, free and fair elections of government representatives at the local, state, and federal level is a best practice in the United States.

A Robust Civil Society

29. By drafting Article 20—“Everyone has the right to freedom of peaceful assembly and association”—the drafters of the UDHR understood that a robust and active civil society was an indispensable component to a free country. The freedom of assembly was so important to the drafters of the U.S. Constitution that it was included in the First Amendment.

30. Civil society organizations—religious organizations and churches, academic institutions, think tanks, labor and trade unions, environmental groups, charities, foundations, and grassroots activists—are the backbone of American society and continually campaign and advocate for people and ideas at the state and federal level throughout the country.⁷ Moreover, human rights civil society organizations that report regularly to the Human Rights Council regarding the U.S. record on human rights⁸ maintain U.S. offices and move freely throughout the country.

31. Collectively, the freedom and operations of civil society organizations in the United States represent a best practice.

Conclusion

32. The U.S. Constitution created a federal government of separated and limited powers while enumerating the fundamental rights held by all people in the nation. The freedoms guaranteed by the Constitution and the independent judicial system that has interpreted it for over 200 years serve as the foundation of an accountable government that may not infringe on the right of civil society to organize and participate in government decisions regarding civil and political rights as well as social welfare programs. Individuals may seek redress for infringement of their rights by the government, and the government has robust enforcement mechanisms to secure the rights of the people.

33. The actions of individuals, civil society organizations, and government working individually or collectively under the principles of the Constitution and U.S. law establish the best practice for the protection of fundamental human rights in the United States. Indeed, while admittedly not perfect, the U.S. system of government and its judicial system are on the whole exemplary in observing and protecting human rights and serve as a model of best practices.

⁷ There is no minority group or human rights issue that is not represented by a U.S. civil society organization. Just a few of the thousands of such organizations: the American-Arab Anti-Discrimination Committee, American Association of People with Disabilities, American Association of Retired Persons, American Civil Liberties Union, American Federation of Labor and Congress of Industrial Organizations, Anti-Defamation League, Children’s Defense Fund, Human Rights Campaign, Human Rights First, The Leadership Conference on Civil Rights, National Association for the Advancement of Colored People, National Congress of American Indians, National Council of La Raza, National Organization for Women Native American Rights Fund, Puerto Rican Legal Defense and Education Fund, and the Southern Poverty Law Center.

⁸ Examples include Amnesty International, Human Rights Advocates, and Human Rights Watch.