

**American Civil Liberties Union
Testimony Before the U.S. Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law**

Submitted by

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I. Introduction

Chairman Durbin, Ranking Member Coburn, and Members of the Subcommittee:

On behalf of the American Civil Liberties Union (ACLU), its over half a million

And yet, while the United States has helped negotiate major human rights documents and treaties, it has fallen behind in ratification of new treaties and implementation of treaties to which it is a party. For example, the U.S. is one of a handful of nations that has not yet ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the U.S. stands alone with Somalia in failing to ratify the Convention on the Rights of the Child (CRC). Moreover, with few exceptions the United States has not acted to pass enabling legislation to effectuate treaty obligations. Often times, our actions do not match our rhetoric on human rights, especially our rhetoric in the foreign policy arena.

III. Importance of Human Rights Treaty Implementation

The United States is a party to a number of human rights treaties and protocols, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the Convention Against Torture (CAT), the Genocide Convention, the Protocol Relating to the Status of Refugees, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child

Constitution, Federal Statutes, and U.S. treaties “the supreme law of the land.”³ This reflects the Framers’ desire that the U.S. government respect international commitments made under treaties signed by the President and approved by the Senate. The United States is obliged to recognize and respect U.S.-ratified treaties. Adherence to U.S. treaty obligations, as a demonstration of its commitment t

5. Every international human rights agreement should be “non-self-executing,” meaning that legislation may be necessary to implement the treaties’ provisions domestically.⁶

The ACLU has raised serious concerns about many of the RUDs, and in our statement to Congress prior to the ratification of the ICCPR in 1991 we noted that: “[T]he Covenant merely sets a minimum standard, which is a floor rather than a ceiling... The ACLU takes the position that, with rare exceptions, the Treaty represents an admirable set of minimum standards for all of the nations of the world. These other [RUDs] reflect the notion that any Treaty provision embodying a *higher* standard of human rights than is currently enforced in this country should be rejected.”⁷

The ACLU has also opposed the non-self-execution declaration on the ground that the

of human rights treaties requires Congress to actively engage with other branches of government to ensure that our treaties are being promoted and respected at all levels. This can be done through a number of complementary measures:

- 1) Because all human rights treaties have been ratified with RUDs, including, in particular, the non-self-executing declaration, Congress should pass enabling or implementing legislation to help maximize treaties' domestic force. While Congress has passed such enabling legislation in the past, it has been the exception and not the rule. In one positive example, Congress passed legislation (the Foreign Affairs Reform and Restructuring Act (FARRA), which implemented the non-refoulement obligation under Article 3 of the CAT, and the Torture Statute) to bring U.S. law in conformity with the CAT.
- 2) Another vehicle for treaty implementation is passage of enabling legislation to

United States into compliance with the treaty because the legislation would address the intractable problem of racial and ethnic profiling. In March 2008 and again in September 2009, the United Nations Committee on the Elimination of Racial Discrimination (CERD Committee), the body charged with monitoring compliance with the ICERD treaty, recommended that the United States pass ERPA. Following its periodic review and a follow-up review of U.S. compliance with ICERD, the CERD Committee urged the United States to “mov(e) expeditiously towards the adoption of the End Racial Profiling Act” and “make all

local and state governments that often lack the resources to engage in such initiatives. Thus, any administration must work closely with Congress to effectively implement U.S. international commitments, provide support for enabling legislation, and testify regarding human rights treaty implementation.

diverse range of social justice issues—from the right of same sex couples to marry, to the rights of children and prisoners.²⁰

VII. Conclusion

Our constitutional system of checks and balances is a bedrock human right principle and one that is admired by nations of the world. However, in recent years the United States disturbed this equilibrium by violating U.S. human rights treaty obligations—for example, through the distortion of the definition of torture and widespread abuse of detainees—which resulted in the tarnishing of U.S. reputation and standing in the world. Congress and the current Administration have a historic opportunity to correct the transgressions of the past by honoring U.S. human rights obligations and commitments, and using our commitment as a beacon for setting policy at home and abroad. Effective implementation of our human rights treaty commitments through human rights protection and enforcement would send an unequivocal message to the world that the U.S. is taking