

A Long March to Progress

*Human Rights Advocacy
to End Racial Discrimination in America*



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Race has been inextricably woven into the fabric of the United Nation's human rights framework from its very inception. The relationship between the role of race in America and international human rights is a complex one in which each sphere affects the other. Although the United States pioneered many advances in racial justice, developments in the international arena have resulted in the United States falling behind the rest of the world in some respects.

In order to understand the dynamic between race in the international human rights perspective and within the United States, it is useful to examine the

root considerations of race in a human rights framework. The cornerstone of that framework, the 1948 Universal Declaration of Human Rights (UDHR or "the Declaration"), established race as a distinction that must be erased from all considerations of national and universal rights and freedoms stating:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.

The Declaration was the first document to set universally applicable standards concerning racial and ethnic equality. Its drafters came from many corners of the globe and were influenced by the racial and ethnic horrors that marked World War II, the anti-colonial and anti-apartheid movements of the time, and the U.S. civil rights movement. Eleanor Roosevelt, the influential chair of the body that drafted the Declaration, the U.N. Commission on Human Rights, had been involved with the NAACP, a leading civil rights organization, since 1934.

Southern segregationists lobbied against legally binding treaties which would have a direct effect on U.S. laws and policies of segregation and apartheid. For example, there was strong opposition to U.S. ratification of the Convention on the Prevention and Punishment of the Crime of Genocide which was also adopted by the U.N. in 1948. Realizing the potential threat of the emerging human rights movement to the status quo, the U.S. delegation ultimately submitted to domestic pressures which demanded that the UDHR not contain any legally binding provisions that would make it an enforceable document.¹

U.S. civil rights movement leaders embraced these emerging human rights principles, were aware of the discrepancy between these principles and U.S. law, and grasped the relevance to their own struggle. Thus, they believed that while U.S. authorities could use domestic law to suppress civil rights actions in the short term, they would not ultimately be successful in depriving Americans of fundamental and universally declared inalienable rights. When state authorities banned the NAACP, the Rev. Fred Shuttlesworth aptly commented, "... [t]hey can outlaw an organization, but they cannot outlaw the movement of a people determined to be free."

Malcolm X was one of the most prominent figures in the United States to make the connection between the struggle for civil rights and the international human rights movement. He saw the United Nations as a means to expose contradictions in the U.S. system, for example, between the language of the Bill of Rights and the doctrine of "separate but equal." Malcolm X traveled to more than a dozen African countries along with a delegation from

for ICERD influenced by the U.S. civil rights movement. In 1966, then United States Ambassador to the U.N., Arthur Goldberg, explicitly linked support for the treaty with the domestic struggle for racial equality, describing it as "completely [in accord with] the policy of my government and the sentiments of the overwhelming majority of our citizens." Goldberg added, the U.S. "has not always measured up to its constitutional heritage of equality ... but we

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the Student Non-Violent Coordinating Committee (co-founded by Martin Luther King) and proposed to bring the "... case of the Afro-American before the General Assembly of the United Nations and hold the U.S. in violation of the Human Rights Charter." Civil rights leaders sought to draw international attention to the mistreatment of minorities in the U.S. as a means to link the civil rights movement to the larger notion of a struggle for human rights.

Over time, it became evident that to properly secure the Declaration’s prohibitions against racial and ethnic inequalities, more concrete race-related protections were necessary. Thus, a multilateral treaty focused on issues of race and ethnicity, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), was developed. ICERD was the first major international human rights agreement adopted since the Declaration.

The U.S. signed ICERD on September 28, 1966, its political support

have made much progress in the past few years, and while not all our ills have been cured, we are on the march."

Unfortunately, Goldberg’s assessment was overly optimistic. Despite the United States’ signing ICERD in 1966 and the passage of the Civil Rights Act of 1964 and the Voting Rights Act the following year, the march whose beginning Goldberg heralded could more accurately be described as a labored slog. Beginning in the sixties and continuing to the present, Americans sought with great difficulty to realize the promises of internationally recognized standards through action in the courts and in the streets. It wasn’t until nearly 30 years after its inception that the U.S. Senate ratified ICERD, on June 24, 1994, making it the law of the land. Even today, despite the election of an African American president, race continues to divide the country in key socio-economic ways. Progress also proved to be slow in the international arena.

ICERD is a broad treaty, protecting

racial and ethnic minorities including indigenous peoples and non-citizens under U.S. jurisdiction against violations of a broad array of civil, political, social and economic rights. These rights include the following:

- to be free of violence;
- to equal treatment before courts;
- to participate in elections as voters and candidates and to participate in government;
- to work;
- to free choice of employment, just and favorable conditions of work, protection against unemployment, equal pay for equal work, and just and favorable pay;
- to join and form unions;
- to housing;
- to healthcare;
- to social security and social services;
- to education and training;
- to equal participation in cultural activities. Significantly, CERD applies to the federal, state and local levels of government, requiring them to review their policies with a view to bringing them into conformity with the treaty.

ICERD departs in several respects from most domestic civil rights laws. First, ICERD broadens the view of what constitutes discrimination to include an assessment of the impact of policies, not simply their intent:

In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the rec-

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ognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Second, ICERD requires the use of affirmative action remedies to eliminate "persistent disparities" and "ensure adequate development" of minorities. Third, ICERD affords non-citizens the same basic anti-discrimination protections as citizens (except for certain political rights such as voting). Finally, ICERD requires states to address overlapping or intersectional racial and gender-based discrimination as well as structural inequalities facing women of color. Given the increased scope of its coverage over the protections offered by American civil rights laws, ICERD has assumed an increased profile in measuring American progress and setting standards for meaningful equality.

Under ICERD, the U.S. is obliged to submit periodic written reports to the U.N. CERD committee that monitors ICERD compliance, following which it must submit to an oral examination by that committee. Non-governmental organizations such as the ACLU may participate in this review process by submitting reports balancing or otherwise critiquing the government reports, known as "shadow reports." In the last decade, the government has done little to meet its obligations under ICERD and very few laws and policies have been enacted pursuant to the U.S.

treaty obligations under ICERD.

To ensure the U.S. begins to meet these obligations, the ACLU along with many other U.S. based human right organizations coordinated by the U.S. Human Rights Network participated fully in the United States' last review. In spring 2007, after the U.S. presented the CERD Committee with a periodic report portraying an incomplete and inaccurate picture of race issues in the U.S., the ACLU began to document U.S. government violations of the treaty. In December 2007, it submitted a shadow report to the Committee entitled *Race & Ethnicity in America: Turning a Blind Eye to Injustice*, which presented overwhelming evidence to counter the U.S. claim to treaty compliance.

The ACLU sent a delegation of national and affiliate staff, as well as clients who had suffered ICERD violations, to Geneva, Switzerland in February 2008, to observe the CERD Committee's two day oral examination of U.S. government representatives about claims made in the official U.S. report. The ACLU's delegates were able to draw attention to its shadow report in an international setting and to advocate for key issues with the CERD Committee. The delegation worked to ensure that Committee members and other influential U.N. personnel were fully briefed on U.S. violations and to ensure that these violations were reflected in the Committee's eventual report. During its oral examination of U.S. representatives, the CERD Committee demonstrated a

sophisticated, deep and thorough understanding of U.S. race issues. After two weeks of deliberation, the Committee issued a public report, "Concluding Observations," that credited the U.S. for progress in certain areas while recommending improvement in a wide range of other areas.

To capitalize on the momentum and opportunities created for advocacy by these recommendations, the ACLU has undertaken various efforts to sustain and broaden both government and community interest in ICERD. The first relates to what the Committee terms a "constructive dialogue" aimed at helping the U.S. government implement ICERD. As part of this dialogue, the Committee specifically asked the government to take action on certain issues and report on them within one year, rather than the customary four-year reporting period. These issues include racial profiling, life sentences for juveniles without the possibility of parole, and improved instruction of government officials, judiciary, law enforcement, teachers, social workers and the public as to treaty rights. After evaluating the information the U.S. submits, the CERD Committee will issue a public letter commenting on the information. The ACLU and its affiliates will participate in this process by collecting and providing the Committee with information that can serve as a basis to evaluate the official report.

Another ACLU objective involves ICERD-related education and implementation for officials and the public nationwide. ACLU staff members have participated in educational briefings on ICERD for federal legislators and staff and have encouraged Congress to establish treaty enforcement mechanisms. Some of these legislators have begun to pay attention and have taken steps to improve ICERD recognition and implementation. For example, Rep. Al-

cee Hastings (D-FL) organized a briefing on ICERD for legislators and their staffs, in which the ACLU participated, and soon after introduced House Resolution 1055 on March 21, 2008 recognizing ICERD and calling on the U.S. to

violence, blight and neglect that continues to haunt us." Specific remedies mentioned in the Obama-Biden election campaign include: overturning an employment discrimination ruling by the Supreme Court that curtails minor-

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meet its commitments to the treaty.

In areas where the U.S. has failed to implement ICERD at the state and local level, ACLU affiliates can help to repair this breach by working with state legislators and caucuses to pass implementing legislation. A model exists: the California Constitution (Section 31) and Code (Section 8315) follow ICERD's expansive definition of racial discrimination. The Code also reflects ICERD's view as to "special measures" (without granting an individual a private cause of action to challenge any special measures undertaken for the purpose of securing adequate advancement of those racial groups requiring the protection). The ACLU can also continue to assist in treaty enforcement by incorporating the CERD Committee's recommendations into its issue advocacy.

The historic election of the nation's first African American as President is both a symbolic and concrete break from the past. It is hoped that the administration will take affirmative steps to implement and enforce ICERD and other human rights treaties. President Obama noted last year, in his now famous speech on race, how entrenched the issue of race remains in America today and described, "... the cycle of

ities and women's ability to challenge pay discrimination; expanding the Hate Crimes Statutes; ending voting practices that suppress minority votes; cracking down on racial profiling; and eliminating racially discriminatory sentence disparities.

Although the new administration inherits a nation in disarray, with two wars and the worst financial crisis since the 1930s, it must nevertheless strive to ensure that equality and opportunity are given priority in an agenda committed to bringing about real change. As Obama declared, "...one of the tasks we set forth at the beginning of this campaign [was] to continue the long march of those who came before us, a march for a more just, more equal, more free, more caring and more prosperous America." We look forward to participating in that march forward.

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¹ Anderson, Carol. *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944-1955*. Cambridge University Press (April 2003).