

Statement by the American Civil Liberties Union to the 86th session of UN Human Rights Committee regarding the U.S. government compliance with the International Covenant on Civil and Political Rights

Monday, March 13, 2006
United Nations, New York

Madame Chair and distinguished members of the committee:

Introduction and Overview

My name is Ann Beeson, and I am the Associate Legal Director of the American Civil Liberties Union (ACLU). On behalf of the ACLU, I would like to thank you for this opportunity and welcome you to New York City. The ACLU works for an America that values freedom and fairness. We are the largest civil liberties organization in the United States, with offices in 50 states and over half a million members. Since the tragic events of September 11, the core priority of the ACLU has been to stem the backlash against human rights in the name of national security. We are honored to address this Committee as part of our commitment to ensure that our government complies with universally recognized human rights principles in addition to upholding our Constitution. We believe that liberty and security are not mutually exclusive, but rather are closely linked. Safeguarding our fundamental liberties under the U.S. Constitution and through universally recognized human rights standards will make us more safe, not less. Unfortunately, in the name of national security, the United States has enacted laws and pursued policies that threaten our most cherished freedoms. There is a disturbing theme that connects these policies – the granting, or in many cases the unilateral assumption of – unchecked executive power. Today I will discuss these policies and the threat they pose to human rights inside the United States.

While my presentation today will highlight the U.S. government's failure to comply with its obligations under the International Covenant on Civil and Political Rights (ICCPR) at the domestic level, we are equally vigilant in exposing U.S. violations of the ICCPR outside the United States. The ACLU is very concerned about the U.S. position that the ICCPR does not apply extraterritorially. We call upon the Committee to reaffirm the position expressed in General Comment No. 31 that "a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."¹

As we discussed in our September 2nd submission to the Committee, the U.S. government continues to violate basic human rights of persons held in U.S. custody abroad, in breach of its specific obligations under several articles of ICCPR.² In addition, as proven through over 90,000 pages the ACLU obtained from the government through the Freedom of Information Act, the U.S. government has engaged in torture and other cruel, inhuman or degrading treatment of detainees, in direct violation of the absolute prohibition of these practices under international law. In short, we share the concerns that will be discussed more fully today by other human rights organizations regarding the serious human rights violations committed by our government outside the United States.

In the last four years, we have witnessed serious setbacks in the protection of civil and political rights within the United States. The U.S. government has instituted a

¹ Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, April 21, 2004.

² <http://www.aclu.org/intlhumanrights/gen/20224lg|20050919.html>

number of unbalanced and unchecked policies that clearly undermine fundamental rights and liberties long recognized and honored in our country. These policies affect a broad range of issues, including women's rights, immigrant's rights, racial justice, national security, and the freedom of religion and belief. We have documented and challenged human rights violations in courts, in Congress, and through community organizing and public education. The ACLU will submit a full shadow report to the Committee on these issues and we look forward to the full review session of the U.S. report this summer. Today I wish to provide a brief update on two important issues regarding the erosion of rights in the name of national security: the reauthorization of the USA Patriot Act and the President's authorization for the National Security Agency to engage in electronic surveillance of Americans without a warrant.

Reauthorization of the Patriot Act

The U.S. Congress passed the USA Patriot Act only forty-five days after the September 11 attacks, with little or no debate in either house of Congress. The ACLU believes there are significant flaws in the Act, flaws that threaten the fundamental rights of people within the United States. We highlighted our concerns in our September 2005 submission to the committee.

There was broad opposition to renewal of the Patriot Act across the country and the political spectrum. More than 400 communities (cities, towns, counties and eight states) passed resolutions seeking reforms of the Patriot Act. These communities range from the conservative state of Montana to the progressive state of Hawaii; and from cities as large as New York to small towns like Elko, Nevada.³ Nevertheless, on March 9,

³ For a full list of these resolutions, go to: <http://www.aclu.org/resolutions>

2006, after months of debate, Congress passed and President Bush signed a law reauthorizing several provisions of the Patriot Act that would otherwise have expired. Unfortunately, the reauthorization statute retains the vast majority of flaws from the original Patriot Act.

I will focus today on two surveillance provisions of the Patriot Act that, even after revisions were made, continue to seriously threaten free speech and privacy rights guaranteed by the ICCPR and the U.S. Constitution.

The first is the National Security Letter provision, which authorizes the FBI to demand certain kinds of personal records from Internet Service Providers and other businesses without court approval, and which gags businesses from telling their clients or anyone else about the demand for records.

- Although there is no longer an indefinite gag imposed on NSL recipients, the ability of recipients to challenge the gag order is still extremely limited. The gag remains in place if a high-level political appointee simply certifies that national security or diplomatic relations would otherwise be harmed; courts must consider that certification "conclusive" unless there is "bad faith." After the initial certification, recipients are not allowed to challenge the gag order again for a year. To illustrate the stark overbreadth of the gag provision, Patriot Act gag orders prohibited two National Security Letter recipients – an organization that maintains library records and an Internet Service Provider – from participating in the recent debate over the Patriot Act.
- Even under the revised National Security Letter provision, customers will never learn their personal records were turned over to the government unless the National Security Letter recipient challenges the gag order and wins – an extremely unlikely outcome given the obstacles described above.
- Under the revised National Security Letter provision, penalties are even more coercive and more punitive. Any employee – from the mail clerk to the CEO of a company – who intentionally discloses a demand for records can go to jail for five years for merely disclosing that they have received a demand for records.
- In the only significant improvement from the original, the revised National Security Letter provision clarifies that any business that receives an order for records has the right to consult with a lawyer.