



Maria Iñamagua Campaign for Justice

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Justice for Maria! Justice for ALL!

Enforce the Human Rights Treaties!

November 11, 2008

John Podesta, Co-Chair
Valerie Jarrett, Co-Chair
Obama Transition Team
Washington, D.C.

Dear Mr. Podesta and Ms. Jarett:

Re: Human Rights Executive Orders ---
Amend Bush's National Security Directive #1 (SD-1) - February 13, 2001
Restore and Improve Upon Clinton's Executive Order 13107 - December 10, 1998

We commend the Obama Transition Team's public announcement that it is preparing a comprehensive list of Bush Administration Executive Orders that the President Obama can reverse, consistent with his pledges to move the United States in policy directions outlined in the campaign, including human rights at home and abroad. Thank you for considering our proposal.

In the area of human rights, a major step to "rejoin the world" and restore our country's leading role in promoting human rights will be to reverse the part of President Bush's National Security Presidential Directive #1 (SD-1)¹ (in essence, an Executive Order) that countermanded President Clinton's Executive Order 131072 by abolishing the Human Rights Treaties Interagency Working Group, the body established in Executive Order 13107 to implement that Executive Order, and submerging the duties of the abolished Working Group into a Policy Coordinating Committee (PCC), the PCC on Democracy, Human Rights, and International Operations, an entity that has taken not one step to implement the purpose of Executive Order #13107. (Death of Executive Order 13107 by reorganization.)

Positively stated, the Obama Presidency can restore and extend, consistent with the country's treaty obligations, President Clinton's Executive Order 13107 to promote implementation of the

¹ See National Security Directive #1 (SD-1) at <http://fas.org/irp/offdocs/nspd/nspd-1.htm>.

² See Executive Order 13107 at http://www.idir.net/~cnc/EO_13107.html.



ratified human rights treaties. For reasons stated in this letter, we urge that President Obama take this action at the first opportunity.

Background

In the 1990s, the United States ratified three important human rights treaties: the International Covenant on Civil and Political Rights (ICCPR), the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). As ratified treaties, these documents are part of the highest law of the land in the United States under the US Constitution, Article VI, Section 2.

On December 10, 1998, President Clinton issued Executive Order 13107: IMPLEMENTATION OF HUMAN RIGHTS TREATIES. In a nutshell, Executive Order 13107 directed the heads of the federal executive branch agencies (HUD, Labor, State Department, etc.) to learn their responsibilities under the three ratified human rights treaties (the CAT, the ICCPR, and the ICERD) and implement them. To make sure this happened, Executive Order 13107 created an Interagency Working Group on Human Rights Treaties

. . . for the purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters.

In 2001, the UN's Committee of the Elimination of All Forms of Racial Discrimination (CERD), the international body that periodically reviews the United State's compliance with the ICERD, expressed great interest in Executive Order 13107 and in the Interagency Working Group on Human Rights Treaties created therein. The CERD specifically asked the US to report as part of its next review on the powers of the Working Group and the **impact** of its activities.

Unfortunately, as detailed below, President Bush derailed Executive Order 13107 and the Interagency Working Group on Human Rights Treaties by issuing SD-1 on February 13, 2001.

Executive Order 13107: Death by Reorganization

For a thorough analysis of what became of the President Clinton's Interagency Human Rights Work Group under SD-1, see the attached Shadow Reports filed with the CERD in December 2007 by the *Maria Iñamagua Campaign for Justice* and the US Human Rights Network.³

³ See "Comments Regarding the Failure to Educate/ Propagate Regarding the ICERD at the Federal Level and the Demise of Executive Order 13107", Chapter 2 of the Minnesota Shadow Report to CERD by the Maria Iñamagua Campaign for Justice (December 10, 2007) at http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/28_Minnesota.pdf and "United States Treaty Obligations Under ICERD: Domestic Implementation of Treaty Norms", pages 6-8 of the U.S. Human Rights Network Response to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination (February 2008) at



Based on its detailed review of the changes wrought by President Bush's SD-1, the *Maria Iñamagua Campaign for Justice* report concluded:

Given these changes, it is not surprising that the State Department can cite not one federal activity that actually continues the mission and duties of the Human Rights Treaties Interagency Working Group established by Executive Order 13107.

And the U.S. Civil Society report stated similarly, as follows:

Despite its promise, the Interagency Working Group was never, however, operationalized. In February 2001, several months before the Committee issued its Concluding Observations to the United States, President George W. Bush abolished the Working Group. [footnote omitted] The formal functions of the Working Group were transferred to a Policy Coordination Committee (PCC) on Democracy, Human Rights, and International Operations, an ad-hoc body to be directed by the Assistant to the President for National Security Affairs under the Presidential National Security Council. . . .

Unfortunately, the PCC has never implemented the mandates in Executive Order 13107. The PCC was non-operational until 2003 when it came together in an ad hoc manner to deal with the United States' overdue treaty reports. [footnote omitted] Without dedicated staff and resources for human rights treaty monitoring, it has functioned only to prepare periodic reports for treaty body consumption and to otherwise coordinate the external presentation of U.S. government engagements with international bodies.

Beyond Revival: Expanding the Scope of Executive Order 13107 to Fulfill Treaty Obligations

Important as Executive Order 13107 was or could have been, the Obama Presidency has the opportunity to improve it by adopting key language absent from Executive Order 13107. Specifically, the Obama Presidency can adopt language that acknowledges and implements the federal duty to promote implementation of the ratified human rights treaties at the state and local levels, as well as at the federal. In ratifying each of these treaties, the U.S. Senate explicitly recognized the Federal Government's responsibility to take "appropriate measures" to ensure fulfillment of the treaty at the state and local levels of government. For example, in ratifying the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Senate stated:

II. The Senate's advice and consent is subject to the following understanding,

<http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/4%20Domestic%20Implications%20Article%202.pdf>.



which shall apply to the obligations of the United States under this Convention:

That the United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.⁴

Consistent with the federal responsibility to ensure fulfillment of the treaties at the federal, state and local level, therefore, we offer the following recommendations:⁵

1. The President should issue a new Executive Order that supercedes SD-1's provisions regarding Executive Order 13107, restoring the substance of Executive Order 13107 and its Interagency Human Rights Task Force on the Implementation of Human Rights Treaties. In addition, the President's new Executive Order should incorporate the following recommendations.
2. The new Executive Order should direct the Interagency Human Rights Task Force or a comprehensive national human rights Commission to develop a comprehensive federal-level system for monitoring compliance with the human rights treaty obligations at the federal, state, and local levels. The government should fully fund and staff the Policy Coordination Committee, operating under the functional mandates of Executive Order 13107, as well as a more comprehensive national human rights commission or supervisory body, to coordinate reporting and implementation on a continuous scale at both the federal and state and local level, with particular attention to tasks designated in Sec. 4(c)iv and v. All reports created under this order should be annually updated in a central location to be drawn upon for all treaty reports, accessible to the public.
3. The Executive Order should direct the Interagency Human Rights Task Force or a comprehensive national human rights Commission to develop and implement a system for

⁴ For the ICERD, see <http://www2.ohchr.org/english/bodies/ratification/2.htm>. For similar language in the ICCPR, see Senate Understanding (5) at http://www.unhchr.ch/html/menu3/b/treaty5_asp.htm. For similar language in the CAT, see Understanding (5) at <http://www.unhchr.ch/html/menu2/6/cat/treaties/convention-reserv.htm>.

⁵ In making these specific recommendations, we are greatly indebted to the collective work of the U.S. Human Rights Network's CERD Working Groups on Local Implementation and Treaty Obligations in its report to the CERD (February 2008), cited above in Footnote 1. For the most part, we have modified the recommendations made by the USHRN Local Implementation Work Group so that they apply to all the ratified human rights treaties.



reviewing the UN treaty monitoring bodies' concluding observations and recommendations at all levels of government.

4. The Executive Order should direct the Interagency Human Rights Task Force or a comprehensive national human rights Commission to develop a comprehensive plan to encourage state implementation of human rights treaty obligations and to systematize reporting from the states and dissemination of information to the states.
5. The Executive Order should encourage state and local initiatives such as local statutes and ordinances, and state and local level reporting on compliance with the human rights treaty obligations.
6. The Executive Order should establish an on-going body, such as a comprehensive national human rights Commission or supervisory body, to engage in greater public education efforts and to educate members of Congress, state and federal public officials, including state and federal judges and attorney generals, about their obligations arising under the CERD.
7. The Executive Order should establish an on-going body, such as a comprehensive national human rights Commission or supervisory body, to distribute copies of the human rights treaties and the Concluding Observations of the UN monitoring bodies to state and local human rights commissions to promote discussion about local obligations of the Convention and review of local policy for compliance.
8. The Executive Order should encourage states to designate representatives in each state's attorney general's office as point persons for treaty compliance to correspond with the Interagency Human Rights Task Force or a comprehensive national human rights Commission, to review state policy for compliance with the Convention, and submit periodic compliance reports.
9. The Executive Order should direct the Interagency Human Rights Task Force or a comprehensive national human rights Commission to monitor the human rights treaty implementation system established in the Executive Order as it seeks to promote federal, state, and local compliance with the ratified human rights treaties.
10. The Executive Order should direct the Interagency Human Rights Task Force or a comprehensive national human rights Commission to provide written reports to the President, Congress, and the public on the efficacy of this Executive Order.

Sense of Urgency



In its Concluding Observations on March 9, 2008 regarding U.S. compliance with the ICERD, the UN monitoring body cited several shortcomings and requested an update report from the United States within a year (i.e., by March 9, 2009) on five key issues.

Among the five items marked for a progress report from the US government due by March 7, 2009 is the treaty requirement (Article 7) that the US provide training programs, courses and public education to make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware of the responsibilities the US has under the treaty, as well as the monitoring mechanisms and procedures provided by the racial justice treaty, the ICERD.

Reviving and expanding the federal effort to comply with the ICERD by issuing an appropriate Executive Order promoting implementation of all the ratified human rights treaties would give the United States as substantial positive development to report in that regard.

Thank you for your consideration of this proposal. We look forward to hearing from you. If you have any questions or would like a draft of the proposed Executive Order, please contact Peter W. Brown at 612-824-6533 or peterb3121@hotmail.com.

Sincerely,

Jorge Panchi, Maria Iñamagua Campaign for Justice

Bill Means, International Indian Treaty Council

Donjia Johnson, Minnesota Tenants Union

Nathaniel Khalik, St. Paul Branch of the NAACP

Cheri Honkala, Poor Peoples Human Rights Campaign

Michelle Gross, Communities United Against Police Brutality

Amalia Anderson, Mainstreet Project

Niel Ritchie, League of Rural Voters

Peter W. Brown, Minnesota Chapter of the National Lawyers Guild

Attachments:

“Comments Regarding the Failure to Educate/ Propagate Regarding the ICERD at the Federal Level and the Demise of Executive Order 13107”, Chapter 2 of the Minnesota Shadow Report to CERD by the Maria Iñamagua Campaign for Justice (December 10, 2007) at http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/28_Minnesota.pdf .

“United States Treaty Obligations Under ICERD: Domestic Implementation of Treaty Norms”, pages 6-8 of the U.S. Human Rights Network Response to the Periodic Report of the United



States to the United Nations Committee on the Elimination of Racial Discrimination (February 2008) at <http://www.ushrnetwork.org/files/ushrn/images/linkfiles/CERD/4%20Domestic%20Implications%20Article%202.pdf>.