

**United States Compliance with the
International Covenant on Civil and Political Rights**

**Meiklejohn Civil Liberties Institute
Suggested List of Issues on the United States**

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1. Meiklejohn Civil Liberties Institute (MCLI) is a national inter-racial organization of activists, academics, and lawyers using its booklets and display poster in its human rights and peace law training sessions since 1965, and listening to people's problems, filing complaints, and making reports based on the U.S. Constitution, Bill of Rights, and treaties ratified and signed by the U.S.ⁱ

Shadow Report: ICCPR

ISSUE: 1 Right to Life and Health

ISSUE: 2 Reproductive Healthcare for women of childbearing age

Summary: Issue Right to Life and Health

2. The U.S. Government failed to address the human rights of communities (predominately people of color and low-income) living in and around chemical factories and /or oil refineries. The right to life includes the right to breath clean air, drink clean water and to play or plant in clean soil. The impact of living in communities constantly bombarded by toxic chemicals, is polluting both external (environment) and internal (body burden), causing physical ailments (asthma, emphysema, low birth weight, shorter life expectancy etc.), and psychological and social ailments (living in fear and lack of security). Environmental hazards may be extreme, causing suffering, trauma and death immediately; or slow long-term effects of the toxic exposure (ticking time bombs inside our bodies) causing future cancers, diseases and death. Death or suffering caused from these pollutants whether fast and furious, or slow and corrosive, are human rights violations. Articles violated are: ICCPR 2, 6, 7, 9,10,12,17, 23, 24, 26 and 27.

Article 2: Non-Discrimination.

3. Communities of color, including but not limited to African-Americans, Asian- Americans, Indigenous peoples, Latinos and poor people are disproportionately impacted by the ongoing and constant exposure to toxic chemicals.ⁱⁱ Pennie Opal Plant, a Native American living in Richmond California stated "in addition to the dire health effects, both environmental and human, the Keystone XL Pipeline violates treaty rights and sacred sites rights under the United Nations Declaration on the Rights of Indigenous Peoples."

Article 6: Right to Life.

4. The rates of asthma and other respiratory illness are higher in impacted areas. The fire in Richmond, California at the Chevron refinery on August 6, 2012 sent 15,000 people to local hospitals in Richmond and surrounding communities.ⁱⁱⁱ

Article 7: Right to be free from inhuman or degrading treatment or punishment.

5. The constant and/or sudden onslaught of chemicals on the human body is an **assault** causing disease up to and including death.

6. Men, women and children are exposed to chemicals which are absorbed into the body, increasing their body burdens. This exposure occurs without consent or knowledge of the individuals exposed to the chemicals.^{iv}

Article 9: Right to Liberty and Security.

7. This article requires protecting people from critical and pervasive threats and harmful situations.

8. "The devastation was immense," from the West Texas fertilizer explosion according to Texas Attorney General Greg Abbot of West Texas, while another official added, "There are homes flattened. Part of that community is gone"... Eric Perez, 21, of West, was playing basketball at a nearby school when the fire started. He and his friends thought nothing of it at first, but about a half-hour later, the smoke changed color. The blast threw him, his nephew and others to the ground and showered the area with hot embers, shrapnel and debris.^v

9. According to the Interim Investigative Report by the U.S. Chemical Safety and Hazard Board, all the governmental bodies (U.S. Environmental Protection Agency (EPA), California Occupational Safety and Health Administration, Contra Costa County Board of Supervisors), failed to protect the residents of Richmond. In addition, Chevron violated its own safety procedures.^{vi}

10. According to the Los Angeles Times, dated, January 31, 2013 by Marc Lifsher, 'Chevron was issued 25 citations, including 11 "willful serious" and 12 lesser "serious" violations related to the blaze. The \$963,200 fine is the highest in Cal- OSHA history'.

Article 10. Rights of the Incarcerated.

11. Some men, women and juveniles incarcerated when the August 6, 2012 fire occurred in Richmond, California were not notified of the danger nor were they given updates. They heard the sirens indicating danger, but they were kept in the dark in their cells. This was a terrifying experience, an example of complete lack of dignity imposed on the inmates.

Article 12: Freedom of Movement.

12. During the initial stages of the Chevron fire on Aug.6, 2012, AC Transit system (public bus system) and the BART system (Bay Area Rapid Transit System) were shut down in North Berkeley. Therefore, no one could use public transportation to enter or leave Richmond, California and parts of El Cerrito. People of low income depend on public transportation and that left them stranded.^{vii}

Article 17. Right to Privacy.

13. Toxins and chemicals that invade the bodies of the community residents, including children, were without their respective consent and / or knowledge.

Article 23. Family Life.

14. During a factory explosion or an oil refinery fire, family life is totally disrupted. At the fire in West, Texas in April 2013 killed 15 and injuring more than 160, devastating the West community of 2800. The destruction, of homes, schools and hospitals is a clear example of the lack of oversight, regulation and protection of the community. The community of West, Texas was vulnerable and completely unprotected.

Article 24. Special Protection of Children.

15. The State failed and continues to fail to protect the children living in the shadow of the Richmond Oil Refinery. Contra Costa County has the highest asthma rate in the state of California. Children suffer from asthma and other respiratory illnesses which then cause them to miss school. Asthma, not only causes difficulty in breathing, but when one is gasping for air, reduces one's ability to focus

on school work, limits a child's physical activity including play, and a child's disposition (not feeling well). Asthma often causes death amongst the most vulnerable-children, elderly and the infirmed.

16. The prevalence of asthma has been increasing steadily over the past 20 years with the largest increase among children under the age of five (Landrigan et al., 2004, Environmental Health Perspectives, 112 (2): 257-265). About 1 in 8 Californians report that they have been diagnosed with asthma. Numerous areas in the County have child hospitalization rates higher than the state average. Some communities, such as Richmond, have child hospitalization rates nearly twice as high as the state average.^{viii}

Article 26. Equal Protection of the law and non-discrimination.

17. Dr. Henry Clark of the West County Toxics Coalition has stated at various public hearings and City Council Meetings that the community in Richmond, California, that's predominately African Americans, Asian-Americans and Latinos are disproportionately impacted by the pollution. Dr. Clark refers to this as 'Environmental Racism'. Overtime the cumulative effects are harmful and cause numerous diseases. Dr. Clark states unequivocally that the polluters and the lack of government regulation and protection "violated our human rights".^{ix}

Article 27. Minority Rights.

18. According to Andres Soto, Richmond organizer for Communities for a Better Environment, 'the notification system on August 6, 2012 was inadequate and failed completely'.^x The sirens meant to warn residents of the danger, did not go off immediately, thereby exposing residents to toxic chemicals released during the fire.

19. The fact that the notification system failed in Richmond, California during the August 6th fire, put residents who have difficulty understanding English at a disadvantage. News broadcasts on the radio or TV are primarily in English.

In conclusion:

The committee may want to ask the U.S. the following questions:

20. What is the U.S. doing to publicize the text of the ICCPR as required in Richmond, California and in West, Texas and in other communities in /or around chemical factories or oil refineries?

21. How is the U.S. going to insure the safety and protection of communities in and around chemical factories and oil refineries, including the workers who work in the factories and refineries as required by articles 6, 7,9,10, 23, 24, 26, and 27?

22. Will the U.S. insist on Chevron and other corporations funding the changes needed to prevent fires, explosions, reducing emissions, (upgrade equipment using state of the art technology) as required by ICCPR articles 2, 6,7,9,23, 24,26,and 27?

23. Will the U.S. insist that Chevron and other corporations provide health care for those communities affected by the pollution as required by IICPR by article 6?

24. Will the U.S properly clean up toxic super fund sites immediately and provide the necessary funding to properly staff all regulatory agencies to properly oversee all factories and oil refineries as required by ICCPR articles 2, 6, 7, 9,10, 12,17, 23 ,24, 26 and 27.?

ⁱ Author of Issue #1, the right to life and health, was Victoria Sawicki, labor and environmental activist, and a board member of Meiklejohn Civil Liberties Institute. The author of Issue #2, access to reproductive healthcare for women of childbearing age was Brittney Vevaina, a graduating senior expecting to receive her B.A. from University of California, Berkeley. She was an intern a Meiklejohn

Civil Liberties Institute during the fall of 2012. Both reports were edited by Attorney Ann Fagan Ginger of MCLI.

ii Environmental Justice Case Study: West County Toxics Coalition and the Chevron Refinery. www.umich.edu/~snre492/sherman.htm

iii San Jose Mercury News by Robert Rogers. Posted 8/14/2013

iv Coming Clean Network. www.chemicalbodyburden.org

v FoxNews.com published by Mike Jaccarino. Published 4/20/2013

vi U.S. Chemical Safety and Hazard Investigation Board

vii Andres Soto, Organizer for Communities for a Better Environment (CBE).
Interview on 8/19/2013

viii Contra Costa Health Services. Copyright 2000-2013 Asthma Program. cchealth.org/contact/

ix Dr. Henry Clark, born in Richmond, Ca. is the director of the West County Toxics Coalition.

Dr. Henry Clark is a staunch fighter for environmental justice, devoting his life, over forty years, for social justice.

x Andres Soto. Organizer for CBE.

Issue 2: Reproductive healthcare for women of childbearing age

ICCPR: Articles 3, 6, 7, and 17.

Reproductive healthcare for women of childbearing age.

Summary:

25. Introduction

In the United States, women make up 50.9 percent, or just over half of the U.S. total population.^{xi} The 2010 U.S. Census reports that there are 61,481,000 women between the ages of 15 and 44, which is considered of childbearing age.^{xii} According to Guttmacher Institute, nearly half of pregnancies among U.S. women are unintended.^{xiii} Unintended pregnancies can result in poorer maternal mental health, increased risk of physical violence during pregnancy, reduced likelihood of breastfeeding, and decreased maternal bonding. Unintended pregnancies also can threaten the economic viability of the family. Access to productive healthcare directly affects the lives of women of childbearing age, but it also has wider implications on the stability of society, gender equality, and the livelihood of the family. There are also linkages between reproductive rights and levels of poverty, crimes, and the state of the welfare system.

26. Reproductive rights refer to legal rights and freedoms relating to reproduction and reproductive health.^{xiv}

27. This report will present facts indicating that the U.S. Government is not meeting its full obligations under ICCPR Article 3: Equal rights of men and women; Article 6: Right to life; Article 7: Freedom from torture and cruel, inhuman, and degrading

treatment; Article 17: Freedom from arbitrary interference with privacy, family, and home.

Article 3

28. Article 6 of the ICCPR guarantees the right to life. The ICCPR does not include the proposition that the right to life protected in Article 6(1) extends to prenatal life.^{xv} In General Comment 28, the Human Rights Committee stated that restrictive abortion laws discriminate and violate women’s enjoyment of the right to life (Article 6). International human rights law recognizes the right to life as accruing at birth, and the United Nations and its bodies have reiterated that a woman’s human rights take precedence over prenatal protections.^{xvi} Article 7 of the ICCPR guarantees every person freedom from torture and cruel, inhuman, or degrading treatment (CIDT).^{xvii} Very few journalists or government officials in the U.S. know that the Human Rights Committee found that forcing a pregnant woman to carry a fetus diagnosed with anencephaly—a serious birth defect in which a fetus does not develop a skull or brain that causes death within a few days—is deemed CIDT. They do not know about the case of *L.M.R. v. Argentina* (2011), in which the Human Right Committee ruled that a state’s denial of an abortion for a woman who had become pregnant as a result of rape was a violation of the ICCPR,^{xviii} or that the Committee ruled that the physical, psychological, and emotional harm incurred from denying a woman an abortion also constitutes CIDT—a violation of Article 7.^{xix}

29. The U.S. Supreme Court made a landmark decision in the case of *Roe v. Wade* (1973), ruling that a right to privacy guaranteed under the due process clause of the 14th Amendment encompasses a woman’s decision to have an abortion.^{xx} The Court concluded that the decision to abort must be left to the mother and her physician. The U.S. Supreme Court has explicitly rejected the claim that “a fetus is a ‘person’ within the language and meaning” of the U.S. Constitution.

30. Legislators in the state of Georgia have drafted legislation that would declare that life begins at the point of fertilization. This highly controversial bill, cited as the ‘Sanctity of Human Life Act’, would grant legal “personhood” rights to unborn fetuses. If this legislation were passed, it would ban abortions and restrict in vitro fertilization, in violation of the ICCPR. Mississippi attempted a similar restriction through Initiative 26, known as the ‘Life Begins at the Moment of Fertilization Amendment’, which was on the November 8, 2011 general election ballot.^{xxi} Initiative 26 was defeated by 57.63% voting against the initiative, and 42.37% voting in favor.^{xxii} This small margin suggests that there is still strong public support to limit or eliminate abortion procedures among people registered to vote and who vote. Furthermore, if an amendment to any state constitution were adopted recognizing life beginning at conception, it would be left up to the courts to determine its constitutionality. The debate on Initiative 26 did not include any discussion of its violating ICCPR Article 6.

31. In June 2011, the Ohio House of Representatives passed proposed Bill 125 to “prohibit an abortion of an unborn human individual with a detectable fetal heartbeat”.^{xxiii} A fetal heartbeat can be detected as early as six weeks before many women even are aware that they are pregnant.^{xxiv} The discussions of these bills did not mention that these various restrictions on abortions violate Articles 6 and 7 of the ICCPR.
Article 17

32. The U.S. Report did not mention that ICCPR Article 17 guarantees freedom from arbitrary or unlawful interference with privacy, family, and home, or that the Human Rights Committee has indicated that the right to privacy includes healthcare decisions, such as the right to an abortion, or that the U.S. Supreme Court has consistently held that the right to privacy extended to a woman’s right to choose an abortion. And the U.S. Report did not mention that, in the 2012 U.N. Population Fund’s annual report, the UN described access to contraception as a “universal human right.”^{xxv}

Access to Contraception

33. While the right to privacy is not explicitly mentioned or protected in the Bill of Rights, the Supreme Court has established that the right to privacy is protected by the due process clause of the Fourteenth Amendment, or as a part of the “penumbras” and “emanations” of other constitutional protections. In the 1965 decision in *Griswold v. Connecticut*, the Supreme Court held that the right to privacy extends to marital relations, and couples seeking contraception cannot be denied access.^{xxvi} This decision recognizes that the constitutional right to privacy should ensure access to birth control and related healthcare counseling. However, access to contraception that was upheld under the right to privacy in *Griswold v. Connecticut* has recently been tested with new legislation limiting access to birth control under the “conscience clauses.”

34. Several states have laws or regulations that allow physicians, pharmacists, and/or individual providers the ability to refuse services under “conscience clauses,” which permits pharmacists, physicians, and other medical professionals to refuse to perform certain services or provide contraception. These regulations allow pharmacists or other healthcare providers to refuse to provide services for reasons of religion or conscience. Some of the pharmacists’ objections stem from the belief that contraception, specifically emergency contraception, known as the “morning after” or “Plan B” pill, is an abortifacient, a drug that would destroy a fertilized egg and induce an abortion. Although the majority of the medical community has debunked these claims that emergency contraception is the “abortion pill”, the controversies over these types of contraception have further fueled public opinion for more stringent regulations of contraception.

35. Several states have enacted legislation evoking the “conscience clause” to permit medical professionals and facilities to refuse to provide reproductive health services. One primary example is Georgia Admin. Code § 480-5-.03. The “Refusal to Fill Prescription” clause states that, “it shall not be considered unprofessional conduct for any pharmacist to refuse to fill any prescription based on his/her professional judgment or ethical or moral beliefs.”^{xxvii} Mississippi Code Ann. § 41-41-215 permits healthcare providers, including but not limited to pharmacists, counselors, social workers, healthcare facilities, “to refuse to provide [any] medical services, including counseling and referral, on religious or ethnical grounds.”^{xxviii}

36. The Human Rights Committee may want to mention that the U.S. federal government could encourage more states to take the effective measures taken by some states to provide greater accessibility to contraception. In Illinois, Governor Rod Blagojevich issued emergency rules that “require pharmacies to dispense FDA-approved contraceptives.” Although only a temporary emergency ruling, the Illinois legislature may make this permanent through the normal rulemaking process.^{xxix}

Conclusion: Recommendations for the U.S.

37. In its Concluding Observations on the U.S. Report, the Human Rights Committee can set forth how many of the state statutes described above violate the ICCPR and the U.S. Constitution by denying women and their doctors and pharmacists rights essential to their exercise of the rights to privacy and health care. The Concluding Observations can remind the U.S. federal government of its duty to publicize the text of the ICCPR at the federal and local levels so that state legislators and state supreme court justices become aware that their decisions on health care and women’s rights issues must not violate the rights set forth in the ICCPR, a treaty ratified by the U.S., making it part of the “supreme law of the land” under the U.S. Constitution, Article 6 clause 2.

^{xi} “Facts on Induced Abortion in the United States,” *Guttmacher Institute*, August 2011, http://www.guttmacher.org/pubs/fb_induced_abortion.html.

^{xii} 2010 U.S. Census,” *U.S. Census Bureau*, accessed November 30, 2012, <http://2010.census.gov/2010census/data/>.

^{xiii} “Facts on Unintended Pregnancy in the United States.” *Guttmacher Institute*, ^{sec}. In Brief: Fact Sheet, January 2012.

^{xiv} World Health Organization, “Sexual and Reproductive Health,” <http://who.int/reproductivehealth/en/>.

^{xv} “Center for Reproductive Rights, “Whose Right to Life? Women's Rights and Prenatal Protections Under Human Rights and Comparative Law.” Last modified 2012.

^{xvi} U.N. GAOR Annex, 12th Session, Agenda Item 33, ¶¶ 96, 113, 119, U.N. Doc. A/C.3/L.654.

^{xvii} International Covenant on Civil and Political Rights, art. 3, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess, Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

^{xix} Ibid.

^{xx} *Roe v. Wade*, 410 S. Ct 113, (1973).

^{xxi} Mississippi Secretary of State, "Official Tabulation of Vote for Statewide Initiative Measure, December 2011.

^{xxii} Ibid.

^{xxiii} General Assembly of the State of Ohio, H.B. 125, 129th Cong. (2011).

^{xxiv} Ibid.

^{xxv} Georgia Secretary of State, "480-5-.03 Code of Professional Conduct," <http://rules.sos.state.ga.us/docs/480/5/03.pdf>.

^{xxvi} National Conference of State Legislatures, "Pharmacist Conscience Clauses: Laws and Information," May 2012.

^{xxix} Ibid.