

**Failure to Provide Effective Avenues of Redress and Relief
for the Role of U.S. Judges in Persecution and Psychological Torture
Imposed Through Persistent U.S. Legal System Abuse**

Suggested List of Issues
to Country Report Task Force on the United States
Implementation of the ICCPR

January 11, 2019

National Judicial Conduct and Disability Law Project, Inc.

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The Law Project



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I. Reporting Organization

National Judicial Conduct and Disability Law Project, Inc. (NJCDLP) is a grassroots, U.S. legal system reform organization and judicial accountability specialist. The nonprofit corporation is headquartered in Atlanta, Georgia. NJCDLP addresses a variety of social justice concerns, yet its overriding goal is to exalt America's judiciary while raising the world's consciousness of judicial misconduct and its impact which can be intergenerational.

II. Issue Summary

According to the Centre for the Independence of Judges & Lawyers, International Commission of Jurists:

Global experience over the last 65 years has demonstrated that the existence of a legal system that all actors know will respond effectively and consistently to violations and abuses has a general deterrent effect. The same experience has demonstrated that we cannot expect a legal system to respond effectively and consistently to human rights violations and abuses unless judges are independent and impartial, lawyers (as a particular kind of civil society actor) are independent and free to fulfil their duties, and prosecutors are impartial and committed to human rights and the rule of law.¹

NJCDLP has taken the lead in establishing that America's legal system lacks the referenced "deterrent effect". In fact, by its campaign known as Opt IN USA, the NJCDLP proposes that U.S. residents, including but not limited to Americans, lack effective avenues of redress and relief for the role of U.S. judges in objectively discernible, national patterns of persistent U.S. legal system abuse.

III. Concluding Observations and ICCPR Legal Framework

In its one-year follow-up to the "Priority Recommendations of the Human Rights Committee on its Fourth Periodic Report on Implementation of the International Covenant on Civil and Political Rights" (ICCPR), the United States of America (USA) does not address Section C, subsection 4. of the Committee's Concluding Observations adopted March 26, 2014. Paragraph (c) of that subsection provides that the USA should:

¹ ICJ (2018 February 27). "The role of judges, lawyers and prosecutors in preventing human rights abuses", accessible as of January 10, 2019 @ <https://www.icj.org/the-role-of-judges-lawyers-and-prosecutors-in-preventing-human-rights-abuses/>

(t)aking into account its declaration that provisions of the Covenant are non-self-executing, ensure that effective remedies are available for violations of the Covenant, including those that do not, at the same time, constitute violations of the domestic law of the United States of America, and undertake a review of such areas with a view to proposing to Congress implementing legislation to fill any legislative gaps. The State party should also consider acceding to the Optional Protocol to the Covenant, providing for an individual communication procedure.

Of course, Article 2, paragraph 3(a) and (b) of the ICCPR provide that:

3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; . . .

The USA does indicate upon responding to Section C, subsection 5 of the Committee's Concluding Observations that "(a)ccountability exists at all government levels in the United States." NJCDLP suggests otherwise in a series of reports spanning 2016 to 2018, issued as part of its Opt IN USA, a U.S. foreign policy reform, judicial accountability, and human rights campaign.²

IV. Current U.S. Government Policy or Practice

On October 10, 2018, pursuant to a proposed communication submitted on behalf of Opt IN USA constituents, the U.N. Human Rights Council (Council) confirmed that America may well have a *de facto* policy of judicial impunity for the role of its judges in persecution and psychological torture imposed through persistent U.S. legal system abuse.³ Obviously the Council could not entertain addressing what Opt IN USA contends is America's woefully

² See, Opt IN USA (2016, February 16). "AMERICANS IN JEOPARDY: When Human Rights Protection Becomes America's Executive, Legislative, and Judicial Branch Shell Game", accessible as of January 10, 2019 at https://www.dropbox.com/s/xduyny4zcdrijvm2/Americans%20In%20Jeopardy_full-graphics.pdf?dl=0 and Opt IN USA (2018, January 18). "JUDICIAL IMPUNITY: A Likely Inadvertent but Deadly Failure of American Democracy", accessible as of January 10, 2019 at <https://www.dropbox.com/sh/03e5qng7yn1by9p/AACLLEklxK9VyVPDMBOV5RZa?dl=0&preview=2017-2018+Winter+Judicial+Impunity+Report.pdf>

³ See, Opt IN USA. (2018 October 12). "UN Human Rights Council Poised to Address Prospect of Judicial Impunity in America". *PR Log*, accessible as of January 10, 2019 at <https://www.prlog.org/12734665-un-human-rights-council-poised-to-address-prospect-of-judicial-impunity-in-america.html>

inadequate judicial oversight if related relief were clearly available in the USA. Yet, as indicated, the United Nations charter body has expressed willingness to intervene, subject to elaboration on instances of related harm. That fact alone at least arguably confirms an ICCPR violation by the USA, specifically a violation of the treaty's Article 2, paragraph 3(a) and (b) which mandate effective domestic remedies for ICCPR violations under color of law.

V. Human Rights Committee General Comments

The Committee has made abundantly clear that ICCPR reservations, understandings, and declarations notwithstanding, a State Party's deviation from fundamentals of fair trial is prohibited at all times.⁴ The Committee has also confirmed that "in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies (including reparations) to vindicate those rights."⁵ Also, recurrences of ICCPR violations should be prevented, and responsible parties should be brought to justice.⁶

VI. Other UN Body Recommendations

NJCDLP's community mobilizing body, the National Strategy and Management Board of the National Forum On Judicial Accountability, has convened a panel of grassroots U.S. legal system reform advocates to examine Opt IN USA's January 2018 submission to the Council in light of its October 2018 response.⁷ Panel members are re-evaluating all key documents directly submitted to or cited (with accessible link) for the Council, keeping in mind its determination that the proposed communication "does not address consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms" and "does not provide sufficient factual description of alleged violations, including the rights which are alleged to be violated."⁸ Given the complaint was not determined "manifestly ill-founded" nor reflective of a failure to exhaust effective and otherwise reasonable domestic judicial/administrative remedies, this Committee would likely agree it suggests America has a *de facto* policy of judicial impunity for the role of its judges in persecution and psychological torture imposed through persistent U.S. legal system abuse.

Had the USA timely ratified the First Optional Protocol to the ICCPR, this Committee, as opposed or compared to the Council, could have entertained the complaint at issue as an

⁴ HRC General Comment No. 32, Section I, ¶¶5-6, p 2, accessible as of January 10, 2019 at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en

⁵ HRC General Comment No. 31 [80], ¶¶15-16, pp 6-7, accessible as of January 10, 2019 at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en

⁶ *Id.* at ¶¶17-18, p 7.

⁷ See footnote 3, *Supra.*

⁸ *Id.*

individual's communication. The Committee, like the Council, may need clarifications and elaborations on the complaint's applicability to a large class of U.S. residents. But apparently the harm to the named complainant it alleges is enough for the Committee (unlike the Council) to deem the complaint admissible were such action authorized by the USA. Naturally, at present, the Committee (unlike the Council) cannot entertain communications from Americans based on their country's ICCPR. And, as Section C, subsection 4. of the Committee's relevant observations acknowledge, the treaty is "non-self-executing" in America, *i.e.*, it cannot be enforced through U.S. court proceedings. Opt IN USA is accordingly left to do what may prove for it – a grassroots initiative lacking major funding sources – an unmanageable task: establish to the Council's satisfaction a reliably attested to, relevant pattern, wide enough to be fairly considered "gross". Even doing that only triggers the Council's fact finding and related recommendations; both potentially invaluable, but less impactful than the Committee's coveted fact finding with corresponding adjudications and enforceable orders.

V. Recommended Questions

For the foregoing reasons, the NJCDLP respectfully recommends that the Committee ask:

1. Whether the USA is intolerant of potential and actual human rights violations under color of law when alleged perpetrators are U.S. judges, prosecutors, and/or private attorneys; and
2. What does the USA do to ensure its court officers are an effective part of prohibiting and appropriately redressing human rights violations.

VI. Suggested Recommendations

The NJCDLP further recommends the Committee:

1. include in its upcoming Observations for the Periodic Report on Implementation of the ICCPR by the USA, a verbatim recital of Section C, subsection 4. of its Concluding Observations regarding the USA's Implementation of the ICCPR, adopted March 26, 2014;
2. Encourage the USA to conduct federal and appropriate state legislative hearings as well as criminal investigations to fairly and impartially confirm the extent to which Americans and U.S. residents have been subjected to U.S. legal system abuse facilitated by unchecked judicial misconduct at any time since 1990; and
3. arrange for any such abuse to immediately cease, for its victims to receive appropriate relief including reparations (without regard for otherwise applicable statutes of limitations or similar tolling/limiting provisions), and prevent recurrences in addition to promptly bringing all responsible parties to justice.