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

Meiklejohn Civil Liberties Institute
Suggested List of Issues to Country Report Task Force on the United States

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Meiklejohn Civil Liberties Institute
Box 673
Berkeley, California 94701-0673
P: (510) 418-5773
annfginger@gmail.com

Issue Summary

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

Access to reproductive healthcare for women of childbearing age

The 2006 Human Rights Committee Concluding Observations did not address reproductive healthcare for women of childbearing age. The U.S. Report only mentioned these subjects briefly in §90, §117 and §290, and did not describe the major attacks on women’s right to health care, planned parenthood, and abortions that have occurred in a number of states since the last U.S. Report, described below.

Introduction

1. In the United States, women make up 50.9 percent, or just over half of the U.S. total population. 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. According to Guttmacher Institute, nearly half of pregnancies among U.S. women are unintended. 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.

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1 The author, Brittney Vevaina, was a graduating senior expecting to receive her B.A. from University of California, Berkeley. She was an intern at Meiklejohn Civil Liberties Institute during the fall of 2012. This report was edited by attorney Ann Fagan Ginger of MCLI.
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.

2. Reproductive rights refer to legal rights and freedoms relating to reproduction and reproductive health. The issues of reproductive health and women’s rights received record attention as a major political campaign issue in 2012. In 2011, the U.S. witnessed an unprecedented increase in state-level abortion restrictions, with 68 percent of states enacting provisions that restrict access to abortion services. There are several categories of abortion restrictions including: personhood laws, fetal heartbeat laws, and waiting periods. In addition, access to contraception is also limited in the U.S. as pharmacists and other medical professionals are allowed to deny patients birth control for religious or moral objections. While the U.S. government has taken some measures to protect access to productive healthcare for women, recent legislation poses a major threat to women’s rights.

Relevant Articles

3. 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.

4. As a party to the ICCPR, the United States undertook the responsibility to “ensure the equal right of men and women” to all the civil and political rights enumerated in the ICCPR. This requirement is an additional protection against legalized gender discrimination. Restricting or prohibiting access to health services that are only required for females is considered a form of gender discrimination. Therefore, the restriction of medical services specific to women, such as an abortion procedure or contraception, is a violation of Article 3, the right to non-discrimination based on gender.

5. The Equal Rights Amendment (ERA) was a proposed amendment to the Constitution that would guarantee equal rights for women, ensuring U.S. citizens freedom from gender discrimination. Although the ERA passed both houses of Congress in 1972, it failed to receive the requisite state ratifications to become part of the U.S. Constitution. Since the failure of the ERA, there has been no successful amendment that would explicitly ensure equal rights to U.S. citizens regardless of gender.

Articles 6 and 7

6. 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. 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

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7 Ibid.
8 Center for Reproductive Rights, “Supplementary information on compliance with the International Covenant on Civil and Political Rights Article 2, 3, 6, 7, 17, & 23 by Philippines, schedule for review by the Human Rights Committee during the 106th session,” Letter to Human Rights Committee September 19, 2012.
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.\(^{10}\)

7. Article 7 of the ICCPR guarantees every person freedom from torture and cruel, inhuman, or degrading treatment (CIDT).\(^{11}\) 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,\(^{12}\) 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.\(^{13}\)

### Abortion

8. 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 14\(^{th}\) Amendment encompasses a woman’s decision to have an abortion.\(^{14}\) The Court contended 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.

9. *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) was another Supreme Court case regarding the constitutionality of several Pennsylvania state regulations. The Court upheld the constitutional right to have an abortion, while also altering the standards used for analyzing abortion restrictions.\(^{15}\) However, this ruling has also opened up the door for states to pass laws restricting access to abortions.\(^{16}\)

### Personhood Laws

10. 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.\(^{17}\)

11. 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.\(^{18}\) Initiative 26 was defeated by 57.63% voting against the initiative, and 42.37% voting in favor.\(^{19}\) This small margin suggests that there is still strong public support to limit or eliminate abortion procedures. 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.

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\(^{12}\) Ibid

\(^{13}\) Ibid


\(^{16}\) Ibid.

\(^{17}\) Mississippi Secretary of State, “Official Tabulation of Vote for Statewide Initiative Measure, December 2011.

\(^{18}\) Ibid.
Time-Limit Bans on Abortions

12. Arizona passed one of the “earliest-in-the-nation” abortion bans in the country at 20 weeks. HB 2036 is a stringent abortion ban that may prevent many women from receiving abortions that are medically necessary. Furthermore, this law would permit criminal prosecutions of physicians who performed abortion services after the 20-week cut-off point. The Center for Reproductive Rights and the American Civil Liberties Union filed a federal lawsuit against HB 2036, seeking to strike down the law as unconstitutional. Currently, the 9th Circuit Court of Appeals is considering the constitutionality of HB 2036. Arizona is not alone in the restriction of abortions. It is among 10 states that have enacted similar 20-week abortion bans, including Alabama, Georgia, Idaho, Indiana, Kansas, Louisiana, Nebraska, North Carolina, and Oklahoma.

Fetal Heartbeat Law

13. 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”. A fetal heartbeat can be detected as early as six weeks before many women even are aware that they are pregnant. The discussions of these bills did not mention that these various restrictions on abortions violate Article 6 and 7 of the ICCPR.

Article 17

14. 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 upheld 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.”

Access to Contraception

15. While the right to privacy is not explicitly protected under the Bill of Rights, the Supreme Court has established 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 extended to marital relations, and couples seeking contraception could not be denied access. This decision recognized 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.”

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

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22 Ibid.
contraception. These regulations allow pharmacists or other healthcare providers to refuse to provide services for reasons of religion or conscience. Some of the pharmacist’s 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.

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.”

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 ethical grounds.”

16. 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, it is expected that the Illinois legislature will make this permanent through the normal rulemaking process.

Conclusion: Recommendations for the U.S.

17. 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 right 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 courts 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.

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27 Ibid.