

1. INTRODUCTION TO THE 2003 ACLU INTERNATIONAL CIVIL LIBERTIES REPORT

by: Ann Beeson and Paul Hoffman*

This year saw serious ongoing human rights abuses by the United States here and abroad, along with unexpected progress as courts began to reference global human rights norms in domestic cases. In the name of "national security," the United States continued to detain a growing number of people in complete legal limbo in Guantanamo and military brigs, arguing that they had no rights under the United States Constitution, and no enforceable rights under international humanitarian or human rights laws. Conceding that the "war on terror" may never end and that detainees of this "war" are not considered by the United States to be ordinary prisoners-of-war, Donald Rumsfeld recently said this indefinite detention could last "for decades." For the first time in history, the U.S. government also argued that *even United States citizens* are not entitled to constitutional rights when detained within the United States and unilaterally declared to be "enemy combatants." It defied court orders to provide detainees and defendants with access to counsel and exculpatory witnesses.

Continuing to except itself from international human rights norms, the United States also dealt two serious blows to international justice and accountability this year. It withdrew the U.S. signature from the treaty (previously signed by President Clinton) establishing the International Criminal Court, the first permanent international war crimes tribunal. By threatening to pull much-needed economic aid, it is now bullying countries around the globe into signing agreements that

exempt U.S. citizens from the jurisdiction of the ICC. It also launched an aggressive attack on the Alien Torts Claim Act, which provides a vital remedy in U.S. courts against human rights abusers worldwide who might otherwise escape accountability.

Despite these serious challenges, there was cause for hope this year among advocates seeking to implement global human rights principles in the United States. The U.S. Supreme Court referenced international law in two landmark civil rights decisions this year. In the single most significant court decision on gay rights in history, *Lawrence v. Texas* struck down sodomy laws as unconstitutional and said gay relationships are entitled to dignity and respect. Referencing decisions in support of gay rights in Europe, Justice Kennedy noted that the right to engage in intimate, consensual conduct "has been accepted as an integral part of human freedom in many other countries." Similarly, in upholding the University of Michigan's affirmative action program in *Grutter v. Bollinger*, Justice Ginsburg's concurring opinion cited both the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All forms of Discrimination Against Women.

Anticipating a new era in which courts recognize the relevance of global human rights here in the United States, the ACLU moved to further expand its use of human rights principles in addition to constitutional ones. Many of these efforts are described in the following pages. To highlight a few: On behalf of Physicians for Human Rights, Veterans for Peace, and other groups, the ACLU and the Center for Constitutional Rights filed a Freedom of Information Act request demanding that the federal government provide information in response to reports that it is intentionally rendering detainees to countries known to engage in torture and other illegal interrogations techniques. If successful, the FOIA will help us determine whether or not the U.S. has violated

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the Convention Against Torture, one of the few human rights treaties that the U.S. has signed and ratified. In a complaint to the United Nations Working Group on Arbitrary Detention to be filed this fall, the ACLU will be representing some of the hundreds of individuals who were swept up by the federal government after September 11 and subsequently deported to Pakistan and other countries. The United States has not shown that a single one of these detainees were connected in any way to terrorism.

The ACLU also responded to a dire need for more human rights training and resources. This September we welcomed the first Aryeh Neier Fellow for Human Rights, who will work jointly with the ACLU and Human Rights Watch. In her two-year term, the Neier fellow will draw on the unique strengths of both organizations to document and end human rights abuses in the treatment of immigrants in the United States.

Finally, and perhaps most indicative of the momentum fueling this new movement, the ACLU is hosting the first-ever national training conference for lawyers and social justice advocates on how to use human rights strategically within the United States. The conference will include overviews of international laws and practical workshops to help advocates develop strategies for enforcing human rights in specific areas, including the rights of non-citizens, women's rights, criminal justice, and economic justice. The Carter Center, in Atlanta, Georgia, will be a truly inspiring venue for this event.

It is clear that we can no longer count on the Constitution alone to protect fundamental freedoms in the United States – let alone the freedoms of those affected by our government's actions abroad. Increasingly, our government refuses to comply not just with international human rights norms but also with the Constitution, even in the treatment of its own citizens. The government's actions here and abroad inevitably encourage other governments

to violate human rights. Our response as social justice advocates must be swift and multifaceted. We must combine grassroots advocacy, documentation, policy work, public education and litigation. We must work with young people to spread the work about human rights. They understand the inextricable links between globalism, poverty, and racism. We must emphasize the positive face of globalization, the globalization of freedom and democracy. We must use human rights documentation to hold our government accountable for its actions here and abroad. We must raise human rights arguments more frequently in our domestic litigation, and provide the courts with more opportunities to – at least – reference international human rights. We must persuade more cities and towns to adopt human rights conventions like CEDAW and CERD locally. All of these actions would add fuel to a grassroots movement to ratify and implement human rights treaties. In short, we must stop at nothing to ensure that every human being – citizen or non-citizen, black or white, Muslim or Christian, rich or poor – has the fundamental rights enshrined in both the United States Constitution and the Universal Declaration of Human Rights.