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SUBJ: NDIAYE REPORT: WRITTEN RESPONSE

TEXT:

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SUBJECT: NDIAYE REPORT: WRITTEN RESPONSE

REF: 04/13 MCISAAC-LOFTIS E-MAIL & FAX

1. DEPARTMENT SENT MISSION FINAL VERSION OF THE WRITTEN RESPONSE TO THE NDIAYE REPORT ON CAPITAL PUNISHMENT IN THE UNITED STATES ON MONDAY, APRIL 13 (REF). MISSION SHOULD PRESENT THIS DOCUMENT TO THE COMMISSION FOR DISTRIBUTION AS THE OFFICIAL U.S. RESPONSE. TEXT OF THE WRITTEN RESPONSE IS REPEATED BELOW.

2. BEGIN TEXT:

USG RESPONSE TO NDIAYE REPORT, MARCH, 1998

THE UNITED STATES HAS PLAYED A PROMINENT ROLE IN THE ESTABLISHMENT AND SUPPORT OF THE UNITED NATION'S SPECIAL RAPPORTEUR SYSTEM FROM THE OUTSET. THIS SUPPORT HAS EXTENDED THROUGH ALL U.S. ADMINISTRATIONS. WE WELCOME VISITS BY THE SPECIAL RAPPORTEURS AND WE CALL ON OTHERS, SUCH AS CUBA AND BURMA, TO DO THE SAME. AS THE UN'S SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY, OR ARBITRARY

EXECUTIONS, MR. NDIAYE HAS DONE AN OUTSTANDING JOB IN COUNTRIES SUCH AS BOSNIA AND RWANDA, WHERE HE WAS AMONG THE FIRST TO REPORT ON MASSIVE HUMAN RIGHTS ABUSES. HIS EFFORTS CAN CONTRIBUTE SIGNIFICANTLY TO EFFECTIVE REMEDIES.

WE WERE PLEASED TO WELCOME MR. NDIAYE TO THE UNITED STATES FOR A VISIT THIS PAST FALL. DURING HIS VISIT, WE ARRANGED APPOINTMENTS WITH DEPARTMENT OF STATE AND HIGH-RANKING DEPARTMENT OF JUSTICE OFFICIALS, EXPERTS ON CAPITAL PUNISHMENT, THE PRISON SYSTEM, AND POLICE BRUTALITY, TO PROVIDE THE SPECIAL RAPPORTEUR WITH A SOLID OVERVIEW OF THE U.S. SYSTEM AND THE RELATIONSHIP OF THE FEDERAL GOVERNMENT TO THE STATE GOVERNMENTS.

WE ARE, HOWEVER, DEEPLY DISAPPOINTED WITH MR. NDIAYE'S REPORT ON THE UNITED STATES. HIS REPORT LEAVES OUT VALUABLE AND EXTENSIVE INFORMATION PROVIDED TO HIM ON THE STRONG AND EFFECTIVE PROCEDURAL PROTECTIONS IN THE UNITED STATES AGAINST MISCARRIAGES OF JUSTICE. THE PROCESSES GO TO THE HEART OF WHETHER THE INSTANCES OF CAPITAL PUNISHMENT ARE EXTRA-JUDICIAL, SUMMARY, OR ARBITRARY. BY LEAVING ALL OF THIS MATERIAL OUT, HE HAS PRODUCED A MOST MISLEADING REPORT WHICH DOES NOT ADVANCE THE CAUSE FOR WHICH SUCH RAPPORTEURS ARE CREATED, I.E., TO HELP DEFINE AND ADVOCATE THE DUE PROCESSES WHICH PROTECT HUMAN RIGHTS.

BECAUSE WE VALUE SO HIGHLY THE ROLE OF SPECIAL RAPPORTEURS, WE FEEL IT ESSENTIAL TO PROVIDE A DETAILED RESPONSE TO THIS REPORT. WE ASK THAT MR. NDIAYE EXAMINE CAREFULLY THE MATERIAL WE ARE PROVIDING AND CONSIDER REVISING HIS REPORT ACCORDINGLY TO MAKE IT CONSISTENT WITH THE ACCURACY AND PURPOSES THAT SUCH REPORTS MUST ATTAIN.

WE ALSO BELIEVE THAT THE SPECIAL RAPPORTEUR SHOULD DEVOTE MORE OF HIS TIME TO HIS PRIMARY MANDATE, INVESTIGATIONS IN THOSE COUNTRIES WHERE SUMMARY, EXTRA-JUDICIAL, AND ARBITRARY EXECUTIONS ARE SERIOUS PROBLEMS. HE SHOULD SPEND LESS TIME ON HIS SECONDARY MANDATE OF REVIEWING THE ESTABLISHMENT OF, AND ADHERENCE TO, INTERNATIONAL STANDARDS FOR CAPITAL PUNISHMENT, PARTICULARLY IN COUNTRIES WHERE THOSE INTERNATIONAL STANDARDS OF DUE PROCESS ARE FULLY PROTECTED, AS THEY ARE IN THE U.S.

CAPITAL PUNISHMENT IS PERMITTED UNDER BOTH U.S. AND INTERNATIONAL LAW. THE U.S. JUDICIAL SYSTEM PROVIDES AN EXHAUSTIVE SYSTEM OF PROTECTIONS TO ENSURE THAT THE DEATH PENALTY IS NOT APPLIED IN AN EXTRA-JUDICIAL, SUMMARY, OR ARBITRARY MANNER. THE U.S. RESPECTS THE RIGHT OF OTHER

COUNTRIES TO BAN THE USE OF THE DEATH PENALTY ON THEIR SOIL AND TO ENTER INTO RELATED TREATIES AND OTHER AGREEMENTS. THE U.S. IS NOT A PARTY TO ANY OF THESE TREATIES OR AGREEMENTS.

THE REPORT FAILS TO RECOGNIZE THAT THE CONSTITUTION AND LAWS OF THE UNITED STATES, AS IMPLEMENTED BY OUR STATE AND FEDERAL COURTS, PROVIDE RIGOROUS PROTECTIONS FOR THE RIGHTS OF CRIMINAL DEFENDANTS. OUR SYSTEM OF CRIMINAL JUSTICE IS ONE OF THE FAIREST IN THE WORLD. THE AMERICAN PEOPLE PLACE A HIGH VALUE ON ENSURING THE FAIRNESS AND EFFECTIVENESS OF THEIR CRIMINAL JUSTICE SYSTEM, INCLUDING PROTECTION AGAINST RACIAL BIAS AND DISCRIMINATION IN ANY FORM. THE ISSUE OF

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CAPITAL PUNISHMENT IS OPENLY AND VIGOROUSLY DEBATED BY THE PUBLIC AND IN THE VARIOUS LEGISLATURES, AND THE COURTS EXERCISE AN INDEPENDENT FUNCTION IN ENSURING AGAINST THE EXCESSES OF EXECUTIVE AUTHORITY OR POPULAR SENTIMENT.

ALSO MISSING FROM THE REPORT IS A RECOGNITION THAT THE U.S. CRIMINAL JUSTICE SYSTEM HAS IN PLACE MECHANISMS TO DEAL WITH CASES OF DEATHS IN POLICE CUSTODY. THE PUBLIC NATURE OF THOSE CASES INDICATES THAT THE MECHANISMS ARE WORKING BY BRINGING INCIDENTS TO LIGHT AND OFFENDERS TO JUSTICE. THE SPECIAL RAPPORTEUR MET, IN FACT, WITH DEPARTMENT OF JUSTICE OFFICIALS WHO WORK IN THIS AREA AND WHO PROVIDED HIM WITH A DETAILED DESCRIPTION OF THEIR WORK. THE REPORT SHOULD HAVE REFLECTED THIS INFORMATION.

FOLLOWING IS A MORE DETAILED ANALYSIS OF THESE POINTS.

TREATIES AS LAW

UNDER THE U.S. CONSTITUTION, DULY-RATIFIED TREATIES ARE THE SUPREME LAW OF THE LAND, EQUAL WITH ENACTED FEDERAL STATUTES. ACCORDINGLY, THEY DISPLACE PREVIOUSLY ADOPTED FEDERAL LAW AND MAY BE DISPLACED BY SUBSEQUENTLY ADOPTED FEDERAL LAW TO THE EXTENT OF ANY INCONSISTENCY. AS FEDERAL LAW, THEY ALSO PREVAIL OVER INCONSISTENT STATE AND LOCAL LAW. WHERE THEY TOUCH ON MATTERS PREVIOUSLY WITHIN THE PURVIEW OF STATE AND LOCAL GOVERNMENT (AS OPPOSED TO THE FEDERAL GOVERNMENT), THEY MAY ALSO SERVE TO "FEDERALIZE" THE ISSUE, THUS AFFECTING THE ALLOCATION OF AUTHORITY BETWEEN THE STATES AND THE CENTRAL GOVERNMENT.

HISTORICALLY, THE PROSPECT THAT THE CONSTITUTIONAL TREATY POWER COULD BE USED TO OVERRIDE OR INVALIDATE STATE AND LOCAL LAW GENERATED CONSIDERABLE DOMESTIC POLITICAL CONTROVERSY, ESPECIALLY WHEN IT CONCERNED INDIVIDUAL

RIGHTS. ALTHOUGH IT HAS BEEN RECOGNIZED THAT CONGRESS MAY ACT UNDER THE TREATY POWER WHEN IT MIGHT NOT OTHERWISE HAVE THE AUTHORITY TO DO SO (SEE MISSOURI V. HOLLAND, 252 U.S. 416 (1920)), RELIANCE UPON THAT POWER TO LEGISLATE CHANGES IN STATE AND LOCAL LAW HAS BEEN CONSIDERED BY SOME TO BE AN INTERFERENCE WITH THE RIGHTS OF THE CONSTITUENT STATES RESERVED TO THEM UNDER THE CONSTITUTION. CONSEQUENTLY, THE EXPECTATION HAS BEEN THAT ANY CHANGES TO U.S. LAW REQUIRED BY TREATY RATIFICATION WILL BE ACCOMPLISHED IN THE ORDINARY LEGISLATIVE PROCESS.

ALSO AS A MATTER OF DOMESTIC LAW, TREATIES AS WELL AS STATUTES MUST CONFORM TO THE REQUIREMENTS OF THE CONSTITUTION; NO TREATY PROVISION WILL BE GIVEN EFFECT AS U.S. LAW IF IT CONFLICTS WITH THE CONSTITUTION. REID V. COVERT, 354 U.S. 1 (1957). THUS, THE UNITED STATES IS

UNABLE TO ACCEPT A TREATY OBLIGATION WHICH LIMITS CONSTITUTIONALLY PROTECTED RIGHTS, AS IN THE CASE OF ARTICLE 20 OF THE COVENANT ON CIVIL AND POLITICAL RIGHTS, WHICH INFRINGES UPON THE FREEDOM OF SPEECH AND ASSOCIATION GUARANTEED UNDER THE FIRST AMENDMENT OF THE CONSTITUTION.

WHEN ELEMENTS OR CLAUSES OF A TREATY CONFLICT WITH THE CONSTITUTION, IT IS NECESSARY FOR THE UNITED STATES TO TAKE RESERVATIONS TO THOSE ELEMENTS OR CLAUSES, SIMPLY BECAUSE NEITHER THE PRESIDENT NOR CONGRESS HAS THE POWER TO OVERRIDE THE CONSTITUTION. WHEN NECESSARY TO CARRY OUT ITS TREATY OBLIGATIONS, IN CASES WHERE THERE IS NO CONFLICT WITH THE U.S. CONSTITUTION, THE UNITED STATES GENERALLY ENACTS IMPLEMENTING LEGISLATION RATHER THAN RELYING ON A TREATY TO BE "SELF-EXECUTING." THE UNITED STATES WILL NOT DEPOSIT ITS INSTRUMENT OF RATIFICATION UNTIL THE NECESSARY LEGISLATION HAS BEEN ENACTED.

BECAUSE THE BASIC RIGHTS AND FUNDAMENTAL FREEDOMS GUARANTEED BY THE COVENANT ON CIVIL AND POLITICAL RIGHTS (OTHER THAN THOSE TO WHICH THE UNITED STATES TOOK A RESERVATION) HAVE LONG BEEN PROTECTED AS A MATTER OF FEDERAL CONSTITUTIONAL AND STATUTORY LAW, IT WAS NOT CONSIDERED NECESSARY TO ADOPT SPECIAL IMPLEMENTING LEGISLATION TO GIVE EFFECT TO THE COVENANT'S PROVISIONS IN DOMESTIC LAW.

AT THE TIME OF RATIFICATION OF THE ICCPR, THE UNITED STATES TOOK A NUMBER OF RESERVATIONS TO THE COVENANT, INCLUDING "RESERVING THE RIGHT, SUBJECT TO ITS CONSTITUTIONAL CONSTRAINTS, TO IMPOSE CAPITAL PUNISHMENT ON ANY PERSON (OTHER THAN A PREGNANT WOMAN) DULY CONVICTED UNDER EXISTING

OR FUTURE LAWS PERMITTING THE IMPOSITION OF CAPITAL PUNISHMENT, INCLUDING SUCH PUNISHMENT FOR CRIMES COMMITTED BY PERSONS BELOW EIGHTEEN YEARS OF AGE." THIS RESERVATION UNCLAS SECTION 03 OF 08 STATE 070928

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IS IN LINE WITH THE CLASSIC RULES ON RESERVATIONS AS PROVIDED IN THE VIENNA CONVENTION ON THE LAW OF TREATIES. UNDER ARTICLE 19(3) OF THE VIENNA CONVENTION, STATES MAY MAKE RESERVATIONS TO TREATIES PROVIDED THEY ARE NOT INCOMPATIBLE WITH THE OBJECT AND PURPOSE OF THE TREATY. THE U.S. RESERVATION IS CONSISTENT WITH ARTICLE 6 OF THE ICCPR.

U.S. FORM OF GOVERNMENT

THE SPECIAL RAPPORTEUR'S REPORT GENERALIZES FROM THE DEATH PENALTY STATUTES OF THE THREE STATES THE SPECIAL RAPPORTEUR VISITED TO THE REST OF THE STATES WHICH HAVE THE DEATH PENALTY. THE GENERALIZATIONS ARE INAPPROPRIATE IN A COUNTRY WITH A REPUBLICAN FORM OF GOVERNMENT IN WHICH THE CONSTITUENT STATES MAINTAIN AN UNPRECEDENTED MEASURE OF

AUTONOMY ON MANY ISSUES IN A WAY THAT IS UNHEARD OF IN MANY OTHER COUNTRIES. HOWEVER, THE FACT THAT STATES HAVE THEIR OWN CRIMINAL JUSTICE SYSTEMS AND DEATH PENALTY STATUTES, INDEPENDENT OF THE FEDERAL SYSTEM, DOES NOT MEAN THAT THE USE OF CAPITAL PUNISHMENT IN THE UNITED STATES IS ARBITRARY. SAFEGUARDS ARE IN PLACE IN ALL STATES WHICH HAVE THE DEATH PENALTY TO ENSURE THAT THEY MEET THE STANDARDS SET BY THE SUPREME COURT, STANDARDS WHICH MEET INTERNATIONAL STANDARDS. THIRTY-EIGHT STATES RETAIN CAPITAL PUNISHMENT (SEE SECTION ON CAPITAL PUNISHMENT BELOW)

THE U.S. IS A FEDERAL REPUBLIC OF 50 STATES, TOGETHER WITH A NUMBER OF COMMONWEALTHS, TERRITORIES, AND POSSESSIONS. THE U.S. CONSTITUTION IS THE CENTRAL INSTRUMENT OF GOVERNMENT AND THE SUPREME LAW OF THE LAND. ADOPTED IN 1789, THE CONSTITUTION IS THE WORLD'S OLDEST WRITTEN CONSTITUTION STILL IN FORCE, AND OWES ITS STAYING POWER TO ITS SIMPLICITY AND FLEXIBILITY. ORIGINALLY DESIGNED TO PROVIDE A FRAMEWORK FOR GOVERNMENT FOR FOUR MILLION PEOPLE IN 13 VERY DIFFERENT FORMER BRITISH COLONIES ALONG THE ATLANTIC COAST, ITS BASIC PROVISIONS WERE SO SOUNDLY CONCEIVED THAT, WITH ONLY 27 AMENDMENTS, IT NOW SERVES THE NEEDS OF SOME 250 MILLION PEOPLE IN 50 EVEN MORE DIVERSE STATES AND OTHER CONSTITUENT UNITS WHICH STRETCH FROM THE ATLANTIC TO THE PACIFIC OCEAN.

ALTHOUGH THE CONSTITUTION HAS CHANGED IN A NUMBER OF RESPECTS OVER THE YEARS, MOST OF ITS BASIC PRINCIPLES REMAIN THE SAME AS WHEN THEY WERE FIRST ADOPTED:

THE WILL OF THE PEOPLE FORMS THE BASIS OF GOVERNMENTAL LEGITIMACY, AND THE PEOPLE HAVE THE RIGHT TO CHANGE THEIR FORM OF NATIONAL GOVERNMENT BY LEGAL MEANS DEFINED IN THE CONSTITUTION ITSELF.

THE THREE MAIN BRANCHES OF THE FEDERAL GOVERNMENT (THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL) ARE SEPARATE AND DISTINCT FROM ONE ANOTHER. THE POWERS GIVEN TO EACH ARE DELICATELY BALANCED BY THE POWERS OF THE OTHER TWO. EACH BRANCH SERVES AS A CHECK ON POTENTIAL EXCESSES OF THE OTHERS.

THE CONSTITUTION STANDS ABOVE ALL OTHER LAWS, EXECUTIVE ACTS AND REGULATIONS, INCLUDING TREATIES.

ALL PERSONS ARE EQUAL BEFORE THE LAW AND ARE EQUALLY ENTITLED TO ITS PROTECTION. ALL STATES ARE EQUAL, AND NONE CAN RECEIVE SPECIAL TREATMENT FROM THE FEDERAL GOVERNMENT. WITHIN THE LIMITS OF THE CONSTITUTION, EACH STATE MUST RECOGNIZE AND RESPECT THE LAWS OF THE OTHERS. STATE GOVERNMENTS, LIKE THE FEDERAL GOVERNMENT, MUST BE REPUBLICAN IN FORM, WITH FINAL AUTHORITY RESTING WITH THE PEOPLE.

POWERS NOT GRANTED TO THE FEDERAL GOVERNMENT ARE RESERVED TO THE STATES AND OR THE PEOPLE.

EACH STATE IS A SOVEREIGN ENTITY, FREE TO PROMULGATE AND ENFORCE POLICY AND LAW THAT PERTAINS EXCLUSIVELY TO THAT STATE, LIMITED UNDER THE CONSTITUTION ONLY TO THE EXTENT THAT THE RELEVANT AUTHORITY HAS BEEN DELEGATED TO THE FEDERAL GOVERNMENT. THE POWER OF A STATE AND ITS CITIES AND LOCALITIES TO REGULATE ITS OWN GENERAL WELFARE HAS TRADITIONALLY BEEN TERMED THE "POLICE POWER." BESIDES ENFORCEMENT OF CRIMINAL LAWS, THE POLICE POWER ENCOMPASSES AGRICULTURE AND CONSERVATION, HIGHWAY AND MOTOR VEHICLE SUPERVISION, PUBLIC SAFETY AND CORRECTION, PROFESSIONAL LICENSING, REGULATION OF INTRASTATE BUSINESS AND INDUSTRY, AND BROAD ASPECTS OF EDUCATION, PUBLIC HEALTH, AND WELFARE. THE INTERPRETATION OF A STATE'S CONSTITUTION FALLS EXCLUSIVELY WITHIN THE DOMAIN OF THAT STATE'S OWN COURT

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SYSTEM. ONLY WHERE THERE IS A DIRECT CONFLICT WITH THE FEDERAL LAW OR THE FEDERAL CONSTITUTION, OR WHERE THE FEDERAL GOVERNMENT HAS "PREEMPTED" THE FIELD, CAN STATE LAW

BE OVERRIDDEN OR INVALIDATED. THE RETENTION OF MOST ASPECTS OF GOVERNMENTAL AUTHORITY AT THE STATE AND LOCAL LEVEL GENERALLY SERVES TO KEEP THAT AUTHORITY IN THE HANDS OF THE PEOPLE.

DISTRIBUTION OF AUTHORITY BETWEEN THE STATES AND THE FEDERAL GOVERNMENT HAS HISTORICALLY BEEN AMONG THE MOST BASIC DYNAMICS OF THE FEDERAL SYSTEM. ALTHOUGH THE POWERS OF CONGRESS ARE LIMITED, AND THOSE POWERS NOT EXPRESSLY DELEGATED TO THE FEDERAL GOVERNMENT ARE RESERVED TO THE STATES OR TO THE PEOPLE, THE 20TH CENTURY HAS SEEN INCREASINGLY BROAD JUDICIAL INTERPRETATION OF THE NATIONAL LEGISLATIVE POWER. ONE BENEFICIAL RESULT OF THIS EXPANSION OF FEDERAL AUTHORITY, ESPECIALLY IN THE LATTER HALF OF THIS CENTURY, HAS BEEN THE INCREASED PROTECTION OF INDIVIDUAL RIGHTS AND FREEDOMS, ESPECIALLY IN THE AREA OF CIVIL AND POLITICAL RIGHTS, INCLUDING ON CAPITAL PUNISHMENT AND CASES OF POLICE BRUTALITY.

COURTS OR APPEALS AND DISTRICT COURTS. THE SECOND HIGHEST LEVEL OF THE FEDERAL JUDICIARY IS MADE UP OF THE COURTS OR APPEALS (THE HIGHEST BEING, OF COURSE, THE SUPREME COURT). THE UNITED STATES IS CURRENTLY DIVIDED INTO 12 APPELLATE CIRCUITS, EACH SERVED BY A COURT OF APPEALS. THE COURTS OR APPEALS HAVE APPELLATE JURISDICTION OVER DECISIONS OF THE DISTRICT COURTS (TRIAL COURTS WITH FEDERAL JURISDICTION) WITHIN THEIR RESPECTIVE GEOGRAPHIC AREAS. THERE IS A THIRTEENTH COURT OF APPEALS WHICH HEARS APPEALS FROM CERTAIN COURTS WITH SPECIALIZED JURISDICTION. APPROXIMATELY 180 JUDGES SIT ON THE VARIOUS COURTS OF APPEALS.

BELOW THE COURTS OF APPEALS ARE THE FEDERAL DISTRICT COURTS. THE 50 STATES ARE DIVIDED INTO 89 DISTRICTS SO

THAT LITIGANTS MAY HAVE A TRIAL WITHIN EASY REACH. ADDITIONALLY, THERE ARE DISTRICT COURTS IN THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, THE COMMONWEALTH OR THE NORTHERN MARIANAS, AND THE TERRITORIES OF GUAM AND THE VIRGIN ISLANDS. CONGRESS FIXES THE BOUNDARIES OF THE DISTRICTS ACCORDING TO POPULATION, SIZE, AND VOLUME OF WORK. SOME STATES (SUCH AS ALASKA, HAWAII, IDAHO, AND VERMONT) CONSTITUTE A DISTRICT BY THEMSELVES, WHILE THE LARGER STATES (SUCH AS NEW YORK, CALIFORNIA, AND TEXAS) HAVE FOUR DISTRICTS EACH. IN TOTAL, THERE ARE APPROXIMATELY 650 FEDERAL DISTRICT JUDGES.

RELATIONSHIP BETWEEN FEDERAL AND STATE COURTS. OVER THE COURSE OF THE NATION'S HISTORY, A COMPLEX SET OF

RELATIONSHIPS BETWEEN STATE AND FEDERAL COURTS HAS ARISEN. ORDINARILY, FEDERAL COURTS DO NOT HEAR CASES ARISING UNDER THE LAWS OF INDIVIDUAL STATES. HOWEVER, SOME CASES OVER WHICH THE FEDERAL COURTS HAVE JURISDICTION MAY ALSO BE HEARD AND DECIDED BY STATE COURTS. BOTH COURT SYSTEMS HAVE EXCLUSIVE JURISDICTION IN SOME AREAS AND CONCURRENT JURISDICTION IN OTHERS.

CAPITAL PUNISHMENT

LAW AND PRACTICE. THE SANCTION OF CAPITAL PUNISHMENT CONTINUES TO BE AVAILABLE UNDER U.S. LAW FOR THE MOST EGREGIOUS CRIMES. A MAJORITY OF THE STATES (CURRENTLY 38 OUT OF 50), HAVE CHOSEN THROUGH THEIR FREELY ELECTED OFFICIALS TO RETAIN THE DEATH PENALTY. IN PRACTICE, IT IS IMPOSED, ALMOST WITHOUT EXCEPTION, ONLY FOR AGGRAVATED MURDER. AT THE FEDERAL LEVEL, CAPITAL PUNISHMENT IS PERMITTED ONLY FOR THE MOST SERIOUS CRIMES (SUCH AS ASSASSINATION OF A FEDERAL OFFICIAL, COMMITTING A TERRORIST BOMBING, OR MASTERMINDING A DRUG RING). IN ALL CASES, THE DEATH PENALTY MAY BE CARRIED OUT ONLY UNDER LAWS IN EFFECT AT THE TIME THE CRIME WAS COMMITTED, SUBJECT TO THE EXTENSIVE DUE PROCESS AND EQUAL PROTECTION REQUIREMENTS OF THE U.S. CONSTITUTION, AND AFTER EXHAUSTIVE APPEALS.

WHEN CARRIED OUT IN ACCORDANCE WITH THESE SAFEGUARDS, THE DEATH PENALTY DOES NOT VIOLATE INTERNATIONAL LAW. CAPITAL PUNISHMENT IS NOT PROHIBITED BY CUSTOMARY INTERNATIONAL LAW OR BY ANY TREATY TO WHICH THE UNITED STATES IS CURRENTLY A PARTY. WE RECOGNIZE THAT MANY COUNTRIES HAVE ABOLISHED THE DEATH PENALTY UNDER THEIR DOMESTIC LAWS AND THAT A NUMBER, ESPECIALLY WITHIN THE COUNCIL OF EUROPE, HAVE ACCEPTED TREATY OBLIGATIONS TO THAT EFFECT. WE RESPECT THEIR DECISIONS. WE BELIEVE THAT IN DEMOCRATIC SOCIETIES THE CRIMINAL JUSTICE SYSTEM, INCLUDING UNCLAS SECTION 05 OF 08 STATE 070928

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THE PUNISHMENTS PRESCRIBED FOR THE MOST SERIOUS CRIMES, SHOULD REFLECT THE WILL OF THE PEOPLE FREELY EXPRESSED AND

APPROPRIATELY IMPLEMENTED BY THEIR ELECTED REPRESENTATIVES. WITHIN THE UNITED STATES, THE ISSUE OF CAPITAL PUNISHMENT CONTINUES TO BE FREELY DEBATED AND IS THE SUBJECT OF STRONGLY HELD VIEWS. AT PRESENT, A MAJORITY OF THE CONSTITUENT STATES HAVE CHOSEN TO RETAIN THE OPTION OF CAPITAL PUNISHMENT FOR THE MOST SERIOUS CRIMES.

DISCUSSION. THE U.S. SUPREME COURT HAS HELD THAT THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION (WHICH PROSCRIBES CRUEL AND UNUSUAL PUNISHMENT) DOES NOT PROHIBIT CAPITAL PUNISHMENT. GREGG V. GEORGIA, 428 U.S. 153 (1976)

(PLURALITY OPINION). HOWEVER, THE DEATH PENALTY IS AVAILABLE FOR ONLY THE MOST EGREGIOUS CRIMES AND, BECAUSE OF ITS SEVERITY, WARRANTS UNIQUE TREATMENT THAT OTHER CRIMINAL SENTENCES DO NOT REQUIRE.

IMPORTANTLY, IT CANNOT BE IMPOSED EVEN FOR SERIOUS CRIMES -- SUCH AS RAPE, KIDNAPPING, OR ROBBERY -- UNLESS THEY RESULT IN THE DEATH OF THE VICTIM. COKER V. GEORGIA, 433 U.S. 584 (1977); ENMUND V. FLORIDA, 458 U.S. 782, 797 (1982); EBERHEART V. GEORGIA, 433 U.S. 917 (1977); HOOKS V. GEORGIA, 433 U.S. 917 (1977). MOREOVER, THAT THE CRIME RESULTED IN DEATH IS NOT PER SE SUFFICIENT TO TRIGGER IMPOSITION OF CAPITAL PUNISHMENT; IT IS FURTHER REQUIRED THAT THE CRIME HAVE ATTENDANT "AGGRAVATING CIRCUMSTANCES." THESE RESTRICTIONS UPON THE IMPOSITION OF THE DEATH PENALTY ARISE OUT OF THE CONSTITUTIONAL REQUIREMENT THAT THE PUNISHMENT NOT BE DISPROPORTIONATE TO THE PERSONAL CULPABILITY OF THE WRONGDOER, TISON V. ARIZONA, 481 U.S. 137, 149 (1987), AND THE SEVERITY OF THE OFFENSE, COKER V. GEORGIA, 433 U.S. 584, 592 (1977) (DEATH PENALTY IS DISPROPORTIONATE PUNISHMENT FOR CRIME OF RAPE).

U.S. LAW ALSO PLACES SPECIAL EMPHASIS ON DUE PROCESS PROTECTION FOR THOSE ACCUSED OF CAPITAL OFFENSES. THE DEATH PENALTY CANNOT BE CARRIED OUT UNLESS IMPOSED IN A JUDGMENT ISSUED BY A COMPETENT COURT AND SUBJECT TO APPELLATE REVIEW. AUTOMATIC REVIEW OF THE CONVICTION AS WELL AS THE SENTENCE IS MANDATORY IN NEARLY ALL OF THE STATES WHOSE LAWS PROVIDE FOR CAPITAL PUNISHMENT. SUCH REVIEW SERVES TO SAFEGUARD AGAINST THE POSSIBILITY THAT CAPITAL PUNISHMENT MIGHT BE IMPOSED CAPRICIOUSLY, ARBITRARILY OR DISPROPORTIONATELY, I.E., IN A MANNER CONSTITUTING CRUEL AND UNUSUAL PUNISHMENT. GREGG V. GEORGIA, 428 U.S. 153 (1976). TYPICALLY, REVIEW IS UNDERTAKEN REGARDLESS OF THE DEFENDANT'S WISHES AND IS CONDUCTED BY THE STATE'S HIGHEST APPELLATE COURT. IN THOSE FEW STATES NOT PROVIDING FOR AUTOMATIC REVIEW, THE DEFENDANT CAN ALWAYS APPEAL THE SENTENCE, THE CONVICTION, OR BOTH. IF AN APPELLATE COURT VACATES THE SENTENCE OR THE CONVICTION, IT MAY REMAND THE CASE TO THE TRIAL COURT FOR ADDITIONAL PROCEEDINGS OR FOR RETRIAL.

IN 1996 THE U.S. CONGRESS PASSED THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT, WHICH INTRODUCED A SERIES OF IMPROVEMENTS TO FEDERAL CRIMINAL PROCEDURE, INCLUDING A PARTIAL REFORM OF THE FEDERAL LAW GOVERNING HABEAS CORPUS

PETITIONS. THE 1996 ACT LEFT IN PLACE THE BASIC STRUCTURE OF FEDERAL LAW GOVERNING THE IMPOSITION OF CAPITAL

PUNISHMENT, SETTING FORTH SPECIFIC CIRCUMSTANCES UNDER WHICH FEDERAL COURTS WILL ALLOW SUCCESSIVE APPEALS OF FINAL ORDERS ISSUED IN FEDERAL AND STATE HABEAS CORPUS PROCEEDINGS, AND LIMITING THE PERIOD OF TIME WITHIN WHICH FEDERAL COURTS MUST RENDER FINAL DETERMINATIONS OF PETITIONS FOR HABEAS CORPUS BROUGHT IN CAPITAL CASES.

UNDER THE U.S. SYSTEM, A STATE MAY NOT PROHIBIT ACTS OF EXECUTIVE CLEMENCY, INCLUDING AMNESTY, PARDON, AND COMMUTATION OF SENTENCE. GREGG V. GEORGIA, 428 U.S. 153, 199 (1976). IN A RECENT DECISION, HERRERA V. COLLINS, 113 S. CT. 353 (1993), THE SUPREME COURT RECOGNIZED THE AVAILABILITY OF EXECUTIVE CLEMENCY FOR PERSONS FACING THE DEATH PENALTY WHOSE CONVICTIONS HAVE BEEN AFFIRMED, WHOSE COLLATERAL APPEAL RIGHTS HAVE BEEN EXERCISED AND EXHAUSTED, AND WHO THEREAFTER PRESENT A NEWLY-ARTICULATED CLAIM OF FACTUAL INNOCENCE.

IN ADDITION TO THE LIMITATIONS UPON IMPOSITION OF THE DEATH PENALTY DESCRIBED ABOVE, THE EX POST FACTO CLAUSE OF THE U.S. CONSTITUTION BARS RETROACTIVE INCREASES IN THE PENALTIES AVAILABLE IN CRIMINAL CASES. THE OPERATION OF THIS CLAUSE FORBIDS THE GOVERNMENT FROM IMPOSING THE DEATH PENALTY ON AN OFFENDER FOR A CRIME THAT WAS NOT SUBJECT TO CAPITAL PUNISHMENT AT THE TIME IT WAS COMMITTED.
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WITH RESPECT TO INTERNATIONAL HUMAN RIGHTS NORMS, ARTICLE 3 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS STATES THAT EVERYONE HAS THE RIGHT TO LIFE. THE UNITED STATES FULLY ACCEPTS AND RESPECTS THE RIGHT TO LIFE. THAT RIGHT DOES NOT PROSCRIBE CAPITAL PUNISHMENT, HOWEVER, AND MOST COUNTRIES PRACTICED CAPITAL PUNISHMENT AT THE TIME THE UNIVERSAL DECLARATION WAS ADOPTED. IN ADDITION, ARTICLE 6 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, TO WHICH THE UNITED STATES IS A PARTY, EXPRESSLY RECOGNIZES THE RIGHT OF COUNTRIES THAT HAVE NOT ABOLISHED THE DEATH PENALTY TO IMPOSE IT FOR THE MOST SERIOUS CRIMES. A NUMBER OF COUNTRIES HAVE CHOSEN TO BECOME PARTIES TO OTHER TREATIES OBLIGATING THEM TO ABOLISH CAPITAL PUNISHMENT, EITHER ENTIRELY OR IN ORDINARY CIRCUMSTANCES. THESE TREATIES, HOWEVER, NEITHER BIND NON-PARTIES, SUCH AS THE UNITED STATES, NOR CHANGE THE STATUS OF CAPITAL PUNISHMENT UNDER CUSTOMARY INTERNATIONAL LAW.

PROTECTION AGAINST MISCARRIAGES OF JUSTICE DUE TO RACIAL DISCRIMINATION OR BIAS IS A FUNDAMENTAL TENET OF THE AMERICAN CRIMINAL JUSTICE SYSTEM. THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS PROVIDE STRONG AND EFFECTIVE

GUARANTEES IN THIS REGARD. IN PARTICULAR, THE DOCTRINE OF

EQUAL PROTECTION REQUIRES THAT IN THE ADMINISTRATION OF JUSTICE, NO PERSON MAY BE SUBJECT TO ANY GREATER OR DIFFERENT PUNISHMENT THAN ANOTHER IN SIMILAR CIRCUMSTANCES, INCLUDING ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN. THE QUESTION OF INFERRING A LACK OF DUE PROCESS OR EQUAL PROTECTION FROM STATISTICAL STUDIES ALONE HAS BEEN ADDRESSED BY THE COURTS, IN PARTICULAR IN MCCLESKEY V. KEMP, 481 US 2V9 (1987), AND REMAINS A SUBJECT OF DEBATE AND DISCUSSION.

JUVENILES. THE APPLICATION OF THE DEATH PENALTY TO THOSE WHO COMMIT CAPITAL OFFENSES AT THE AGE OF SIXTEEN OR SEVENTEEN CONTINUES TO BE SUBJECT TO OPEN DEBATE IN THE UNITED STATES. THE LAWS IN A MINORITY OF STATES ALLOW THE IMPOSITION OF CAPITAL PUNISHMENT ON PERSONS WHO WERE SEVENTEEN, AND IN SOME CASES SIXTEEN, AT THE TIME OF THE CRIME WHEN OUR COURTS FIND THE DEFENDANTS FIT TO BE TRIED AS ADULTS; THIS OCCURS ONLY IN THE CASE OF THE MOST HEINOUS CRIMES. THE EXECUTION OF JUVENILE OFFENDERS IS EXTREMELY RARE; THE ACTUAL EXECUTION OF PERSONS UNDER AGE 18 IS EVEN MORE RARE.

PERSONS WHO WERE UNDER SIXTEEN YEARS OF AGE AT THE TIME OF THE CRIME MAY NOT RECEIVE CAPITAL PUNISHMENT IN THE UNITED STATES, AS THE U.S. SUPREME COURT HAS HELD THAT SUCH EXECUTIONS WOULD VIOLATE THE U.S. CONSTITUTION. THOMPSON V. OKLAHOMA, 487 U.S. 815 (1988) (NO CAPITAL PUNISHMENT OF PERSONS 15 YEARS OR YOUNGER AT THE TIME OF THE OFFENSE); SANFORD V. KENTUCKY, 492 U.S. 361 (1989) (EIGHTH AMENDMENT DOES NOT PROHIBIT IMPOSITION OF CAPITAL PUNISHMENT ON WRONGDOER AGED 16 AT TIME OF OFFENSE).

CUSTOMARY INTERNATIONAL LAW DOES NOT PROHIBIT THE EXECUTION OF PERSONS WHO WERE SIXTEEN OR SEVENTEEN AT THE TIME OF THE CRIME WHEN THEY ARE JUDGED COMPETENT TO BE TRIED AS ADULTS. EVEN IF SUCH A LEGAL NORM DID EXIST, THE UNITED STATES WOULD NOT BE BOUND BY IT AS OUR LONG-STANDING PRACTICE IN THIS AREA REPRESENTS A CONSISTENT PATTERN OF DISSENT. CERTAIN INTERNATIONAL INSTRUMENTS PROHIBIT "JUVENILE EXECUTIONS," BUT THESE INSTRUMENTS NEITHER BIND THE UNITED STATES ON THIS POINT NOR CREATE A NEW NORM OF CUSTOMARY INTERNATIONAL LAW. ARTICLE 37 OF THE CONVENTION ON THE RIGHTS OF THE CHILD, FOR EXAMPLE, PROVIDES THAT CAPITAL PUNISHMENT SHALL NOT BE IMPOSED FOR OFFENSES COMMITTED BY PERSONS BELOW EIGHTEEN YEARS OF AGE. WHILE THE UNITED STATES SIGNED THE CONVENTION IN 1995, IT HAS NOT RATIFIED IT AND THEREFORE IS NOT BOUND. FURTHER, THE UNITED

STATES HAS CONSISTENTLY TAKEN RESERVATIONS TO TREATY PROVISIONS CONTRARY TO ITS CAPITAL PUNISHMENT PRACTICE.

MENTAL DISABILITIES. BOTH FEDERAL AND STATE LAW PROVIDE SIGNIFICANT PROTECTION AGAINST THE TRIAL, CONVICTION AND PUNISHMENT OF INDIVIDUALS WITH SIGNIFICANT MENTAL INFIRMITIES OR DISABILITIES. U.S. LAW PROHIBITS THE EXECUTION OF INSANE PEOPLE. IN MANY, BUT NOT ALL, STATES A DEFENDANT CANNOT BE HELD RESPONSIBLE IF HE OR SHE REACTED TO AN "IRRESISTIBLE IMPULSE" OR IS INCAPABLE OF ACTING

RESPONSIBLY BY REASON OF MENTAL OR EMOTIONAL DISABILITY. MANY PEOPLE WITH MENTAL DISABILITIES, HOWEVER, ARE NOT LEGALLY INSANE. SOME PERSONS WITH MENTAL DISABILITIES ARE CAPABLE OF DISTINGUISHING RIGHT FROM WRONG, RESISTING IMPULSES AND ACTING RESPONSIBLY.

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NEVERTHELESS, NO ONE, INCLUDING PERSONS WITH MENTAL DISABILITIES, CAN BE FORCED TO STAND TRIAL UNLESS THEY ARE MENTALLY COMPETENT. THE STANDARD FOR JUDGING MENTAL COMPETENCE VARIES FROM JURISDICTION TO JURISDICTION IN THE UNITED STATES. IN GENERAL, A DEFENDANT MUST HAVE KNOWN THE NATURE AND WRONGFULNESS OF THE ACT. SIMILARLY, AN INDIVIDUAL CANNOT BE EXECUTED UNLESS HE OR SHE IS BOTH AWARE OF THE PUNISHMENT AND OF THE REASON WHY THE PUNISHMENT IS TO BE IMPOSED.

THE LEGAL STANDARD FOR COMPETENCE, TOGETHER WITH THE BAR ON THE PROSECUTION OF THE INSANE AND THE OTHER DEFENSES MENTIONED ABOVE, LIMIT SIGNIFICANTLY THE PROSECUTION OF PERSONS WITH MENTAL DISABILITIES. ON RARE OCCASIONS, PERSONS WITH SOME DEGREE OF MENTAL DISABILITY ARE JUDGED COMPETENT TO STAND TRIAL FOR A CAPITAL OFFENSE UNDER U.S. LAW. THE EXECUTION OF THESE DEFENDANTS IS VERY RARE, HOWEVER, BECAUSE MANY STATES REGARD MENTAL DISABILITY AS AN IMPORTANT MITIGATING FACTOR TO BE CONSIDERED DURING SENTENCING.

THE PROTECTIONS AFFORDED PERSONS WITH MENTAL DISABILITIES UNDER U.S. LAW RELATING TO CAPITAL PUNISHMENT ARE CONSISTENT WITH INTERNATIONAL LAW. THOUGH THE STANDARD USED BY SOME COUNTRIES TO JUDGE THE COMPETENCY OF DEFENDANTS TO STAND TRIAL FOR A CAPITAL CRIME MAY DIFFER FROM THE STANDARDS EMPLOYED BY SOME STATES IN THE UNITED STATES, THE STANDARDS ARE NOT A PART OF CUSTOMARY INTERNATIONAL LAW. THIS IS AN AREA WHERE COUNTRIES MAY DISAGREE, ALLOWING THEIR CITIZENS TO DECIDE THE APPROPRIATE STANDARD THROUGH THE DEMOCRATIC PROCESS. EVEN IF A SINGLE LEGAL NORM EXISTED THAT DIFFERED FROM U.S. LAW, THE UNITED

STATES WOULD NOT BE BOUND BY IT BECAUSE OUR PRACTICE IN THIS AREA REFLECTS A CONSISTENT PATTERN OF DISSENT. ANY INTERNATIONAL INSTRUMENTS PURPORTING TO ESTABLISH AN INTERNATIONAL STANDARD BY WHICH TO JUDGE MENTAL COMPETENCY FOR EXECUTION NEITHER BIND THE UNITED STATES ON THIS POINT NOR CREATE A NEW NORM OF CUSTOMARY INTERNATIONAL LAW. IN ITS RATIFICATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, FOR EXAMPLE, THE UNITED STATES RESERVED THE RIGHT TO IMPOSE CAPITAL PUNISHMENT IN A MANNER CONSISTENT WITH THE U.S. CONSTITUTION, INCLUDING IN THE MANNER DESCRIBED ABOVE.

POLICE BRUTALITY

THE CRIMINAL SECTION OF THE DEPARTMENT OF JUSTICE'S CIVIL RIGHTS DIVISION IS STAFFED BY ATTORNEYS WHO FREQUENTLY PROSECUTE CASES OF NATIONAL SIGNIFICANCE INVOLVING DEPRIVATION OF PERSON LIBERTIES WHICH EITHER CANNOT BE, OR ARE NOT, SUFFICIENTLY ADDRESSED BY STATE OR LOCAL AUTHORITIES. THESE ARE INVARIABLY MATTERS OF INTENSE PUBLIC INTEREST INVOLVING ACTS OF RACIAL OR RELIGIOUS VIOLENCE, MISCONDUCT BY LOCAL AND FEDERAL LAW ENFORCEMENT OFFICIALS, OR VIOLATIONS OF THE PEONAGE AND INVOLUNTARY SERVITUDE STATUTES THAT PROTECT MIGRANT WORKERS AND OTHERS HELD IN BONDAGE.

THE FEDERAL CRIMINAL CIVIL RIGHTS STATUTES PROVIDE FOR PROSECUTIONS OF CONSPIRACIES TO INTERFERE WITH FEDERALLY PROTECTED RIGHTS, DEPRIVATION OF RIGHTS UNDER COLOR OF LAW, THE USE OR THREAT OF FORCE TO INJURE OR INTIMIDATE SOMEONE IN THEIR ENJOYMENT OF SPECIFIC RIGHTS (SUCH AS VOTING, EMPLOYMENT, EDUCATION, PUBLIC FACILITIES, AND ACCOMMODATIONS), CRIMINAL HOUSING INTERFERENCE, AND INTERFERENCE WITH PERSONS SEEKING TO OBTAIN OR PROVIDE REPRODUCTIVE HEALTH SERVICES.

THE SECTION RECEIVES BETWEEN EIGHT AND TEN THOUSAND CRIMINAL CIVIL RIGHTS COMPLAINTS ANNUALLY IN THE FORM OF CITIZEN CORRESPONDENCE, TELEPHONE CALLS, OR PERSONAL VISITS TO THE DEPARTMENT OF JUSTICE, TO THE LOCAL U.S. ATTORNEY'S OFFICE OR, MOST COMMONLY, TO THE FEDERAL BUREAU OF INVESTIGATION. UPON CONCLUSION OF THE INVESTIGATION, THE FBI FORWARDS A REPORT TO THE RESPONSIBLE ATTORNEY WITHIN THE DIVISION AS WELL AS TO THE APPROPRIATE U.S. ATTORNEY'S OFFICE. A PROSECUTIVE DETERMINATION IS THEN MADE BY SECTION ATTORNEYS BASED ON THE FACTS CONTAINED IN THE FBI REPORT.

OF THE APPROXIMATELY 3,000 INVESTIGATIONS CONDUCTED EACH YEAR, ABOUT 60% ARE AUTHORIZED FOR GRAND JURY PRESENTATION. ABOUT 60% OF THESE PRESENTATIONS ULTIMATELY RESULT IN CHARGES BEING FILED. BECAUSE ALMOST ANY MATTER WHICH PRESENTS A VIOLATION OF FEDERAL LAW IS ALSO A MATTER INVOLVING A LOCAL OR STATE LAW VIOLATION, DEFERENCE IS

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GIVEN TO LOCAL PROSECUTIONS UNLESS FEDERAL INTERESTS ARE DEEMED TO BE UNVINDICATED. BUT OF THE RESULTS OF THE STATE OR LOCAL PROCEEDINGS ARE INSUFFICIENT, OR IN THE ABSENCE OF ANY SUCH ACTION, A FEDERAL PROSECUTION CAN BE BROUGHT.

ALLEGATIONS OF OFFICIAL MISCONDUCT CONSTITUTE THE MAJORITY OF ALL COMPLAINTS REVIEWED BY THE SECTION. THE OFFICIALS WHO HAVE BEEN DEFENDANTS INCLUDE POLICE OFFICERS, FEDERAL LAW ENFORCEMENT OFFICERS, CORRECTIONAL OFFICERS, AND A COUNTY JUDGE. THESE OFFICIALS HAVE BEEN CHARGED WITH USING THEIR POSITIONS TO DEPRIVE INDIVIDUALS OF CONSTITUTIONAL RIGHTS, SUCH AS THE RIGHT TO BE FREE FROM

UNWARRANTED ASSAULTS, ILLEGAL ARRESTS AND SEARCHES, AND THE RIGHT TO BE FREE FROM DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW. -

IN 1995, AT THE ATTORNEY GENERAL'S DIRECTION, THE CIVIL RIGHTS DIVISION LAUNCHED AN INITIATIVE ON POLICE MISCONDUCT. THE INITIATIVE'S GOAL IS TO ESTABLISH AND IMPLEMENT A COMPREHENSIVE APPROACH TO COMBAT AND PREVENT LAW ENFORCEMENT MISCONDUCT, THROUGH DETERRENCE, EFFECTIVE TRAINING, AND PREVENTION. TO ACHIEVE THIS GOAL, WE HAVE UNDERTAKEN EFFORTS TO IMPROVE COORDINATION BETWEEN OUR CRIMINAL AND CIVIL ENFORCEMENT EFFORTS, AND BETWEEN THE DIFFERENT MODES OF CIVIL ENFORCEMENT. THIS EFFORT IS ONGOING, RESULTING IN A 1997 SUIT AGAINST ONE U.S. CITY AND ITS POLICE DEPARTMENT. IN ADDITION, UNDER THE PROVISIONS OF THE 1994 CRIME CONTROL AND PREVENTION ACT, THE DIVISION HAS FILED SUIT AGAINST ANOTHER CITY AND ITS LAW ENFORCEMENT OFFICERS AND SEVERAL JUVENILE JUSTICE FACILITIES. THE DIVISION IS ALSO WORKING TO PREVENT POLICE MISCONDUCT BY ENCOURAGING LAW ENFORCEMENT AGENCIES TO DEVELOP AND IMPLEMENT MANAGEMENT PRACTICES THAT OPTIMIZE INTEGRITY WITHIN THE FORCE.

END TEXT.
ALBRIGHT

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TO: ALL DIPLOMATIC AND CONSULAR POSTS
SPECIAL EMBASSY PROGRAM
INFO: /////
SUBJ: EXECUTIVE ORDER: VIOLENCE AGAINST WOMEN AND
TRAFFICKING IN WOMEN AND GIRLS

TEXT:
UNCLAS STATE 087336

FROM THERESA LOAR FOR AMBASSADORS

E.O. 12958: N/A

TAGS: KWMN, PHUM, SCWL, PREL, ELAB, SMIG, KFRD, PREF, CVIS,
CASC

SUBJECT: EXECUTIVE ORDER: VIOLENCE AGAINST WOMEN AND
TRAFFICKING IN WOMEN AND GIRLS

1. THIS CABLE PROVIDES BACKGROUND INFORMATION ON THE
DEPARTMENT'S EFFORTS TO COMBAT VIOLENCE AGAINST WOMEN,
INCLUDING TRAFFICKING IN WOMEN AND GIRLS.

2. ON MARCH 11, 1998, PRESIDENT CLINTON ISSUED AN
EXECUTIVE MEMORANDUM ON STEPS TO COMBAT VIOLENCE AGAINST
WOMEN AND TRAFFICKING IN WOMEN AND GIRLS. THE MEMORANDUM
WAS ISSUED AT A MARCH 11, 1998 WHITE HOUSE EVENT IN HONOR
OF INTERNATIONAL WOMEN'S DAY. AT THIS EVENT THE PRESIDENT,
THE FIRST LADY, THE ATTORNEY GENERAL JANET RENO, THE
SECRETARY GENERAL OF THE UNITED NATIONS KOFI ANNAN, DR.
SAISUREE CHUTIKUL, A THAI GOVERNMENT OFFICIAL, AND I SPOKE
ABOUT USG LEADERSHIP ON WOMEN'S HUMAN RIGHTS AROUND THE
WORLD.

3. THE AUDIENCE INCLUDED U.S. GOVERNMENT OFFICIALS,
MEMBERS OF THE DIPLOMATIC CORPS, MEMBERS OF CONGRESS, AND
REPRESENTATIVES FROM NON-GOVERNMENTAL ORGANIZATIONS.

4. THE EVENT HIGHLIGHTED THE FOLLOWING:

-- A REAFFIRMATION OF USG SUPPORT FOR A VIGOROUS CAMPAIGN
FOR SENATE RATIFICATION OF THE WOMEN'S HUMAN RIGHTS TREATY,
THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN.

-- AN ANNOUNCEMENT OF NEW PROGRAMS TO ASSIST AFGHAN WOMEN AND GIRLS SUFFERING AT THE HANDS OF THE TALIBAN, A REGIME THE USG AND THE UNITED NATIONS HAVE DENOUNCED FOR THEIR ABUSES OF HUMAN RIGHTS, INCLUDING WOMEN'S RIGHTS.

-- AN ANNOUNCEMENT OF AN ADDITIONAL \$10 MILLION TO COMBAT VIOLENCE AGAINST WOMEN AROUND THE WORLD THROUGH THE DEPARTMENT OF STATE AND USAID.

-- AN ANNOUNCEMENT OF A SERIES OF INITIATIVES TO COMBAT TRAFFICKING IN WOMEN AND GIRLS, ONE OF THE FASTEST GROWING CRIMINAL ENTERPRISES IN THE WORLD. THESE INITIATIVES IN THE U.S. AND AROUND THE WORLD WILL:

- EDUCATE YOUNG WOMEN AND GIRLS ABOUT TRAFFICKING SO THAT THEY WILL NOT FALL PREY TO TRAFFICKERS TACTICS OF COERCION, FRAUD, AND DECEIT,
- PROVIDE PROTECTION AND ASSISTANCE TO VICTIMS, AND
- ENHANCE THE CAPABILITIES OF LAW ENFORCEMENT OFFICIALS TO COMBAT TRAFFICKING.

TEXT OF PRESIDENT'S MEMORANDUM TO FOLLOW.

5. BEGIN TEXT. AS WE CELEBRATE INTERNATIONAL WOMEN'S DAY TODAY, WE HIGHLIGHT THE ACHIEVEMENTS OF WOMEN AROUND THE WORLD. WE ALSO ACKNOWLEDGE THAT THERE IS MUCH WORK YET TO BE DONE TO ENSURE THAT WOMEN'S HUMAN RIGHTS ARE PROTECTED AND RESPECTED. THE MOMENTUM GENERATED BY THE UNITED NATIONS FOURTH WORLD CONFERENCE ON WOMEN IN BEIJING IN 1995 CONTINUES TO ENCOURAGE OUR GOVERNMENT, AS WELL AS NATIONS AROUND THE WORLD, TO FULFILL OUR COMMITMENTS TO IMPROVE THE LIVES OF WOMEN AND GIRLS.

I HAVE, ONCE AGAIN, CALLED UPON THE SENATE TO GIVE ITS ADVICE AND CONSENT TO RATIFICATION TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, THUS ENABLING THE UNITED STATES TO JOIN 171 OTHER COUNTRIES IN SUPPORT OF THE CONVENTION. THIS CONVENTION IS AN

EFFECTIVE TOOL THAT CAN BE USED TO COMBAT VIOLENCE AGAINST WOMEN, REFORM UNFAIR INHERITANCE AND PROPERTY RIGHTS, AND STRENGTHEN WOMEN'S ACCESS TO FAIR EMPLOYMENT AND ECONOMIC OPPORTUNITY. RATIFICATION OF THIS CONVENTION WILL ENHANCE OUR EFFORTS TO PROMOTE THE STATUS OF WOMEN AROUND THE WORLD. AS WE LOOK AT AFGHANISTAN AND THE EGREGIOUS HUMAN RIGHTS VIOLATIONS COMMITTED AGAINST WOMEN AND GIRLS AT THE HANDS OF THE TALIBAN, WE RECOGNIZE THAT THIS IS AN ISSUE OF GLOBAL IMPORTANCE.

MY ADMINISTRATION IS WORKING HARD TO ELIMINATE VIOLENCE AGAINST WOMEN IN ALL ITS FORMS. OUR EFFORTS HELP COMBAT THIS HUMAN RIGHTS VIOLATION AROUND THE WORLD AND HERE IN THE UNITED STATES. AS PART OF MY 1994 CRIME BILL, I SIGNED INTO LAW THE VIOLENCE AGAINST WOMEN ACT. THIS LEGISLATION DECLARES CERTAIN FORMS OF VIOLENCE AGAINST WOMEN TO BE FEDERAL CRIMES AND PROVIDES FOR CRITICAL ASSISTANCE TO STATES, TRIBES, AND LOCAL COMMUNITIES IN THEIR EFFORTS TO RESPOND TO THIS PROBLEM. THE DEPARTMENT OF JUSTICE IS

IMPLEMENTING THE VIOLENCE AGAINST WOMEN ACT AND WORKING WITH COMMUNITIES ACROSS THE COUNTRY TO PROMOTE CRIMINAL PROSECUTION AND PROVIDE SERVICES TO VICTIMS. THROUGH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, WE HAVE ESTABLISHED FOR THE FIRST TIME A NATIONWIDE DOMESTIC VIOLENCE HOTLINE, SO THAT WOMEN THROUGHOUT THE COUNTRY CAN CALL ONE TOLL-FREE NUMBER AND BE CONNECTED TO A LOCAL DOMESTIC VIOLENCE SUPPORT CENTER. WE HAVE COME A LONG WAY SINCE 1994, AND I AM PROUD OF OUR EFFORTS.

EACH DAY RECOGNITION OF THE IMPORTANCE OF? THIS ISSUE GROWS AROUND THE WORLD. IN RECENT YEARS, MANY COUNTRIES HAVE BEGUN TO RESPOND TO CALLS FOR LEGISLATION AND GOVERNMENT PROGRAMS ADDRESSING VIOLENCE AGAINST WOMEN. THE INTERNATIONAL COMMUNITY INCREASINGLY REGARDS VIOLENCE AGAINST WOMEN AS A FUNDAMENTAL HUMAN RIGHTS VIOLATION, AN IMPEDIMENT TO A NATION'S DEVELOPMENT, AND AN OBSTACLE TO WOMEN'S FULL PARTICIPATION IN DEMOCRACY.

TODAY I AM DIRECTING THE SECRETARY OF STATE, THE ATTORNEY GENERAL, AND THE PRESIDENT'S INTERAGENCY COUNCIL ON WOMEN TO CONTINUE AND EXPAND THEIR WORK TO COMBAT VIOLENCE AGAINST WOMEN HERE IN THE UNITED STATES AND AROUND THE WORLD. WE HAVE MADE GREAT PROGRESS SINCE THE ENACTMENT OF THE VIOLENCE AGAINST WOMEN ACT IN 1994, BUT THERE REMAINS MUCH TO BE DONE. WE MUST CONTINUE TO WORK TO IMPLEMENT THE

ACT FULLY AND TO RESTORE THE ACT'S PROTECTION FOR IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE HERE IN THE UNITED STATES SO THAT THEY WILL NOT BE FORCED TO CHOOSE BETWEEN DEPORTATION AND ABUSE.

THE PROBLEM OF TRAFFICKING IN WOMEN AND GIRLS, AN INSIDIOUS FORM OF VIOLENCE, HAS RECEIVED A GREAT DEAL OF ATTENTION FROM THE WORLD COMMUNITY. THIS IS AN INTERNATIONAL PROBLEM WITH NATIONAL IMPLICATIONS. HERE IN THE UNITED STATES, WE HAVE SEEN CASES OF TRAFFICKING FOR THE PURPOSES OF FORCED PROSTITUTION, SWEATSHOP LABOR, AND EXPLOITATIVE DOMESTIC SERVITUDE. THE VICTIMS IN THESE CASES OFTEN BELIEVE THEY WILL BE ENTERING OUR COUNTRY TO SECURE A DECENT JOB. INSTEAD, THEY ARE VIRTUAL PRISONERS, WITH NO RESOURCES, LITTLE RECOURSE, AND NO PROTECTION AGAINST VIOLATIONS OF THEIR HUMAN RIGHTS. MY ADMINISTRATION IS COMMITTED TO COMBATING TRAFFICKING IN WOMEN AND GIRLS WITH A FOCUS ON THE AREAS OF PREVENTION, VICTIM ASSISTANCE AND PROTECTION, AND ENFORCEMENT. OUR WORK ON THIS ISSUE HAS BEEN ENHANCED BY A STRONG PARTNERSHIP WITH NON-GOVERNMENTAL GROUPS AND THE U.S. CONGRESS.

I AM ALSO DIRECTING THE SECRETARY OF STATE, THE ATTORNEY GENERAL, AND THE PRESIDENT'S INTERAGENCY COUNCIL ON WOMEN TO INCREASE NATIONAL AND INTERNATIONAL AWARENESS ABOUT TRAFFICKING IN WOMEN AND GIRLS. I WANT TO ENSURE THAT YOUNG WOMEN AND GIRLS ARE EDUCATED ABOUT THIS PROBLEM SO THAT THEY WILL NOT FALL PREY TO TRAFFICKERS' TACTICS OF COERCION, FRAUD, AND DECEIT.

I ALSO WANT TO PROVIDE PROTECTION AND ASSISTANCE TO

VICTIMS. AND FINALLY, I WANT TO ENHANCE THE CAPACITY OF LAW ENFORCEMENT WORLDWIDE TO PREVENT WOMEN AND GIRLS FROM BEING TRAFFICKED AND ENSURE THAT TRAFFICKERS ARE PUNISHED.

THEREFORE, I DIRECT:

I. THE SECRETARY OF STATE, IN COORDINATION WITH THE ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT, TO STRENGTHEN AND EXPAND OUR EFFORTS TO COMBAT VIOLENCE AGAINST WOMEN IN ALL ITS FORMS AROUND THE WORLD. THESE EFFORTS WILL BE RESPONSIVE TO GOVERNMENT AND NON-GOVERNMENT REQUESTS FOR PARTNERSHIPS, EXPERT GUIDANCE, AND TECHNICAL ASSISTANCE TO ADDRESS THIS HUMAN RIGHTS VIOLATION.

II. THE PRESIDENT'S INTERAGENCY COUNCIL ON WOMEN TO COORDINATE THE UNITED STATES GOVERNMENT RESPONSE ON TRAFFICKING IN WOMEN AND GIRLS, IN CONSULTATION WITH NON-GOVERNMENTAL GROUPS.

III. THE ATTORNEY GENERAL TO EXAMINE CURRENT TREATMENT OF VICTIMS OF TRAFFICKING INCLUDING TO DETERMINE WAYS TO INSURE: THE PROVISION OF SERVICES FOR VICTIMS AND WITNESSES IN SETTINGS THAT SECURE THEIR SAFETY; PRECAUTIONS FOR THE SAFE RETURN OF VICTIMS AND WITNESSES TO THEIR ORIGINATING COUNTRIES; WITNESS COOPERATION IN CRIMINAL TRIALS AGAINST TRAFFICKERS; AND CONSIDERATION OF TEMPORARY AND/OR PERMANENT LEGAL STATUS FOR VICTIMS AND WITNESSES OF TRAFFICKING WHO LACK LEGAL STATUS.

IV. THE ATTORNEY GENERAL TO REVIEW EXISTING UNITED STATES CRIMINAL LAWS AND THEIR CURRENT USE TO DETERMINE IF THEY ARE ADEQUATE TO PREVENT AND DETER TRAFFICKING IN WOMEN AND GIRLS, TO RECOMMEND ANY APPROPRIATE LEGAL CHANGES TO ENSURE THAT TRAFFICKING IS CRIMINALIZED AND THAT THE CONSEQUENCES OF TRAFFICKING ARE SIGNIFICANT, AND TO REVIEW CURRENT PROSECUTION EFFORTS AGAINST TRAFFICKERS IN ORDER TO IDENTIFY ADDITIONAL INTELLIGENCE SOURCES, EVIDENTIARY NEEDS, AND RESOURCE CAPABILITIES.

V. THE SECRETARY OF STATE TO USE OUR DIPLOMATIC PRESENCE AROUND THE WORLD TO WORK WITH SOURCE, TRANSIT, AND DESTINATION COUNTRIES TO DEVELOP STRATEGIES FOR PROTECTING AND ASSISTING VICTIMS OF TRAFFICKING AND TO EXPAND AND ENHANCE ANTI-FRAUD TRAINING TO STOP THE INTERNATIONAL TRAFFICKING OF WOMEN AND GIRLS.

VI. THE SECRETARY OF STATE TO COORDINATE AN INTERGOVERNMENTAL RESPONSE TO THE GOVERNMENT OF UKRAINE'S REQUEST TO JOINTLY DEVELOP AND IMPLEMENT A COMPREHENSIVE STRATEGY TO COMBAT TRAFFICKING IN WOMEN AND GIRLS FROM AND TO THE UKRAINE. THE U.S.-UKRAINE COOPERATION WILL SERVE AS A MODEL FOR A MULTI-DISCIPLINARY APPROACH TO COMBAT TRAFFICKING THAT CAN BE EXPANDED TO OTHER COUNTRIES.

VII. THE SECRETARY OF STATE, IN COORDINATION WITH THE ATTORNEY GENERAL, TO EXPAND AND STRENGTHEN ASSISTANCE TO THE INTERNATIONAL COMMUNITY IN DEVELOPING AND ENACTING LEGISLATION TO COMBAT TRAFFICKING IN WOMEN AND GIRLS, TO

PROVIDE ASSISTANCE TO VICTIMS OF TRAFFICKING, AND TO

CONTINUE TO EXPAND EFFORTS TO TRAIN LEGAL AND LAW
ENFORCEMENT PERSONNEL WORLDWIDE.

VIII. THE SECRETARY OF STATE AND THE DIRECTOR OF THE
UNITED STATES INFORMATION AGENCY TO EXPAND PUBLIC AWARENESS
CAMPAIGNS TARGETED TO POTENTIAL VICTIMS TO WARN THEM OF THE
METHODS USED BY TRAFFICKERS.

IX. THE PRESIDENT'S INTERAGENCY COUNCIL ON WOMEN TO
CONVENE A GATHERING OF GOVERNMENT AND NONGOVERNMENT
REPRESENTATIVES FROM SOURCE, TRANSIT, AND DESTINATION
COUNTRIES AND REPRESENTATIVES FROM INTERNATIONAL
ORGANIZATIONS TO CALL ATTENTION TO THE ISSUE OF TRAFFICKING
IN WOMEN AND GIRLS AND TO DEVELOP STRATEGIES FOR COMBATING
THIS FUNDAMENTAL HUMAN RIGHTS VIOLATION. END TEXT.
ALBRIGHT

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