

tion in the imposition of death sentences are particularly serious in southern states such as Alabama, Florida, Louisiana, Mississippi, Georgia, and Texas; the Supreme Court has ruled that studies demonstrating statistically that the death penalty is racially discriminatory are not sufficient, and that each defendant must prove the existence of racial bias in the case and present "exceptionally clear proof" that "the decision makers in [the] case acted with discriminatory purpose"; this ruling has had the effect of allowing the courts to tolerate racial bias because of the great difficulties defendants face in proving individual acts of discrimination in their cases; the ruling may be incompatible with obligations undertaken under the International Convention on the Elimination of All Forms of Racial Discrimination, which requires states parties to take appropriate steps to eliminate both direct and indirect discrimination; the Racial Justice Act, passed by the House of Representatives as an amendment to the 1994 Crime Bill but rejected in the Senate, would have allowed the defendant to introduce evidence of racism by the use of statistics and would have removed the need to prove discriminatory intent on the part of any specific individual or institutions.

Commentary is also provided on a number of related concerns, including that: the system by which a number of judges are elected, rather than appointed for life, has raised concern about the independence of some judges who are exposed to a higher level of pressure than those who hold life tenures, do not have to run for re-election, and are not accountable to volatile public opinion; it has been alleged that in states where a judge may override the decision of a jury (e.g., Alabama, Delaware, Florida, and Indiana) some judges may not override or overturn a death sentence for fear of the repercussions this may have on their professional careers; it is very difficult for a judge who has reservations regarding the death penalty to be re-elected and, in state judicial elections, judges have been attacked for their decisions in death penalty cases. The report also notes: in all murder cases in which the death penalty may be sought, the prosecutor has the unreviewable discretion to decide to proceed with a capital charge or not, leading to a situation where some prosecutors will seek the death penalty almost all the time while others, in similar cases, will not; prosecutors have discretionary powers related to plea bargaining and instances in which they may seek the opinion of the family of the victim, with information indicating that in the latter there may be excessive discretion in the selection of which families the office of the prosecutor will or will not approach, leading to an increased risk of arbitrariness in imposing a sentence of death; and, at the federal level, more processes have been put in place to restrict or guide the discretion of the federal prosecutors, including the provision that the death penalty may only be sought with the written authorization of the Attorney-General. With regard to jury selection processes, as a practical matter the system tolerates the use of peremptory challenges along racial lines despite measures and stipulations prohibiting the practice; on the basis that the jury system was intended to represent the community as a whole, the community cannot be represented when

those opposed to the death penalty or have reservations about it seem to be systematically excluded from sitting as jurors; and reports indicate that the information juries receive concerning the meaning of the sentencing options varies according to the state (e.g., in Texas, the jury cannot be instructed on the meaning of "life imprisonment"), leaving open the possibility that in many cases jurors believe that by choosing life imprisonment the defendant may shortly be released from prison. The report also notes that with the decision by Congress in 1995 to stop funding for post-conviction defender organizations (PCDO) a situation has developed in which many death row inmates do not have legal representation at post-conviction level. On the Anti-Terrorism and Effective Death Penalty Act the report states that it will cause capital cases to proceed more quickly from state court to federal court, most substantive decisions will be made by state court judges, the role of the federal judge in state capital punishment cases will be substantially reduced, and a narrower scope of review will be established — leaving more aspects of the trial unreviewable and justice more dependent on the actions of the lower court judges.

The report refers to information indicating that there is a movement to speed up executions in state law, with some state laws requiring capital defendants to raise all their claims at a single appeal, limiting or eliminating the possibility of taking into account new evidence which becomes known at a later stage and to redress inadequacies caused by incompetent counsel. Reference is also made to the fact that: in some states, such as Texas, no public defender system exists, there is no institutional experience in defending death penalty cases, and most of the judges are former prosecutors, creating a climate far more favourable to the prosecution than to the defence; in several states, members of the board of pardons and paroles are appointed by the governor of the state, opening up the possibility of politicization of the pardon or commutation; in Texas, members of the parole or pardon board never meet, do not discuss the cases brought to their attention together, and provide their individual votes by phone; and recent studies show that people are not simply "in favour of" or "opposed to" the death penalty — 73 per cent of the people have inconsistent attitudes towards this punishment, indicating a need to differentiate between sporadic popular support of capital punishment and well-informed opinion.

In commentary on the awareness of international obligations, the report states that government officials and members of the judiciary at the federal and state levels — with the exception of officials in the Department of State — had little awareness of the ICCPR and the international legal obligations of the U.S. regarding the death penalty. It was brought to the SR's attention that state authorities had not been informed by the Federal government about the existence and/or ratification of this treaty, and were consequently not aware of it. The SR stated that no efforts appeared to have been undertaken by the Federal government to disseminate the ICCPR. The SR further stated that: there seems to be a serious gap in the relations between federal and state govern-