

## **SUMMARY BY THE HUMAN RIGHTS PROJECT AT THE URBAN JUSTICE CENTER**

### **UPDATE ON GENEVA**

Last week, an unprecedented number of United States NGOs traveled to Geneva to participate in the United States government review by the United Nations Committee on the Elimination of Racial Discrimination (CERD Committee). The review was to monitor US progress in combating racial discrimination as per its obligations under the International Convention on the Elimination of all forms of Racial Discrimination (CERD). The week culminated in a powerful review session where the United States delegation found itself seated in a room jam-packed with activists. Informed and probably bolstered by the impressive NGO presence in the room, the CERD Committee asked pointed questions and challenged the United States stance of exceptionalism with respect to international law. Below is a synopsis of some of the week's events. Please bear in mind that these are brief notes to give you a sense of the week. We will be scheduling a report back in a couple weeks where the New Yorkers who were in Geneva can describe the week in more detail.

*MONDAY, FEBRUARY 18, 2008*

#### **NGO Briefing with CERD Committee**

The US Human Rights Network scheduled an informal briefing with the CERD Committee members to hear from the NGO community on key issues relating to racial discrimination. The goal was to inform the Committee members of important race problems and guide their questioning of the United States government delegation during the review scheduled for later in the week. The session was scheduled for an hour and each speaker was allotted about 4 minutes to speak. Members of the New York delegation spoke on reproductive rights of women of color, school suspensions, and the impact of school to prison pipeline on immigrant youth. Other topics covered were Hurricane Katrina, police brutality, mass incarceration of people of color, school to prison pipeline, conditions in juvenile detention centers, immigrant workers' rights, post 9/11 racial profiling and abuse, access to health care, public housing, Western Shoshone Urgent Action, racial discrimination against transgender women of color, American Indian boarding schools, and sexual and domestic violence against Native women.

#### **Meeting with the Special Rapporteur on Racism, Mr. Doudou Diene**

The United Nations Special Rapporteur (special expert) on racism, Mr. Doudou Diene met with the US NGO delegation to discuss his planned visit to the United States this spring. He explained that he had asked to visit the United States because a visit was long overdue. The visit is yet to be confirmed by the US government. During his visit, he will be meeting with government representatives, as well as NGOs. He is scheduled to come to New York and is interested in seeing how people are actually living and will be looking at prisons, housing, employment, health, and other issues we bring up. We presented on a range of issues including: homelessness, war on drugs, school to prison pipeline (indigenous youth and

racial discrimination, Arab Americans/migrants and racial discrimination, and racial discrimination and alternative programs), local anti-immigrant ordinances, and discrimination against immigrant women. We also reported on some of the local working group reports including the NYC CERD Shadow Report. Because several of the issues in the New York City report had been covered, I used the two minutes allotted to give a brief overview of the NYC CERD Shadow Report, but highlighted the child welfare section as it was missing from the rest of the dialogue. The Special Rapporteur asked specifically for more time to hear about the problems arising from Hurricanes Katrina and Rita. We will be circulating more information on his visit and hope that you can all participate in some of the planning.

TUESDAY, FEBRUARY 19, 2008

### **NGO Training**

The Human Rights Project, along with some other organizations contributed in a training session for the NGOs in Geneva providing an overview of the UN, and discussing different strategies for local implementation. This session also allowed time for introductions and a brief summary of the work organizations are currently involved in.

### **Meeting with Office of the High Commissioner for Human Rights (OHCHR) on the Universal Periodic Review**

Some of you may know that in 2006, the United Nations General Assembly established the Human Rights Council to replace the former UN Commission on Human Rights. The idea was that the Human Rights Council would have a higher profile and increased power to hold all countries accountable to guaranteeing human rights. Ms. Miriam Tebourbi, a representative from OHCHR, met with us to discuss a new monitoring mechanism that has been created under the Human Rights Council. She explained that the Human Rights Council has undertaken the mandate of a universal periodic review of the fulfillment by each country of its human rights obligations and commitments. The Universal Periodic Review (UPR) would be guided by a few key principles including:

- Universal treatment (i.e. all countries will be considered)
- Equal treatment (i.e. all countries will be considered equally in modality)
- UPR will be used to identify needs for capacity building in a non-accusatory capacity
- States under review will be involved in all stages of the review process
- UPR will be a peer review (i.e. will not be done by experts). This raises questions on how states will be educated on issues

The UPR is based on the charter of the UN, the UDHR, all treaties and international human rights law. The UPR will be conducted by a working group of the 47 members of the Human Rights Council. As in the treaty process, civil society (i.e. NGOs) will not be allowed to take the floor in the discussions of the working group session. While all the details are yet to be

worked out, they currently foresee appointment of 3 rapporteurs per country to facilitate its review. The UPR of all 192 countries is scheduled to take place in 4 years starting this year. There will be 3 sessions per year, and each session will review 16 countries—48 countries a year. The UPR will be based on three documents:

- 1) A State Report which will be no more than 20 pages (no annex or attachments, to ensure equality)
- 2) OHCHR Compilations which will be no more than 10 pages
- 3) Summary of stakeholders submissions, a maximum of 10 pages (NGO submissions no more than 5 pages)

The UPR will include a 3-hour interactive session with working group, a ½ hour of report from country, and 1 hour debate when civil society can take floor. The United States is scheduled to undergo the UPR in 2010.

### **NGO-to-NGO Meeting**

The US Human Rights Network also scheduled a meeting with NGOs from Italy who were also in Geneva to participate in Italy's review by the CERD Committee.

WEDNESDAY, FEBRUARY 20, 2008

### **Second NGO Briefing with CERD Committee**

The second informal briefing with the CERD Committee was designed to enable Committee members to ask questions of the NGO delegation. This format was more a bit more dynamic as Committee members were more engaged and came prepared with specific questions. Representatives from the Indian American Council, the Cherokee Nation, and the Sovereign Native Nation began the session and spoke about different injustices visited on Native Americans by the United States government including the denial of spiritual and cultural rights, environmental racism and violence against women. Other NGO delegates spoke on racial disparities in criminal convictions, pregnancy behind bars, and the lack of legislative protection for women against shackling, and long term solitary confinement particularly for mental health patients.

Committee Member Mr. Morten Kjaerum asked questions about voting rights and transgender health rights. He was interested in the current problems around voting rights in the United States particularly in light of the elections. Mr. Patrick Thornberry asked about what level of criminal activity resulted in voter disenfranchisement, and language access in voting rights. Mr. Jose Francisco Calitzay asked about immigrant rights and discriminatory actions of companies. Mr. Linos-Alexander Sicilianos (the country rapporteur) asked for more examples of when Congress has intervened on judicial decisions in spite of the separation of powers. He also asked about the new racial profiling law in the United States and was informed that it had not yet been passed. Mr. Anwar Kemal asked for clarification on whether special measures (e.g. affirmative action) are now illegal or unconstitutional in

the United States. Ms. Fatimata-Binta Victoria Dah, chairperson for the CERD Committee was present at both NGO briefings, as were some other committee members.

### **Meeting with OHCHR, Anti-Discrimination Unit, Research and Right to Development Branch**

Mr. Jose Dougan-Beaca from the OHCHR met with us to discuss the upcoming Durban Review Conference. He explained that the purpose of the conference is to review the commitments made during the World Conference Against Racism (WCAR) held in Durban, South Africa in 2001. Many of you may recall that the United States government pulled out of that conference. The Durban Review conference is scheduled to take place in 2009 (most likely in June) in either Geneva or New York, although it is more likely to take place in Geneva. Other important dates to note include April 21-May 2, 2008 (1<sup>st</sup> substantive session of preparatory committee in Geneva) and October 2008 (2<sup>nd</sup> substantive session of preparatory committee in Geneva). A regional preparatory meeting is also scheduled for June 2008 in Brazil.

To participate in the conference, NGOs must get accreditation. There are separate processes for accreditation for three different categories of NGOs. 1) NGOs with special UN consultative status are automatically accredited for the conference as long as they communicate their interest with the OHCHR, 2) all NGOs admitted to participate in preparatory committee of Durban Conference are also accredited unless a government raises questions about that particular NGO within 14 days (he explained that questions have to be reasonable e.g. questions around legitimacy of NGO. If questions are raised, the NGO will be notified to give response), 3) new NGOs need to fill out form which will be on their website. Please check their website for updated accreditation information.

[http://www2.ohchr.org/english/issues/racism/groups/prep\\_committee\\_durban/#docs](http://www2.ohchr.org/english/issues/racism/groups/prep_committee_durban/#docs).

He confirmed that while the United States had not endorsed the Durban Review conference, NGO participation is not connected to participation of their governments.

The NGOs organized a couple evening panel sessions including one on indigenous rights, and another on economic, social and cultural rights.

*THURSDAY, FEBRUARY 21, 2008*

### **Briefing by the Members of the U.S. Delegation to CERD**

The NGO delegation was invited to a briefing by the members of the United States government delegation on "The U.S. Presentation of the periodic Reports to the UN Committee on the Elimination of Racial Discrimination" at the US Mission to the UN in Geneva. The United States delegation comprised about 24 people including the United States Ambassador to the UN, Warren Tichenor, and representatives from Department of the Interior, Department of Justice, Department of State, Equal Employment Opportunity Commission, Department of Homeland Security, and Department of Labor. Oddly, the delegation also included "private sector advisers" including Ralph Boyd, who used to serve as a conservative CERD Committee member. The briefing lasted an hour and consisted

mainly of NGOs asking questions of the delegation. Beyond giving the NGOs an opportunity to see the delegation before the actual CERD review, the briefing did not produce any new or helpful information.

### **United States Review by CERD – First Day (3pm – 6pm)**

The CERD Committee chairperson, and the only female member of the committee, Ms. Fatimata-Binta Victoria Dah, opened the review session noting the unprecedented number of NGOs and students present. As per the usual practice, she gave the floor to the United States delegation to respond to written questions that had been previously submitted by the CERD committee. Ambassador Tichenor made brief introductory comments rather disingenuously observing that the large delegation from civil society (i.e. NGOs) is an indication of the seriousness with which “the American people treat the elimination of racial discrimination.” Grace Chung Becker, Acting Assistant Attorney General in the Civil Rights Division of the Department of Justice gave an oral summary of the questions posed to the United States by the Committee. Please see attached written responses by the US delegation.

In his response to the US presentation, the Country Rapporteur, Mr. Linos-Alexander Sicilianos started by saying that he received the written responses late the previous night which did not give him enough time to thoroughly review them. Several other committee members noted the late submission of the responses as well as the overwhelming amount of information submitted. Mr. Sicilianos also thanked the NGOs for their contribution, and commended the vibrant civil society in US. Among other things, he noted the discrepancy between the United States government report to CERD and the shadow reports also submitted to CERD. He asked a number of questions including on the limited definition of discrimination in the United States; the status of the Civil Rights Act of 2008 introduced by Senator Edwards; clarification on reach and enforcement of federal racial profiling guidelines which he noted seemed to provide guidelines on how to do racial profiling. He noted that the United States seems to lack any mechanisms to coordinate and review disparate impact cases. He called on the United States to remove or limit its reservation to CERD on racial discrimination in the private domain and to article 4 of CERD. Several other committee members asked pointed questions about the lack of United States compliance with CERD. Subjects covered included over-representation in the criminal justice system, police brutality, sentencing of juvenile to life without parole, death penalty, targeted discrimination suffered by immigrant communities, residential segregation, voter disenfranchisement including in DC, the US role in the Durban Review Conference (US responded that it would not be participating but would be “observing” the process), environmental racism, delay in resolving education cases, human right violations against indigenous people, Hurricane Katrina and a number of other issues. As mentioned previously, we will circulate video-tape of session once it is available. Chairperson Dah closed the session by emphasizing that all countries are dealt with on an equal basis. I think she was trying to reassure the United States.

FRIDAY, FEBRUARY 22, 2008

### **United States Review by CERD – Second Day (10am – 1pm)**

The second day started with the US delegation responding to questions asked the previous day. The US responses were carefully worded and made it clear that they were not willing to admit any failures in meeting their obligations under CERD. They insisted that the United States government did not believe that voting limitations for residents of DC, voter disenfranchisement of convicted felons, and sentencing of juveniles to life without parole, was in violation of CERD when it decided to ratify the convention. They confirmed that the United States will not be participating in preparatory committee for the Durban Review Conference but will be observing to keep track of important issues. They also said that the United States would make a decision on whether to participate in Durban in 2009, although Secretary Rice had made clear that they have no interest in participating. In response to persistent disparities in a number of areas, the delegation said they were “very vexed.” They insisted that factors other than race drive these disparities including poverty, and that NGOs have an equal role to play in addressing them. With respect to voter disenfranchisement, they tried to offer State jurisdiction over voting laws as an excuse for the current situation. In response to the voter disenfranchisement respond, the Committee states that the answer provided by the US delegation could not be accepted by an international body. The US delegation did concede that racial minorities bore a disproportionate number of the housing and healthcare problems related to Hurricanes Katrina and Rita. The US delegation also made an attempt to distinguish between “correlation and causation” of race and negative treatment. The committee members responded numerous times to this latter point insisting that both article 1 of CERD and General Recommendation 31 both clarify that direct and indirect forms of discrimination dovetail and are subject to the mandate of CERD. Committee members asked more questions which can be viewed on the video-tape of the session.

Due to the limited time, Mr. Sicilianos gave very brief closing comments and said that he could not give his conclusions at that stage but that the US government would be the first to hear the concluding comments. We (i.e. the NGO delegation) have sent in our suggestions for what should be contained in the concluding comments. Chairperson Dah closed the session by thanking the United States government for an interactive session and the NGOs for being dynamic.

The week in Geneva was quite productive but the bulk of the work begins now. We will be setting up a meeting to strategize on how to keep the US and NYC governments accountable to CERD over the course of the year, as well as our engagement in the Durban Review Conference and the Universal Periodic Review. We will also be posting photographs from the week on our website- [www.hrpujc.org](http://www.hrpujc.org). Stay tuned!