

Agenda

Civil Society Consultation for the U.S. Universal Periodic Review: San Francisco, California

March 26, 2010

Welcome, Introductions, and Overview of UPR Consultation Process

Connie de la Vega, University of San Francisco School of Law; Dr. James Wiser, University of San Francisco

Panel I: Race Discrimination

Alberto Saldamando, International Indian Treaty Council; Linda Burnham, Women of Color Resource Center; Arnaldo García, National Network for Immigrant and Refugee Rights; Lakota Harden, Bay Native Circle

Panel II: LGBT Issues

Shannon Minter, National Center for Lesbian Rights; Sylvia Guerrero; Shirley Tan; Cecilia Chung; Henry Pacheco

Panel III: Criminal Justice

Connie de la Vega, University of San Francisco School of Law; Michelle Leighton, Law and Global Justice; Alison Parker, Human Rights Watch; Don Specter, Prison Law Office; Elizabeth Zitrin, Death Penalty Focus

Panel IV: Disability Rights

Connie de la Vega, University of San Francisco School of Law; Kim Swain, Disability Rights California; Mary Lou Breslin, Disability Rights Education and Defense Fund; Claudia Center, Disability Rights Programs of the Legal Aid Society

Panel V: Environmental Justice

Morningstar Gali, International Indian Treaty Council; Rev. Henry Clark, West County Toxics Coalition; Jim Brown, Pomo Nation; Sherri Norris, California Indian Environmental Alliance

Closing remarks and Adjournment

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Seven federal agencies participated in this UPR Session: the Department of State, the Department of Justice, the Department of Education, the Equal Employment Opportunity Commission, the Department of Homeland Security, the Department of Health and Human Services and the Environmental Protection Agency were represented.

- **Panel I: Racial Discrimination**

The first civil society representative described the need for remedies to address the racially discriminatory effect of current policies and the perception that racism no longer exists. She said that there are widening disparities in dozens of social and economic indicators, especially in health and education. She also stated that Native Americans, African Americans, and Latinos have the highest poverty rates, which are more than twice as high as those of the white population and that the median income gap between whites and blacks has widened and there is very little upward economic mobility; in some cases, there is a trend toward downward mobility. She said that statistics on graduation rates, life expectancy, and infant mortality all show huge differences between white and Native American, African American, and Latino populations. She recommended that the government undertake reforms to provide serious investments in affordable housing, education, and job creation. She also called for the establishment of benchmarks for closing racial gaps at local, state, and national levels as well as providing incentives for closing these gaps. Her final recommendations included documenting best practices and offering leadership and commitment from Washington.

The next panelist raised the concern that immigrants in particular face difficult conditions in the United States. He stated that 75% of Latinos in prisons are imprisoned for being undocumented, that people can be deported for misdemeanors, and that border checkpoints are bleeding into personal spaces (such as churches and workplaces). His recommendations included the decriminalization of immigration, the demilitarization of immigration and border control, the disassociation of community services and immigration status, and development for immigrant communities.

Another speaker raised the profile of issues concerning Native Americans, including what she called historical repressive legislation of the U.S. Government that allows for the taking of Native land. She argued that society has lost sight of the value of spirituality in public discourse and relationships with the land. She also stated that Native American teenagers have the highest suicide rate per capita and recommended that the U.S. Government devote resources to repairing any damage caused by these policies. She and other members of the audience urged the U.S. Government to support the UN Declaration on the Rights of Indigenous Peoples. Another member of the audience stated that sports mascots depicting Native Americans are offensive and should be considered a hate crime.

- **Panel II: LGBT Issues**

Civil society representatives discussed issues such as hate crimes, employment discrimination, immigration discrimination, and the need for health benefits for same-sex partners of federal employees. One civil society representative quoted a 2010 study that showed rising levels of violence against the lesbian, gay, bisexual, and transgender (LGBT) community. Also discussed was the refusal of the U.S. Government to recognize same-sex marriage and equal benefits to federal employees.

The open discussion included many personal stories of workplace discrimination in the federal government, denial of rights for same-sex couples, discrimination in housing, harassment in schools, and violent hate crimes based on sexual orientation. Civil society representatives expressed concern regarding the lack of recognition of LGBT families in immigration laws and called for the repeal of the Defense of Marriage Act. Interlocutors called on United States Government to enact the Employment Non-Discrimination Act as well as the Domestic Partners Obligation Act.

During the open discussion, a civil society representative raised the point that the LGBT community is not identified in the Census, making data pertaining to this community unavailable. The representative went on to express concern that unemployment and poverty rates in the transgender community are much higher than that of the general population.

- **Panel III: Criminal Justice**

During this panel, civil society participants argued that conditions in prisons violate international obligations on non-discrimination, right to life, and due process. A member of the audience asserted that state laws that disenfranchise prisoners violate the International Covenant on Civil and Political Rights. Civil society representatives also stated that while there have been some improvements, such as the U.S. Supreme Court's decision in *Roper v. Simmons*, which outlawed the juvenile death penalty, states still do not understand their obligations under international law.

Panelists asserted that although African Americans engage in drug offenses at roughly the same rate as whites, law enforcement authorities target urban communities of color making the arrest and incarceration rates in black communities much higher. Panelists recommended monitoring the disproportionate impact on African American communities and eliminating its causes, prioritizing community-based sanctions for low-level drug offenses, and offering treatment and prevention.

The next representative raised issues particular to children in the justice system. She asserted that juvenile life without parole (JLWOP) is prohibited by several international law and treaties, though this practice is still permissible in the United States. She recommended that the U.S. Government impose an immediate moratorium on trying children as adults, support

Congressional legislation that would abolish JLWOP at state and federal levels, and inform states about human rights obligations to urge them to abolish JLWOP.

Another person noted that the U.S. prison system is one of the largest in the world. He also stated that there is widespread overcrowding of prisons, with substantial risk of violence, infectious disease, and riots. Concern was also expressed about the lack of adequate healthcare in prisons and the inability of U.S. prisons to properly protect prisoners with disabilities. He recommended that in addition to upholding treaty obligations on the right to life and due process, the U.S. Government should create a commission that examines incarceration and its alternatives. One member of the audience stated that conditions for women prisoners are also extremely dire, including a lack of adequate healthcare. She also stated that in some facilities, pregnant inmates are shackled while in labor and only get to spend a few days with her child after childbirth. It was recommended that the United States end this practice.

The next speaker discussed the death penalty in the United States, arguing that it fails to comport with international human rights standards. The speaker asserted that the over-breadth of the death penalty is notable since it is no longer reserved for the worst of the worst offenses, it is arbitrary with respect to relevant criteria, and has a racially disparate impact. Members of the audience stated that the risk of executing an innocent person is significant given that eyewitness testimony is not always reliable and DNA evidence is available in only a few cases. They also argued that the death penalty is a drain on resources and prolongs the pain of victims' families. It was recommended that the U.S. Government immediately adopt a moratorium on executions and on new death sentences, immediately address racial disparities, and stop executions of persons with mental disabilities.

- **Panel IV: Disability Rights**

The first speaker asserted that there is an emphasis in the United States on cures and treatment for individuals with disabilities rather than on challenging disability discrimination. He also argued that issues regarding disability discrimination persist in communities of color more than in white communities. He stated that persons with disabilities are twice as likely to drop out of high school and are subjected to inhumane practices of seclusion and restraint in schools and that many people with disabilities do not have health insurance and have only limited access to specialists, mental healthcare, and special equipment since costs are prohibitively high. He also noted that women with disabilities need specialized services related to childcare, reproductive abilities, and prevention. The panelist concluded by recommending the federal government take measures including increased monitoring and enforcement of the Americans with Disabilities Act, ratification of the Convention on the Rights of Persons with Disabilities, better enforcement of the Community Choice Act, the Preventive Harmful Restraint Act, and the Minorities Health and Healthcare Disparities Act, and development of performance standards related to architectural accommodations.

The next civil society representative discussed the institutionalization of persons with disabilities and stated that more community-based alternatives are needed. He argued that despite the lack of community alternatives, there have been cuts in funding for in-home care and other services that could prevent institutionalization. He also noted that school-age children with disabilities are subjected to seclusion and restraint, but no federal laws regulate their use in public and private schools and that these practices are sometimes used in an abusive manner and can lead to death or injury, especially when teachers are not well trained. Other members of the audience commented that persons with disabilities could be full social and economic partners given adequate accessibility and adaptation. They remarked that architectural access for persons with mobility disabilities is still a problem with large numbers of new housing units that are still not accessible.

Another panelist raised the issue of mental and psychiatric disabilities. She noted that many individuals with mental illnesses endure employment discrimination.

- **Panel V: Environmental Justice**

This panel began with a discussion on the impact that environmental pollutants have on people of color. Panel members described the prevalence of environmental plants in close proximity to communities of color as “environmental racism.”

Representatives spoke on behalf of indigenous peoples in California and raised the concern of mercury poisoning in California waters. A representative cited the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination as reminders of the rights of indigenous tribes to consultation, food and sustenance, and self-determination. The representatives stated that current mercury clean-up plans are inadequate, and water conditions remain substandard. Consultation remains an important issue with indigenous people, and civil society representatives requested a higher level of consultation at an earlier stage between the U.S. Government and indigenous groups on environmental issues. The representatives also suggested consultation combined with financial support.

Other environmental concerns discussed included the use of carcinogenic pesticides, dairy facilities contaminating ground water wells with nitrates, and an increase in asthma-related hospitalization rates in areas in close proximity to toxic substances and industries. Counties in the “toxic triangle” were reported to include Alameda, San Francisco, and Richmond. Representatives from civil society recommended a shift away from coal power, taxes on toxic items, and additional comprehensive information that would allow consumers to make educated choices. One representative also suggested that the burden of proof should be shifted from consumers to companies.