

ISSUES based on report submitted by City Council of Berkeley, “Challenging U.S. Human Rights Violations Since 9/11,” described by Hon. Claudia Morcom¹ at the Human Rights Committee meeting Oct. 13, 2005 for Meiklejohn Civil Liberties Institute, an NGO in Berkeley, California.

ISSUES

Issue 1 on Reporting Requirements:

Article 40

There are at present six problems with U.S. reporting to the Committee: (1) The U.S. stated that it doubled the resources for preparing reports in the fall of 2003, yet it did not meet the Committee deadlines in 2004 or 2005, or its reporting deadline for CERD. (2) The Report is based solely on federal government agency reports, and does not include information submitted in a timely manner by at least one City Council based on information from knowledgeable and concerned NGOs, and the Government did not even acknowledge receipt of the material.² (3) A few City officials and many NGOs working at the state and local levels find no awareness of the provisions of the Covenant, although the Report states that “There is extensive awareness at the state and federal levels,” but gave no statistics or examples. (4) Will the federal government immediately send copies of its Report to each state governor and attorney general, and send copies of the Committee Suggestions and Recommendations after the Report is discussed by the Committee in its Geneva meeting in 2006? (5) Does the Government plan to request information from each state for the 4th Report due in 2009? (6) How does the Government plan to get the attention of the U.S. media concerning its Report and the Committee’s responses?

Issue 2 on Violations of the Right to Privacy through Surveillance

Article 17 and Articles 2.1 and 20.1

While the U.S. Government was preparing its 2d/3d Report, the President and top officials knew that he had ordered the National Security Agency to conduct an electronic eavesdropping program in the U.S. without first obtaining warrants. This program was not described in the U.S. Report. The program includes interception of communications of Americans and terrorist suspects inside the U.S. without first obtaining warrants from the secret court that enforces the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. §501. The program “included monitoring the communications of as many as 500 Americans and other people inside the United States without search warrants at any one time,” Eric Lichtblau and James Risen reported in the *New York Times* on Dec. 16, 2005, after waiting one year for White House approval. Sen. Patrick Leahy of Vermont, the ranking Democrat on the Senate Judiciary Committee, immediately said, “Our government must follow the laws and respect the Constitution while it protects Americans’ security and liberty.” The Committee chair said he would hold a hearing on the subject.

This procedure must be included in the discussion of the U.S. Report under Art. 17.

The right to privacy, the right not to be discriminated against based on political opinion, and the prohibition of propaganda for war were reportedly violated by the President and Vice President, according to an Investigative Status Report of the U.S. House of Representatives Judiciary Committee Democratic Staff issued Dec. 20, 2005. The Report, “The Constitution in Crisis: The Downing Street Minutes and Deception, Manipulation, Torture, Retribution, and Coverups in the Iraq War,” describes White House actions against members of the Administration,³ the military,⁴ a reporter,⁵ a Gold Star Mother,⁶ the CIA and its employees,⁷ and a contracting officer.⁸

¹ Hon. Claudia Morcom, Wayne County Circuit Court, Michigan, USA (ret.). Judge Morcom also attended the 1995 discussion of the First U.S. Report for MCLI, an NGO founded in 1965 as a center for peace law and human rights.

² Copy of 180 reports in “Challenging U.S. Human Rights Violations Since 9/11” was sent to the Department of State on March 29, 2005 by the City Council of Berkeley, California, return receipt requested. The book was delivered according to the U.S. postal service.

³ Former Secretary of Treasury Paul O’Neill and Economic Advisert Lawrence Lindsey, p. 123.

This Report, like the *New York Times* report, was based on surveillance and collection of information on the named individuals. Since these events occurred before the U.S. Report was submitted in October 2005, they need to be discussed with the U.S. Government as part of its 2d/3d Report so that the Committee of the UN⁹ can make comments to help overcome obstacles to the exercise of human rights in the U.S. during the declared war on terror.

Issue 3 on Practices of Local Police:

Article 6

The Government failed to discuss numerous reports they received¹⁰ of police killing men and women in New York City¹¹, Cincinnati¹² and the Virgin Islands¹³, and injuring many peaceful protesters in: Oakland, CA.¹⁴ New York City¹⁵, Miami, FL.¹⁶, and Portland.¹⁷

The Government did not discuss whether the civil suits and criminal charges brought by the federal government against police officers¹⁸ have led to new practices to prevent “any excessive use of force by the police, including the use of weapons.”¹⁹ Is the federal government setting up training sessions to ensure that U.S. and UN law is obeyed by police departments?

What is the federal government doing to avoid a repetition of State prison guards who tortured their prisoners being sent by the U.S. Government to Iraq to deal with prisoners there.²⁰

Issue 4 on Racial Discrimination by Local Police in the Criminal Justice System:

Articles 2, 26, 18

Certain practices at the federal and local levels need deeper discussion than given in the Report, including the denial of competent counsel to indigent defendants (who are more often Black than the percentage of Blacks in the community), and frequent denial of the right to a trial by a jury of peers by permitting exclusion of all minority prospective jurors.²¹

What actions has the U.S. Government taken under U.S. law²² to investigate, and act against, city police and county sheriffs charged with racial discrimination in their arrests, and in their use of force against people of color? Has the Justice Department collected statistics on the number of African

⁴ Former General Eric Shinseki and others, p. 122..

⁵ Jeffrey Kofman, p. 127.

⁶ Cindy Sheehan, o, 126.

⁷ p. 131.

⁸ Bunnatine Greenhouse.

⁹ Chapter 3 A 5 discusses Using the United Nations as a Pretext for War, p. 45. Chapter 3 D 2 f describes the Organization for the Prohibition of Chemical Weapons and the IAEA as another “instance of Bush Administration Retribution Against its Critics,” p. 128.

¹⁰ All of the references to R_ are to numbered reports in “Challenging U.S. Human Rights Violations Since 9/11,” edited by Ann Fagan Ginger for Meiklejohn Civil Liberties Institute of Berkeley, CA (Prometheus Books 2005), copies of which were presented to Human Rights Committee members in March 2005 after the meeting in New York. Each report lists the sources for the information in numbered footnotes at the end of the book.

¹¹ “Challenging” R 1.2 and R. 1.3.

¹² “Challenging” R 1.4.

¹³ “Challenging” R 1.7.

¹⁴ “Challenging” R 3.1.

¹⁵ “Challenging” R 3.2 and 3.9.

¹⁶ “Challenging” R 3.6.

¹⁷ “Challenging” R 3.7.

¹⁸ Para 131.

¹⁹ Para 460.

²⁰ “Challenging: R 2.15.

²¹ See, generally, David Cole, “No Equal Justice: Race and Class in the American Justice System” (New Press 1999). This Issue is being dealt with in several other NGO submissions more in depth, so the Issue here is specifically local police.

²² Para. 59.

American and Latino/Hispanic/Chicano men short, wounded, and killed by police compared with the number of Whites subjected to such actions?²³ What steps has the U.S. Government taken to train local police agencies with records of racism in their treatment of suspects, arrestees, and prisoners? Is the DOJ careful not to fund local police and prisons with records of racist actions?

Issue 5 on Race and Gender Discrimination Leading to Differences in Life Expectancy:

Articles 2, 3, 6, 26, 27

The U.S. reported²⁴ that: “Whites have a longer life expectancy than minorities. For example, the life expectancy for Whites is 77 years, but for African Americans it is only 71.4. From 1998 to 1999, life expectancy has increased for males, but decreased for females. For Black males it has increased from 67.6 to 67.8... For Black females, life expectancy has decreased from 74.8 to 74.7.”

The Report does not describe specific steps the U.S. Government is taking to help decrease these disparities based on race and to increase the life expectancy of both male and female African Americans. Many NGOs oppose the Administration budget cuts because they have sent more single mothers into poverty²⁵ and have caused cuts in city services provided by cities and counties.²⁶ Is the Administration going to stop proposing cuts in cancer care²⁷ and Veterans benefits,²⁸ which will cause decreases in life expectancy, including among both Whites and Blacks?

The U.S. Report did not discuss²⁹ the surge of public concern about racism and capital punishment as a result of the award-winning film, “Redemption: The Stan Tookie Williams Story” released in 2004 and shown all over the world as Williams faced execution in California and the California Governor considered his application for clemency.

The Government faces increasing citizen concerns about the proper response to the dramatic description of the racial and economic and educational and social factors that lead to gang violence in the U.S. and the factors that can lead to a rejection of gang violence by someone incarcerated as a youth.

Issue 6 on Labor Union Membership:

Article 22

Due in large part to Government action and inaction over the last ten years, union membership in the United States has sharply declined and labor rights have been restricted.³⁰ Since 2002, the Administration has used executive orders and agency directives to eliminate collective bargaining rights for 1,000 federal employees in the U.S. Attorneys’ offices and for 2,000 employees in the National Imagery and Mapping agency.³¹ The U.S. Government also prohibited 56,000 federal baggage screeners from organizing² and tried to eliminate collective bargaining rights for 170,000 federal employees in the new Department of Homeland Security – all under a broad interpretation of national security.³²

²³ While the Report includes some examples of such actions, in Para 131, it does not include many examples in “Challenging” R 1.2, 1.3, 1.4, 1.6, and 1.7.

²⁴ Core Document para 12.

²⁵ “Challenging” R 25.1.

²⁶ “Challenging” R 25.5.

²⁷ “Challenging” R 25.2.

²⁸ “Challenging” R 25.3.

²⁹ As to Article 6.

³⁰ Issue 5 was prepared by Polly J. Halfkenny, General Counsel, United Electrical, Radio & Machine Workers of America (UE).

³¹ See Complaint Presented by the American Federation of Government Employees, AFL-CIO, to the ILO Committee on Freedom of Association, Case No. 2292.

³² In August, 2005, a US District Court Judge enjoined the Department of Homeland Security from implementing rules which would prohibit unions from negotiating arrangements for staffing, deployment, technology and other workplace issues, and would allow the Department’s Secretary to override any provision in a collective bargaining agreement by issuing a department-wide directive.

The US Supreme Court has ruled that state employees can no longer sue their employers for violations of the Americans with Disabilities Act, the Age Discrimination in Employment Act, or the Fair Labor Standards Act, which covers overtime compensation, among other things.³³ Moreover, the federal Government has done nothing to notify state governments officials about Article 22 of the ICCPR and that it is a treaty and part of the supreme law of the land under the U.S. Constitution. About half of the states have failed to provide for collective bargaining for public employees; North Carolina, Virginia and Texas specifically prohibit public employers and employees from signing collective bargaining agreements. In early 2005, public employee rights were further reduced when the governors of Indiana and Missouri eliminated state employees' collective bargaining rights and invalidated existing labor agreements by executive order.

In the private sector, the National Labor Relations Board recently removed labor protections for graduate student employees and disabled workers, made it almost impossible to organize temporary workers by requiring consent by both the temporary employment agency and the contracting employer, narrowed the scope of protected concerted activities under the National Labor Relations Act (NLRA), and is currently reviewing long standing precedent on voluntary recognition of unions by employers.³⁴ Finally, the Supreme Court's decision in *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137 (2002), mentioned in the US report, has been found by both the ILO and the Inter-American Court of Human Rights to violate international law by restricting labor rights of undocumented workers.³⁵ Nevertheless, the *Hoffman* decision continues to be applied in the NLRA context and its application has been used to restrict backpay remedies in discrimination and workers' compensation cases as well.³⁶ A recently-filed complaint with the ILO underscores the discriminatory impact of the lack of collective bargaining on low wage African American workers.³⁷

Issue 7 on the Unemployment Rates for Women and Minorities:

Articles 2, 3, 27

The Government needs to confront the issue of unemployment, which is only mentioned once in its Report³⁸ even though the Core Document indicates that the unemployment rate for women was 5.4%, and for men, 5.6%.³⁹ These rates are far higher than the rate of 3% set in the Humphrey Hawkins Full Employment and Balanced Growth Act of 1978, 15 U.S.C. 1022.⁴⁰

These figures do not describe the loss of human dignity felt by many workers when they lose their jobs, particularly, as in the current economic situation in the U.S., workers with many years of seniority with large corporations. This leads to life and death problems documented by Johns Hopkins University Prof. M. Harvey Brenner for the Subcommittee on Economic Goals and Intergovernmental Policy of the Joint Economic Committee of Congress in 1984. Brenner found that for every one per cent increase in

³³ *University of Alabama v. Garrett*, 531 U.S. 356 (2001); *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000); *Alden v. State of Maine*, 527 U.S. 706 (1999).

³⁴ *Brown University*, 342 NLRB No. 42 (2004); *Brevard Achievement Center (BAC)*, 342 NLRB No. 101 (2004); *Oakland Care Center*, 343 NLRB No. 76 (2004); *IBM Corp.* 341 NLRB No. 148 (2004); *Holling Press*, 343 NLRB No. 45 (2004); *Dana Corp. and Metaldyne Corp.* 341 NLRB No. 150 (2004).

³⁵ ILO Case No. 2227, Report No. 332 (2003); Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of September 17, 2003.

³⁶ EEOC Directive No. 915.002 (June 27, 2002)(rescinding enforcement guidance granting backpay to undocumented workers); *Lopez v. Superflex, Ltd.*, 13 Am. Disabilities Cas. (BNA) 1339 (2002); *The Reinforced Earth Co. v. Workers' Compensation Appeal Bd.*, 810 A.2d 99 (Pa. Sup. Ct. 2002); *Sanchez v. Eagle Alloy*, 658 N.W.2d (Mich. Ct. App. 2003).

³⁷ Filed by UE Dec. 16, 2005).

³⁸ In Para 137 under Article 7.

³⁹ Para 20.

⁴⁰ "Challenging" R 23.3.

unemployment, there will be an increase in homicides; suicides; cirrhosis mortality; mental hospitalization; infant, fetal, and maternal mortality, and alcohol abuse.⁴¹

What steps is the Administration taking to decrease the unemployment rate down to 3 % for adults and 4% for workers under 20 that will help carry out the commitments to human rights in the ICCPR?

And what is the U.S. Government doing to work with local and state governments to increase training of youth and unemployed adults so that they can get jobs? What is the Government doing to create jobs for U.S. residents who came to the U.S. seeking employment and to improve their living conditions and are not yet citizens?

Issue 8 on Racism and the Loss of Human Dignity through Poverty:

Articles 2 and 26

Many NGOs are recommending that the U.S. Government comment on the findings of Arjun Sengupta, the UN Independent Expert on Extreme Poverty and Human Rights of the UN Commission on Human Rights, who came to study situation in Mississippi and Louisiana after Katrina,⁴² since his stark statistics on poverty based on race and national origin for 2004 were easily accessible. He found that:

24.7 percent of African Americans lived in poverty;

21.9 percent of Hispanics lived in poverty;

only 8.6 percent of non-Hispanic Whites lived in poverty.

The Government needs to comment on the conclusions in his initial report: “a multitude of Federal and state social benefit systems and means-tested programs have been designated to provide assistance to poor people. At the same time, the persistent and increasing numbers of people experiencing poverty and the testimonies of people and civil society organizations indicated significant gaps in the current system.”

The Government should discuss the factors he listed leading to poverty: “the high costs of health care, inadequate access to quality education and vocational training, low wages, limited protection of tenants and lack of low-cost housing.” And the Government should discuss his conclusion:

“Resource constraints have limited the reach of the assistance programmers, and social discrimination has aggravated the problems in many situations resulting in poverty clearly seen as a violation of human rights. If the United States designed and implemented the policies according to the human rights standards much of the problem of poverty could be resolved ...”⁴³

Issue 9 on Government and Arab-American and Muslim-American Communities:

Articles 2, 18, 26, 27

The Government needs to provide some examples of the federal government reaching out to Arab-American and Muslim-American communities it mentioned.⁴⁴

The Report did not mention the highly publicized arrest in October 2001 of four young men from the large Arab American/Muslim American community in Detroit, Michigan that ended, in 2004, with the Department of Justice asking the federal judge to throw out the convictions and drop the terrorism charges because of misconduct by the Assistant U.S. Attorney.⁴⁵

What if any actions did the U.S. Government take to reach out to the Arab-American and Muslim American community in Detroit after these events?

⁴¹ Brenner, M.H. Estimating the Effects of Economic Change on National Health and Social Well-Being. Joint Economic Committee of the U.S. Congress. Washington, D.C.: Government Printing Office, June, 1984.

⁴² He made his initial report on 15 November 2005 after a fact-finding mission to the U.S. Oct. 23 - Nov. 8, 2005 to study the situation in Louisiana and Mississippi after Katrina and the continuing poverty in the Appalachian mountains of Kentucky. (See ICCPR article 2, 25 and 27.)

⁴³ <http://www.ohchr.org/english/issues/poverty/index.htm>

⁴⁴ Para 45.

⁴⁵ “Challenging” R 18.7.

The U.S. Report did not discuss the racial profiling by a flight crew that refused to permit an Arab American to enter a plane flying to Saudi Arabia until he proved he was a member of Congress from California.⁴⁶ Nor did the Report discuss many of the 21 other reports of unwarranted violations of the rights of Arab Americans and Muslim Americans by Government officials including actions by the new Bureau of Immigration and Customs Enforcement (ICE) and its short-lived “registration” program;⁴⁷ problems of racial profiling,⁴⁸ the DOD detention of a U.S. Army Muslim Chaplain,⁴⁹ or many hate crimes committed by U.S. White citizens.⁵⁰ The number of students from Middle Eastern countries who were not permitted to re-enter the U.S. after going home for vacations in 2001 and 2002 is in the tens of thousands.⁵¹ These and similar incidents need to be addressed by the Government.

Issue 10 on Immediate Steps To Provide Equal Education:

Articles 2 and 26

The Report describes litigation to end racial discrimination in some schools pending for 40 years⁵². The U.S. Government is continuing to fight a war in Afghanistan and in Iraq because the overthrown governments discriminated against some of their citizens. NGOs working on issues of education, racism and the effects of the war are concerned about the message this sends to U.S. citizens discriminated against in public schools and universities? And what kind of message does this send to people in Iraq and Afghanistan who feel discriminated against by one or another national/religious group?

Statistics show large drops in African Americans entering leading colleges and universities due to an end to affirmative action programs, particularly in states with large minority populations: California, Georgia, Florida and Texas.⁵³

Issue 11 on Disproportionate Number of Blacks in the Military:

Articles 2, 26 and 6

The U.S. Report does not mention the current statistics: Blacks make up 12 per cent of the U.S. population but 20% of military enlistees; and from March 19, 2003 through February 26, 2004, 14.3 per cent of combatant deaths were black soldiers. Nor does the Report discuss why these African American deaths should surpass the percents in the Korean War (8.4 percent) and 12.4 percent in the Vietnam conflict.⁵⁴

Some NGO newsletters report hearing from members that that the Government is permitting or encouraging military recruiters to target public schools in African American and Hispanic American and poor communities. There are allegations that recruiters are making promises to students who need money for college or to help poverty-stricken families, promises students, on entering the Service, will not be sent to Iraq and will be put into training programs for nursing, etc.? The targeting and the promises need to be discussed as part of the U.S. report.

Issue 12 on Programs To Protect Human Rights of Returning Veterans:

Articles 23 and 24

⁴⁶ “Challenging” R 4.1.

⁴⁷ “Challenging” R 8.1, R 8.2, 8.3, 10.5.

⁴⁸ “Challenging” R 4.1.

⁴⁹ R 6.1

⁵⁰ “Challenging” R 4.4.

⁵¹ See Student Exchange and Visitor Information System reports in “Challenging” R 10.1

⁵² Para 46.

⁵³ “Challenging” R 4,1 fnote 166 on p. 492.

⁵⁴ “Challenging” R 4.11, p. 492, fn. 161.

The Report does not discuss⁵⁵ what, if anything, the Government is doing, or planning, to deal with the massive increase in disabled people coming back from the war in Iraq with both physical and deep mental injuries that will take years to heal and be dealt with. This issue is on the minds of many who have read the statistics on the high percentage of homeless people who came back from the war in Vietnam.⁵⁶

Issue 13 on Reparations for Slavery:

Articles 2, 8, 26 and 27

The U.S. Government walked out of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa in 2001 over the inclusion of paras. 165 and 166 urging nations to redress past grievances, such as slavery, These paragraphs had been approved by all other nations that had permitted slavery in the past -- United Kingdom, France, Netherlands, Belgium, Spain, Portugal, et al. In view of presentations to the U.S. Congress on this issue by Representative John Conyers (D-MI)⁵⁷ and other Representatives, what actions is the U.S. Government taking to improve conditions in Black neighborhoods -- as to education, police protection but not racist police actions, equal opportunities for employment, health care, libraries, etc., which many African Americans attribute to the slave system that existed in this country from 1500 until 1865, including 77 years after the U.S. Constitution was adopted?

⁵⁵ In Para 41.

⁵⁶ Core document Para 64

⁵⁷ On Feb. 6, 2002.