

**Summary Record of the dialogue between the Human Rights  
Committee and the Official Delegation of the United States of America  
(Geneva, 17-18 July 2006)**

**NON OFFICAL RECORD**

This summary record underlines the concerns of the Human Rights Committee (HRC) raised during the dialogue with the U.S. Delegation, held during the Committee's 87<sup>th</sup> session in Geneva, on 17 and 18 July 2006.

This dialogue was focused on the list of issues<sup>1</sup> prepared by the HRC and submitted in advance to the U.S. Delegation with the purpose of soliciting information supplemental to the State Party's combined second and third periodic reports<sup>2</sup>. The report addresses the State Party's compliance with its obligations under the International Covenant on Civil and Political Rights.

The U.S. Delegation affirmed the ongoing implementation of its Covenant obligations. Its written report reflects new legislation, recent judicial decisions and governmental responses to new challenges. September 11 represented a "new threat" to which the U.S. responded with new legislation consistent with its Constitution and treaty obligations.

The Committee noted its appreciation for the high level Delegation and the seriousness with which the reporting process was undertaken. Committee members noted, however, that some items were not thoroughly addressed and that the report failed to include much information regarding implementation at the state level. Committee members also acknowledged the recent difficulties experienced by the U.S. and stated that terrorist acts are human rights violations that must be addressed. Responsive measures, furthermore, must be consistent with the Covenant. The Committee also noted that the U.S. submitted its report many years late and made available its written replies to the list of issues only shortly before the first meeting. Members of the Committee commended the efforts of the many NGOs in this process and lauded the Delegation for meeting separately with NGO representatives in Geneva.

**Constitutional and legal framework within which the Covenant is implemented (Art. 2)**

The Delegation affirmed its respect for the Committee's views regarding the extra-territorial reach of the Covenant but stated that the U.S. has long maintained that the Covenant applies only within a State Party's territory. As a courtesy, however, the Delegation provided responses to some Committee questions regarding extraterritorial activity. The Government's position is that only the law of armed conflict applies to such activity. Committee members urged the Government to review its position in light of the Covenant's plain language, its negotiating history, International Court of Justice (ICJ) decisions and HRC guidance on the subject. The U.S. replied that its interpretation of the Covenant's language and negotiating history remains the same and that HRC guidance and ICJ decisions are not legally binding on the U.S.

**Right to self-determination and rights of persons belonging to minorities (Arts. 1 and 27)**

The U.S. noted that the Government's relationship with Indian tribes has a "complex history." It stated that all treaties with Indian tribes retain their full force and legal effect. Under federal

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<sup>1</sup> See the List of Issues, UN Document CCPR/C/USA/Q/3, 26 April 2006.

<sup>2</sup> See Combined Second and Third Periodic Reports of the United States, UN Document CCPR/C/USA/3, 28 November 2005.

law, tribal self-determination allows tribes to engage in a government-to-government relationship with the U.S. and to operate their own governmental systems within the U.S. political system. Regarding law suits alleging corruption in the administration of Individual Indian Money accounts, accounts held in trust by the Government, the Delegation indicated that preliminary findings reveal no evidence of widespread or systemic mishandling.

### **Counter-terrorism measures and respect of Covenant guarantees**

The Delegation confirmed that all U.S. personnel everywhere in the world are prohibited from engaging in torture and cruel, inhuman and degrading treatment. The Delegation stated that some individuals have violated this prohibition, and the U.S. investigates and holds offenders accountable. A Committee member described many of the sentences handed down to these individuals as light and asked why more commanding officers have not been held accountable. The U.S. stated that no individual is beyond reproach and cited statistics regarding prosecutions, convictions, general reviews and reforms. The Committee member also asked how those in CIA custody access an appropriate complaint procedure. It was noted that the U.S. has provided only vague assurances regarding CIA accountability. The Committee appreciated the withdrawal of interrogation techniques previously authorized by the Defense Secretary and asked what remedies are available to victims of these techniques.

With respect to secret detention facilities, the Delegation asserted that it does not comment publicly on allegations of intelligence activities. The Committee condemned prolonged secret detention and noted that HRC jurisprudence has classified this practice as torture.

The U.S. confirmed that it does use renditions but does not transfer persons to countries in which the U.S. believes they will “more likely than not” be tortured. The Committee criticized this standard as incompatible with the “substantial grounds” standard adopted by the Committee and the Convention Against Torture. Committee members decried the Government’s apparent willingness to transfer a person to a country in which there are substantial grounds to believe – up to a 49% chance – that she or he will be subjected to ill treatment. The U.S. explained that the standard is whether it is “probable” that a person will be subjected to torture and described the analysis as qualitative rather than quantitative. The U.S. declined to provide specific examples of renditions or of diplomatic assurances sought, but confirmed that such assurances are one factor in the decision to render an individual.

The “more likely than not” standard is also applied in the non-refoulement context. The U.S. does not understand the Covenant to contain a non-refoulement provision, and Committee guidance interpreting it otherwise is not binding. The Convention Against Torture does contain such a provision relating only to torture, but not to other forms of ill-treatment.

The Committee asked why offshore detention is necessary. The Delegation responded that it is necessary in order to remove combatants from the battlefield and to keep them safely away from the American public. The member asked why a country as large as the U.S. could not find suitable maximum security facilities on its own territory.

It was confirmed by the Delegation that habeas corpus review is not available to Guantánamo detainees who did not file habeas petitions prior to the implementation of the Detainee Treatment Act. This Act allows a specific federal court to review Combatant Status Review Tribunal determinations. The Committee asked why equivalent tribunals and Administrative Review Boards do not exist for detainees in Iraq and Afghanistan. The Delegation stated that “similar” procedures exist in those countries.

The Committee asked about future plans in light of the recent Supreme Court decision invalidating current military commissions procedures. The U.S. replied that the commissions are suspended, and the President and Congress are working together on future procedures.

According to the Delegation, the interrogation techniques permitted in the Army Field Manual are the only techniques the military may employ. A Committee member lauded certain aspects of the Army Field Manual but asked the Delegation whether non-Defense Department personnel are also limited to these techniques.

Committee members disapproved of the detention of persons to determine whether they would be material witnesses in criminal proceedings. The U.S. described the procedural safeguards in place for such persons and stated that Article 14 does not prohibit the closure of material witness hearings because they are not criminal proceedings. One Committee member identified this practice as a derogation issue under Article 4.

The Delegation characterized Terrorist Surveillance Program as compatible with Article 17. The National Security Agency only intercepts communications under specific circumstances, and the Supreme Court has allowed surveillance without warrant in cases of special need. The Delegation cited a long-recognized practice of surveilling one's enemy government's armed forces. One Committee member asked the U.S. how it reconciles this activity with Article 17. Another identified the practice as a derogation issue and asked for clarification of State report paragraph 299; specifically, how one can "not record or overhear conversations that are not related to the crimes or persons for which the surveillance order was obtained" without first overhearing such conversations in order to make this determination.

**Non-discrimination and right of equality before the law and to the equal protection of the law (art. 2 and 26):**

The Committee welcomed recent jurisprudence regarding discrimination on the basis of sexual orientation but asked the U.S. to respond to reports of extremely high murder and police abuse rates of transgender persons and to provide more information about violence against lesbian, gay, bisexual and transgender individuals. The member also asked how the Government will respond to findings and recommendations in Amnesty International's "Stonewalled" report. The U.S. responded that the Covenant does not mention sexual orientation, but discrimination on these grounds is illegal. It cited hate crimes and anti-discrimination statutes existing in some states. The Committee expressed concern that the U.S. response implied that other Covenant rights, such as the right to life, were not applicable to sexual minorities. The U.S. replied that such persons are protected under the Constitution.

The Delegation described ongoing efforts to ensure non-discrimination against undocumented immigrants, Arabs and Muslims and other populations, including problems involving racial profiling by law enforcement. The U.S. acknowledged the homelessness problem and stated that everyone is entitled to shelter. The Department of Justice recently launched Operation Home Sweet Home to address housing access and discrimination.

Regarding de facto segregation of schools, the U.S. Government investigates and monitors instances of intentional discrimination, but the fact of racial preponderance alone is not legally actionable. The Committee replied that the Covenant obliges the U.S. to address not only intentional discrimination but also discriminatory effects. The U.S. cited the No Child Left Behind legislation as addressing differences in education levels among U.S. schools.

In the aftermath of Hurricane Katrina, President Bush acknowledged that federal, state and local capabilities were strained and initially overwhelmed. The Government is implementing lessons learned from the incident. The Committee commended this admission of mistakes

and failures. The U.S. denied that the preexisting evacuation plan was discriminatory in its design but stated that nationwide monitoring of evacuation plans has occurred, and all such plans consider various modes of transportation.

### **Right to life (Art. 6)**

A recent Supreme Court decision prohibits death penalty sentences for crimes committed by persons under 18, which renders the U.S. reservation to Article 6(5) without practical effect. However, the Delegation informed the Committee that the U.S. has no intention of withdrawing its reservations to Covenant Articles 6(5). The Committee praised the recent decisions not to execute juveniles and the mentally retarded but asked whether persons suffering from severe mental illness continue to be executed. The Delegation stated that there is a factual inquiry to be made in terms of the line between mental retardation and mental illness.

Committee members asked what are considered the “most serious offenses” that may result a death sentence. Additional questions raised the significant correlation between the death penalty with race and class. The U.S. stated that the scope of conduct subject to the death penalty is not relevant under the Covenant. In terms of race and capital punishment, every defendant is treated as an individual.

### **Prohibition of torture and cruel, inhuman or degrading treatment (Art. 7)**

The Delegation explained that electro-muscular disruption devices (EMDs), such as tasers and stun guns, are in use, but their safety is still being studied. Proper policies and implementation still need to be flushed out. Committee members expressed concern about detailed reports of misuse of EMDs, and the U.S. responded that those guilty of misuse are prosecuted.

### **Treatment of persons deprived of liberty (Art. 10)**

A Committee member noted that policies regarding the treatment of women in prison appear to be poorly implemented, and court decisions are not consistent. The U.S. provided information regarding specific prosecutions and stated that protective laws are in place. Recent legislation regarding prison rape is in effect, and its impact is still being studied. Regarding the shackling of women prisoners while giving birth, this is not general practice or policy but still occurs in necessary situations.

### **Freedom of association (Art. 22)**

The Committee expressed concern regarding the effect of a recent Supreme Court decision (*Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*) on the freedom of undocumented workers to form and join labor unions. The U.S. denied that the ruling negatively affects the ability of such immigrants to unionize. Committee members disagreed with this assessment, citing a recent International Labour Organisation decision.

### **Protection of children (Art. 24)**

The U.S. characterized its practice of sentencing some juveniles to life without parole as consistent with the Covenant. The Delegation stated that this sentence is generally reserved for hardened criminals, and various factors are considered in the sentencing process. A Committee member stated that statistics suggest that this sentence is not imposed only in exceptional cases. The member asked why it is necessary for some states to try children as young as 12 as adults. He also noted that racial disparities in the application of this sentence are dramatic; eleven times more African American juveniles receive this sentence than white

juveniles. The U.S. disagreed that the statistics reflect that such sentences are not exceptional.

**Right to take part in the conduct of public affairs, to vote and to be elected, and to have access to public service (Art. 25)**

The U.S. stated that state laws prohibiting convicted felons from voting do not violate the Convention. Criminal history is not an “unreasonable” restriction under Article 25, and because it is based on the felons’ own behavior, it is not discriminatory. The Committee referenced the large number of persons ineligible to vote due to this policy and posited that the restriction was imposed too broadly. One member questioned whether such a restriction is indeed reasonable.

The Committee raised concerns regarding voting access for certain persons displaced by Hurricane Katrina. The Delegation described special state and federal efforts to ensure that the most recent election was full and fair.

The U.S. informed the Committee that responses to questions not yet answered would be provided in writing by Friday, 21 July 2006.