

HUD UPR Follow Up Meeting 1/24/2011

In attendance:

Alven Lam, IPI, HUD
Justin Scheid, IPI, HUD
Ana Marie Argilagos, IPI, HUD
Jeremy Rosen, NLCHP
Maria Foscarninis, NLCHP
Eric Tars, NLCHP
Ben Clark, NFHA
Nathalie Thompson, NCFH
Joe Rich, LCCRUL
David Sullivan, L, State
Tina Thomas, L, State
Tanya Clay House, LCCRUL
Lauren Nussbaum, NAHC
Phil Tegeler, PRRAC
Rob Robinson, NESRI
Bryan Green, FHEO, HUD
Jonathan Harwitz, Sec, HUD
Fred Karnas, Sec., HUD
Janet Hostetler, FHEO, HUD
Tino Calabria, FHEO, HUD
Marianna Leavy-Sperounis, CPD, HUD
Fred Tombar, Sec., HUD

By Phone:

Susan Scott, NLG
Risa Kaufman, Columbia
Monika Gerhart, E&I
JoAnn Kamuf Ward, Columbia
Vicki Schultz, CR, DOJ
Anita Beaty, NCH

I. Welcome and introductions

Ana Marie Argilagos from HUD opened the meeting with a welcome to the broad number of participants in the room and noted the importance which HUD puts on the UPR and human rights processes, as demonstrated by its presence at all the listening sessions, hosting the Special Rapporteur on Adequate Housing last year, participating in the Town Hall in Geneva via videoconference, and releasing the press statement with the UPR hearing. She noted the meeting goals as an opportunity to hear from NGOs, share HUD's accomplishments, build relationships, and talk about lessons learned from the process that we can improve on next time. She invited Maria Foscarninis of NLCHP give opening remarks.

Maria thanked the government representatives for hosting the conversation and for their participation through the UPR process, hoping this is the beginning of an ongoing conversation. She noted our initial concern about HUD not attending the Geneva portion of the review, but our happiness with their participation in the consultations before, and their subsequent follow up in press statements and these meetings. As a general matter, she expressed that the government should formally accept each of the housing-related recommendations at the March session of the Human Rights Council, and provide a brief description of the steps it will take to implement that recommendation.

David Sullivan from the State Department also gave opening remarks, noting the progress just made through this first round of meetings. He noted the most important part of the process has been the dozen consultations held around the country. He reaffirmed Harold Koh's statement that this process shouldn't just be about producing paper to stay on a shelf in Geneva, but to actually make improvements here in the U.S. He noted the success of the NGO side events and the town hall in Geneva, and the next step there is the presentation of our acceptance or rejection of the recommendations on March 18, 3pm Geneva time, with the U.S., other countries, and NGOs each getting 20 minutes to present. He framed today's discussion as an opportunity to get input on the UPR recommendations and how to answer them – understanding that we can't end racial discrimination in the next 3 month or 4 years, but how do we show support for the spirit of the recommendation? He praised the groups in the room for keeping ESC rights at the forefront of the conversation.

II. Substantive Discussion

HUD broke discussion down into three areas around the recommendations they saw as in their purview:

a. Racial discrimination

- i. Bryan Green of HUD gave Asst. Sec. Trasvina's regrets on not being able to attend. He described broadly U.S. law and policy on fair housing, including the commitment to affirmatively further fair housing. He noted the devil was in the details in terms of answering how to commit to making progress.
- ii. Ben Clark of NFHA noted that the UPR recommendations were not new, but echoed the previous recommendations of the CERD, Special Rapporteur, and Human Rights Committee. He said that the "affirmatively furthering" fair housing work HUD is doing needs to be done in the spirit of CERD and we need to develop metrics to measure progress so we can hold communities accountable. He raised concern about the lack of regulations implementing disparate impact assessments, especially because this is a commitment under CERD, but may come under attack in the future. He also noted the need for HUD to bring larger, systemic cases where individuals may not be able to bring them.
- iii. Phil Tegeler of PRRAC reaffirmed the importance of the previous CERD and Special Rapporteur recommendations and the

benchmarks they provide for measuring our progress. He noted that the Low Income Housing Tax Credit program still doesn't have a fair housing commitment, site selection requirements are not being followed, and fair market rent calculations continue to segregate families into low opportunity areas.

- iv. Bryan replied that there is an opportunity to work on the disparate impact, large scale cases, and also reaffirmed the agency's work on lending discrimination, affirmatively furthering, and across a broad range of human rights issues.
- v. Joe Rich of the Lawyer's Committee asked for HUD's support in amending the Fair Housing Act to include a private right of action for HUD and individuals to sue to uphold affirmatively furthering requirements – this law has been on the books for 40 years, but hasn't been acted on because there's no enforcement.
- vi. Janet Hostetler said HUD isn't waiting for regulations on many of these issues, they're moving ahead. Also she noted that on Friday regs on LGBT protections in HUD housing came out and groups have 60 days to comment.

b. Homelessness

- i. Fred Karnas of HUD affirmed the Federal Strategic Plan is the framework we're building on with bold commitments for ending homelessness – for veterans and chronic homeless persons in 5 years, families in 10, but political realities are going to put a dent in those commitments. He understands the issues of criminalization as a priority, and in terms of rehousing, the importance of building working relationships with other housing programs as homeless-specific funding will never achieve scale.
- ii. Janet Hostetler of HUD also affirmed that the Sec. 3 jobs program is important and HUD has ramped up enforcement and compliance efforts and is starting to see results
- iii. Maria Foscarnis of NLCHP affirmed the interplay of the Federal Plan and our human rights commitments. On criminalization, she noted the issue has been raised by two Special Rapporteurs and the Human Rights Committee, and the recent summit on criminalization is a step in the right direction, but we need HUD and other agencies to take concrete steps to discourage criminalization. This could include issuing guidance and opening civil rights investigations into areas where these laws are being implemented in ways with a clear disparate effect on racial minority communities or persons with disabilities or other protected classes as a strong statement that such policies should be discouraged. The DOJ currently has a request for such an investigation from residents of Los Angeles' Skid Row pending, and we would like to see progress in opening that, and further investigations. HUD should work with Congress to request at least \$1 billion per year allocated to homelessness prevention programs

to fund emergency housing, rental assistance, and rapid rehousing resources. The Protecting Tenants at Foreclosure Act should be made permanent with a private right of action to enable enforcement of the law. In the meantime, HUD and the DOJ should be actively investigating reports of noncompliance with PTFA. HUD, HHS, and GSA should work with advocates to reform the surplus property program in Title V of the McKinney-Vento Act, so that more federally owned vacant properties are made available to house homeless people and the program is simplified to allow more homeless service providers to take advantage of it. Poor individuals should have a right to counsel in all civil cases involving housing, with a significant expansion of funding to legal aid services to facilitate the implementation of this right.

- iv. Fred replied they have learned much from HPRP on prevention and wants to build on that, and the same with more work on criminalization
- v. Jonathan Harwitz of HUD noted that the difficulty of including discouragement of criminalization in the NOFAs is that you don't want to hurt the poor people in the community because their leaders take the wrong steps.
- vi. Eric Tars of NLCHP spoke to the State Department's concerns about phrasing things for the international community, and emphasized that we should accept the recommendations, and give ourselves concrete benchmarks we can hold ourselves accountable to.
- vii. Jeremy Rosen of NLCHP noted there's \$1 billion of foreclosure prevention money that will be lost if not used in the next 6 months, and though he understands the difficulty of drafting regs, this is money that is there, and is desperately needed.
- viii. Rob Robinson of NESRI spoke about the gap faced by children aging out of foster care who can't get into shelters in NYC and must face the streets and potential criminalization, and wonders what can be done in the CoC process to encourage cities to address this.
- ix. Fred said they have a new person on staff to address just this issue and would follow up with Rob
- c. Affordable housing
 - i. Jonathan Harwitz of HUD led discussion off by talking about the Secretary's commitment to rebalancing our housing policy – getting off the old focus on homeownership and what passed for affordability with short term teaser rates, and pushing the HAMP mortgages to no more than 31% of income. He noted the National Housing Trust Fund was established, but Congress is failing to fund it. He spoke of the loss of over 180,000 units of public housing over the last decade, which is why the Administration

proposed the TRA, which would preserve units and infuse the rights of tenants to move to opportunity rich communities. He noted the budget, if approved, would provide housing for an additional 211,000 families.

- ii. Rob Robinson of NESRI spoke as a formerly homeless person who saw the Special Rapporteur's report as a validation of the demands he and others have been making for years, and asked HUD if there was some way to formally accept or address her recommendations. He noted the difficulties caused by the flawed Area Median Income calculation and the need for improved federal guidance in this area. He noted that the TRA needs the input of local residents in the process, and that HUD needs to affirm the critical importance of public housing as a safety net. And he spoke of the difficulty with the HCV program – he is currently spending 86% of his SSI disability check on rent, and has been on the waiting list for a voucher for 4 years. He concluded by noting the importance of recognizing housing as a human right for people on the ground everywhere.
- iii. Jonathan replied that the HUD median income for families receiving rental assistance is \$10K, so they are doing a good job of income targeting. He noted the capital backlog on public housing is likely to be \$20-30 billion, and it isn't realistic to expect this Congress to appropriate that, so TRA is the only option that will keep units from being lost.
- iv. Ana Marie stated it wasn't HUD's place to determine if housing is a human right – it's the State Department's
- v. David noted the State would do so in consultation with HUD
- vi. Jeremy affirmed that in line with the Secretary's initiative on reducing the focus on homeownership that if the mortgage income tax deduction is reformed, HUD needs to take a strong stand that those monies should be reallocated to affordable housing, not deficit reduction.
- vii. Maria passionately noted that affirming housing as a human right brings both international and domestic benefits – internationally, we can join the rest of the globe in affirming this right, and domestically we can use it as a basis for policy.
- viii. Susan Scott of the NLG continued this discussion by noting the recommendations of many countries to ratify the ICESCR. She understands it's difficult to get 67 votes, but there's much that can be done in the meantime, and that's why it's important to start talking about housing as a human right, so we can build the conversation toward ratification in the long run.
- ix. Eric reaffirmed this notion that naming housing as a right gives both international benefits and domestic ones – citing the example of billions of dollars of stimulus funds being spent without obtaining a commitment from the banks to keep people in their

homes. If the underlying premise of the discussion was that housing is a human right, this might not have happened.

- x. Jonathan asked if we name housing as a right but can't follow through, does that make it less important? For example, South Africa and India have the right on paper, but clearly aren't meeting it in practice.
- xi. Eric answered that it is important to raise the starting point for the discussion. In South Africa, although they don't have the resources to fully meet the right, it has been used in court cases to protect the rights of homeless persons and gotten some public resources allocated to specific, immediate needs. Even if we can't meet the full right immediately, having it as the baseline of discussion would help in the political and judicial process.
- xii. Vicki Schultz of the DOJ noted they are working hard and look forward to continuing the process.
- xiii. Bryan thanked everyone and looked forward to continuing the conversation.

III. Closing

- a. Ana Marie closed with thanks for the conversation, and invited Maria to give any additional remarks.
- b. Maria closed with additional thanks to both government and non-governmental representatives and looked forward to a continuing dialogue.