

Summary of March 2011 U.S. Government Responses to UPR Recommendations

General Trends:

The government placed every recommendation into one of three categories, those that: enjoy their support, enjoy their support in part and do not enjoy their support. Most of the recommendations that the government supported in full relate to issues they feel are already being addressed, and the administration made it very clear that they reject any statement that “understates the success of our [the government’s] ongoing efforts”. The government supports in part recommendations that include “inaccurate assumptions, assertions or factual predicates” but that recommend an action that the government can endorse. The third category contains recommendations the government rejects outright. By grouping its support in these three categories, the government of the U.S. effectively rejects any criticism of its actions and practices.

The U.S. mostly accepted recommendations that recognized its previous efforts and only asked for the government to continue those same efforts. In this way, the administration generally did not commit to taking further action, but rather pointed out the efforts and initiatives already in place and promised to continue and, occasionally, to strengthen them. These small commitments allow chances to organize and ensure the government lives-up to its stated commitment.

Additionally, the U.S. only accepted recommendations that fit neatly into the main categories of their report, indicating they are not willing to consider human rights issues outside of their perceived prior commitments.

Civil Rights and Discrimination:

The United States supported recommendations that highlight prior commitments in regards to civil rights and discrimination. They agreed to continue efforts to ensure fair and equal treatment of all persons, regardless of their sex, race, religion, color, creed, sexual orientation, gender identity or disability. They agreed to reinforce existing safeguards in favor of vulnerable groups, such as the disabled and the homeless, and to welcome the signing of the Convention on the Rights of Persons with Disabilities. They also stated that they do not believe anyone should face violence or discrimination in access to public services based on sexual orientation or employment in prostitution, and that they have taken recent steps to address discrimination on the basis of gender identity and sexual orientation. The government stated that it has comprehensive legislation to combat racial discrimination and is working diligently to better enforce and implement those laws and programs. In response to recommendations addressing racial profiling, the administration asserted that profiling is expressly prohibited in U.S. law, but they did not commit themselves to any further action.

The administration agreed to accept a number of recommendations in part. The government committed to combat discrimination and promote tolerance, but asserted the U.S. already has

laws regarding racial profiling and discrimination and is always working to better enforce these existing laws. They also stipulated that a migrant's eligibility for benefits under state programs may depend on their legal status. They insisted that effective measures to fight intolerance, violence and discrimination against all minority groups are already in place, while rejecting a recommendation to pass legislation countering insults, as spoken insults are protected under free speech. Additionally, they agreed to ensure the investigation and prosecution of persons responsible for acts of racial hatred and xenophobic crimes but asserted that they could not make commitments regarding outcomes or compensation from such prosecutions.

The government did not reject any recommendations regarding civil rights and discrimination.

Criminal Justice

The U.S. supports recommendations calling for the government to ensure the full enjoyment of rights, as defined by international law, to those deprived of their liberty. They also committed to reduce overcrowding in prisons and to review alternatives to incarceration for handling petty crime. Additionally, they agreed to take practical measures to improve living conditions within the prison system, especially in terms of sexual violence, health care, and education. The government accepted a number of recommendations addressing racial disparity and bias in the criminal justice system and committed to take practical measures to prevent racial bias, undertake studies to review and assess racial bias in the application of the death penalty and maximum sentencing, and strengthen oversight in order to end the use of excessive force by law enforcement, especially when directed against minorities. At the same time, however, they asserted that law enforcement and immigration officials are legally permitted to use deadly force in exceptional circumstances. The administration also stated that U.S. law prohibits both the use of torture in all detention centers under its control and the mistreatment of detainees in U.S. custody without committing itself to any further action on these issues.

The U.S. supported in part many recommendations regarding the death penalty and other criminal justice issues. They agreed to continue to ensure that the application of the death penalty complies with international obligations. They also committed to end the execution of minors and persons with certain mental illnesses but rejected any recommendation to abolish capital punishment altogether. They also stipulated that they would not end the prosecution of minors and all mentally ill persons. They agreed to comply with principles of international cooperation for the extradition of those accused of crimes against humanity but rejected Bolivia's request that specific persons be extradited to stand trial in Bolivia for such crimes. The U.S. also agreed to hold accountable perpetrators of human right violations and war crimes but could not guarantee compensation to victims and does not agree to become a party to the Rome Statue. The government again points to existing laws when discussing torture and the use of excessive force and agrees to ensure the right to habeas corpus to the extent provided in the U.S. constitution, U.S. law and international obligations. The U.S. also stated that some states

allow inmates and former felons the right to vote, but made no commitment to expand or regulate these rights at the federal level.

The U.S. rejected numerous recommendations that called for prohibiting the sentencing of a minor to life imprisonment without possibility of parole and another that suggested considering imprisonment only as last resort for convicted minors. They also did not support a recommendation to stop punishing journalists who do not reveal their sources and refused to consider abolishing capital punishment.

Indigenous Issues

The government agreed to create goals and guidelines for the promotion of indigenous rights and for cooperation between the government and indigenous peoples. They similarly agreed to implement concrete measures to ensure the full participation of indigenous peoples in decisions affecting their natural environment, culture, spiritual practices and means of subsistence and to adopt and implement the UN Declaration of the Rights on Indigenous Peoples.

The U.S. supported in part a recommendation to end the violation of the rights of indigenous peoples, rejecting the implied statement that the U.S. is violating their rights in some way. They also specified they would not accept the UN Declaration on the Rights of Indigenous Peoples without any reservations, but would implement it at the federal and state levels.

However, the U.S. rejected a recommendation to use the UN Declaration on the Rights of indigenous People as a guide to interpret its obligations relating to indigenous peoples, thus complicating its earlier promises to adopt and implement the treaty.

National Security

The U.S. supported many recommendations related to Guantanamo Bay. They agreed to respond to and follow-up on joint study and Special Rapporteur reports on the detention center, promised that they were still planning on closing the site and ensured that all operations until closing would be consistent with international obligations. The government also agreed to not transfer detainees to third countries unless they can assure they will be treated according to international law requirements. The administration supported recommendations to comply with its obligations under international law regarding the treatment of prisoners of war and the drafting of anti-terrorism legislation. Relating to torture, the U.S. again insisted that existing law prohibits torture and complies with its obligations under the Convention Against Torture. They also agreed to observe the Amnesty International 12-point program to prevent torture but noted that not all the points would be “fully applicable in every context”. They similarly asserted that the U.S. Constitution and law already prohibits the use of technology for the excessive and unjustifiable intervention in private citizen’s lives and that the U.S. already tries suspected terrorist in legally established courts and provides such suspects with all the protections of domestic and international law.

In terms of national security, the U.S. used the support in part category to refute a number of accusations and to claim that it is not violating human rights. They first asserted that the U.S. Constitution and existing laws protect the privacy of communications and that these protections are consistent with their human rights obligations. They also insist that the U.S. has consistently invited UN Special Rapporteurs to tour Guantanamo Bay detention facility and to observe military commission proceedings and that the invitation stands. They also claim the President still intends to close Guantanamo Bay, that he already closed all CIA detention facilities, that the Red Cross has access to all individuals detained by the U.S., and the administration investigates all allegations of torture and prosecutes when appropriate. They reiterated, however, that the government could not make any promises regarding outcomes. The administration did not accept the recommendations suggesting they close all detention facilities outside the U.S. or that they release all detainees from armed conflicts who are not given prompt trials. They similarly asserted that private contractors hired by the government are not authorized to engage in direct hostilities, offensive operations nor assassinations. They further claimed that private contractors and U.S. government personnel use only the force consistent with international and domestic obligations. Support was also expressed for the International Code of Conduct for Private Security Service Providers, also asserting that the military takes great care to ensure that only legitimate objectives are targeted and that collateral damage is minimized.

The government did not support a few recommendations that insinuated that the administration has committed human rights offences. One such recommendation asked the U.S. to stop the arms race and to bring to justice all those responsible for war crimes. Another recommended the closing of Guantanamo Bay but also stated that the conditions of the detention center violate the UDHR, ICCPR and other human rights instruments.

Immigration

The U.S. accepted recommendations to constantly evaluate immigration law enforcement with a vision of promoting and protecting human rights. They also agreed to eliminate discrimination and abuse of authority against foreigners and migrants and to avoid discrimination against persons with common Muslim names at security checks. Similarly, they agreed to prohibit and punish the use of racial profiling in programs that enable local authorities to enforce immigration legislation and provide recourse to remedy human rights violations that occur under these programs. They also promised to further foster measures relating to migrant women and foreign adopted children exposed to domestic violence. They agreed to enforce existing laws regarding racially motivated acts against migrants and minority communities and to increase efforts to eliminate brutality and excessive use of force against Latino and African American persons and undocumented migrants. They further agreed to ensure that relevant cases of brutality and excessive force by law enforcement officials are investigated and prosecuted, but stipulated the allowance for prosecutorial discretion. The administration committed to carefully investigate each instance of immigrant incarceration and to also

reconsider alternatives to detention for migrants. They also agreed to ensure that detention centers and the treatment of migrants complies with international human rights obligations and that all migrants are entitled to legal counsel, a fair trial and to fully understand their rights. However, they stipulated that migrants are entitled to counsel at their own expense and that understanding their rights means that they are available in a language that the migrant understands. They claimed that migrants are already guaranteed access to basic services such as primary education and emergency health services but made no further commitment to expand these services. They also insisted that the government widely disseminates information on its consular notification and access outreach and training efforts to foreign missions in the United States, but made no further commitment to engage with Foreign Missions further in access to incarcerated foreign nationals.

Regarding their partial support, the US administration committed to continue human rights training and awareness campaigns and to bring civil or criminal actions regarding racial profiling, police brutality, excessive use of force and other civil rights violations against immigrants. However, they stated that they could not avoid the criminalization of migrants as certain immigrant offenses are subject to criminal sanction, such as illegal entry. The government insisted that they are continuing efforts to improve immigration policies and eliminate xenophobia, racism, and intolerance. They also claimed that the registration requirements for the National Security Entry-Exit Registration system are under review and that the Constitution and other statutes already prohibit the invidious use of race or ethnicity.

The U.S. did not support recommendations to repeal or refuse to enforce discriminatory and racial laws such as Law SB 1070 in Arizona because the Federal Executive Branch lacks the authority to repeal or refuse to enforce state laws. They noted that the government endeavors to only detain migrants when necessary, but U.S. statutes, policies and practices do result in detention for non-exceptional circumstances. Similarly, the administration rejected a recommendation to reconsider restrictions on undocumented migrants' access to publicly supported healthcare by noting that migrants already have access through an extensive network of Migrant Health Centers.

Economic, Social, and Cultural Rights and Measures, and the Environment

The U.S. agreed to promote equal socio-economic and educational opportunities for all in both law and fact and to take further measures in the areas of economic and social rights for women and minorities. They also agreed to reduce the number of homeless people and continue their efforts in access to housing in order to meet the need for adequate housing at an affordable price for all segments of society. Additionally, the administration agreed to continue strengthening its aid to development, particularly in response to natural disasters. They also accepted a recommendation to ensure the realization of rights to food and health for all who live within U.S. territory but defined these rights in terms of human rights instruments that the U.S. already accepted without making commitments to expand rights protection. More

generally, they claimed that the U.S. Government seeks to improve the safety net that the country provides for the less fortunate.

The U.S. accepted in part a number of recommendations relating to the environment that insinuated that the U.S. has had a negative impact on the environment and on climate change. They rejected the premises of these statements, but agreed to reduce greenhouse gas emissions and cooperate internationally regarding environmental issues.

The administration did not accept a recommendation to raise the level of official development assistance to the UN target of 0.7% of GDP and allow duty-free-quota-free access to all products of less-developed countries.

Labor and Trafficking

The U.S. accepted recommendations to define, prohibit, and punish the trafficking of persons and child prostitution, to combat the demand for human trafficking, and to provide information and services to victims of trafficking. They also agreed to prevent the slavery of agricultural workers. While they accepted a suggestion regarding gender equality at work, the administration insisted that they have comprehensive laws aimed at ensuring gender equality and are taking further actions through the President's Equal Pay Taskforce. The U.S. also claimed that they do support the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which reaffirms the commitment of states to respect, promote, and realize principles regarding fundamental labor rights including freedom of association and collective bargaining.

The U.S. supported in part a recommendation to ensure that undocumented migrants and minority workers enjoy the right to work and fair conditions of work so that they do not become victims of discrimination and abuse by insisting that members of minority groups already enjoy anti-discrimination and labor protections. Regarding undocumented migrants, the administration stated that labor law applies to these workers but that these individuals may not be entitled to remedies.

The U.S. did not support a recommendation to make maternity leave mandatory. They stated that maternity leave is not mandatory for either employers or mothers but that employers of a certain size are obligated to allow leave in connection with the birth or adoption of a child.

Domestic Implementation of Human Rights

The U.S. agreed to continue consultations with NGOs and civil society during the follow-up process. Regarding recommendations to review laws and set up a human rights institution at the federal level ensuring implementation and protection of international human rights obligations, the administration pointed out various ways this already occurs, including claims that the government regularly reviews Federal laws to bring them in line with human rights obligations. This happens by enforcing and implementing Federal civil rights laws and programs, utilizing litigation and judicial review, reporting to UN human rights treaty bodies, engaging with UN Special Procedures and participating in active discussions with civil society.

They asserted the U.S. Government does not systematically review state laws but that civil rights mechanisms allow such review when necessary. Furthermore, the administration stated they are considering whether the network of protection in place is in need of improvement and are exploring ways to strengthen Federal and State programs providing human rights training.

The U.S. supported in part a recommendation regarding the Leahy Laws. They claimed that they already apply the Leahy Laws to all countries receiving U.S. security assistance and to respond appropriately in the case of abuse. However, they did not agree to document, evaluate and make public the human rights records of all units receiving assistance because they cannot release classified information that is included in those records.

Although the U.S. has promised to consider establishing a national human rights institution, the administration rejected a number of recommendations that such an institution be established according to the Paris Principles because they could not commit to a particular plan at the moment. The U.S. also did not support recommendations to abandon the State Department practice of qualifying other States according to a U.S. interpretation of human rights and to include and rank the United States in the U.S. Annual Country Reports on Human Rights. They also refused to remove blanket abortion restrictions on aid covering medical care for women and girls who are pregnant as a result of rape during armed conflict situations.

Treaties and International Human Rights Mechanisms

The U.S. agreed to move towards ratifying the Convention on the Elimination of all forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities, the ILO Convention 111, and the Convention on the Rights of the Child. They also claim a longstanding U.S. policy of supporting the International Court of Justice and promise to take appropriate action to ensure compliance with the *Avena* Judgment.

The U.S. supported in part a number of recommendations to ratify the human rights treaties mentioned before, but did not make any promises regarding the International Covenant on Economic, Social, and Cultural Rights, Convention of the Protection of the Rights of All Migrant Workers and Members of their Families, Optional Protocol to the Convention Against Torture, Rome Statute of the International Criminal Court, Convention for the Protection of All Persons from Enforced Disappearances, Additional Protocols I and II of the Geneva Conventions, and the 1st and 2nd Protocols to the Hague Convention. The administration also did not make any promises to recognize the jurisdiction of the Inter-American Court on Human Rights. Additionally, the U.S. did not accept parts of recommendations to withdraw reservations from treaties and asserted that they believe any reservations, understandings or declarations accompanying the U.S. ratification of international instruments maintains their obligations to the treaty's object and purpose. Regarding a recommendation to ensure the implementation of international humanitarian law obligations towards the Palestinian people, the U.S. claimed that international humanitarian law governs conduct within the context of an armed conflict

and the U.S. did not accept the implication that it is involved in an armed conflict with the Palestinian people.

The U.S. again rejected recommendations to ratify the International Covenant on Economic, Social, and Cultural Rights, Convention of the Protection of the Rights of All Migrant Workers and Members of their Families, and Rome Statute of the International Criminal Court. They also refused to withdraw reservations from treaties, accept individual applications procedures in human rights instruments, nor to extend a standing invitation to Special Procedures of the Human Rights Council. Additionally, the U.S. rejected a recommendation to modify the definition of discrimination in the law to bring it in line with the CERD standards by stating that they believe the law is already consistent with their CERD obligations. The U.S. also rejected a recommendation to raise the minimum age for voluntary recruitment into the armed forces to 18, but asserted that they prevent service members under 18 from engaging in direct combat. Lastly, the administration rejected Nicaragua's recommendation to respect the 1986 ruling of the International Court of Justice of the Hague to compensate that country for terrorist acts committed against the Nicaraguan People during Ronald Reagan's administration by claiming that the governments of Nicaragua and the U.S. had already come to an agreement to not pursue further action on the case.

Other Recommendations

In this category, the U.S. rejected all recommendations they claim does not fit under the other classifications. These include recommendations to end economic sanctions and embargos against other nations, especially Cuba and Sudan, and to abolish all extraterritorial laws on human rights and other related issues. Several of these recommendations also called for the release of political prisoners, such as Leonard Peltier, Mumia Abu-Jamal, and the Cuban Five while others called for the prosecution and extradition of Luis Posada Carriles. One recommendation calls for the U.S. to end actions impeding the realization of rights to a health environment, peace, development and self-determination. Additional recommendations called for the U.S. to end the defamation of religion and to end the use of slavery as a punishment.

Full government response available via:

<http://ushrnetwork.org/content/reportsdocuments/upr-adoption-government-response-referenced-recommendations>

Compiled by: The logo for the US Human Rights Network, featuring the letters 'US' in a large, bold, blue font, followed by the words 'HUMAN RIGHTS' in a smaller, blue, sans-serif font, and 'NETWORK' in a bold, blue, sans-serif font below it.