

Copyright 2010 Federal News Service, Inc.
All Rights Reserved

Federal News Service
November 5, 2010 Friday
STATE DEPARTMENT BRIEFING
14384 words

U.N. HUMAN RIGHTS COUNCIL TOWN HALL MEETING;
SUBJECT: UNIVERSAL PERIODIC REVIEW (UPR) OF THE UNITED STATES'S HUMAN
RIGHTS RECORD

LOCATION: U.N. PALAIS, GENEVA, SWITZERLAND

U.N. HUMAN RIGHTS COUNCIL TOWN HALL

MEETING SUBJECT: UNIVERSAL PERIODIC REVIEW (UPR) OF THE UNITED
STATES'S HUMAN RIGHTS RECORD

PANELISTS: ESTHER BRIMMER, ASSISTANT SECRETARY OF STATE FOR
INTERNATIONAL ORGANIZATION AFFAIRS; MICHAEL POSNER, ASSISTANT
SECRETARY OF STATE FOR DEMOCRACY, HUMAN RIGHTS, AND LABOR; HAROLD
HONGJU KOH, LEGAL ADVISOR, DEPARTMENT OF STATE; GERALD ANDERSON,
PRINCIPAL DEPUTY ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL
ORGANIZATION AFFAIRS; MARGO SCHLANGER, OFFICER FOR CIVIL RIGHTS AND
CIVIL LIBERTIES, DEPARTMENT OF HOMELAND SECURITY (DHS); SAMUEL
BAGENSTOS, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS
DIVISION, DEPARTMENT OF JUSTICE (DOJ); GEORGINA VERDUGO, DIRECTOR,
OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF HEALTH AND HUMAN SERVICES
(HHS); LARRY ECHO HAWK, ASSISTANT SECRETARY FOR INDIAN AFFAIRS,
DEPARTMENT OF THE INTERIOR (DOI); ROBIN TOMA, EXECUTIVE DIRECTOR, LOS
ANGELES COUNTY HUMAN RELATIONS COMMISSION; RUSSLYNN ALI,
ASSISTANT SECRETARY FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION; TARA
JONES (SP), EXTERNAL AFFAIRS, DETAINEE AFFAIRS, DEPARTMENT OF DEFENSE
(DOD); AND JOHN TRASVINA, ASSISTANT SECRETARY FOR FAIR HOUSING AND
EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

(HUD) MODERATOR: SHEILA MACVICAR, INTERNATIONAL CORRESPONDENT, CBS

NEWS LOCATION: U.N. PALAIS, GENEVA, SWITZERLAND

TIME: 10:33 A.M. EDT

DATE: FRIDAY, NOVEMBER 5, 2010

MS. MACVICAR: Good morning to those of you joining us in Washington, D.C., and a very special welcome to those of you who are joining us via the web. My name is Sheila MacVicar, and I have been asked to moderate this first town hall on the universal periodic review submitted to the United Nations Human Rights Council by the government of the United States.

The genesis of this town hall began over a year ago when, in preparation for the review, representatives from many branches of government met in venues across the U.S. to listen to what Americans had to say about a wide variety of human-rights issues. This is part of the commitment made by the Obama administration to listen to, engage with, and to incorporate ideas from civil society. The goal today, I hope for all of us, is to further that dialogue and to demonstrate how civil society and government can work together to promote and protect human rights worldwide and at home.

As many of you have heard, as part of this morning's presentation, U.S. representatives responded to a number of questions, some of them hard hitting and some of them reflecting concern shared by Americans, from countries ranging from Cuba to India and beyond. Journalists have aired their questions at a recently concluded press conference, and now, civil society, it's your turn.

We do have limited time. So that as many of you as -- many of you representing civil society can ask your questions across as wide a range of topics as possible, we will have strict rules that I will aim to enforce.

As your moderator, I will call upon participants. And please -- may I borrow yours? -- signal using your placard. The mike -- there's two -- will be brought to you. I will ask you to very briefly identify yourselves and your organization, and I will give each questioner about a minute to put their question. If I don't hear a question within that minute, I will ask you to immediately put one or to yield the floor.

You may direct your question, I may direct your question, or I may call upon Harold Koh, the senior legal adviser of the State Department, who is here with us today, for assistance in the traffic department.

Now, for panelists, I would ask you to keep your answers as succinct as possible. If I don't think you're coming to the point quickly enough, I will ask you to do so.

Let me introduce you to the panelists. Three assistant secretaries of State -- Esther Brimmer, who deals with international organizations and multilateralism; Howard (sic) Koh, who you've met; and Michael Posner, who deals with human rights.

From the Department of the Interior, we have assistant Secretary Larry Echo Hawk, responsible for Indian affairs; Margo Schlanger from Homeland Security; Samuel Bagnestos (sic/Bagenstos) from the Department of Justice; Tara Jones (sp), who handles detainee issues at the Department of Defense; Georgina Verdugo from the Department of Health and Human Services; and Robin Toma from the Los Angeles County Human Rights Commission. Mr. Toma is a special adviser

to the U.S. delegation, but he will speak in his capacity as a municipal official and not as a representative of the United States.

Joining us in Washington, we have, from the Department of Education, Assistant Secretary for Civil Rights Russlynn Ali, and John Trasvina, the assistant secretary for Fair Housing and Equal Opportunity at the Department of Housing and Urban Development. We also have Gerald Anderson from State. And David Bame from State's bureau of International Organizations will moderate questioners there.

For those of you who are joining us via the web outside the U.S., you can submit questions via the chat room, which is up and running. Those in the U.S. can e-mail questions, and that address is uptownhall@gmail.com. That's [uptownhall](mailto:uptownhall@gmail.com), all lower-case, all one word, [@gmail.com](mailto:uptownhall@gmail.com). So let's get to it. And the first question of the afternoon, please, from the Leadership Conference on Civil and Human Rights. And the microphone will be brought to you, sir.

Q (Off mike.)

MS. MACVICAR: Thank you.

Q Good afternoon. I'm Wade Henderson, president of the Leadership Conference on Civil and Human Rights. First I'd like to thank the State Department for hosting this dialogue with civil society and for the opportunity to participate in what has been an extensive consultative process here in Geneva and proceeding to UPR.

Given my limited time, I will have to stop here and resist the temptation to make further acknowledgements.

My first focus is on the follow up to this process and the concrete steps we can expect the U.S. government to commit to taking back home in terms of implementation. As has been noted by many countries this morning, the U.S. currently lacks an institutionalized mechanism to implement its human rights commitments into domestic policy. We also lack an independent national human rights body modeled on the Paris Principles. Thus, many NGOs here today have urged that the administration take two concrete steps to put in place mechanisms that will enhance both coordination and accountability for implementation.

First, we are calling on the administration to issue an executive order to create an interagency working group on human rights that will bring together departments and agencies represented here today in the U.S. delegation as well as to others to better enable the federal government to promote its human rights commitments on a range of issues, from racial profiling to immigration reform to access to quality education for all.

Second, we want to know what concrete steps the government will take to work with the Congress and civil society regarding the transformation of the current U.S. Commission on Civil Rights into an independent, nonpartisan U.S. Commission on Civil and Human Rights as soon as possible.

I look forward to your response regarding both of these critical next steps and a time frame for implementation. Thank you.

MS. MACVICAR: Who would like to take that? Mr. Posner?

MR. POSNER: Thank you.

First of all, I want to thank you all for being here. We look forward to this conversation. And Wade, I want to thank you and others who helped us in the preparatory stage, when we had consultations around the country. You raised two really important pieces here for us, and I want to try to take them one at a time.

One, as you know, and many of you know, we've had, been having and are having discussions about exactly the kind of executive order you're discussing. We have not yet -- we're not there yet, but I think one of the elements that is clearly envisioned is a stronger interagency process. And that's something that this UPR process has made clear to us, that there really is a value in different agencies of government coming together around these issues.

The second thing is the idea of transforming the civil rights commission into a human rights commission, following the Paris Principles. That's also on the table for discussion. A decision hasn't been made. And I know there's got to be a legislative piece of that, and you've been, I know, exploring some of that. It's a discussion we should have, I think, immediately coming out of it.

The third thing I would just add to what you've said is that we had a discussion yesterday with our delegation in house, and one of the things that I stressed and asked each of my colleagues from the different agencies to think about, we have a two-step process here. We will get a report early next week from -- kind of interim report from this troika, three governments, to the council, and then we have until March to come back and respond and say what we're doing. So we have an opportunity. And my intention, at least -- I can't tell you that I have the game plan -- but as we did consultations prior to coming here, we need to figure out a practical, efficient way to get feedback from you and others around the country and to put some concrete proposals in front of ourselves, and then -- and then the council.

One of the things I said is that we each in our own agency ought to be thinking about, what are the things -- concrete things that we have learned from this process, from your -- from this group, from other governments, and from ourselves? And how do we begin to put together a list of things that we can be doing so that when we come back here in March, we have something very practical to talk about? So we look to you and others in this room to help us get there.

MS. MACVICAR: Any follow up to that? Shall we move on?

Questions? Yes, the Hawaii Institute for Human Rights.

Q Aloha. I am Poka'a Lai'nue (ph) from, of course, Hawaii, and I'd like to cover very quickly some historical points.

In 1893, the independent nation of Hawaii was invaded and overthrown by the United States, which a hundred years later, in 1993, the U.S. Congress confessed, apologized to the native Hawaiians.

In 1945, the United Nations Charter included Article 73, which set forth the obligation for non-self-governing territories and administering authorities that had control over these territories. In 1946, in General Assembly Resolution Number 66, the United States submitted Hawaii, as well as Alaska and several other places, under which it took a sacred obligation to bring to self-governance or self-determination. The standards for self-governance or self-determination is that the self should have choice -- integration into the United States, free association or independence.

In 1958 --

MS. MACVICAR: Can I ask you to move towards your question, please?

Q Yes. The people of Hawaii and of Alaska was never given the choice of independence or free association. The question that was placed on the ballot was "Shall Hawaii be immediately admitted into the union as a state?" If we voted yes, we became a state; if we voted no, we remained a territory -- both integrated.

MS. MACVICAR: Your question, please.

Q Will the Obama administration commit itself to reopening and examining this question of whether or not we should be entitled to all three options; not only integration under the Akaka bill, but the choice of independence, free association or integration? Thank you very much.

MS. MACVICAR: Who would like to take that?

Mr. Koh.

MR. KOH: Well, I understand the history of Hawaii as a state of the union; indeed, the president is from that state. If there is an issue about whether that ought to be undone, that historical fact, there is legislation, as you're suggesting, that would address that question. So I suggest you take that to the legislative process.

MS. MACVICAR: Questions, please. Yes. The rights working group.

Q Good afternoon, I'm the deputy director of the rights working group. I wanted to ask -- this morning and throughout this process you've placed a great emphasis on and we've appreciated your engagement with civil society and the UPR process in general. Rights working group is a coalition of over 270 civil society groups who've engaged many of you on issues of racial profiling that various U.N. special rapporteurs and treaty bodies have also made some specific recommendations on, as we all have.

As important to us as the engagement piece of these processes and of civil society is the implementation and action piece on these recommendations. So specifically, I wanted to ask how

you intend to implement outstanding recommendations that have come from U.N. bodies and from civil societies on a few issues.

One is on ending NSEERS and other programs that encourage racial profiling against the Arab, Muslim, Middle Eastern and South Asian communities; ending 287(g) and other programs, looking into the problems of other programs such as Secure Communities and CAP (ph) that engage state and local criminal justice systems in enforcing immigration laws; illuminating the loopholes in the Department of Justice guidance on the use of race by federal law enforcement to address omissions and loopholes that are contained in it; and addressing the disparities in stop-and-frisk data for African-Americans, Latinos and Native American communities in the United States.

So I'd love to know your plan of action for implementing some of these recommendations and a possible timeline in which they may be implemented.

MS. MACVICAR: To discuss implementation -- who would like to take that?

MS. BRIMMER: Is that working?

MS. MACVICAR: Yeah.

MS. BRIMMER: Okay.

I'll speak to the pieces of that question that go to DHS programs which I think are NSEERS and 287(g) Secure Communities kinds of constellations. NSEERS was intended to be -- NSEERS, which has been in effect for quite some time now -- was intended to be the first phase of a more comprehensive entry and exit system which is now known as US-VISIT. And we have captured in US-VISIT all or nearly all of the information much more comprehensively than NSEERS ever did it.

As a result of that, we're very aware of the criticisms that have been levied against NSEERS, and we use it currently -- it has been used for aliens in the United States from over 150 countries, it's been broadly applicable. But we're very aware of the criticisms that have been leveled against it and have met, as you know, with many, many groups to discuss those criticisms. And what I can say is that we continue to review the program at the very highest level and that we're confident that we're going to be able to reach a resolution that addresses concerns while ensuring national security.

But I'm not going to be able to give you a timetable for that. That's on NSEERS.

On 287(g) and Secure Communities alike, we have been working very hard in 287(g) to make sure that there is a robust set of protections against racial discrimination in the implementation of the program, and that has included modifications to the agreements with local communities, training modifications and monitoring modifications. And my office, the Office for Civil Rights and Civil Liberties, is working hard on the monitoring piece and the training piece right this instant. We would really look forward to working with you to improve that even more.

And I think that's the method that will be followed for reform of that program. So I can't speak to the stop-and-frisk in the guidance, however.

MS. MACVICAR: From Justice, please?

MR. BAGENSTOS: Yes, just to speak to the couple of other issues. I mean, number one, the attorney general called for the re-examination of the 2003 racial profiling guidance, and we are in the heart of that process. It's a complicated process, but it's a process that we're very much in the middle of. And I will say that the concerns that you have raised are the concerns that are very central to what we're talking about.

So I think what most people in the civil rights and human rights community would say about the 2003 racial profiling guidance is that the general rule was very good, and there are two exceptions that many folks in the civil and human rights communities believe are problematic. And we are looking very carefully at those issues and those questions.

It should be clear, though, that racial profiling is illegal. Racial profiling violates the 14th Amendment to the Constitution, and the Department of Justice and the Civil Rights Division enforces that prohibition against both individuals and law enforcement agencies that violate that prohibition.

We have investigations of and litigation against a number of jurisdictions, including 287(g) communities. So the fact that a law enforcement agency has a 287(g) agreement does not mean that they are excluded from the prohibition on racial profiling, and we will enforce that there as well.

MS. MACVICAR: Before we -- I know that there is a question in the room from Washington, but before we go to Washington, does anyone want to follow up on that -- on that particular subject?

Yes, ma'am? I'm sorry, you're from the Urban Justice Center.

Q Yes. My name is -- (off mike). Thank you. I wanted to follow up with -- (inaudible) -- following up on all the recommendations made by the -- (off mike).

I ask in particular because in reference to treaty ratification, this morning, Mr. Posner, you made the -- you said that in order -- before we ratify treaties, we look at our laws to make sure that we -- we're in full compliance or we're in compliance. And we have ratified CERD, but we're not in full compliance with CERD. And in fact, the gaps between our law and the full CERD implementation were listed -- some of the gaps were listed in the list of recommendations put out in the concluding observations by the Committee on the Elimination of Racial Discrimination. In particular, they also mention that we can take special measures with regard to the enjoyment of economic, social -- and social rights in the United States. Employment, for example, as you may know, the unemployment rate for African-Americans in the U.S. is twice that of white Americans, and this is the same ratio was when we passed the Civil Rights Act of '64.

So my question is what concrete steps can we expect from this administration in terms of fully implementing CERD, starting with the recommendations of March of 2008, and will we see these steps taken before the next CERD review?

MS. MACVICAR: Mr. Posner?

MR. POSNER: Yeah. This relates in some way back to the question that Wade asked at the beginning. And I think there is -- there's a procedural answer to the question, and then there's substantive answers. Procedural answer to me is that we need a stronger interagency process, and one that's mindful both of domestic organizations in the domestic debate, but also integrating that in with treaty and convention debates and obligations.

This was undertaken initially by the Clinton administration in an executive order in 1998. It didn't do well under the previous administration, and we're now, as Wade's question suggests, trying to revive that process and have a stronger relationship between these various treaty bodies and expert recommendations and what gets filtered into the various agencies.

The substantive answer, though, is that each of you, or many of you, are already engaged in a direct way with relevant federal agencies that are responsible for these things. We should be taking these things up because of our own obligations domestically. We don't need -- I mean, it's good that we're here. This is a catalyst or a prod. But we ought to be having these discussions, as the previous two speakers talked about, in terms of their realm. One of the reasons we're here today is to have those conversations.

So I don't know the particulars of the recommendations from the CERD and where we are. I don't know if anybody else on the panel wants to address that. But I think it's on a parallel track. There's a domestic debate. There are agencies like yours that are working on specific things. You ought to pursue it. And we as a government ought to be more mindful of how we work on an interagency basis and drawing the U.N. obligations into that process.

MS. MACVICAR: Just to move on now, I know that there's a question in the room that is directed at Washington. And can we have the National Center on Homelessness and Poverty, please?

ERIC TARS (Human Rights Program Director, National Law Center on Homelessness and Poverty): Thank you. I'm Eric Tars, from the National Law Center on Homelessness and Poverty.

And given that the State Department reported that housing was actually the number-one issue brought to them through the pre-UPR consultations, we were disappointed that the U.S. report didn't even mention that there's a housing crisis going on in the U.S.

But we're happy that, despite not being physically present here, HUD issued a statement today emphasizing their engagement going forward, and agreed to a follow-up meeting with Assistant Secretary Trasvina and others, to talk to the folks who did bring those issues to those meetings

about putting together an action plan to address the concerns raised today, and then the Special Rapporteur on Housing's report last year.

I wanted to point out that almost every country today raised a concern about ratifying the Covenant on Economic, Social and Cultural Rights, emphasizing that the rest of the world views these rights as fully justiciable. But the government's response has basically been to deny the enforceability of these rights in our system, referring it to the political process. HUD Secretary Donovan has stated he believes that housing is a human right.

MS. MACVICAR: Can I ask you to come to your question, please?

MR. TARS: Yes. My question to both the State Department and HUD is: Can you clarify your positions on economic, social rights, and our obligations to progressively ensure them? And to HUD specifically, what steps are you going to take to work within the agency to conduct training on our human right to housing obligations and create an action plan for implementation of the rapporteur's recommendations across all of the -- HUD's departments.

MS. MACVICAR: If we could hear from the assistant secretary in Washington? Good morning, Washington.

MR. TRASVINA: Good morning. And I want to thank you for the opportunity to be here. And unfortunately -- at least the technology allows us to be with you. And our work in the -- in this area is critically important, as noted, the work that Secretary Donovan has done and others have done in the area of homelessness. So the president's 19 agencies coming together on homelessness issues is indicative of the importance upon which we place it.

In terms of what we can do in terms of implementing -- and whether it's internally through training and bringing all of the HUD parts together -- the principles of affirmatively furthering fair housing, for the first time really in the history of the HUD legislation, we are working to both internally ensure that all of HUD moves forward to ensure the federal government's responsibility to make sure that HUD dollars are going to communities to advance fair housing, not only in the areas of individual cases of discrimination based upon race, religion, national origin, gender, disability, family status, but that the overall -- the decisions mainly made at the local level, but made with HUD funds, are able to be done in a way that reduces segregation, that reduces poverty, and provides opportunity and a broad link -- opportunity and education, opportunity and jobs, opportunity and transportation. These are all areas that we have at the highest levels of this department, and in coordination with our secretaries of other departments, they are high priority. And as we move forward into the year 2011, you will see more action on that.

MS. MACVICAR: Is that what you wanted to hear, Mr. Tars? Microphone -- sorry, we're waiting for a microphone.

MR. TARS: That's part of it. I'm also interested to hear from Mr. Posner, as well.

MR. POSNER: Yeah, I think two things in response to your question about economic and social rights generally, and the Covenant on Economic, Social and Cultural Rights in particular. As I said this morning, as a matter of public policy we regard the whole range of housing, education, health as important priorities for this government. We -- there is a section of the report that deals with those things, and we, through a range of federal programs, initiatives of this administration, are pursuing that agenda.

The United States, as you know, has signed but not ratified the economic and social covenant. As I said this morning we are leading off with CDA and the Convention on the Rights of Disabled, and we're going to take it from there. This is -- frankly, we need the support of people in this room and many others to make that a reality. There is a tall hill to climb in terms of the Senate to get 67 votes. And this has to be -- this is a place where government and the NGO sector can work together, need to work together if we're going to be successful.

MS. MACVICAR: David Bame in Washington, are there any questions in the room from the representatives of civil society with you there?

DAVID BAME (special assistant to the undersecretary): We're here. Stand by for -- (off mike).

Q Yeah. I'm -- (name inaudible) -- from Amnesty International. I first would like to thank the administration for sending senior officials to represent -- (off mike).

My question is actually a follow-up question to the first question from Geneva about creating human rights -- civil and human rights commission under the aegis of Paris Principles. My question is, since you all three senior officials are there, do you have any reservations about creating a civil and human rights commission in the U.S. under the aegis of the Paris Principles? If so, please explain it right now, because there are civil society officials who would love to hear what your reservations are.

If not, if you agree to create that commission, would you commit to us that President Obama will mention in his State of the Union on January 20th, calling upon the creating of that commission?

MS. MACVICAR: Did everyone hear that question clearly?

Q Yes.

MS. MACVICAR: Okay. Thank you. And who would like to take that one?

MR. POSNER: (Clears his throat.)

MS. MACVICAR: (Chuckles.) In the -- (inaudible.)

MR. POSNER: You know, the answer is, again, that we are at a, I would say, fairly late stage in a governmental process trying to come -- get past the finish line. I'd like to be able to tell you that I could just answer your question by saying, yes, we're going to do it. We're not there yet, but we

are -- there is certainly in momentum in the direction of trying to get an executive order out and putting -- this is one element that's on the table.

It's helpful to us, frankly, that this discussion is going on here and that the issue is raised as it's being raised. And I can assure you, at least for me personally, and for others sitting behind me and around me, we will go back and report the interest and enthusiasm here and try to advance that process as fast as we can.

MS. MACVICAR: Yes, please, from Human Rights Watch.

Q Antonio Ginatta, U.S. program advocacy director at Human Rights Watch. I want to ask a question about torture.

Last month, Human Rights Watch asked the U.S. government to investigate whether its forces had violated international law by transferring Iraqi detainees to Iraq to face certain torture. I want to know if that investigation is under way.

And generally, since there was a discussion about accountability today, do you view accountability to require that the investigation solely focus on those service members who effectuated the transfer or go up the chain of command to the people who ordered such transfers?

MS. MACVICAR: Where would you like to begin? Tara (sp)?

MR. KOH: Well, I haven't seen your report, and I'd be interested to see it. What we had said is that we are committed to ensuring that we don't transfer individuals to torture anywhere, not just in Iraq, and that a critical piece of the Iraqi transition under the security arrangements that were made in the last few years were to train the Iraqi forces in human rights protection and to develop rules of engagement that require all U.S. forces to report any credible allegations of violations of the laws of armed conflict.

Now, as you know, some of these issues have been addressed in court, in the Munaf and Omar cases.

We are continuing to take very seriously these commitments and to work to ensure the transfer of safeguards meet the relevant needs and challenges.

If your report is itself something that you think ought to be the basis for further investigation, please provide it to us.

MS. MACVICAR: Yes. From the Western Shoshone Defense Project. Oh, sorry, sorry, before we move on, sorry, sorry, sorry Tara. I forgot, sorry.

MS. JONES (sp): That's okay. Thank you. I've also not seen your report, so I would be interested in taking a look at it. I'd also just like to point out that we do have safeguards in place in Iraq when our forces observe any mistreatment of detainees. They are obligated to report that and we do handle those in a diplomatic relationship with Iraq. We have very robust procedures in order

to make sure that those instances or even suspicions are being reported up the chain of command to be appropriately dealt with.

MS. MACVICAR: Before we move on from that, can I just ask are there any other questions in the room? Anyone want to follow up on the question of detainee treatment? Yes, please. The gentleman here in the front, sorry.

Can I ask you to tell us where you're from?

Q Jim O'Neill (sp) for Advocates for Human Rights. I wanted to follow up on the portion of a question regarding potential accountability or consideration of accountability for policy-level officials on the issue of torture. Is there a plan to consider and investigate potential accountability of such policy-level officials on the torture issue? And if not, what impact will that have on the credibility of the United States indicating its commitment to the enforcement of international human rights instruments, which it has ratified?

MS. MACVICAR: Harold?

MR. KOH: Well, I think there are two pieces of the question, one is the civilian side and the other is the military side. On the military side, as I mentioned in my statement, there's been a lot of recent publicity about this issue, basically three assumptions and a conclusion. A series of documents have been out on the web, assumption number one that these are new documents to the U.S. government; second, that somehow these are un-investigated incidents; and third, that they led to no accountability.

So the conclusion that those who have put those on the web would ask you to draw is that the U.S. doesn't please its own military forces. What I said today is that all three assumptions are false. And so it's the conclusion, these documents were entirely known to and studied. They were extensively investigated. This led to hundreds of investigations and that of those hundreds of investigations, it led to more than 100 cases that ended in court-martial and either federal conviction or some other kind of federal action.

So that is part of the conclusion which I led my remarks, which was that the U.S. military polices its own like no other. It's hard to find another military force which does the same.

On the civilian side, as you know, Attorney General Holder has referred investigations around these issues with regard to certain officials to the special prosecutor John Durham, distinguished prosecutor, career prosecutor from Connecticut. Those investigations are ongoing. We don't know yet what the outcome of that will be. But I think from that we can conclude there is established accountability on the military side of the equation and still ongoing accountability issues on the civilian side of the equation.

MS. MACVICAR: Can we go back to D.C. for another question? David? Do you have another question there?

MR. : Do we have another question. Not at the moment, Sheila.

MS. MACVICAR: Okay. Then let's go over here to the Western Shoshone Defense Project. Thank you.

Q (Off mike.)

MS. MACVICAR: Whoops. Wait for the microphone. Thank you.

Q Good afternoon, and good morning, Washington. My name is Larson Bill, Western Shoshone. In 2006, the CERD Committee rendered a historic decision on behalf of the Western Shoshone people and their lands. The decision was number 168. And yesterday, the United States made an anticipated statement -- I'm sorry, made a bold and anticipated statement saying that they are the protectors and the defenders of human rights.

And my question to the -- to the United States is, when will the Western Shoshone peoples and the world see a positive, measurable, transparent movement to address the recommendations of the Third Committee on decision 168?

MS. MACVICAR: Mr. Echo Hawk?

MR. ECHO HAWK: First of all, there was a noted scholar and writer by the name of D.H. Lawrence that said long ago that the American Indian will never again control this continent, speaking of North America, but he will forever haunt it. And I think it's generally known that there have been many injustices perpetrated against native people. Many of those relate to land that was previously within the ownership of native people. Whether that's a direct taking that occurred, whether it was by virtue of a treaty that really wasn't negotiated at arm's length, or was there a loss of land through the General Allotment Act -- between 1887 and 1934, 90 million acres of land passed out of the ownership of native people.

The United States, in 1946, allowed native nations to bring lawsuits under the Indian Claims Commission Act to acquire damages, money damages, as a result of these unjust takings. It was, of course, up to elected leadership in tribal nations to determine whether or not they would file those claims. And the United States has paid out millions of dollars in compensation. But I think that it is still disheartening to many native people that they had to settle for monetary damages instead of getting the return of lands. Even though there have been elected leaders of Western Shoshone that have petitioned for the monetary damages, there are members of Western Shoshone people that would rather have the lands.

I don't know, you know, the degree of feasibility that there is for actually acquiring lands as opposed to monetary compensation. That is a political question. I would hope that the United States would keep an open mind to see what we can do in the future to overcome some of the injustices for the past.

I can speak for the Obama administration in terms of knowing that this administration has a very aggressive policy of taking land into trust upon application of native people. Secretary Salazar has said that additional lands that would be returned to native people would be vital for economic

development, but more importantly, he said that it is the morally right thing to do to allow native people to retake ownership of some of their traditional homelands.

MS. MACVICAR: I have a question by e-mail on a similar subject from Rodney Tahe. He's with the Office of the Navajo Nation Human Rights Commission.

And he writes, "The United States is a party to the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the American Declaration of the Rights and Duties of Man. Regardless of federalism, then, why are the rights of indigenous people to freely profess a religious faith and to manifest in practice, both in public and private, not protected by U.S. federal legislation such as the American Indian Religious Freedom Act of 1978, the Native American Graves Protection and Repatriation Act of 1990, or the Religious Freedom Restoration Act of 1993?" That religious faith, he says, "is embodied and grounded in the peaks and other sacred sites."

MR. ECHO HAWK: You know, I was one of the very first Native American lawyers, meaning native people in United States that obtained a law degree.

And over the last approximately 40 years, I've seen enormous advances in protecting rights, including sacred spiritual rights and cultural rights of Native people. The United States Congress, in the last 40 years in particular, have passed numerous legislative acts -- you know, some of which were just mentioned -- that were aimed at protecting religious and cultural rights of Native people.

I don't think the rights of Native people are fully protected at this point, and I think there's certainly room for improvement. I am not prepared to comment. I don't think, you know, I'm an advanced scholar when it comes to international law, and I think I would defer to others that may be more familiar with those aspects.

MS. MACVICAR: Harold?

MR. KOH: Well, I think the premise of the question is incomplete. Obviously the rights of Native Americans to worship is protected by the First Amendment to the United States Constitution. Secondly, it's protected by the International Covenant on Civil and Political Rights, which has protections for the rights of individuals to worship individually and in community. It is true that there are some practices that have been challenged as beyond the scope, and assertions have been made that those practices are protected by the Religious Freedom Restoration Act. And the Supreme Court a few years ago decided the O Centro Espirita case, which came out of the 10th Circuit, in which that claim was -- the claim that these particular practices were permitted was not protected.

So I think that there's a combination and a set of overlapping protections under domestic and international law which attach to any set of activities. And I think it goes to a second point, which is a critical one, which Mike Posner made early on. He said that the United States, unlike some countries, tries to achieve a high degree of compliance before we ratify, where other countries ratify and then do not comply for many years.

I don't think what Mike was saying is that the other countries are necessarily not committed. The fact of the matter is that our treaty ratification process is extremely difficult, and so therefore it has become a political end state that after you've achieved substantial compliance in any way -- in many ways, that you then move to actual ratification, which requires 67 votes. So a treaty like the Vienna Convention on the Law of Treaties has never been ratified, although it's accepted as customary law.

I think an important point, which Wade Henderson made at the very beginning, is that this often means it's easier to get legislation than it is to get a treaty, and that the act of getting certain kinds of legislation will help us to come into compliance with our treaty obligations if we were to ratify the treaty and thus make the treaty to ratify. The path to a convention on disabilities ratification is certainly made easier by the fact that we have had 20 years of Americans for Disabilities Act, which was pressed by civil society groups including many in this room. We're now at a time in which, because of elections and other things, it is again extremely difficult to count votes for treaties. And it may well be that legislative routes or other kinds of ways to achieve these through cooperation between civil society and government is the best way to go.

MS. MACVICAR: Does anyone want to comment on that subject before we move on?
Yes, the International Indian Treaty Council?

Q Yes, thank you very much. I think the questions posed by the Western Shoshone really gets to the heart of the sincerity of the Obama administration and the U.S. generally, with regard to compliance with -- and international human rights. There certainly is a difference between the standards imposed by the international community with regard to the CERD convention that he referred to or the Inter-American Declaration that the Inter-American Commission also ruled, with regard to the Western Shoshone and the invalidity of the Indian Land Claims Commission, only awarding damages when the fact of title was never allowed to be litigated and they were never allowed to raise title or whether or not they had ever even ceded land. Which is really the heart of the injustice of the case.

To say that historical circumstances are not going to allow us to rectify those injustices is to say that we will never be in compliance with international human rights standard. I --

MS. MACVICAR: Can I ask you to move toward the question?

Q Yes. Well, yes. I mean, that's the question. To what degrees, then, is the United States willing to take us into consonance with international human rights? Is it only when it's historic -- historically convenient, or are they willing to bite the bullet and say, yes, these are hard questions, but these are the human rights standards that we must implement in the United States? I think it also goes to the question of how well the review is going, the review of the -- the Declaration on the Rights of Indigenous Peoples. If in fact you have to be -- it has to be implemented --

MS. MACVICAR: Let's put the question --

Q All right.

MS. MACVICAR: Let's let the panel answer the question, please. Thank you.

Q But it's part of the same question. If you wait for implementation before you accept, it's never going to be -- it's never going to be accepted.

MS. MACVICAR: Who would like to take that? Larry?

MR. ECHO HAWK: Well, I'd like to just comment in a general way first with regard to the Obama administration. And it's not just Larry Echo Hawk speaking; I would like to quote from an article that was published just recently by a well-known Native American journalist named Mark Trahant.

He says, "In just two years, this administration has done more for American Indian and Alaskan Native communities than any government in decade -- decades. By any objective measure, Barack Obama has been the most engaged and effective president on American Indian issues since at least Richard Nixon. You could even make the case that Obama is better than Nixon because there has been so much successful legislation and executive branch action in less than two years." So that, I think, displays, you know, the vigor of the Obama administration in trying to address Native American issues.

Many of the things that have been raised are very challenging when it comes to retaking lands that were once in ownership of native people. Speaking of my own tribal identity and our struggle, the Pawnee Nation once occupied what is now Nebraska, 23 million acres of land. In 1874, we were forced off of our homelands and removed into the Oklahoma Indian Territory with the promise that that would forever be Indian land. Of course we know that Oklahoma is not now all Indian land. Instead of 23 million acres, we have just a few hundred acres. So I would like you to know that I understand the struggle of native people. And I think this administration is trying to do things that other administrations have not, but these are very challenging issues. When it comes to retaking lands, we do take an aggressive policy where we can.

But you know, what is the feasibility of retaking 23 million acres of land in Nebraska that is mainly in private ownership? At least in Nevada where the Western Shoshone are from, there is more federal acreage. And that's a political question that the government, you know, will face, and I'm hopeful sometime in the future where there may be some federal lands made available instead of just monetary compensation.

Thank you.

MS. MACVICAR: We have a question from the chat room that speaks to one of the -- one of the subjects that we've been discussing, which is the difficulty now perhaps of getting treaties ratified, given the political changes that have taken place in Washington. And this is from David Cornut of the International Humanist and Ethical Union of Great Britain. And he asks, "Will the

political setback that President Obama recently suffered have an impact on the work of the USA here at the Human Rights Council? And if so, what would that impact be?"
Perhaps, Ms. Brimmer.

MS. BRIMMER: Thank you for the question and the opportunity to talk about the work of the United States in the Human Rights Council. And we very much think that working within the Human Rights Council and working within the United Nations overall is a fundamental part of U.S. foreign policy. And indeed, being involved in multilateral affairs has been a fundamental tenet of -- and a bipartisan one for over 60 years.

We think that, of course, that we will want to reflect the concerns of the American people that we raised here at the council and in our debates at home about human rights. But we are a member of the council, we remain a member of the council, and we think it will continue to be an important tenet of American foreign policy.

MS. MACVICAR: How will the political changes, do you think, in Washington affect your role here, your work here?

MS. BRIMMER: Indeed, as I've said that it is absolutely important that foreign policy be a bipartisan effort. Under our system as you know, both the -- of course, we have a tripartite system, and indeed, there is an important, long-term conversation between the executive branch and the legislative branch about our foreign policy work. And irrespective of the majority or minority, in particular, House -- the question, of course, is -- particularly is the House of Representatives, we maintain a strong and close conversation with our congressional colleagues of both parties about our work here in the council, which we believe is in the overall interest of the United States.

MS. MACVICAR: Thank you. The U.S. Human Rights Network, please.

Q My name is Richard Brown and I am a U.S. torture survivor. On several occasions, I was tortured in the Bay area by law enforcement agents while they said they were in the process of trying to get some information.

On two occasions, I was framed, railroaded and incarcerated for years simply because of my political beliefs. I only won my freedom -- the trumped up charges were so weak that I won my freedom through appeal. I am also a co-defendant in a case referred to in San Francisco as the SF8. Three of my co-defendants were tortured horribly in New Orleans in 1973, Harold Taylor, John Bowman and Ruben Scott were deprived of sleep, food, water. They were brutally beaten. They had to endure waterboarding and torture -- shocks from cattle prods for three -- four or five days.

This morning, a statement was made that the United States does not torture. Why in the face of overwhelming evidence to the contrary do you continue to make that statement? And why is that you constantly ignore questions that pertain to political prisoners housed within the United States for decades?

MS. MACVICAR: Harold?

MR. KOH: The fact that there is an absolute prohibition on torture is a statement which is sometimes violated, and therefore, leads to punishment of those who drew that violation. In the U.S., it's often called police brutality or sometimes it's called something else. It's often done by officials who are not at the federal level.

We have no desire to defend beatings like Rodney King or Amadou Diallo. I do not know about your case. But as I said this morning, President Obama has made crystal clear his unequivocal determination to prohibit torture or cruel treatment by U.S. federal officials, that these are crimes in the U.S. and will be investigated and prosecuted as such, that similar actions by state and local officials are also federal crimes and that there's a variety of torture programs -- torture training programs to make sure that law enforcement personnel, corrections officers, immigration officials and others who are in charge with situations of custody are given all available information related to the prohibition against torture and other abuse so it does not occur. There are also, obviously, remedies for those who feel that they have suffered to bring lawsuits against officials. And so we have a robust system of accountability that can and should be pursued in these situations.

Q I would like to follow up, please .

MS. MACVICAR: Go ahead. You are?

Q My name is Efia Nwangaza, I am the director of the Malcolm X Center for Self-Determination. And in follow up to the previous question, I would like to ask what concrete steps will the U.S. Department of Justice take to review the convictions of all cointelpro, civil rights era activists in federal and state custody for civil and human rights violations having been held for more than 40 years in most cases. And to what step, concrete steps will the U.S. government take to create or establish a mechanism, a truth and reconciliation commission for the release of all cointelpro pro-civil rights era political prisoners currently held in federal and state facilities?

MS. MACVICAR: Shall we begin with the Department of Justice. Please.

MR. BAGENSTOS: So there are established processes for evaluating the continued detention of people who are in prison for all sorts of crimes in the federal system and in the state systems, and those processes will be and can be followed in the case you talked about.

I just want to add one thing, maybe a little -- a little more detail and texture, to some of what Harold just said about this set of questions. Because when we talk about the use of excessive force by police officers -- police brutality, that sort of thing -- I think it's very important to understand that this is something we very aggressively in the Department of Justice both prosecute and restructure and reform police departments and law-enforcement agencies when they do. Rodney King, which Harold mentioned, is a -- was a good example of that. Of course, in the Justice Department, we prosecuted the officers who were involved in the beating of Rodney King in the Los Angeles Police Department and, you know, there were convictions of two of

them.

After that, however, we realized that we couldn't just stop at putting in prison the people who committed the most egregious acts of police misconduct, but we also had to respond by going to the city and obtaining a consent decree against them that restructured the entire way that the -- that the police department did business in that city. And you know, we -- no one would say that it is a Nirvana there or anywhere, that there aren't problems; but both excessive force and all sorts of other problems of police misconduct have reduced substantially there. And that's true in a number of jurisdictions throughout the country. And that's something at the Department of Justice, we prosecute these cases every day and we're involved in these investigations, from New Orleans, Louisiana, all over the country, every day.

MS. MACVICAR: The American Civil Liberties Union.

LAURA MURPHY (director, Washington Legislative Office, American Civil Liberties Union): I want to associate my --

MS. MACVICAR: What's your name, please?

MS. MURPHY: I'm sorry. My name is Laura Murphy. I'm director of the ACLU Washington Legislative Office.

The ACLU is delighted that the United States has put itself before an international peer-review session on its domestic human right efforts. We also want to commend you and thank you for the impressive level of U.S. nongovernmental organization engagement in the UPR process leading up to today. Thank you very much. We also support the need for an interagency working group, and an entity that complies with the Paris Principles that allows us to monitor U.S. compliance with human rights commitments.

But I have to say that, notwithstanding the tremendous progress on human rights that many of you cited by the Obama administration, we also think that some of the progress was overstated today, especially in the area of racial profiling, immigration enforcement, and in the criminal justice system overall.

MS. MACVICAR: Can I ask you to move towards a question?

MS. MURPHY: Sure.

MS. MACVICAR: Thank you.

MS. MURPHY: It's our understanding that the Federal Bureau of Investigation will be coming forward with sample legislation that would allow a statute to allow indefinite detention. We think that that would be a horrible blot on the United States' human rights record, would be in complete violation of the Bill of Rights, and would set a terrible example and put our soldiers, American citizens, at risk throughout the world, if we use that as an example.

And I would like to know what the State Department would be willing to do to weigh in to prevent the president from supporting such a statute, and what the Justice Department would do to weigh in to stand up for civil liberties. I realize we are a nation at war, but we should not abandon our core principles of due process and equal protection, right to counsel, by endorsing indefinite detention.

Thank you.

MS. MACVICAR: Where would you like to begin? Harold.

MR. KOH: Well, I watch this area very carefully, as you know, and I know of no such bill offered by the FBI. If there was one, I would, obviously, weigh in on it.

MS. MACVICAR: Justice?

MR. BAGENSTOS: Yeah, I thought I was hardly out of the loop, but me, either.

MS. MACVICAR: There you have it. Apparently, no bill.

MS. MURPHY: (Off mike.)

MS. MACVICAR: The Center for Reproductive Rights, please. Thank you.

MICHELLE MOVAHED (staff attorney, U.S. Legal Program, Center for Reproductive Rights): I'm Michelle Movahed, with the Center for Reproductive Rights.

In one of its advance written questions, Norway asked what steps the United States is taking and will take to reduce persistent racial disparities in sexual and reproductive health. This is an issue that the CERD committee also raised in 2008. The new health-care reform law is an important step toward reducing those disparities, but it has serious gaps with respect to sexual and reproductive health; most notably, in the lack of a guarantee that contraception will be included in the minimum benefits package. There are other measures the government could take, like altering federal policies to include in Medicaid those who are currently excluded. And those would go a long way towards reducing disparities.

What steps is the United States taking and will the United States take, other than the new health-care reform law, to address and reduce the persistent racial disparities in sexual and reproductive health?

MS. MACVICAR: Georgina?

MS. VERDUGO: Can you hear me? Thank you for asking that question.

The administration has been committed to reproductive rights and the upholding of Roe versus Wade, and also -- (inaudible) -- to the Justice Department in terms of the efforts they're making. But insofar as Health and Human Services and its work, we have done a lot of work in terms of expanding women's health. Certainly over \$2 billion were set up from the American Recovery

and Reinvestment Act money. Certainly we recognize that there is more to be done. But the White House has created a council for women and girls to look at women's health -- particularly women's health issues.

We have also committed to increasing Medicaid and Medicare funding for women at all ages, and we're looking at that in terms of the implementation part of the Affordable Care Act, which is coming up. There are certain provisions in Title I, which you may be familiar with, that increased coverage for women -- maternal health, child health. We've improved our access for children in terms of insurance coverage. We've done a lot in terms of the Affordable Care Act. There is also a nondiscrimination provision that will be expanded through implementation. We're looking at that. The public comment period will be coming up as it goes to regulation next year. So I urge you to proceed accordingly when that comes up.

We have done a lot, from banning discrimination in terms of insurance coverage that was denied previously to women. So there are a number of things on -- I know you said despite the Affordable Care Act, but with the Affordable Care Act, there are a number of things that the administration is working as a beginning. We know it's a beginning and we know that there are other areas that we can certainly expand upon, but this is a vast improvement over what it was.

MS. MACVICAR: Thank you.
Human Rights First, please.

Q Thank you. I'm Devon Chaffee, advocacy counsel with Human Rights First. We appreciate President Obama's oft-repeated unwavering commitment to close Guantanamo and recognize the progress that has been made through the case-by-case review, resettlement and repatriation. However, in the short term, for example, in the next two to three months, how will the administration use its existing authorities, including its existing authority to bring detainees in to the United States for the purpose of prosecution, to further advance Guantanamo's closure?
MR. KOH: Well, Devon, as you well know, the question of what is (their/our ?) existing authority depends on whether that is restricted by legislation that might be enacted by the Congress that has just been elected. And we certainly need the support of the advocacy community to make sure that the president's efforts to close Guantanamo are not thwarted by our own elected representatives.

And there is legislation pending that would restrict transfers of 70 percent of the people who are currently on Guantanamo. If that's enacted, there would be a constitutional confrontation over the question of whether that's a legitimate use of the appropriations power, to prevent the president from moving forward with a stated objective that obviously has the support of the executive branch, the support of much of the world and the support of much of the human rights community.

MS. MACVICAR: Yes, Michael.

MR. POSNER: Yes. Let me just add one other point to what Harold said. We just had a midterm election. And I didn't follow every detail of every race, but I hardly sense that there was a groundswell of political support for the notion of closing Guantanamo. That does not mean that

it's not possible, but I would say, from where we sit -- and we're certainly trying to fulfill the president's commitment -- there needs to be a broader national strategy, both from the executive branch and from people outside of government, to advance a rational, intelligent policy that allows us to close Guantanamo.

We're committed to doing that, but we're committed to doing that mindful of the fact that, as Harold said this morning and again just now, we can't do it on our own. And so this is another area, to me, an important area where the engagement, the public education, the advocacy from outside the government is going to be a key component to our ability to succeed.

MS. MACVICAR: Tara, anything you want to add to that? Let's just go back to D.C. for just a moment and ask David Bame there if there are -- if there are any questions in the room?

MR. BAME: Thanks, Sheila. Actually, we do have another question for Assistant Secretary Trasvina, so we'll keep the microphone on this end for just a moment. Jeremy, please go ahead.

Q Thank you, good morning. My name is Jeremy Rosen with the National Law Center on Homelessness and Poverty. Thank you for the opportunity and for holding the session. We appreciate the presence of senior officials from HUD in the room today.

My question is the following. Perhaps a visible manifestation of our nation's current housing crisis is the crisis in foreclosures. So I'd like to ask the officials here from HUD to comment on and commit taking additional steps to work with us and with many other organizations concerned with this issue to look at additional ways, both to keep families in their homes, protect innocent tenants living in foreclosed properties. And when, unfortunately, we do have situations where foreclosures that occur particularly -- particularly in government-owned properties, will they commit to working with us for looking at additional ways to use foreclosed and now vacant properties to provide affordable housing for low income and homeless Americans?

MR. TRASVINA: Yes. Thank you for that question. You certainly have our commitment. It is of utmost importance that not only HUD, but as we do our work, our partners in the Department of Treasury and other parts of the administration are working together with those of you in the community-based organizations and non-governmental organizations to tackle these problems. We have -- over a period of time, we have modified the modification programs to address the ongoing aspects of the crisis. Some of it is in predatory lending at the beginning. Then with the increase in -- where people were in an appropriate loan, appropriate mortgage, but because of their unemployment situation or because of the decrease in the value of the home, they get in -- other aspects take over. And as that has occurred, we have modified the programs in order to address and adjust as we go along.

So, today, the modifications outweigh the number of foreclosures, but we have a lot of work to do ahead of us. One of the aspects that is of particular importance in my area of fair housing and equal opportunity, of course, the discrimination aspect in terms of the lending up front, but also the scams that occur.

So we have worked, again, with our partners and greatly depending upon our partners in the communities. Partners that speak languages other than English, for example, to make sure that the types of targeted scams in any minority communities of non-English speakers, African

Americans and others are addressed and that also occurs at the state and local level, with many of the laws that are broken are state laws rather than federal laws.

But we have an array of tools to address this. And certainly in the area of future -- of saving people before they get into the foreclosure situation or taking properties that are already in foreclosure and allowing community-based organizations and cities and communities to use HUD funding to support them and transform them into affordable housing. These are all areas where we have a strong commitment to work together with the U.N. and all of those gathered in Geneva.

MS. MACVICAR: Thank you.

MR. BAME: Back to you.

MS. MCVICAR: Thank you. Columbia Law School, please.

Q Thank you. Good afternoon, I'm Risa Kaufman from the Human Rights Institute at Columbia Law School.

We appreciate that you've included in your UPR delegation a representative from a local human relations commission. This inclusion and many of your answers and comments today recognize that the federal government must work in partnership with state and local officials, ensuring that the human rights commitments that are made here in Geneva are realized in local communities throughout the United States where many of the concerns that have been raised by civil society are felt most acutely.

With this in mind, how will you include state, local and tribal and nation governments and commissions in your follow up from the CPR process? And if I may pose a question directly to your local agency representatives, what federal support do you need, do you and your colleagues need in order to bolster human rights implementation at the state and local level?

Thank you.

MS. MACVICAR: Robin Toma, do you want to begin with -- begin with the last part of that question?

MR. TOMA: Sure. Well, just to start off, I do want to point out that there hasn't historically necessarily been a tight connection between the federal government and the over 150 state, county and city human rights and human relations commissions that exist around the country, many for over 50 and 60 years, enforcing anti-discrimination laws and carrying out public education and training around human rights issues.

I -- and I do want to point out that it was this year that we -- for the first time that the State Department reached out to the International Association of Official Human Rights Agencies, which is a nonprofit organization that brings together these agencies, to ask us specifically to provide information regarding the international human rights treaty obligations of the United

States. So we think that is the beginning of a very fruitful relationship. We've had the opportunity to have representatives from the State Department Legal Adviser Office at our conferences, as well as from the White House National Security Council. And my presence here on this delegation obviously is another indication that we are strengthening that connection between federal, state and local.

The particular question you ask is that these agencies, which have -- exist in all levels of government and in 48 states around the country, are also -- while they've had a long relationship with EEOC and HUD and with the assistant secretary for Civil Rights in HUD, as well as with the leadership of the EEOC, we've also been challenged by the fact that local government with budget cuts often turns to our agencies as the first place to cut, because there is no mandate for our existence because we're not seen as an essential service comparable to many others. And so those agencies are really struggling to continue and maintain the work they currently do, and so one of the obvious needs for us -- and I'll emphasize what was mentioned earlier, that I'm speaking on behalf of myself and not on behalf of the U.S. government -- but it's clear that we need greater support and resources to continue the work of gathering that information, training our agencies and addressing some of the human rights problems that are very apparently local and that I think were made clear in today's hearing as well as in this -- in this discussion. Death penalty, racial profiling, housing, homelessness, health care -- all of those are responsibilities that the county government in L.A., as well as city departments such as the LAPD, are directly involved in at a much greater frequency with the population than the federal government. And so I think it will be critical for us to receive the kind of support and engagement, including grants that help collaboration between our different agencies, which we do already, as well as support and training so that we can really expand this relationship and not only identify the issues that need to be addressed but also help provide the solutions at the local level that we often are involved in and know closely who the players are at the local level.

MS. MACVICAR: Thank you.

MR. TOMA: (So I think ?) it's a great opportunity.

MS. MACVICAR: The other part of that question, Esther Brimmer, the question of how you intend to move this process forward from today.

MS. BRIMMER: Thank you. I wanted to -- also to let people know that the State Department has been exploring ways to reach out to state and local authorities on foreign policy issues. And we actually have a new mechanism -- the secretary of State actually now has an adviser on outreach to state and local communities, Reta Jo Lewis, who works on these intersections between foreign policy issues and our state and local communities. So that's an important new mechanism that also complements our overall foreign policy effort.

And as we talked to earlier in reply to an earlier question, that we also see this conversation today as (it's at ?) phase one of a -- well, actually, it's phase two (of ?) a longer conversation. The first year of our conversations were phase one. We're now here. I'll have our conversation today. But we will continue working on these issues both in terms of our immediate reply on Tuesday, but then looking at how we can adopt these measures between now, March and beyond.

MS. MACVICAR: Thanks.

Mr. Posner.

MR. POSNER: Yeah, just one quick comment in addition to what Esther said. I think it's important for us to think about many of the issues we're discussing here. Police brutality, for example, lots of other issues are local issues or state issues. And it's critical that we begin to figure out in a more systematic way how to bring state and local governments into the process. I remember in -- when I was outside of government in 1994 when the U.S. presented its first report to the Human Rights Committee under the civil and political covenant, I went to my predecessor several times removed, John Shattuck, and I said, "What about the 50 states?" And there really was no plan.

And so we went to the attorney general of New York, Bob Abrams, and we said: Would you send something out to the attorney generals in the 50 states? We got back some unbelievable responses. They had no idea that any of this was going on, no idea.

And we're a bit farther than that, but frankly, this is an area where there's a lot of work for us to do. This is still largely at a federal level, and there's a huge state apparatus that's largely not engaged in this as they need to be. And if we're going to be really successful, it's got to take place at that level.

MS. MACVICAR: The Woodhall Freedom --

MR : (Off mike.)

MS. MACVICAR: Yes. Sorry, Washington.

MR.: Just to add to that conversation for a moment.

MR. TRASVINA: I mean, if I could add, over the -- for the past 20 years, we've had a very strong and ongoing relationship with state and local civil rights agencies. And I'm very pleased that under this administration, we have been able to increase the amount of money that we give these agencies to work on our cases. We cannot do our work on fair housing, ending housing discrimination without these partners. They work on our cases, we reimburse them for their cases. And we're looking for other ways both in regulation and otherwise for them to play a major role, and for us to be able to support them with more HUD dollars to be able to take on some of the larger systemic issues dealing with housing discrimination.

So the point is very important, and we think our programs are a model and certainly would like to share those with other agencies, and to encourage more state and local agencies to come forward and be our partners.

MS. MACVICAR: Harold, did you want to add something?

MR. KOH: Just quickly that, as you know, the process from here is that on Tuesday we will get a set of recommendations from the troika at the Human Rights Council based on recommendations that were made to us this morning in the UPR session. Those recommendations that cannot be implemented without either state and local participation or without the participation of civil society, part of our response will have to be that we're going to go back and continue on the consultations that we began before the UPR process began. Part of the purpose of going to 11 different communities was precisely to gather inputs, but it was also to create a network with which to go back after these recommendations are received.

MS. MACVICAR: We have a question via the chat room, I think, from Mexico City, asking, "Please comment on how the administration proposes to ensure that ICE programs such as 287(g) and Secure Communities will not continue to violate human rights through practices through racial profiling."

MS. SCHALANGER: Thank you. Thank you. I guess this is sort of the same question that's been asked before, but let me give a little bit fuller answer since it seems to be a topic of great interest to a lot of the -- a lot of the interlocutors this morning as well.

Racial profiling in law enforcement is not allowed in the United States, and that's true for those effectuating 287(g) agreements. And working by way of the Secure Communities arrangement with ICE, those arrangements do not expand the authority of the local law enforcement to violate the Constitution. That's not what they're about. What they are about is making sure that DHS, in implementing the immigration laws, can accomplish its purpose, which the secretary has repeated over and over, of focusing immigration enforcement on criminal offenders and making sure that we prioritize enforcement against those folks.

And so partnerships with local law enforcement are extremely important to getting that done, but they come with risks, and those risks include this risk of racial profiling. It is not allowed, and if it happens, there are two different methods by which it can be reported. It can be reported to the Justice Department, because these are local law enforcement offices; it can be reported to DHS, and we have an apparatus to go out, see what's going on, and try to solve problems with that. We don't -- so Justice operates by way of lawsuits, and we operate by a different, more internal administrative process, but both are available avenues if there are violations going on.

So I want to encourage -- I want to encourage civil society to use those processes. They are important, and they are how we will detect and solve problems.

Let me say one other word about other ways that we try to make sure that there are not civil rights violations that go on as part of 287(g) and Secure Communities. And there are a lot of other civil rights obligations that are not about racial profiling -- there are language access obligations; there are humane detention obligations. There's a whole host of obligations that go with those. In all of that, what we do is we are working -- we have a new agreement that we signed with local law enforcements under 287(g). We have a new monitoring process that is being done with routine audits of 287(g) jurisdictions.

We also have a process whereby my office, the Office for Civil Rights and Civil Liberties, can go out and inspect and see what's going on not only with respect to racial profiling but any other

kinds of civil rights violations that are closely associated with 287(g) jurisdictions. We also do a month of training of every new 287(g) officer, which includes civil rights training.

So that's not to say there isn't areas for improvement, and that's the thing that I focused on in my last answer. And I want to just end with that. There's always room for improvement, and I really look forward -- we really look forward -- to working with civil society, with community-based organizations, with advocacy NGOs, with all of them, to try to improve all of those processes. But the processes -- the processes are out there and they're available to be used, and I encourage you to use them.

MS. MACVICAR: Can we hear from the Woodhull Freedom Foundation, please?

Q (Off mike) -- follow-up question. (Off mike) -- follow up with -- to that, specifically to that.

MS. MACVICAR: Let's go -- let's go this way and we'll come back to you, okay?

Q We can go after them, if -- (off mike).

MS. MACVICAR: Okay. All right, if you want to do that way, please. Go ahead.

Q We understand --

MS. MACVICAR: Can you tell me who you are first, please?

Q My name is Salvador Reza. I come from Phoenix, Arizona.

MS. MACVICAR: Thank you.

Q I'm part of a human rights network, Tonatierra.

Specifically to that, in Maricopa County, all those safeguards are failing. They have been investigating Sheriff Joe Arpaio for two years and they still -- when I got arrested, you know, for no reason at all, the 287(g) officer himself threatened me with 20 years -- 20 days in jail if I didn't tell him my -- where I came from when I was asking for my rights. But on top of that, the - - Sheriff Joe Arpaio does not allow access to the Justice Department to his own jails. And on top of that, after two-and-a-half years and even, you know, looking for -- at him for a lot of reasons, nothing is happening.

What has to happen in order for all those safeguards that you're talking about for actually to be implemented on the ground? Because nobody believes you anymore in Maricopa County.

MR. BAGENSTOS: So let me answer that. As you probably know, it's not just an investigation, the Department of Justice has sued Maricopa County for obstructing our investigation into them. The investigation that we're looking -- the potential violations that we're looking at extend to a number of matters, both racial profiling and excessive force by agents and deputies of the sheriff's office outside of the jail, but also conditions in the jails and the -- and potential

discrimination within the jail. So the kind of access-to-justice issues that you're talking about are really central to what -- to our investigation. And we -- and in the lawsuit we have filed, we're seeking information about that so that we can see whether they have violated civil rights laws. It's also -- I should emphasize, the Department of Justice has taken action against other Arizona laws that have been used by Sheriff Arpaio or would have been used by Sheriff Arpaio and others as perhaps a mechanism for racial profiling. One, in the Candelaria case in the Supreme Court, the Department of Justice has taken the position that the employer sanctions law in Arizona is preempted by federal immigration law. In our Maricopa County investigations, one of the things we've found is use and abuse of that law as a means of racial profiling. And of course, the Arizona SB1070, which essentially was a state immigration law, the United States sued Arizona over and obtained an injunction, which we're defending on appeal in the 9th Circuit Court of Appeals.

So this is something we take very seriously. We have filed lawsuits, we have been very aggressive, and we will continue to be aggressive. And if you have information that we should look at that we're not looking at, you should let us know because we want to hear it.

MS. MACVICAR: Margaret, do you want to add to that?

MS. SCHLANGER: I guess what I want to say, just to add to that slightly, is that a good deal of the measures that I just described are quite recent. And so -- so I hear you that it's a very frustrating situation and I think they were necessary measures, and so it was particularly frustrating before.

We're continuing to make progress, and so -- I don't want to ask for your patience, but I want to ask for you to believe that we are operating in good faith and with real determination to bring about changes in places that seem to have problems, and we are building a system that I think will robustly do that.

MS. MACVICAR: ACLU in Arizona, you have a quick follow-up?

Q Yes, I just had a quick follow-up.

MS. MACVICAR: Hang on a second, wait for the mike -- two secs.

Q My name is Alessandra Soler-Meetze; I am the executive director at the ACLU of Arizona. We're also based in Maricopa County. I just have a quick question. Why not terminate these programs in Maricopa County? I mean, given the evidence of the abuses, why not immediately terminate that program?

MS. MACVICAR: Margo?

Q Both 287(g) and Secure Communities.

MS. SCHLANGER: Well, as you know, we did terminate the task force 287(g) agreement in Maricopa County, which was the one that expanded the authority of the sheriff's office to enforce

immigration laws. And we took that authority away from the sheriff. And what remains at this point is the ability of ICE, when people are arrested in Maricopa County on state law charges, on criminal offenses, to process those people and see if they are appropriate to be removed. And so that's not an expansion of authority; that's ordinary criminal justice enforcement.

So I think -- I mean, that's the answer.

Q (Off mike) -- 54 percent of people in America who have been -- (off mike). The majority of those -- (off mike) --

MS. SCHLANGER: So I would be anxious to talk to you about this further, but I don't -- I don't think that could be any longer true, because right now, the sheriff's office does not have authority to pick people up for non-criminal violations and run them through criminal offense processes.

MS. MACVICAR: Let's agree that --

MS. SCHLANGER: So I think that's outdated. But I would like to talk to you about it.

MS. MACVICAR: -- let's agree that we'll move on, and you can make -- and now we'll go to the Woodhull Freedom Foundation.

Q Thank you. My name is R.J. Thompson; I'm the director of the human rights program for the Woodhull Freedom Foundation.

Human rights abuses are occurring domestically and internationally in the name of local anti-sex-trade laws such as prostitution-free zones in local communities and national anti-trafficking policy. In today's review, Uruguay, while it was being cut off, raised the important issue of access to services for sex workers. Those involved in the sex trade who experience exploitation require social, health and legal services. But the response to human trafficking in the U.S. currently focuses on law enforcement approaches that further alienate and traumatize survivors of trafficking.

Requiring recipients of HIV and anti-trafficking funding, for example, to adopt a stance condemning sex work and barring those who have engaged in consensual sex work, even if they have been trafficked, from entering the U.S. are examples of policies that violate human rights. Will the administration repeal these policies, and who specifically in the administration can sexual rights advocates work with once we get back home?

MS. MACVICAR: Who would like to take that? Georgina, perhaps? Health and Human Services?

MS. VERDUGO: Well, I'm not really aware of the requirement of anti-sex-trafficking in terms of HIV enforcement and the continuation. Certainly we have a new HIV national strategy that includes expanded services for all women as part of an expanded recognition of the greater HIV/AIDS -- part that is going towards women. But we don't have any -- I'm not aware of that limitation, and I'd like to talk to you about it. Or get more information from you.

MS. MACVICAR: Yes, from Justice, please.

MR. BAGENSTOS: I just want to say, I mean, human trafficking is a major international problem and it's a problem in America, and it's a crime. And we will pursue criminal justice strategies against human trafficking. I mean, that's something that we've -- that we will do and we will continue to do.

We will pursue other strategies as well. It's very important to us in our criminal enforcement of the human trafficking laws. We just reached a 10-year anniversary of the expanded human trafficking law in the United States, and it's very important to us in enforcing human trafficking laws that we are very sensitive to the interests and needs of the victims, because of course the goal here is to punish the perpetrators and not the victims. I think we try very hard to be attentive to that.

We provide them specialized care and services. We take account of that in immigration status determinations as well. We provide access to legal services and I can tell you because it's my office that does these prosecutions, the folks who are prosecuting these cases, you know, they know -- they get to know very well the victims. They care very much about their welfare and they try very hard to do what's right by them while going after the people who are perpetrating these crimes.

MS. MACVICAR: Ladies and gentlemen, we are coming to an end of our time. We committed only to be here until 5 o'clock. Amnesty International, please, the last question.

Q Thank you. Thank you for holding this town hall and facilitating this open dialogue with civil society.

I appreciate the statements this morning and at this town hall from the delegation affirming the strong support of the administration for the ratification of CEDA, urged by so many government delegations.

In that spirit and on behalf of the CEDA coalition of more than 160 national and international organizations, I wanted to ask, will the administration commit to -- communicating to the Senate leadership that CEDA ratification is a priority and what other steps is the administration planning on taking to ensure that CEDA is ratified?

MS. MACVICAR: Thank you. Harold?

MR. KOH: Well, I testified on behalf of CEDA as assistant secretary for Democracy, Human Rights and Labor in 1999. I testified for it again as a private citizen in the early 2000s. As you know, there has been a very dynamic effort by many individuals in this room to try to build a coalition. Obviously, to build a coalition that gets to 67 got harder a couple of days ago. I think all of the commitments have been communicated and the question is how to work with a new political environment to get those commitments made a reality.

MS. MACVICAR: Esther, do you want to add to that or Michael?

MR. POSNER: Yeah. I was just going to add -- I believe that Senator Durbin of Illinois is holding a hearing through the judiciary subcommittee on human rights on November 18th. I think, Sam, you're testifying and Melanne Verveer from the State Department. So that'll be an opportunity for us to raise the profile of this and we're going to take it then one step at a time.

MS. MACVICAR: Thank you. Esther?

MS. BRIMMER: I was just going to comment on that, an upcoming hearing that indeed -- advancing global women issues is a major priority for this administration, indeed. As we discussed in our presentation this morning. The secretary created the office of the global women's issues headed by Ambassador Verveer who will be actively participating in the upcoming hearing just described.

MS. MACVICAR: Thank you.

Ladies and gentlemen, with that, our time is up. Thank you very much. This has been a most -- (applause) -- interesting session. We've covered a lot of ground.

My thanks to all of you from Civil Society who came to Geneva. My thanks to those in Washington, to those who joined us on the worldwide web, to those who submitted questions by e-mail and by the chatroom, to all of you, thank you very much and to the panelists.

November 6, 2010