

## Agenda

### Civil Society Consultation for the U.S. Universal Periodic Review: Washington, DC

April 28, 2010

#### **Welcome and Introductions**

*Stephen Rickard, Open Society Institute; Devon Chaffee, Human Rights First; Andrea Prasow, Human Rights Watch; Wendy Patten, Open Society Institute*

#### **Panel I: Detainee Treatment, Transfer and Accountability**

*Devon Chaffee, Human Rights First; Meg Satterthwaite, NYU School of Law Center for Human Rights and Global Justice; Laura Olson, Constitution Project*

#### **Panel II: Detention and Trial of Terrorist Suspects**

*Joanne Mariner, Human Rights Watch; Jamil Dakwar, American Civil Liberties Union*

#### **Panel III: Privacy and Surveillance**

*Greg Nojeim, Center for Democracy and Technology; Kate Martin, Center for National Security Studies; Suzanne Spaulding*

#### **Panel IV: Profiling and Discrimination Post 9/11**

*Deepa Iyer, South Asian Americans Leading Together; Jumana Musa, Rights Working Group; Rajdeep Singh, Sikh Coalition*

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**Seven federal agencies participated in this UPR Session:** the Department of State, the Department of Justice, the Department of Defense, the Department of Homeland Security, the Department of the Treasury, the Office of the Director of National Intelligence, and National Security Council staff were represented.

- **Panel I: Detainee Treatment, Transfer and Accountability**

The first speaker highlighted the importance of President Obama's executive order on detainee treatment. She praised it as renewing the United States' commitment to the Geneva Conventions and ordering the closure of CIA detention facilities. She also stated that while the Army Field Manual has many strengths including specific bans on certain interrogation techniques, it has been interpreted to allow sleep deprivation, long standing, isolation and sensory deprivation. She called for the Field Manual to be reviewed and amended, as well as to allow the International Committee of the Red Cross to have increased access to secret U.S. facilities.

The next panelist commented on issues of transfer. She said that extraordinary rendition is an infamous issue and that all forms of transfer have been under examination by the Interrogation and Transfer Policy Task Force that was created by executive order. She stated that there must be procedural guarantees, such as the right to challenge one's transfer. She also asserted that diplomatic assurances need to follow clear procedures and should be subject to judicial review. Additionally, she argued for guarantees not to transfer individuals to situations where they can be tortured and the need for a valid legal basis for apprehension and transfer. Her recommendations included increased transparency, individualized review, and clarity on post-return monitoring.

The next speaker called for an investigative commission to review detainee and transfer issues. She suggested that it investigate all the relevant facts about detention policies but not seek criminal prosecutions. She stated that there must be thorough investigation into whether and how the Geneva Conventions and Committee Against Torture were violated. She also stated that the balance of power has shifted away from the system of checks and balances toward increased executive power, leaving the door open to future abuses. She also said that the State Secrets privilege, in her view, had been transformed into an immunity doctrine. She stated that it blocks litigation of cases that involve national security and called for reform so that judges could determine whether or not the privilege applies to individual cases.

A number of audience members contributed to the following discussion. A civil society representative, referring to the question of accountability for torture, reminded the authors of the United States UPR report to keep in mind "first do no harm". He stated that it would be

extremely unfortunate if the U.S. Government were to advance arguments that would undermine accountability in other countries. Another participant conveyed frustration with what he described as a lack of progress in codifying any of the principles of the executive order.

- **Panel II: Detention and Trial of Terrorist Suspects**

The panel began with a civil society representative asking attendees whether international human rights law is relevant to detention authorities. The next speaker mentioned the importance of prosecuting suspected terrorists fairly and quickly. Regarding the U.S. Government's use of military commissions, she said that there are compelling differences between the commissions and courts. She cited what she described as the key flaws of military commissions as: a lack of independence and impartiality, discrimination based on citizenship and relaxed hearsay rules.

Another panelist stated that the Authorization for Use of Military Force has not been interpreted consistent with international human rights law, something that can be improved without resort to new legislation.

Another interlocutor from civil society asked about the implications of military commission hearings and trials. She described the existence of allegations of mistreatment regarding detention in Afghanistan and encouraged the release of more information.

- **Panel III: Privacy and Surveillance**

A perceived increase in the ability of the U.S. Government to collect information on people was of serious concern to the first panelist. She discussed the difficulty of gauging the scope of government surveillance power. After mentioning the lack of adequate structures to protect First Amendment and privacy rights, she highlighted two main points. First, she said that there had been changes in the way technology is used and a determination by legal authorities that the traditional Fourth Amendment distinctions no longer apply to protect Americans' privacy rights. She called on the Obama Administration to extend Fourth Amendment protections to non-traditional sources of information. Second, she discussed adequate safeguards for using surveillance against political opponents and adherents of certain religions. While there has been a long struggle on this issue, she asserted that Federal Bureau of Investigation (FBI) guidelines have been weakened since the terrorist attacks on September 11, 2001.

Next, a panelist stated that the chilling effect caused by restrictions on privacy undermines national security. Raising the issue of the reinforcing relationship between privacy and security, she asserted that the matter of foreign agent intelligence surveillance needs improvement. She also argued that because there is no official statement regarding the government's interpretation of its broad statutory authority, greater transparency is needed. Another speaker stated that government reporting on privacy protections reveals significant gaps.

She stated that government reports should be supplemented by forward-looking reporting about what the United States is doing to close these gaps.

Members of civil society questioned the effectiveness of the Foreign Intelligence Surveillance Act. They stated that its requirements lack a standard of suspicion and that it can chill civil society activities. Other interlocutors called for increased oversight as well as independent criteria and standards for collection that should be related to the standards of the International Covenant on Civil and Political Rights.

- **Panel IV: Profiling and Discrimination Post 9/11**

The first panelist addressed the post-September 11 impact on South Asian and Sikh communities. Key concerns of these communities include airport screening, border protection, and interrogations of minority communities. Her recommendations included a revision of the Justice Department's 2003 guidance on racial profiling by federal agencies.

The next participant discussed U.S. Government profiling at borders, watchlists, and airport security. He stated that the rescinding of the 14-country directive is a step forward, but he said that de facto profiling still occurs. Regarding borders, he stated that U.S. citizens and permanent residents are subject to inappropriate actions such as intensive questioning and searches. Regarding watchlists, he asserted that between 2007 and 2009, thousands of redress requests were filed, but the government has no effective mechanism to address these complaints. He recommended that U.S. Government agencies undertake individual audits of screening at airports and borders. Other participants from civil society discussed alleged infiltration of mosques without suspicion and how it can result in a fear of worshipping. Concern was also expressed regarding allegations that Muslims are being coerced into becoming informants. Civil society participants stated that FBI guidelines need to be revised to address these concerns and to be made consistent with Department of Justice guidance.