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## Recent Developments

### **The Role of Civil Society Organizations in the United States' Recently-Concluded CERD Review. By Bradley Silverman<sup>†</sup>**

In recent years, American civil society organizations (CSOs)<sup>1</sup> have taken on a more active role in monitoring and enforcing America's compliance with a variety of its obligations under international law. CSOs have engaged in a human rights monitoring and enforcement strategy to pursue their missions. CSOs are interacting with a variety of global enforcement monitors to hold the United States' feet to the fire—spotlighting areas where they believe the United States has fallen short of its responsibilities to protect and advance social justice. This Recent Development will examine the United States' recently concluded Convention on the Elimination of all forms of Racial Discrimination periodic review to illustrate and explore both its mechanics and implications.

In 1994, the United States ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which obligates signatories to take affirmative measures to combat racial discrimination.<sup>2</sup> The Convention established the Committee on the Elimination of Racial Discrimination (CERD Committee) to monitor its implementation in signatory states.<sup>3</sup> As a signatory to the Convention, the United States is obligated to submit a report every two years “on the legislative, judicial, administrative or other measures . . . [it has] adopted” to promote racial equality.<sup>4</sup> Recently, the United States completed its third periodic review, submitting a report to the United Nations in June 2013<sup>5</sup> and appearing before the CERD this past August in Geneva, Switzerland.<sup>6</sup>

Under the terms of its ratification, the Convention is not a self-executing law in this country.<sup>7</sup> Human rights advocates use CERD review to bring

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1. “The increasingly accepted understanding of the term civil society organizations . . . is that of non-state, not-for-profit, voluntary organizations formed by people in [the] social sphere.” *Civil Society*, WORLD HEALTH ORG., <http://www.who.int/trade/glossary/story006/en/> (last visited Dec. 4, 2014).

2. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4 1969) (ratified by the United States Oct. 21, 1994) [hereinafter Convention].

3. *Id.* art. 8.

4. *Id.* art. 9(1).

5. *United States Periodic Report to the Committee on Elimination of Racial Discrimination*, U.S. DEP'T OF STATE (June 12, 2013), <http://www.state.gov/documents/organization/210817.pdf>.

6. See U.S. Delegation to the Comm. on the Elimination of Racial Discrimination, *Media Note*, U.S. DEP'T OF STATE (Aug. 11, 2014), <http://www.state.gov/r/pa/prs/ps/2014/230498.htm>.

7. U.S. Reservations, Declarations, and Understandings, International Convention on the

pressure to bear on the United States to pursue policies to reduce racial disparities in American society. To that end, CSOs “engage with [CERD] and its work” in numerous ways before, during, and after formal review sessions: they participate in the preparation of the government’s own reports, lobby at review sessions, and monitor domestic Convention implementation.<sup>8</sup> CSOs make their most significant contribution to the review process through the submission of “shadow reports,” which augment and contextualize the United States’ formal reports by detailing areas where the United States allegedly has failed to meet its Convention obligations, shedding light on “what is actually happening on a daily basis to communities of color across the U.S.”<sup>9</sup> Many shadow reports seek to bring issues within the ambit of CERD review by tying a government practice, policy, or inaction to either discriminatory purpose or effect,<sup>10</sup> both of which are incorporated into the CERD definition of “racial discrimination.”<sup>11</sup>

This cycle, CSOs played a more prominent role in the United States’ CERD review than ever before, contributing dozens of reports on topics ranging from housing to accessible medical care to the rights of indigenous peoples.<sup>12</sup> To enhance the efficacy of their presentations, CSOs coordinated their advocacy efforts through a U.S. Human Rights Network-established umbrella organization, the CERD Taskforce. This Taskforce was created to “serve as the primary coordinating body for social justice groups and individuals interested in using [CERD] to advance racial justice in the United States.”<sup>13</sup> By serving as a central organizing body and information resource for CSOs seeking to lever the CERD review process for human rights advocacy, the Taskforce would “facilitate broad engagement in the [CERD] review process” and “promote [CSO] participation in civil society and government consultations.”<sup>14</sup> Though a prior Taskforce had played a coordinating role during the prior CERD review cycle,<sup>15</sup> the 2014 process represented a high-water mark of CSO engagement with CERD review.

The Taskforce synchronized CSOs’ advocacy efforts by “disseminat[ing]

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Elimination of All Forms of Racial Discrimination, 140 CONG. REC. S7634-02 (daily ed. June 24, 1994).

8. Daisuke Shirane, *ICERD and CERD: A Guide for Civil Society Actors*, in INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM 24 (2011).

9. *ICERD: The International Convention on the Elimination of All Forms of Racial Discrimination*, U.S. HUMAN RTS. NETWORK, <http://www.ushrnetwork.org/icerd-project> (last visited Dec. 4, 2014) [hereinafter ICERD Resources].

10. See generally *Executive Summary of U.S. Civil Society Shadow Report Submissions*, U.S. HUMAN RTS. NETWORK, [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerdexecutive\\_summary2014final.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerdexecutive_summary2014final.pdf) (last updated Aug. 7, 2014).

11. Convention, *supra* note 2, art. 1 ¶ 1.

12. See generally *Executive Summary of U.S. Civil Society Shadow Report Submissions*, *supra* note 10.

13. *CERD Taskforce*, U.S. HUMAN RTS. NETWORK, <http://www.ushrnetwork.org/members/taskforce/cerd-taskforce> (last visited Dec. 4, 2014).

14. *Id.*

15. See Lisa Crooms, *Executive Summary*, U.S. HUMAN RTS. NETWORK, <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd2008executivesummary.pdf> (last updated Feb. 2008).

information relevant to the CERD review of the United States” among them.<sup>16</sup> As CSOs worked on their reports, the Taskforce provided a wealth of background knowledge and educational resources, including information on the Convention’s interaction with domestic civil rights law<sup>17</sup> and applicability to particular discriminated-against communities.<sup>18</sup> It also “coordinate[d] the submission of shadow reports and other relevant written responses” by providing tools and training to assist CSOs with their report writing. The mechanics of shadow report writing were unfamiliar to the many CSOs that were participating in the review process for the first time.<sup>19</sup> In addition to producing a template,<sup>20</sup> sample reports,<sup>21</sup> and guidelines on effective writing,<sup>22</sup> the Taskforce guided CSOs through various aspects of the writing process, including identifying organizational expertise and allies.<sup>23</sup>

The Taskforce also coordinated the human rights community’s direct engagement with government officials before and during official proceedings in August. In the months leading up to its appearance before CERD in Geneva, the United States repeatedly consulted with CSOs.<sup>24</sup> In Geneva, the Taskforce planned or proposed a schedule of meetings, including a proposed meeting with U.N. entities such as the Civil Society Unit, Special Rapporteurs, and High Commissioner of Human Rights.<sup>25</sup>

It is too soon to measure the influence that CSOs wielded in CERD review or to fully ascertain the impacts of their participation. The review process went virtually unnoticed by American media outlets, which devoted

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16. *Id.*

17. *The CERD Treaty and U.S. Civil Rights Law*, U.S. HUMAN RTS. NETWORK (Oct. 2011), [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/ushrn\\_prrac\\_cerd\\_and\\_civil\\_rights\\_comparison\\_factsheet\\_0.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/ushrn_prrac_cerd_and_civil_rights_comparison_factsheet_0.pdf).

18. See, e.g., *Using the International Convention on the Elimination of all forms of Racial Discrimination to Hold States Accountable for Racial Discrimination*, U.S. HUMAN RTS. NETWORK, <http://www.ushrnetwork.org/IITC-CERD-Handout-ENG#sthash.LVVUg1Ca.dpuf> (last visited Dec. 4, 2014).

19. See *ICERD Newsletter One: 2008 ICERD Shadow Reports Compilation*, U.S. HUMAN RTS. NETWORK, <http://www.ushrnetwork.org/news-updates/icerd-newsletter-one-2008-icerd-shadow-reports-compilation> (last visited Dec. 4, 2014).

20. *ICERD Suggested Shadow Report Template*, U.S. HUMAN RTS. NETWORK, <http://www.ushrnetwork.org/resources-media/icerd-suggested-shadow-report-template> (last visited Dec. 4, 2014).

21. See ICERD Resources, *supra* note 9. See, e.g., *Written Statement on Deportations to Haiti*, U.S. HUMAN RTS. NETWORK (2013), [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/21\\_page\\_293-299\\_deportations\\_to\\_haiti\\_miami\\_law.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/21_page_293-299_deportations_to_haiti_miami_law.pdf).

22. *10 Steps to Writing a UPR Stakeholder Report*, U.S. HUMAN RTS. NETWORK (2014), [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/10\\_steps\\_upr\\_stakeholder\\_handout\\_advforhr.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/10_steps_upr_stakeholder_handout_advforhr.pdf).

23. *How to Write an Effective Shadow Report*, U.S. HUMAN RTS. NETWORK 2-15 (June 4, 2014), [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/how\\_to\\_write\\_an\\_effective\\_shadow\\_report\\_-\\_cerd\\_training\\_call\\_june\\_4.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/how_to_write_an_effective_shadow_report_-_cerd_training_call_june_4.pdf).

24. See *UN Human Rights Mechanisms Calendar*, U.S. HUMAN RTS. NETWORK (2014), [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/ushrn\\_un\\_human\\_rights\\_mechanisms\\_calendar\\_2.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/ushrn_un_human_rights_mechanisms_calendar_2.pdf); *Government Consultations*, U.S. HUMAN RTS. NETWORK, <http://www.ushrnetwork.org/events/government-consultations> (last visited Dec. 4, 2014).

25. *Tentative Geneva Schedule*, U.S. HUMAN RTS. NETWORK, [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd\\_geneva\\_schedule\\_august\\_2014\\_subject\\_to\\_change.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd_geneva_schedule_august_2014_subject_to_change.pdf) (last visited Dec. 4, 2014).

little if any coverage to the proceedings or to comparisons of the process's outcomes with those of prior years. There is reason, however, to believe that CSOs made a meaningful impact. During the CERD review cycle, forty-six shadow reports were submitted through the Taskforce.<sup>26</sup> This figure constitutes a 27.8% increase from the thirty-six reports submitted through the Taskforce during the 2008 review cycle.<sup>27</sup> Moreover, many recommendations found in CERD's Concluding Observations<sup>28</sup> offered suggestions for continuing reform, reflecting concrete proposals suggested in shadow reports, such as the need for a state-federal coordinating mechanism for CERD implementation.<sup>29</sup> However, many recommendations are framed at a level of generality such that it is difficult to determine the degree to which they reflect CSO input. CERD pointedly recommended that the United States "continue consulting and expanding its dialogue with [CSOs] working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to these concluding observations."<sup>30</sup>

Three months after CERD review concluded, CSOs weighed in on the United States' periodic review under the Convention Against Torture,<sup>31</sup> again highlighting American shortcomings.<sup>32</sup> A campaign to influence the United States' Universal Periodic Review<sup>33</sup> in 2015 is underway.<sup>34</sup> The Taskforce's apparent success in mobilizing and coordinating CSOs' engagement with CERD review suggests the continuing potency of this approach not only with respect to future CERD review cycles, but potentially many other domains of human rights monitoring as well.

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26. *CERD Shadow Reports*, U.S. HUMAN RIGHTS NETWORK, <http://www.ushrnetwork.org/resources-media/cerd-shadow-reports> (last visited Dec. 4, 2014).

27. *ICERD Newsletter One: 2008 ICERD Shadow Reports Compilation*, U.S. HUMAN RIGHTS NETWORK, <http://www.ushrnetwork.org/news-updates/icerd-newsletter-one-2008-icerd-shadow-reports-compilation> (last visited Dec. 4, 2014).

28. *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, at 13 (Aug. 29, 2014, 85th CERD session document) [hereinafter *Concluding Observations*].

29. *Id.* at 2-3; see also LAWYERS' COMM. FOR CIVIL RIGHTS UNDER LAW, U.S. FEDERALISM AND ITS IMPACT ON ICERD COMPLIANCE 5 (2014).

30. *Concluding Observations*, *supra* note 28, at 13.

31. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988).

32. *CAT Shadow Reports*, U.S. HUMAN RTS. NETWORK (last visited Dec. 4, 2014), <http://www.ushrnetwork.org/cat-shadow-reports>.

33. See G.A. Res. 60/251, ¶ 5(e), U.N. Doc. A/RES/60/251 (Mar. 15, 2006).

34. *UPR: Universal Periodic Review*, U.S. HUMAN RTS. NETWORK, <http://www.ushrnetwork.org/our-work/project/upr-universal-periodic-review> (last visited Dec. 4, 2014).