

# Invoking Human Rights and Transnational Activism in Racial Justice Struggles at Home: US Antiracist Activists and the UN Committee to Eliminate Racial Discrimination

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## Abstract

In February 2008, over 120 members of US civil society representing a range of domestic non-governmental organizations attended a United Nations hearing regarding the US government's compliance with the International Convention to Eliminate All Forms of Racial Discrimination. In this article, I analyze a distinct form of transnational activism that requires US racial justice activists to identify human rights standards and principles upon which to build their assertions of racial injustice, necessitating a fluency in the language of human rights and the ability to negotiate and lobby with members of a UN committee.

## Keywords

human rights, antiracism, United Nations, reproductive rights, Committee to Eliminate Racial Discrimination

## Introduction

In this great attempt to find common ground and to maintain peace, it is therefore, fitting and proper that the thirteen million American citizens of Negro descent should appeal to the United Nations and ask that organization in the proper way to take cognizance of a situation which deprives this group of their rights as men [*sic*] and

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\*) The author would like to express her gratitude to Dana Collins, Sharmila Lodhia, and the *Societies Without Borders* guest editors and reviewers for their comments. Special thanks goes to *mi hermana* Molly Talcott for providing critical feedback on several versions of the article.

citizens, and by so doing makes the functioning of the United Nations more difficult, if not in many cases impossible. – W.E.B. Du Bois, “An Appeal to the World” Submitted to the United Nations, 1947

In October 1947, W.E.B. Du Bois coordinated, contributed, and submitted “An Appeal to the World: A Statement on the Denial of Human Rights to Minorities in the Case of Citizens of African Descent in the United States of America” on behalf of the National Association for the Advancement of Colored People (NAACP) to the United Nations (UN). The appeal addressed various aspects of Black life, including the denial of legal rights and systematic and institutional discrimination in education, employment, housing, and health. In this statement, Du Bois and the NAACP leadership firmly situated African American struggles for racial justice within the context of the human rights movement; and as a result of positioning these struggles as such, they powerfully invoked a call for transnational solidarity and support directed at the UN and the “international community.”

More than sixty years later on February 21–22, 2008, over 120 US racial justice activists and advocates, including myself, engaged in a similar political strategy and went to the Palais des Nations (UN headquarters) in Geneva, Switzerland to bring attention to multiple racial injustices occurring in the United States: violations against indigenous peoples’ rights; disparities in reproductive health care for women of color; immigrant rights, including the militarization of the US-Mexico border and the rights of farm workers; the prison industrial complex; and housing rights violations and displacement resulting from Hurricane Katrina, to name a few. We went to Geneva to participate in and observe the treaty compliance review hearing between representatives of the US government and the UN Committee to Eliminate Racial Discrimination (CERD) and to challenge the image of racial progress advanced by the US government. We had an alternative and counter narrative to convey to the UN committee.

The US government ratified the International Convention to Eliminate Racial Discrimination (ICERD), the premier human rights treaty to combat racism, in 1994. Per the treaty’s stipulations and upon ratification, State Parties submit periodic compliance reports to CERD, the UN treaty monitoring review committee for the ICERD treaty. CERD openly reviews the government report the following year in Geneva with State Party representatives, which members of civil society can observe. The US government has submitted two periodic compliance reports to the com-

mittee – the first in 2000 and the second in 2007 – with reviews occurring in August 2001 and February 2008, respectively.

In this article, I delineate the space of political engagement offered by UN committees like CERD for US domestic justice groups who are discouraged by state inaction or by the inadequacies of civil rights legal frameworks. I discuss why anti-racist advocates opted to participate in the 2008 US-CERD review, what they gained from the experience, and how a human rights framework aided their anti-racist activism. I highlight the work of the Center for Reproductive Rights (CRR) as a case study of this distinct form of transnational activism. CRR's US legal program had not engaged with international human rights frameworks until recently and they viewed the CERD review as an opportunity to re-situate their work within a human rights framework.<sup>1</sup> CRR's platform agenda – women of color's reproductive rights – was *not* on the minds of the early draft writers of ICERD and thus their advocacy demonstrates the treaty's relevance for a range of contemporary racial justice struggles.

The form of transnational activism deployed by organizations like CRR required US racial justice activists to identify human rights standards and principles upon which to build their assertions of racial injustice at home, necessitating a fluency in the language of human rights and the ability to negotiate and lobby with UN committee members. The success of participating US NGOs noticeably differed depending on experience, knowledge of the process, and an ability to effectively lobby UN committee members, especially if CERD members did not show an interest in the organization's advocacy issues.

### **An Overview of the US-CERD Review**

The review hearing involved an open dialogue between US government representatives and CERD members wherein the committee evaluated the US's human rights problems pertaining to racism.<sup>2</sup> During the scheduled review, the government delegation provided the committee and civil

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<sup>1</sup>) The Center for Reproductive Rights as an organization has been involved in advocacy at the UN level; but the US legal program had negated using a human rights framework in their work.

<sup>2</sup>) Thornberry 2005.

society observers with an overview of its own report. The delegation then answered questions from the committee, requesting clarification or explanation on issues of concern. The hearing lasted for a total of six hours, divided into three-hour segments over two days. In existence since 1970, CERD is a UN committee of independently elected experts on racial discrimination.

Treaty compliance reviews require the US government to go “on record” about racism in the US, which can be useful for political organizing at national and local levels for activists. The US government cannot claim a racist-free society exists in the US as they are routinely asked to explain, for example, the disproportionately higher incarceration rates for people of color, the lack of affordable and quality healthcare for racial minority communities, and the intolerable federal response in the aftermath of Hurricanes Katrina and Rita. No other venue exists at either the domestic or international level that *requires* the US to account for continued systematic and institutional racism.

Article 9 of ICERD requires governments to submit their initial periodic report to CERD one year following state ratification and subsequently, two years after the first initial periodic report. No penalty mechanism exists for governments that submit reports late, which is unfortunately a common practice among governments. The primary purpose of the government report is to demonstrate compliance, not to necessarily admit deficiencies. In that spirit, CERD affirms the positive strides in combating racism by the reporting government, but it also highlights the shortcomings; and NGOs can play a pivotal role in identifying those shortcomings through their advocacy and lobbying efforts.

CERD bases its decisions on what issues are covered (and not covered) by referencing ICERD Article 1’s definition of racial discrimination:

In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.

Members of CERD do not always agree about what is encompassed by this definition. The intersection of gender and racial discrimination, for example, had been one area of contention. Until recently, CERD considered a gender analysis of racial discrimination in government periodic reports as

incompatible with the committee's mandate. With respect to guidelines for governments preparing to submit reports, Michael Banton, the former Chair of CERD, viewed "the integration of gender into state parties reports [as] 'fundamentally misconceived.'"<sup>3</sup>

However, after changes in UN leadership in the late 1990s, such as the appointment of Mary Robinson as High Commissioner for Human Rights (1997–2002), the inclusion of various racial issues with an acknowledgment of gender differences during the 2001 World Conference Against Racism (WCAR) in Durban, South Africa,<sup>4</sup> and the addition of new members to CERD who were receptive to gender dynamics, the committee began to modify its position on gender. CERD issued General Recommendation XXV in 2000, which mandates State Parties to ICERD "integrate a 'gender perspective' into their official understanding of racism and racial discrimination."<sup>5</sup> General Recommendations are official statements adopted by a UN committee with the purpose of elaborating on treaty obligations.

NGOs have the option to submit their own reports, known as "shadow reports," after the government's report has been filed. The shadow reports contest the arguments presented in the government periodic report. Due to General Recommendation XXV, the committee can accept shadow reports like the one submitted by CRR. The expansion of the definition of racism through the reinterpretation of Article 1 has produced a situation where a wide coalition of NGOs can participate and use this international human rights mechanism in their anti-racist advocacy and activism.

## **Research Methodology**

The data accessed for this article derives from a portion of continuing research since 2001 about feminist anti-racist efforts at the UN from the Americas region.<sup>6</sup> My ongoing qualitative research project includes interviews with NGO and UN staff, participant observation at UN events

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<sup>3</sup> Chan-Tiberghien 2004, pp. 465; see also Gallagher 1997.

<sup>4</sup> Falcón 2006.

<sup>5</sup> Crooms 2003, pp. 247; Chan-Tiberghien 2004. Refer to: <http://www.unhchr.ch/tbs/doc.nsf/0/76a293e49a88bd23802568bd00538d83?Opendocument> for the entire text.

<sup>6</sup> Falcón 2006, 2008.

about racism, and extensive document and archival research. I attended the 2008 US-CERD review with the Women's Institute for Leadership Development (WILD) for Human Rights in San Francisco, California.

The data for this article comes from six semi-structured interviews with NGO representatives from five organizations conducted in 2008 and several documents, including the US government report, NGO shadow reports, and CERD's "concluding observations." The "concluding observations" is CERD's final document containing the committee's overall evaluation of the review hearing. The shadow report submitted by CRR's US legal program is used as a case study to analyze how participating in the CERD review process affected organizing itself. I transcribed the interviews and the discussion at the review session between the US government delegation and CERD members from a combination of personal and US Human Rights Network's recordings uploaded to their website. My discourse analysis of this data reveals the CERD review process compelled US activists to remake themselves into transnational actors, forging links between UN work and local organizing.

### **A New Approach to Transnational Activism**

Transnational activism by US activists is not new,<sup>7</sup> but the particular manifestation of transnational activism I discuss in this article is relatively new, especially in the United States. The early activism of the NAACP at the UN in the 1940s largely ended when the organization shifted towards a civil rights framework by the 1950s.<sup>8</sup> The decision by the NAACP to move away from identifying as a human rights movement resulted in their efforts becoming US-centric and subsequently, stifling to transnational solidarity. Anti-racist human rights groups began emerging throughout the United States in the 1990s, such as WILD for Human Rights, the Center for Human Rights Education, the Human Rights Project of the Urban Justice Center, Mississippi Workers' Center for Human Rights, and Sistersong.<sup>9</sup> The merging of anti-racism and human rights began anew.

Interventions in the CERD review process are largely new for US anti-racist activists. In treaty compliance reviews, US activists work with a UN

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<sup>7</sup>) Della Porta and Tarrow 2005, pp. 71–93; Soohoo, Albisa, and Davis 2008 (Volume 3).

<sup>8</sup>) Anderson 2003; Skrentny 1998.

<sup>9</sup>) Smith 2008, pp. 211.

committee rather than exclusively with fellow activists in their struggles.<sup>10</sup> To effectively bolster their assertions of racial injustice, NGOs must acquire knowledge of human rights standards and ICERD principles, and they must cultivate the ability to negotiate and lobby with CERD members.

The purpose of the review is to encourage dialogue between the state and the UN committee – and dialogue is stimulated by pointed questions. Activists must communicate to CERD what they want to *ask* their government representatives for the official record about the government's plan to combat racism, a task that can be easier said than done. According to Cynthia Soohoo, Director of CRR's US legal program,

I think it is difficult for the committee to take up economic and social rights issues. I think they were interested in our issues, but wanted to know what was the remedy for these violations. And that's the hard thing when you're doing economic and social rights issues – what is to be asked of the government.

The questions must be framed in such a manner where it speaks to resolutions of identified human rights violations. In terms of questions pertaining to social and cultural rights, identifying policy, which directly violates the reproductive health rights of women of color, is challenging. In other words, organizations like CRR had to argue that the *effects* of certain health policies and practices disproportionately and negatively impact women of color; fortunately, CERD considers effect on the same level as intent when it comes to racism. Questions, which fall under the civil and political rights realm, like the right to an education, can be easier to draft because the policy solutions are evident.

For example, when CERD asked questions about legal setbacks in affirmative action policies in higher education, the point of departure for the question from the committee was about how the US government planned to rectify the problem of racial disparities in higher education and reinstate affirmative action policies in order to comply with ICERD. This move captures the essence of Soohoo's argument that questions should have some relationship to policy. The question did not inquire about the US government's views on the elimination of affirmative action policies; rather, the query was about how the US government planned to reinstate affirmative action policies or establish similar policies to proactively redress

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<sup>10</sup> Keck and Sikkink 1998; Bennis 2005.

several decades of racial discrimination in higher education. The committee members specifically cited the 2003 University of Michigan affirmative action case as continuing a troubling trend that violates Article 7 of the treaty, which endorses affirmative action policies.

This starting point for questions from the committee requires that NGOs frame their own concerns from a markedly different place than when organizing to inform the general public on their issues. For instance, the practice of sentencing juveniles to life without parole is considered a violation of human rights under international law. Therefore, juvenile justice reform groups that participated in the 2008 CERD review have the support of international law and CERD in their lobbying and advocacy efforts. These activists did not have to convince the committee this sentencing practice should be of concern to them; rather, they provided the committee members with information about racial disparities, which in turn, assisted CERD in their probing of the government's record. But as one of my interviewees points out, US NGOs are not accustomed to organizing in this way. She said:

The biggest struggle is that few groups have the capacity to do the kind of work committees like CERD need in order to do their work. I think as advocates, especially on the left, we haven't sufficiently appreciated the importance of data, statistics as much as we should. We're much better at organizing rallies and directing blame but, doing the nuts and bolts steps of collecting data, assembling the data for dissemination, forming a strong argument irrespective of what we know on the ground, we have done less well. So getting people to actually contribute numbers was challenging.

My interviewee illuminates an obstacle that is not easily solvable because it requires groups to do organizing differently, and the capacity to organize differently just may not be possible. Moreover, the learning curve about the CERD review process was high, as the vast majority of participants were being introduced to this international mechanism as they simultaneously witnessed it in action.

Yet despite these very real challenges, CERD is receiving information from NGOs that it was not getting before and this information has improved their work when compared to the first US-CERD review in 2001. The substantial NGO presence impacted the 2008 CERD review as well. According to Soohoo,

The 2008 concluding observations were much more detailed than the ones from 2001, which has to be because CERD has been getting information from the NGOs. So

CERD has in-depth information that they really didn't have access to before. I think the activist presence also forces the committee to take on issues they might not have thought of on their own. How else is the committee going to know if people don't show up to the review process? And having people present, lobbying them, really forces the committee to take on issues that maybe they don't want necessarily to do. So I think in that way, the NGO presence really had an impact.

Margaret Huang, Executive Director of Rights Working Group, agreed. Huang is a long-time human rights advocate who has attended several other UN treaty reviews, meetings, and conferences. She said,

The US civil society presence totally shook up the whole UN. People were talking about the US NGOs in offices of the UN that had nothing to do with CERD or human rights. The buzz was out there about how many of us came and how important the hearing was to us. And our presence sent a significant statement to the rest of the world about how we're feeling about human rights in the US right now.

Soohee and Huang make a crucial argument here that merits emphasis: actually observing the review and lobbying members is as important as submitting a report. The US government could not ignore members of civil society when we were staring at them as they spoke. CERD could not ignore NGOs when we approached them to discuss our issues.

NGO representatives must lobby CERD members to raise the questions that activists want on the record. In order to do so, they must work closely with UN administrative staff and be confident and comfortable enough to approach CERD members in hotel lobbies, cafeterias, the hallways of the UN, or even in the streets and hotel bars of Geneva. Approaching committee members itself must be strategic: activists must invite conversation with the committee members rather than be overly aggressive in getting their attention. NGO activists have to be assertive but not *too* assertive at the same time, which can be a fine line to negotiate. For Caroline Bettinger-Lopez, Deputy Director, Human Rights Institute at Columbia Law School, experiencing a treaty review for the first-time was a learning process. She said,

I felt like a fish out of water when I first got to Geneva. I felt like there were all of these people who move very fluidly there and they definitely knew the deal in Geneva and I was not one of them. By the end, I was feeling more emboldened. I was feeling, oh ok if I knew then what I know now I would have maybe been a little more assertive with some of the committee members and approached them. I just didn't know in the beginning if the same rules applied to the committee members as apply to judges who'd you never speak with about your case outside of the courtroom.

Bettinger-Lopez described how intimidating the quasi-formal setting itself can be and that the formality of the process can hinder lobbying efforts by advocates new to this setting.

Yet at the same time as Soohoo maintained, “Everyone can’t have access when you have so many people, which can be a problem.” This issue of access goes to the core of why UN lobbying has its drawbacks in this review process, because organizations inevitably compete with each other to get CERD members’ attention precisely because the committee is unable to bring forth every issue for discussion. The committee is constrained by the time limits of the review hearing itself. Even if an NGO successfully convinces a CERD member to raise particular questions for the record, the government delegation can ignore the questions or provide incomplete responses. As Katrina Anderson, former Human Rights Attorney for CRR’s US legal program, stated:

I felt like there wasn’t enough opportunity for CERD to come back and challenge the US’s responses again. It almost felt like the US got to have the last word even though their answers were so incomplete or ridiculous in a lot of instances . . . or insulting. So I found the structure of it wanting in that way.

When the allotted six hours of the review was over, the window of opportunity for directly challenging the state’s problematic or non-existent responses to CERD’s questions closed. However, concluding observations are important precisely because this document is intended to symbolize the “final word” in terms of both evaluation and assessment of the review and is completed several weeks after the review. Concluding observations can also contain requests for additional information on a select few items to be addressed in an addendum report. More importantly, NGOs can use the concluding observations in their advocacy, which organizations like CRR, the Human Rights Project (HRP) of the Urban Justice Center, and the National Law Center on Homelessness & Poverty, to name a few, have done effectively.

For NGO activists, the reviews are challenging, exhausting, and enormously burdensome both financially and physically (very little sleep occurs due to the enormously limited turn around time). Yet a sustained engagement with this international mechanism, alongside other international and local strategies, has resulted in some success for racial justice activists. For Huang,

International mechanisms will matter to people in the US if they see them as a piece of their advocacy. These mechanisms, like the treaty review hearing, should always be part of a broader campaign. I think it is really important that the UN mechanisms are emphasized in that way so that the local organizing work does not suffer.

Huang's view emphasizes the need for a multi-pronged approach to anti-racist organizing where the CERD review constitutes a key tool for advocacy, but is not a substitute for local grassroots organizing efforts.<sup>11</sup>

By way of example, Chicago activists against police brutality deployed a multi-level strategy over several years, which culminated with the arrest of former Chicago police commander Jon Burge in October 2008. Their political organizing demonstrates the efficaciousness of a human rights framework in pursuit of racial justice when it is integrated with other political strategies at the local level.<sup>12</sup> Victims of police brutality in Chicago and national activists against police brutality had urged an investigation of Burge for decades for allegedly torturing over 100 African Americans during the 1970s and 1980s.<sup>13</sup> The press release announcing his arrest mentioned the vital support of the UN treaty-monitoring committee for the Convention Against Torture (CAT).<sup>14</sup> The CAT committee called for an investigation and prosecution of Burge and other officers responsible for engaging in torture.<sup>15</sup>

At the same time, using a human rights framework in transnational organizing at the UN has its contradictions.<sup>16</sup> Some human rights work, for example, has been co-opted by the state to advance their own political agendas to justify war, as the Bush Administration did effectively with the support of the Feminist Majority, to militarily intervene in Afghanistan to “save” Afghani women from human rights violations.<sup>17</sup> Given these types of co-optation, why would we expect this same government to abide by ICERD? As discussed in the Burge case, the UN treaty monitoring hit

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<sup>11</sup> See Smith 2008 about avoiding the perpetuation of human rights “fundamentalism” in US social-justice organizing.

<sup>12</sup> Tars 2009.

<sup>13</sup> See <http://archives.chicagotribune.com/2008/oct/21/news/chi-ap-il-policetorture-quo> for public reactions to his Burge's arrest.

<sup>14</sup> The US ratified the Convention Against Torture in October 1994.

<sup>15</sup> See [www.ushrnetwork.org/files/ushrn/images/linkfiles/chicago\\_pressrelease.pdf](http://www.ushrnetwork.org/files/ushrn/images/linkfiles/chicago_pressrelease.pdf) for press release.

<sup>16</sup> Smith 2008, pp. 214–215.

<sup>17</sup> McNamara 2002, pp. E1.

too close to home for local politicians. After all, what Chicago politician aspires for their city to be under review by a UN committee on torture? Moments of contradiction can also produce opportunities to demand for change.

US NGOs transcend national systems of accountability to access an international structure in the CERD review process.<sup>18</sup> The US organizations that participated in the 2008 US-CERD review hearing sought out international human rights standards to strengthen their claims of racial injustice. In the process, these groups relied on a UN committee, rather than international activist allies, to apply pressure on the state. As a result, the political mobilization involved a different type of organizing to promote US-UN dialogue than when activists collaborate with other similarly minded colleagues to mobilize the public.

### **US NGO Shadow Reports and Lobbying: Transnational Advocacy in Action**

A challenging aftermath of the WCAR 2001 was the drastic cut in funding to continue anti-racism work at the UN due to the mischaracterizations of the conference as anti-Semitic, or more precisely, as anti-Israel.<sup>19</sup> The world witnessed this same mischaracterization during the recent UN Durban Review Conference (DRC) in April 2009 in Geneva. UN High Commissioner for Human Rights Navi Pillay issued a strong rebuke about this misrepresentation in her final DRC 2009 press release, stating “it was clear that either [people] had not bothered to read what [the Durban Declaration and Programme of Action] actually said, or they were putting a cast on it that was, to say the least, decidedly exaggerated.”<sup>20</sup> But the damage had been done; the media, especially in the United States, which Pillay also criticized, reproduced this mischaracterization of the DRC 2009, as they did for WCAR 2001, as fact rather than politically motivated. WCAR 2001 struck a nerve, which lingered over the 2008 US-CERD review and

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<sup>18</sup>) Keck and Sikkink 1998.

<sup>19</sup>) The majority of US interviewees for my dissertation research mentioned their funding had been completely cut upon their return from Durban.

<sup>20</sup>) See [http://www.un.org/durbanreview2009/coverage/press/pr\\_24-04-09\\_pillay.shtml](http://www.un.org/durbanreview2009/coverage/press/pr_24-04-09_pillay.shtml) for press release.

later, pervaded the DRC 2009; dynamics buoyed by the US's continual disengagement and obstructionism at the UN.

As a result, securing the financial support to enable organizational staff to dedicate additional hours (on top of their daily work) in preparing shadow reports, attend trainings, conduct trainings, participate in frequent conference calls, and send NGO representatives to observe the review and lobby CERD members, was difficult and burdensome for US NGOs. However, in spite of these tangible obstacles, US organizations obtained enough funding for over 120 people to attend the review in Geneva. Activists and advocates unable to participate engaged the process in other ways, primarily through collaboration in drafting shadow reports.<sup>21</sup>

The NGO shadow reports provide the treaty monitoring committee with additional material for consideration. A handful of human rights organizations, such as the HRP, WILD for Human Rights, and the International Indian Treaty Council, conducted shadow report trainings in every region of the US and published training manuals to guide activists through the shadow report writing process. When I asked Ejim Dike, Director of the HRP, about the decision to conduct the trainings, she said:

It was important to conduct trainings for the mere fact that a lot of people throughout the US didn't know about CERD and if we wanted NGO engagement across the country in Geneva, then someone needed to do it. And because the Human Rights Project has done these trainings, we were one of the few people with the expertise to do them.

These trainings proved invaluable for mobilizing a wide range of participants for the CERD review.

In contrast to the 2001 review where only a small number of US groups submitted shadow reports, CERD received dozens of shadow reports for the 2008 review, totaling over 600 pages in length. NGO mobilization for the 2008 CERD review was far better organized than in 2001 due to the role of the US Human Rights Network (USHRN). Founded in 2002, the USHRN was the main organizing body and liaison for participating NGOs in the CERD review process. They supported the process in a number of ways: by organizing “issue-themed” working groups to foster

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<sup>21</sup>) According to the USHRN, 400 individuals and organizations had some involvement in the CERD review process.

activist collaboration, hosting conference calls with updates about the review, conducting on-site training on lobbying, collecting the bulk of the shadow reports to submit a unified NGO report, and scheduling separate sessions for US NGOs with CERD and the UN Special Rapporteur Against Racism.

For Bettinger-Lopez, “the role of the US Human Rights Network became so apparent in Geneva to all of us and of the importance of having a centralized group coordinating all of us. We also saw the difficulties of that work too.” The role of the USHRN to organize a coherent and unified human rights movement in the US is a massive undertaking, as they decipher how to navigate racial divisions amongst communities of color, especially between indigenous peoples and African Americans. And therein lies its importance because anti-racism remains central to the USHRN’s vision of unifying a US-based human rights movement.

The actual space for political engagement was small given the review period itself was only six hours; moreover, during the three-week period when CERD was in session last February, the committee also reviewed six other government reports. Due to the extreme brevity of this advocacy moment, US NGOs must act with precise strategies and with keen attention to the dynamics of the meeting in order to be effective agents of change and to successfully lobby for the recognition of their issue in the concluding observations.<sup>22</sup>

*“A US legal frame . . . really limits the advocacy and work we can do”: The Case of Reproductive Justice for Women of Color*

The Center for Reproductive Rights, based in New York City, assisted in the production of a shadow report on racial disparities in health with other US health advocates, paying particular attention to issues of gender.<sup>23</sup> Self-described on their website as the “world’s only global legal advocacy organization dedicated to advancing women’s reproductive health, self-determination, and dignity as basic human rights,” CRR’s US legal program had not actually utilized human rights frameworks until recently. Anderson stated, “When I joined the organization, the US legal program had not done much human rights work at all.” The CERD review enabled

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<sup>22</sup>) Concluding observations can be accessed at <http://www.ushrnetwork.org/projects/cerd>.

<sup>23</sup>) CRR collaborated with the National Latina Institute for Reproductive Justice, also based in New York City.

CRR “to really change the work we were doing and really build new alliances,” said Soohoo. “We’ve really been using a US legal frame for a long time and it really limits the advocacy work we can do.”

For Soohoo, “The value of the human rights frame in the United States is really helping to reframe the advocacy and organizing conversations” of which reproductive rights is no different. For Anderson, the CERD review was an opportunity “to use this experience to first shift the thinking within the advocacy community and then among policymakers.” She said, “We want the advocacy community to start thinking about access to reproductive health as human rights issues.” And Soohoo concurred saying, “We were able actually to talk about access and really think about access as the organizing principle and the goal of our work. And also we were able to talk about racial disparities, which you can’t really do under a US legal frame.”

In addition to co-writing the health disparities shadow report, the organization also submitted a supplement shadow report to CERD, to underscore “several areas of concern related to the status of reproductive health and rights of women of color in the United States.”<sup>24</sup> “Acknowledging that women of color fare worse than white women in every aspect of reproductive health,” the shadow report’s objective was to “highlight what we felt were the most dramatic health issues facing women of color,” Anderson stated. The organization selected three issues for elaboration in their shadow report – maternal mortality, HIV/AIDS, and unintended pregnancy. The shadow report concluded with questions for CERD to ask of the US government; ranging from an explanation of the government’s promotion and funding of “abstinence-only-until marriage programs, which limits women of color’s access to information about [sexually transmitted infections] and pregnancy prevention” to the rights of “immigrants [to] receive basic reproductive and sexual health care regardless of their citizenship status.”

Building on the 2001 US-CERD concluding observations, CRR emphasized a problematic pattern of failing to provide adequate health care services for women of color in its shadow report. The shadow report also made clear links between their advocacy issues and specific treaty articles.

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<sup>24</sup> CRR refers to their second submission to CERD as a “supplementary information letter” but I refer to the letter as a shadow report because it meets the criteria of a shadow report. See <http://reproductiverights.org/en/document/united-statescerd2007english> for the report.

For example, the report cited treaty Article 5(e)(iv) with reference to its discussion on “equal access to family planning” and access to contraception. Making these linkages between advocacy issue and the treaty article assisted CERD members in justifying their particular questions to the government. For “the first time... the CERD committee actually talked about family planning as a racial justice issue; [and] that recognition is very significant for us as an organization,” said Soohoo.

The caliber of questions posed by CERD to the US government surprised Soohoo, Anderson, and other interviewees. Soohoo stated, “I think that people weren’t actually expecting much from the committee, but in actuality, the degree of engagement was really great.” Anderson provided additional context for the questions asked during the CERD review. She stated, “It really is a diplomatic space and so you aren’t going to see the kind of questioning that you would see in a US court, and I didn’t really expect that they would be grilled. So I was surprised to hear committee members sometimes ask really challenging questions.”

In Anderson’s view, witnessing the committee members ask, “a couple of questions about our issues... pleased us. That was exciting in itself.” She continued,

We expected the dominant issues that would consume the committee’s attention would be the war on terror, the criminal justice system, and indigenous rights issues. So the fact that the committee was a little bit more expansive in its thinking was great. We were really pleased CERD included an entire concluding observation on our issues, which we just weren’t sure was going to happen.

Having an entire concluding observation discuss the reproductive rights issues facing women of color aided CRR’s work when they used the concluding observation in their domestic advocacy efforts. Anderson informed me that CRR organized, “a congressional briefing with other advocates from the health working group where representatives from both the Senate and House side who work on health disparities legislation were in attendance.” This briefing provided an “opportunity to give them information [about]... our shadow report [and] also the concluding observations themselves.” CRR also submitted testimony to the House Committee on Government Oversight when that committee held a hearing on abstinence-only education. According to Anderson, “We used the concluding observations to support our position that funding for abstinence-only programs violates international human rights standards on the right to information and right to health.”

From the onset of preparation for the 2008 US-CERD review, CRR positioned the US legal program as part of the international political struggle regarding reproductive rights. This positioning not only reflects a trend emerging among antiracist activists and advocates invoking the transnational in demanding accountability at the local level, but it situates the struggle for reproductive rights in a proper context, especially with respect to this issue of access. US foreign policies like the Global Gag Rule signal a transnational dimension in the struggle for reproductive rights, which disproportionately affects US women of color and Third World women.

*“As meaningful as we advocates make them”: The Consequences of a Critical CERD Review*

All State Parties receive critical reviews by CERD since no state in the world has a stalwart record on human rights, especially in terms of combating racism. So if everyone gets a critical review, then what is the point? Where is the accountability? Why do the CERD concluding observations matter? I interviewed participants several months after the review concluded and inquired if they felt participating in the review process was worthwhile. Anderson said, “I definitely think it was useful. I think it is all a matter of expectations. We weren’t expecting to take this concluding observation back and immediately have the federal government pour \$300 million into family planning.” Anderson makes an important point here about expectations. It is important to have realistic expectations about what a small committee like CERD can achieve when they issue their concluding observations. For Dike,

Compared to the 2001 concluding observations, I thought the 2008 concluding observations were pretty strong. I think there are limits to what we can expect any body from the United Nations to do. And quite frankly, I think the struggle now is to figure out how do we engage in these mechanisms legitimately, but also not make it about the mechanisms.

Not “making it about the mechanisms” is precisely why the CERD review and its concluding observations should be situated as part of a broader strategy to combat racism rather than the primary approach to do so.

The improved concluding observations for 2008 as compared to 2001 is also revealing about engaged participation by CERD members, which resulted in “a pretty good dialogue” according to Huang. This improved

open dialogue was a result of both CERD members and NGOs being better prepared according to my interviewees. Huang stated:

I think substantively the concluding observations were about as good as I've ever seen them coming out of the CERD and I definitely attribute some of the observations to the new members of CERD, who actively engaged in the discussion more than some of their predecessors. The concluding observations are fairly broad and more extensive than the first set of recommendations.

NGOs can work productively and creatively with well-written concluding observations in their local advocacy.

“The Concluding Observations are as meaningful as we as advocates make them,” said Eric Tars, Human Rights/Children & Youth Program Director for the National Law Center for Homelessness & Poverty; “and when we make them part of our daily dialogue with the government, they will be forced to respond in kind!” Tars speaks to the important role advocates and activists play in ensuring “consequences” result from a critical or “bad” review. As numerous anti-racist activists have told me over the years, the real work happens when we return home from the UN. Whether it is by issuing press releases to publicize CERD’s concluding observations, using this international mechanism to bolster existing grassroots anti-racism campaigns or legal cases, and modifying shadow reports for “local organizing” efforts, NGOs play a crucial role in ensuring the State Party experiences consequences from the CERD review. The USHRN has been diligent in keeping the concluding observations alive, sending regular emails to participants about forming working groups to strategize and apply pressure on the Obama Administration.

Bettinger-Lopez found the entire CERD review experience to be “a transformative experience on many fronts.” Dike shared a similar perspective:

I thought the US-CERD review hearing was a very powerful process because members of civil society, several NGOs, activists, and advocates who maybe were unconvinced this mechanism could help them advance their work domestically, became excited. And to me, that's the most important part of organizing around human rights...

It is because the experience felt meaningful for many of us that the concluding observations will not remain on paper alone, but rather become “as meaningful as we make them.”

## **Conclusion**

Bettinger-Lopez spoke about the unusual experience many of us felt as we witnessed the US government having to respond to questions about racism before the UN committee.

I'm not used to seeing my government having to answer for itself. I mean [the Bush Administration] for the past eight years had an 'I don't answer to anybody' approach and to see them up there... sometimes kind of fumbling along with their blah blah blah blah... I mean it was intense.

It is a rare and unique opportunity to see one's government being challenged using international human rights standards. NGO shadow reports directly facilitated this challenge. Rather than reacting to public policies, NGOs are positioned proactively in this process – meaning the government is the one doing the reacting by having to respond to a series of questions by CERD members, many of which are supported by NGOs. The government is placed in a defensive posture via the NGO shadow reports when CERD members reference the reports in their questions, which members did repeatedly during the 2008 review.

NGO shadow reports illuminate the duplicity of governments. Moreover, our mere presence at the 2008 CERD review sent a clear message to the US government that we take its commitments to this treaty seriously and that we are witnesses to their verbal and written exchanges with the UN committee. It also signals to the government that we are fully cognizant of the fact that international law and an international human rights treaty support our various demands for racial justice.

The anti-racist transnational activism I discuss in this article is distinct from other types of anti-racist transnational organizing, in two primary ways. First, US activists are not working with activists from abroad to pressure the US government into action, but rather working with domestic NGOs to lobby an international committee that consists of people identified by member states of the UN as independent experts on racism. CERD members may be reluctant to challenge a powerful government like the United States if they feel perhaps it could jeopardize future UN career opportunities. Second, even though a tremendous amount of organizing occurs at the domestic level, US NGOs must familiarize themselves with an international treaty that may be new to them; and as a result, they must ascertain how their advocacy issue corresponds to the treaty and international human rights standards. This strategy, in essence, requires US

NGOs to go “global” or “transnational” to access the language of human rights and international mechanisms to highlight domestic racial injustices.

I highlighted the work of CRR’s US legal program as a case study, not only because the organization experienced tangible results from the process, but because the organization applied a treaty written in the 1960s to a contemporary issue that grapples with gender and racial discrimination. The leadership of CRR’s US legal program practiced a form of transnational activism where they successfully identified human rights precedents to embolden their demands for upholding the reproductive justice rights for women of color.

Antiracist activists and advocates are making their own Duboisian “appeal to the world” on the conditions facing communities of color, indigenous peoples, women, immigrants, youth/children, and refugees. Though by no means a perfect outlet or model, it is one of very few opportunities that requires the US government to dialogue on racism and turn the lens inward on human rights violations in the US.<sup>25</sup> US NGOs play an especially crucial role in this process because if they do not communicate to CERD the realities on the ground for US communities of color, then how else will CERD know about human rights violations inside the US? In essence, the CERD review process can empower NGOs to be part of a global checks and balances system that operates both from below, with NGO representatives, and from above, with United Nations committee members. The political spaces that treaty review hearings like CERD provide are limited, but they can enable US antiracist activists to gain access to, and thus to re-imagine, new transnational political landscapes for racial justice struggles.

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During the COVID-19 pandemic, human rights violations including censorship, discrimination, arbitrary detention and xenophobia were reported from different parts of the world. Amnesty International has responded that "Human rights violations hinder, rather than facilitate, responses to public health emergencies and undercut their efficiency." The World Health Organization (WHO) has stated that stay-at-home responses for slowing the pandemic must not be mandated at the expense of human rights. Broader... The concept of human rights, based on the notions of the dignity of the human being and the limitation of the power of the State, is a phenomenon that has, although in many different manifestations, been present practically throughout the whole of history. The right for the recognition of the dignity of people has been a constant throughout historical evolution, from the tentative recognition of the rights of Indians during the time of the Spanish Conquista of America, to the modern expression of the rights of man and the citizen following the French Revolution. US Antiracist Activists and the UN Committee to Eliminate Racial Discrimination. Sylvanna M. Falcón\* Department of Women's Studies, University of California, Riverside. The US government ratified the International Convention to Eliminate Racial Discrimination (ICERD), the premier human rights treaty to combat racism, in 1994. Per the treaty's stipulations and upon ratification, State Parties submit periodic compliance reports to CERD, the UN treaty monitoring review committee for the ICERD treaty. ABSTRACT How do transnational ideas such as human rights approaches to violence against women become meaningful in local social settings? How do they move across the gap between a cosmopolitan awareness of human rights and local sociocultural understandings of gender and family? Hussaina J. Abdullah (2002:152-153) describes the growth of human rights and civil liberties activism in Nigeria while noting that the religious revivalism and authoritarian state feminism emerging at the same time have reinforced patriarchal structures, undermining the challenges posed by the explosion in human rights activism. Such broad statistics mask the racial disparity that pervades the U.S. criminal justice system, and for African Americans in particular. African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, and they are more likely to experience lengthy prison sentences. The source of such disparities is deeper and more systemic than explicit racial discrimination. We welcome this opportunity to provide the UN Special Rapporteur with an accurate assessment of racial disparity in the U.S. criminal justice system. United States Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Human Rights. (p. 8).