

August 2013

CLOSING THE GAP:

THE FEDERAL ROLE IN RESPECTING
& ENSURING HUMAN RIGHTS AT
THE STATE AND LOCAL LEVEL



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INTERNATIONAL ASSOCIATION
OF OFFICIAL HUMAN RIGHTS
AGENCIES

EXECUTIVE SUMMARY

INTRODUCTION AND ISSUE SUMMARY

Despite international leadership, the U.S. has an inconsistent record of implementing human rights within our nation's borders.

At the core of the United States' failure to fully recognize and implement human rights is the absence of a domestic human rights infrastructure that reaches all levels of government – federal, state and local. There are no transparent, institutionalized and effective mechanisms to translate international human rights law into domestic practice. Many state and local actors are thus unaware of international human rights treaties and their associated obligations. This lack of basic human rights education is compounded by resource and staffing constraints at the state and local level, which further impede the promotion and protection of human rights.

Myriad examples illustrate how the current lack of accountability has led to persistent gaps in human rights protections in areas within state and local jurisdiction.¹ Recent examples include the impact of the recent mortgage crisis, which resulted in disproportionate rates of homelessness in communities of color,² and the persistence of employment inequality for women.³

While human rights transcend the jurisdictional divides of federal, state and local governments, the federal government is ultimately responsible for treaty compliance throughout and within the United States.

By ratifying the ICCPR in 1992, the U.S. committed to prevent and protect against discrimination and ensure equal treatment for all, as set forth in Articles 2 and 26.⁴ These protections apply to all parts of federal states, “without any limitations or exceptions,” in accordance with Article 50.⁵ Indeed, to ensure the full range of

1 Examples from the 2006 review of U.S. compliance with the International Covenant on Civil and Political Rights include racial segregation in schools and housing, homelessness, racial profiling, criminal justice and detention.

2 See, e.g., James H. Carr et al., Nat'l Community Reinvestment Coalition, *The Foreclosure Crisis and Its Impact on Communities of Color: Research and Solutions* 5 (2011), available at http://www.ncrc.org/images/stories/pdf/research/ncrc_foreclosurewhitepaper_2011.pdf; Debbie Grunstein Bocian et al., Cntr. for Responsible Lending, *Foreclosures by Race and Ethnicity: The Demographics of a Crisis* (2010), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.html>.

3 See, e.g., Maxwell Matite et al., Inst. for Women's Policy Research, *Quantifying Women's Labor Market Experiences: How a Gender Lens Changes the Conversation about the Economy* (2013), available at http://www.iwpr.org/publications/pubs/the-truth-in-the-data-how-quantifying-women2019s-labor-market-experiences-changes-the-conversation-about-the-economy/at_download/file; Press Release, U.S. Equal Emp't Opportunity Comm'n, Outback Steakhouse To Pay \$19 Million For Sex Bias Against Women in 'Glass Ceiling' Suit by EEOC (Dec. 29, 2009), <http://www.eeoc.gov/eeoc/newsroom/release/12-29-09a.cfm>.

4 International Covenant on Civil and Political Rights, arts. 2, 26, Dec. 16, 1966, 999 U.N.T.S. 171, available at <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> [hereinafter ICCPR].

5 *Id.* at art. 50. See also Human Rights Comm., Gen. Comment No. 31, *Nature of the General Legal Obliga-*

rights, the ICCPR requires that governments employ appropriate measures, including through legislation, education and policy.⁶ By virtue of our federal system, federal, state and local authorities share responsibility for implementation of the Covenant.⁷ Such shared authority is consistent with international law, under which the United States can delegate human rights implementation.⁸

Protecting human rights requires concerted and coordinated government action, in conjunction with community partnerships. State and local authorities are on the front lines of addressing key human rights issues, including housing, employment, criminal justice and education. The over 150 state and local civil and human rights agencies (“Human Rights Agencies”) are natural partners in promoting and protecting human rights. Authority to implement human rights also resides with the full array of state and local decision-makers, including governors, mayors, state legislators, city council members, law enforcement, city, county and town executives, and boards of supervisors.

Indeed, a number of state and local governments already foster U.S. compliance with the ICCPR. Human Rights Agencies and a number of state and local decision-makers are developing proactive initiatives to address and eliminate discrimination and promote and protect rights in housing and employment, specifically related to sexual orientation, gender and national origin discrimination. They also monitor and report on human rights compliance, as well as conduct human rights education. A number of states and localities have explicitly incorporated international human rights standards into local law, policy and practice.

Yet state and local efforts are ad hoc, patchwork and vulnerable to elimination through budget cuts.

The U.N. Human Rights Committee and other U.N. experts have previously called on the U.S. to address these concerns by facilitating more comprehensive reviews of human rights compliance, ensuring federal and state laws comply with human rights treaties and improving human rights monitoring.⁹

tion on States Parties to the Covenant, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), available at <http://www.unhchr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f> [hereinafter General Comment 31].

⁶ See ICCPR, *supra* note 4, at art. 2(2); Human Rights Comm., Gen. Comment No. 18, *Non-Discrimination*, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 at 195 (1989), available at <http://www1.umn.edu/humanrts/gencomm/hrcom18.htm> [hereinafter General Comment 18]; General Comment 31, *supra* note 5.

⁷ Reservations, Understandings and Declarations to the International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992).

⁸ Article 26 of the Vienna Convention on the Law of Treaties states, “every treaty in force is binding upon the parties.” Vienna Convention on the Law of Treaties, art. 26, May 23, 1969, 1155 U.N.T.S. 33, available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf [hereinafter Vienna Convention].

⁹ See Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America*, ¶¶ 22-25, 28, 39, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/459/61/PDF/G0645961.pdf?OpenElement> [hereinafter 2006 HRC *Concluding Observations*]. See Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶¶ 12, 13, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008), available at <http://www1.umn.edu/humanrts/CERDConcludingComments2008.pdf> [hereinafter 2008 CERD *Concluding Observations*]; Comm. on the Rights of

RELEVANT QUESTION IN THE COMMITTEE'S LIST OF ISSUES

Recognizing the ongoing need for federal coordination and support for state and local human rights implementation, the Human Rights Committee has asked the United States to articulate:

- The specific actions taken to ensure state and local implementation of the ICCPR,¹⁰ and
- The U.S.' intent to establish institutionalized federal mechanisms to monitor and implement human rights.¹¹

U.S. GOVERNMENT RESPONSE

The U.S. Fourth Periodic Report, while laudable for recognizing the important role of state and local actors in human rights implementation,¹² offers an incomplete picture of the context in which they operate. It fails to acknowledge the existing barriers to state and local human rights monitoring and implementation. These constraints include – and extend beyond – limited knowledge of international human rights standards to broader structural issues. Even where state and local governments have an awareness of international human rights, they have little capacity to engage in human rights work. Further, the U.S. report omits discussion on the ways in which the broad range of state and local actors, such as state and local elected officials and law enforcement personnel, promote and protect human rights, despite the important role these actors can play to ensure human rights treaty compliance at the state and local level.

Significantly, neither the U.S. Report nor the U.S. response to the List of Issues describe how the federal government supports, incentivizes or coordinates state and local efforts to comply with international human rights treaty standards through edu-

the Child, *Concluding Observations: United States of America*, ¶¶ 13, 19, U.N. Doc CRC/C/OPSC/USA/CO/1 (June 25, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.USA.CO.1.pdf>; Human Rights Council, *Report of the Working Group of Experts on People of African Descent*, ¶ 88, U.N. Doc. A/HRC/15/18 (Aug. 6, 2010), available at <http://www2.ohchr.org/english/issues/racism/groups/african/docs/A-HRC-15-18.pdf> [hereinafter *Report of Working Group of Experts on People of African Descent*].

10 Human Rights Comm., List of Issues to be Taken Up in Connection with the Consideration of the Fourth Periodic Report of the United States, ¶ 1(b), U.N. Doc. CCPR/C/USA/Q/4 (Mar. 2013), available at <http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm> [hereinafter 2013 List of Issues] (inquiring whether the U.S. intends “to reinvigorate Executive Order 13107/1998”).

11 *Id.* at ¶ 1(c) (inquiring whether the U.S. intends “to reinvigorate Executive Order 13107/1998”); *id.* at ¶ 2 (asking if the U.S. intends to establish a national human rights institution with a broad human rights mandate, in line with the principles relating to the status of national institutions for the promotion and protection of human rights).

12 As part of its report to the Human Rights Committee, the U.S. included an Annex, which provides a snapshot of state, local, tribal and territorial human rights organizations and programs and emphasizes that state and local agencies play a “critical role” in human rights implementation. See *Annex A to the Common Core Document of the United States: State, Local, Tribal, and Territorial Human Rights Organizations and Programs, Submitted With the Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights*, ¶¶ 1-3, 124–26 (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179782.htm> [hereinafter *Annex A*].

cation, training and other means. The response to the List of Issues mentions an existing policy process to implement human rights treaties pursuant to Executive Order 13107 (known as the Interagency Working Group on Human Rights).¹³ In recent months, the United States has also publicized the existence of the Equality Working Group, newly established by the Obama Administration to coordinate human rights implementation.¹⁴ Yet there is no publicly available information on the mandate, membership or activities of these mechanisms, and to date, they have not engaged with state and local governments. It is also unclear what relationship, if any, these initiatives have to each other.

RECOMMENDED QUESTIONS

- Please describe the education, legislative, policy and other measures the United States will take to ensure that state and local agencies and officials have the capacity to respect and implement the United States' commitments under the ICCPR and to implement the Committee's Concluding Observations. Specifically, how will the United States (a) effectively communicate these recommendations to state and local agencies and officials to foster greater awareness of, and compliance with, human rights standards; and (b) offer guidance and technical assistance to state and local governments on how treaties such as the ICCPR relate to law and policy at the state and local level.
- Please indicate (a) what measures the United States is taking to create institutionalized, transparent and coordinated mechanisms to monitor and implement human rights at the federal, state and local levels in the long term; and (b) how the federal government, including the federal level Interagency Working Group on Human Rights and the Equality Working Group, coordinate with state and local governments to support and encourage state and local human rights implementation, including through education, training and funding.

SUGGESTED RECOMMENDATIONS

To ensure that state and local governments can reach their full potential to implement the ICCPR, the United States must develop a more comprehensive and coordinated approach to human rights. Specifically the federal government must:

- **Ensure dedicated staff responsible for coordinating and liaising with state and local actors regarding human rights reporting and imple-**

¹³ U.S. Dep't of State, United States Written Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the International Covenant on Civil and Political Rights, ¶ 4 (July 3, 2013), available at <http://www.state.gov/j/drl/rls/212393.htm> [hereinafter U.S. Written Responses to the HRC].

¹⁴ See *id.* at ¶ 3; Periodic Report of the United States of America to the United Nations Comm. on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, ¶ 4 (2013), available at <http://www.state.gov/documents/organization/210817.pdf> [hereinafter 2013 CERD Report].

mentation, including identifying and developing best practices at the state and local level and communicating recommendations from international bodies to state and local governments.

- **Provide education and training to state and local officials on international human rights treaty standards and Concluding Observations**, as well as obligations to implement human rights and effective practices to foster compliance with human rights standards.
- **Provide state and local governments with funding to engage in civil and human rights implementation and compliance**, including through grants to Human Rights Agencies, to ensure they have the resources to undertake human rights education, monitoring, reporting and enforcement.
- **Establish institutionalized, transparent and effective mechanisms** to coordinate with state and local officials to ensure comprehensive monitoring and implementation of international human rights standards at the federal, state and local levels, such as a reinvigorated Interagency Working Group on Human Rights and a National Human Rights Institution.