Strengthening State and Local Promotion and Protection of Human Rights in the United States

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Submitted by: Columbia Law School Human Rights Institute (HRI) & The International Association of Official Human Rights Agencies (IAOHRA)

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Founded in 1998, the Columbia Law School Human Rights Institute advances international human rights through education, advocacy, fact-finding, research, scholarship, and critical reflection. The Institute works in partnership with advocates, communities, and organizations pushing for social change to develop and strengthen the human rights legal framework and mechanisms, promote justice and accountability for human rights violations, and build and amplify collective power in the United States and throughout the world. The Institute’s Human Rights in the U.S. Project challenges discrimination on the basis of race and ethnicity, advances economic and social rights protections, and promotes gender equity in order to combat inequality in the United States. Through this project, the Institute works to build the capacity of state and local governments to use human rights in their daily work and secure federal support for state and local human rights implementation.

The International Association of Official Human Rights Agencies (IAOHRA), founded in 1949, is a non-profit membership association of state and local statutory civil and human rights and human relations agencies mandated by state, county or city governments to enforce human and civil rights laws and/or to conduct research, training, and public education (“Human Rights Agencies”). IAOHRA also develops educational programs on human rights and civil rights issues, and serves as a clearinghouse for information exchange between human rights agencies around the world. IAOHRA members are mainly in the United States but membership is open to other similar agencies around the world.
I. SUMMARY

1. Subnational governments are critical to human rights implementation and monitoring. In the United States, state and local government actors are essential to enforcing federal, state and local anti-discrimination protections, and more broadly and proactively promoting and protecting fundamental human rights. This includes the state and local civil and human rights agencies that enforce federal, state and local human and civil rights laws and/or conduct research, training and education, and issue policy recommendations within the United States (“Human Rights Agencies”). It also encompasses the full array of state and local officials with decision-making and enforcement authority, including governors, state attorneys general, mayors, state legislators, city council members, law enforcement, city, county and town executives, and boards of supervisors. State and local governments are on the front lines on an array of human rights issues including access to housing and employment, as well as discrimination.

2. Between 2009 and 2016, the U.S. federal government repeatedly affirmed that state and local actors play a pivotal role in comprehensive human rights implementation and took some encouraging steps to communicate with them on U.S. human rights commitments. This included dissemination of UN Treaty Body Concluding Observations to state and local governments for the first time, outreach focused on treaty reporting, and inclusion of state and local governments in the UPR and consultations on human rights monitoring and implementation.

3. Expanded outreach and engagement with state and local governments around human rights are positive steps. While laudable, these actions are insufficient to educate state and local governments about international human rights obligations or to support or encourage efforts to promote and protect human rights.

4. The U.S. continues to lack a comprehensive or coordinated approach to human rights promotion and protection at the federal, state and local levels. In contrast to countries around the world:
   - There is no institutionalized federal infrastructure to support human rights education, monitoring or implementation at the state and local levels, or provide guidance on human rights and translate international standards into domestic practice.
   - The United States lacks a national human rights institution and there are no focal points to gather information on human rights compliance or disseminate and follow up with state and local actors regarding recommendations from UN Treaty Bodies, the UPR, or UN Special Procedures.

5. What has existed at the federal level is an ad-hoc and under-resourced approach to human rights education, reporting, and implementation, without meaningful avenues for state and local government participation.

6. Currently, many state and local officials are unaware of the UDHR as well as the treaties the U.S. has ratified and their obligations with respect to treaty implementation. This lack of basic human rights education is compounded by resource and staffing constraints at the state and local levels, which further impede the promotion and protection of human rights. State and local governments lack the
capacity necessary to effectively collect and analyze data on human rights compliance and take other necessary steps to implement human rights.

7. Commitments to promote and protect human rights vary widely across jurisdictions, and the efforts that exist are currently vulnerable to elimination. Thus, while state and local agencies and officials have the potential to implement the United States human rights commitments, this potential is largely unrealized.

8. Myriad examples illustrate the ongoing lack of human rights accountability and persistent gaps in human rights protections in areas within state and local jurisdiction. A 2018 survey of IAOHRA members surfaced a number of issues prevalent in the work of Human Rights Agencies. Specifically, respondents noted that their agencies frequently address discrimination on the basis of or related to disability, race, sex, LGBT status, and national origin and immigration status. While recent political and social developments have elevated the importance of the work of Human Rights Agencies, their ability to respond to the breadth of human rights issues they face is limited. Discrimination on the basis of gender and sex offers one example of an issue straining many of the agencies that address workplace discrimination. State and localities are also facing heightened discrimination on the perceived national origin and immigration status, with a significant impact on Latinx communities. Discrimination and community discord on the basis of perceived religion was also prevalent around the country. Agencies also expressed concern about their limited resources to adequately respond to the breadth of civil and human rights issues they face.

9. Notably, some state and local governments are expressing increasing interest in promoting and protecting globally recognized human rights. An encouraging array of states and localities have explicitly incorporated international human rights standards into local law, policy and practice. In 2013 the U.S. Conference of Mayors, an organization representing the mayors of cities of 30,000 residents or more, passed resolutions committing to promote and protect human rights locally, and IAOHRA has continually expressed support for human rights at its annual membership convening. Nine municipalities have adopted laws based on the Convention on the Elimination of All Forms of Discrimination Against Women CEDAW. While existing efforts are promising, they lack the coordination and resources necessary to ensure their sustainability. A more comprehensive and coordinated approach to human rights implementation requires sustained federal guidance and support. Indeed, state and local actors have specifically requested federal support, but to date, little responsive action has been taken.

10. A national government committed to upholding and strengthening international human rights protections, must support and encourage state and local human rights promotion, monitoring, and implementation through measures that include: (1) education and training on international human rights standards, including recommendations from international bodies; (2) funding to engage in human rights implementation and compliance and (3) institutionalized, transparent and effective federal human rights mechanisms mandated to coordinate with state and local governments to promote and protect human rights.

II. LEGAL FRAMEWORK

11. According to the U.S. Constitution, ratified treaties constitute “the supreme Law of the Land.” As the U.S. affirmed when ratifying the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against
Torture, federal, state, and local authorities share responsibility for implementing international human rights obligations. Such shared authority is consistent with international law, which permits the United States to delegate human rights implementation to subnational governments, while remaining ultimately responsible for meeting its human rights commitments internationally.

12. Existing case law and the U.S. federal system prevent the federal government from compelling state and local governments to comply with human rights obligations. However, there are numerous avenues available for the federal government to support, incentivize, and encourage state and local human rights implementation. Concrete steps that the United States can take to improve human rights promotion and protection have been raised repeatedly during past Universal Periodic Reviews of the United States, and reviews of U.S. compliance with the ICCPR and the CERD.

13. During the first and second cycles of the UPR, the United States accepted recommendations to incorporate human rights training and education into policies, including specific training for law enforcement. During the first cycle of the UPR, in 2011, the U.S. supported recommendations to establish a National Human Rights Institute, but did not accept recommendations that explicitly call for the US to create an NHRI, and the U.S. response noted that the United States “cannot now commit to a particular plan.” During the second cycle of the UPR, in 2015, the U.S. received over a dozen recommendations calling for a federal mechanism to ensure compliance with international human rights instruments at all levels of government. The U.S. supported these recommendations in part. The U.S. response emphasized that the government is “taking steps to strengthen federal-level coordination,” and “considering ways to improve implementation.” The U.S. response further clarified that “there are no current plans to establish a single national human rights institution.” However, there is virtually no publicly available information on the steps the federal government is taking to strengthen coordination and improve human rights implementation and monitoring among federal agencies, or federal coordination with state and local actors.

14. UN Treaty Bodies have repeatedly called on the United States to improve federal support for state and local monitoring and implementation. Indeed, treaties ratified by the United States emphasize that their provisions apply to all parts of federal states. This is true for the ICCPR, as well as the CERD.

- In 2014, the Committee on the Elimination of All Forms of Racial Discrimination called on the U.S. to “create a permanent and effective coordinating mechanism, such as a national human rights institution … to ensure the effective implementation of the Convention throughout the State party and territories under its effective control; monitor compliance of domestic laws and policies with the provisions of the Convention; and systematically carry out anti-discrimination training and awareness-raising activities at the federal, state and local levels” and “to widely publicize the concluding observations of the Committee.” These recommendations echoed the Committee’s 2008 call for “an independent national human rights institution” and “appropriate mechanisms to ensure a co-ordinated approach towards the implementation of the Convention at the federal, state and local levels,” which were coupled with a call for increased human rights education for government officials.

- In 2014, the Human Rights Committee called on the U.S. to “strengthen and expand existing mechanisms mandated to monitor the implementation of human rights… [and] provide them with adequate human and financial resources or consider establishing an independent national human rights institution.” In 2006, the Committee called for the creation of mechanisms to facilitate more comprehensive reviews of compliance at all levels of government and foster follow-up with
the Concluding Observations, emphasizing that action was needed to ensure that federal and state laws comply with the treaty in a number of areas.  

- The Committee on the Rights of the Child has similarly voiced concern over the lack of a national human rights institution.

15. UN Special Procedures have likewise emphasized that the importance of a more comprehensive national approach to human rights monitoring and promotion. After its 2010 U.S. Country visit, the Working Group of Experts on Peoples of African Descent recommended that the United States create a national human rights monitoring body. The Working Group on Business and Human Rights, too, has noted that incentives for human rights compliance from federal, state and local authorities are needed to bolster respect for human rights among businesses.

III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

16. During the 2015 UPR, the United States emphasized its commitment “to effective implementation of our human rights treaty obligations” and noted that while important strides had been made in state and local engagement, “[t]he United States has continued to receive and consider proposals for a national human rights institution.” In its last comprehensive report to UN Treaty Bodies in 2013, the U.S. “fully agree[d] that mechanisms designed to strengthen coordination are critical,” emphasizing that “[t]he United States continues to examine ways to improve human rights treaty implementation at all levels of government.”

17. Past U.S. recognition of the valuable role of state and local governments is laudable, but the U.S. has continually offered an incomplete picture of the context in which state and local governments operate. The U.S. typically indicates that state and local governments already provide “complementary protections and mechanisms” that “reinforce the ability of the United States to guarantee respect for human rights.” However, the U.S. has failed to acknowledge the challenges that state and local actors face in fully participating in human rights monitoring and implementation. These constraints range from – 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 and the will to engage in monitoring and implementation, they have limited capacity to do so.

18. While offering a potential infrastructure for human rights implementation, the “complementary [federal, state and local] protections and mechanisms” discussed in U.S. reports to the Treaty Bodies and the Human Rights Council are neither oriented around international human rights treaty standards nor adequately resourced to monitor or promote compliance with these standards. A more comprehensive national approach to human rights implementation will require federal mechanisms and initiatives to support, incentivize and coordinate state and local efforts to comply with international human rights treaty standards through education, training and other means.

19. Between 2009-2016, the United States took important steps to improve federal coordination around treaty reporting and implementation, including: development of a federal level inter-agency Equality Working Group to coordinate federal agencies around human rights; communications from the State Department’s Office of the Legal Adviser to state and local governments, emphasizing the U.S. “commitment to protecting human rights domestically through the operation of our comprehensive system of laws, policies, and programs at all levels of government – federal, state, local, insular, and tribal”; requests for input into U.S. treaty reports; dissemination of Treaty Body Concluding
Observations; and presentations to Human Rights Agencies and state attorneys general on U.S. human rights commitments and obligations.

20. Increased outreach and communication is positive, yet more must be done to foster comprehensive and coordinated human rights monitoring and implementation at the state and local levels. At present, there is little public information available on any action the United States is taking to promote human rights protections either federally or subnationally. State and local governments have not received substantive guidance on ways to foster state and local compliance with U.S. human rights commitments and obligations. And further, the Equality Working Group mentioned above was never institutionalized and there is no publicly available information on its current status, mandate, membership or activities.

21. Moreover, there remains a significant gap in human rights implementation within the United States. Discrimination and inequality are longstanding challenges, but over the past two years there has been a sharp increase in acts of bias, harassment, and discrimination. The rise in expressions of discrimination are of significant concern in light of efforts to eliminate basic civil and human rights legal protections at the state and local levels and threats to the infrastructure of the agencies that monitor and enforce these protections. The result is that even where state and localities are progressive and working to advance civil and human rights, they face increasing impediments to success.

22. Human Rights Agencies, and other state and local governments, a first line of defense against discrimination, xenophobia, and intolerance are under threat. Longstanding challenges in civil and human rights implementation are further heightened today as states and localities face the potential loss of federal funding due to cuts in programs addressing discrimination and those targeted to economic rights, like housing – cuts which disproportionately harm communities living in poverty, and communities of color. Examples include:

- Federal threats to eliminate funding from cities and states that are viewed as protecting particular vulnerable groups, such as immigrants, so called “sanctuary cities.”
- Elimination of protections put in place to affirmatively furthering fair housing, which undercut policy advancements lauded by UN Independent experts in 2016.
- The ongoing and systematic attack on the right to vote.

23. These negative trends are compounded by the fact that since the last UPR, the US has withdrawn from engagement with UN Treaty Bodies and the Human Rights Council and limited engagement with UN Special Procedures, steps that significantly undermine human rights promotion and protection.

24. In the current climate, where the federal government, as well as some state governments, are undercutting and limiting rights-protective measures at the municipal level, the need for minimum core protections and monitoring mechanisms grounded in globally recognized human rights principles is clear.

25. More must be done to foster human rights monitoring and implementation at the state and local levels. A comprehensive national approach to human rights implementation will require federal mechanisms and initiatives to support, incentivize, and coordinate state and local efforts to comply
with international human rights treaty standards through education, training, resource support, and other means.

III. CONCLUSION

26. The United States has repeatedly emphasized a commitment to human rights for all. By endorsing the Universal Declaration of Human Rights and ratifying the ICCPR, the CERD, and the CAT, the federal government has undertaken obligations to promote and protect human rights throughout the United States, through all appropriate measures, including legislation, education and policy.\(^{53}\) To meet those obligations, and ensure that state and local governments can reach their full potential to implement human rights, the United States must develop a more comprehensive and coordinated approach to human rights implementation and support, encourage, and incentivize state and local human rights promotion, monitoring, and implementation. The United States, should, at a minimum:

- **Constructively participate** in the full range of activities of [international and regional human rights mechanisms](http://www.law.columbia.edu/sites/default/files/microsites/human_rights/periodic_report/periodic_report.pdf), and include state and local government representatives in US delegations.

- Work across federal agencies and departments to foster more comprehensive [education and training](http://www.law.columbia.edu/sites/default/files/microsites/human_rights/periodic_report/periodic_report.pdf) for state and local agencies and officials on international human rights, including recommendations from the UPR, UN Special Procedures and Treaty Bodies, and publicize and disseminate recommendations made to the United States.

- Consider mechanisms to **provide resources and funding** to state and local agencies and officials to engage in civil and human rights monitoring and implementation.

- **Take proactive measures to support establishment of transparent and effective federal mechanisms** mandated to coordinate with state and local officials around international human rights monitoring and implementation at the federal, state, and local levels to inform engagements with Treaty Bodies, UN Special Procedures, and the UPR.

- Continue to emphasize the **vital role of subnational actors in responding to racism, discrimination, and intolerance**, and fostering equality, including through efforts to [document and disseminate best practices](http://www.law.columbia.edu/sites/default/files/microsites/human_rights/periodic_report/periodic_report.pdf) at the subnational level to counter racism, racial discrimination, xenophobia, and intolerance.

ENDNOTES


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http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/LocalGovernmentAndHR.aspx;
4 See infra para. 19 & accompanying footnotes.
5 Closing the Gap, supra n. 1, at 18–19.
6 See, e.g., Human Rights Watch, Submission to the Committee on the Elimination of all Forms of Racial Discrimination During its Consideration of the Fourth, Fifth, and Sixth Periodic Reports of the United States of America CERD 72nd Session 64 (Feb. 2008), available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/HRW.pdf.
7 Survey responses are on file with the Human Rights Institute.
8 Susan Haigh, Wave of #MeToo complaints strains human rights agencies, Chicago Sun Times (Sep. 4, 2018), available at https://chicago.suntimes.com/news/metoo-complaints-strains-human-rights-agencies/ (“[p]laces such as New York City and Massachusetts have added resources to deal with the surge in complaints, but human rights agencies elsewhere say their small staffs are struggling to keep up with growing caseloads.”) (discussing challenges faced by commissions in Idaho and Maine, but noting that the increase in complaints is not occurring everywhere).
15 U.S. Const. art. VI.
23 Id. ¶ 27.
24 See 2015 UPR Outcomes, supra n. 21, ¶¶ 176.108, 176.75 -176.90.
26 Id. ¶ 21.
39 Closing the Gap, supra note 1.
41 See U.S. 2013 CERD Report, supra note 37, ¶¶ 4; 30 (“the newly established Equality Working Group creates a forum for dialogue between civil society and the federal government on issues of equality and human rights”).

For example, in 2017 in the state of Missouri the legislature changed its law to raise the standard of proof required to demonstrate discrimination. The law now requires that anyone suing for discrimination must demonstrate that membership in a protected class was the “motivating factor” in the adverse act being challenged. See Rick Montgomeret, Greitens signs bill that raises standards for fired employees to win discrimination cases, The Kansas City Star (June 30, 2017), at http://www.kansascity.com/news/politics-government/article159183319.html. The text of Missouri’s SB 43 is available here: https://legiscan.com/O/MO/bill/SB43/2017. Several states have enacted laws that prevent localities from passing or enforcing prohibitions on discrimination laws that are stronger than what state laws already protect (this is most prevalent in the context of discrimination based on gender or sexual orientation). These laws exist in North Carolina, Tennessee, and Arkansas. See National League of Cities, City Rights in an Era of Pre-emption, a State-by-State Analysis (2017), available at http://www.nlc.org/preemption.


The Department of Housing and Urban Development has chipped away at the disparate impact standard See, e.g., Katy O’Donnell, HUD to propose more hurdles to prove housing discrimination (July 31, 2019), https://www.politico.com/story/2019/07/31/hud-probe-housing-discrimination-1629826


