

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

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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<sup>1</sup>

1. Subnational governments are critical to human rights implementation and monitoring.<sup>2</sup> 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 in a pivotal role in comprehensive human rights implementation<sup>3</sup> 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.<sup>4</sup>
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.<sup>5</sup>
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.<sup>6</sup> 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.<sup>7</sup> 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.”<sup>8</sup> State and localities are also facing heightened discrimination on the perceived national origin and immigration status, with a significant impact on Latinx communities.<sup>9</sup> 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.<sup>10</sup> 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,<sup>11</sup> and IAOHRA has continually expressed support for human rights at its annual membership convening.<sup>12</sup> Nine municipalities have adopted laws based on the Convention on the Elimination of All Forms of Discrimination Against Women CEDAW.<sup>13</sup> 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,<sup>14</sup> 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.”<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> However, there are numerous avenues available for the federal government to support, incentivize, and encourage state and local human rights implementation.<sup>19</sup> 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,<sup>20</sup> including specific training for law enforcement.<sup>21</sup> During the first cycle of the UPR, in 2011, the U.S. also supported recommendations to *consider* establishing a National Human Rights Institute,<sup>22</sup> 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.”<sup>23</sup> 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.<sup>24</sup> 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.”<sup>25</sup> The U.S. response further clarified that “there are no current plans to establish a single national human rights institution.”<sup>26</sup> 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,<sup>27</sup> as well as the CERD.<sup>28</sup>
  - 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.”<sup>29</sup> 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.<sup>30</sup>
  - 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.”<sup>31</sup> 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.<sup>32</sup>

- The Committee on the Rights of the Child has similarly voiced concern over the lack of a national human rights institution.<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup>

### 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.”<sup>36</sup> 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.”<sup>37</sup>

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.”<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup> 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;<sup>41</sup> 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”;<sup>42</sup> requests for input into U.S. treaty reports;<sup>43</sup> dissemination of Treaty Body Concluding

Observations;<sup>44</sup> and presentations to Human Rights Agencies and state attorneys general on U.S. human rights commitments and obligations.<sup>45</sup>

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.<sup>46</sup> 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.<sup>47</sup> 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.”<sup>48</sup>
  - Elimination of protections put in place to affirmatively furthering fair housing,<sup>49</sup> which undercut policy advancements lauded by UN Independent experts in 2016.<sup>50</sup>
  - The ongoing and systematic attack on the right to vote.<sup>51</sup>
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,<sup>52</sup> 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.<sup>53</sup> 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**, and include state and local government representatives in US delegations.
- Work across federal agencies and departments to foster more comprehensive **education and training** 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** at the subnational level to counter racism, racial discrimination, xenophobia, and intolerance.

### ENDNOTES

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<sup>1</sup> This report draws upon prior submissions to UN human rights experts, and past resources and scholarship, as well as independent research conducted by the Columbia Law School Human Rights Institute, in partnership with state and local actors, including a 2018 survey of IAOHRA member agencies. This includes a 2014 joint submission for the UPR, *available at* [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/images/state\\_and\\_local\\_upr\\_report.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/images/state_and_local_upr_report.pdf), as well as *Closing the Gap: The Federal Role in Respecting and Ensuring Human Rights at the State and Local Level: Response to the Fourth Periodic Report of the United States to the United Nations Human Rights Committee (2013)*, *available at* [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT\\_CCPR\\_NGO\\_USA\\_15121\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_15121_E.pdf) (hereinafter “Closing the Gap”), and Columbia Law School Human Rights Institute, *Gender Equity Through Human Rights: Local Efforts to Advance the Status of Women and Girls in the United States (2017)*, *available at* [http://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/gender\\_equity\\_through\\_human\\_rights.pdf](http://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/gender_equity_through_human_rights.pdf).  
<sup>2</sup> See, e.g., U.N. Human Rights Council, *Role of local government in the promotion and protection of human rights – Final report of the Human Rights Council Advisory Committee*, U.N. Doc A/HRC/30/49 (2015), *available at*

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<http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/LocalGovernmentAndHR.aspx>;

<sup>3</sup> See *Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination*, ¶ 32 (June 12, 2013), available at [http://www.state.gov/j/drl/rls/cerd\\_report/210605.htm](http://www.state.gov/j/drl/rls/cerd_report/210605.htm); *Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights In Conjunction with the Universal Periodic Review* (Feb. 6, 2015) [U.S. 2015 UPR Report]; Annex A to the Common Core Document of the United States of America: 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, ¶ 129 (Dec. 30, 2011).

<sup>4</sup> See *infra* para. 19 & accompanying footnotes.

<sup>5</sup> *Closing the Gap*, *supra* n. 1, at 18-19.

<sup>6</sup> 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>.

<sup>7</sup> Survey responses are on file with the Human Rights Institute.

<sup>8</sup> 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).

<sup>9</sup> A 2018 report by the U.S. Commission on Civil Rights, *Contemporary Civil Rights Challenges: A View from the States* identifies raids by Immigration and Customs Enforcement (ICE) as a civil rights concern, and highlights immigration as a challenging issue. See U.S. Commission on Civil Rights, *Contemporary Civil Rights Challenges: A View from the States: A Survey of State Advisory Committees (Sep. 2018)*, available at <https://www.usccr.gov/pubs/2018/09-07-Contemporary-Civil-Rights-Challenges.pdf>

<sup>10</sup> See, e.g., *Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy* (2012), available at <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf>.

<sup>11</sup> U.S. Conference of Mayors, Res. Promoting and Encouraging International Human Rights, (June 2013), available at [http://www.usmayors.org/resolutions/81st\\_conference/csj15.asp](http://www.usmayors.org/resolutions/81st_conference/csj15.asp); IAOHRA, Res. To Promote and Encourage Broader Understanding of International Human Rights (August 2013) (on file with Columbia Law Sch. Human Rights Inst.).

<sup>12</sup> See e.g., 2017 IAOHRA Resolution, Gender Equity – A Basic Human Right, available at <http://citiesforcedaw.org/wp-content/uploads/2018/03/IAOHRA-REsolution.pdf>.

<sup>13</sup> See Cities for CEDAW: Status of Local Activities, at <http://citiesforcedaw.org/wp-content/uploads/2018/03/Landscape-Cities-for-CEDAW-Branded-for-Website-March-2018.pdf>

<sup>14</sup> Letter from Ralph Becker, Mayor, Salt Lake City, Utah, et al., to Tom Malinowski, Asst. U.S. Sec’y of State (July 22, 2014), at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/state\\_and\\_local\\_sign\\_on\\_letter\\_to\\_dos-federal\\_support\\_final\\_with\\_sigs\\_.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/state_and_local_sign_on_letter_to_dos-federal_support_final_with_sigs_.pdf).

<sup>15</sup> U.S. Const. art. VI.

<sup>16</sup> See, e.g., *Reservations, Understandings and Declarations to the International Covenant on Civil and Political Rights*, 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992).

<sup>17</sup> 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](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).

<sup>18</sup> *Medellin v. Texas*, 552 U.S. 491 (2008); see also The Lawyers’ Committee for Civil Rights Under the Law, *US Federalism and its impact on ICERD Compliance: Shadow Report Submitted to the Committee on the Elimination of All Forms of Racial Discrimination* (July 2014), available at <http://www.lawyerscommittee.org/admin/site/documents/files/0481.pdf> (discussing federalism and recommending specific ways that federal agencies can encourage state and local compliance with CERD in immigration, voting, education and criminal justice).

<sup>19</sup> See, e.g., Risa E. Kaufman, “By Some Other Means”: *Considering the Executive’s Role in Fostering Subnational Human Rights Compliance*, 33 CARDOZO L. REV. 1971, 2009 (2012).

<sup>20</sup> *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶ 92.87, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011) [Hereinafter 2011 UPR Outcomes].

<sup>21</sup> *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶¶ 176.73-176.74, U.N. Doc. A/HRC/30/12 (Jul. 20, 2015) [Hereinafter 2015 UPR Outcomes].

<sup>22</sup> *Report of the Working Group on the Universal Periodic Review: United States of America, Addendum, A/HRC/16/11.Add.1* ¶ 25 (Jan. 4, 2011), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/116/28/PDF/G1111628.pdf?OpenElement> [Hereinafter U.S. 2011 UPR Response]

<sup>23</sup> *Id.* ¶ 27.



- <sup>24</sup> See 2015 UPR Outcomes, *supra* n. 21, ¶¶ 176.108; 176.75 -176.90.
- <sup>25</sup> *Report of the Working Group on the Universal Periodic Review: United States of America, Addendum*, ¶ 21, U.N. Doc. A/HRC/30/12/Add.1 (Sept. 14, 2015).
- <sup>26</sup> *Id.* ¶ 21.
- <sup>27</sup> International Covenant on Civil and Political Rights art. 50, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).
- <sup>28</sup> International Convention on the Elimination of All Forms of Racial Discrimination art. 2, opened for signature Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).
- <sup>29</sup> Comm. on the Elimination of All Forms of Racial Discrimination, *Concluding Observations on the combined seventh to ninth periodic reports of the United States of America*, ¶¶ 6;32, 85<sup>th</sup> Sess., Aug 11-29, 2014, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014).
- <sup>30</sup> Comm. On the Elimination of Racial Discrimination., 72<sup>nd</sup> Sess., Feb.18-Mar. 7, 2008, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶¶ 12; 13;36, U.N. Doc. CERD/C/USA/CO/6 (Feb. 2008).
- <sup>31</sup> Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America*, 110<sup>th</sup> Sess., Mar. 10-28, ¶ 4(b); (d), U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014).
- <sup>32</sup> Human Rights Comm., 87<sup>th</sup> Sess., July 10-28, 2006, *Concluding Observations of the Human Rights Committee: United States of America*, ¶ 39; 22-25; 28, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006).
- <sup>33</sup> Comm. on the Rights of the Child, *List of Issues Concerning Additional and Updated Information Related to the Second Periodic Report of the United States of America*, ¶ 4, U.N. Doc. CRC/C/OPSC/USA/Q/2 (July 25, 2012).
- <sup>34</sup> 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).
- <sup>35</sup> U.N. Working Group on Business and Human Rights, *Statement at the End of Visit to the United States* (May 1, 2013).
- <sup>36</sup> United States of America, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, A/HRC/WG.6/22/USA/1,¶¶ 5; 7 (Feb. 13, 2015), at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/024/66/PDF/G1502466.pdf?OpenElement>
- <sup>37</sup> See *Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination*, ¶ 32 (June 12, 2013), available at [http://www.state.gov/j/drl/rls/cerd\\_report/210605.htm](http://www.state.gov/j/drl/rls/cerd_report/210605.htm). [hereinafter *U.S. 2013 CERD Report*].
- <sup>38</sup> See *Id.*, ¶ 31; *Common Core Document of the United States of America: 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*, ¶ 129 (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179780.htm>. As part of its report to the Committee on the Elimination of Racial Discrimination, 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*, *supra* n. 3, ¶¶ 1-3; 124-26.
- <sup>39</sup> *Closing the Gap*, *supra* note 1.
- <sup>40</sup> There is a Special Representative for Global Intergovernmental Affairs. See Transcript of U.N. Human Rights Council Town Hall Meeting, Universal Periodic Review of the United States Human Rights Record, at 11, Nov. 5, 2010, available at <http://www.charityandsecurity.org/system/files/02.05.10%20UPR%20Town%20Hall%20Transcript.pdf>. Yet that office is not mandated to address domestic human rights implementation and has lacked permanent leadership for a year. See Letter from Robin Toma, Exec. Dir., Los Angeles County Human Relations Comm’n, to Reta Jo Lewis, Special Representative for Global Intergovernmental Affairs (May 3, 2011) (on file with the Human Rights Institute).
- <sup>41</sup> 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”).
- <sup>42</sup> See Letter From Principal Deputy Legal Adviser McLeod to Governors of U.S. State and Territories (Feb. 18, 2014), available at <https://2009-2017.state.gov/s/l/releases/2014/223238.htm> (disseminated to the U.S. Conference of Mayors, National Association of Counties, National Governors Association, National Association of Attorneys General and IAOhRA).
- <sup>43</sup> See, e.g., Letter from Harold Koh, Legal Adviser, U.S. Dep’t of State, to State and Local Human Rights Commissions (Dec. 21, 2010) (on file with Columbia Law Sch. Human Rights Inst.) (requesting information for U.S. CERD and CAT reports); Letter from Harold Hongju Koh, Legal Adviser to the U.S. Dep’t of State, to State and Local Human Rights Commissions (May 3, 2010), available at <https://2009-2017.state.gov/s/l/releases/223235.htm>; Memorandum from Harold Hongju Koh, Legal Adviser to the U.S. Dep’t of State, to State Governors on U.S. Human Rights Treaty Reports (Jan. 20, 2010), available at <https://2009-2017.state.gov/documents/organization/137292.pdf>.
- <sup>44</sup> See Letter from Mary E. McLeod, Acting Legal Adviser, U.S. Dep’t of State, to Muriel Bowser, Mayor, D.C. (Apr. 25, 2015), available at <https://2009-2017.state.gov/s/l/releases/2015/241814.htm>
- <sup>45</sup> Mary E. McLeod, Acting Legal Adviser, U.S. Dep’t of State, *The Role of State, Territorial, and Local Government in Promoting, Respecting, and Defending Human Rights*, Remarks to the National Association of Attorneys General National Conference (Feb. 25, 2015), available at <http://www.state.gov/s/l/releases/remarks/239960.htm>.

<sup>46</sup> The FBI has documented a 17% increase in hate incidents from 2016 to 2017. *See Federal Bureau of Investigation, Uniform Crime Reporting: 2017, available at* <https://www.fbi.gov/news/stories/2017-hate-crime-statistics-released-111318>; *See also* Jessica Schneider, *Hate crimes increased by 17% in 2017*, FBI report finds, CNN, at <https://www.cnn.com/2018/11/13/politics/fbi-hate-crimes-2017/index.html>, This is consistent with reports of increased hate and bias incidents across the country. *See Reuters, U.S. Hate Crimes Up 20 Percent in 2016, Fueled by Election Campaign: Report*, NBC News (Mar. 14, 2017, 12:57 PM), <http://www.nbcnews.com/news/us-news/u-s-hate-crimes-20-percent-2016-fueled-election-campaign-n733306> (“The new numbers, collected from police departments, reverse a trend toward fewer hate crimes in many of the cities in recent years.”).

<sup>47</sup> 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 Montgomer, 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/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>.

<sup>48</sup> This threat began during the first days of the current presidential administration, via executive order Exec. Order 13768, *Enhancing Public Safety in the Interior of the United States* (Jan. 25, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united> (hereinafter Muslim and Refugee Travel Ban). The threat escalated in March of 2018, when Attorney General Jeff Sessions announced litigation against the State of California on the basis of its policies to limit cooperation of state officials with federal immigration enforcement efforts. Tal Kopan, *Jeff Sessions takes immigration fight to California, announces lawsuit*, CNN (Mar. 7, 2018).

<sup>49</sup> 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-prove-housing-discrimination-1629826>

<sup>50</sup> Human Rights Council, Report of the Working Group of Experts on People of African Descent, ¶ 18, A/HRC/33/61/Add.2 (Aug. 18 2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/30/PDF/G1618330.pdf?OpenElement>

<sup>51</sup> While most agencies do not work on voting issues, it is vital to emphasize the need for laws and policies that promote, rather than curtail access to the ballot box – an essential component of a democracy. The right to vote must be protected as a cornerstone of democracy and foundation for basic human rights. Past UN recommendations remain unheeded, with dire impacts for U.S. elections and democracy. *See Human Rights Council, Report of the Working Group of Experts on People of African Descent, ¶¶ 42, 114, A/HRC/33/61/Add.2 (Aug. 18 2016), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/30/PDF/G1618330.pdf?OpenElement*. The CERD Committee has also previously recommended improved enforcement of voting rights and measures that promote voter participation, as well as called for a prohibition on enforcement of laws that have discriminatory impacts. Comm. on the Elimination of All Forms of Racial Discrimination, *Concluding Observations on the combined seventh to ninth periodic reports of the United States of America*, ¶¶ 11; 85th Sess., Aug. 11-29, 2014, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014) <https://www.state.gov/documents/organization/235644.pdf> [hereinafter 2014 CERD Concluding Observations].

<sup>52</sup> *See* Ed Pilkington, *US halts cooperation with UN on potential human rights violations*, The Guardian (Jan. 4, 2019), at <https://www.theguardian.com/law/2019/jan/04/trump-administration-un-human-rights-violations>

<sup>53</sup> *See, e.g.* International Covenant on Civil and Political Rights, art. 2(2); 50, Dec. 16, 1966, 999 U.N.T.S. 171; 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>; Gen. Comment No. 31, *Nature of the General Legal Obligation 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>; International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2, 5, 7, Mar. 7, 1966, 660 U.N.T.S. 195; Comm. On the Elimination of Racial Discrimination, 42nd Sess., March 1-19, 1993, *General Recommendation No. 31, Establishment of National Institutions to Facilitate Implementation of the Convention*, ¶ 1(a)-(e), U.N. Doc. A/48/18 (Supp), 116 (Mar. 19, 1993).