



International Association of Official Human Rights Agencies



Toward An Effective National Human Rights Institution for the United States of America

For the 107th Session of the U.N. Committee on the Elimination of Racial Discrimination
August 8 – 30, 2022

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July 2022

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Introduction and Issue Summary

In the United States, compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) depends on effective coordination between federal, state, and local governments. In sharing authority to implement the treaty, subnational actors are essential to protecting and promoting fundamental human rights. These include the state and local agencies that promote, enforce, and realize human and civil rights protections and/or conduct research, training and education, and issue policy recommendations. They also encompass 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.

While advancing human rights requires collective effort at all levels of government, the federal government is ultimately responsible for treaty compliance and accountability at both the national and subnational levels. At present, the United States lacks an institutionalized federal infrastructure to support human rights education, monitor and implement human rights initiatives at the state and local levels, or to provide guidance on human rights and translate international standards into domestic practice.

This Submission provides an overview of the fragmented framework under which actors and institutions in the United States currently operate with respect to human rights law. It urges the federal government to establish an independent national human rights institution to effectively fulfill its obligations enumerated in international treaties. Encouraged by the Committee on the Elimination of Racial Discrimination (“the Committee”) and other UN treaty bodies, the creation of a federal entity that would provide direction and support to state and local commissions is critical to the development of a more comprehensive and coordinated approach to human rights implementation. This Submission includes best practices and recommendations towards creating a more sustainable model under the guidance of the federal government.

I. State and Local Implementation

Among the nearly 200 human rights commissions (“HRCs”) established at the municipal level, many offer useful insight into promising practices and mechanisms utilized to uphold human rights locally.¹ With varying degrees of quasi-judicial power authorized by ordinances, HRCs throughout the country are primarily tasked with enforcing civil rights laws; providing policy advice; promoting intergroup relations; and offering human rights education.² The numerous local-level examples serving these functions offer foundational elements to be incorporated into a national human rights institution that would provide better oversight and enhanced support to HRCs to ensure greater compliance with international human rights treaties and obligations.

¹ Prisca Tarimo, *Achievements and Challenges of Human Rights Commissions in US Cities*, UNIV. OF MASS. BOS.: SCH. FOR GLOB. INCLUSION AND SOC. DEV. & CITY OF BOS.: BOS. HUM. RTS. COMM. 2 (July 2021), <https://www.boston.gov/sites/default/files/file/2022/03/Achievements-Challenges-Human-Rights-Commissioners-US-cities.pdf> (“The researcher visited approximately 190 websites of city HRCs and identified 20 HRCs to be most active and therefore to include in the study.”).

² *Id.*

Accordingly, best practices adopted by HRCs across the country should inform federal reforms to better advance the critical work of state and local agencies, and thereby result in more effective coordination between all levels of government through an international human rights framework. This non-exhaustive list includes monitoring and documenting human rights issues; assessing local policy and practice in light of international standards; engaging in human rights education; incorporating human rights principles into advocacy efforts; investigating human rights complaints; coordinating and implementing local policy to integrate human rights principles and norms; and measuring progress toward implementation of the Sustainable Development Goals (SDGs), such as reducing racial and gender inequities, and building effective and inclusive institutions.³

In applying these practices, state and local governments have reported notable advances through innovative programs and initiatives designed to promote human rights. In its 2020 Voluntary Local Review of the SDGs (“VLR”), the City of Pittsburgh reported that the Pittsburgh Commission on Human Relations investigates instances of discrimination in housing, employment, and public accommodations for protected classes free of charge to city residents, and seeks resolution for anyone who has experienced harm because of discrimination.⁴ Successive VLRs produced by New York City (“NYC”) have highlighted the progress of its Commission on Human Rights in enforcing the NYC Human Rights Law. In 2017, the Commission received 9,772 inquiries of discrimination – an 85% increase over the prior two years following expanded efforts targeting more isolated communities.⁵ In 2018, the number of inquiries rose to 10,372 – a 24% increase from 2016,⁶ by 2019, the Commission saw a 480% increase in bias incident reports since 2016.⁷ The NYC Commission continues to educate the public about the NYC Human Rights Law and conducts educational workshops, townhalls, roundtables, and listening sessions in multiple languages to educate residents about discrimination based on protected classes, such as race.⁸ The City of Los Angeles also took measures to promote racial equity, establishing the Los Angeles Civil + Human Rights and

³ Columbia Law School, Human Rights Institute & International Association of Official Human Rights Agencies (“IAOHRA”), *State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality Through an International Human Rights Framework*, COLUM. L. SCH. 11-13 (2010), https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/45408_HRI-Text%20%5BOnline%5D%20-%202nd%20printing%20%28updated%2010.1.09%29.pdf [hereinafter IAOHRA Report].

⁴ Kaitlyn Pendrak & Tyler Viljaste, *Pittsburgh and the Sustainable Development Goals: A Voluntary Local Review of Progress*, DESA 27 (2020), <https://sdgs.un.org/sites/default/files/2020-12/Pittsburgh%20VLR%202020%20Final%20Draft.pdf>.

⁵ *Voluntary Local Review: New York City’s Implementation of the 2030 Agenda for Sustainable Development*, DESA 54 (2018), https://sdgs.un.org/sites/default/files/2020-09/NYC_VLR_2018_FINAL.pdf. See generally NYC HUMAN RIGHTS, <https://www1.nyc.gov/site/cchr/index.page> (last visited July 7, 2022).

⁶ *Voluntary Local Review: New York City’s Implementation of the 2030 Agenda for Sustainable Development*, DESA 63 (2019), <https://sdgs.un.org/sites/default/files/2020-09/International-Affairs-VLR-2019.pdf> [hereinafter *VLR: NYC 2019*]. See generally N.Y.C. HUM. RTS., <https://www1.nyc.gov/site/cchr/index.page> (last visited July 7, 2022).

⁷ *VLR: NYC 2019*, *supra* note 6, at 63. See also *Fiscal Year 2021 Annual Report*, N.Y.C. COMM. ON HUM. RTS. 39, <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/CCHRAnnualReport2021.pdf> (“COVID-19 notwithstanding, inquiries in FY 21 remained nearly twice as high since calendar year 2015 when the number of inquiries the agency received was 5,296.”).

⁸ *VLR: NYC 2019*, *supra* note 6. See generally N.Y.C. ADMIN. CODE § 8 (2022), <https://www1.nyc.gov/assets/cchr/downloads/pdf/Title-8-Text-of-the-Law-3-2022.pdf>.

Equity Department in December 2020.⁹ This division is responsible for enforcing the city’s Civil and Human Rights Law, and has investigative powers and quasi-judicial authority to address the long-standing discrimination impacting underserved communities that denies equal treatment in private commerce, education, employment, and housing.¹⁰ The Department also supports five city commissions: the Human Relations Commission, Commission on the Status of Women, and Commission on Civil Rights, Reparations Advisory Commission, and the Transgender Advisory Council.¹¹

Following the worldwide declaration of the COVID-19 pandemic and ensuing public health restrictions starting March 2020, a wave of hate crimes and incidents targeted Asian and Pacific Islander Americans. According to a national survey by AAPI Data, anti-Asian hate crimes have increased since the start of the pandemic: one in six Asian Americans reported experiencing a hate crime in 2021, up from one in eight in 2020.¹² The figure had already reached one in twelve in just the first three months of 2022, suggesting a continuing upward trend.¹³ In response to this surge, the Los Angeles County’s Commission on Human Relations bolstered and expanded its unique and robust anti-hate program, LA vs Hate.¹⁴ In addition to serving as an alternative way of reporting hate acts that otherwise may not be communicated to the police, this initiative provides free, multilingual, 24/7 assistance to anyone reporting hate to the hotline so as to address basic human needs, including freedom from hate violence and discrimination. LA vs. Hate has partnered with a network of community nonprofit organizations to advocate for hate victims and build more inclusive communities.¹⁵

These laudable efforts of subnational HRCs, however, are frustrated by structural challenges, such as shortages in funding and staff.¹⁶ The limited budgets of most local entities make it difficult to hire the necessary staff for administrative and outreach activities.¹⁷ The ordinances establishing the HRCs may also limit the ability and flexibility of a commission to act. Furthermore, they tend to restrict HRCs’ independence to address critical policies and procedures in alignment with the Paris Principles, and deprioritize HRCs in budget allocations.¹⁸ Moreover, most HRC ordinances limit commissions to addressing discrimination, particularly in housing, employment, and public accommodations.¹⁹ State laws also often preempt rulings made

⁹ CIV. + HUM. RTS. AND EQUITY DEP’T, <https://civilandhumanrights.lacity.org/commissions> (last visited July 11, 2022). See also *Los Angeles Sustainable Development Goals: A Voluntary Local Review of the Progress Toward the Sustainable Development Goals in Los Angeles*, DESA 55 (2021), https://sdgs.un.org/sites/default/files/vlrs/2021-11/losangeles_2021_vlr.pdf [hereinafter *LA SDG: VLR*].

¹⁰ *LA SDG: VLR*, *supra* note 9, at 55. See generally L.A., CAL., MUN. CODE ch. 4, art. 16 (2019), https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-135597.

¹¹ *Commissions*, CIV. + HUM. RTS. AND EQUITY DEP’T, <https://civilandhumanrights.lacity.org/commissions> (last visited July 11, 2022).

¹² Jennifer Lee, *Confronting the Invisibility of Anti-Asian Racism*, BROOKINGS INST. (May 18, 2022), <https://www.brookings.edu/blog/how-we-rise/2022/05/18/confronting-the-invisibility-of-anti-asian-racism/> (citing Jennifer Lee & Karthick Ramakrishnan, *A Year After Atlanta*, AAPI DATA (Mar. 16, 2022), <http://aapidata.com/blog/year-after-atlanta/>).

¹³ *Id.*

¹⁴ LA VS HATE, <https://www.lavshate.org> (last visited July 7, 2022).

¹⁵ *Id.*

¹⁶ Tarimo, *supra* note 1, at 14.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

by HRCs on discrimination cases that end up in state-level or higher courts.²⁰ In Philadelphia, for example, the Pennsylvania Human Relations Commission (“PHRC”) investigated whether the city could refuse to contract with a Roman Catholic adoption agency that claimed its religious beliefs prevented it from working with same-sex couples.²¹ The PHRC, as well as the federal district court and Third Circuit Court of Appeals, decided that Philadelphia could stop referring children to Catholic Social Services until it agreed to certify members of the LGBTQ+ community as adoptive or foster parents. However, the US Supreme Court unanimously reversed, citing a violation of the Constitution’s First Amendment Free Exercise Clause.²²

To address these shortcomings, a national government committed to upholding and strengthening international human rights protections needs to support and encourage state and local human rights promotion, monitoring, and implementation. Key to this are 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. Directly Impacted Communities

Myriad examples illustrate the persistent lack of human rights accountability and gaps in human rights protection in areas within state and local jurisdictions. At the most recent conference of the International Association of Official Human Rights Agencies (“IAOHRA”) in 2021, member agencies met virtually to discuss pressing issues confronting racially oppressed communities, such as systemic devaluation of property in Black neighborhoods. Controlling for structural characteristics and neighborhood amenities, a study conducted by the Brookings Institution revealed homes in majority-Black neighborhoods are underpriced by 23% compared to houses in neighborhoods where the population is less than one percent Black, cumulatively resulting in \$156 billion in lost equity.²³ With housing as the primary mechanism by which Americans have built and passed along generational wealth for the last century, national leadership is vital to creating policy solutions to achieve racial wealth equity and bolster Black home-ownership throughout the country in accordance with Article 5(e)(iii) of the ICERD.

In the wake of the murder of George Floyd in May 2020, state and local human rights agencies have also pushed for more significant criminal justice and racial equity reform across the country.²⁴ The St. Paul (Minnesota) Human Rights and Equal Economic Opportunity Commission, for example, demands a conversion of the current model of policing that is presently better suited to preserve the racial hierarchy than meet the needs of modern life in a multi-racial democracy.²⁵ An institutional overhaul of law enforcement agencies coordinated at

²⁰ *Id.* at 15.

²¹ *Fulton v. City of Phila., Pa.*, 141 S. Ct. 1868, 210 L. Ed. 2d 137 (2021).

²² *Id.*

²³ IAOHRA, *Worthy of Investment: Restoring Justice to Black Communities*, YOUTUBE, at 13:04 (Feb. 1, 2022), <https://www.youtube.com/watch?v=Zd23eopFj8g>. See also ANDRE M. PERRY, *KNOW YOUR PRICE: VALUING BLACK LIVES AND PROPERTY IN AMERICA’S BLACK CITIES* (Brookings Institution Press 2020).

²⁴ IAOHRA, *The Anatomy of a Community in Crisis: The Tale of the Twin Cities and George Floyd*, YOUTUBE, at 8:59 (Feb. 2, 2022), <https://www.youtube.com/watch?v=qjh1P0AssmM>.

²⁵ *Id.*

the federal level could make significant progress to reduce police misconduct, increase officer accountability, and dismantle power structures to ultimately better reflect the values of the communities being served and comply with Article 4 of the ICERD.

Furthermore, the increased use of artificial intelligence (“AI”) has progressively perpetuated racial inequities and created new biases with harmful consequences in multiple domains, amplifying prejudices in the criminal justice system, healthcare, housing, education and hiring practices. Heavy reliance by law enforcement on flawed facial recognition software that misidentifies women and people of color more often than white men, for example, has resulted in wrongful arrests and incarcerations of Black men across the country.²⁶ Racial bias built into algorithms used by professionals in the healthcare industry has systemically underestimated Black patients’ medical needs.²⁷ To minimize and prevent future violations of privacy, civil, and human rights, AI experts are calling for increased transparency and accountability in the form of federal oversight of algorithms and augmented critical decision processes by agencies and lawmakers.²⁸ The federal Algorithmic Accountability Act of 2022, introduced at the beginning of this year, would require qualifying companies to conduct impact assessments for bias, effectiveness, and other factors when using automated systems to make critical decisions; create a public repository at the Federal Trade Commission for these reports; and provide guidance on how to comply with the law from the Directors of the National Institute of Standards and Technology, the National Artificial Intelligence Initiative, the Office of Science and Technology Policy, and other relevant stakeholders.²⁹ The objectives of this legislation to target discrimination in AI with federal supervision and coordination should be incorporated into a national human rights institution that provides similar federal oversight and support for local and state commissions.

III. CERD Committee Position with Respect to the U.S. and an Independent National Human Rights Commission

Nearly three decades ago, in its General Recommendation No. 17, this Committee urged state parties to establish national institutions to facilitate implementation of the ICERD. Specifically, it advised governments to create these bodies to promote respect for the enjoyment of human rights without any discrimination, foster education concerning the Convention, and promote and

²⁶ Natasha Singer & Cade Metz, *Many Facial-Recognition Systems are Biased, Says U.S. Study*, N.Y. TIMES (Dec. 19, 2019), <https://www.nytimes.com/2019/12/19/technology/facial-recognition-bias.html>. See also Kashmir Hill, *Wrongfully Accused by an Algorithm*, N.Y. TIMES (June 24, 2020), <https://www.nytimes.com/2020/06/24/technology/facial-recognition-arrest.html>.

²⁷ Katherine J. Igoe, *Algorithmic Bias in Health Care Exacerbates Social Inequities – How to Prevent It*, HARV. T.H. CHAN SCH. OF PUB. HEALTH (Mar. 12, 2021), <https://www.hsph.harvard.edu/ecpe/how-to-prevent-algorithmic-bias-in-health-care/>. See also Sam Jemielity, *Health Care Prediction Algorithm Biased Against Black Patients, Study Finds*, UNIV. OF CHI. NEWS (Oct. 28, 2019), <https://news.uchicago.edu/story/health-care-prediction-algorithm-biased-against-black-patients-study-finds>.

²⁸ *Wyden, Booker and Clarke Introduce Algorithmic Accountability Act of 2022 to Require New Transparency And Accountability For Automated Decision Systems*, RON WYDEN: U.S. SEN. FOR OR. (Feb. 3, 2022), <https://www.wyden.senate.gov/news/press-releases/wyden-booker-and-clarke-introduce-algorithmic-accountability-act-of-2022-to-require-new-transparency-and-accountability-for-automated-decision-systems>.

²⁹ Algorithmic Accountability Act of 2022, H.R. 6580, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/house-bill/6580>.

monitor compliance nationally.³⁰ In General Recommendation No. 31, the Committee encouraged state parties to implement national strategies to, inter alia, develop training on human rights; and “entrust an independent national institution with the task of tracking, monitoring and measuring progress made under the national plans of action and guidelines against racial discrimination, identifying undetected manifestations of racial discrimination and submitting recommendations and proposals for improvement.”³¹ As a follow-up to the Durban Review Conference, General Recommendation No. 33 re-emphasized the importance of effective national monitoring and evaluation mechanisms and strongly urged their establishment to ensure that all appropriate steps are taken to comply with the Committee’s concluding observations and general recommendations.³²

In 2008, this Committee advised the United States to “consider the establishment of an independent human rights institution in accordance with the Paris Principles” after noting that no such body existed.³³ The Committee also recommended that the United States “establish appropriate mechanisms to ensure a coordinated approach toward the implementation of the Convention at the federal, state and local levels.”³⁴ In its most recent set of recommendations in 2014, the Committee remained unsatisfied with the efforts of the United States and expressed regret at the lack of progress in instituting a federal human rights entity. The Committee reiterated that the United States should “create a permanent and effective coordinating mechanism, such as a national human rights institution... to ensure the full implementation of the Convention through the State party and the 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 level.”³⁵

IV. U.S. Government Response

In its Report to the Committee in 2013, the United States “fully agree[d] that mechanisms designed to strengthen coordination are critical” and offered assurance that “[t]he United States continues to examine ways to improve human rights treaty implementation at all levels of government.”³⁶ To defend the lack of a single independent national human rights institution, the

³⁰ Comm. on the Elimination of Racial Discrimination, *General Recommendation XVII on the Establishment of National Institutions to Facilitate the Implementation of the Convention*, at 116-117, ¶ 1(a)-(e), U.N. Doc. A/48/18(SUPP) (Mar. 19, 1993).

³¹ Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, at 98-108, ¶ 5(j), U.N. Doc. A/60/18(SUPP) (Aug. 19, 2005).

³² Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 33: Follow-up to the Durban Review Conference*, ¶ 1(k), U.N. Doc. CERD/C/GC/33 (Sept. 29, 2009).

³³ Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶ 12, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008).

³⁴ *Id.* at ¶ 13.

³⁵ Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, ¶ 6, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014).

³⁶ *Seventh to Ninth Periodic Reports of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination*, ¶¶ 31, 32, U.N. Doc. CERD/C/USA/7-9 (June 13, 2013) [hereinafter *Seventh to Ninth Periodic Reports*]

United States presented as adequate substitutes its “multiple complementary protections and mechanisms,” such as the independent judiciary at federal and state levels, and the coordination efforts of the Civil Rights Division of the Department of Justice.³⁷ It also referenced its piecemeal approach of relying on separate state, local, tribal, and territorial organizations and commissions to monitor domestic implementation of human rights obligations, noting their “critical role in raising public awareness of human rights issues and pressing for continued progress on such issues.”³⁸ In its current submission to the Committee, the United States maintained its position that “it has in place sufficient multiple and complementary protections and mechanisms to reinforce its ability to guarantee respect for human rights.”³⁹

During the 2010 Universal Periodic Review (“UPR”), numerous countries suggested that the United States consider a national human rights institution, improve federal coordination with state and local governments, and incorporate human rights trainings and education strategies into public policies.⁴⁰ The U.S., however, did not support the recommendations that explicitly called for a centralized human rights entity, admitting that it could not “now commit to a particular plan.”⁴¹ During the second UPR cycle, the United States also received repeated recommendations to promptly instate an effective federal mechanism to ensure comprehensive and coordinated compliance with international human rights instruments at all levels of government and strengthen existing human rights monitoring procedures.⁴² Again, the U.S. responded that “there are no current plans to establish a single national human rights institution” in light of the “many efforts at all levels to improve and strengthen existing domestic institutions that monitor human rights.”⁴³

In 2015, the U.S. clarified that it was “taking steps to strengthen federal-level coordination” and “consider[ing] ways to improve implementation.”⁴⁴ Encouraging progress to correspond with state and local actors included 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”;⁴⁵ requests for

³⁷ *Id.* at ¶ 31.

³⁸ *Id.* See also *Common Core Document Forming Part of the Reports of State Parties: United States of America*, ¶ 145, Annex, U.N. Doc. HRI/CORE/USA/2011 (Dec. 30, 2011).

³⁹ *Tenth to Twelfth Periodic Reports of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination*, ¶ 12, U.N. Doc. CERD/C/USA/10-12 (June 2, 2021).

⁴⁰ U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶¶ 92.72–92.74, ¶ 92.87, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011).

⁴¹ *Addendum of the United States of America to the Report of the Working Group on the Universal Periodic Review*, ¶ 25, U.N. Doc. A/HRC/16/11.Add.1 (Mar. 8, 2011).

⁴² U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶¶ 176.75-176.90, U.N. Doc. A/HRC/30/12 (July 20, 2015).

⁴³ *Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review*, ¶ 21, U.N. Doc. A/HRC/30/12/Add.1 (Sept. 14, 2015).

⁴⁴ *Id.*

⁴⁵ See Letter from Mary E. McLeod, Principal Deputy Legal Adviser, U.S. Dep’t of State, to Governors of U.S. State and Territories (Feb. 18, 2014), available at <https://2009-2017.state.gov/documents/organization/223481.pdf> (disseminated to U.S. Conference of Mayors, National Association of Counties, National Governors Association, National Association of Attorneys General, National Congress of American Indians, and IAOHRA).

input into U.S. treaty reports;⁴⁶ dissemination of UN Treaty Body Concluding Observations;⁴⁷ and presentations to human rights agencies and state attorneys general on U.S. human rights commitments and obligations.⁴⁸ While commendable, these increased outreach and communication efforts remain inadequate to address the significant gap in human rights implementation within the United States.

In its submission to the third UPR cycle, the United States once more expressly rejected the multiple suggestions by the international community to establish a national human rights institution.⁴⁹ After receiving eleven recommendations for a federal mechanism from state parties,⁵⁰ the United States repeated that it has no intention to create a single national human rights institution and, thus, could not support these proposals.⁵¹

Previous attempts to create national mechanisms suggested progress in establishing a federal framework, but have ultimately proved unsustainable in changing political climates. In 1998, President Clinton created the Interagency Working Group on the Implementation of Human Rights Treaties to undertake a range of functions to oversee domestic implementation of the UN treaties ratified by the United States.⁵² This mechanism was tasked with, inter alia, coordinating the preparation of treaty compliance reports to international organizations, including the UN and the OAS, and responses to contentious complaints that were lodged with these bodies; overseeing a review of all proposed legislation to ensure conformity with international human rights obligations; ensuring annual review of the reservations, understandings and declarations the U.S. attached to human rights treaties; and considering complaints and allegations of inconsistency with or breach of international human rights obligations.⁵³ The Interagency Working Group was disbanded in 2001 during the George W. Bush Administration.⁵⁴

In March 2012, the Civil Rights Division of the Department of Justice launched the Equality Working Group to improve coordination throughout the United States and strengthen understanding and respect for human rights.⁵⁵ The entity was designed to enhance the government's domestic implementation of international human rights obligations relating to non-

⁴⁶ See Letter from Harold Hongju Koh, Legal Adviser, U.S. Dep't of State, to State and Local Human Rights Commissions (May 3, 2010), available <https://2009-2017.state.gov/documents/organization/223478.pdf>; Memorandum from Harold Hongju Koh, Legal Adviser, 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>.

⁴⁷ 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/documents/organization/242026.pdf>.

⁴⁸ 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 <https://2009-2017.state.gov/s/l/releases/remarks/239960.htm>.

⁴⁹ *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: United States of America*, 19 n.10, U.N. Doc. A/HRC/WG.6/36/USA/1 (Aug. 13, 2020).

⁵⁰ U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶¶ 26.90-26.100, U.N. Doc. A/HRC/46/15 (Dec. 15, 2020).

⁵¹ U.N. Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶¶ 21-22, U.N. Doc. A/HRC/46/15/Add.1 (Mar. 4, 2021).

⁵² IAOHRA Report, *supra* note 3, at 14.

⁵³ Exec. Order No. 13107: Implementation of Human Rights Treaties, 63 Fed. Reg. 68991 (Dec. 15, 1998).

⁵⁴ IAOHRA Report, *supra* note 3, at 14.

⁵⁵ *Seventh to Ninth Periodic Reports*, *supra* note 36, at ¶ 4.

discrimination and equal opportunity, with an initial focus on those commitments that relate to combating racial discrimination.⁵⁶ Under the Obama Administration and beyond, the Group was intended to create a forum of dialogue between civil society and the federal government on issues of human rights with participation from numerous federal departments and agencies.⁵⁷ This initiative, however, was never institutionalized; and there is no publicly available information as to its current status, mandate, membership, or activities.

The Biden Administration has yet to advocate for a national human rights institution dedicated to implementing human rights obligations domestically, especially those under the ICERD. President Biden has, however, prioritized racial justice by signing Executive Order (“EO”) 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* on his first day in office.⁵⁸ This directive tasks the Domestic Policy Council with coordinating efforts to embed equity principles, policies, and approaches across federal government agencies to ultimately dismantle systemic racism. In consultation with the Director of the Office of Management and Budget, the head of each agency will conduct an equity assessment of the agency’s programs and policies to evaluate the barriers to equal opportunity faced by underserved communities, and report these findings to the Assistant to the President for Domestic Policy to collectively produce a remedial plan.⁵⁹ EO 13985 also established an Interagency Working Group on Equitable Data (“Data Working Group”), whereby federal officials and agency representatives coordinate and consult to better collect federal datasets disaggregated by race and other key demographic variables.⁶⁰ The success of this initiative remains to be seen.

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, and resource support that cannot be threatened by the succeeding administration. Drawing on the examples of the Equality Working Group, Interagency Working Group, and Data Working Group described above, the federal government must make it a priority to create an independent, non-partisan national human rights institution that would include as part of its mandate an examination of the United States’ compliance with international human rights treaties and other human rights obligations.

V. Other UN and Regional Human Rights Bodies Recommendations

In its 2014 Concluding Observations, the UN Human Rights Committee recommended that the United States “strengthen and expand existing mechanisms mandated to monitor the implementation of human rights at federal, state, local and tribal levels, provide them with adequate human and financial resources or consider establishing an independent national human

⁵⁶ *Id.*

⁵⁷ *Id.* at ¶ 30.

⁵⁸ Exec. Order No. 13985: *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 Fed. Reg. 7,009 (Jan. 25, 2021).

⁵⁹ *Id.*

⁶⁰ *Id.*

rights institution.”⁶¹ This builds upon its previous recommendation in 2006 that the United States adopt effective mechanisms to facilitate more comprehensive reviews of compliance with the Covenant and the Committee’s Concluding Observations at all levels of government.⁶²

Other UN treaty bodies have voiced similar concerns over the lack of a national human rights infrastructure in the United States, calling on the U.S. to improve federal support for state and local monitoring and implementation. The Working Group of Experts on Peoples of African Descent, for example, encouraged the United States to establish a human rights commission as an independent body to promote and protect human rights in accordance with international standards.⁶³ Similarly, the Working Group on Business and Human Rights noted that “significant gaps remain in regulation, oversight and enforcement in areas where business activities may adversely impact human rights,” suggesting that incentives from federal authorities to respect human rights are necessary to supplement insufficient state-level efforts.⁶⁴

VI. Recommended Questions

1. How does the United States educate its subnational actors about its international human rights obligations, including the total amount spent on those educational efforts?
2. When does the United States expect to take action toward creating a national human rights institution aligned with the Paris Principles?
3. What can the United States do to strengthen, monitor, and implement human rights norms at the state and local level?

VII. Suggested Recommendations

The United States has repeatedly emphasized a commitment to human rights for all. By endorsing the Universal Declaration of Human Rights and ratifying the ICERD, the International Covenant on Civil and Political Rights (“ICCPR”), and the Convention Against Torture (“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. 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:

⁶¹ U.N. Hum. Rts. Comm., *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶ 4(c), U.N. Doc. CCPR/C/USA/C/4 (April 23, 2014).

⁶² U.N. Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: United States of America*, ¶ 39, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006).

⁶³ U.N. Hum. Rts. Council, *Report of the Working Group of Experts on People of African Descent, Visit to the United States (25-29 January 2010)*, ¶ 88, U.N. Doc A/HRC/15/18 (Aug. 6, 2010).

⁶⁴ U.N. Hum. Rts. Council, *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Addendum, Visit to the United States of America (22 April-1 May 2013)*, ¶ 96, U.N. Doc A/HRC/26/25/Add.4 (May 6, 2014).

- **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 the establishment of transparent, effective, and enduring 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.
- Building on existing work, such as the July 2021 Boston Human Rights Commission Report,⁶⁵ **undertake a comprehensive study**, including best practices and challenges, of the practical steps to be taken towards making an effective national human rights institution or permanent effective coordinating mechanism a reality.
- **Pass and implement the Algorithm Accountability Act of 2022.**⁶⁶
- **Institutionalize the Data Working Group** (mandated under EO 13985) to support municipalities and states in compiling disaggregated data.⁶⁷

⁶⁵ Tarmino, *supra* note 1.

⁶⁶ Algorithmic Accountability Act of 2022, H.R. 6580, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/house-bill/6580>. For further discussion, *see* Section II. Directly Impacted Communities.

⁶⁷ Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7,009 (Jan. 25, 2021). For further discussion, *see* Section IV. U.S. Government Response.