

Submission to the UN Human Rights Committee for the List of Issues: United States

I. The Federal Role in Respecting and Ensuring Covenant Rights at the State and Local Level

II. Reporting Organization(s)

Columbia Law School's Human Rights Institute & the International Association of Official Human Rights Agencies

III. Issue Summary

Full compliance with the ICCPR requires that treaty provisions are respected and protected at the state and local levels. In ratifying the ICCPR, the United States indicated that state and local governments share authority to implement the treaty. Such shared responsibility is consistent with international law and U.S. federalism.¹ Indeed, state and local governments have jurisdiction over a range of issues covered by the Covenant and are essential partners in ensuring compliance with the ICCPR.² Despite their critical role, state and local governments continue to lack the necessary training and resources to implement international human rights treaty standards. The U.S. has yet to establish transparent and effective federal mechanisms to encourage, coordinate and support state and local efforts to monitor and implement human rights. Because there is no national human rights infrastructure, many state and local officials are unaware of the treaties the U.S. has ratified and their obligations with respect to treaty implementation.³ State and local governments also lack the funding and resources necessary to effectively collect and analyze data on human rights compliance and take other steps to implement human rights. Thus, while state and local agencies and officials have the potential to implement the United States human rights commitments, this potential is largely unrealized.⁴

IV. Concluding Observations

In 2006, the Human Rights Committee called for the creation of mechanisms within the United States to facilitate more comprehensive reviews of compliance at all levels of government and foster follow-up with the Concluding Observations.⁵ The Committee emphasized the importance of implementation of the treaty at the state level, calling for the U.S. to take steps that ensure federal and state laws comply with the treaty in a number of areas, including racial profiling, housing discrimination on the basis of race and employment discrimination on the basis of gender and sexual orientation.⁶ The Committee further requested more comprehensive information on compliance at the state level.⁷

V. U.S. Government Report

For this review, the U.S. has submitted Annex A to the Common Core Document of the United States of America, which describes an array 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. It offers a snapshot of the ways that some of the approximately 150 existing state and local civil and human rights agencies in the United States are addressing issues of discrimination in their local communities.⁸

We commend the inclusion of state and local agency initiatives. However, the U.S. Report and Annex A omit essential information on the domestic human rights context. Most notably, state and local agencies face numerous constraints in their efforts to promote and protect human rights. First, these agencies are primarily mandated to monitor and enforce state and local anti-discrimination laws and they lack training on human rights standards. Second, agencies are over-burdened and under-resourced, often lacking the staff necessary to carry out even their core anti-discrimination work. Over the past several years, many of these agencies have experienced budget cuts, and several have been forced to close. As a result of these constraints, their capacity to monitor and implement human rights is limited.

Furthermore, neither the Fourth Periodic Report nor Annex A describe how the federal government supports and coordinates efforts to comply with human rights treaty standards through education, training, and other means. The only examples of federal support focus on anti-discrimination initiatives related to provisions of domestic law. Finally, Annex A lacks a broader discussion on the ways in which other state and local actors, such as state and local elected officials and law enforcement personnel, promote and protect human rights, despite the important role these actors can also play to ensure human rights treaty compliance at the state and local level.⁹

VI. Legal Framework

Articles 2; 26 and 50.

VII. Human Rights Committee General Comments

General Comment 31 clarifies that all levels of government—federal, state and local—bear a responsibility to implement human rights standards and affirms that the provisions of the ICCPR “extend to all parts of federal states without any limitations or exceptions.”¹⁰

VIII. Other UN Body Recommendations

The CERD Committee has recommended that the U.S. “establish appropriate mechanisms to ensure a coordinated approach” to human rights implementation “at the federal, state and local levels.”¹¹ The Committee on the Rights of the Child has similarly called for greater coordination at the federal and state levels to foster compliance with the Optional Protocols to the CRC.¹² In 2010, the U.N. Working Group of experts on people of African descent recommended that the U.S. create a human rights monitoring body to facilitate greater human rights implementation at the state and federal level.¹³ Most recently, during the UPR review of the United States, twelve countries called for the U.S. to establish a national human rights monitoring body and four of these emphasized that such a body should coordinate with state and local entities.¹⁴

IX. Recommended Questions

- Please describe the education, legislative, policy and other measures taken by the United States to ensure that state and local agencies and officials have the capacity to respect and implement the United States’ commitments under the ICCPR and implement the Committee’s Concluding Observations. Specifically describe how the federal government effectively communicates these standards and recommendations to state and local agencies and officials to foster greater awareness of and compliance with human rights standards.

- What measures has the United States taken to create institutionalized, transparent and coordinated mechanisms to monitor and implement human rights at federal, state and local levels in order to raise awareness of treaty provisions and Committee recommendations, disseminate information about and oversee implementation, and provide financial and other resources and support to foster human rights compliance.

X. Suggested Recommendations

- **Establish transparent and effective federal mechanisms** mandated to coordinate with state and local officials to ensure comprehensive monitoring and implementation of international human rights standards at the federal, state and local levels, such as a reinvigorated Inter-Agency Working Group on Human Rights and a National Human Rights Institution.
- Ensure **Dedicated Staff** responsible for coordinating and liaising with state and local agencies and officials regarding human rights reporting and implementation, including identifying and developing best practices at the state and local level and communicating recommendations from international bodies to state and local governments.
- **Provide education and training** to state and local officials on international human rights treaty standards and Concluding Observations, as well as their obligations to implement human rights and effective practices for fostering compliance with human rights standards.
- **Provide** state and local governments with **funding** to engage in civil and human rights implementation and compliance, including through grants to state and local agencies to ensure they have the resources to undertake human rights education, monitoring, reporting and enforcement.

¹¹ See International Covenant on Civil and Political Rights, Declarations and Understandings of the United States of America, Understandings, ¶ 5. According to Article VI of the U.S. Constitution, treaties are “the supreme law of the land.”

² See United States of America, Annex A to the Common Core Document of the United States State, Local, Tribal, and Territorial Human Rights Organizations and Programs, ¶ 3, (Dec. 31, 2011) [hereinafter Annex A], available at <http://www.state.gov/j/drl/rls/179782.htm>

³ To date, several mechanisms have been created to support treaty implementation but these mechanisms have lacked transparency have not coordinated with state and local officials. In 1998, President Bill Clinton issued Executive Order 13107, setting up an Inter-Agency Working group to promote and implement ratified human rights treaties. This body was never fully operationalized and was rendered inactive and ineffective when George W. Bush took office. More recently, the Obama Administration creating an Interagency Equality Working group, which may be responsible for treaty reporting and UPR implementation. However, there is very little publicly available information about this body. To date, it has no institutionalized mandate and has not engaged with state and local agencies and officials.

⁴ A number of state and local agencies and officials in states and localities have begun to promote and protect human rights using innovative strategies. These initiatives are detailed in three reports by the Columbia Law School’s Human Rights Institute, available at <http://web.law.columbia.edu/human-rights-institute/human-rights-us/treaty-implementation/state-and-local-work/state-local-report>.

⁵ Human Rights Comm., 87th Sess., July 10-28, 2006, *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) [hereinafter *Concluding Observations 2006*], available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/459/61/PDF/G0645961.pdf?OpenElement>.

⁶ *Concluding Observations 2006*, ¶ 22-25; 28.

⁷ *Concluding Observations 2006*, ¶ 39.

⁸ Annex A, ¶ 3.

⁹ In prior reviews on compliance with the CERD, the U.S. has provided more comprehensive data on state civil rights programs foster compliance with provisions of that treaty. See Annex I to the Periodic Report of the United States of America to the U.N. Committee on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, (April 2007), available at http://www.state.gov/j/drl/rls/cerd_report/83405.htm.

¹⁰ U.N. Human Rights Comm.—General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 4, U.N. Doc CCPR/C/21/Rev.1/Add. 13 (May 26, 2004), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/419/56/PDF/G0441956.pdf?OpenElement>.

¹¹ Comm. On the Elimination of All Forms of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶ 13, U.N. Doc. CERD/C/USA/CO/6 (May 16, 2008), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/419/82/PDF/G0841982.pdf?OpenElement>

¹² Comm. on the Rights of the Child, *Concluding Observations: United States of America*, ¶13, U.N. Doc CRC/C/OPSC/USA/CO/1 (June 25, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.USA.CO.1.pdf>; see also ¶ 19 (recommending that the U.S. consider creating human rights institutions equipped with requisite funding and resources).

¹³ Report of the Working Group of experts on people of African descent: Visit to the United States of America, ¶ 88, U.N. Doc. A/HRC/15/18 (Aug. 6, 2010), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/152/97/PDF/G1015297.pdf?OpenElement>.

¹⁴ See U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/100/69/PDF/G1110069.pdf?OpenElement>.