

**TITLE: THE NEED FOR COMPREHENSIVE FEDERAL OUTREACH AND  
MECHANISMS TO SUPPORT STATE AND LOCAL IMPLEMENTATION OF THE  
CONVENTION**

**Response to the Third to Fifth Periodic Reports of the United  
States to the Committee Against Torture**

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## **I. Title: The Need for Comprehensive Federal Outreach and Mechanisms to Support State and Local Implementation of the Convention.<sup>1</sup>**

### **II. Reporting Organizations**

**Columbia Law School's Human Rights Institute** is the focal point for international human rights education, scholarship, and practice at Columbia Law School. Founded in 1998, the Institute fosters the development of a rich and comprehensive human rights curriculum and builds bridges between theory and practice, between law and other disciplines, between constitutional rights and international human rights, and between Columbia Law School and the worldwide human rights movement. Through our Human Rights in the United States project, we work to build the capacity of state and local governments to use human rights in their daily work and encourage 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 over 150 state and local statutory civil and human rights and human relations agencies in the United States and Canada mandated by state, county or city governments to enforce human and civil rights and/or to conduct research, training, and public education.

### **III. Issue Summary**

As this Committee has recognized, compliance with the Convention Against Torture ("CAT") requires effective federal coordination with, and education of, state and local governments.<sup>2</sup> In ratifying the CAT, the United States indicated that state and local governments share authority to implement the treaty.<sup>3</sup> This includes the over 150 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<sup>4</sup> ("Human Rights Agencies"). It also includes 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. Together these state and local authorities are on the front lines of addressing key human rights concerns raised by this Committee, including criminal justice issues, school discipline and sexual violence.

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

Yet, the United States lacks institutionalized government entities tasked to encourage, coordinate and support human rights education, monitoring or implementation at the federal, state and local levels. There is no federal clearinghouse to offer guidance or technical assistance on how human rights treaties, including the CAT, relate to law and policy. No federal focal point exists to collect and disseminate recent developments or to translate international standards into domestic

practice. The United States also lacks a national human rights monitoring body, such as an NHRI.

In recent years, the federal government has taken some promising steps to improve federal coordination around treaty reporting and to expand outreach and engagement with state and local governments around human rights. While laudable, these steps are insufficient to educate state and local governments about international human rights obligations and to support or encourage their efforts to implement human rights. As a result, many state and local officials are unaware of the treaties the U.S. has ratified and their obligations with respect to treaty implementation.<sup>5</sup> This lack of basic human rights education is compounded by resource and staffing constraints at the state and local level, which further impede the promotion and protection of human rights. State and local governments thus lack the capacity to effectively collect and analyze data on human rights compliance and to take other necessary steps to fully implement the United States' obligations under the CAT.

What does currently exist at the federal level is an ad hoc approach to human rights reporting and implementation with insufficient state and local government participation.<sup>6</sup> Thus, U.S. compliance with CAT continues to fall short. Numerous examples illustrate how the current lack of a coordinated approach to implementation has led to persistent gaps in human rights protections in areas within state and local jurisdiction. These include sexual violence by correctional authorities,<sup>7</sup> use of the death penalty,<sup>8</sup> police brutality<sup>9</sup> and domestic violence and sexual assault.<sup>10</sup>

At the same time, state and local governments are increasingly expressing interest in promoting and protecting human rights. A number of states and localities have explicitly incorporated international human rights standards into local law, policy and practice.<sup>11</sup> In 2013, both IAOHRA, the umbrella organization of Human Rights Agencies, and the U.S. Conference of Mayors, an organization representing cities of 30,000 residents or more, passed resolutions committing to promote and protect human rights locally.<sup>12</sup> While existing efforts are promising, they, too, are ad hoc and lack the coordination and resources necessary to ensure their sustainability. A more comprehensive and coordinated approach to human rights implementation requires federal guidance and support.

While U.S. law may prevent the federal government from compelling state and local governments to comply with human rights obligations,<sup>13</sup> the United States has many options for encouraging and incentivizing state and local implementation.<sup>14</sup> These include developing a federal focal point for educating state and local governments about human rights and providing tangible resources and support to encourage broader human rights compliance. A national human rights monitoring mechanism is also needed.

#### **IV. Concluding Observations & List Of Issues**

The Committee's 2006 review of the United States addressed numerous human rights issues that fall within state and local jurisdiction, including allegations of torture and excessive force by law enforcement, conditions of detention for women, children and immigrants, as well as inadequate responses to sexual assault and domestic violence. The Committee Against Torture specifically

emphasized that despite its “federal structure,” the U.S. “is a single State under international law and has the obligation to implement the [CAT] in full at the domestic level.”<sup>15</sup>

To this end, the Committee called on the U.S. to “ensure that education and training of all law enforcement or military personnel are conducted on a regular basis... [including] how to identify signs of torture and cruel, inhuman or degrading treatment;” to evaluate such training; and to “ensure regular and independent monitoring” of law enforcement and military conduct.<sup>16</sup> The Committee also called on the U.S. to disseminate its report and the Committee’s findings widely.<sup>17</sup> Further, the Concluding Observations recommended measures to ensure that women and children in detention are treated “in conformity with international standards.”<sup>18</sup> The majority of individuals detained in the U.S. are detained by state governments, rather than the federal government.

The Committee also requested that the U.S. improve its collection of disaggregated data on complaints related to torture and ill-treatment as well as information on the ensuing investigations and any compensation or rehabilitation for victims.<sup>19</sup> Yet, in its one year follow-up to the review, the U.S. noted that

[a]s a result of the decentralized federal structure of the United States, the creation of one unified database [regarding complaints of torture and ill-treatment] would not materially contribute to better implementation of the Convention. Instead, Federal and state authorities compile relevant statistics, including those mentioned by the Committee, and use them for a wide variety of purposes, including assessing the effectiveness of enforcement.<sup>20</sup>

As a whole, the Committee’s observations and recommendations highlight that, as a result of the lack of institutionalized mechanisms to facilitate effective human rights education and training on international human rights standards, and the failure to implement these standards or monitor compliance, the U.S. continues to fall short of its obligations under the CAT.

Reiterating prior concerns, the 2010 List of Issues promulgated by the Committee Against Torture for the current review seeks information on progress toward developing a more effective national approach to human rights monitoring and implementation, emphasizing the valuable oversight role that the national government can play and the importance of education and monitoring. Specifically, the Committee requested detailed information on:

- “steps taken to establish an independent national human rights institution in accordance with the Paris Principles;”<sup>21</sup>
- “new developments on the legal and institutional framework within which human rights are promoted and protected at the national level;”<sup>22</sup>
- “new political, administrative and other measures taken to promote and protect human rights at the national level, since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results;”<sup>23</sup>
- “new measures and developments undertaken to implement the Convention and the Committee’s recommendations;”<sup>24</sup>

- steps taken to “[e]nsure that education and training of all law enforcement or military personnel is conducted on a regular basis;”<sup>25</sup> and
- steps taken to “implement a methodology to evaluate the implementation of its training/educational programmes, and their effectiveness and impact on the reduction of cases of torture and ill-treatment.”<sup>26</sup>

The Committee also expressed concern regarding numerous substantive issues within state and local jurisdiction, including “ill treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation” by law enforcement, and recognized the importance of “establishing adequate systems for monitoring police abuses and developing adequate training for law enforcement officials.”<sup>27</sup> Further, the Committee requested information on efforts to eliminate racial profiling at the federal and state level.<sup>28</sup>

## V. U.S. Government Report

In its 2013 report to this Committee (U.S. CAT Report), the U.S. incorporated by reference its 2011 report to the Human Rights Committee (U.S. ICCPR Report) and its 2013 report to the Committee on the Elimination of All Forms of Racial Discrimination (U.S. CERD Report).<sup>29</sup> According to the United States, these reports include “robust reporting on a host of new initiatives to further promote and protect human rights undertaken by ... the federal government as well as by state and local governments.”

The U.S. ICCPR Report underscored that state and local agencies play a “critical role” in human rights implementation.<sup>30</sup> In its CERD Report, 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>31</sup>

U.S. recognition of the valuable role of state and local governments is laudable, but the U.S. continually offers an incomplete picture of the context in which they operate. The U.S. typically indicates that state and local governments provide “complementary protections and mechanisms” that “reinforce the ability of the United States to guarantee respect for human rights.”<sup>32</sup> However, the U.S. fails 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>33</sup>

In recent years, the Obama Administration has taken a number of important steps to improve federal coordination around treaty reporting and implementation, including the creation of an inter-agency Equality Working Group to coordinate federal efforts pertaining to human rights.<sup>34</sup> In 2014, the State Department’s Office of the Legal Adviser sent letters to state and local officials, 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,” and noting that the U.S. is “proud of this

shared role in upholding and protecting human rights.”<sup>35</sup> Additionally, in 2014, the U.S. included a mayor and a state attorney general in its delegations for reviews of compliance with the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

The U.S. CAT Report describes some additional ways that the U.S. endeavors to comply with the CAT, including through training on “torture and cruel, inhuman and degrading treatment” for state and local partners of the Department of Homeland Security’s Immigration and Customs Enforcement.<sup>36</sup> Furthermore, regarding ill-treatment in schools, which is an issue of state and local concern, the U.S. notes there is a trend away from corporal punishment in school districts around the country.<sup>37</sup> The U.S. also highlights the Prison Rape Elimination Act as an effort address abuses in prisons related to women, children and LGBT individuals.<sup>38</sup> These are positive steps, but the U.S. must do more to foster human rights monitoring and implementation at the state and local level. The efforts described by the U.S. are ad hoc and lack a firm grounding in international human rights treaty standards.

The Equality Working Group, though a welcome development, has yet to be institutionalized and, to date, has not engaged with state and local governments. There is also no publicly available information on the Working Group’s mandate, membership or activities. Further, the State Department Legal Adviser’s communications with state and local officials have focused on treaty reporting, and have not provided substantive guidance on ways to foster state and local compliance with ongoing human rights commitments and obligations.<sup>39</sup>

To date, the federal government has not disseminated the U.N. treaty bodies’ Concluding Observations or UPR recommendations to state and local government actors, nor has it offered guidance on how the recommendations relate to state and local policy or how state and local governments can comply with them.

While offering a potential infrastructure for human rights implementation, the “complementary [federal, state and local] protections and mechanisms” the U.S. has highlighted 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 to support, incentivize and coordinate state and local efforts to comply with international human rights treaty standards through education, training and other resources.

## **VI. Legal Framework**

- Article 2: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”
- Article 10: “Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”

## VII. The CAT Committee General Comments

Two of the Committee's General Comments address issues of particular relevance in the U.S. federalist context, and speak to the need for federal government action.

General Comment 2 emphasizes three key aspects of government obligations:

- First, that parties to the CAT “are obligated to adopt *effective* measures to *prevent* public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture” and that “the State's indifference or inaction provides a form of encouragement and/or defacto permission.”<sup>41</sup>
- Second, that monitoring and documentation are key to efforts to implement the Convention and that “[c]ontinual evaluation is ... a crucial component of effective measures” necessary “to adequately evaluate the implementation of the Convention.”<sup>42</sup>
- And, finally, that governments bear responsibility for educating both state and local officials, including law enforcement, as well as the general public, about the Convention.<sup>43</sup>

General Comment 3 emphasizes that the principle of non-discrimination is core to the implementation of the CAT, particularly regarding those detained and seeking remedies and compensation. Therefore, states must ensure that “access to justice and to mechanisms for seeking and obtaining redress are readily available and that positive measures ensure that redress is equally accessible to all persons regardless of status.”<sup>44</sup> In investigations of torture allegations, states must ensure “the training of relevant police, prison staff, medical personnel, judicial personnel and immigration personnel.”<sup>45</sup> Ultimately, compliance with the Convention requires that governments “establish a system to oversee, monitor, evaluate, and report on their provision of redress measures and necessary rehabilitation services to victims of torture or ill-treatment.”<sup>46</sup>

State and local authorities are essential partners in monitoring, promoting and protecting the provisions of the CAT as laid out in these General Comments. Effective measures to prevent, identify and redress acts of torture and ill treatment will require coordination amongst all levels of governments. This includes robust training, data collection and oversight mechanisms. While the U.S. cannot compel state action, the federal government must take a more comprehensive approach to implementation by developing a robust domestic human rights infrastructure that coordinates and supports human rights compliance at the federal, state and local level.

## VIII. Other UN Body Recommendations

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.<sup>47</sup>

The Committee further recommended that the U.S. “widely publicize the concluding observations.”<sup>48</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 recommendation for increased human rights education for government officials.<sup>49</sup>

The Human Rights Committee’s 2014 Concluding Observations recommended specifically that the U.S. “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>50</sup> In 2006, the same 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,<sup>51</sup> emphasizing that action was needed to ensure that federal and state laws comply with the treaty in a number of areas.<sup>52</sup> The Committee on the Rights of the Child has similarly voiced concern over the lack of a national human rights institution.<sup>53</sup>

During the 2010 Universal Periodic Review of the United States, a number of countries called for the U.S. to consider a national human rights institution, to improve federal coordination with state and local governments and to increase human rights education and training<sup>54</sup>— recommendations the U.S. accepted.<sup>55</sup> After its 2010 U.S. visit, the Working Group of Experts on Peoples of African Descent recommended that the United States create a national human rights monitoring body.<sup>56</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>57</sup>

## **IX. Recommended Questions**

We respectfully recommend that the Committee ask the U.S. delegation to:

- Please describe the education, legislative, policy and other measures the United States will take moving forward to ensure that state and local agencies and officials have the capacity to respect and implement the United States’ commitments under the CAT and to implement the Committee’s Concluding Observations. Specifically, how will the United States (a) effectively communicate these recommendations to the full range of state and local actors to foster greater awareness of, and compliance with, human rights standards; and (b) offer guidance and technical assistance to state and local governments on how treaties such as the CAT relate to law and policy at the state and local level.



- Please indicate (a) what measures the United States is taking to create institutionalized, transparent and coordinated mechanisms to monitor and implement human rights at the federal, state and local levels in the long term; and (b) how the federal government, including the federal level Interagency Working Group on Human Rights and the Equality Working Group, coordinate with state and local governments to support and encourage state and local human rights implementation, including through education, training and funding.

## X. Suggested Recommendations

To ensure that state and local governments reach their full potential to implement the CAT, the United States must:

- **Provide education and training to state and local agencies and officials on their obligations under the CAT.** This should include dissemination of **Concluding Observations by federal agencies in coordination with the State Department, within one year of the review**, along with appropriate guidance on how they relate to state and local policy and effective means of implementation.
- **Ensure dedicated staff to serve as focal points for coordinating and liaising with state and local actors regarding human rights reporting and implementation**, including identifying and developing effective practices at the state and local level and communicating recommendations from international bodies to state and local governments.
- **Provide state and local governments with the funding and resources necessary to engage in civil and human rights implementation and compliance**, including through grants to Human Rights Agencies, to ensure they have the resources to undertake human rights education, monitoring, reporting and implementation.
- **Establish institutionalized, transparent and effective mechanisms** to coordinate with state and local officials to ensure comprehensive monitoring and implementation of international human rights standards at the federal, state and local levels, such as a reinvigorated Interagency Working Group on Human Rights and a National Human Rights Institution.

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<sup>1</sup> The information in this submission draws heavily from research and recommendations made in the Columbia Law School Human Rights Institute & International Association of Official Human Rights Agencies (IAOHRA) report, *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://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/State%20and%20Local%20Shadow%20Report%20\(ecopy\).pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/State%20and%20Local%20Shadow%20Report%20(ecopy).pdf). The recommendations laid out here echo a joint Human Rights Institute and IAOHRA report to the Committee on the Elimination of All Forms of Racial Discrimination, see *The Need for Effective Federal Outreach and Mechanisms to Coordinate and support Federal, State and Local Implementation of The Convention*, available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/cerd\\_shadow\\_report\\_state\\_and\\_local\\_implementation\\_-\\_final.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/cerd_shadow_report_state_and_local_implementation_-_final.pdf).

<sup>2</sup> Committee Against Torture, 36<sup>th</sup> Sess., May 1-29, 2006, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and recommendations of the Committee against Torture to the*

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*United States of America*, CAT/C/USA/CO/2, ¶¶ 4; 6; 23 (July 25, 2006) [hereinafter CAT 2006 Concluding Observations].

<sup>3</sup> The U.S. ratified the CAT subject to the following understanding: “this Convention shall be implemented by the United States Government to the extent that it exercises legislative and juridical jurisdiction over the matters covered by the Convention and otherwise by the state and local governments. Accordingly, in implementing articles 10-14 and 16, the United States Government shall take measures appropriate to the Federal system to the end that the competent authorities of the constituent units of the United States of America may take appropriate measures for the fulfillment of the Convention.” See *Reservations, Understanding and Declarations of the United States*, ¶ II (5) (Oct. 1994).

<sup>4</sup> See Kenneth L. Saunders & Hyo Eun (April) Bang, Kennedy School of Government, Harvard University, *A Historical Perspective on U.S. Human Rights Commissions* 5 (2007), available at [http://www.hks.harvard.edu/var/ezp\\_site/storage/fckeditor/file/pdfs/centers-programs/programs/criminal-justice/ExecSessionHumanRights/history\\_of\\_hrc.pdf](http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/programs/criminal-justice/ExecSessionHumanRights/history_of_hrc.pdf); Risa Kaufman, State and Local Commissions as Sites for Domestic Human Rights Implementation, in *Human Rights in the United States: Beyond Exceptionalism* 89, 91 (Shareen Hertel & Kathryn Libal eds., 2011).

<sup>5</sup> As one example, in 2008, Human Rights Watch sent letters to the Attorneys General of every state to identify whether they were aware of the International Convention on the Elimination of All Forms of Racial Discrimination and their states’ responsibilities under the treaty. The responses they received were limited but illuminating. The Attorney General of Kansas, for example, responded: “It does not appear that Kansas was a party to any agreement or resolution passed by this body or the federal government” and requested a “cite to the pre-emptive federal law and/or Kansas Statute...creating a legal duty.” 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>6</sup> See *Closing the Gap*, *supra* n. 1, at 18-19.

<sup>7</sup> U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics, *Survey of Sexual Violence in Adult Correctional Facilities, 2009-11, Statistical Tables* (January 2014), available at <http://www.bjs.gov/content/pub/pdf/ssvacf0911st.pdf>.

<sup>8</sup> Center for Constitutional Rights and FIDH, *Discrimination, Torture, and Execution: A Human Rights Analysis of the Death Penalty in California and Louisiana* (2013), available at <http://www.fidh.org/IMG/pdf/report-death-penalty-us-2013.pdf>.

<sup>9</sup> See, e.g., Stephanie Nebehey, *Missouri racial violence recalls apartheid, UN rights chief says*, Reuters (Aug. 20, 2014), at <http://in.reuters.com/article/2014/08/20/un-rights-pillay-idINKBNOGJ1UF20140820>.

<sup>10</sup> Rape, Abuse & Incest National Network (RAINN), How often does sexual assault occur, at <https://www.rainn.org/get-information/statistics/frequency-of-sexual-assault> (aggregating results from the U.S. Census Bureau for the Bureau of Justice Statistics National Crime Victimization Survey from 2008-2012); Michele C. Black et al., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report 2* (2011), available at [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>11</sup> See, e.g., Columbia Law School Human Rights Institute, *Implementing Recommendations from the Universal Periodic Review: A Toolkit for State and Local Human Rights and Human Relations Commissions* (2011), available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/UPR%20Toolkit\\_0.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/UPR%20Toolkit_0.pdf); Columbia Law School Human Rights Institute & IAOHRA, *State and Local Human Rights Agencies: Recommendations for Advancing Equality Through an International Human Rights Framework* (2009), available at [http://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](http://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).

<sup>12</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 School’s Human Rights Institute).

<sup>13</sup> See *Medellin v. Texas*, 552 U.S. 491 (2008).

<sup>14</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); 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

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<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>15</sup> CAT 2006 Concluding Observations, *supra* n. 2, ¶ 4.

<sup>16</sup> *Id.* ¶ 23.

<sup>17</sup> *Id.* ¶ 44.

<sup>18</sup> *Id.* ¶¶ 33, 34.

<sup>19</sup> *Id.* ¶ 42.

<sup>20</sup> United States of America, *Response to Specific Recommendations Identified by the Committee Against Torture*, at 13 (July 25, 2007), available at <http://2001-2009.state.gov/documents/organization/100843.pdf>.

<sup>21</sup> Comm. Against Torture, 43<sup>rd</sup> Sess., Nov. 2-20, 2009, *List of issues prior to the submission of the fifth periodic report of the United States of America (CAT/C/USA/5)*, U.N. Doc CAT/C/USA/Q/5, ¶ 47 (Jan. 20, 2010), at <http://www.ushrnetwork.org/sites/default/files/catlistofissues2010.pdf>.

<sup>22</sup> *Id.* ¶ 53.

<sup>23</sup> *Id.* ¶ 54.

<sup>24</sup> *Id.* ¶ 55.

<sup>25</sup> *Id.* ¶ 16(a).

<sup>26</sup> *Id.* ¶ 16(c).

<sup>27</sup> *Id.* ¶ 42(a).

<sup>28</sup> *Id.* ¶ 42(b).

<sup>29</sup> United States of America, United Nations Committee Against Torture, *Convention Against Torture, Periodic Report of the United States of America (2013)*, ¶ 77, at <http://www.state.gov/documents/organization/213267.pdf> [hereinafter U.S. 2013 CAT Report].

<sup>30</sup> Annex A to the Common Core Document of the United States: State, Local, Tribal, and Territorial Human Rights Organizations and Programs, Submitted With the Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, ¶¶ 1-3, 124-26 (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179782.htm> [hereinafter Annex A].

<sup>31</sup> *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>32</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. 30, ¶¶ 1-3; 124-26.

<sup>33</sup> *Closing the Gap*, *supra* n. 1.

<sup>34</sup> *See U.S. 2013 CERD Report*, *supra* note 31, ¶¶ 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>35</sup> *See* Letter From Principal Deputy Legal Adviser McLeod to Governors of U.S. State and Territories (Feb. 18, 2014), available at <http://www.state.gov/s/l/releases/2014/223237.htm> (disseminated to the U.S. Conference of Mayors, National Association of Counties, National Governors Association, National Association of Attorneys General and IAOhRA). The 2014 letter followed up on earlier communications seeking input into U.S. treaty reports, *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 School’s Human Rights Institute) (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 [http://www.iaohra.org/storage/pdf/human-rights-campaign/Letter\\_from\\_HaroldKoh\\_to\\_Stateand%20LocalCommissions.pdf](http://www.iaohra.org/storage/pdf/human-rights-campaign/Letter_from_HaroldKoh_to_Stateand%20LocalCommissions.pdf); 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 <http://www.state.gov/documents/organization/137292.pdf>.

<sup>36</sup> *U.S. 2013 CAT Report*, *supra* n. 29, ¶ 100.

<sup>37</sup> *Id.* ¶ 226.

<sup>38</sup> *Id.* ¶ 170.

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- <sup>39</sup> See Letter From Principal Deputy Legal Adviser McLeod, *supra* n. 35.
- <sup>40</sup> The one known actor responsible for federal to state and local communities is The 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 Columbia Law Sch. Human Rights Inst.); Office of Intergovernmental Global Affairs, Biography, at <http://www.state.gov/s/rgia/c38305.htm> (last visited June 12, 2014); Mike DeBonis, *Reta Jo Lewis, ex-State Department official, enters D.C. mayor race*, Washington Post, July 2, 2013. Nevertheless, state and local actors interested in participating in treaty reviews have been directed to contact that office. See Letter From Principal Deputy Legal Adviser McLeod, *supra* n. 35.
- <sup>41</sup> Comm. Against Torture, *General Comment 2, Implementation of article 2 by States Parties*, UN. Doc. CAT/C/GC/2/CRP.1/Rev.4, IV, ¶¶ 15-19 (Nov. 23, 2007).
- <sup>42</sup> *Id.* ¶¶ 22-23.
- <sup>43</sup> *Id.* ¶ 24-25.
- <sup>44</sup> Comm. Against Torture, *General Comment No. 3, Implementation of article 14 by States parties*, UN. Doc. CAT/C/GC/3, ¶ 32 (Nov. 19, 2012).
- <sup>45</sup> *Id.* ¶ 35.
- <sup>46</sup> *Id.* ¶ 45.
- <sup>47</sup> Comm. on the Elimination of All Forms of Racial Discrimination, 85<sup>th</sup> Sess., Aug 11-29, 2014, *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 (Aug. 29, 2014).
- <sup>48</sup> *Id.* ¶ 32.
- <sup>49</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>50</sup> Human Rights Comm., 110<sup>th</sup> Sess., Mar. 10-28, 2014, *Concluding Observations of the Human Rights Committee: United States of America*, ¶ 4(b), (d), U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014), available at <http://justsecurity.org/wp-content/uploads/2014/03/UN-ICCPR-Concluding-Observations-USA.pdf>.
- <sup>51</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, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/459/61/PDF/G0645961.pdf?OpenElement>.
- <sup>52</sup> *Id.* ¶¶ 22-25, 28 (referring to racial profiling, housing discrimination on the basis of race, and employment discrimination on the basis of gender and sexual orientation).
- <sup>53</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), available at <http://www2.ohchr.org/english/bodies/crc/crcs62.htm>.
- <sup>54</sup> Human Rights 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), available at [http://www.upr-info.org/IMG/pdf/a\\_hrc\\_16\\_11\\_add.1\\_united\\_states\\_e.pdf](http://www.upr-info.org/IMG/pdf/a_hrc_16_11_add.1_united_states_e.pdf).
- <sup>55</sup> See United States of America, *Accepted UPR Recommendations*, at 11, available at <http://www.humanrights.gov/wp-content/uploads/2012/03/USAcceptedRecommendations-2010UPR.pdf> (expressing US Support for Recommendation 65 (“Review its laws at the Federal and State levels with a view to bringing them in line with its international human rights obligations”); 74 (“That a human rights institution at the federal level be considered in order to ensure implementation of human rights in all states”); and 87 (“Incorporate human rights training and education strategies in their public policies.”)).
- <sup>56</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), available at <http://www2.ohchr.org/english/issues/racism/groups/african/docs/A-HRC-15-18.pdf>.
- <sup>57</sup> See U.N. Working Group on Business and Human Rights, *Statement at the End of Visit to the United States* (May 1, 2013), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13284&LangID=E>.