

# Toward an Effective National Human Rights Institution for the USA

## U.S. Compliance with the International Covenant on Civil and Political Rights

For the 139<sup>th</sup> Session of the Human Rights Committee, Geneva  
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Submitted by:

Northeastern University Program on Human Rights and the Global Economy (PHRGE), American Civil Liberties Union (ACLU), Amnesty International, International Association of Official Human Rights Agencies (IAOHRA), Southern Poverty Law Center (SPLC), University of California Irvine International Justice Clinic, Human Rights Educators USA, and University and College Consortium for Human Rights Education

September 12, 2023



## I. Submitting Organizations

1. This submission was drafted by Professor Martha F. Davis, Co-Director of the Northeastern University Program on Human Rights and the Global Economy (PHRGE), and Jennifer A. Loveland-Rose, Research Associate at the PHRGE. It is endorsed by U.S. Civil Society Coalition on National Human Rights Institution, which is composed of civil society organizations focused on respecting, protecting, and fulfilling human rights in the United States. The coalition includes PHRGE, the American Civil Liberties Union (ACLU), Amnesty International, International Association of Official Human Rights Agencies (IAOHRA), Southern Poverty Law Center (SPLC), University of California Irvine International Justice Clinic, Human Rights Educators USA, and University and College Consortium for Human Rights Education.

## II. Contact Details of Submitting Organizations

2. Please contact Professor Martha F. Davis: [m.davis@northeastern.edu](mailto:m.davis@northeastern.edu) for more information regarding this submission.

## III. Target Issues from LOI Addressed in this Report

3. This joint submission addresses the following topic on the List of Issues under “Constitutional and legal framework within which the Covenant is implemented” (art. 2):

As the State party operates on a federal system of government, please provide information on the extent to and manner in which the Covenant has been incorporated into domestic law at the federal, state and local levels. Please also provide examples of cases in which the provisions of the Covenant have been referred to by national courts and other law-applying institutions. In addition, please indicate the steps taken to increase awareness and understanding of the Covenant among the general public and State employees such as judges, lawyers and law enforcement officials.<sup>1</sup>

## IV. Relevant ICCPR Language

4. The topic of this submission relates to Article 2 of the ICCPR.<sup>2</sup> Additional guidance regarding National Human Rights Institutions (NHRIs) is given in General Comment 31 and the Principles Relating to the Status of NHRIs (Paris Principles).<sup>34</sup>

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<sup>1</sup> Human Rights Comm., [List of Issues prior to submission of the fifth periodic report of the United States of America](#), U.N. Doc. CCPR/C/USA/QPR/5, ¶3 (Apr. 18, 2019).

<sup>2</sup> G.A. Res. 2200A (XXI), [International Covenant on Civil and Political Rights](#) (Mar. 23, 1976).

<sup>3</sup> Human Rights Comm., [General comment no. 31 \(80\), The nature of the general legal obligation imposed on States Parties to the Covenant](#), International Covenant on Civil and Political Rights, ¶15 (Mar. 29, 2004).

<sup>4</sup> G.A. Res. 48/134, [Principles relating to the Status of National Institutions \(The Paris Principles\)](#) (Dec. 20, 1993).

## V. Issue Summary

5. The United States has not made any tangible progress towards the creation of an NHRI since the Committee's fourth review. At present, the United States lacks a comprehensive and coordinated approach to human rights promotion and protection at the federal, state, and local levels. The website mentioned in the United States report in response to the LOI for this review fails to meet the standards set out by the ICCPR. There is no institutionalized federal infrastructure to support human rights education, monitoring, and implementation, or to provide guidance on human rights and translate international standards into domestic practice. As a result of the lack of a national human rights infrastructure, many state and local officials are unaware of the treaties the United States has ratified and their obligations with respect to treaty implementation.<sup>5</sup> Some state and local agencies, like official human rights commissions and those involved in the Human Rights Cities movement, are engaged in implementing the United States' human rights commitments, but there is little federal support or coordination of this work.<sup>6</sup>

6. This task force acknowledges the statements made by the United States that demonstrate openness and support for establishing an NHRI. We commend the United States for supporting UNHRC Res. 51/31 on NHRIs, which was adopted in 2022 by the Human Rights Council without a vote.<sup>7</sup> The language of that resolution unequivocally:

[e]ncourages States to establish effective, independent, and pluralistic national human rights institutions or, where they already exist, to strengthen them to enable the effective fulfilment of their mandate to promote and protect human rights and fundamental freedoms for all, as outlined in the Vienna Declaration and Programme of Action, and to do so in accordance with the Paris Principles.”<sup>8</sup>

Further, the United States (largely between the 1990s and through the Obama Administration) recognized the value of establishing NHRIs and advocated for many countries to establish their an NHRI in order to safeguard domestic human rights. The establishment of NHRIs in Southwest Asian and North African countries specifically was a main foreign policy objective for the United States for much of the 2000s.<sup>9</sup>

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<sup>5</sup> Prior mechanisms created to support treaty implementation were inadequate and appear to be dormant.

<sup>6</sup> [The Human Rights Cities Movement](#) has emerged as an attempt to fill in the gaps left by the US federal government's lack of an NHRI through connecting and empowering states who have committed to safeguarding human rights. The Human Rights Cities Alliance has been extensively engaged in UN procedures like the Permanent Forum on People of African Descent, and through projects like CERD Cities which is aimed at implementing the Convention on the Elimination of all forms of Racial Discrimination within the United States.

<sup>7</sup> [Human Rights Council Res. 51/31](#), U.N. Doc. A/HRC/RES/51/31 (Oct. 7, 2023), [hereinafter Resolution 51/31].

<sup>8</sup> Resolution 51/31, *supra* note 7.

<sup>9</sup> Brookings Doha Center, Turan Kayaoglu, [National Human Rights Institutions: A Reason for Hope in the Middle East and North Africa?](#), Jan. 2021.

7. The United States government’s lack of progress towards establishing an NHRI exists in stark contrast to the growing momentum among civil society organizations calling for the creation of an NHRI. The establishment of an NHRI has long been a priority of civil society groups and was a central demand during the most recent CERD review of the United States. Over the last two years, multiple coalition letters and reports have been submitted to United States government officials urging the United States to establish an NHRI. On December 15<sup>th</sup>, 2022, the ACLU sent a letter signed by over one hundred civil society organizations and concerned individuals to the White House’s Domestic Policy Counsel urging that a commission be established to study the creation of a human rights institution.<sup>10</sup> In the same month, UC Irvine School of Law’s International Justice Clinic released an extensive report detailing the multiple benefits of establishing an NHRI.<sup>11</sup> On March 20<sup>th</sup>, 2023, the International Association of Official Human Rights Agencies (IAOHRA) sent an open letter to the Biden Administration and members of Congress on the need for an NHRI.<sup>12</sup> Most recently, the need for the United States to establish an NHRI was discussed at length during the Bringing Human Rights Home Lawyers’ Network’s virtual Continuing Legal Education course, which had a national audience.

## **VI. United States’ Report Addressing List of Issues**

8. The United States’ submission addressing the List of Issues prior to reporting addressed Article 2 requirements and NHRIs under the heading: “Reply to paragraph 3 of the list of issues – Covenant in U.S. Law.” The United States asserted that it does meet its ICCPR obligations, but meets its obligations to communicate international law and human rights related information through the DOS website, <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/>. The United States further asserts that “agencies of the federal government include information on civil rights programs on their websites and in other outreach mechanisms.”<sup>13</sup> By treating civil rights programs as a demonstration of its ICCPR obligations, the United States government continues to conflate civil rights with human rights obligations.

## **VII. Concluding Observations and Recommendations after the Fourth ICCPR Review of the United States**

9. In this Committee’s Concluding Observations for the fourth cycle of the ICCPR review of the United States, this Committee noted that the United States “has only limited avenues to ensure that state and local governments respect and implement the Covenant, and that its provisions have been

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<sup>10</sup> ACLU, [Coalition Letter to Susan Rice on Establishment of Domestic Human Rights Institution](#), Dec. 15, 2022.

<sup>11</sup> UC Irvine School of Law International Justice Clinic, [Establishing a National Human Rights Institution in the United States: A Special Report of the International Justice Clinic](#), Dec. 2022.

<sup>12</sup> The International Association of Human Rights Agencies (IAOHRA) facilitates educational programs and information sharing between its member human rights agencies around the world, available at <https://www.iaohra.org/>.

<sup>13</sup> [Fifth periodic report submitted by the United States of America under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020: International Covenant on Civil and Political Rights](#), U.N. Doc. CCPR/C/USA/5, ¶12,13 (Nov. 11, 2021).

declared to be non-self-executing at the time of ratification.”<sup>14</sup> The Committee’s recommendations (b) and (d) to the United States are most pertinent to evaluate the United States’ progress between the past review and the upcoming review.<sup>15</sup>

## VIII. Previous Recommendations from U.N. Treaty Bodies to which the United States is a State Party

### *International Covenant on Civil and Political Rights*

10. 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 to foster follow-up with Concluding Observations.<sup>16</sup> In 2014, the Human Rights Committee called on the United States to “strengthen and expand existing mechanisms mandated to monitor the implementation of human rights...[and] provide them with adequate human and financial resources or consider establishing an independent national human rights institution.”<sup>17</sup>

### *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*

11. In 2022, the CERD Committee expressed regret and concern that the United States had failed to make any progress in establishing an NHRI.<sup>18</sup> The Committee repeated its recommendations from 2008 and 2014 that “that the State party create a permanent and effective coordinating mechanism, such as an NHRI established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).”<sup>19</sup>

### *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

12. In its 2012 review of the United States pursuant to the Optional Protocol, the Committee on the Rights of the Child urged the state party to establish a national independent mechanism in response to the multiple recommendations by numerous United Nations human rights bodies recommending the establishment of an NHRI.<sup>20</sup>

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<sup>14</sup> Human Rights Comm., [Concluding observations on the fourth periodic report of the United States of America](#), U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014) [hereinafter ICCPR Concluding Observations 2014].

<sup>15</sup> *Id.*

<sup>16</sup> Human Rights Comm., [Concluding Observations of the Human Rights Committee: United States of America](#), U.N. Doc. CCPR/C/USA/CO/3/Rev.1, ¶ 39 (Dec. 18, 2006).

<sup>17</sup> Concluding Observations 2014, *supra* note 14, ¶ 4(b);(d).

<sup>18</sup> Comm. on the Elimination of Racial Discrimination, [Concluding observations on the combined tenth to twelfth reports of the United States of America](#), U.N. Doc. CERD/C/USA/CO/10-12, ¶10,11 (Sep. 21, 2022).

<sup>19</sup> Comm. on the Elimination of All Forms of Racial Discrimination, [Concluding Observations on the combined seventh to ninth periodic reports of the United States of America](#), U.N. Doc. CERD/C/USA/CO/7-9, ¶¶ 6, 11, 32 (Aug. 29, 12 2014); Comm. On the Elimination of Racial Discrimination, [Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America](#), U.N. Doc. CERD/C/USA/CO/6, ¶¶ 12, 13, 36 (Feb. 2008).

<sup>20</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).

*Optional Protocol on the Rights of the Child on the Involvement of children in armed conflict*

13. In 2017, the Children’s Rights Committee, reviewing the United States’ performance under the Optional Protocol to the Convention on the Rights of Children in Armed Conflict, expressed concern about the lack of an NHRI and recommended “that the State party establish a national independent mechanism in line with the Paris Principles.”<sup>21</sup>

## **IX. Other UN and Regional Human Rights Bodies’ Recommendations**

### Recommendations of Special Procedures<sup>22</sup>

*Working Group of Experts on Peoples of African Descent*

14. In 2016, the first recommendation of the Working Group of Experts on Peoples of African Descent’s report to the Human Rights Committee reiterated the working group’s 2010 recommendation that the United States should establish a human rights commission as an independent body to promote and protect human rights in accordance with international standards.<sup>23</sup>

*Special Rapporteur on the Rights of Indigenous Peoples<sup>24</sup>*

15. The first recommendation of the 2017 report to the Human Rights Council by the Special Rapporteur on the Rights of Indigenous Peoples calls for the United States to “establish a national body for oversight of international treaty obligations with full and effective participation of indigenous peoples on issues relevant to them[.]”

*Working Group on Business and Human Rights*

16. The Working Group on Business and Human Rights noted in 2014, 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.<sup>25</sup>

*Special Rapporteur on Minority Issues*

17. In the Special Rapporteur on Minority Issues’ August 17<sup>th</sup>, 2022 Report to the General Assembly, he recommended that the United States: “[c]reate a national human rights institution in line with the principles relating to the status of national institutions for the promotion and

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<sup>21</sup> Comm. On the Rights of the Child, [Concluding observations on the combined third and fourth reports submitted by the United States of America under article 8 \(1\) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict](#), U.N. Doc. CRC/C/OPAC/USA/CO/3-4 (July 11, 2017).

<sup>22</sup> [Country Visits of Special Procedures of the Human Rights Council since 1998 Database](#).

<sup>23</sup> 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).

<sup>24</sup> U.N. Hum. Rts. Council, [Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America](#), U.N. Doc. A/HRC/36/46.Add.1, ¶¶ 86 (a), (b) (Aug. 9, 2017).

<sup>25</sup> 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), U.N. Doc A/HRC/26/25/Add.4, ¶ 96 (May 6, 2014).

protection of human rights (Paris Principles) on the status of national institutions for the promotion and protection of human rights.”<sup>26</sup>

### Universal Periodic Review

18. During the first cycle of the UPR, in 2011, the United States supported recommendations to consider establishing a National Human Rights Institute but did not accept recommendations that explicitly call for the US to create an NHRI.<sup>27</sup>

19. During the second cycle of the UPR in 2015, the United States received over a dozen recommendations calling for a federal mechanism to ensure compliance with international human rights instruments at all levels of government.<sup>28</sup> The United States supported these recommendations in part but clarified that “there are no current plans to establish a single national human rights institution.”<sup>29</sup>

20. During the third cycle of the UPR in 2020, the United States received recommendations calling for the establishment of an NHRI from a dozen countries.<sup>30</sup> The United States’ National Report asserted that the United States’ “international and domestic human rights obligations are implemented through a comprehensive system of laws, administrative regulations and enforcement actions. Judicial proceedings at all levels of government also provide invaluable interpretive guidance legal precedent.” Footnote 10 of the United States report further clarified: “These recommendations propose that the United States create a ‘national human rights institution’ and various ‘national plans’ to advance the cause of human rights. The United States rejected these suggestions because ‘planning’ is no substitute for remedial action.”<sup>31</sup> After a change in presidential administrations, the United States government reverted its position to its prior practice of acknowledging recommendations to establish an NHRI. The United States stated in 2021 that at present “there are no current plans to establish a single national human rights institution.”<sup>32</sup>

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<sup>26</sup> U.N. Hum. Rts. Council, [Report of the Special Rapporteur on minority issues, Fernand de Varennes, on his visit to the United States of America](#), U.N. Doc. A/HRC/49/46.Add.1, ¶¶21, 71 (b) (Aug. 17, 2022).

<sup>27</sup> U.N. Hum. Rts. Council, [Report of the Working Group on the Universal Periodic Review: United States of America, Addendum](#), A/HRC/16/11.Add.1, ¶ 25 (Jan. 4, 2011).

<sup>28</sup> U.N. Hum. Rts. Council, [Report of the Working Group on the Universal Periodic Review: United States of America](#), U.N. Doc. A/HRC/46/15, ¶¶ 176.108; 176.75 -176.90 (Dec.15, 2020).

<sup>29</sup> U.N. Hum. Rts. Council, [Report of the Working Group on the Universal Periodic Review: United States of America, Addendum](#), ¶ 21, U.N. Doc. A/HRC/30/12/Add.1 (Sept. 14, 2015).

<sup>30</sup> Human Rights Council, [Report of the Working Group on the Universal Periodic Review: United States of America](#), U.N. Doc. A/HRC/46/15 (Dec. 15, 2020).

<sup>31</sup> [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: United States of America](#), U.N. Doc. A/HRC/WG.6/36/USA/1 (Aug. 13, 2020).

<sup>32</sup> U.N. Hum. Rts. Council, [UN Report of the Working Group on the Universal Periodic Review: United States of America](#), A/HRC/46/15/Add.1, (Mar. 4, 2021).

## **X. Suggested Questions**

1. What measures is the United States taking to create an institutionalized, transparent, and coordinated NHRI to monitor human rights at the federal, state, and local levels?
2. How will the United States coordinate with local and state level human rights agencies, commissions and other subnational government entities to implement best practices for the federal level body?
3. When will the United States establish an exploratory commission on the establishment of an NHRI?
4. When will the United States create an NHRI aligned with the Paris Principles?
5. Will the United States establish a permanent and transparent human rights implementation mechanism (HRIM) through updating executive order 13107?<sup>33</sup>

## **XI. Conclusion and Suggested Recommendation to the United States**

21. UN human rights bodies have consistently recommended that the United States establish an NHRI, and the United States continues to fail to do so. An institutionalized national approach to human rights promotion and protection is necessary in the United States in order to ensure domestic human rights accountability. Below is this taskforce's suggested recommendation to foster a comprehensive approach to United States human rights compliance:

22. To achieve full implementation of the ICCPR, **the United States must establish an NHRI in accordance with the Paris Principles.** The NHRI should be built on transparent and effective mechanisms with a dedicated staff coordinating with state and local actors regarding human rights reporting and implementation. The NHRI's mechanisms should be based on best practices at the state and local level. The NHRI should communicate recommendations from international bodies to state and local governments and act as a central federal point of coordination to liaise with state and local actors regarding human rights standards, implementation, and monitoring.

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<sup>33</sup> Executive Order 13107 states that the U.S. Government must fully respect and implement its obligations under the international human rights treaties to which it is a party.