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## **The Road to Rights: Establishing a Domestic Human Rights Institution in the United States**

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# THE ROAD TO RIGHTS:

## ESTABLISHING A DOMESTIC HUMAN RIGHTS INSTITUTION IN THE UNITED STATES

A Post-Conference Report from the Global Convening on  
National Human Rights Commissions



COLUMBIA LAW SCHOOL

HUMAN RIGHTS INSTITUTE



The Leadership  
Conference



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Report from the Global Exchange on National Human  
Rights Commissions at the Rockefeller Foundation Center,  
Bellagio, Italy: August 2-6, 2010



HUMAN RIGHTS INSTITUTE



The Leadership  
Conference



Dedicated to the memory of John Payton, a participant in the Global Convening, whose passionate commitment, wisdom and tireless efforts to advance civil and human rights have had a profound impact on the United States and the world.

The Global Exchange was co-convened by The Leadership Conference Education Fund and Columbia Law School's Human Rights Institute, advocacy and academic institutions based in Washington, D.C., and New York City, respectively. The convening was made possible by generous support from the Rockefeller Foundation, the U.S. Human Rights Fund and the Ford Foundation.

**The Leadership Conference Education Fund is the sister organization to The Leadership Conference on Civil and Human Rights**, the Nation's oldest and largest civil rights coalition, consisting of more than 200 national organizations, representing persons of color, women, children, labor unions, individuals with disabilities, older Americans, major religious groups, gays and lesbians and civil liberties and human rights groups. The Leadership Conference was founded in 1950 and has coordinated national lobbying efforts on behalf of every major civil rights law since 1957. Since 1969, The Education Fund has assisted the work of the civil and human rights coalition in providing research, education, and communications regarding the need for national public policy that provides opportunity and justice for all.

**The Human Rights Institute**, founded in 1998, serves as the focal point of international human rights education, scholarship and practice at Columbia Law School. 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. Our Human Rights in the U.S. Project builds the capacity of domestic lawyers, policy-makers and advocates to incorporate a human rights framework into social justice advocacy. The Project also directly contributes to the development of legal theories and positive precedents based on international law through work on select litigation before U.S. courts, in international and regional fora, and through other advocacy projects.

# Table of Contents

<b>Foreword</b> . . . . .	<b>3</b>
<b>Executive Summary</b> . . . . .	<b>7</b>
<b>I. Introduction</b> . . . . .	<b>11</b>
A. Support for Human Rights in the U.S. . . . .	11
B. Calls for a Domestic Human Rights Monitoring Body . . . . .	12
<b>II. Convening Background</b> . . . . .	<b>13</b>
A. Global Proliferation of National Human Rights Institutions . . . . .	13
B. Domestic Proposals for a Human Rights Monitoring Body . . . . .	14
C. International Calls for a U.S. National Human Rights Institution . . . . .	16
<b>III. Convening Overview</b> . . . . .	<b>17</b>
A. Convening Goals . . . . .	17
B. Convening Structure . . . . .	17
C. Convening Outcomes . . . . .	18
<b>IV. Key Ingredients For a U.S. Human Rights Institution</b> . . . . .	<b>19</b>
A. Mandate . . . . .	19
B. Essential Functions and Powers . . . . .	20
1. Engaging in Fact-Finding and Assessing Human Rights Situations Through Investigations, Hearings and Inquiries . . . . .	21
2. Advising, Reporting and Making Recommendations Regarding Human Rights Implementation . . . . .	22
3. Promoting Human Rights Education and Awareness . . . . .	22
4. Undertaking and Promoting Human Rights Research . . . . .	23
5. Monitoring Governmental Agencies to Ensure Compliance With Domestic Civil Rights Laws and International Standards . . . . .	24
6. Partnering With Subnational Human Rights Structures and Indigenous Governing Bodies . . . . .	25
7. Proactive Engagement With Civil Society . . . . .	26
8. Authority to Strengthen Domestic Human Rights Compliance by Engaging With Regional and International Human Rights Bodies . . . . .	27
9. Flexibility to Achieve its Mandate . . . . .	28



- C. Potential Additional Functions and Powers . . . . . 29
  - 1. Complaint Handling. . . . . 29
  - 2. Participating in Domestic Litigation . . . . . 30
    - a. Initiating Litigation to Ensure Compliance With Civil and Human Rights Laws . . . . . 31
    - b. Filing *Amicus Curiae* Briefs at the Federal Level . . . . . 31
- D. Structural Characteristics to Promote Independence and Effectiveness . . . . . 32
  - 1. Adequate Resources and Autonomy . . . . . 33
  - 2. Transparent Appointment and Removal Processes . . . . . 33
  - 3. Ability to Assess Human Rights Locally . . . . . 33
- V. Next Steps & Challenges . . . . . 35**
  - A. Strengthening and Transforming the U.S. Civil Rights Commission as an Initial Step to Establishing a U.S. Human Rights Institution . . . . . 35
  - B. Ensuring Local Presence and Impact . . . . . 36
  - C. Establishing Broad Based Support . . . . . 36
  - D. Carrying Out Additional Research . . . . . 37
  - E. Need for a Campaign to Undertake Additional Tasks . . . . . 37
- VI. Conclusion . . . . . 39**
- VII. Appendix . . . . . 40**
  - A. Domestic Proposals for a Human Rights Monitoring Body . . . . . 40
  - B. Details of International Calls for a U.S. National Human Rights Institution . . . . . 47
  - C. List of Relevant U.S. Federal Civil Rights Laws and Enforcing Agencies . . . . . 48
  - D. Convening Agenda . . . . . 55
  - E. Meeting Participants . . . . . 61
  - F. Contact Information for Select National Human Rights Commissions . . . . . 63
  - G. Paris Principles . . . . . 64
- Endnotes . . . . . 67**

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# Foreword

By Wade Henderson, *President and CEO, The Leadership Conference on Civil and Human Rights*

*“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”*

— U.S. Declaration of Independence, 1776

*“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”*

— Universal Declaration of Human Rights, 1948

## Human Rights: Building and Bettering America

The Declaration of Independence sets forth the American Creed: All persons have rights that must be respected by virtue of our humanity. This basic belief in human rights undergirds the Constitution, the Bill of Rights, the Emancipation Proclamation, the Reconstruction Amendments, the landmark legislation for civil rights, voting rights and women’s rights, and all the other documents that built and improved American democracy, from generation to generation.

To be sure, when our nation’s Founders drafted the Declaration and the Constitution, they spoke only of “all men” being “created equal,” and their vision of “We the people” excluded enslaved African Americans and impoverished whites. Indeed, many of the Founders owned slaves themselves. Few, if any, believed that their vision of liberty and freedom extended to the entire human family.

But the genius of American democracy is its capacity for self-correction, through the people’s exercise of their human rights. As Justice Thurgood Marshall declared in his address commemorating the bicentennial of the Constitution, the nation needed “several amendments, a civil war and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights we hold as fundamental today.”

## Human Rights: The U.S. Leads the Way Worldwide

While America’s journey toward justice has never been easy, it has widened the circle of citizenship in our own country and inspired a watchful world. As the vision of democracy and human rights has expanded in this country, it has been embraced in other countries. And the United States helped to lead the way.

As early as January 1941, President Franklin D. Roosevelt proposed four fundamental freedoms—freedom of speech, freedom of worship, freedom from want, and freedom from fear—that people “everywhere in the world” ought to enjoy. After the nation entered World War II, these “Four Freedoms” were widely believed to be the aims of the U.S., its allies and freedom fighters in Europe, Asia and Africa.

With the allied victory in World War II and the founding of the United Nations, Eleanor Roosevelt chaired the commission that drafted the Universal Declaration of Human Rights. Adopted by the U.N. General Assembly in 1948, the document declares, “All human beings are born free and equal in dignity and rights.” While its provisions have not always been honored, the declaration has set a standard to which oppressed peoples can appeal and by which the world’s democracies can act.

## Bringing Human Rights Home

For more than six decades, presidents from both parties have spoken eloquently for human rights abroad. But, while the U.S. has led the way in promoting human rights throughout the world, there is still a gap between the ideals that our nation professes and the imperfections that our nation practices. Admirable as it is, our existing domestic legal framework is largely concerned with protecting civil and political rights, rather than the economic and social conditions that have also been addressed by human rights activists around the world. The gap between American rhetoric and American reality has been highlighted by the growing inequalities in employment, income, wealth, education, housing and healthcare along the

lines of race, gender, immigration status and economic condition. These disparities are among the most severe within the nations of the Organization for Economic Co-operation and Development. Meanwhile, the United States has yet to ratify some of the major international treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and the International Covenant on Economic, Social and Cultural Rights, even though American presidents have signed these agreements.

Americans rightly believe that we are an exceptional nation. We pride ourselves on the fact that we were founded on the basis of shared ideals, not common ancestry, and that we have inspired peoples around the world to struggle for self-government. But we are exceptional because of our capacity for self-criticism and our commitment to self-improvement. Just as peoples from South Africa to Eastern Europe have been inspired by the words and deeds of Thomas Jefferson, Abraham Lincoln and the Rev. Martin Luther King Jr., we can benefit from observing how these societies have implemented many of the ideas and ideals that we helped impart to them.

## A Global Convening

In that spirit, I was proud to help lead an international convening focused on domestic human rights commissions: independent, government-funded bodies mandated to promote and protect human rights. Commissions are the most prevalent type of national human rights institutions—institutions that exist in countries in every region of the world to defend and extend fundamental rights.

This convening, sponsored by the Rockefeller Foundation and conducted by The Leadership Conference on Civil and Human Rights in partnership with the Human Rights Institute at Columbia Law School, took place at the Rockefeller Conference Center in Bellagio, Italy in August 2010.

At this meeting, human rights activists from throughout the world exchanged information and ideas and gained new insights into how human rights commissions can protect and promote a wide range of freedoms. Informed and inspired by this remarkable gathering, the U.S. convenors have produced a roadmap to guide the process of establishing a U.S. Civil and Human Rights Commission that would effectively monitor human rights and defend and extend the rights of individu-

als and groups. Our organizations and the Human Rights at Home (HuRAH) Campaign have begun the work of motivating and mobilizing the leaders of key constituencies for a public education campaign to create an effective new U.S. commission.

## Gleaning Global Lessons

Reflecting the consensus reached during the convening, the Roadmap calls upon the U.S. to take the next step towards the fulfillment of human rights: Establish a national body dedicated to monitoring our country's compliance with human rights standards and making recommendations to ensure that human rights become a reality for every American.

As we met with our counterparts from other countries, we were reminded that, while they share common goals, human rights commissions have very different mandates. Throughout the world, these entities are empowered to pursue some or all of these endeavors: monitoring the implementation of human rights laws, conducting investigations and hearings, raising awareness of human rights, recommending changes in law and policy, and interfacing with international forums, including the U.N. But for all the differences in their mandates and methods, the major thrust of these commissions' work is furthering their countries' compliance with human rights norms by putting international standards into practice.

In a development with clear implications for the U.S., the commissions in the United Kingdom, Canada and Australia have expanded the focus from an initial concentration on anti-discrimination laws to a more wide-ranging concern with human rights. Meanwhile, more recently established commissions, such as those in India, South Africa and Mexico's Federal District, were founded with the authority to address the full panoply of human rights.

## An American Solution

The Roadmap for the U.S. considers how to create a national human rights institution that can improve domestic legal protections by addressing complex forms of discrimination and inequality, promoting teamwork among federal, state and local governments, and empowering local communities to participate in policy change. This institution would have the power to conduct fact-finding and assessments, make recommendations, promote education and awareness, undertake and promote research, monitor government agencies, and

partner with every level of government. Most important of all, this institution must be in the government but not of it—fully independent of public officials and outside interest groups.

So how can such an institution be created? As the Roadmap recommends, the best way is to strengthen and expand an existing institution with a proud history but recent difficulties. The U.S. Commission on Civil Rights should be transformed into a U.S. Civil *and Human* Rights Commission.

## Proud Legacy, Recent Difficulties

This transformation makes sense, practically and politically, because the strengthened and transformed commission would build upon a proud legacy, expand its core responsibilities and capacities, and enjoy more support in securing funding at a time of tight budgeting.

Established in 1957 as part of the first national civil rights legislation since Reconstruction, the U.S. Commission on Civil Rights served for several decades as the conscience of the nation. As an independent investigative agency monitoring compliance with federal laws, the Civil Rights Commission exposed discriminatory practices in areas including voting rights, employment, education and housing. Its recommendations influenced groundbreaking federal anti-discrimination laws, including the Civil Rights Act of 1964, the Voting Rights Act and the Fair Housing Act.

Unfortunately, during the last decade, the Civil Rights Commission suffered from over-politicization, under-funding and under-staffing, and lost much of its capacity to investigate instances of discrimination and assess the impact of federal policies on the ground. While the Obama Administration has taken strong steps to strengthen civil rights enforcement on every front, restoring the Civil Rights Commission remains a challenge. Moreover, the Commission's mandate continues to lack the broader focus on human rights that is essential to addressing the issues that challenge a changing America in the 21st century. However, with several new appointments already to the Commission, we expect that its agenda will once again begin to address key issues of discrimination.

By building on public support for strengthening the Civil Rights Commission and addressing human rights issues as they emerge, this transformation can move the U.S. closer to dignity, equality and respect for all.

## From Civil Rights to Civil and Human Rights

The campaign to strengthen and transform the Civil Rights Commission can build upon and benefit from the growing public concern with human rights. An increasing roster of organizations has embraced the human rights framework to advance a domestic policy agenda as well as international issues. The increase in organizations that focus on human rights has been accompanied by the expanded engagement in human rights work at the local and national levels by organizations traditionally viewed as “civil rights” groups. The nation's leading civil and human rights coalition exemplifies this trend. For many years after our founding in 1950, our coalition was called the Leadership Conference on Civil Rights. And we spoke of civil rights much more often than human rights.

During the 1950's and 60's, we devoted almost all of our time, energy and resources to the great struggle for civil rights for African Americans. So it would be for decades to come as the civil rights coalition won great victories for equal opportunities in education and employment, voting rights, and fair housing. But, at heart, we were always a movement for human rights. Over the decades, we broadened our constituencies and concerns to include the rights of women, Latinos, Asian Americans, people with disabilities, immigrants, gays and lesbians, and all those who were excluded from the fullness of American life.

Nor did our concerns stop at our nation's borders. During the 1980's, the civil and human rights coalition challenged the injustice of apartheid in South Africa. Together, we convinced Congress to approve the Comprehensive Anti-Apartheid Act of 1986, which called for a trade embargo against South Africa and the immediate divestment of American corporations, contributing to the creation of a nonracial democracy in 1993.

In 1988, the civil and human rights coalition helped to enact the Civil Liberties Act. Together, we helped to redress the terrible treatment that Japanese-Americans suffered during World War II—one of the injustices that had inspired the Universal Declaration of Human Rights. In 1994, I testified before the Committee on Foreign Relations on behalf of the NAACP, urging the Senate to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

At The Leadership Conference, we are monitoring our

country's compliance with CERD. We have submitted "shadow reports" in response to the reports that the U.S. government filed in 2000 and again in 2007 regarding implementation of CERD. We have joined with many other organizations, including the HuRAH Campaign, to improve human rights compliance in the U.S. and to urge the Obama Administration to strengthen our nation's own mechanisms for protecting human rights, at home and abroad.

In 2010 we recognized the sweep and scope of our efforts by expanding our name to The Leadership Conference on Civil and Human Rights. With this name, we are returning to our roots as a coalition that believes that, as Dr. King famously said, "Injustice anywhere is a threat to justice everywhere."

Ultimately, the fight for human rights is as timely as today's headlines and as timeless as our nation's founding documents. By strengthening and transforming the U.S. Commission on Civil Rights into a U.S. Commission on Civil *and Human* Rights, our nation can continue its historic journey towards fulfilling the truths that our Founders declared to be "self-evident" and becoming an America as good as its ideals.

## Executive Summary

The American public supports and embraces the concept of human rights, which recognizes that all people must be afforded the full range of civil, political, economic, social and cultural rights, by virtue of their humanity.<sup>1</sup> These internationally accepted norms and values recognize and promote dignity, fairness and opportunity and place an obligation on governments to respect, protect and fulfill these rights.

Historically, the United States has played a central role in shaping human rights norms and promoting human rights protections throughout the world. As a champion of human rights ideals, the U.S. has participated in the drafting of the Universal Declaration of Human Rights and other human rights agreements and has been a strong voice globally to promote human rights and democracy abroad. However, the United States lacks a national human rights body with a coordinated and comprehensive approach to promoting and protecting human rights at home. As detailed throughout this report, such a body is needed to address the gaps that remain in achieving human rights for all within the United States.

As the United States re-engages with the international human rights system<sup>2</sup> and recognizes economic, social and cultural rights,<sup>3</sup> we are at a pivotal moment where the United States can, and should, create domestic accountability mechanisms that promote and monitor U.S. compliance with universal human rights standards. Indeed, seeking to close the gap between the norms espoused abroad and existing domestic practices, advocates are urging the United States to measure its own laws, policies and practices against the international human rights standards it helped create and to build human rights into the way that government operates.

This Roadmap calls on the United States to take a critical step towards the full realization of human rights by establishing a national body dedicated to monitoring U.S. compliance with human rights standards and making recommendations to ensure that human rights become a reality at home. The Roadmap describes the ingredients necessary to create an effective body and provides concrete next steps to move advocacy forward, reflecting the consensus reached during a multi-day convening of civil and human rights experts from around the world. The convening was an opportunity for advocates from the United States and abroad to engage in a comparative

exploration of national human rights commissions, with the goal of developing recommendations for a U.S. human rights body that improves domestic legal protections and empowers vulnerable individuals and communities.

National human rights institutions (NHRIs) exist in countries in every region of the world to promote and protect human rights. Human rights commissions, the most common form of NHRI, are government-funded, multi-member bodies with an explicit mandate to promote and protect human rights. These entities have varying mandates, including monitoring implementation of human rights laws, conducting investigations and hearings, raising awareness of human rights, recommending changes in law and policy and interfacing with international fora, including the U.N. The major thrust of a human rights commission's work is furthering compliance with human rights norms by translating international standards into local practice. Commissions can bolster government accountability, improve transparency and help ensure that policies take local community needs into account.

In Commonwealth Countries, including Australia, Canada and the United Kingdom, commissions have expanded from an initial focus on anti-discrimination laws to include human rights. More recently established commissions, such as those in India, South Africa and Mexico's Federal District, began with explicit authority to promote and protect a broad range of human rights.

Lessons learned from the formation and operation of these commissions provide important guidance for establishing a human rights institution in the United States, as each bears one or more characteristics relevant to our domestic context: operating within a federalist system, functioning within a legal system grounded in anti-discrimination laws and authorization to address the full panoply of human rights. An exploration of the functioning of the commissions in these six countries helps us identify the elements necessary for an effective domestic human rights institution within the United States.

While these commissions face challenges in promoting and protecting human rights, they have also made advances in translating international norms into domestic practice, including the following examples:



- The South African Human Rights Commission addresses issues around poverty through a variety of means. Its mandate includes monitoring government progress in the realization of the rights to housing, healthcare, social security and other economic and social rights through information requests and reporting. The Commission has developed protocols that not only assist in gathering such information but also raise awareness of human rights. In addition, the Commission has held countrywide hearings on the causes of poverty in conjunction with non-governmental organizations.
- In Canada, a main function of commissions is the resolution of discrimination complaints. Nevertheless, Canada's national and subnational commissions coordinate formally and informally to address proactively the rights of First Nation Peoples. One means of formal collaboration has been through memoranda of understanding as part of the National Aboriginal Initiative. In 2010, this type of partnership was used to further education and awareness of federal, provincial and international human rights and treaty rights, including balancing individual rights with the collective rights to land and preservation of traditional languages and cultures. Informally, federal, provincial and territorial commissions participate in annual conferences, facilitating dialogue on particular legislative initiatives and other opportunities to promote indigenous human rights issues.
- The Australian Human Rights Commission participates in international assessments of Australia's human rights record, providing reports on the domestic human rights situation and advising government, as well as offering statements during U.N. treaty reviews. As part of these efforts, the Commission solicits input from civil society organizations and state and territorial commissions.

In each country studied—Australia, Canada, India, Mexico, South Africa and the United Kingdom—the human rights commission's ability to fulfill its mandate has been influenced by the legal context, the commission's institutional design and its relationship to stakeholders. Lessons drawn from these examples inform the recommendations in this Roadmap for the elements necessary to create a sustainable and effective U.S. human rights accountability mechanism.

### Key Recommendations:

#### A. The Institution: Create an Independent and Effective Domestic Human Rights Body

A domestic human rights institution has the potential to improve domestic legal protections by addressing complex forms of discrimination and inequality, facilitating collaboration between federal, state and local governments and empowering local communities to participate in policy change. A domestic human rights body can inform U.S. law and policy by fostering a comprehensive approach to compliance with international human rights standards.

Taking this concrete action would demonstrate a true commitment to the norms that the U.S. promotes on the world stage, translating rhetoric into action.

#### The Essential Elements of a Domestic Human Rights Institution Include:

- **A Broad Mandate.** A human rights institution must have flexibility to ensure it can address the full range of rights abuses. It should be mandated to address all human rights issues pertaining to all people within the United States and subject to U.S. authority.
- **The Ability to Promote and Protect Human Rights.** An effective institution should have the ability to monitor compliance with civil and human rights laws, raise awareness of civil and human rights norms, interface with government officials and understand how policies are playing out on the ground in local communities. This should include the authority to hold hearings and conduct investigations. To do this work, it should have the power to:
  - Conduct fact-finding and assessments, including through issuance of subpoenas
  - Advise, report and make recommendations regarding implementation of human rights standards
  - Promote education and awareness
  - Undertake and promote research
  - Monitor governmental agencies
  - Partner with subnational human rights structures and indigenous governing bodies
  - Engage with civil society
  - Engage with regional and international human rights bodies

- Undertake additional functions as needed to fulfill its mandate.
- **A Structure that Promotes Independence and Responsiveness.** A human rights institution must be constituted to allow for the full exercise of its powers, independent of government or particular interest groups. This is necessary to ensure that it remains responsive to community needs. Its members should be independent and representative of the population they serve. A sustainable national body will assess laws and policies through the lens of how they play out on the ground. To serve its purpose, it must also remain accessible to stakeholders at the federal, state and local levels. The following elements of institutional design can foster these characteristics:
  - Adequate resources and autonomy
  - A transparent appointment and removal system
  - The ability to assess local conditions, including through collaboration with existing state and local agencies and officials and ad hoc committees.

## B. The Avenue: Transform and Strengthen the U.S. Commission on Civil Rights

There are many avenues to establishing a human rights institution, including working within the existing institutional landscape and/or creating a wholly new federal body. It was the consensus of those at the convening that, at present, transforming the existing U.S. Commission on Civil Rights (USCCR) into a Civil and Human Rights Commission is the preferred path to establishing a human rights body within the United States.

The USCCR, established in 1957, once served as the conscience of the nation—an independent fact-finding and investigative agency that monitored compliance with federal laws. At its apex, the Commission used its investigatory power to expose discriminatory practices and made recommendations that influenced a number of groundbreaking federal anti-discrimination laws. However, the existing USCCR lacks independence and has become a politicized, under-staffed and under-funded body without the infrastructure to assess the impact of federal policies on the ground. Human rights norms are notably missing from its mandate.

Transforming the USCCR into a Civil and Human Rights Commission as a path to human rights accountability is recommended for a number of reasons, including:

- **Building Upon a Powerful Legacy.** By strengthening and transforming the USCCR, advocates can build upon the legacy of the once venerable Commission while enhancing its role as a promoter and protector of rights.
- **Retaining Core Powers.** The USCCR was able to make important strides toward equality by using its investigatory powers, and subpoena power in particular, which are crucial for successful monitoring of human rights compliance.
- **Securing Funding.** Finally, efforts to secure funding for improving and reinvigorating an existing body are likely to receive more support than calls for funding for an entirely new institution.

## C. The Action: Cultivate a Broad Based and Inclusive Campaign to Sustain Advocacy

Proposals to establish a U.S. human rights commission are percolating among a number of individuals and organizations. For the past several years, two coalitions with shared leadership and goals, The Leadership Conference on Civil and Human Rights USCCR Taskforce and the Human Rights at Home Campaign's USCCR Subcommittee, have spearheaded efforts to both reform and transform the USCCR into a Civil and Human Rights Commission. The convening on which this Roadmap is based was an unparalleled opportunity to build upon these efforts and bring an array of advocates together to develop consensus around various proposals—but it was only a starting point. It is clear that a broader and more representative coalition, reflecting diverse expertise and experience, is needed for proposals to coalesce, and, ultimately, for a human rights institution in the U.S. to have the necessary support and engagement from all relevant stakeholders.

A more inclusive, multi-stakeholder campaign would advance efforts in the following areas, each of which is necessary to sustain and grow support for a domestic human rights institution:

- Human Rights Education
- Broad Outreach
- Constituency and Capacity Building
- Communications
- Research
- Legislative Advocacy
- Resource Cultivation.

Bringing human rights home requires vision, leadership and action. To make human rights a reality, the United States must hold itself accountable to the universal values it espouses abroad and measure progress against the ability of all members of our society to fulfill their fundamental needs. Establishing a human institution is one critical step in the right direction. A robust institution, equipped to translate international human rights norms into domestic practice, can respond to civil and human rights issues as they emerge and move the United States closer to achieving dignity, equality and respect for all.

## I. Introduction

While human rights are often discussed as international standards, they are realized first and foremost at home. Respect for human rights is a domestic endeavor—the promotion, protection and fulfillment of these rights falls to national and local governments, not to international bodies. Because the front line of human rights is domestic, full realization of these rights requires coordination and dialogue between civil society, national policy-making bodies and local institutions.<sup>4</sup>

U.S. human rights advocates have continually emphasized that “human rights begin at home,”<sup>5</sup> and it is only when the full spectrum of rights are recognized and protected in local communities that we can claim equality, dignity and fairness for all. Franklin D. Roosevelt recognized this in his 1941 Four Freedoms speech, stressing that “[f]reedom means the supremacy of human rights everywhere.”<sup>6</sup> A. Philip Randolph, one of the founders of The Leadership Conference on Civil Rights, highlighted this in 1942 when he stated that “[a] community is democratic only when the humblest and weakest person can enjoy the highest civil, economic, and social rights that the biggest and most powerful possess” and that engaging in a domestic “fight for economic, political, and social equality, thus becomes part of the global war for freedom.”<sup>7</sup> The idea of fundamental, inalienable rights has permeated our history and serves as a foundational principle upon which U.S. democracy is built.

### A. Support for Human Rights in the U.S.

*“I think it is necessary to realize that we have moved from the era of civil rights to the era of human rights.”<sup>8</sup>*

Since World War II, the United States has been a key player in the international human rights system, shaping international human rights norms through its role in the drafting of human rights agreements, beginning with the Universal Declaration of Human Rights in the 1940s.<sup>9</sup> Domestically, human rights treaties have been ratified under the leadership of Republican and Democratic presidents alike.<sup>10</sup> When submitting the Covenant on Civil and Political Rights for ratification, George H.W. Bush spoke of the essential connection between U.S. democracy and human rights, noting that “ratification of the Cove-

nant...would underscore our natural commitment to fostering democratic values through international law” and “strengthen our ability to influence the development of appropriate human rights principles in the international community.”<sup>11</sup> However, the U.S. commitment to promote and protect human rights domestically has not always been consistent.

Members of the Obama Administration have demonstrated a new level of engagement with human rights, invoking human rights language, joining the U.N. Human Rights Council and consulting with civil society at an unprecedented level to discuss ongoing human rights concerns. The current Administration has further committed to measure human rights using “a single yardstick,”<sup>12</sup> and President Barack Obama has indicated that the U.S. intends to prioritize human rights in both domestic and foreign policy.<sup>13</sup>

Although the U.S. has taken a leadership role in promoting human rights globally, a gap remains between the ideals the United States professes and its actual domestic practice. The existing domestic legal framework, largely concerned with protecting civil and political rights and using litigation as a remedy for discrimination and inequality, however admirable, has failed to provide protection to vast segments of the population. Existing law and policy do not adequately address increasing social and economic inequality and the social programs that do exist are often regressive in nature and in contradiction to human rights principles.<sup>14</sup> Recent indicators underscore that the goal of equality for all continues to elude the United States as the disparities in health, education and employment continue to grow along racial, economic and gender lines. Indeed, the United States has some of the worst social indicators among OECD countries, marked by stark gender and racial disparities.<sup>15</sup> The gap between U.S. statements and domestic practice is further demonstrated by the U.S.’ inconsistent record of adopting, or complying with, human rights norms and treaty obligations.

To address the gaps between the United States’ professed support for human rights and domestic practice, advocates have been calling for the restoration of civil and human rights. Growing domestic support for human rights can be seen in the increasing number of organizations that have embraced the human rights framework to advance a domestic policy agenda. As detailed in a recent report by the U.S.

Human Rights Fund, the number of domestically focused human rights organizations has grown exponentially over the past ten years.<sup>16</sup> The U.S. Human Rights Network, founded in 2004 to strengthen the domestic human rights movement using a collaborative, “people-centered approach,” has grown to include approximately 275 organizational and 1,400 individual members.<sup>17</sup> The Bringing Human Rights Home Lawyers’ Network, which is coordinated by Columbia Law School’s Human Rights Institute and serves as a forum to develop strategies and build the capacity of domestic social justice advocates to use human rights, includes more than 500 individual and institutional members.<sup>18</sup> Additionally, in 2009, approximately 50 U.S.-based organizations, including national and local human rights, civil rights, civil liberties and social justice groups came together as a coalition to advocate for policies and mechanisms that build human rights principles into the way government operates at the federal, state, and local levels, creating the Human Rights at Home (HuRAH) Campaign.<sup>19</sup>

The growth in domestic human rights-focused organizations is accompanied by the increasing engagement of organizations traditionally viewed as “civil rights” organizations in sustained human rights work at the local and national level. In 2004, the American Civil Liberties Union created a human rights program with dedicated staff to complement its foundational focus on civil liberties.<sup>20</sup> More recently, in 2009, the nation’s oldest and largest civil rights coalition changed its name from The Leadership Conference on Civil Rights to The Leadership Conference on Civil and Human Rights, explicitly acknowledging the broad scope of its work and the centrality of the human rights framework to its goal of attaining a more open and just society.<sup>21</sup> The Executive Director of the NAACP has also announced his intention “to revive [the NAACP’s] legacy as a human rights organization.”<sup>22</sup>

Domestic support for human rights also exists beyond policy and advocacy circles. Today, a majority of Americans support the idea of human rights and believe the U.S. should strive to uphold these rights.<sup>23</sup> They also believe there are gaps in human rights protections, manifesting, for example, in racial profiling, the lack of quality education for children in poor communities and the government’s response to Hurricane Katrina.

## B. Calls for a Domestic Human Rights Monitoring Body

Domestic mobilization around human rights is not a new phenomenon, but recent calls to improve human rights have taken on a new contour as advocates push for national human rights accountability mechanisms.<sup>24</sup> Over the past decade, grassroots community groups, national policy organizations, academics and international non-governmental organizations have called on the U.S. to improve compliance with its international obligations through such national mechanisms. Specific recommendations include the establishment of a national, independent, human rights monitoring body to promote and protect civil and human rights at the federal, state and local level: a national human rights institution (NHRI) and additional federal mechanisms to implement human rights. Treaty monitoring bodies, U.N. experts and other countries have echoed these domestic calls for a human rights infrastructure, urging the United States to establish an NHRI.<sup>25</sup>

The current U.S. Administration has also highlighted the value of a coordinated approach to human rights implementation and specifically recognized that a national human rights institution can aid in promoting and protecting human rights. Twice in international fora, the U.S. government has recommended that other countries create or study the possibility of creating NHRIs.<sup>26</sup>

Seizing on the momentum to strengthen domestic human rights protections and ensure accountability, The Leadership Conference on Civil and Human Rights and the Human Rights Institute organized a multi-day international convening with human rights experts, including advocates, academics and policy-makers, to develop guidelines for effective strategies to promote and monitor human rights domestically, focusing particularly on the role of national human rights commissions, which today exist in every region of the world, but not in the United States.

## II. Convening Background

Drawing upon efforts to establish a human rights monitoring body in the United States, the Global Exchange on National Human Rights Commissions was designed to leverage the expertise of a diverse group of individuals with backgrounds in activism, governance and education in a variety of countries to explore the necessary ingredients for effective national human rights institutions. By exploring the work of commissions existing around the world, the convening was structured to highlight effective practices for protecting and promoting human rights, potential challenges to establishing and sustaining effective human rights institutions and strategies to address these challenges. A central goal of the convening was to build consensus around a concrete proposal for establishing a human rights institution within the United States.

This Part first describes the recent proliferation of domestic human rights institutions, focusing on human rights commissions. It then highlights elements of domestic proposals that lay the groundwork for the convening, including efforts to transform the U.S. Civil Rights Commission into a Civil and Human Rights Commission, calls for a U.S. Border Commission and advocacy for a federal body that coordinates and supports state and local efforts to implement human rights. The descriptions highlight the genesis and unique features of each proposal, providing a snapshot of the domestic landscape. This Part concludes by summarizing the multiple recommendations for the U.S. to establish a National Human Rights Institution that have emerged in the international arena.

### A. Global Proliferation of National Human Rights Institutions

Calls for the United States to establish an NHRI are part of a global trend toward enhancing human rights protections through the creation of domestic monitoring mechanisms.

NHRIs, which are independent, autonomous institutions created by law and funded by the State have proliferated around the world over the past two decades.<sup>27</sup> NHRIs are domestic bodies with a constitutional and/or legislative mandate to protect and promote human rights.<sup>28</sup> They are often described as institutions that bridge the gap between international human rights standards and domestic realiza-

tion of human rights<sup>29</sup> because they translate these standards into concrete national policies and practices.<sup>30</sup> NHRIs typically monitor compliance with human rights standards, advise government on compliance with international human rights instruments, facilitate human rights awareness and communicate with regional and international institutions.<sup>31</sup>

Thus, an NHRI, when non-partisan, independent and properly funded, can play a primary role in ensuring effective domestic human rights protections. A human rights commission can monitor and facilitate human rights compliance, investigate human rights violations and promote human rights norms through education and the media. It can also partner with civil society, maintaining a “pivotal position as the keystone of a strong national human rights protection system.”<sup>32</sup>

NHRIs take a variety of forms, from ombudsmen to advisory committees to national human rights commissions.<sup>33</sup> Each type of NHRI bears a distinct structure, which in turn informs its institutional competency, relationship to government and civil society and ability to fulfill its mandate. The characteristics that define NHRIs include: whether they are multi-member, whether they are primarily advisory bodies or complaint handling institutions, and whether they focus on discrimination or have a broader mandate (that may include economic, social and cultural rights).<sup>34</sup>

Commissions, which make up the majority these institutions,<sup>35</sup> have varying structures, mandates and levels of efficacy and they exist in almost all regions of the world, including Africa, Europe, the Asian Pacific and the Americas, but are most prevalent in Commonwealth Countries.<sup>36</sup> Commissions are state-sponsored, multi-member institutions that bear an explicit mandate to protect and promote human rights.<sup>37</sup>

Australia, Canada, New Zealand and the United Kingdom established commissions in the late nineteen seventies and eighties, all focused on implementation of equality and anti-discrimination legislation. However, over time, the commissions in these countries have broadened their mandates to include promotion and protection of human rights.<sup>38</sup> More recent commissions, such as the Indian and South African Human Rights Commissions, have authority to investigate complaints dealing with both discrimination and international human rights standards.

While no two commissions are the same, their functions typically include monitoring implementation of human rights laws, raising awareness of human rights through training and education and advising the government on human rights, often through policy or legislative recommendations. Almost all commissions can conduct investigations and make recommendations but some also have complaint handling processes and may also bear the quasi-judicial power to make decisions that are enforceable in courts or tribunals.<sup>39</sup> The promotion role of a commission includes public education, report dissemination, policy development and advising government. The protection role, in contrast, is fulfilled through investigation, complaint handling, conflict resolution, public inquiries and monitoring efforts.

In an effort to provide a framework for the establishment of NHRIs, the U.N. has adopted a set of guiding principles, commonly known as the Paris Principles.<sup>40</sup> The Principles focus upon four aspects of commissions: competence, composition and independence, methods of operation and guidance for commissions that have a quasi-judicial function. They are important minimum standards for NHRIs, but they do not touch upon the accessibility or credibility of an institution, its public legitimacy or how to evaluate its domestic impact.<sup>41</sup> As the number of NHRIs grows, increased international attention has been paid to the factors that influence NHRI creation and impact NHRI design and efficacy.<sup>42</sup>

## B. Domestic Proposals For a Human Rights Monitoring Body

In recent years, U.S. civil and human rights organizations, including large policy organizations in Washington, D.C., advocates working on border policy in the Southwest, grassroots organizations in New York City, and members of state and local civil and human rights agencies have been advocating for a federal institution to monitor human rights in the United States. This Section sets forth three current proposals and provides the context out of which they emerged.

### 1. Transforming the U.S. Commission on Civil Rights

Recent proposals call for an overhaul of the existing U.S. Commission on Civil Rights (USCCR) by strengthening it and expanding its mandate to include monitoring U.S. compliance with human rights commitments, thus transforming the Commission into a U.S. Commission on Civil and

Human Rights. During its early history, the USCCR served as “the conscience of the nation,”<sup>43</sup> but since the 1980s several internal and external political factors have encroached upon the existing Commission’s ability to function effectively and independently. In recent years, due to a partisan make-up of the Commission, it has been largely absent from debates around critical civil rights issues and, in some instances, openly opposed critical federal civil rights initiatives.<sup>44</sup> While very recent changes in Commission leadership may indicate a righting of that course, to many, the Commission has not only been peripheral to protecting civil rights, it is “so debilitated as to be considered moribund.”<sup>45</sup>

Throughout its history, the USCCR’s reports have informed important civil rights laws. In 1965, the Commission called for federal voting rights legislation and made substantive recommendations to address voting rights abuses, based in part on its investigation of voting practices in Mississippi. Ultimately, the Voting Rights Act of 1965 incorporated these recommendations. In upholding the Act the following year, the Supreme Court relied on data the USCCR gathered during a multitude of hearings and investigations. The Commission continued to play a major fact-finding role in the reauthorization of the Voting Rights Act, including the 1982 reauthorization of all major components of the Act for twenty-five years (with the exception of the language provisions which were reauthorized for 10 years). During the 2006 reauthorization process, however, the Commission was largely absent<sup>46</sup> and a collaboration of civil society groups performed the fact-finding that helped create the congressional record for reauthorization.<sup>47</sup>

Calls for reform include recommendations to expand the USCCR’s name and mandate to include human rights and to explicitly address discrimination based on sexual orientation or gender identity,<sup>48</sup> to revamp the appointment procedures to address the over-politicization of the Commission and to enhance its ability to have an adequate reach across the country. Many advocates that support restructuring of the USCCR see this as a logical step to establishing a NHRI, which is viewed as a long-term goal.

The current recommendations developed by The Leadership Conference on Civil and Human Rights USCCR Taskforce and the HuRAH Campaign are detailed in Appendix A.1.b. More information on the existing U.S. Civil Rights Commission can also be found in Appendix A.1.a, which draws from the comprehensive history of the Commission included in the 2009 report by The Leadership Conference on Civil and Human Rights, *Restoring the Conscience of a Nation: A Report on the U.S. Commission on Civil Rights* as well as the article *The Rise and Fall of the U.S. Commission on Civil Rights*, published in 1987.<sup>49</sup>

## 2. Ensuring Federal Coordination of State and Local Efforts to Monitor and Implement Human Rights

Within the U.S., there are approximately 150 state and local civil and human rights and human relations commissions and agencies (State and Local Human Rights Agencies) currently mandated to enforce human and civil rights and/or to conduct research, training and public education and issue policy recommendations on human intergroup relations as well as civil and human rights.<sup>50</sup> A number of these Agencies currently use the human rights framework to promote equality, dignity and fairness.

Indeed, the human rights framework and the U.S. federalist system envisage a strong role for state and local agencies and officials.<sup>51</sup> However, despite their critical role in monitoring and promoting compliance with civil and human rights laws, resources for their work are often scarce and there is currently no infrastructure to support state and local efforts to monitor or implement human rights laws, even though the treaties ratified by the U.S. constitute the “supreme law of the land.”<sup>52</sup>

In order to improve coordination of, and support for, domestic monitoring and implementation of human rights, the International Association of Official Human Rights Agencies (a non-profit membership organization of these Agencies, known as IAOHRA) is working with a number of civil society advocacy organizations to achieve meaningful federal engagement with state and local efforts to promote and protect human rights. Together, these organizations have proposed that the federal government provide much needed guidance on how State and Local Human Rights Agencies can help the U.S. fulfill its obligations to comply with human rights standards, as well as called for dedicated staff, education and training, and funding for local efforts. They have also called

for the operationalization of these recommendations through the establishment of a national human rights infrastructure that includes a human rights commission to monitor human rights compliance and a federal Inter-Agency Working Group on Human Rights that would coordinate implementation at all levels of government.

Additional information on these recommendations, existing state and local efforts to implement human rights and the ways the federal government supports civil rights enforcement at the state and local level is available in Appendix A.2, which draws upon the 2009 Report by Columbia Law School’s Human Rights Institute and IAOHRA, *State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality Through an International Human Rights Framework*.<sup>53</sup>

## 3. Establishing a U.S. Border Commission

A more targeted proposal for a Border Human Rights Commission has been made by the Border Network for Human Rights (BNHR) and its allies, who comprise the U.S./Mexico Border Enforcement and Immigration Task Force (Border Task Force). This proposal grows out of the BNHR’s efforts to involve border communities in the defense and promotion of civil and human rights in an effort to create an environment where all members of these often marginalized communities are equal in dignity and rights.<sup>54</sup>

The Border Task Force has spent several years analyzing rights abuses at the U.S./Mexico border and a key theme of its findings is the lack of oversight and accountability for actions taken in these local communities (whose residents are often immigrants or perceived to be immigrants). To address this, the Border Task Force has recommended the creation of a United States Border Enforcement and Immigration Review Commission that would improve accountability, transparency and government-community partnerships along the border.

The Border Commission would be an independent agency established by legislation to operate at the federal, regional and local level, monitoring government agencies and promoting effective law enforcement practices that protect the human and civil rights of all people in the border region. In order to pursue these functions, the Border Commission would, at a minimum, have investigatory power, including the power to subpoena, auditing power, and legal power, as well as adequate funding to conduct outreach in local communities.<sup>55</sup>



Greater detail on the BNHR, the Border Task Force and these recommendations, as well as the ways that the proposal for a Border Commission complements the other advocacy efforts described in this Section, can be found in Appendix A.3.

### **C. International Calls for a U.S. National Human Rights Institution**

Recommendations made in several U.N. fora bolster the domestic proposals laid out above. Treaty compliance reviews, independent human right expert visits and the recent Universal Periodic Review of the United States by the U.N. Human Rights Council have all yielded recommendations that the U.S. establish a human rights monitoring body in line with international standards and several specifically recommend coordination at the federal, state and local levels.<sup>56</sup> These recommendations grow out of concern that the lack of a comprehensive national approach to human rights implementation has led to gaps in U.S. compliance with its human rights obligations. Appendix B includes a more detailed description of each of these recommendations.

### III. Convening Overview

It is within the domestic and international context described above that the convenors of the Global Exchange on National Human Rights Commissions set out to bring together human rights experts from around the world to develop a better understanding of the elements necessary to establish an effective human rights institution in the United States. The following Part distills the convening goals, structure and outcomes. This overview provides the context to understand the more detailed discussion of the key ingredients for an effective U.S. human rights institution presented in Part IV.

#### A. Convening Goals

The three-day meeting was conceived as an opportunity to facilitate candid conversations with advocates from around the world in order to:<sup>57</sup>

1. Develop concrete recommendations for a U.S. commission to achieve the twin aims of improving legal protection and empowering vulnerable individuals and communities;
2. Distill methods of operation and indicators to ensure a U.S. commission operates independently and effectively to address the needs of disadvantaged communities in partnership with subnational entities and civil society;
3. Mobilize human rights advocates whose support and input is crucial for developing an effective U.S. human rights institution and the monitoring and implementing of human rights; and
4. Identify barriers to implementing human rights and steps to overcome political and institutional opposition to a human rights monitoring body.

#### B. Convening Structure

In order to achieve the goals laid out above, participants engaged in a comparative exploration of the work of several human rights commissions, each with a history, structure or function relevant to establishing an effective human rights commission within the United States. Convening sessions were developed to highlight lessons learned from the successes and challenges of these commissions, which bear one or more of the following characteristics:<sup>58</sup>

1. **An Expanded Mandate:** This category includes commissions that have expanded their mandates from a specialized or narrow mandate (such as a civil rights mandate) to a broader human rights mandate. This change is analogous to the proposal to expand the mandate of the existing U.S. Civil Rights Commission to a U.S. Civil and Human Rights Commission. An expanded commission may continue to emphasize or prioritize the specialization that provided its foundation but must balance this with a new mandate in order to gain legitimacy as a human rights institution. The comparative focus was the United Kingdom's Equality and Human Rights Commission, established to replace three distinct equality commissions.
2. **Treating Rights as Indivisible:** This category includes commissions that address the indivisibility of rights, including economic, social and cultural rights, as well as civil and political rights. The focus was on the South African, Indian and Mexico City Federal District Commissions. The South African Commission addresses economic and social rights, which are recognized as fundamental rights in the national constitution. The Indian Commission exemplifies how even when economic and social rights are not considered fundamental rights, a commission may still promote them and foster compliance and recognition of these rights. The Mexico City Federal District Commission further demonstrates how subnational bodies may provide broad rights protections, even while working with a national commission in a federal system.
3. **A Federalist Tradition:** In order to ensure comprehensive human rights protections, commissions functioning within a federalist tradition must coordinate with subnational commissions or bodies, as well as governing bodies representing indigenous peoples. To be truly effective, a U.S. human rights commission will have to find a way to ensure that state and local entities and civil society will have a voice in decision-making. Human rights commissions in Australia, Saskatchewan and Mexico City's Federal

District served as examples, providing insight into ways that national and subnational commissions function as well as ways they cooperate with indigenous governing bodies.

Grounded in these comparative examples, the convening explored ways that human rights commissions can and should monitor and promote human rights domestically at the national, state and local level. Sessions were structured to identify strategies to overcome challenges to human rights monitoring and implementation, highlighting effective ways to address the needs of disadvantaged individuals and communities while forming meaningful partnerships with civil society, as well as government actors and other relevant stakeholders.

Each day included a mixture of interactive roundtable discussions as well as more intimate breakout groups to allow maximum participation and input. The closing session was used to distill the discussions of the preceding days and identify the key elements of an effective human rights commission. It was an opportunity for participants to outline a series of next steps to guide domestic efforts to create a U.S. human rights institution. This closing session also provided guidance for building support among various constituencies and forging partnerships with subnational government entities and civil society in order to foster a stronger human rights culture. The Global Exchange was held under the Chatham House Rule and, accordingly, no attributions are included in this Report.<sup>59</sup>

### C. Convening Outcomes

Convening participants reached broad consensus regarding the essential ingredients for a national human rights commission that can effectively promote and protect the broad spectrum of human rights, including the mandate, functions and structural components of such a commission. These areas of consensus, laid out in Part IV, comprise the bulk of this Report. In addition to identifying these elements, participants agreed on the need for additional groundwork that needs to be done to establish a U.S. human rights institution, particularly human rights education and advocacy, grassroots engagement and organizing, legal research, public opinion polling, effective media messaging and follow-up meetings to develop a detailed strategy. These next steps, which are critical to the implementation of the participants' collective vision of a human rights commission that, once established, remains

effective and accountable to the vulnerable populations it is meant to serve, are discussed in Part V.

The convening further served to foster new relationships between human rights advocates in the U.S. and abroad, who face many of the same issues in their daily work. The format and setting of the convening provided a unique space for U.S. advocates working at the grassroots level and more policy-focused advocates to connect, creating synergies and new opportunities for collaboration in order to strengthen the domestic human rights movement.

Finally, the convening spurred the creation of a concrete domestic effort to build broader-based support for human rights. As an outgrowth of conversations begun during the Global Exchange, two participants have spearheaded a national effort to engage local communities in consultations regarding a human rights accountability framework within the United States. Since the convening, a Social Engagement Subcommittee has been created within the HuRAH Campaign to facilitate this effort. The Subcommittee aims to establish a process for engagement in social change efforts and build the capacity of interested organizations. To this end, it will hold regional consultations to involve a wider constituency in the dialogue on domestic human rights and bring the proposals discussed at the convening to communities so that they can respond and provide input to inform the ultimate structure of the domestic human rights accountability mechanisms that the HuRAH Campaign is advocating for.

## IV. Key Ingredients For a U.S. Human Rights Institution<sup>60</sup>

The diverse experiences of convening participants contributed to a rich dialogue about existing commissions around the world, as well as the challenges and limitations faced by institutions with a human rights mandate. Delving into the history of the USCCR, and the specific national contexts in which each commission functions, participants explored the core elements of these institutions and developed recommendations for establishing an effective human rights institution in the United States.

Throughout the convening, participants identified a number of factors necessary to ensure that a commission is sustainable, effective and independent. The consensus that emerged regarding the essential mandate, powers and functions and structural elements of this institution are highlighted in the chart below.

<p><b>Mandate</b></p> <ul style="list-style-type: none"> <li>■ To address all human rights issues pertaining to all people within the United States and subject to U.S. authority</li> </ul>
<p><b>Essential Powers and Functions</b></p> <ul style="list-style-type: none"> <li>■ Conduct fact-finding and assessments, including through issuance of subpoenas and document requests</li> <li>■ Advise, report and make recommendations regarding implementation</li> <li>■ Promote education and awareness</li> <li>■ Undertake and promote research</li> <li>■ Monitor governmental agencies</li> <li>■ Partner with subnational human rights structures and indigenous governing bodies</li> <li>■ Engage with civil society</li> <li>■ Engage with regional and international human rights bodies</li> <li>■ Undertake additional functions necessary to achieve its mandate</li> </ul>
<p><b>Structural Elements</b></p> <ul style="list-style-type: none"> <li>■ Adequate resources &amp; autonomy</li> <li>■ Transparent appointment and removal processes</li> <li>■ Ability to assess human rights locally</li> </ul>

Sections A, B and D of this Part describe these elements, and where appropriate, provide examples from other countries. Section C introduces additional functions that participants agreed could be useful for a successful commission, but that are not necessarily required in the U.S. context.

This Part does not endeavor to capture the contours of each convening session in detail, rather it distills the main themes of the convening and the consensus reached on the key ingredients for an effective and independent U.S. human rights commission. It builds upon the Global Exchange, supplementing examples raised during the convening with the author's independent research on the essential elements of a human rights institution.<sup>61</sup>

### A. Mandate

Ultimately, there was resounding support for a U.S. human rights institution with the broad mandate to address all human rights issues pertaining to all people within the United States and subject to U.S. authority.<sup>62</sup> Consensus emerged that this mandate would ensure that the body has the flexibility to promote and protect the rights of individuals and groups that in the past have been outside the scope of civil rights protections, whether due to national origin, citizenship status, the site of alleged mistreatment or other limitation in domestic law protections.

Participants agreed that this broad mandate will also allow a U.S. institution to address the full panoply of indivisible and interdependent human rights, including economic, social and cultural rights. The reality in the United States is that poverty and discrimination are deeply intertwined and addressing ongoing human rights violations requires looking at the intersectionalities of race, gender, national origin, class, disability, age, sexual orientation and religion. Without a holistic approach, gaps in civil and human rights protections will continue to grow.

The consensus reached on the need for a broad mandate in the United States comports with the literature on national human rights institutions.<sup>63</sup> Existing commissions address issues that often defy simple categorization among rights and

include violations that touch upon civil and political, as well as economic, social and cultural rights.<sup>64</sup> A limited mandate, such as one based purely on discrimination, may prohibit a commission from engaging on a multitude of human rights issues, such as poverty that results from economic policy or practices that are not discriminatory *per se* but result in disparate treatment.<sup>65</sup> This has led to an ongoing international effort to strengthen the role that NHRIs play in promoting and protecting economic, social and cultural rights.<sup>66</sup>

A broad mandate, defined in terms of international standards, would also be advantageous for a U.S. human rights body because it would ensure that the United States remains engaged in international dialogues around these issues (even where U.S. domestic and international commitments lag behind) as NHRIs are increasingly participating in U.N. proceedings. Finally, while a broad mandate does bring with it some challenges,<sup>67</sup> it would allow a U.S. institution the flexibility needed to undertake the essential functions described in Section B, below.

The commissions represented at the convening have a broad range of mandates, some of which clearly encompass economic, social and cultural rights. Four commission mandates, and their relationship to these rights in particular, are highlighted here. Section B of this Part focuses on the essential functions and powers of an effective institution and highlights how commission's mandates have been used in practice.

### 1. Explicit Economic, Social and Cultural Rights Mandate

The South African Human Rights Commission is the most well known example of a commission with an explicit mandate to address economic, social and cultural rights. Its mandate is unique as it is based in the Constitution, which also recognizes these rights as justiciable.<sup>68</sup>

The Indian Commission is mandated to promote and protect rights guaranteed by the Indian Constitution or embodied in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and enforceable in the courts.<sup>69</sup> Economic, social and cultural rights are considered "Directive Principles" that should inform state policy, though they are not automatically enforceable in courts.<sup>70</sup>

### 2. Mixed Mandate

The Australian Commission's mandate enables it to perform functions in relation to "human rights," as defined in its enabling legislation, the Australian Human Rights Commission Act. The Act explicitly includes only the rights and freedoms recognized in a limited list of international instruments, including the ICCPR and the Convention on the Rights of the Child (CRC), but not the ICESCR.<sup>71</sup> In fact, the Australian Human Rights Commission (AHRC) draws a large part of its mandate from national laws that prohibit discrimination on the basis of sex, age, disability, race and associated matters. These national laws grant the Commission specific functions, enabling partial implementation of Australia's obligations under the human rights treaties it has ratified.<sup>72</sup>

However, the Human Rights Act also indicates that the AHRC must perform its functions "with regard for the indivisibility and universality of human rights."<sup>73</sup> The AHRC has interpreted this provision as permitting it to address economic, social and cultural rights where they arise in connection with discrimination or civil and political rights. The Human Rights Act further states that the Aboriginal and Torres Strait Islander Social Justice Commissioner "must have regard to" the ICESCR, among other international agreements, in carrying out his reporting and recommendation functions.<sup>74</sup>

### 3. Anti-Discrimination Mandate

Though Canada is a party to the ICESCR, its national and subnational human rights commissions have anti-discrimination mandates and they can only address economic, social and cultural rights where there is a claim of discrimination.<sup>75</sup> The Saskatchewan Human Rights Commission demonstrates how an anti-discrimination mandate has played out at a provincial level. It is governed by the Saskatchewan Human Rights Code, which calls for the promotion of the "inherent dignity and the equal inalienable rights of all members of the human family" and aims to ensure "that every person is free and equal in dignity and rights."<sup>76</sup>

## B. Essential Functions and Powers

An important lesson gleaned from the convening is that there is no particular commission model that will work in every country, and that the structure and functions of a national institution must account for the specific context in which it is created.<sup>77</sup> Drawing from the comparative experiences of col-

leagues from Australia, Canada, India, Mexico, South Africa and the United Kingdom, participants achieved consensus on the powers and functions necessary for an institution to effectively promote and protect civil and human rights in the U.S. context. Consensus around these elements also drew on U.S. participants' extensive knowledge of the existing institutional landscape.

This Section explores the contours of each of these essential functions and powers and includes practical examples from the commissions represented at the convening.

### **1. Engaging in Fact-Finding and Assessing Human Rights Situations Through Investigations, Hearings and Inquiries**

An effective commission is equipped to assess the civil and human right policies and practices that exist at the national and local level to further compliance with existing obligations, determine obstacles to implementation and identify gaps where additional action is needed.<sup>78</sup> By conducting fact-finding through a variety of means, a commission also builds its visibility within communities and bolsters its credibility.

This function should include the power to conduct investigations, hold public hearings on the national and local level, convene national inquiries and consult with government agencies and officials as well as civil society.<sup>79</sup> Commissions should be empowered to commence investigations on their own initiative, in response to specific complaints or to address emerging patterns of human and civil rights violations. Subpoena power is a critical tool for successful investigations, as it provides a commission with the leverage necessary to ensure that requests for appearance and document requests are taken seriously. It also allows a commission to create a complete record where obtaining information would otherwise be impossible.<sup>80</sup> In the late 1950s, the U.S. Civil Rights Commission used its subpoena power in conjunction with field hearings to build an indisputable record that state practices violated the voting rights of African Americans.<sup>81</sup> Today, subpoenas should be similarly useful to identify discriminatory practices and make informed recommendations to address them.

To foster a national institution's ability to carry out local investigations, particularly in a federalist country like the United States, some flexibility is necessary. This may include the ability to partner with existing state and local entities and the ability to create ad-hoc structures.<sup>82</sup>

### *Practical Examples*

#### **Australia**

The Australian Human Rights Commission has the authority to conduct national inquiries into actions that may be inconsistent with Australia's human rights commitments.<sup>83</sup> Pursuant to this power, the AHRC conducted a multi-year inquiry to assess immigration practices and policies against the standards set forth in the Convention of the Rights of the Child and to determine what measures, if any, were needed to protect the rights of children in detention.<sup>84</sup>

The inquiry involved a combination of information gathering techniques: public hearings, collecting written submissions, detention center visits, interviews with impacted children and families and use of the Commission's power to require government agencies to produce documents.<sup>85</sup> Based on this fact-finding, the Commission released a report that sets out Australia's international human rights obligations and assesses detention policy toward children who arrive without visas. The report culminates with a discussion of recommendations and principles to guide the development of new laws that would bring Australia into compliance with the CRC.<sup>86</sup>

#### **South Africa**

The South African Human Rights Commission (SAHRC) also has broad fact-finding powers. It can investigate both individual and systemic complaints of human rights violations and may, at its discretion, hold public hearings or inquiries, which allow it to hear from a wide range of stakeholders. After an inquiry, the Commission issues a report with its finding and recommendations.<sup>87</sup>

As one of its first initiatives, the SAHRC was involved in countrywide hearings on the causes of poverty. Working in conjunction with the Commission on Gender Equality and a coalition of NGOs, hearings were convened in each province. Approximately 10,000 people participated. Based on this input, the SAHRC was able to identify some of the obstacles to fulfilling economic and social rights for South Africans and highlight the importance of equal access to services and decent jobs.<sup>88</sup>

## 2. Advising, Reporting and Making Recommendations Regarding Human Rights Implementation

A commission's ability to disseminate its findings and make recommendations regarding law, policy and practice is essential to strengthen domestic human rights protections. Through the publication of general annual reports and issue-specific reports a commission can improve transparency and accountability to government officials as well as to the public.<sup>89</sup>

Recommendations should not just be relegated to reports. Instead, a commission should also be empowered to provide guidance and advice on ways to improve compliance with human rights norms to all branches of government through briefings and testimony.<sup>90</sup> A commission's advisory functions should also include developing guidelines for implementing human rights, commenting on how legislation (proposed or existing) comports with human rights standards and publicizing human rights indicators that are specific to its particular domestic context.<sup>91</sup> This may include the adoption of national action plans to make human rights a reality on the ground.<sup>92</sup> As a party to several human rights treaties, the U.S. undergoes periodic reviews of its compliance with treaty standards and receives recommendations on how to strengthen compliance. A U.S. human rights institution could provide guidance on ways to implement the recommendations and highlight effective strategies in other jurisdictions.

It is when making recommendations to government, particularly on new or proposed legislation, that commissions are often criticized for being partisan or overly political.<sup>93</sup> While charges of politicization may be unavoidable, a commission can bolster its credibility by ensuring its positions are grounded in international human rights standards<sup>94</sup> and focusing on issues of interest to a broad segment of the population.<sup>95</sup>

### *Practical Examples*

#### **United Kingdom**

Established by the Equality Act 2006, the United Kingdom's Equality and Human Rights Commission (EHRC) is charged with enforcing and promoting equality on seven grounds protected by law.<sup>96</sup> In relation to human rights, the Commission has a duty to encourage compliance with human rights legislation and promote awareness of human rights.<sup>97</sup> The EHRC has the power to disseminate information and to assess the efficacy of the equality and human rights laws by

advising government.<sup>98</sup> The Commission is required to prepare an annual report on its performance and may produce additional reports and recommendations on matters arising during its inquiries, investigations and assessments, as well as other human rights issues.<sup>99</sup>

The Commission has interpreted its human rights mandate to include assessing the compatibility of Britain's law and policy with international standards and preparing submissions and briefings on potential human rights implications of draft legislation. The Commission has analyzed legislation such as the 2007-2008 Counter-Terrorism Bill and provided legal advice and briefings to Parliament,<sup>100</sup> indicating where the law was incompatible with the European Convention on Human Rights and the domestic Human Rights Act.<sup>101</sup> In practice, however, despite a broad remit to address human rights, the Commission has focused much of its work on equality issues.<sup>102</sup>

#### **India**

In India, the National Human Rights Commission (NHRC) has utilized its advisory function to focus on a broad spectrum of civil, political, economic and social rights.<sup>103</sup> Core to its advisory role is reviewing and making recommendations on effective implementation of human rights as protected in the Constitution and international agreements, as well as on factors that inhibit human rights. These recommendations are often made through published reports.<sup>104</sup>

One area of sustained focus has been human rights violations against Dalits, or so-called untouchables (also known as scheduled castes). Due to their low economic and social class, Dalits are frequently discriminated against, denied access to land and subjected to poor working conditions and violence at the hands of police.<sup>105</sup> The NHRC used its annual reports from 2002-2007 to highlight the impact of national and state government failure to fully implement legislation protecting scheduled castes.<sup>106</sup> It has also addressed issues of discrimination and social inclusion through a specific report on Dalit rights<sup>107</sup> and in efforts to seek implementation of its recommendations.<sup>108</sup>

## 3. Promoting Human Rights Education and Awareness

An effective commission plays a central role in increasing knowledge of, and support for, human rights. Its promotional powers should be broad and include providing education and

training on the full panoply of human rights and the international agreements where they are articulated.<sup>109</sup> It is important that a commission promotes the rights of all persons in its jurisdiction, underscoring that human rights are universal, indivisible and applicable to all.<sup>110</sup>

This can be done through public awareness campaigns and activities promoting international celebrations, such as human rights day. Human rights education should also involve creating general human rights curricula as well as materials for more targeted education, such as trainings for public officials. Promoting human rights also entails building the capacity of its own staff to perform their work. A human rights commission will reach a wider audience if it is empowered to work with both government and private entities in these efforts.

#### *Practical Examples*

##### **India**

The Indian Commission's promotional activities are grounded in its power to "spread human rights literacy... and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means."<sup>111</sup> The NHRC often collaborates with other entities to produce materials aimed at diverse audiences.

In conjunction with the National Academy of Legal Studies and Research University, Hyderabad, the Commission has published a Know Your Rights Series. The series is intended to reach a wide audience and foster a basic understanding of human rights and the international and national mechanisms available to help realize these rights.<sup>112</sup> The Commission has also made strides towards developing human rights curricula. In partnership with the Ministry of Human Resource Development, the National Council for Educational Research and Training, and the National Council for Teacher Education, the Commission has created materials for education at all levels of school, including the university level.<sup>113</sup>

##### **Australia**

The Australian Human Rights Commission works to build a human rights culture<sup>114</sup> by producing reports, fostering media attention on human rights issues and creating resources for educators as well as through targeted community programs. For example, the Aboriginal and Torres Strait Islander Social Justice Commissioner,<sup>115</sup> focused on indigenous issues, conducts awareness-raising workshops and trainings for members

of the aboriginal community and consults with them regarding his work.<sup>116</sup>

With regard to general education, the Commission develops fact sheets and maintains a website, which includes podcasts on human rights topics ranging from Australia's international obligations and the implications of domestic terrorism legislation to violence against women and the rights of linguistic minorities.<sup>117</sup> Its educational function further extends to supporting state and territorial departments of education, schools and organizations in efforts to promote human rights. In this vein, the AHRC has produced rightsED resources, which include activities for students and teachers.<sup>118</sup>

#### **4. Undertaking and Promoting Human Rights Research**

In addition to the general fact-finding powers described above, a commission should be mandated to conduct and promote research on human rights. Appropriate areas of research include the domestic factors that inhibit the enjoyment of human rights, relevant international and domestic legal developments and effective practices in human rights monitoring and implementation. This function helps identify areas where a commission should focus its resources and legitimizes a commission's recommendations and analyses.

#### *Practical Examples*

##### **United Kingdom**

The U.K. Commission's strategic plan emphasizes that research is integral to identifying the causes of discrimination and other persistent human rights violations, focusing on the areas of human rights and equality (on the basis of age, disability, gender, race, religion & belief, sexual orientation and gender identity).<sup>119</sup>

The Commission has partnered with universities to research topics including the impact of the 1998 Human Rights Act on judicial cases and an assessment of whether certain public bodies were making progress in the promotion of human rights.<sup>120</sup> It has also released research reports on substantive issues including inequality in education, employment and pay, the allocation of public housing and the impact of counterterrorism legislation on the Muslim community.<sup>121</sup> Research is conducted by the Commission itself or by engaging universities or independent organizations.<sup>122</sup>



## India

The Indian Commission is also responsible for conducting and promoting research,<sup>123</sup> and has partnered with the National Law School of India University and several institutes and academies to promote research programs that review human rights implementation on the ground. At the behest of the Commission, the National Centre of Advocacy Studies has conducted a study to assess the overall situation of economic, social and cultural rights in three states, with the aim of analyzing resources allocation and highlighting civil society initiatives that help individuals access these rights.<sup>124</sup>

## 5. Monitoring Governmental Agencies to Ensure Compliance with Domestic Civil Rights Laws and International Standards

In order to evaluate and strengthen domestic compliance with human rights, a commission should be empowered to monitor and assess how government agency policies and practices measure up to domestic law and international human rights standards.<sup>125</sup> As an independent monitoring body, a commission is well placed to collect data from other government entities and assess the efficacy of programs through impact analyses. The city of San Francisco has passed an ordinance that uses human rights to measure local policy and “integrates gender equity and human rights principles into [government] operations.” Based on the Women’s Rights Treaty, the ordinance empowers a city commission to conduct gender analyses of the budget, services and employment practices of city departments to identify discriminatory practices and barriers to equity. The ordinance has resulted in policies to correct employment inequality and a subsequent increase in the number of women employed in certain departments.<sup>126</sup> This type of human rights assessment can be used in a comprehensive manner to review compliance with human rights standards and improve the way government functions.

To be comprehensive, a monitoring function should include the ability to gather information from all relevant bodies and agencies, including law enforcement agencies. The authority to visit and inspect places of detention, including prisons, immigration detention centers and correctional facilities is also considered a core monitoring function by many NHRIs.

## Practical Examples

### South Africa

As part of the South African Human Rights Commission’s explicit mandate to address economic, social and cultural rights, the Constitution requires the Commission to request information from organs of state on the measures they have taken towards the realization of the rights to housing, healthcare, food, water, social security, education and the environment.<sup>127</sup>

To assist in this process, the Commission has developed protocols to gather and report on policy, legislation, budgets and other measures adopted to protect particular rights and to assess the measures against domestic and international standards.<sup>128</sup> The purpose is to provide information to the SAHRC on steps taken to realize rights and also to raise awareness among government officials regarding their obligations, encouraging officials to set benchmarks for monitoring their own performance. In practice, implementation of the protocol monitoring methodology has sometimes proved challenging for the SAHRC, according to several advocates and former commissioners.<sup>129</sup>

### United Kingdom

The U.K. Commission takes a different approach to monitoring public authorities. Notably, the Commission has a duty to enforce compliance with the equality and anti-discrimination legislation but is only authorized to “encourage” public authorities to comply with their human rights obligations.<sup>130</sup>

As part of its statutory function, the Commission produces Codes of Practice in the areas of employment, services, public functions and equal pay.<sup>131</sup> The Codes offer guidance to employers and service providers on how to comply with the national anti-discrimination law<sup>132</sup> as well as to courts and tribunals to ensure consistent application of the law.<sup>133</sup> The Commission also facilitates the completion of Equality Impact Assessments to evaluate how public authorities are complying with non-discrimination in employment, education and public services.<sup>134</sup> These Assessments are a tool to help public authorities ensure that their policies and practices are structured to comply with their equality duties in the areas of gender, race equality and disability and are required for authorities working in these areas.<sup>135</sup> According to the EHRC, assessments are designed to foster compliance with legal obligations and improve responses to community needs by identifying potential steps to proactively promote equality.<sup>136</sup>

## 6. Partnering With Subnational Human Rights Structures and Indigenous Governing Bodies<sup>137</sup>

To be effective, a human rights commission must remain apprised of the human rights conditions on the ground and responsive to local needs. Indeed, human rights implementation should involve and reflect the needs and expertise of local communities and requires cooperation and collaboration between local, state and federal government.<sup>138</sup> Where subnational, indigenous or tribal governing bodies exist, they are often best equipped to assess local human rights concerns and can serve as valuable partners for a national institution. Local and regional offices can also function as the eyes and ears of a national body, providing a more nuanced understanding of ongoing human rights concerns and the impact of policies and practices aimed at improving human rights compliance.<sup>139</sup>

In federalist countries, such as the United States, human rights implementation raises unique challenges as certain areas of law and policy fall to state and local governments. However, federalism also provides a unique opportunity for state and local agencies and officials to partner in promoting and protecting human rights. Ensuring that the necessary monitoring and follow-up takes place on a national scale requires strong coordination.<sup>140</sup> A national body can facilitate this through its relationship with state and local entities and the development of guidelines that aid states and localities in meeting their obligations.<sup>141</sup>

Eight of the human rights commissions accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) are in federalist countries<sup>142</sup> and many share the authority to promote and protect human rights with state or other subnational commissions.<sup>143</sup> While working independently, some of these national commissions have developed strong partnerships to aid in fulfilling their mandates. In Canada, Australia and Mexico, for example, independent subnational human rights commissions play a role in addressing human rights. The commissions in Canada and Australia, however, primarily focus on preventing discrimination. Recognizing the importance of effective coordination, particularly in federalist systems, the U.N. Office of the High Commissioner for Human Rights recently undertook a study on NHRIs in federal states and has recommended that national bodies work with subnational entities to enhance their infrastructure and capacity.<sup>144</sup>

### *Practical Examples*

#### **Canada**

In Canada, as in the U.S., certain areas of law and policy fall either within exclusive federal or provincial jurisdiction.<sup>145</sup> Reflecting this division, there is a national Canadian Human Rights Commission (the CHRC) and independent commissions at the provincial and territorial levels. Each of the eleven subnational commissions is created through legislation and therefore, they have varying structures, with some considered more robust than others.<sup>146</sup> The CHRC has no oversight authority over provincial commissions and no authority to speak on their behalf. Additionally, funding for federal and local commissions is completely independent.

The Saskatchewan Human Rights Commission is one of the nine provincial commissions. It is mandated to promote and protect individual dignity and equal rights, which it does by investigating discrimination complaints, promoting equity programs and conducting education on its provincial human rights law.<sup>147</sup> Like the majority of Canadian Commissions, the Saskatchewan Commission focuses on fostering equality and preventing discrimination.<sup>148</sup>

Despite this formal autonomy, the national and subnational commissions have developed several means of collaboration and coordination. The primary forum for collaboration among the commissions is the independent Canadian Association of Statutory Human Rights Agencies (CASHRA). CASHRA facilitates communications in common areas of work, fosters public education, passes resolutions, intervenes in Supreme Court proceedings and issues news releases on topics of interest.<sup>149</sup>

Some collaboration has taken place around Canada's treaty reporting, although more has been called for.<sup>150</sup> Notably, in 2009, the National Commission made a statement to the U.N. Human Rights Council calling on Canada's national government to create a national mechanism that includes local commissions and civil society in treaty reporting and implementation.<sup>151</sup>

The CHRC also collaborates with provincial commissions, particularly in Saskatchewan and Manitoba, to address issues related to First Nations Peoples. In 2010, as part of its National Aboriginal Initiative, the CHRC worked with Manitoba Human Rights Commission to pursue improved education and awareness of federal, provincial and international human rights and treaty rights.<sup>152</sup>

## Australia

Like Canada, each Australian state and territory has a statutory equality or human rights commission that is independent of the national commission. The commissions are all charged with providing information and education and assessing and resolving complaints, with some offering more protections than others. The state and territorial commissions are under-resourced and while they take complaints and conduct training, they often lack the capacity to conduct human rights monitoring.<sup>153</sup>

Though their funding and staffing are independent, the state and national commissions collaborate on a number of issues that impact federal and local jurisdictions in an effort to close the existing human rights implementation gap. Formal collaboration ranges from complaint handling to information sharing.<sup>154</sup> The Australian Human Rights Commission provides professional development and conciliation training to the state commissions,<sup>155</sup> which in turn provide office space and conference facilities to visiting national staff. Additionally, the AHRC has arrangements with several state commissions and agencies in which its publications are displayed by these agencies, raising local visibility of its publications.

The Australian Council of Human Rights Agencies, an independent association, fosters collaboration among the various commissions.<sup>156</sup> At times the Council's members come together to support pro-human rights policy change. One example of this is the annual Race Relations Roundtable hosted by the National Commission, which also includes the New Zealand Human Rights Commission. In 2010, the Roundtable participants called for full implementation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) through a national anti-racism strategy and for the government to take actions in accordance with the U.N. Declaration on the Rights of Indigenous Peoples (U.N. DRIP).<sup>157</sup>

The AHRC's Aboriginal and Torres Strait Islander Social Justice Commissioner has fostered a sustained focus on the rights of indigenous communities domestically.<sup>158</sup> The Commissioner also contributes to Australia's reports to treaty bodies and prepares independent submissions on indigenous issues under the auspices of the Commission.<sup>159</sup>

In recent years, the Australian Commission, through this Commissioner has led several major initiatives on aboriginal rights. In 2009, the Australian government formally adopted the U.N. DRIP.<sup>160</sup> Using the Declaration

as a guide, the Commissioner developed a proposal for a National Indigenous Representative Body to implement the Declaration.<sup>161</sup> The Commissioner has held consultations at the request of the Minister for Indigenous Affairs to discuss these proposals<sup>162</sup> and produced a final report with recommendations,<sup>163</sup> which the federal government has accepted. The Australian government has provided financial resources to the National Congress of Australia's First Peoples to begin implementation.

## 7. Proactive Engagement With Civil Society

Civil society engagement ensures legitimacy, accountability and responsiveness and should constitute a formal part of a commission's work from its inception.<sup>164</sup> As commissions develop partnerships with civil society, two principles are important. First, that the commission should respond to all segments of society, particularly marginalized communities.<sup>165</sup> Second, that the commission is an independent body that should not be beholden to any particular members of civil society with whom it has consulted or partnered.<sup>166</sup> Nevertheless, by recognizing the strength of civil society organizations, a commission can build effective partnerships with human rights groups and a multitude of other stakeholders.<sup>167</sup>

A recurring theme throughout the convening was that a broad, non-partisan constituency is essential to the sustainability and effectiveness of a national human rights commission in the United States. Particularly in the politically charged U.S. context, where mention of international human rights invites reflexive resort to claims of sovereignty and U.S. exceptionalism, long-term success requires individuals and groups who are invested in the protection of human rights to monitor a commission's work and provide critical feedback. To ensure civil society plays this role, the initial establishment phase of a commission must be consultative and inclusive of stakeholders, so that support exists at its inception.<sup>168</sup> Without constituents on the ground who support human rights more broadly, a commission may lose site of the most relevant issues of concern, become overly partisan and lose credibility.<sup>169</sup> Indeed, NHRI's themselves have underscored the value of civil society relationships.<sup>170</sup> To ensure ongoing engagement, some commissions develop concrete partnerships through advisory councils or core groups of experts on particular issues.<sup>171</sup>

## Practical Examples

### United Kingdom

The U.K. Equality Act of 2006 includes one of the most extensive articulations of how a commission can engage constituents and requires civil society partnership.<sup>172</sup> In fact, the final structure of the EHRC was established using consultation process,<sup>173</sup> though some advocates note that this consultation was too limited. In fulfilling its duties, the EHRC is supposed to consult with appropriate persons regarding its strategic plan, its periodic monitoring reports and its Codes of Practice.<sup>174</sup> The Commission is also empowered to cooperate with any entities interested in human rights or equality, or that publish or disseminate information, undertake research or provide education and training.<sup>175</sup> In carrying out its work, the EHRC may also establish ad-hoc committees that include external members.<sup>176</sup>

A unique feature of the EHRC is its grant-making function.<sup>177</sup> Grant-making is aimed to support smaller organizations working in communities of those most impacted by human rights violations in an effort to address the human rights implementation gap<sup>178</sup> and underscore the added value of a human rights approach. Extensive budget cuts have recently threatened the grant-making function. The cuts highlight the fragility of the Commission and how easily a lack of adequate resources can impact its functions.<sup>179</sup>

Despite its strong statutory mandate to engage with civil society, the U.K. Commission has faced challenges in garnering on-going civil society support. According to conversations with advocates, this is the result of the climate in which the EHRC came into existence. There was a lack of broad public support for human rights and the human rights portion of the Commission's mandate was added quietly while the existing equality bodies were being consolidated into one institution. The broader context, that British media has been hostile to human rights since September 11, 2001, has also had an impact. Additionally, civil engagement was very limited during the establishment of the Commission. Some human rights advisors were consulted as the Commission's mandate was being developed but they have expressed disappointment in the Commission's failure to embrace human rights and equality law on equal footing.<sup>180</sup>

### Mexico

The Mexican Federal District Human Rights Commission collaborates with civil society on both a formal and informal basis. Formally, the structure includes a Citizen's Council, an advisory body of human rights experts, which works with the President of the Commission to craft general policies and specific programmatic guidelines to direct the Commission's work.<sup>181</sup> The Citizen's Council, elected by the legislative assembly,<sup>182</sup> it empowers civil society by providing opportunities to influence the Commission's human rights agenda and to dialogue with commissioners.

Informally, the Federal District Commission has worked with civil society to advocate for the government to hold hearings and disseminate human rights information, which has helped bolster its success.<sup>183</sup> One result of this collaboration is an initiative to establish a children's education center. The center has provided a half-day education program on human rights to 140,000 children school groups and street children.<sup>184</sup>

## 8. Authority to Strengthen Domestic Human Rights Compliance by Engaging With Regional and International Human Rights Bodies

With regard to treaties, commissions can bridge the domestic and international spheres in several explicit ways. They can review international agreements and make recommendations about which to sign and ratify as well as assessing any packages of reservations, understandings and declarations (RUDs) proposed by the government.<sup>185</sup> These efforts promote a general understanding of treaties and their relationship to domestic law.

The role of NHRIs in fostering domestic compliance with ratified treaties is becoming increasingly formalized at the international level. For example, recent treaties, such as Optional Protocol to the Convention Against Torture and the Convention on the Rights of Persons with Disabilities (CRPD), give NHRIs a formal role in monitoring and implementation.<sup>186</sup> A commission can also participate in treaty compliance reporting. As an independent body, it is important that a commission undertakes its reporting functions separate from the government itself.<sup>187</sup> It can preserve its independence if it plays an advisory role but refrains from submitting reports, or speaking, on behalf of the national government.<sup>188</sup>

The U.S. participates in periodic reviews of its compliance with the three treaties it has ratified and provides a report in advance of each review assessing how it fulfills its human rights commitments. A U.S. human rights commission could participate in these reviews and provide supplemental information based on its research, fact-finding and engagement with civil society and state and local partners. Such interventions can ensure reviews are based on accurate and comprehensive data.

Engaging with other NHRIs is another way for commissions to remain apprised of international developments and effective human rights practices. The International Coordinating Committee is one example of a mechanism that fosters collaboration among NHRIs by organizing workshops and annual meetings.<sup>189</sup> There are also regional coordinating bodies, such as the Asia-Pacific Forum of NHRIs, the Commonwealth Secretariat and the Federación Iberoamericana de Ombudsman. Through formal and informal collaborations, NHRIs can strengthen domestic protections and promote shared learning.<sup>190</sup>

### *Practical Examples*

#### **United Kingdom**

While the U.K. Equality Act contains no specific provisions regarding encouraging ratification and implementation of international human rights instruments, the EHRC's work demonstrates multiple approaches to bringing international human rights standards home while deepening a country's engagement with the international system.<sup>191</sup> The EHRC has worked collaboratively to achieve treaty ratification. One example is its joint effort with the Office for Disability Issues to encourage ratification of the CRPD without RUDs.<sup>192</sup> The Commission submitted statements to Parliament and engaged in a dialogue with government regarding the government's pre-ratification assessment of compliance. Despite the Commission's efforts, the U.K. ratified the treaty and the protocol in 2009, with RUDs.<sup>193</sup> The U.K. Commission has also drafted independent shadow reports and participated in treaty review processes, as well as the U.N. Human Rights Council's Universal Periodic Review (UPR) of the U.K.<sup>194</sup>

#### **Australia**

The Australian Commission has engaged international and regional mechanisms in myriad ways. The AHRC is a member of the Asia-Pacific Forum of NHRIs, promoting information sharing and technical assistance for NHRIs in the region. It also drafts independent shadow reports, provides information

to inform government reports and collaborates with NGOs to produce shadow reports.<sup>195</sup> In its 2009 report as part of the ICESCR review, the AHRC advocated for concrete action at the national level, including passage of a federal Human Rights Act that incorporates economic, social and cultural rights and adoption of its National Plan of Action to reduce violence against women and children, as well as for improvements in health, education and gender equality.<sup>196</sup>

The Commission has also been deeply engaged in CERD and UPR review processes. Aside from drafting reports, the Commission has participated in the reviews in its independent capacity.<sup>197</sup> In the lead up to Australia's UPR, the Commission consulted with state and territorial human rights agencies as well as civil society, using their inputs in its stakeholder submission.<sup>198</sup>

## **9. Flexibility to Achieve its Mandate**

A commission's major functions and powers should be spelled out in its founding legislation, but a commission should retain flexibility to undertake additional functions and powers necessary to promote and protect human rights domestically.<sup>199</sup> Domestic human rights situations are fluid and require dynamic responses. The ability to address these situations as they arise will lead to an institution that is sustainable in the long term. A commission that has independent authority and a broad mandate is more likely to develop the capacity to gather and interpret relevant information on issues of concern than a commission with a narrow mandate.<sup>200</sup> As many convening participants noted, if the commission is effective, it will not duplicate the work of existing entities, but will complement them. Providing the authority to undertake functions as needed fosters this flexibility.

In 2010, the U.S. government participated in the U.N. UPR process, a review of its human rights record in light of the Universal Declaration of Human Rights. The review provided an unparalleled opportunity for government and civil society to engage in dialogue on issues of concern across the U.S. The U.S.' robust engagement set a high standard for other countries as they go through the UPR, including consultations across the country. Throughout the process, U.S. advocates used consultations and reporting to highlight gaps in human rights protections, including in areas of criminal justice, housing, healthcare and employment, concerns reflected in the final recommendations to the U.S. govern-

ment. To remain responsive to community needs, a domestic human rights institution should have the flexibility to promote and monitor compliance with the recommendations resulting from reviews like the UPR and to address the full range of human rights.

### *Practical Examples*

#### **Australia**

In Australia, the Commission is granted the “power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.”<sup>201</sup>

#### **India**

The Indian Commission is empowered to perform “such other functions as it may consider necessary for the protection of human rights.”<sup>202</sup>

#### **Canada**

The Canadian National Commission has discretion to take action regarding its anti-discrimination function. Its founding Act provides that it “shall, so far as is practical and consistent with [its proscribed functions], try by persuasion, publicity or any other means that it considers appropriate to discourage and reduce discriminatory practices [referred to within this Human Rights Act].”<sup>203</sup>

## **C. Potential Additional Functions and Powers**

Many commissions around the world have several additional functions that were discussed during the convening, though participants were unable to reach consensus on whether they were essential for a human rights institution in the U.S. These are complaint handling and the authority to participate in judicial proceedings, either by initiating litigation or submitting *amicus curiae* briefs. The following Section describes these functions, notes key discussion points from the convening and provides examples of how these functions have been used by commissions in other countries. As highlighted below, it was agreed that further conversations and research are needed to determine whether a U.S. commission should take on these functions.

### **1. Complaint Handling**

Complaints are often the means by which a commission is most accessible to its constituents, raising its visibility.<sup>204</sup> A commission that handles complaints should ideally accept complaints in all areas of human rights.<sup>205</sup> Clear guidelines for the investigation and resolution of complaints should be created to guide this function.<sup>206</sup> In order to ensure that complainants understand the potential outcomes, a commission’s authority to enforce its recommendations should be clearly established.<sup>207</sup>

Multiple considerations must be taken into account in a final assessment of whether a U.S. human rights institution should accept complaints. A comprehensive complaint handling mechanism can shape a commission’s work by providing information on issues of individual concern as well as practices and patterns of human rights abuses that inform its policy work and research.<sup>208</sup> Complaints may also be beneficial as they provide a concrete way to measure a commission’s output (i.e., the number of complaints received and resolved). However, this function incurs costs as well. It is resource-intensive and may dominate the work of a commission, hampering its ability to conduct other monitoring or education functions.<sup>209</sup> In this regard, too, complaint backlogs can impact the credibility of a commission and become the sole focus of evaluating its efficacy.

Convening participants noted the importance of avoiding duplication with other domestic entities and the need to take stock of the existing institutional landscape. At present, there are multiple agencies at the federal, state and local level that address discrimination complaints in areas including employment, housing and education on the basis of race, sex, disability, religion, and national origin. These agencies include the Department of Justice, the Department of Housing and Urban Development, the Equal Employment Opportunity Commission and state and local Fair Employment Practice Agencies. Appendix C provides a list of relevant federal civil rights laws and the federal agencies that enforce them.

In light of the complex network of existing entities that address a wide range of civil rights issues, participants highlighted the need to ensure that a commission’s complaint role, if any, addresses a need that is unfulfilled. Several proposals were made to this effect. First, a U.S. commission could be empowered only to hear complaints that do not fall within the jurisdiction of an existing agency. Second, a commission might conduct complaint intake and provide referrals to complainants rather than serve any adjudicatory function. Finally,

some suggested that the commission should not take any complaints of individual human rights violations but only review complaints regarding the failure of enforcement agencies to adequately carry out their functions.

Participants ultimately concluded that in order to reach consensus on whether a complaint handling function was necessary, and if so, to determine its scope, further mapping of the existing domestic infrastructure is needed.

### *Practical Examples*

#### **India**

The Indian National Human Rights Commission's primary function is handling complaints, and it receives about 70,000 per year.<sup>210</sup> The Commission can hear complaints regarding human rights violations or negligence in preventing such violations if the complaint is brought within one year of the alleged violation.<sup>211</sup> When conducting inquiries into human rights violations, the NHRC has the powers of a civil court. Specifically, the NHRC can compel witnesses to testify under oath, conduct discovery and requisition public records.<sup>212</sup> It may also recommend that the relevant public official or entity grant interim relief to victims.<sup>213</sup>

While the NHRC cannot look into matters pending before any other government commission,<sup>214</sup> it may transfer complaints to the commission of the state where the complaint arose.<sup>215</sup> There are number of other constraints on the NHRC's jurisdiction<sup>216</sup> and the Commission's authority has been viewed as limited because it lacks the authority to enforce its recommendations.<sup>217</sup>

If the Commission investigates a complaint and concludes that a violation of rights has occurred, it can recommend that the government pay compensation, initiate litigation or seek an order from the relevant Court.<sup>218</sup> In practice, the Commission's inquiries are often limited to calling for reports from relevant authorities to obtain information regarding a particular alleged violation.

While a majority of the complaints investigated since 1994 have related to custodial violence and police excesses,<sup>219</sup> the NHRC has also addressed socio-economic rights. In its first year, for example, the Commission accepted a complaint regarding youth deaths resulting from malnutrition and recommended that the government pay compensation, rejecting the government's claim that it lacked the resources to compensate victims. It has more recently received complaints

regarding starvation deaths in the state of Orissa as well as complaints on labor issues.<sup>220</sup>

#### **Australia**

The Australian Commission has authority to hear complaints of discrimination in all areas of public life including employment, education, housing and the administration of federal laws and programs, as well complaints alleging breaches of human rights.<sup>221</sup>

Complaints lodged under the Human Rights Act can be investigated and, if appropriate, resolved through conciliation.<sup>222</sup> If conciliation is unsuccessful in a human rights case and the Commission makes a finding that a human rights breach occurred, it can prepare a report with recommendations for the Attorney General, which it must then table in Parliament.<sup>223</sup> The Attorney General has no obligation to justify the government's refusal to implement recommendation from the Commission. In reality there has been mixed success regarding implementation of the Commission's recommendations about individual complaints. As in India, the Commission's decisions are unenforceable.<sup>224</sup>

The Australian Commission's use of public inquiries, discussed in greater detail above, in Part IV.B.1, has been a means to bridge a complaints driven approach to human rights and a thematic approach. This process allows the AHRC to respond to complaints of a more general or systematic nature while raising awareness of the issues by placing them squarely before the public. Inquiries have also galvanized support for government action to address systemic concerns.<sup>225</sup>

## **2. Participating in Domestic Litigation**

Courts and commissions can play complementary roles in strengthening a domestic human rights infrastructure. Accordingly, commissions around the world have varying authority to interface with courts and tribunals. Common judicial interventions include initiating litigation, filing *amicus* briefs, making recommendations regarding enforcement of decisions or reparations, appearing in support of complainants and/or providing legal assistance.<sup>226</sup> This Section discusses the authority to initiate litigation and *amicus* power, the two powers that convening participants proposed as potentially appropriate for a U.S. human rights institution.

### a. Initiating Litigation to Ensure Compliance With Civil and Human Rights Laws

Convening participants discussed the value of an institution with the authority to bring suits against government agencies for failure to comply with human rights standards. However, the group determined that further research was needed before consensus could be reached on whether a U.S. human rights commission could or should have this power. Participants developed specific questions to help determine the scope of such authority, if any: Who currently has the authority to bring suits to enforce compliance with domestic law? What is the legal basis for this function, if any? Is it possible to grant this type of entity standing through legislation or other means? What are the potential risks of politicization that accompany this function? Is there a particular gap in enforcement that would be most appropriate for a human rights commission to fill?

#### *Practical Examples*

##### **United Kingdom**

The U.K. Equality and Human Rights Commission has limited authority to take cases related to human rights. In cases alleging breaches of the Human Rights Act, the Commission can initiate judicial review or provide advice regarding rights under the Act via phone and its website.<sup>227</sup> However, where there is an equality law dimension to the case, the Commission has the additional power to provide legal assistance, including advice, representation and “any other form of assistance.”<sup>228</sup> Where a potential violation of equality legislation and the Human Rights Act exists, the EHRC can address both.<sup>229</sup>

Judicial review proceedings are one avenue open to the Commission when a public sector body has, or is about to, violate the law, including the Human Rights Act, and there is no alternative remedy available.<sup>230</sup> These High Court proceedings may result in a judicial declaration on the lawfulness of a policy, the quashing of a decision or the issuance of an injunction.<sup>231</sup> Notably, the Commission can initiate these proceedings in its own name. This may be appropriate in circumstances with a number of individual victims, allowing the Commission to demonstrate a particular pattern of violations, or where actual victims lack the resources to pursue review.

The U.K. Commission has been using its authority to ensure compliance with U.K. equality law as well as international standards.<sup>232</sup> As one example, the EHRC has initiated judicial review proceedings in the U.K. High Court, challenging the

government’s domestic enactment of an EU directive on equal treatment.<sup>233</sup> The majority of the EHRC’s interventions focus on implementation of equality law, not human rights.

##### **India**

The Indian Commission has wide-ranging authority to interact with courts and may, after an inquiry, go to the Court for specific orders, including enforcement of its recommendations.<sup>234</sup> The Commission has also brought substantive litigation. In some cases, courts have reciprocated, referring their cases to the Commission for resolution or monitoring.<sup>235</sup> In these ways, the Commission has been able to contribute to the jurisprudence of Indian Courts.<sup>236</sup>

The cases that the NHRC has initiated cover a wide-range of subjects. The Commission has used its authority to file a public interest petition seeking enforcement of the rights of refugees who were displaced and denied citizenship. The NHRC went to the Court after its own failed attempt to conduct an inquiry of the relevant state government organs. The High Court ultimately affirmed the applicability of fundamental rights to refugees, focusing on the right to life and liberty.<sup>237</sup>

The Commission has also addressed issues of due process. One of its most well known interventions was part of its ongoing efforts to address violent burning deaths in the province of Gujarat. In the *Best Bakery Case*, the Commission filed a special leave petition for re-trial in the Supreme Court. The NHRC argued that the right to a fair trial, (required under the Constitution and the Covenant on Civil and Political Rights), had been denied and sought judicial guidelines for the protection of witnesses and victims in criminal trials.<sup>238</sup>

### b. Filing *Amicus Curiae* Briefs at the Federal Level

A number of participants suggested that a U.S. institution should have the authority to file *amicus* briefs, though this power was not discussed in detail. As the literature on national human rights institutions bears out, by submitting *amicus curiae* briefs, a commission can ensure that courts are aware of the human rights dimensions of a case, such as relevant standards or the human rights impact of a decision.<sup>239</sup>

Many commissions develop internal guidelines to ensure a consistent approach to the exercise of *amicus* power. Key determinants in the decision to participate in a case often



include capacity, the overall subject matter of the case, the potential impact of a decision and the severity of the human rights violation at issue.<sup>240</sup> Additionally, a commission should evaluate whether other human rights organizations are already involved in the case and how commission participation intersects with its stated priorities. In most countries, leave of court is needed and a commission may not have full discretion to intervene even when its own criteria are met.

U.S. courts, and particularly members of the U.S. Supreme Court, have expressed openness to looking to international human rights as persuasive authority, and have highlighted the need for lawyers to provide relevant standards and practices to educate the court. As Justice Breyer has explained, the Court relies on lawyers to research and share comparative materials and “[t]he demand is there.”<sup>241</sup> A human rights institution would likewise be well-situated to submit briefs including international law and examples of implementation from other countries.

While there is a potential value in granting a commission *amicus* authority, convening participants noted that there are potential drawbacks as well, suggesting further deliberation was needed to decide whether this power would be appropriate in the U.S. context. Further analysis should include the implications of this power for inter-governmental relations.

#### *Practical Examples*

##### **South Africa**

The South African Human Rights Commission intervenes as *amicus* in an array of cases.<sup>242</sup> In the well-known *Grootboom* case, relating to the enforcement of several rights, particularly the right to adequate housing, the SAHRC and the Community Law Center intervened. They argued that the government had a minimum core obligation to fulfill the rights at issue, echoing international law.<sup>243</sup> More recently, the Commission intervened in a case dealing with access to education and the failure of schools to inform parents of their right to apply for a tuition exemption.<sup>244</sup> The SAHRC was particularly well-suited to participate as it had previously held a public hearing on the right to education where the failure to notify parents of the exemption was raised as an impediment to fulfilling the right to education.<sup>245</sup> In these cases, the Commission’s judicial intervention was a direct extension of its broader work.

##### **Australia**

The Australian Human Rights Commission may assist Federal or Magistrate Courts as *amicus curiae* when the Commission obtains leave of court, the case meets certain subject matter criteria<sup>246</sup> and the case is likely to have a broad impact on law or policy.<sup>247</sup>

The Australian Commission’s role in a landmark case, *Minister of State for Immigration and Ethnic Affairs v. Teoh*, regarding the domestic application of human rights law demonstrates the value of serving as *amici*. The *Teoh* case arose after the Commission held an inquiry regarding homeless children and Australia’s ratification of the Child’s Rights Convention (CRC).<sup>248</sup> In the case, Mr. Teoh, a non-citizen with seven citizen children was denied permanent resident status. The Commission posited that Teoh had a legitimate expectation that the decision regarding his application should involve consideration of the CRC and its “best interest of the child” standard. The Australian High Court agreed. This was the first Australian decision stating that ratified treaties are relevant to domestic administrative decision-making.<sup>249</sup>

## **D. Structural Characteristics to Promote Independence and Effectiveness**

The powers, functions and mandate of a national human rights commission guide what role the commission can play in promoting and protecting human rights. A commission’s actual ability to execute its functions, however, is deeply dependent on its structure. Studies have shown that “strong institutional design is a prerequisite for an effective NHRI but it is not sufficient alone” to ensure success.<sup>250</sup>

Consensus emerged around the need for three primary structural safeguards essential for an effective and independent U.S. human rights body: adequate funding, a transparent appointment and removal processes, and the ability to assess human rights at the local level. All participants agreed that a legitimate commission is one that remains independent<sup>251</sup> and that safeguards should be put in place both to shield the commission from being co-opted (by the executive branch or otherwise) and to ensure it remains accountable to the individuals and communities it is meant to serve. This Roadmap

has already explored means of promoting accountability, particularly through reporting and relationships with civil society.<sup>252</sup> This Section focuses on the three structural components that participants recognized as ensuring independence and effectiveness.

### **1. Adequate Resources and Autonomy**

Participants continually noted the need for consistent adequate funding, secured in legislation.<sup>253</sup> Many human rights commissions are plagued by a lack of adequate resources and funding is often subject to the whims of government officials.<sup>254</sup> Thus, the value of providing a commission with necessary resources, and control over how to use them, cannot be overstated. Without this autonomy, a commission is not only unable to carry out its mandate, its credibility is also likely to be diminished.<sup>255</sup>

In order to ensure sufficient resources, the legislative branch should allocate funds to cover a commission's operating requirements, including staff, material creation and dissemination, offices and investigations. Adequate funding should be secured to the extent possible in authorizing legislation and through the appropriations process.<sup>256</sup> Without sufficient funding, on a continuous basis, a commission will be unable to create an achievable long-term strategic plan, marring its credibility.<sup>257</sup>

### **2. Transparent Appointment and Removal Processes**

Appointment procedures are an essential way to promote the independence and diversity of a commission.<sup>258</sup> Fair and transparent appointment procedures can alleviate some of the threat of government over-reaching and politicization and should be part of the legislation establishing a human rights institution.<sup>259</sup> As highlighted in literature on NHRIs, the independence, competence and credibility of an institution are clearly linked to its individual members.<sup>260</sup> Scholarship on NHRIs notes that the executive should not be solely responsible for appointments and that the legislative branch (or equivalent high level authority), as well as civil society should be involved in the appointments process.<sup>262</sup> Some literature further suggests that direct appointments by the executive should be avoided.<sup>262</sup>

During the convening, a strong preference emerged for a U.S. institution appointment procedure consisting of presidential appointments with a public confirmation and hearing

process through the advice and consent of the Senate. Advocates believe that this public vetting of all appointments will guard against congressional and executive over-reaching and is an appropriate check in the U.S. context. A public vetting will ensure some baseline of expertise and provide much-needed transparency in the confirmation process. Likewise, removal procedures should be contained in legislation to provide clear guidelines and ensure that individual mishandling of responsibilities does not hinder a commission. At present, the President appoints four USCCR commissioners and Congress appoints four. There is no public vetting.

Participants also underscored the extent to which civil society participation is integral to the appointment process, particularly in nomination hearings and proposing candidates for appointment. Indeed, such engagement in the selection process leads to greater credibility and legitimacy for a national human rights institution.<sup>263</sup>

Finally, participants highlighted the importance of including eligibility criteria in the governing legislation as a means to ensure that all appointees have demonstrated experience with civil and human rights issues. Setting forth "objectively verifiable" criteria is one way to ensure a diverse and qualified membership.<sup>264</sup> A commission's composition should reflect, to the extent possible, the diversity of its constituents. This includes racial, religious, national origin, gender, ethnic, age, disability and sexual orientation diversity as well as inclusion of representatives from different regions and a variety of backgrounds.<sup>265</sup> Members should further have "proven expertise, knowledge and experience" in the promotion and protection of human rights.<sup>266</sup> The need for expertise is imperative for commission leadership, which so often dictates the activities of a commission as a whole.<sup>267</sup>

### **3. Ability to Assess Human Rights Locally**

Participants with commission experience highlighted that in order to be effective, a commission must have a connection to how human rights are being protected on the ground. During the Global Exchange, conversations focused on several ways commissions can effectively assess issues of concern throughout the country: creating local and regional offices, partnering with state and local agencies and working with civil society. These powers, described in detail in Sections B.6 and B.7, above, each serve to raise a commission's visibility and foster connections with local communities. Part V.B, below, describes the consensus reached on specific ways that

a U.S. commission should coordinate with state and local entities, as well as indigenous governing bodies to enhance domestic human rights protections given the U.S.' unique federalist structure.

While not the focus of the convening, the literature on NHRIs bears out the importance of local accessibility and visibility to a commission's effectiveness. A commission should, therefore cultivate awareness of its existence and functions among all segments of the population, but particularly in communities most likely to be impacted by human rights violations.<sup>268</sup> A commission can raise the visibility of its work through media, brochures and fact sheets, all of which should be developed in multiple languages.<sup>269</sup> Consultations and inquiries, where a commission goes out into communities, also serve to elevate a commission's profile. This type of targeted outreach, while useful, cannot replace the value of having a commission that is decentralized, with a permanent local presence in the form of fully staffed offices or field officers.<sup>270</sup>

## V. Next Steps & Challenges

Convening participants were in unanimous agreement on the need for a U.S. institution mandated to promote and protect the broad spectrum of human rights and the key functions and structural elements of such an institution, as laid out in Parts IV.A, IV.B and IV.D, respectively.

Noting that the establishment of a U.S. institution is a long-term goal, attendees also reached consensus on the broad strokes for how to establish a commission in the present context and the challenges that need to be overcome. The remainder of this Part captures the group consensus on how efforts to create an effective and independent U.S. commission should proceed, highlighting in particular:

- The decision to focus on strengthening and transforming the existing U.S. Commission on Civil Rights into a Civil and Human Rights Commission;
- Recommendations for ways a U.S. human rights institution can maintain a presence in local communities;
- The need to cultivate broad based, non-partisan support;
- Research and mapping necessary to determine whether any additional functions are essential to a U.S. human rights institution; and
- The importance of a broad-based multi-stakeholder campaign to undertake these and other tasks moving forward

### A. Strengthening and Transforming the U.S. Civil Rights Commission as an Initial Step to Establishing a U.S. Human Rights Institution

During the convening, participants discussed the merits of two main approaches to establishing a U.S. Human Rights Institution: transforming the existing U.S. Civil Rights Commission into a Civil and Human Rights Commission and establishing a wholly new human rights institution. Ultimately, participants determined that current advocacy efforts should focus on strengthening and transforming the existing USCCR, but that it may be appropriate in the future to establish a new human rights body and that these tracks need not be mutually exclusive.

Transformation of the USCCR was prioritized as the best path for several practical and political reasons. While the existing Civil Rights Commission is flawed by all accounts, any efforts to close or fully defund it would be politically fraught. First and foremost, the Commission has an important history and core elements that allowed it to serve as a robust fact-finding and monitoring institution at one time. At its prime, the USCCR held public hearings across the country, monitored government agencies and fostered legislative and policy change to ensure robust implementation of civil rights laws. Through strengthening the existing Civil Rights Commission structurally, expanding its mandate and granting it the powers described herein, it can potentially regain a prominent role as a guarantor of rights protections.

Practical considerations counsel toward transforming, rather than replacing the existing institution as well. Elected officials are not likely to take ownership of efforts to eliminate a body that is mandated to enforce civil rights, even if its current mandate is ineffectual in practice. In fact, efforts to transform the USCCR can build upon its past successes as a basis for reinvigorating the once venerable institution. Additionally, many advocates with policy-making expertise believe that it would be an uphill battle to establish a new institution with the robust fact-finding powers of the USCCR. However, by revitalizing and transforming the existing Commission, those powers, including subpoena power, can be retained. Just as the political climate makes it unlikely that Congress will grant subpoena power to a new institution, securing legislation to create a new institution with a human rights mandate is likely to face a large amount of political pushback. Finally, establishing a new institution is apt to raise greater funding concerns among government officials than attempts to strengthen an existing body.

Working within an existing infrastructure also has some drawbacks. It's likely that some staff and current methods of work are entrenched in the USCCR. Additionally, those who are aligned with the institution (whether as appointees, employees or constituents) may not have the knowledge base to appropriately adopt an expanded mandate and may, in fact, be resistant to it. Thus, any efforts to expand the mandate will require time and resources to conduct education and outreach to address this. While it is too early to tell,

recent Commissioner appointments may breathe new life into the USCCR.<sup>271</sup>

Weighing these considerations, participants ultimately agreed that the benefits of focusing on transforming the existing body outweigh the costs. At present, the American public has sharply divergent views on the value of U.S. engagement with international mechanisms and the utility of human rights more generally. However, there is a growing constituency base for accountability mechanisms with a human rights mandate. Additionally, to the extent advocacy for a human rights institution can leverage support by highlighting links to civil rights, which are more widely accepted and understood in the U.S., it is more likely to garner support.

## B. Ensuring Local Presence and Impact

During the convening, specific recommendations were made to ensure that a U.S. human rights institution can promote and protect human rights in all corners of American society, accounting for the relationship between federal, state and local authorities, particularly as they relate to human rights.

U.S. federalism has some unique features that impact human rights implementation.<sup>272</sup> When ratifying the human rights treaties it has joined, the United States includes the understanding that the federal government shares responsibility for human rights implementation with state and local authorities.<sup>273</sup> International law echoes the principle that subnational governments have an important role to play in implementation although the national government remains internationally responsible for failure to meet human rights treaty obligations and ultimately bears the obligation to fulfill human rights commitments.<sup>274</sup> Nevertheless, principles of federalism may limit the scope of the federal government's power to require that state and local governments engage in these activities.<sup>275</sup> This limitation, however, does not negate the fact that federal support is necessary for comprehensive human rights implementation at the state and local level and that the federal government can and should encourage these efforts. Indeed, the need for intergovernmental coordination is clear given that U.S. human rights concerns increasingly involve intrastate issues, such as immigration, healthcare and racial profiling.<sup>276</sup> Some states and localities are even ahead of the federal government in efforts to implement human rights, demonstrating local support for human rights values.<sup>277</sup> But at the same time, many

federal, state and local authorities are uninformed of their obligations to monitor or implement human rights.

The United States has a unique relationship with indigenous peoples and tribal governing bodies, as well. There are over 550 native governments with their own law enforcement, courts and decision-making bodies such as tribal councils. Most of these governments are small and don't have resources to create a free-standing human rights commission, though the Navajo Nation has established one.<sup>278</sup> Nevertheless, native governments serve a unique function, providing community support and sometimes playing a role analogous to State and Local Human Rights Agencies, though they may in fact have sovereign authority. Like State and Local Human Rights Agencies, native governments can report on local issues and interface with a national commission.<sup>279</sup>

To address these U.S. realities, participants agreed that there is a clear need for a commission to clarify the obligations that officials and agencies at all level of government are expected to undertake. Conversations also highlighted the need for mechanisms by which a U.S. human rights institution can facilitate and support state and local efforts to promote and protect human rights, including through the provision of incentives, such as financial resources, for improved monitoring and implementation. It was largely agreed that a U.S. institution should, therefore, be charged with identifying priorities for, and assisting in, implementation of a federal grants program that supports civil and human rights education, monitoring, reporting and enforcement efforts.<sup>280</sup> It should also have staff focused on developing relationships with state and local entities, including through the provision of training and education. Because of the salient nature of relationships with state and local agencies and officials, a U.S. human rights institution should also be authorized to create ad hoc committees to conduct fact-finding and analysis of particular human rights issues as they arise.<sup>281</sup>

## C. Establishing Broad Based Support

While the majority of the convening focused upon the core components of an effective human rights institution, conversations continually returned to the premise that, in order to be effective and sustainable, any effort to establish a human rights accountability mechanism requires broader support. There was consensus that efforts to establish a human rights commission may not be achievable if education and awareness-raising

around human rights and the value of such an institution are not prioritized as part of a larger strategy. U.S. advocates and international participants with deep commission expertise all acknowledged that community engagement on human rights issues is vital to success in the long term, no matter which path to creating a human rights institution is pursued.

Broad-based support can help to ensure that human rights commissions continue to fulfill their mandates over time. During the convening, participants highlighted the importance of ongoing, comprehensive reviews of commissions that go beyond compliance with basic international standards. Civil society should continually monitor a commission's efficacy and the outcomes of its work. Several factors can be used to evaluate success: how the public uses the mechanism, general awareness of human rights, the inclusion of human rights standards in laws, policies and procedures, as well as whether the government adopts recommendations from the commission or international and regional human rights bodies. While it is difficult to draw clear causal lines between these indicators and the work of a commission alone, they can help to generate a more nuanced understanding of where it adds value. Recent literature on national human rights institutions underscores this point, highlighting that these factors must be monitored and re-assessed over time.<sup>282</sup> Civil society monitoring should not replace internal assessments, and NHRIs should create their own internal benchmarks and indicators to ensure ongoing effectiveness.<sup>283</sup>

## D. Carrying Out Additional Research

Together, convening participants identified concrete steps necessary to establish an effective human rights accountability mechanism in the United States. First, several discrete research questions need to be answered to determine the ultimate scope and authority of the proposed institution. Participants agreed that an effective institution will not duplicate the work of existing agencies and will be properly authorized by domestic law. The convening group identified the need to map the existing organizational landscape, focusing on the following questions:<sup>284</sup>

- **What, if Any, is the Appropriate Scope of a New Institution's Complaint Function?**
  - What are the enforcement and/or investigatory functions of existing agencies with jurisdiction over civil and human rights? (See Appendix C for a list of federal civil rights laws and enforcing agencies)
- For agencies with complaint handling functions, what subject matter is covered? What are the gaps?
- What types of oversight exist for enforcement agencies?
- **Should a National Institution Have Authority to Sue Other Agencies for Failure to Comply With Legal Obligations?**
  - Which entities have authority to bring suits to enforce compliance with domestic law? What laws are covered? What are the gaps?
  - Can legislation authorize a new institution to bring suit against other agencies? What examples exist?
  - Are there limitations on a national institution's power to litigate more generally?
  - What are potential downsides to granting an independent institution a litigation function?
- **Is the Power to Intervene in Litigation Through *Amicus Curiae* Briefs Recommended?**
  - What are the implications of this power in the U.S. context? What are the potential benefits? Potential drawbacks?
  - How should situations where the institution may take a position contrary to other government agencies or departments be addressed?

## E. Need for a Campaign to Undertake Additional Tasks

The majority of next steps build upon the belief, articulated during the convening, that to be successful, advocacy to create a human rights commission must be broader and more inclusive. Advocates must expand the dialogue on the value of incorporating human rights and the potential impact of a national institution to include a more diverse, non-partisan constituency. As noted above, broad support will help ensure that a human rights body, once established, remains effective and accountable to the vulnerable populations it is meant to serve.

Broader engagement is a long-term effort that includes coordination, education and capacity building, all of which require additional resources. The next steps laid out in this Section do not comprise an exhaustive list of actions, but represent the framework that participants agreed is necessary to move advocacy forward.

- **Education.** Participants from every country emphasized that awareness of the intrinsic value of domestic accountability mechanisms is essential to build sustainable support for a U.S. human rights commission. Education should target civil and human rights advocates working at the grassroots level and more policy focused organizations, as well as policy-makers. To garner support, advocates must share tangible examples of success derived from human rights commissions around the world and domestic human rights advocacy. These efforts can develop a deeper understanding of how the human rights framework can bolster existing civil rights protections and impact individuals.

These efforts should reach as wide an audience as possible and go beyond disseminating reports and fact sheets. Through the creative use of media and messaging platforms, a campaign can engage new individuals and groups in the calls for accountability mechanisms.

- **Outreach.** Participants continually emphasized that an effective movement requires cross-cutting community support and setting the stage to bring a broad range of interested parties to the table requires outreach.

Participants identified members of the following groups and communities as central to developing strong non-partisan support for human rights accountability mechanisms: labor activists, religious groups, business leaders, anti-poverty groups and advocates working on LGBT issues, disability rights, housing, education and the rights of non-citizens as well as representatives from a broader range of African American and Latino communities.

A general consensus emerged that outreach should include more inclusive dialogues on the proposals for a human rights institution, as input from additional stakeholders can ultimately result in greater buy-in by myriad communities.

- **Capacity Building.** Many of the groups who currently support human rights, or appear to be natural allies, lack the capacity to focus resources on efforts for long-term structural change. To address this gap, it was agreed that that a long-term strategy should include efforts to build organizational capacity so that interested groups can engage in outreach and education.

To cultivate capacity, advocates must first map out where there is interest in creating a human rights commission. The next step is to assess existing capacity to focus on establishing a human rights body and identify ways to effectively grow that capacity as well as providing tools for engaging in these efforts.

These steps will help constitute a base of support that can be effectively mobilized as part of long-term efforts. Without that, efforts at social change will lack the constituency power to push for meaningful change and avoid compromises that could ultimately limit efforts to create strong accountability mechanisms.

- **Developing a Communications Strategy.** Intrinsic to a long-term, multi-prong campaign is a comprehensive communication strategy built on current views of the human rights framework and accountability mechanisms. Effective communications require messaging built on public opinion research related to these topics. Communication materials should concretize the need for a human rights commission and develop a narrative that highlights the impact (and potential impact) of the human rights framework on real people and communities. These messages can foster media support, enhance outreach to those who are unfamiliar with human rights and build support among policy-makers.
- **Legislative Advocacy.** The convening highlighted that advocates should expand existing efforts to build strong relationships with federal policy-makers and agency staff.<sup>285</sup> A targeted campaign should continue to identify and engage Congressional and administrative champions whose interests align with a strengthened domestic civil and human rights infrastructure. Advocates can then energize these potential champions and arm them with information to galvanize additional support.
- **Cultivating Resources.** Each of the steps identified above require resources, particularly sustained funding support. Thus, in order to move advocacy forward, the group noted that a campaign must identify and leverage available resources and cultivate financial support, technical assistance and expertise regarding each of the steps outlined in this Section.

## VI. Conclusion

The human rights movement in the United States is growing. Support for domestic mechanisms to address the pressing domestic civil and human rights issues of our time exists both at home and in the international arena. One such mechanism is a human rights commission mandated to promote and protect all human rights issues pertaining to all people within the United States and subject to U.S. authority.

Based on a multi-stakeholder convening, this Roadmap provides the key ingredients for a U.S. human rights commission, drawing lessons from the experiences of existing commissions in Australia, Canada, India, Mexico, South Africa and the United Kingdom, and applying them to the unique U.S. context. The proposed mandate, structure and functions serve to ensure that the institution that is established is effective, legitimate and sustainable.

While no one institution alone is a panacea for social ills, a robust human rights commission can strengthen existing law and policy by translating international human rights norms into practice in the pursuit of achieving dignity, equality and respect for all. It can also take a proactive role in addressing growing disparities in wealth across economic and racial lines as well as issues of housing, education and healthcare, which impact every community.

As highlighted throughout this Roadmap, establishing such a domestic accountability mechanism is not a short-term goal. It requires building broader general support for human rights within the United States, conducting greater outreach and education on the value of a human rights commission more specifically and building the capacity of organizations to engage in efforts for this type of social change. However, by prioritizing these goals, advocates can work together to establish an institution that is responsive to pressing civil and human rights issues as they emerge.



## Appendix A

### Domestic Proposals for a Human Rights Monitoring Body

#### 1. Transforming the U.S. Commission on Civil Rights

Two of the principal coalitions pushing for reform of the existing U.S. Civil Rights Commission are The Leadership Conference on Civil and Human Rights (which has a USCCR Taskforce) and the Human Rights at Home (HuRAH) Campaign (which has a USCCR Subcommittee). The USCCR Taskforce and the USCCR Subcommittee share goals and leadership and together have spearheaded federal legislative efforts to reform and transform the USCCR into a *Civil and Human Rights Commission*.<sup>286</sup> These coalitions have joined their voices with other advocates for reform of the USCCR.<sup>287</sup>

Such a transformation would allow a revitalized institution to build upon the historic legacy of the USCCR, which gained a reputation as “the conscience of the nation”<sup>288</sup> during the civil rights struggle of the 50s, 60s and 70s. At its peak, the USCCR was a robust, bi-partisan, fact-finding agency that held public hearings across the country, served as a powerful vehicle for education and public awareness and routinely evaluated the enforcement of civil rights laws by the agencies charged with implementation. It also had, and still maintains, the power to subpoena witnesses to ensure its findings were based on complete and accurate records. Based on its hearings and investigations, the Commission made recommendations to the President and Congress, influenced the substance of civil rights legislation and served as a clearinghouse for reports, ensuring that civil rights issues from around the country reached policy-makers.

While the Civil Rights Commission has a rich history, there is a growing consensus in the domestic social justice community that the current USCCR is broken. Its critics contend that the Commission no longer serves as an effective independent monitoring body. It is a politicized institution, lacks resources and professional staff with civil rights credentials, has lost its connection to the facts and people on the ground, and, in recent years, has even opposed critical civil rights proposals and/or reversed long-standing core posi-

tions on some of our nations’ most critical civil rights. The Commission is no longer equipped to respond to the most critical civil and human rights crises of our time.<sup>289</sup>

Expanding the USCCR’s mandate to include human rights would provide a new, broader framework to guide the Commission’s work, while allowing it to retain the robust powers that facilitated its success and gave it legitimacy at its peak. An expanded mandate would further improve the Commission’s ability to engage with the complex manifestations of 21st century racism and the pressing domestic human rights concerns of the day. This could include, for example, the government failures in response to Hurricane Katrina and the disparate impacts of the recent financial crisis; these are areas where the USCCR has been notably absent. Use of the human rights framework would allow the Commission to squarely address important intersectionalities of race, gender, national origin, disability, age, sexual orientation, gender identity, and religion, while working to ensure that civil and human rights policies reflect the facts on the ground throughout the country. A broader mandate would also help bring the U.S. into compliance with its existing human rights commitments.

In order to be effective, a transformed commission needs more than an expanded mandate. The Leadership Conference Civil and Human Rights and HuRAH coalitions have made a set of recommendations to strengthen the USCCR by also revamping its structure and appointment process. These recommendations aim to facilitate the creation of a robust, independent and effective human rights commission out of the USCCR. Section (a) briefly describes the trajectory of the USCCR and Section (b) lays out the coalitions’ recommendations for transforming it into a civil and human rights commission.

#### a. The History of the USCCR

Several advocates and scholars have developed rich and detailed histories of the USCCR. This Section draws heavily from the comprehensive history of the Commission included in the 2009 report by The Leadership Conference on Civil and Human Rights, *Restoring the Conscience of a Nation: A Report on the U.S. Commission on Civil Rights* as well as the article *The Rise and Fall of the U.S. Commission on Civil Rights*, published in 1987 in a Harvard Law School Journal.<sup>290</sup>

The USCCR was established in 1957 by a provision of the first federal civil rights law of the 20th century, with the goal of achieving more effective monitoring to enhance enforcement of civil rights.<sup>291</sup> The Eisenhower Administration created the Commission in response to extreme domestic racial strife, at a time when the U.S. was facing international condemnation for its treatment of African Americans. Its work paved the way for landmark legislation in the areas of civil rights, voting and housing, including the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The Commission uncovered discriminatory practices and fought to change policies to advance individual rights, with a focus on the rights of African Americans. Notably, the Commission focused on not only the legal and political barriers to equality but on the economic causes as well.<sup>292</sup> Its work challenged the status quo and gave a voice to individuals across the country.

Over the years, as the USCCR was periodically reauthorized by Congress, its statutory responsibilities expanded and it played an active role in shaping the country's civil rights agenda.<sup>293</sup> Its current mandate includes addressing discrimination based on race, national origin, religion, gender, age or disability.<sup>294</sup>

The Commission has no enforcement authority, but is empowered to hold hearings and subpoena witnesses. To facilitate its work investigating civil rights violations, particularly conducting field surveys and planning hearings, the commissioners established State Advisory Committees (SACs) to serve as their "eyes and ears" on the ground. In each state, the SACs are authorized to receive reports and recommendations, give advice to the national office regarding matters of local concern and participate in USCCR conferences and hearings.<sup>295</sup>

However, the Commission's voice as an independent monitor of rights has been compromised. Beginning in the 1980s, several internal and external political factors have encroached upon the Commission's ability to function effectively and independently. Over time, the White House and Congress have made attempts to stack the USCCR with commissioners who shared their positions and to exert greater control over the Commission's agenda.<sup>296</sup> However, the very compromises that Congress and the White House reached to avert these attempts, including changing the appointments process and the number of commissioners, are today often viewed as causing the fundamental structural flaws of the Commission.<sup>297</sup>

As the Commission was reauthorized throughout the 1980s and 90s,<sup>298</sup> there were some signs that the USCCR was regaining strength as a watchdog of civil rights. The Commission issued several reports on racial tension and reinvigorated its monitoring function. However, despite these efforts, government entities and civil society continue to highlight ongoing structural concerns.

A key concern today is the dwindling resources that have led to severe staffing and office cuts.<sup>299</sup> The Commission no longer produces the volume or quality of reports it generated in the past<sup>300</sup> and its ability to assess and address civil rights concerns at the state and local level has been stymied by a reduction in the number of regional offices, regional staffing cuts<sup>301</sup> and the proliferation of political patronage in appointments to the national body and local SACs (whose members often lack experience with civil rights issues),<sup>302</sup> among other causes.<sup>303</sup> The Commission's lack of connection to facts on the ground is exacerbated by the fact that today, instead of holding fact-finding hearings that involve broad participation, the Commission uses monthly two-hour briefings to conduct its investigations. As the USCCR stands now, commissioners and SAC members are often advocates of the positions held by the administration or party that appointed them, and lack relevant experience or expertise.

While civil rights abuses and discrimination continue, the existing USCCR is ill-equipped to address them. The Commission has been largely absent from debates around critical civil rights issues, such as the impact of Hurricane Katrina or the disparate impact of the recent financial crisis on communities of color, as just two examples. In fact, the majority of the Commission has taken positions that many in the civil rights community find objectionable, including opposing the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act<sup>304</sup> and recommending that the ABA remove language stating that law schools should be committed to diversity, reversing its long standing position in support of affirmative action.<sup>305</sup>

To many, the Commission is not only peripheral to protecting civil rights, it is "so debilitated as to be considered moribund."<sup>306</sup> The Commission's mandate, structure, appointment process and budget have all contributed to its demise. The Commission's mandate should be broadened to ensure its ability to address complex 21st Century injustices. Additionally, structural changes are needed to ensure the independence that gave it legitimacy at its zenith.

## b. Recommendations of the Leadership Conference USCCR Taskforce and the HuRAH Campaign

A number of recommendations to reform the current Commission have emerged to minimize the political nature of the appointments process and equip the Commission to address modern manifestations of discrimination and take a proactive approach to pressing domestic civil and human rights concerns. These include, among other reforms, expanding the mandate to include human rights. The motivation behind these recommendations is the desire to build upon the strengths of the USCCR, ensuring that the agency's critical powers and functions remain, while creating a body that is both better equipped to remain independent and has stronger ties to local communities. The goal is ultimately to improve civil rights enforcement and strengthen U.S. compliance with human rights norms and commitments. The recommendations discussed below represent the current consensus views of the USCCR coalitions of The Leadership Conference on Civil and Human Rights and the HuRAH Campaign. These proposed reforms focus on enhancing the Commission's mandate, structure and appointments but do not represent an exhaustive list of the coalitions' recommendations. The coalitions' proposed reforms build upon and modify recommendations included in a 2009 Report by the Leadership Conference.<sup>307</sup>

First, the Commission's name should be changed to the U.S. Commission on Civil and Human Rights. Its current mandate should continue, but should be expanded to explicitly include human rights as well as discrimination based on sexual orientation or gender identity.<sup>308</sup> Second, in an effort to reduce partisan deadlock and the over-politicization of the Commission, staffing and appointment procedures should be revamped. This includes reducing the number of commissioners by one (to a total of seven) to prevent deadlock in decisions. It further includes re-instituting an appointments process which requires that appointments be subject to Senate confirmation and a public vetting process.<sup>309</sup> Recommendations also call for criteria to ensure that appointees have relevant civil and human rights experience.

A third area of focus for these coalitions is enhancing the Commission's reach across the country, enabling it to hold hearings and monitor and investigate local civil and human rights concerns, as well to serve as a clearinghouse of information on civil and human rights. To achieve this goal, the coalitions are calling for a more robust infrastructure that

supports and coordinates state and local government and civil society efforts to ensure compliance with civil and human rights, including through a grants program.<sup>310</sup> Recommendations further call for increasing the number of fully staffed regional offices from six to 10, with provisions for additional professional staff, as well as giving the Commission the ability, in consultation with the regional offices, to create ad-hoc state and local committees.

These reforms would ensure the existence of a high level agency that has the power to conduct hearings on civil and human rights issues both at the national and local level. At the same time, they preserve the power to subpoena witnesses in pursuit of its fact-finding efforts and ensure there is a national clearinghouse for information on civil and human rights issues throughout the country. A transformed Commission would be able to make policy and legislative recommendations and provide an independent voice working to strengthen civil and human rights protections.

## 2. Ensuring Federal Coordination of State and Local Efforts to Use Human Rights

Columbia Law School's Human Rights Institute, in coordination with the HuRAH Campaign and the International Association of Human Rights Agencies (IAOHRA), develops scholarship on, and resources for, state and local officials interested in using the human rights framework. This Section draws heavily from these resources.<sup>311</sup>

### a. State and Local Human Rights Agencies

Although state and local human rights and human relations agencies (State and Local Human Rights Agencies) go by different names and have varying missions, they are all primarily focused on preventing and eliminating discrimination through a variety of means, including enforcing anti-discrimination laws and engaging in community education and training in an effort to prevent discrimination. Encouraging and facilitating institutional change through policy and practice to eradicate discrimination and promote equal opportunity is a central part of their mission.

Many State and Local Human Rights Agencies were established in the 1940s and 1950s to address the racial tension and violence erupting around the country. Others were formed in reaction to the civil rights movement and in response to calls to eradicate racial discrimination.<sup>312</sup> Most Agencies are organized into non-profit associations, for example, IAOHRA.<sup>313</sup>

State and Local Human Rights Agencies receive funding from federal, state and local governments as well as private sources, yet this funding is inconsistent from year to year and across agencies. In 2010, several IAOHRA members lost funding and were forced to close their doors while almost all Agencies experienced cutbacks.

For the past several years, these Agencies, in partnership with the HuRAH Campaign, have advocated for federal government support for their efforts to monitor and implement human rights. They have called for the establishment of a national infrastructure that includes both a national human rights commission to monitor human rights implementation throughout the country and a federal Inter-Agency Working Group on Human Rights that would coordinate implementation among federal agencies and departments, as well as with state and local officials.

The following Section describes how some State and Local Human Rights Agencies are already using the human rights framework and the importance of these efforts in bringing the U.S. into compliance with its human rights commitments. It concludes by detailing concrete recommendations for ways in which the federal government can support and coordinate state and local efforts, specifically through dedicated staff, education, training and resources.

#### b. Ongoing State and Local Agency Efforts to Implement Human Rights

Human rights implementation is meant to involve state and local officials. Human rights treaties provide the opportunity to report on conditions within local communities<sup>314</sup> and call for training and education of both government officials and the public to promote awareness of, and compliance with, human rights. They also offer a set of standards to guide local governments in administering their own laws and policies and means to assess compliance with these standards.

U.S. federalism also provides state and local governments a role in human rights implementation. When ratifying human rights treaties, the government explicitly acknowledges this by stating that treaty obligations will be implemented by state and local governments to the extent that they exercise jurisdiction over such matters.<sup>315</sup> Despite the federal government's inconsistent record of recognizing, or implementing, human rights, local officials in several jurisdictions are using human rights standards and strategies.

As described below, some local officials explicitly embrace international standards and agreements while others engage in work that reflects human rights principles more generally.

Several cities have incorporated human rights directly into local law. San Francisco has an ordinance that incorporates the principles of the Women's Rights Convention. The ordinance requires the City to eradicate policies with a discriminatory intent or impact, identify barriers to protecting human rights and provides for education and training of city employees. In 2009, Chicago adopted a resolution that calls on the city to "advance policies and practices that are in harmony with the principles of the Convention on the Rights of the Child in all city agencies and organizations that address issues directly affecting the City's children."

Several State and Local Human Rights Agencies collect valuable information on existing programs and policies relevant to protecting human rights. The Pennsylvania Human Rights Commission collects disaggregated data on cases involving race, color, and national origin in employment, housing and education, and has provided this information to the U.N. Committee that oversees compliance with the Convention on the Elimination of All Forms of Racial Discrimination. The Portland Oregon Human Rights Commission uses a complaint mechanism to track a wide range of potential human rights violations, including the denial of education, trafficking in persons, abuse of workers' rights and other abuses.

State and Local Human Rights Agencies are also ideally situated to hold hearings on local human rights issues. In the past, the San Francisco Human Rights Commission, in conjunction with other organizations, conducted a hearing on discrimination against Native Americans, which involved a large number of local stakeholders and led to a written report with policy recommendations to address housing, health, education and other issues of concern.<sup>316</sup>

These examples demonstrate that State and Local Human Rights Agencies across the country have the capacity to bolster human rights compliance. However, this activity is not conducted in a comprehensive or coordinated way. These examples are ad-hoc and at the behest of local officials and communities. There is no coordinated effort to incentivize human rights compliance, to collect or share these initiatives where they are effective or to provide training on human rights standards and strategies.

### c. The Lack of Federal Support and Coordination for Human Rights Work

Because the federal government remains ultimately responsible for human rights compliance, it has an important role to play in facilitating the work of State and Local Human Rights Agencies and providing guidance and support to these Agencies to assist in achieving human rights compliance. However, to date, federal government support to State and Local Human Rights Agencies has been limited to enforcing and monitoring compliance with federal anti-discrimination laws and does not facilitate efforts related to human rights treaties. Existing federal support comes largely through federal grant programs, such as Department of Housing and Urban Development grants to facilitate fair housing education and outreach as well as local enforcement of fair housing laws.<sup>317</sup> Similarly, the Equal Employment and Opportunities Commission contracts with State and Local Human Rights Agencies to enforce federal anti-discrimination law in employment at the local level.<sup>318</sup> The Department of Justice provides grants to promote public education and awareness of the Immigration and Nationality Act as it relates to employment.<sup>319</sup> Each of these programs exemplifies how federal support can facilitate intragovernmental partnerships to strengthen compliance with existing laws. A coordinated national approach to promoting and protecting human rights could include federal resources for state and local efforts through similar grant programs as well as additional means of support, some of which are described in the following Section.

It is encouraging that members of the Obama Administration have recently demonstrated an increasing awareness of the important role that State and Local Human Rights Agencies play in fulfilling human rights treaty obligations and have requested their assistance in human rights treaty reporting.<sup>320</sup> While this outreach is laudable, it fails to recognize the severe resource constraints that these Agencies face in meeting their existing day-to-day work or the widespread lack of familiarity with human rights standards.

### d. Strategies for A National Human Rights Commission to Successfully Engage State and Local Human Rights Agencies

The following Section describes the recommendations made by IAOHRA and members of the HuRAH Campaign for ways that federal support, including through a human rights commission that provides dedicated staff, education and

training and resources to State and Local Agencies, can foster their participation in human rights reporting and broader compliance efforts.

1. **Dedicated Staff:** The HuRAH Campaign has called for federal staff dedicated to liaising and coordinating with states and municipalities around human rights implementation. Such staff could foster intragovernmental efforts to comply with human rights by soliciting information from state and local government when reporting to international and regional human rights bodies and assisting in the collection and analysis of this data to determine where compliance is strong and where it needs improvement. To ensure a national commission is kept abreast of local issues this staff should also be responsible for receiving reports, suggestions, and recommendations from State and Local Agencies Human Rights Agencies and officials and holding hearings on issues of state and local concern, including how state and local policy comport with civil and human rights standards. The staff can also raise awareness of human rights by channeling developments in international fora to the local level and identifying and sharing effective local practices in civil and human rights implementation.
2. **Training and Education:** The HuRAH Campaign has also called for training to foster awareness of existing human rights commitments, including under human rights treaties ratified by the United States, and relevant international, regional and national human rights mechanisms. This type of education and training is essential to develop government officials' understanding of the obligations that state and municipal governments are expected to undertake, to assist with data collection and analysis and to facilitate dialogue with international and regional human rights bodies. Without a working knowledge of human rights standards, states and localities are unable to take steps to meet their obligations or serve as effective resources in their communities.
3. **Funding:** Finally, the Campaign has recommended that the federal government provide financial support for state and local governments to engage in civil

and human rights implementation and compliance. A federal grants program should be established to support State and Local Human Rights Agencies and community based non-governmental agencies in their efforts to undertake civil and human rights education, monitoring, reporting and enforcement. This grants program could be modeled after one of the many federal programs that already exist to enhance enforcement efforts and awareness of anti-discrimination laws or structured in other ways to foster a complementary relationship between federal, state and local agencies and officials.

### 3. Establishing a U.S. Border Commission

Advocates and community members along the U.S./Mexico have recommended that the U.S. establish a federal human rights accountability mechanism to address specific abuses in the region. Beginning formally in 1998, a number of community-based human rights committees around the U.S./Mexico border came together to form the Border Network for Human Rights (BNHR). Grounding its work in the experiences of those living in immigrant communities in border states, the Universal Declaration of Human Rights and the Constitution, the BNHR strives to achieve comprehensive immigration reform, accountable border policy and broader promotion and protection of human rights.<sup>321</sup> The comprehensive efforts of the BNHR include the systematic documentation and analysis of human and civil rights violations perpetrated at the Border, focusing particularly on Texas, New Mexico and other border regions.

The Border Network strives to create community driven solutions to address these ongoing abuses. In 2006, as part of its growing national policy efforts, the BNHR and its allies organized a U.S./Mexico Border Enforcement and Immigration Task Force (Border Task Force).<sup>322</sup> Members include local community groups, academics, law enforcement officials, mayors, county commissioners and faith group leaders.

According to the Border Task Force, border communities have experienced increased harassment and intimidation as well as a growing number of deaths. These abuses can be attributed, at least in part, to the following: increased militarization of the border, more stringent national security policies, increased use of force by Border Patrol and Immigration and Customs Enforcement officials, initiatives expanding local enforcement of federal immigration policy and a growth

in enforcement personnel more generally. These factors are coupled with decreasing training requirements for Border Patrol as well as Department of Homeland Security (DHS) oversight mechanisms that lack transparency and are poorly advertised to DHS staff itself or local communities.<sup>323</sup>

The Border Task Force cites the lack of government oversight and accountability as a key factor in the growing number of abuses. Accordingly, the recommendations to improve enforcement efforts while reducing the number of civil and human rights violations focus on increasing local and federal government accountability.

A guiding principle of the Border Task Force is that “all people in the U.S./Mexico border, regardless of their ethnicity or legal status, should have their basic rights respected.”<sup>324</sup> This Task Force has made over 70 recommendations,<sup>325</sup> some of which have been incorporated into legislative proposals.<sup>326</sup> The focus here is the proposed Independent Review Commission, also known as the United States Border Enforcement and Immigration Review Commission (Border Commission), which is described below.

#### Proposal for a Border Commission<sup>327</sup>

The Border Commission would play a primary role in improving accountability and transparency as well as promoting partnerships between government officials and local communities in the region. Its membership would be diverse, including individuals with specific knowledge of border issues, and include border residents and other relevant stakeholders.

The proposed Border Commission would monitor border and immigration policies and the practices of DHS and other relevant agencies and make recommendations to improve federal immigration and border security policy, enforcement, and complaint procedures.<sup>328</sup> It would proactively promote the incorporation of civil and human rights in federal, state and local policy and practice and build the capacity of border agencies. The Commission would also be charged with reporting annually to Congress, as well as conducting an independent study to examine the goals of border policies and agencies to determine whether they are appropriate, whether they are being met, and ultimately, to provide recommendations for improvement. Finally, its responsibilities would include conducting outreach in local communities and the promotion of civil society partnerships.

As noted in Part II.C of this Report, the Border Commission would have powers to investigate (including issuing sub-

poenas) and audit government agencies as well as legal power and sufficient funding to undertake its functions.

While the Border Task Force's proposed commission has a regional and topical focus, its foundational principles and objectives are aligned with the other domestic proposals for a national human rights commission laid out above. There are multiple ways its work could complement, or be integrated into, the work of a national human rights monitoring body. A national body could collaborate with a Border Commission to conduct local fact-finding, report on human rights and make policy recommendations. Alternatively, a domestic human rights institution could integrate the functions laid out by the Border Task Force, which overlap with the general mandate proposed for a transformed U.S. Civil and Human Rights Commission. Through a focus on the treatment of non-citizens or those perceived to be non-citizens, a human rights institution would provide a forum to address some of the most salient domestic political issues of our time. The issue of the rights of non-citizens intersects not only with national security and immigration policy, but also with issues of education, labor and healthcare. A national body with eyes and ears on the border would be well-situated to assess the local implications of national policy and provide recommendations to the federal government in order to ensure compliance with our domestic human rights commitments and obligations.

## Appendix B

### International Calls for a U.S. National Human Rights Institution

This Section describes international recommendations for the U.S. to establish a national human rights institution, some of which stem from obligations that the U.S. has undertaken by signing or ratifying particular treaties.

During its 2008 review of U.S. compliance with its obligations under The Convention on the Elimination of All Forms of Racial Discrimination (CERD), the U.N. CERD Committee voiced concern over the United States' "lack of appropriate and effective mechanisms to ensure a co-ordinated approach towards implementation of the Convention at the federal, state and local levels," and recommended establishing such mechanisms in line with international standards to remedy this deficit.<sup>329</sup> The U.S. is party to CERD and establishing a human rights monitoring body in line with the Committee's recommendation would demonstrate concrete progress in fulfilling its human rights commitments.<sup>330</sup>

The Committee that monitors U.S. compliance with the two Optional Protocols of the Convention of the Rights of the Child<sup>331</sup> has similarly recommended that the U.S. establish a national human rights infrastructure, calling on "the federal and state governments [to] consider the creation of human rights institutions" in order to monitor compliance with the Optional Protocols, highlighting that "[t]hese institutions should be provided with the necessary human and financial resources to carry out their mandates."<sup>332</sup> Notably, the U.S. is also a signatory to the Convention on the Rights of Persons with Disabilities, which requires State Parties to establish independent mechanisms to monitor and promote implementation of the Convention.<sup>333</sup>

Since the convening concluded, further attention has been paid to the need for an NHRI in the United States. In August of 2010, the U.N. Working Group of experts on people of African Descent released a report with recommendations based on their recent visit to the United States, which focused on issues of discrimination as they impact persons of African descent. Based on meetings with government officials and civil society, the experts "encourage[d] the Government to establish a human rights commission, as an independent body...[compliant with international standards,] which will

monitor and assist the implementation by the Government of international standards at the state and federal levels."<sup>334</sup>

During the recent U.N. Universal Periodic Review (UPR) process, other countries, many of which have established NHRIs, likewise advocated for the U.S. to create a national human rights mechanism. As part of the UPR, the U.N. Human Rights Council reviews the human rights records of all 193 United Nations Member States once every four years.<sup>335</sup> The U.S. was reviewed in November of 2010 and during the review, a dozen countries recommended that the U.S. establish an independent human rights monitoring body. Four of these recommendations specifically called for a national body that coordinates with entities at the state and local level.<sup>336</sup> These recommendations are notable because they echo concerns raised by U.S. civil society groups in an array of reports filed as part of the UPR process.<sup>337</sup> Reports endorsed by several dozen individuals and organizations called for a human rights institution, demonstrating broad support for the federal government to take action.<sup>338</sup>



## Appendix C

### List of Relevant U.S. Federal Civil Rights Laws & Enforcing Offices

[By Protected Class]<sup>339</sup>

Protected Class	Relevant Federal Statute (and Protections Provided)	Enforcing Agency/Office(s)
Age	<p><b>1. Age Discrimination Act of 1975</b> Prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. <a href="http://www.dol.gov/oasam/regs/statutes/age_act.htm">www.dol.gov/oasam/regs/statutes/age_act.htm</a> (for text)</p>	Any federal agency funding the program/activity. (Department of Health and Human Services (HHS) plays a role in coordinating federal activities).
	<p><b>2. Age Discrimination in Employment Act</b> Prohibits employers from discriminating against workers and applicants who are 40 years of age or older based on age. <a href="http://www.eeoc.gov/laws/statutes/adea.cfm">www.eeoc.gov/laws/statutes/adea.cfm</a> (for text)</p>	Equal Employment Opportunity Commission (EEOC) <a href="http://www.eeoc.gov/laws/types/age.cfm">www.eeoc.gov/laws/types/age.cfm</a>
	<p><b>3. Equal Credit Opportunity Act</b> Prohibits creditors from discriminating against credit applicants on basis of race, color, religion, national origin, sex, marital status, age, or because an applicant receives income from a public assistance program. <a href="http://www.justice.gov/crt/about/hce/documents/ecoafulltext_5-1-06.php">www.justice.gov/crt/about/hce/documents/ecoafulltext_5-1-06.php</a> (for text)</p>	Department of Justice (DOJ) Housing and Civil Enforcement Section <a href="http://www.justice.gov/crt/about/hce/">www.justice.gov/crt/about/hce/</a>
	<p><b>4. Disaster Relief and Emergency Assistance Act</b> Provides for equitable and impartial relief operations without discrimination on grounds of race, color, religion, nationality, sex, age, or economic status. <a href="http://www.fema.gov/pdf/about/stafford_act.pdf">www.fema.gov/pdf/about/stafford_act.pdf</a> (for text)</p>	Department of Homeland Security (Through the Federal Emergency Management Agency (FEMA)) <a href="http://www.fema.gov/about/index.shtm">www.fema.gov/about/index.shtm</a>
	<p><b>5. Civil Service Reform Act of 1978</b> Prohibits discrimination in federal employment on the basis of race, color, national origin, religion, sex, age, disability, marital status, or political affiliation. <a href="http://www.opm.gov/biographyofanideaf/PU_CSreform.htm">www.opm.gov/biographyofanideaf/PU_CSreform.htm</a> (for text)</p>	Office of Special Counsel and the Merit Systems Protection Board <a href="http://www.osc.gov/Intro.htm">www.osc.gov/Intro.htm</a>
	<p><b>6. Lilly Ledbetter Fair Pay Act of 2009</b> See #18 below</p>	

Protected Class	Relevant Federal Statute (and Protections Provided)	Enforcing Agency/Office(s)
Disability	<p><b>7. Air Carrier Access Act of 1986</b> Prohibits discrimination against individuals with disabilities in the provision of (including access to) transportation. <a href="http://www.dlrp.org/html/topical/aircarrier/aircarrier_general.html">www.dlrp.org/html/topical/aircarrier/aircarrier_general.html</a> (for text)</p>	<p><b>Department of Transportation (DOT)</b> Office of Aviation Enforcement and Proceedings <a href="http://airconsumer.dot.gov/ACAAComplaint.htm">http://airconsumer.dot.gov/ACAAComplaint.htm</a></p>
	<p><b>8. Americans with Disabilities Act (ADA)</b> Protects those with disabilities from discrimination in employment, education, access to public accommodations, and more. <a href="http://www.eeoc.gov/laws/statutes/ada.cfm">www.eeoc.gov/laws/statutes/ada.cfm</a> (for text)</p>	<p><b>Equal Employment Opportunity Commission (EEOC)</b> (enforces employment discrimination provisions) <a href="http://www.eeoc.gov/laws/statutes/">www.eeoc.gov/laws/statutes/</a></p> <p><b>Department of Justice (DOJ)</b> Disability Rights Section (enforces public services and public accommodations provisions) <a href="http://www.justice.gov/crt/about/drs/">www.justice.gov/crt/about/drs/</a> <i>*Individuals can sue in federal court</i></p>
	<p><b>9. Architectural Barriers Act of 1968</b> Requires that buildings and facilities that are designed, altered, constructed, or leased with certain federal funds after Sept. 1969 be accessible and usable by handicapped persons. <a href="http://access-board.gov/about/laws/ABA.htm">http://access-board.gov/about/laws/ABA.htm</a> (for text)</p>	<p><b>United States Access Board</b> <a href="http://access-board.gov/enforce.htm">http://access-board.gov/enforce.htm</a></p>
	<p><b>10. Fair Housing Act</b> Prohibits discrimination in sale, rental, and financing of housing based on race, color, national origin, religion, sex, familial status, and disability. <a href="http://www.justice.gov/crt/about/hce/title8.php">www.justice.gov/crt/about/hce/title8.php</a></p>	<p><b>Department of Housing and Urban Development (HUD)</b> <a href="http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp">http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp</a></p> <p><b>Department of Justice (DOJ)</b> Housing and Civil Enforcement Section <a href="http://www.justice.gov/crt/about/hce/">www.justice.gov/crt/about/hce/</a></p>
	<p><b>11. Individuals with Disabilities Education Act</b> Protects rights of students with disabilities, ensures they have access to a free appropriate public education. <a href="http://idea.ed.gov/download/statute.html">http://idea.ed.gov/download/statute.html</a> (for text)</p>	<p><b>Department of Justice (DOJ)</b> Educational Opportunities Section <a href="http://www.justice.gov/crt/about/edu/">www.justice.gov/crt/about/edu/</a></p>

Protected Class	Relevant Federal Statute (and Protections Provided)	Enforcing Agency/Office(s)
Disability (continued)	<p><b>12. Rehabilitation Act of 1973</b> Protects disabled individuals from discrimination by employers and organizations that receive federal financial assistance. <a href="http://www.eeoc.gov/laws/statutes/rehab.cfm">www.eeoc.gov/laws/statutes/rehab.cfm</a> (for text)</p>	<p><b>Department of Justice (DOJ)</b> Educational Opportunities Section (administers provisions re: discrimination in federally conducted or funded programs/activities) <a href="http://www.justice.gov/crt/about/edu/">www.justice.gov/crt/about/edu/</a></p> <p><b>Equal Employment Opportunity Commission (EEOC)</b> (administers provisions re: nondiscrimination in federal employment; sections 501 and 505)</p> <p><b>Department of Labor (DOL)</b> (administers provisions re: nondiscrimination by federal contractors)</p>
	<p><b>13. Civil Rights of Institutionalized Persons Act</b> Protects persons in institutions (includes residents in government-run nursing homes) from unconstitutional conditions. <a href="http://www.justice.gov/crt/about/spl/cripastat.php">www.justice.gov/crt/about/spl/cripastat.php</a> (for text)</p>	<p><b>Department of Justice (DOJ)</b> Special Litigation Section <a href="http://www.justice.gov/crt/about/spl/cripa.php">www.justice.gov/crt/about/spl/cripa.php</a></p>
	<p><b>14. Civil Rights Act of 1991</b> (Intentional Employment Discrimination) See #17 below</p>	
	<p><b>15. Lilly Ledbetter Fair Pay Act of 2009</b> See #18 below</p>	
National Origin	<p><b>16. Civil Rights Act of 1964: Title VII</b> (Equal Employment Opportunities) Prohibits employment discrimination based on race, color, religion, sex, and national origin. <a href="http://www.eeoc.gov/laws/statutes/titlevii.cfm">www.eeoc.gov/laws/statutes/titlevii.cfm</a> (for text)</p>	<p><b>Equal Employment Opportunity Commission (EEOC)</b> (enforces in cases with private employers) <a href="http://www.eeoc.gov/laws/statutes/">www.eeoc.gov/laws/statutes/</a></p> <p><b>Department of Justice (DOJ)</b> Employment Litigation Section (enforces in cases with state and local governments) <a href="http://www.justice.gov/crt/about/emp/">www.justice.gov/crt/about/emp/</a></p>
	<p><b>17. Civil Rights Act of 1991</b> (Intentional Employment Discrimination) Amended Title VII of the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, added disability protections, and provided for damages in intentional employment discrimination cases. Also, clarified provisions regarding disparate impact. <a href="http://www.eeoc.gov/laws/statutes/cra-1991.cfm">www.eeoc.gov/laws/statutes/cra-1991.cfm</a> (for text)</p>	<p><b>Department of Labor (DOL)</b> <a href="http://www.dol.gov/oasam/programs/crc/internal-statutes-regs.htm">www.dol.gov/oasam/programs/crc/internal-statutes-regs.htm</a></p> <p><b>Equal Employment Opportunity Commission (EEOC)</b> (Sections 102 and 103) <a href="http://www.eeoc.gov/laws/statutes/">www.eeoc.gov/laws/statutes/</a></p>

Protected Class	Relevant Federal Statute (and Protections Provided)	Enforcing Agency/Office(s)
National Origin (continued)	<p><b>18. Lilly Ledbetter Fair Pay Act of 2009</b> To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes. <a href="http://www.govtrack.us/congress/billtext.xpd?bill=s111-181">www.govtrack.us/congress/billtext.xpd?bill=s111-181</a> (for text)</p>	<p>Department of Labor (DOL) <a href="http://www.dol.gov/oasam/programs/crc/internal-statutes-regs.htm">www.dol.gov/oasam/programs/crc/internal-statutes-regs.htm</a></p>
	<p><b>19. Title VI Civil Rights Act of 1964</b> Prohibits discrimination in federally funded programs or activities on the basis of race, color, or national origin. <a href="http://www.justice.gov/crt/about/cor/coord/titlevistat.php">www.justice.gov/crt/about/cor/coord/titlevistat.php</a> (for text)</p>	<p>Any federal agency funding the agency/program.</p>
	<p><b>20. Title II Civil Rights Act of 1964</b> Prohibits discrimination on basis of race, color, or national origin in public accommodations. (Defined as establishments that serve the public and have a connection to interstate commerce, like hotels and motels, restaurants and bars, movie theaters and sports arenas). <a href="http://uspolitics.about.com/od/usgovernment/1/bl_civil_rights_act_2.htm">http://uspolitics.about.com/od/usgovernment/1/bl_civil_rights_act_2.htm</a> (for text)</p>	<p>Department of Justice (DOJ) Housing and Civil Enforcement Section <a href="http://www.justice.gov/crt/about/hce/">www.justice.gov/crt/about/hce/</a></p>
	<p><b>21. Immigration and Nationality Act</b> Prohibits discrimination in employment on the basis of national origin or citizenship status. It also protects against unfair documenting practices during the employment eligibility verification process. (Applies to citizens and legal immigrants, but not unauthorized immigrants.) <a href="http://www.justice.gov/crt/about/osc/1324b.php">www.justice.gov/crt/about/osc/1324b.php</a> (for text)</p>	<p>Department of Justice (DOJ) Office of Special Counsel for Immigration Related Unfair Employment Practices <a href="http://www.justice.gov/crt/about/osc/">www.justice.gov/crt/about/osc/</a></p>
	<p><b>22. Equal Educational Opportunities Act of 1974</b> Prohibits discrimination on the basis of race, color, sex, or national origin against faculty, staff, and students, including racial segregation of students to overcome barriers to equal participation.</p>	<p>Department of Justice (DOJ) Educational Opportunities Section <a href="http://www.justice.gov/crt/about/edu/overview.php">www.justice.gov/crt/about/edu/overview.php</a></p>

Protected Class	Relevant Federal Statute (and Protections Provided)	Enforcing Agency/Office(s)
National Origin (continued)	<p><b>23. Voting Rights Act of 1965</b> Prohibits voting practices that discriminate on the basis of race, color, or membership in a language minority group. Specifically, no discriminatory redistricting plans or voter registration procedures; authorizes use of federal voting observers to monitor elections. <a href="http://archive.fairvote.org/?page=1327">http://archive.fairvote.org/?page=1327</a> (for text)</p>	<p>Department of Justice (DOJ) Voting Section <a href="http://www.justice.gov/crt/about/vot/overview.php">www.justice.gov/crt/about/vot/overview.php</a> <i>*Individuals can sue in federal court</i></p>
	<p><b>24. Equal Credit Opportunity Act</b> See #3</p>	
	<p><b>25. Disaster Relief and Emergency Assistance Act</b> See #4</p>	
	<p><b>26. Civil Service Reform Act of 1978</b> See #5</p>	
	<p><b>27. Fair Housing Act</b> See #10</p>	
Race	<p><b>28. Equal Credit Opportunity Act</b> See #3</p>	
	<p><b>29. Disaster Relief and Emergency Assistance Act</b> See #4</p>	
	<p><b>30. Civil Service Reform Act of 1978</b> See #5</p>	
	<p><b>31. Fair Housing Act</b> See #10</p>	
	<p><b>32. Civil Rights Act of 1964: Title VII (Equal Employment Opportunities)</b> See #16</p>	
	<p><b>33. Civil Rights Act of 1991 (Intentional Employment Discrimination)</b> See #17</p>	
	<p><b>34. Lilly Ledbetter Fair Pay Act of 2009</b> See #18</p>	
	<p><b>35. Title VI Civil Rights Act of 1964</b> See #19</p>	
	<p><b>36. Title II Civil Rights Act of 1964</b> See #20</p>	

Protected Class	Relevant Federal Statute (and Protections Provided)	Enforcing Agency/Office(s)
Race (continued)	37. Equal Educational Opportunities Act of 1974 See #22	
	38. Voting Rights Act of 1965 See #23	
Sex/Gender	39. Equal Credit Opportunities Act See #3	
	40. Disaster Relief and Emergency Assistance Act See #4	
	41. Civil Service Reform Act of 1978 See #5	
	42. Fair Housing Act See #10	
	43. Civil Rights Act of 1964: Title VII (Equal Employment Opportunities) See #16	
	44. Civil Rights Act of 1991 (Intentional Employment Discrimination) See #17	
	45. Lilly Ledbetter Fair Pay Act of 2009 See #18	
	46. Equal Educational Opportunities Act of 1974 See #22	
	47. Equal Pay Act of 1963 Prohibits discrimination on the basis of sex re: compensation paid to men and women for substantially equal work in the same establishment. <a href="http://www.eeoc.gov/laws/statutes/epa.cfm">www.eeoc.gov/laws/statutes/epa.cfm</a> (for text)	Equal Employment Opportunity Commission (EEOC) <a href="http://www.eeoc.gov/laws/statutes/">www.eeoc.gov/laws/statutes/</a>
	48. Family and Medical Leave Act Allows employees to take time off of work to care for a newborn or recently adopted child, or to look after an ill family member. <a href="http://www.dol.gov/whd/regs/statutes/fmla.htm">www.dol.gov/whd/regs/statutes/fmla.htm</a> (for text)	Department of Labor (DOL) Wage and Hour Division (WHD) <a href="http://www.dol.gov/whd/fmla/">www.dol.gov/whd/fmla/</a>

Protected Class	Relevant Federal Statute (and Protections Provided)	Enforcing Agency/Office(s)
Sex/Gender (continued)	<p><b>49. Pregnancy Discrimination Act</b> Prohibits employment discrimination against female workers who are or intend to become pregnant. Includes discrimination in hiring, failure to promote, wrongful termination. (Amended Title VII of CRA of 1964) <a href="http://www.eeoc.gov/laws/statutes/pregnancy.cfm">www.eeoc.gov/laws/statutes/pregnancy.cfm</a> (for text)</p>	<p>Equal Employment Opportunity Commission (EEOC) <a href="http://www.eeoc.gov/laws/statutes/">www.eeoc.gov/laws/statutes/</a></p>
	<p><b>50. Title IX of the Education Amendments of 1972</b> Prohibits sex discrimination in education programs that receive federal funds. <a href="http://www.dol.gov/oasam/regs/statutes/titleix.htm">www.dol.gov/oasam/regs/statutes/titleix.htm</a> (for text)</p>	<p>Any federal agency funding the program. (but DOJ plays a role in coordinating)</p>
Miscellaneous	<p><b>51. National Voter Registration Act</b> Establishes procedures to increase the number of eligible citizens who register to vote in national elections. <a href="http://archive.fairvote.org/?page=1325">http://archive.fairvote.org/?page=1325</a> (for text)</p>	<p>Department of Justice (DOJ)</p>

# Appendix D

## Convening Agenda

### Monday, August 2

#### 7:30 Welcome Dinner

Catherine Powell, author of the Human Rights at Home Policy Blueprint will welcome participants to Belaggio. On behalf of the Leadership Conference on Civil and Human Rights and the Columbia Law School Human Rights Institute, Wade Henderson will set the stage for the convening, discussing the current U.S. context and proposals for a human rights commission in the United States and outlining the ways in which we hope examining comparative experiences of commissions in other countries can help the U.S. human rights community reflect on the possibilities and challenges of establishing a human rights commission in the United States.

Wade Henderson, *The Leadership Conference*  
Catherine Powell, *U.S. State Department*

### Tuesday, August 3

#### 8:00–9:00 Breakfast

#### 9:00–9:15 Agenda and Logistics Review

JoAnn Kamuf Ward, *Human Rights Institute, Columbia Law School*

#### 9:15–10:30 Overview of Proposed National Human Rights Commission in the United States

Recent reports by civil and human right leaders have paved the way for renewed interest in establishing a U.S. human rights commission, including, as one option, overhauling the existing U.S. Civil Rights Commission by, among other things, broadening its mandate and integrating human rights. Leaders involved in developing various proposals will share their insights into the value and goals of a reconstituted commission. What new groups/communities/issues (such as undocumented workers, LGBT communities, economic and social rights) could be addressed by a broader mandate?

##### FACILITATOR

Karen Narasaki, *Asian American Justice Center*

##### DISCUSSANTS

Julie Fernandes, *U.S. Department of Justice*

Catherine Powell, *U.S. State Department*

##### RESPONDENT

Deb Vagins, *ACLU*

#### 10:30–10:45 Break



**10:45–11:45 Indicators and Principles of Effective Human Rights Commissions**

What are the indicators of effective human rights commissions? This session will help identify best practices, metrics of success and characteristics of successful commissions. Potential topics of exploration include the Paris Principles, how to measure success regarding civil and political rights vs. economic and social rights and what standards should be used as a baseline (treaty body vs. U.S. interpretation of treaty standards)?

## FACILITATOR

**Jamil Dakwar**, *ACLU*

## DISCUSSANTS

**Gay McDougall**, *U.N. Independent Expert on Minority Issues*

**Gianni Magazzeni**, *OHCHR*

## RESPONDENT

**Katie Wepplo**, *Human Rights Researcher*

**11:45–12:00 Break****12:00–12:55 Break Out Sessions: Expanding from a Civil Rights to a Human Rights Mandate**

Participants will break into smaller groups to discuss the implications of a shift from civil rights to human rights, guided by the following questions: As a national human rights commission broadens its focus from a more specialized mandate (i.e., civil rights, women's rights, etc.) to a broader human rights mandate, what is lost and what is gained? How can a broadened mandate advance civil rights struggles using a human rights framework? What are the ways in which a commission can address the intersection of rights violations such as racial, gender, and other forms of injustice? How can a transformed commission advance economic and social rights? What are the pros and cons of addressing these rights in their own right? As these rights intersect with civil and political rights? What are the pros and cons of using civil and political rights as a starting point and bootstrapping economic and social rights (where they do not have the same status domestically) as they relate to civil and social rights (as in India)? Promotion and protection of LGBT rights? How would expansion of the U.S. Civil Rights Commission redirect the Commission's work?

## FACILITATORS AND REPORTERS

**John Payton**, *NAACP-LDEF* and **Elizabeth Birch**, *True Blue Inclusion*

**Cathy Albisa**, *NESRI* and **Robert Raben**, *The Raben Group*

**Margaret Huang**, *Rights Working Group* and **Robin Toma**, *Los Angeles County Human Relations Commission*

**Mallika Dutt**, *Breakthrough* and **Lorraine Miller**, *National Board of Directors, NAACP*

**1:00–2:00 Lunch****2:00–3:00 Report Back****3:00–3:15 Break**

3:15–4:00 **The U.S. Commission on Civil Rights: Learning from the Past**

While most of the comparative approaches examined in this convening are outside the United States, our first comparative examination is the U.S. Civil Rights Commission. This session will explore how the Civil Rights Commission developed and what lessons we can take from the past as we move forward. What actors and societal forces influenced the creation of the Commission? How might this history inform efforts to expand the mandate and transform the Commission or create a U.S. human rights commission?

FACILITATOR/DISCUSSANT

**John Payton**, *NAACP LDF*

DISCUSSANTS

**Mary Frances Berry**, *University of Pennsylvania, former U.S. Civil Rights Commission Chair*

4:00–7:00 **Break**

7:00–8:30 **Dinner**

**Wednesday, August 4**

8:00–9:00 **Breakfast**

9:00–10:30 **Expanding the Mandate:**

**The Move from a Specialized Commission to a Broader Human Rights Commission**

How does a commission which starts with a more limited or specialized mandate (i.e., civil rights) pivot to a broader human rights mandate without abandoning its original set of concerns? What are the challenges in terms of outreach to key constituencies as well as in terms of staff training to undertake the broader mandate? In addition to examining how social justice groups in the United States have a rich history of linking civil rights and human rights, this session will focus on the British experience as a case study. In the United Kingdom, the Equal Opportunities Commission, the Commission for Racial Equality, and the Disability Rights Commission became the Equality and Human Rights Commission. What have been the opportunities and challenges of combining three individual specialized commissions focused on discrimination into one broader human rights commission? What prompted this shift, and what impact has it had? Also, how has the UK Equality and Human Rights Commission bridged the human rights implications of counterterrorism policies with broader human rights concerns? Has this either strengthened or undermined the broader agenda?

FACILITATOR/DISCUSSANT

**Dorothy Thomas**, *School of Oriental and African Studies*

DISCUSSANT – UK CASE STUDY

**Katie Ghose**, *British Institute for Human Rights*

RESPONDENT

**Wade Henderson**, *Leadership Conference*

10:30–11:00 **Break**

- 11:00–12:30 **The Indivisibility of Rights:  
What are Effective Ways that Human Rights Commissions Can Work at the Intersection of Rights?**  
What effective strategies have human rights commissions used to address the indivisibility of rights, including economic and social rights as well as civil and political rights? Do these strategies vary according to whether the constitution of the country recognizes economic and social rights as fundamental rights? Do the strategies vary according to whether a country is a party to the International Covenant on Economic, Social, and Cultural Rights? What are the ways in which commissions can build support for these rights, regardless of whether or not they are officially recognized as having the same status as civil and political rights? How do these commissions address the intersection of rights touched upon in breakouts on day 1? Because poverty is so deeply intertwined with the discrimination issues that are at the heart of the existing U.S. Civil Rights Commission, a new U.S. Civil and Human Rights Commission could learn from the experience of commissions that already address the intersection of, for example, race, poverty, and gender. How can an expanded mandate incorporate or directly address economic and social rights? This session will focus on South Africa, Mexico, and India to explore the different strategies used to address economic and social rights. Speakers will also draw upon the previous breakout session.

## FACILITATOR

Cathy Albisa, *NESRI*

## DISCUSSANTS – SOUTH AFRICA, MEXICO AND INDIA CASE STUDIES

Pregs Govender, *South African Human Rights Commission*

Y.S.R. Murthy, *Jindal Global University (JGU)*

Emilio Álvarez Icaza Longoria, *Mexico Federal District Human Rights Commission*

## RESPONDENT

Gay McDougall, *U.N. Independent Expert on Minority Issues*

- 12:30–1:00 **Break**
- 1:00–2:00 **Lunch**
- 2:00–3:00 **The Indivisibility of Rights:  
What are Effective Ways that Human Rights Commissions Can Work at the Intersection of Rights?  
[Panel Continued]**
- 3:00–7:00 **Break**
- 7:00–7:30 **Reception**
- 7:30–8:30 **Dinner**

**Thursday, August 5**

- 8:00–9:00 **Breakfast, including Report Back**

- 9:00–10:30 **Human Rights Begin Close to Home:  
How Can National Human Rights Commissions Partner with Subnational Human Rights Structures and Governing Bodies of Indigenous Peoples?**
- How can a national human rights commission function effectively in a federalist system? Here, we hope to learn how the national commissions coordinate with subnational commissions or bodies, as well as governing bodies representing indigenous peoples. The proposed U.S. Civil and Human Rights Commission must find an effective way to work with regional, state and local bodies (such as state and local human rights commissions), so that affected individuals will have a voice in decision-making close to their communities. Case studies here include Canada and Australia, whose national commissions have grappled with finding creative ways to partner with sub federal entities.
- FACILITATOR  
**Risa Kaufman**, *Human Rights Institute, Columbia Law School*
- DISCUSSANTS – U.S., CANADA AND AUSTRALIA CASE STUDIES  
**Donna Scott**, *Saskatchewan Provincial Court*  
**Darren Dick**, *Australian Human Rights Commission*  
**Robert Coulter**, *Indian Law Resource Center*
- RESPONDENT  
**Robin Toma**, *Los Angeles County Human Relations Commission*
- 10:30–10:45 **Break**
- 10:45–11:45 **Promoting and Protecting the Rights of Non-Citizens**
- How can a national commission address the rights of non-citizens, including immigrants and undocumented workers? How might a commission balance issues of human rights, national security and border security? How might current efforts to create a U.S. border commission, including successes and challenges, inform the role of a human rights commission? In this session, participants will also reflect on how recent political events and media impact our advocacy efforts.
- FACILITATOR  
**Margaret Huang**, *Rights Working Group*
- DISCUSSANTS  
**Fernando Garcia**, *Border Network for Human Rights*  
**Emilio Alvarez Icaza**, *Mexico Federal District Commission*
- RESPONDENT  
**Robert Raben**, *The Raben Group*
- 11:45–12:00 **Break**
- 12:00–1:00 **Developing a Broader Constituency for Human Rights: How Can National Human Rights Commissions Work with Civil Society to Build a Human Rights Culture?**
- What strategies have national human rights commissions used to involve a broad range of affected communities and individuals in identifying human rights problems and developing and implementing meaningful solutions? In achieving these aims, what methods have been effective (i.e., public hearings, human rights education, media/ new media, other constituency outreach approaches)? At a broader level, in responding

to new developments and the needs of diverse constituents, what approaches to institutional learning have been effective, particularly as regards approaches that involve affected communities and individuals in updating, revising and adapting commission standards or methods? How can the proposed U.S. Civil and Human Rights Commission be structured with these lessons in mind to effectively involve constituencies in addressing injustice and improving the lives of those most in need of human rights protection? How can a transformed commission draw upon the successes and tactics of the robust Civil Rights Commission to address indirect discrimination that leads to unequal enjoyment of human rights? The session will touch on South Africa and India as case studies, but all participants will be invited to share experiences of each legal system represented and discussed.

**FACILITATOR**

**Ajamu Baraka**, *U.S. Human Rights Network*

**DISCUSSANTS**

**Mallika Dutt**, *Breakthrough*

**Y.S.R. Murthy**, *Jindal Global University (JGU)*

**Pregs Govendor**, *South African Human Rights Commission*

1:00–2:00 **Lunch**

2:00–2:45 **Breakout Sessions: Unanswered Questions**

These smaller sessions are an opportunity for participants to raise and discuss some of the questions that their own experiences and the convening sessions have raised regarding domestic implementation of human rights including unexplored political challenges and essential elements of a human rights commission

**FACILITATORS**

**Robin Toma**, *Los Angeles County Human Relations Commission*

**Mary Frances Berry**, *University of Pennsylvania*

**David Morrissey**, *USICD*

**Deb Vagins**, *ACLU*

2:45–3:30 **Report Back**

3:30–3:45 **Break**

3:45–5:15 **Building the Roadmap: Developing a Strategic Plan**

This session will distill best practices and lessons learned that can help inform the work of national human rights commissions globally and the development of an effective national human rights commission in the United States. Thus, the session will begin to identify the elements of the Bellagio Outcomes document.

**FACILITATORS**

**Laura Murphy**, *ACLU*

**Karen Lawson**, *The Leadership Conference*

5:15–7:00 **Break**

7:00–7:30 **Reception**

7:30–8:30 **Dinner**

## Appendix E

### Participant List<sup>340</sup>

The convening brought together a diverse group of thirty-three civil and human rights practitioners from various countries with expertise in advocacy, activism, education and policy-making. Practitioners from the United States had a wealth of knowledge regarding the U.S. human rights movement, national and local human rights initiatives, engagement with the international human rights system and the history of the U.S. Civil Rights Commission. International participants brought a breadth of experience working with, or as part of, human rights commissions in Australia, Canada, India, Mexico, South Africa and the United Kingdom as well as engaging in domestic and international advocacy.

1. **Cathy Albisa**, *Executive Director, National Economic and Social Rights Initiative*
2. **Ajamu Baraka**, *Executive Director, U.S. Human Rights Network*
3. **Mary Frances Berry**, *Author and Former Chair, U.S. Commission on Civil Rights; Professor of History at the University of Pennsylvania*
4. **Elizabeth Birch**, *President and CEO, Elizabeth Birch Company*
5. **Robert Coulter**, *Executive Director, Indian Law Resource Center*
6. **Jamil Dakwar**, *Director, Human Rights Project, American Civil Liberties Union*
7. **Darren Dick**, *Director, Policy and Programs, Australian Human Rights Commission*
8. **Mallika Dutt**, *Executive Director, Breakthrough*
9. **Julie Fernandes**, *Deputy Assistant Attorney General, U.S. Department of Justice, Civil Rights Division (in her individual capacity)*
10. **Fernando Garcia**, *Executive Director, Border Network for Human Rights*
11. **Katie Ghose**, *Executive Director, British Institute of Human Rights*
12. **Pregs Govendor**, *Commissioner, South African Human Rights Commission*
13. **Wade Henderson**, *President and CEO of the Leadership Conference on Civil and Human Rights*
14. **Margaret Huang**, *Executive Director, Rights Working Group*
15. **Risa Kaufman**, *Executive Director, Human Rights Institute and Lecturer in Law, Columbia Law School*
16. **Karen McGill Lawson**, *Executive Vice President and Chief Operating Officer of The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund*
17. **Emilio Álvarez Icaza Longoria**, *Former Commissioner, Mexico Federal District Human Rights Commission (Comision de Derechos Humanos del Distrito Federal)*
18. **Gianni Magazzeni**, *Chief of Branch, Americas, Europe and Central Asia, National Institutions and Regional Mechanisms Section, Field Operations and Technical Cooperation Division Office of the High Commissioner for Human Rights*
19. **Gay McDougall**, *U.N. Independent Expert on Minority Issues*
20. **Lorraine Miller**, *President, NAACP Washington, D.C. Branch & National Board of Directors, NAACP*
21. **David Morrissey**, *Executive Director, United States International Council on Disabilities*
22. **Laura Murphy**, *Director, American Civil Liberties Union, Washington Legislative Office*
23. **Y.S.R. Murthy**, *Executive Director, Centre for Human Rights Studies at Jindal Global Law School*
24. **Karen Narasaki**, *President and Executive Director, Asian American Justice Center*
25. **John Payton**, *Director-Counsel and President, NAACP-LDF*
26. **Catherine Powell**, *Staff Office of Policy and Planning, U.S. Department of State; Professor and Director, International Law and the Constitution Initiative, Leitner Center on International Law and Justice, Fordham Law School (currently on leave) (in her individual capacity)*
27. **Robert Raben**, *The Raben Group*

28. **Donna Scott**, *Judge, Saskatchewan Provincial Court*
29. **Dorothy Thomas**, *Fellow, School of Oriental and African Studies*
30. **Robin Toma**, *Executive Director, Los Angeles County Human Relations Commission*
31. **Deborah Vagins**, *Legislative Counsel, American Civil Liberties Union Washington Legislative Office*
32. **JoAnn Kamuf Ward**, *Counsel, Human Rights Institute, Columbia Law School*
33. **Katie Wepplo**, *Human Rights Researcher*

# Appendix F

## Commission Contact Information

### Australian Human Rights Commission

Address: Level 3, 175 Pitt Street  
 SYDNEY NSW 2000  
 Website: [www.hreoc.gov.au/about/index.html](http://www.hreoc.gov.au/about/index.html)  
 Telephone: (02) 9284 9600

### Federal District Human Rights Commission of Mexico (Comision de Derechos Humanos del Distrito Federal)

Address: Avenida Universided 1449 col. Florida,  
 pueblo de Axotla delegacin Alvaro  
 Obregon 01030  
 Mexico Distrito Federal  
 Website: [www.cd hdf.org.mx/index.php?id=piwhr](http://www.cd hdf.org.mx/index.php?id=piwhr)  
 Telephone: 52295600

### National Human Rights Commission of India

Address: Faridkot House,  
 Copernicus Marg,  
 New Delhi, PIN 110001  
 Website: [www.nhrc.nic.in](http://www.nhrc.nic.in)  
 Telephone: 23384012

### Saskatchewan Human Rights Commission

Address: 8th Floor, Sturdy Stone Building  
 122-3rd Avenue North  
 S7K 2H6  
 Website: [www.shrc.gov.sk.ca/news.html](http://www.shrc.gov.sk.ca/news.html)  
 Telephone: (306) 933-5952

### South African Human Rights Commission

Address: Braampark Forum  
 333 Hoofd Street  
 Braamfontein  
 Website: [www.sahrc.org.za/home/](http://www.sahrc.org.za/home/)  
 Telephone: 011 877 3600

### U.K. Equality and Human Rights Commission

Address: 3 More London, Riverside Tooley Street,  
 London, SE1 2RG  
 Website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)  
 Telephone: 020 3117 0235



## Appendix G

### Principles Relating to the Status of National Institutions (The Paris Principles) *Adopted by General Assembly resolution 48/134 of 20 December 1993*

#### Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
  - (b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
  - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
  - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
  - (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
  - (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
  - (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

## Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
  - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - (b) Trends in philosophical or religious thought;
  - (c) Universities and qualified experts;
  - (d) Parliament;
  - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

## Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

## Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- ( a ) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- ( b ) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- ( c ) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- ( d ) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

## Endnotes

- 1 Opportunity Agenda, *Human Rights in the U.S.: Opinion Research with Advocates, Journalists and the General Public* 3 (2007), available at [http://opportunityagenda.org/files/field\\_file/Human%20Rights%20Report%20-%202007%20public%20opinion.pdf](http://opportunityagenda.org/files/field_file/Human%20Rights%20Report%20-%202007%20public%20opinion.pdf). 80% of respondents believe that all individuals have “basic rights, regardless of whether government recognizes [them]” and 81% agreed that the U.S. “should strive to uphold human rights” and that people in America are being denied these rights.  
The term *human rights* is used in this Report to refer to the full spectrum of rights protected under the Universal Declaration of Human Rights. Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc A/RES/217 (III) (Dec. 10, 1948).
- 2 In 2009, the U.S. rejoined the United Nations Human Rights Council. See Jane Morse, The United States Wins Seat on U.N. Human Rights Council (May 12, 2009), available at [www.america.gov/st/democracyhr-english/2009/April/20090414111055ajesrom0.7777979.html](http://www.america.gov/st/democracyhr-english/2009/April/20090414111055ajesrom0.7777979.html).
- 3 See Michael Posner, Assistant Sec’y of State for Democracy, Human Rights, & Labor, The Four Freedoms Turn 70: Address to the American Society of International Law (Mar. 23, 2010), available at [www.state.gov/g/drl/rls/rm/2011/159195.htm](http://www.state.gov/g/drl/rls/rm/2011/159195.htm).
- 4 See, e.g., C. Raj Kumar, *National Human Rights Institutions and Economic, Social and Cultural Rights: Towards the Institutionalization and Developmentalization of Human Rights*, 28 Hum. Rts. Q. 755, 756-79 (2006).
- 5 See Hillary Clinton, Sec’y of State, Remarks to the Press on the Release of the 2009 Country Reports on Human Rights Practices (Mar. 11, 2010), available at [www.state.gov/secretary/rm/2010/03/138241.htm](http://www.state.gov/secretary/rm/2010/03/138241.htm) (“Human Rights are universal, but their experience is local.”); see also Eleanor Roosevelt, Remarks at the United Nations Concerning Human Rights (Mar. 27, 1958), available at [www.udhr.org/history/inyour.htm](http://www.udhr.org/history/inyour.htm) (“Where, after all, do universal human rights begin? In small places, close to home.... Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.”).
- 6 Franklin D. Roosevelt, The Annual Message to Congress (Jan. 6, 1941), in *The Public Papers and Addresses of Franklin D. Roosevelt*, 1940 Volume 663, 672 (Samuel Rosenman ed., 1950).
- 7 A. Philip Randolph, “Why Should We March?” (1942), available at <http://web.mit.edu/course/21/21h.102/www/Primary%20source%20collections/World%20War%20II/Randolph,%20Why%20Should%20We%20March.htm>.
- 8 Rev. Martin Luther King, Jr., Address at the Southern Christian Leadership Conference Staff Retreat (May 1967), quoted in Vanita Gupta, *Blazing a Path from Civil Rights to Human Rights*, in *Bringing Human Rights Home: Portraits of the Movement* 145, 145 (Cynthia Soohoo et al. eds., 2008).
- 9 See ACLU, Dignity Begins at Home: Celebrating the Universal Declaration of Human Rights at 60: FAQs, [www.udhr60.org/udhr\\_faq.html](http://www.udhr60.org/udhr_faq.html) (last visited Jan. 30, 2012). More recently, during the drafting of the Convention of the Rights of the Child, the U.S. proposed language or amendments for 38 of the Convention’s 40 substantive articles. See Human Rights Watch, Q&A: The Convention on the Rights of the Child, [www.hrw.org/en/news/2009/11/18/qa-convention-rights-child](http://www.hrw.org/en/news/2009/11/18/qa-convention-rights-child) (last visited Jan. 30, 2012).
- 10 The Covenant on Civil and Political Rights was ratified in 1992, under President George H.W. Bush. The International Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture were ratified under President Bill Clinton, in 1994.
- 11 See William F. Schulz, Center for Am. Progress, *The Power of Justice: Applying International Human Rights Standards to American Domestic Practices* 9 (2009) (citation omitted), available at [www.law.columbia.edu/null/download?&exclusive=filemgr.download&file\\_id=154602](http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=154602).
- 12 See Michael Posner, Assistant Sec’y of State for Democracy, Human Rights, & Labor, Briefing to the Foreign Press Center on the 2009 Country Reports on Human Rights Practices (Mar. 11, 2010), available at <http://fpc.state.gov/138252.htm> (noting that the U.S. “appl[ies] a single standard to all countries ... [i]t’s an international standard. It’s the standard in the Universal Declaration of Human Rights or the Convent on Civil and Political Rights. So it’s a single yardstick.”).
- 13 President Barack Obama, Remarks by the President to the United Nations General Assembly (Sept. 23, 2009), available at [www.whitehouse.gov/the-press-office/remarks-president-united-nations-general-assembly](http://www.whitehouse.gov/the-press-office/remarks-president-united-nations-general-assembly) (stating that “America will always stand with those who stand up for their dignity and their rights ... democracy and human rights are essential to achieving each of the goals that I’ve discussed today, because governments of the people and by the people are more likely to act in the broader interests of their own people, rather than narrow interests of those in power.”).
- 14 A retrogressive measure directly or indirectly results in “backward steps being taken with respect to the rights recognized in the Covenant [on Economic, Social and Cultural Rights].” See Office of High Comm’r for Human Rights, *Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions* 28 (2005), available at [www.ohchr.org/Documents/Publications/training12en.pdf](http://www.ohchr.org/Documents/Publications/training12en.pdf).
- 15 Center for Econ. & Soc. Rights, *Visualizing Rights: Fact Sheet No. 11: United States of America* (2010), available at [www.cesr.org/downloads/USA%20Web%20final.pdf](http://www.cesr.org/downloads/USA%20Web%20final.pdf).
- 16 U.S. Human Rights Fund, *Perfecting Our Union: Human Rights Success Stories from Across the United States* (2010); see also Ford Foundation, *Close to Home: Case Studies of Human Rights Work in the United States* (2004), available at [www.fordfoundation.org/pdfs/library/close\\_to\\_home.pdf](http://www.fordfoundation.org/pdfs/library/close_to_home.pdf).

- 17 U.S. Human Rights Fund, *supra* note 16, at 16; U.S. Human Rights Network, About Us, [www.ushrnetwork.org/node/5](http://www.ushrnetwork.org/node/5) (last visited Jan. 30, 2012).
- 18 U.S. Human Rights Fund, *supra* note 16, at 105; see also Columbia Law School, Human Rights Institute, The Bringing Human Rights Home Lawyers' Network, [www.law.columbia.edu/center\\_program/human\\_rights/HRinUS/BHRH\\_Law\\_Net](http://www.law.columbia.edu/center_program/human_rights/HRinUS/BHRH_Law_Net) (last visited Jan. 30, 2012); Scott Cummings, *Internationalization of Public Interest Law*, 57 Duke L.J. 891, 981 (2008).
- 19 See Human Rights at Home Campaign, *Written Comments Submitted by the Human Rights at Home Campaign to the U.S. Department of State Regarding the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Review* (July 15, 2010), available at [www.hurahcampaign.org/wp-content/uploads/2010/12/UNDRIP-HuRAH-Statement.pdf](http://www.hurahcampaign.org/wp-content/uploads/2010/12/UNDRIP-HuRAH-Statement.pdf). The Human Rights at Home (HuRAH) Campaign was formerly known as The Campaign for a New Domestic Human Rights Agenda.
- 20 U.S. Human Rights Fund, *supra* note 16, at 16.
- 21 See Tyler Lewis, Leadership Conference on Civil & Human Rights, The Leadership Conference Announces New Executive Committee Officers (Oct. 1, 2010), available at [www.civilrights.org/archives/2010/10/1071-exec-comm.html](http://www.civilrights.org/archives/2010/10/1071-exec-comm.html).
- 22 NAACP Chief Outlines New 'Human Rights' Focus, MSNBC.com, Feb. 3, 2009, available at [www.msnbc.msn.com/id/29000798/ns/us\\_news-life/](http://www.msnbc.msn.com/id/29000798/ns/us_news-life/). While the NAACP is known primarily for its work challenging discrimination within U.S. courts and policy channels, it was an early proponent of the human rights framework and one of the first major domestic organizations using human rights to address domestic social injustice. It has not only played a seminal role in the struggle to ensure that human rights were included in the U.N. Charter, it engaged directly with U.N. mechanisms as early as 1947. See Carol Anderson, A "Hollow Mockery": African Americans White Supremacy, and the Development of Human Rights in The United States, in *Bringing Human Rights Home: Portraits of the Movement*, *supra* note 8, at 75, 89.
- 23 See Opportunity Agenda, *supra* note 1, at 89.
- 24 See Ajamu Baraka et al., Letter to the Editor, *Human Rights at Home*, N.Y. Times, Jan. 27, 2009, at A29; Mary Francis Berry, Op-Ed., *Gay But Equal*, N.Y. Times, Jan. 15, 2009, at A29; Catherine Powell, Am. Constitution Soc'y for Law & Policy, *Human Rights at Home: A Domestic Policy Blueprint for the New Administration* 12, 18-23 (2008), available at [www.iaohra.org/storage/pdf/human-rights-campaign/HRAHDomestic\\_Policy\\_Blueprint.pdf](http://www.iaohra.org/storage/pdf/human-rights-campaign/HRAHDomestic_Policy_Blueprint.pdf); see also Human Rights at Home Campaign, About Us, [www.hurahcampaign.org/about/](http://www.hurahcampaign.org/about/) (last visited Jan. 30, 2012).
- 25 See, e.g., *Concluding Observations of the Committee on the Elimination of Racial Discrimination*, ¶ 12, U.N. Doc. CERD/C/USA/CO/6, available at [www1.umn.edu/humanrts/CERDConcludingComments2008.pdf](http://www1.umn.edu/humanrts/CERDConcludingComments2008.pdf) [hereinafter *2008 CERD Observations*]. During a recent U.N. Human Rights Council review of U.S. compliance with its human rights obligations, a dozen states called on the United States to take steps to create a national human rights institution (NHRI). 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> [hereinafter *UPR Outcomes Report*].
- 26 During the May 2009 Universal Periodic Review of Belize, the United States recommended that Belize study the feasibility of establishing an NHRI. See U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Belize*, ¶ 39, U.N. Doc. A/HRC/12/4 (Jun. 4, 2009), available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/BZ/DEC\\_103\\_BELIZE.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/BZ/DEC_103_BELIZE.pdf). During the review of the Democratic People's Republic of Korea in December of 2009, the U.S. similarly recommended the creation of a national human rights institution. See U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Democratic People's Republic of Korea*, ¶ 25, U.N. Doc. A/HRC/13/13 (Jan. 4, 2010), available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KP/A\\_HRC\\_13\\_13\\_PRK\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KP/A_HRC_13_13_PRK_E.pdf).
- 27 There are more than a hundred NHRIs today. See Int'l Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions* 75 (2004), available at [www.ichrp.org/files/reports/17/102\\_report\\_en.pdf](http://www.ichrp.org/files/reports/17/102_report_en.pdf) [hereinafter *Performance and Legitimacy*]. For a directory of NHRIs, see Int'l Coordinating Comm. of Nat'l Insts. for the Promotion & Protection of Human Rights, *Directory of Institutions*, <http://nhri.ohchr.org/EN/National/DirectoryOfInstitutions/Pages/default.aspx> (last visited Jan. 30, 2012).
- 28 See Office of the High Comm'r for Human Rights, *UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions vi* (2010), available at [www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf](http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf) [hereinafter *UNDP-OHCHR Toolkit*].
- 29 See Richard Carver, *A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law*, 10 Hum. Rts. L. Rev. 1, 2 (2010); Linda C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 Harv. Hum. Rts. J. 1 (2000); Office of the High Comm'r for Human Rights, *Fact Sheet 19, National Institutions for the Promotion and Protection of Human Rights* (1993), available at [www.ohchr.org/Documents/Publications/FactSheet19en.pdf](http://www.ohchr.org/Documents/Publications/FactSheet19en.pdf).
- 30 *Performance and Legitimacy*, *supra* note 27, at 67.
- 31 See Morten Kjaerum, *National Human Rights Institutions Implementing Human Rights* 6-7 (2003), available at [www.humanrights.dk/files/Importerede%20filer/hr/pdf/n\\_h\\_r\\_i\\_h\\_fte\\_eng.pdf](http://www.humanrights.dk/files/Importerede%20filer/hr/pdf/n_h_r_i_h_fte_eng.pdf).
- 32 See Speech by Louise Arbour, U.N. High Comm'r for Human Rights, 19th Annual Meeting of the International Coordinating Committee of National Human Institutions for the Promotion and Protection of Human Rights (Mar. 21, 2007), quoted in Office of the High Comm'r for Human Rights, *Discussion Paper on the Interactions between National Human Rights Institutions and Special Procedures* (June 2007), available at [www.ohchr.org/Documents/Countries/NHRI-SP.pdf](http://www.ohchr.org/Documents/Countries/NHRI-SP.pdf).

- 33 See Anna-Elina Pohjolainen, *The Evolution of National Human Rights Institutions—The Role of the United Nations* 16-20 (2006). For contrasting classifications of human rights institutions, see *id.* at 27 n.55 (describing two other taxonomies).
- 34 *Performance & Legitimacy*, *supra* note 27, at 6.
- 35 *UNDP-OHCHR Toolkit*, *supra* note 28, at 22.
- 36 Kenneth L. Saunders & Hyo Eun (April) Bang, Kennedy School of Government, Harvard University, *A Historical Perspective on U.S. Human Rights Commissions* 5 (Aug. 2007), available at [www.hrcj.org/pdfs/history\\_of\\_hrc.pdf](http://www.hrcj.org/pdfs/history_of_hrc.pdf).
- 37 *Id.*
- 38 *Id.* Their complaints intake may still, in some cases, be limited to anti-discrimination or equality laws. *UNDP-OHCHR Toolkit*, *supra* note 28, at 23.
- 39 Saunders & Bang, *supra* note 36, at 5.
- 40 Principles Relating to the Status of National Institutions (The Paris Principles), G.A. Res. 48/134 ¶ 2, U.N. Doc. A/RES/48/134 (Dec. 20, 1993), available at [www2.ohchr.org/english/law/parisprinciples.htm](http://www2.ohchr.org/english/law/parisprinciples.htm) [hereinafter Paris Principles]. Int'l Coordinating Comm. of Nat'l Insts. for the Promotion & Protection of Human Rights, ICC Statute, available at <http://nhri.ohchr.org/EN/WhoWeAre/News/Lists/News/Attachments/44/ICC%20Statute%20%28as%20amended%2019%20May%202011%29.pdf>. See Appendix G, *infra*, for the full text of the Paris Principles.
- 41 See C. Raj Kumar, *National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights*, 19 Am. U. Int'l L. Rev. 259, 271-75 (2003); Reif, *supra* note 29, at 23-30.
- 42 Several studies focus on NHRIs more broadly (including human rights ombudsman, human rights advisory committee, human rights institute, and human rights commissions). Studies by the International Council on Human Rights Policy have also sought to identify benchmarks of success for NHRIs and provide a critical assessment of NHRI effectiveness.
- 43 The Leadership Conference Education Fund, *Restoring the Conscience of a Nation: A Report on the U.S. Commission on Civil Rights* 6 (2009), available at [www.protectcivilrights.org/pdf/reports/commission/lccref\\_commission\\_report\\_march2009.pdf](http://www.protectcivilrights.org/pdf/reports/commission/lccref_commission_report_march2009.pdf) [hereinafter *Conscience of a Nation*].
- 44 See *infra* notes 303-04 and accompanying text.
- 45 *Conscience of a Nation*, *supra* note 43, at 4.
- 46 See *id.* at 38-41 (discussing the limited role of the U.S. Commission on Civil Rights (USCCR) and noting that the USCCR report contained no findings or recommendations). Two of the Commissioners voted against adoption of the USCCR report regarding reauthorization of the Voting Rights Act and in a dissenting statement noted that through the report, the Commission “abandon[ed] its historic support for the extension of Sections 4 through 9 and 203 of the Voting Rights Act.” See U.S. Comm’n on Civil Rights, *Voting Rights Enforcement and Reauthorization* 91 (2006), available at [www.usccr.gov/pubs/051006VRAStatReport.pdf](http://www.usccr.gov/pubs/051006VRAStatReport.pdf). During the reauthorization process, the Commission did not participate during House hearings. Two Commissioners spoke during Senate hearings, but they were not speaking on the Commission’s behalf. See, e.g., *Conscience of a Nation*, *supra* note 43 at 40 (“Commissioners Thernstrom and Kirsanow testified before the Senate Judiciary Committee, but were speaking on their own behalf, not for the commission.”); Peter N. Kirsanow, Testimony Before the S. Judiciary Comm. on The Continuing Need for Section 203’s Provisions for Limited English Proficiency Voters (June 13, 2006), available at [www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da1160929&wit\\_id=e655f9e2809e5476862f735da1160929-1-4](http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da1160929&wit_id=e655f9e2809e5476862f735da1160929-1-4).
- 47 See, e.g., Lawyers’ Comm. for Civil Rights Under Law, *Protecting Minority Voters: The Voting Rights Act at Work 1982-2005* (Feb. 2006), available at [www.lawyerscommittee.org/admin/voting\\_rights/documents/files/0023.pdf](http://www.lawyerscommittee.org/admin/voting_rights/documents/files/0023.pdf); Leadership Conference on Civil & Human Rights, Voting Rights in the States, [www.civilrights.org/voting-rights/vra/states.html](http://www.civilrights.org/voting-rights/vra/states.html) (last visited Jan. 30, 2012) (presenting 14 state-specific reports prepared by lawyers and academics in collaboration with the Leadership Conference).
- 48 *Conscience of a Nation*, *supra* note 43, at 44. Proposals to expand the mandate to include human rights were first made by Theodore Hesburgh, an early member of the Commission. Theodore M. Hesburgh, *The Commission on Civil Rights—And Human Rights*, 34 Rev. of Pol. 291, 303-04 (1972). This proposal has been taken up by others as well. See, e.g., Mary Frances Berry, *And Justice For All: The United States Commission on Civil Rights and the Continuing Struggle for Freedom in America* 175, 338 (2009).
- 49 See generally *Conscience of a Nation*, *supra* note 43; Jocelyn C. Frye et al., *The Rise and Fall of the United States Commission on Civil Rights*, 22 Harv.C.R.-C.L. L. Rev. 449 (1987).  
The recommendations of the U.S. Commission on Civil Rights Taskforce convened by the Leadership Conference and the HuRAH Campaign, discussed in Appendix A.1, *infra*, developed from the initial recommendations made in the Leadership Conference’s 2009 report, *supra* note 43.
- 50 See Saunders & Bang, *supra* note 36. Forty-eight of the commissions are state-based and the others are in localities.

- 51 The three treaties the U.S. has ratified (the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)) each require the U.S. to report periodically to the relevant U.N. monitoring body, providing information on the status of compliance with the rights set forth in the treaty and progress made since the last reporting period.
- In ratifying these treaties, the U.S. has noted that in light of federalism, human rights treaty obligations will be implemented by state and local governments to the extent that they exercise jurisdiction over such matters. 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992) (recognizing that state and local governments shall implement obligations under the ICCPR in areas within their jurisdiction); 140 Cong. Rec. S7643-02 (daily ed. June 24, 1994) (same understanding regarding CERD); 136 Cong. Rec. 136 S17486-01 (daily ed. Oct. 27, 1990) (same understanding for Convention Against Torture CAT).
- 52 U.S. Const. art. VI, § 2.
- 53 See Columbia Law School's Human Rights Institute & the International Association of Human Rights Agencies (IAOHRA), Under the Auspices of the Campaign for a New Domestic Human Rights Agenda, *State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality Through an International Human Rights Framework* (2009), available at [www.ushrnetwork.org/sites/default/files/State\\_and\\_Local\\_Human\\_Rights\\_Agencies\\_Report.pdf](http://www.ushrnetwork.org/sites/default/files/State_and_Local_Human_Rights_Agencies_Report.pdf) [hereinafter *Advancing Opportunity and Equality*]; see also Risa E. Kaufman, *State and Local Commissions as Sites for Domestic Human Rights Implementation, in Human Rights in the United States: Beyond Exceptionalism* 89 (Shareen Hertel & Kathryn Libal eds., 2011) [hereinafter *Sites for Domestic Implementation*]; Risa E. Kaufman, *By "Some Other Means": Considering the Executive's Role in Fostering Subnational Human Rights Compliance*, 33 *Cardozo L. Rev.* (forthcoming 2012) [hereinafter *Some Other Means*].
- 54 Border Network for Human Rights, *Behind Every Abuse Is a Community: U.S./Mexico Border Report to the United Nations Human Rights Committee Regarding the United States' Compliance with the International Covenant on Civil and Political Rights* 4 (2006), available at [www.borderaction.org/PDFs/BNHR\\_Report\\_to\\_HRC.pdf](http://www.borderaction.org/PDFs/BNHR_Report_to_HRC.pdf) [hereinafter *Behind Every Abuse*]. As of 2008, the Network has trained over 100 human right community organizers and counted over 500 immigrant families in its membership, all throughout Texas and New Mexico. Fernando Garcia, *Human Rights and Immigrants in the U.S.: An Experience of Border Immigrant Communities*, 22 *Geo. Immigr. L.J.* 405, 411 (2008).
- 55 These recommendations are drawn from the U.S.-Mex. Border & Immigration Task Force, *Accountability, Community Security and Infrastructure on the U.S.-Mexico Border: Policy Priorities for 2009-2010* 2 (2009), available at [www.bnhr.org/reports/accountability-community-security-and-infrastructure-on-the-u-s-mexico-border](http://www.bnhr.org/reports/accountability-community-security-and-infrastructure-on-the-u-s-mexico-border) [hereinafter *Accountability, Community Security*] and the Border Network for Human Rights, *U.S.-Mexico Border Policy Report, Effective Border Policy: Security, Responsibility And Human Rights at the U.S.-Mexico Border* 12-19 (2008), available at [www.utexas.edu/law/centers/humanrights/borderwall/communities/municipalities-US-Mexico-Border-Policy-Report.pdf](http://www.utexas.edu/law/centers/humanrights/borderwall/communities/municipalities-US-Mexico-Border-Policy-Report.pdf) [hereinafter *Border Policy Report*].
- 56 See 2008 CERD Observations, *supra* note 25 (calling for federal, state and local coordination); U.N. Comm. on the Rights of the Child, *Concluding Observations: United States*, ¶ 13, U.N. Doc. CRC/C/OPSC/USA/CO/1 (June 25, 2008), available at [www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.USA.CO.1.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.USA.CO.1.pdf) [hereinafter *2008 CRC Observations*]; U.N. 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 [www2.ohchr.org/english/issues/racism/groups/african/docs/A-HRC-15-18.pdf](http://www2.ohchr.org/english/issues/racism/groups/african/docs/A-HRC-15-18.pdf) [hereinafter *Experts on People of African Descent Report*]; *UPR Outcomes Report*, *supra* note 25.
- 57 Catherine Powell drafted the initial convening proposal while a Fordham Law School Professor and Director of the International Law and the Constitution Initiative at the Leitner Center on International Law and Justice. The Human Rights Institute at Columbia Law School and The Leadership Conference on Civil and Human Rights assumed responsibility for the planning and execution of the Global Exchange when Ms. Powell took a leave of absence to join the U.S. Department of State.
- 58 This comparative approach to commissions, using the classifications of the Expanded Mandate Model, the Indivisibility Model, the Transitional Justice Model and the Federalist Model was developed as part of an ongoing analysis of NHRIs by Catherine Powell.
- 59 The Chatham House Rule dictates that “[w]hen a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.” See Chatham House, [www.chathamhouse.org.uk/about/chathamhouserule/](http://www.chathamhouse.org.uk/about/chathamhouserule/).
- 60 As described in Part V.A, *infra*, participants reached consensus that current advocacy efforts should focus on creating a human rights commission in the United States but also agreed that in the future advocacy for another type of human rights institution could be appropriate. Because the consensus around essential elements would apply to any effective human rights body, no matter what form it takes, the terms institution, commission and body are used interchangeably in this report.
- 61 The case study research in many cases is drawn from literature compiled by the commissions themselves and should be viewed as descriptive, though critical perspectives on programs and initiatives are included where available and appropriate.
- 62 The precise scope of this authority was not defined during the convening.

- 63 See, e.g., *Amnesty International, National Human Rights Institutions: Amnesty International's Recommendations on Effective Protection and Promotion of Human Rights* 7 (2001), available at [www.amnesty.org/en/library/asset/IOR40/007/2001/en/2f94804b-d8e3-11dd-ad8c-f3d4445c118e/ior400072001en.pdf](http://www.amnesty.org/en/library/asset/IOR40/007/2001/en/2f94804b-d8e3-11dd-ad8c-f3d4445c118e/ior400072001en.pdf), advocating that
- NHRIs should enjoy the broadest possible mandate to address human rights concerns as set out in international human rights law and standards. The mandate should not be defined solely in terms of those rights that are specifically provided for in the country's constitution.... Rather NHRIs should take as their frame of reference the definitions of human rights as set out in international human rights instruments and standards, whether or not the state has ratified the relevant treaties. The mandate should include the power to protect and promote economic, social and cultural rights, as well as civil and political rights.
- Office of the High Comm'r for Human Rights, *Appointment Procedures of National Human Rights Institutions: Paper for the Discussion of the International Coordinating Committee of National Human Rights Institutions* 19 (2006), available at [www.nhri.net/pdf/OHCHR\\_Appointments\\_Procedure\\_Paper\\_E.pdf](http://www.nhri.net/pdf/OHCHR_Appointments_Procedure_Paper_E.pdf) (same); see also Paris Principles, *supra* note 40, at "Competence and Responsibilities," § 2.
- 64 See *Performance and Legitimacy*, *supra* note 27, at 75-76 (listing issues that include labor, land, discrimination, education, and detention conditions).
- 65 *Id.* at 76.
- 66 See U.N. Comm. on Econ., Soc. & Cultural Rights, *General Comment No. 10, The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/1998/25 (Dec. 10, 1998), available at [www.unhcr.org/refworld/docid/47a7079c0.html](http://www.unhcr.org/refworld/docid/47a7079c0.html) (calling for NHRIs to take the following steps regarding economic, social and cultural rights: promote specific education programs, provide technical assistance, identify national benchmarks to measure progress, examine complaints and assess compliance with the International Covenant on Economic, Social and Cultural Rights, including by reviewing existing and draft legislation); Office of the U.N. High Comm'r for Human Rights, *Professional Training Series No. 12, Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions* (2005), available at [www.ohchr.org/Documents/Publications/training12en.pdf](http://www.ohchr.org/Documents/Publications/training12en.pdf) (fleshing out the Committee's recommendations, providing examples of economic, social and cultural rights efforts in practice, and discussing barriers to implementation); see also Kumar, *supra* note 4, at 758-80; Orest Nowosad, *National Institutions and the Protection of Economic, Social and Cultural Rights*, in *The Protection Role of National Human Rights Institutions* 179-92 (Bertrand G. Ramcharan ed., 2005).
- 67 See, e.g., *Sonia Cardenas, Emerging Global Actors: The United Nations and National Human Rights Institutions*, 9 *Global Governance* 23, 38 (2003) (noting that "NHRIs may not be able to accommodate the social expectations they help to generate" and "[i]n the end, these institutions could replicate what already is evident in international human rights institutions: if NHRIs are not independent, representative and organizationally powerful, they could be more adept at promoting rather than protecting human rights norms.").
- 68 Notably, South Africa has not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- 69 The Protection of Human Rights Act of 1993, No. 10 of 1994, available at <http://indiacode.nic.in/> [hereinafter PHRA], defines human rights as "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India." While the International Covenants are not generally enforceable unless Parliament takes steps to incorporate them through statute, the Supreme Court has held that international treaties setting out fundamental rights—that do not conflict with the constitution—are enforceable if India signs them, even in the absence of enabling legislation. See Vijayashri Sripati, *India's National Human Rights Commission: A Shackled Commission?*, 18 *B.U. Int'l L.J.* 1, 13 (2000) (discussing *Vishaka et al. v. State of Rajasthan*, A.I.R. 1997 S.C. 3011, 3014 (India)).
- 70 Indian Const. arts. 12-51. Directive Principles include the rights to work and fair wages, to equal pay for equal work, to improved living conditions, to education, to participation in cultural life, and to the highest attainable standards of physical and mental health. The courts have played a role in diluting the distinction between the Principles and fundamental rights through a series of judicial interpretations since the 1970s. The Supreme Court has read the "fundamental" aspects of the Directive Principles into the enforceable rights, utilizing the fundamental rights to personal liberty and to life as hooks for enforcing the Directive Principles. The Supreme Court has found that the "expression 'personal liberty' guaranteed in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man." See *Maneka Gandhi v. Union of India*, A.I.R. 1978 S.C. 597 (India). The right to life has also been construed broadly, to include "the right to livelihood because, no person can live without the means of living." See *Olga Tellis v. Bombay Municipal Corporation*, A.I.R. 1986 S.C.180 (India). The rights to life and to liberty have both a negative and positive dimension. See *Unnikrishnan v. State of Andhra Pradesh*, 1993 A.I.R. 2178 (India).
- 71 See *infra* note 221. The ICESCR has not been fully incorporated into domestic legislation. The government's position is that various laws implement provisions of the ICESCR. U.N. Comm. on Econ., Soc. & Cultural Rights, *State Party Report: Australia*, ¶ 7, U.N. Doc. E/1994/104/Add.22 (July 23 1998), available at [www.unhcr.org/refworld/pd/3f6caa017.pdf](http://www.unhcr.org/refworld/pd/3f6caa017.pdf).
- 72 These functions include promoting awareness and understanding of discrimination related matters, conducting inquiries, reporting to Parliament, preparing guidelines to promote better compliance with these laws, conducting educative activities and related functions.
- 73 Australian Human Rights Commission Act 1986, § 10A (1), available at [www.comlaw.gov.au/Details/C2012C00072](http://www.comlaw.gov.au/Details/C2012C00072) [hereinafter *AHRC Act*].
- 74 *Id.* § 46(4)(a).
- 75 John Hucker, *A (New) Human Rights Commission for Canada?*, *Human Rts. Res. & Educ. Bull.* No. 44 at 5 (Dec. 2002).
- 76 Saskatchewan Human Rights Code, S.S. ch. S-241, § 3 (1979), as amended. For a full list of functions, see *id.* § 25.



- 77 See, e.g., *Performance and Legitimacy*, *supra* note 27, at 102.
- 78 See Paris Principles, *supra* note 40, at “Competence and Responsibilities,” § 3(iv) (An NHRI should “[d]raw the attention of the Government to situations in any part of the country where human rights are violated and mak[e] proposals to it for initiatives to put an end to such situations”); *id.* at “Methods of Operation,” §§ (a), (b) (an NHRI shall “[h]ear any person and obtain any information and any documents necessary for assessing situations falling within its competence”).
- 79 Consultations can and should be held on topics of general concern but also on a more regular basis to assess how a human rights commissions’ programs are working.
- 80 During the convening, the majority view was that subpoena power is essential for a U.S. human rights institution, while the minority position was that it is highly preferable but not required. It was further suggested that enforcement of the subpoenas should not be dependent on the Attorney General (see 42 U.S.C. § 1975a (e)(2) (2006)), but should be enforceable by the institution itself.
- 81 See *Conscience of a Nation*, *supra* note 43, at 14.  
The USCCR used subpoenas often. One of the most recent examples was the use of subpoenas to pursue investigations after the 2000 Presidential elections. See U.S. Comm’n on Civil Rights, *Report on Voting Irregularities in Florida During the 2000 Presidential Election*, ch. 9 (June 2001) (investigations included “three days of hearings, more than 30 hours of testimony, 100 witnesses, and a systematic review of more than 118,000 pages of pertinent documents”), available at [www.usccr.gov/pubs/vote2000/report/ch9.htm](http://www.usccr.gov/pubs/vote2000/report/ch9.htm).
- 82 Examples of commissions that partner with subnational entities are described further in Part IV.B.6, *infra*.
- 83 The Australian Human Rights and Equality Opportunity Commission Act explicitly empowers the Commission to “examine enactments for the purpose of ascertaining whether the enactments are inconsistent with or contrary to any human right and report to the Minister the results of any such examination” and “inquire into acts or practices that may be inconsistent with or contrary to any human right.” See Human Rights and Equal Opportunity Commission Act 1986 (HREOC Act), §§ 11(1)(e)-(f). For general information on the Australian Commission, see John Von Doussa, *The Protection Role of the Australian Human Rights Commission*, in *The Protection Role of National Human Rights Institutions*, *supra* note 66, at 1, 1-22; see also AHRC Act, *supra* note 73.
- 84 The Inquiry, led by a full-time Commissioner and two individuals appointed as experts, was conducted when the Commission was known as the Human Rights and Equality Opportunity Commission. A name change occurred in 2008. For the full report on the Inquiry, see Austl. Human Rights Comm’n, *A Last Resort? The National Inquiry into Children in Immigration Detention* (2004), available at [www.hreoc.gov.au/human\\_rights/children\\_detention\\_report/report/index.htm](http://www.hreoc.gov.au/human_rights/children_detention_report/report/index.htm).
- 85 Evidence collected from across the country included 346 public submissions, 64 confidential submissions, 68 public hearings sessions with 114 witnesses, 17 confidential sessions with 41 witnesses and 29 focus groups. The Commission was able to procure myriad documents from the Australasian Correctional Management Pty Limited, using the powers granted under section 21 of the HREOC Act. These documents informed many of its findings and recommendations. See *id.*
- 86 Other national inquiries have been held on topics including Pregnancy and Work, Homeless Children, People with Mental Illnesses and the Separation of Indigenous Children from their Families.
- 87 See S. Afr. Human Rights Comm’n, *Complaints Handling Manual* (2006), available at [http://baseswiki.org/en/Complaints\\_Handling\\_Manual,\\_South\\_African\\_Human\\_Rights\\_Commission,\\_2006](http://baseswiki.org/en/Complaints_Handling_Manual,_South_African_Human_Rights_Commission,_2006).
- 88 See S. Afr. Human Rights Comm’n, *Economic & Social Rights Report, SANGOCO’s Report on Poverty and Human Rights*, vol. V (1997-1998), available at [www.sahrc.org.za/home/21/files/Reports/ESR%20Sangogo%20Report%20on%20Poverty%20and%20Human%20Rights1997-1998.pdf](http://www.sahrc.org.za/home/21/files/Reports/ESR%20Sangogo%20Report%20on%20Poverty%20and%20Human%20Rights1997-1998.pdf); see also University of Minn. Human Rights Resource Center, Module 23: National Human Rights Commissions and ESC RIGHTS, [www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module23.htm](http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module23.htm) (last visited Jan. 30, 2012). But see Dejo Olowu, *Human Rights and the Avoidance of Domestic Implementation: The Phenomenon of Non-Justiciable Constitutional Guarantees*, 69 Sask. L. Rev. 39, 73 & n.138 (2006) (noting two critiques: that there was little transparency surrounding the hearings and the objective measurements of poverty have been challenged); see also Human Rights Watch, *Protectors or Pretenders? Government Human Rights Commissions in Africa* (2001).
- 89 See Amnesty International, *supra* note 63, at 21. Reports should also be more widely published to the general public, since reporting to the legislature alone may not lead to concrete results. Legislative inaction has occurred in India and South Africa. See, e.g., Avani Mehta Sood, *Gender Justice Through Public Interest Litigation: Case Studies from India*, 41 Vand. J. Transnat’l L. 833, 902-03 (2008) (discussing India).
- 90 See Paris Principles, *supra* note 40, at “Competence and Responsibilities,” §§ 3(a)(i)-(iii).
- 91 Kjaerum, *supra* note 31, at 19; Carver, *supra* note 29, at 9; see also Paris Principles, *supra* note 40, at “Competence and Responsibilities,” § 3(b) (calling for the power “[t]o promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.”).
- 92 Int’l Council on Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions* 20 (2005), available at [www.ohchr.org/Documents/Publications/NHRlen.pdf](http://www.ohchr.org/Documents/Publications/NHRlen.pdf) [hereinafter *Assessing the Effectiveness*].
- 93 Kjaerum, *supra* note 31, at 11.

- 94 While Kjaerum argues for basing positions on the international standards laid out in treaties ratified by the country in which an NHRI is established, see *id.*, the author believes this is unduly restrictive and core human rights treaties, whether signed or ratified, should guide a commissions work.
- 95 *Id.* at 12.
- 96 These include age, disability, gender, race, religion and belief, sexual orientation and gender reassignment. See Equality Act, 2010, c. 15 (U.K.). This mandate expands beyond the areas of discrimination previously handled by the three commissions that were merged to form the Equality and Human Rights Commission (EHRC). However, much of the EHRC staff was previously employed by its precursor commissions. See Bob Niven, *The EHRC: Transformational, Progressively Incremental or a Disappointment?*, 79 Pol. Q. 17, 25 (2008) (explaining that in 2008, the 500 staff posts included 370 employees from the three prior equality commissions).
- 97 Human Rights are defined as the rights set forth in the Human Rights Act, 1998, c.42 (U.K.) (which incorporates the European Convention on Human Rights domestically and enables U.K. courts to rely on the Convention) and “other human rights.” Equality Act, 2006, c. 3, § 9.2 (U.K.).
- 98 See *id.* §§ 13, 11.
- 99 *Id.* sch. 1, ¶ 32; sch. 2, ¶ 15.
- 100 See Equality & Human Rights Comm’n, Counter-Terrorism Bill, Including Proposals to Allow Detention for up to 42 Days, [www.equalityhumanrights.com/legal-and-policy/parliamentary-briefings/crime-security-policing-and-counter-terrorism-bill-briefings/counter-terrorism-bill-including-proposals-to-allow-detention-for-up-to-42-days/](http://www.equalityhumanrights.com/legal-and-policy/parliamentary-briefings/crime-security-policing-and-counter-terrorism-bill-briefings/counter-terrorism-bill-including-proposals-to-allow-detention-for-up-to-42-days/) (last visited Jan. 30, 2012).
- 101 In the U.K., both the EHRC and the idea of Human Rights more broadly have faced criticism on the basis that the Human Rights Act impedes counter-terrorism efforts. On occasion, the Commission has engaged with the public debate, defending the importance of human rights protections. See, e.g., Blair ‘to Amend Human Rights Law’, BBC News, May 14, 2006, available at [http://news.bbc.co.uk/2/hi/uk\\_news/4770231.stm](http://news.bbc.co.uk/2/hi/uk_news/4770231.stm); Press Release, Equality & Human Rights Comm’n, Political Parties Debate the Future of Human Rights Legislation (Mar. 1, 2010) available at [www.equalityhumanrights.com/media-centre/2010/march/political-parties-debate-the-future-of-human-rights-legislation/](http://www.equalityhumanrights.com/media-centre/2010/march/political-parties-debate-the-future-of-human-rights-legislation/).
- 102 This is in part due to lack of internal political will to address human rights as well as a hostile climate towards human rights among the general population. For example, the Commission played a role in a recent government inquiry into replacing the Human Rights Act with a Bill of Rights for Britain despite the fact that the creation of the Bill of Rights was extremely controversial among human rights organizations, who saw it as a rollback in legal protections.
- 103 The National Human Rights Commission (NHRC) was established by the PHRA, which also established State Human Rights Commissions and district level Human Right Courts. Its mission is two-fold: to investigate and recommend remedies for human rights violation and to promote and develop a human rights culture. The definition of human rights in the PHRA is described in note 69, *supra*.
- 104 The NHRC is specifically mandated to submit annual reports to the National Government or State Government concerned, as well as additional reports as it sees fit. PHRA, *supra* note 69, ch. IV, § 20 (1). The government is then required to submit these reports to Parliament along with a memorandum of action detailing the steps that have been, or will be, taken to respond to the NHRC’s recommendations along with an explanation of why recommendations were accepted or rejected.
- 105 Human Rights Watch, *Hidden Apartheid: Caste Discrimination Against India’s Untouchables 2-7* (2007), available at [www.chrgj.org/docs/IndiaCERDShadowReport.pdf](http://www.chrgj.org/docs/IndiaCERDShadowReport.pdf).
- 106 Nat’l Human Rights Comm’n, *Report on Prevention of Atrocities Against Scheduled Castes* (2004), available at [www.nhrc.nic.in/Publications/reportKBSaxena.pdf](http://www.nhrc.nic.in/Publications/reportKBSaxena.pdf). The NHRC’s 2004 report was an important source for a 2007 Human Rights Watch report on caste discrimination in India. Human Rights Watch, *supra* note 105, at 15.
- 107 Martin Macwan, Nat’l Human Rights Comm’n, *Dalit Rights* (2006), available at <http://nhrc.nic.in/publications/dalitrighths.pdf>.
- 108 For example, in February 2010, the NHRC ordered the state of Orissa to address multiple complaints of discrimination and violence, particularly forced labor, giving the state two months to investigate and initiate legal action against those responsible. The NHRC had previously condemned labor practices in the state, and received an unsatisfactory response from officials. See Press Release, Nat’l Human Rights Comm’n, NHRC Rejects Orissa Government’s Claims on Bonded Labour; Asks the Authorities to Take Action Against the Practitioners of ‘Bartan’ (Feb. 10, 2010), available at <http://nhrc.nic.in/dispArchive.asp?fno=1951>. The NHRC also recommended that the State “consider appropriate action” against officials who failed to intervene in cases of violence and forced labor. *Id.*
- 109 See Paris Principles, *supra* note 40, at “Competence and Responsibilities,” §§ 3 (f)-(g).
- 110 See Amnesty International, *supra* note 63, at 8.
- 111 See PHRA, *supra* note 69, ch. 3, §§ 12(h)-(i).
- 112 See, e.g., Nat’l Human Rights Comm’n, *Know Your Rights: Bonded Labor*, available at [www.nhrc.nic.in/Publications/KnowYourRights.pdf](http://www.nhrc.nic.in/Publications/KnowYourRights.pdf).
- 113 See Sujata Manohar, [India’s] National Human Rights Commission: A Survey, Halisbury L. Monthly (Dec. 2008), available at [www.constitutionalvalues.org/pdf/docs/analysis/Manohar,%20National%20Human%20Rights%20Commission.A%20Survey.pdf](http://www.constitutionalvalues.org/pdf/docs/analysis/Manohar,%20National%20Human%20Rights%20Commission.A%20Survey.pdf); see also Nat’l Human Rights Comm’n, *Human Rights Education at the Universities and College Level*, available at [www.nhrc.nic.in/Publications/HREduCollege.pdf](http://www.nhrc.nic.in/Publications/HREduCollege.pdf).

- 114 AHRC Act, *supra* note 73, § 11(1)(g) (a core function of the Commission is “to promote an understanding and acceptance, and the public discussion, of human rights in Australia”).
- 115 This Commissioner is responsible for reviewing the impact of laws and policies developed by the federal, state, and territorial governments on indigenous communities, consulting with indigenous and non-indigenous communities on relevant issues, raising awareness of indigenous issues in Australia, reporting on indigenous social justice and native title matters, and generally promoting and protecting the rights of indigenous individuals. Austl. Human Rights Comm’n, Information Sheet: Social Justice and Human Rights for Aboriginal and Torres Strait Islander Peoples, [www.humanrights.gov.au/social\\_justice/info\\_sheet.html](http://www.humanrights.gov.au/social_justice/info_sheet.html) (last visited Jan. 30, 2012).
- 116 *Id.*
- 117 Austl. Human Rights Comm’n, Pod Rights, [www.hreoc.gov.au/podcasts/index.html](http://www.hreoc.gov.au/podcasts/index.html) (last visited Jan. 30, 2012).
- 118 Austl. Human Rights Comm’n, rightsED, [www.hreoc.gov.au/education/rightsed.html](http://www.hreoc.gov.au/education/rightsed.html) (last visited Jan. 30, 2012).
- 119 Equality & Human Rights Comm’n, *Our Strategic Plan 2009-2012* at 35 (2009), available at [www.equalityhumanrights.com/uploaded\\_files/strategicplan2009-2012parliamentary.pdf](http://www.equalityhumanrights.com/uploaded_files/strategicplan2009-2012parliamentary.pdf). The Equality Act 2006, *supra* note 97, § 13(1)(g), empowers the Commission to undertake research.
- 120 *Id.* In 2008 alone, the Commission was involved in more than 20 research projects. See E.U. Agency for Fundamental Rights, *National Human Rights Institutions in the EU Member States: Strengthening the Fundamental Rights Architecture in the EU* 42 n.350 (2010), available at [www.constitutionalvalues.org/pdf/docs/analysis/European%20Union%20Fundamental%20Rights%20Agency.National%20Human%20Rights%20Institutions%20in%20EU%20Member%20States.pdf](http://www.constitutionalvalues.org/pdf/docs/analysis/European%20Union%20Fundamental%20Rights%20Agency.National%20Human%20Rights%20Institutions%20in%20EU%20Member%20States.pdf).
- 121 Equality & Human Rights Comm’n, Research Reports, [www.equalityhumanrights.com/publications/our-research/research-reports/](http://www.equalityhumanrights.com/publications/our-research/research-reports/) (last visited Jan. 30, 2012); Equality & Human Rights Comm’n, Human Rights Research, [www.equalityhumanrights.com/human-rights/policy-and-research/human-rights-research/](http://www.equalityhumanrights.com/human-rights/policy-and-research/human-rights-research/) (last visited Jan. 30, 2012).
- 122 See, e.g., Equality & Human Rights Comm’n, *Social Housing Allocation and Immigrant Communities* (2009), available at [www.equalityhumanrights.com/uploaded\\_files/ehrc\\_report\\_-\\_social\\_housing\\_allocation\\_and\\_immigrant\\_communities.pdf](http://www.equalityhumanrights.com/uploaded_files/ehrc_report_-_social_housing_allocation_and_immigrant_communities.pdf) (independent research was carried out by the Institute for Public Policy Research). This report concludes that social housing policies are targeting those most in need, including the homeless, the elderly and families with children.
- 123 PHRA, *supra* note 69, § 12(g).
- 124 The study is referenced on the Commission’s website. See Nat’l Human Rights Comm’n, Research Studies and Projects, <http://nhrc.nic.in/ResearchStudies&Project.htm> (last visited Jan. 30, 2012).
- 125 See Paris Principles, *supra* note 40, at “Competence and Responsibilities,” §§ (3)(a)(1), 3(b).
- 126 See Anu Menon, San Francisco Dep’t on the Status of Women, *Human Rights in Action: San Francisco’s Local Implementation of the United Nations’ Women’s Treaty* (CEDAW) 5-7 (2010), available at [www.sfgov3.org/Modules/ShowDocument.aspx?documentid=314](http://www.sfgov3.org/Modules/ShowDocument.aspx?documentid=314); *Advancing Opportunity and Equality*, *supra* note 53, at 8.
- 127 S. Afr. Const. § 184(3).
- 128 See D. Horsten, *The Role Played by the South African Human Rights Commission’s Economic and Social Rights Reports in Good Governance in South Africa*, 9 Potchefstroom Electronic L. J. 1, 4, 5 (2006), available at [www.puk.ac.za/opencms/export/PUK/html/fakulteite/regte/per/issues/2006\\_2\\_Horsten\\_art.pdf](http://www.puk.ac.za/opencms/export/PUK/html/fakulteite/regte/per/issues/2006_2_Horsten_art.pdf).
- 129 Charlotte McClain, *The SA Human Rights Commission and Socioeconomic Rights: Facing the Challenges*, ESR Rev. vol. 3, no. 1, at 9 (2002), available at [www.communitylawcentre.org.za/clc-projects/socio-economic-rights/esr-review-1/previous-editions/ESR%20Review%20Vol.3%20No.2%20September%202002.pdf](http://www.communitylawcentre.org.za/clc-projects/socio-economic-rights/esr-review-1/previous-editions/ESR%20Review%20Vol.3%20No.2%20September%202002.pdf). There has been some criticism of how these protocols have been implemented, focusing on the lack of civil society engagement and government bodies reluctance to comply with requests, which has in turn led to the SAHRC’s use of its subpoena power. See Human Rights Watch, *supra* note 88, at 308-09; Linda Mokate, *Monitoring Economic and Social Rights in South Africa: The Role of the SAHRC*, [www.inwent.org/ef-texte/human\\_rights/mokate.htm](http://www.inwent.org/ef-texte/human_rights/mokate.htm) (last visited Jan. 30, 2012).
- 130 These obligations are part of the Human Rights Act. See Equality Act 2006, *supra* note 97, § 9. The Commission’s focus remains on equality law as separate from human rights, rather than addressing the two as complementary.
- 131 *Id.* § 42 (3)(a); Equality Act 2010, *supra* note 96, sched. 23, § 10(2).
- 132 A single comprehensive equality act was passed in 2010. The Equality Act 2010 streamlines U.K. discrimination and equality law into one piece of legislation. It also strengthens individual protections and sets a new standard for those who provide public services to treat everyone, with dignity and respect. See Equality & Human Rights Comm’n, Equality Act Codes of Practice, [www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/](http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/) (last visited Jan. 30, 2012). The EHRC was heavily involved in the passage of the new Equality Act and plays an ongoing role in implementation. It has published briefings on the Act, supporting provisions that require public authorities to consider socioeconomic disadvantage in the planning and monitoring of the services they provide, held consultations on the related Codes of Practice and spoken out publicly in support of the Act. See Equality & Human Rights Comm’n, Equality Act, [www.equalityhumanrights.com/legal-and-policy/equality-act/](http://www.equalityhumanrights.com/legal-and-policy/equality-act/) (last visited Jan. 30, 2012).

- 133 See, e.g., E.U. Agency for Fundamental Rights, *supra* note 120 at 39, 47, 48; Equality & Human Rights Comm'n, Equality Act Codes of Practice, *supra* note 132.
- 134 Equality & Human Rights Comm'n, Equality Impact Assessments, [www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/tools-equal-pay/equality-impact-assessments/](http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/tools-equal-pay/equality-impact-assessments/) (last visited Jan. 30, 2012).
- 135 For other strands of the equality law, Assessments are optional. *Id.*; see also Equality & Human Rights Comm'n, Our Assessments of Impact, [www.equalityhumanrights.com/about-us/our-equality-scheme/our-equality-impact-assessments/](http://www.equalityhumanrights.com/about-us/our-equality-scheme/our-equality-impact-assessments/) (last visited Jan. 30, 2012).
- 136 Equality & Human Rights Comm'n, *Meeting the Equality Duty in Policy and Decision-Making 7-17* (Jan. 2012), available at [www.equalityhumanrights.com/uploaded\\_files/EqualityAct/PSED/policy\\_and\\_dm\\_guide\\_update.doc](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/policy_and_dm_guide_update.doc).
- 137 For purposes of this Report, "Indigenous Governing Bodies" include governing bodies of Indian Nations and Alaska Natives as well as representatives of Native Hawaiians.
- 138 See generally Tara J. Melish, *From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies*, 34 Yale J. Int'l L. 389 (2009); *Sites for Domestic Implementation*, *supra* note 53.
- 139 The Paris Principles call for each NHRI to "establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions." See Paris Principles, *supra* note 40, at "Methods of Operation," § (e).
- 140 See Amnesty International, *supra* note 63, at 21-22.
- 141 See Part V.B and Appendix A.2, *infra*, for in-depth recommendations on federal coordination with state and local governments.
- 142 See *infra* note 189 and accompanying text for additional information on the ICC. Accredited commissions in federalist States include the Australian Human Rights Commission, the Human Rights Commission of Malaysia, the National Human Rights Commission of Nepal, the National Human Rights Commission of India, the South African Human Rights Commission, the Canadian Human Rights Commission, the Comision Nacional de los Derechos Humanos de Mexico and the Nigerian Human Rights Commission. *Chart of the Status of National Institutions Accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights* (August 2011), available at [www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf).
- 143 See Lyal S. Sunga, *National Human Rights Institutions in Federal States: A Study for the United Nations Office of the High Commissioner for Human Rights* (forthcoming) (manuscript at 2, on file with author).
- 144 See *id.*
- 145 Within federal jurisdiction are First Nations Peoples, commerce, interprovincial issues, criminal law and divorce. Provinces, in contrast, have jurisdiction over issues including marriage, civil rights, education, courts and welfare.
- 146 The Quebec Human Rights Charter provides for economic and social rights protections and explicitly protects individuals from discrimination on the basis of social condition. It is also mandated to cooperate with any organization dedicated to the promotion of human rights and freedoms in and outside of Quebec. Charter of Human Rights and Freedoms, R.S.Q., ch C-12 (1975), as amended.
- 147 See Saskatchewan Human Rights Comm'n, About Us, [www.shrc.gov.sk.ca/aboutus.htm](http://www.shrc.gov.sk.ca/aboutus.htm) (last visited Jan. 30, 2012). The Saskatchewan Human Rights Code prohibits discrimination on the following grounds: age, ancestry, aboriginal status, perceived race, color, nationality, place of origin, family status, marital status, mental disability, physical disability, receipt of public assistance, religion, sexual orientation, pregnancy or gender. See Saskatchewan Human Rights Code, *supra* note 76, ch. S-24.1.
- 148 While the Canadian system is complaint based, there exists potential for broader policy change and impact beyond the interests of individual claimants. Indeed, a number of commissions, such as the Ontario Commission, include systemic advocacy and human rights policy development in their mandates. See Ontario Human Rights Comm'n, About Us, [www.ohrc.on.ca/en/commission/about](http://www.ohrc.on.ca/en/commission/about). The Saskatchewan Commission's most explicit function tied to economic and social rights is receiving complaints related to discrimination on the basis of public assistance, which is narrower than social condition. Saskatchewan Human Rights Code, *supra* note 76, ch. S-241, §§ 2(1)(m.01)(xiv)-(m.1).
- 149 Canadian Association of Statutory Human Rights Agencies, [www.cashra.ca/](http://www.cashra.ca/) (last visited Jan. 30, 2012).

- 150 Each province and territory is bound by treaties and there is a federal body, the Continuing Committee of Officials on Human Rights, charged with ensuring federal-provincial-territorial consultation and coordination on human rights issues, including treaty reporting. Provincial commissions at one time served as representatives to this body, which is responsible for drafting Canada's human rights treaty compliance reports. However, the provincial commissions have become less involved and no longer serve as part of the Committee. The Committee has faced criticism because it lacks transparency, does not have sufficient authority to make policy decisions and is not open to civil society. See Standing S. Comm. on Human Rights, *Promises to Keep: Implementing Canada's Human Rights Obligations* (Dec. 2001), available at [www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/huma-e/rep-e/rep02dec01-e.htm#l](http://www.parl.gc.ca/37/1/parlbus/commbus/senate/Com-e/huma-e/rep-e/rep02dec01-e.htm#l); U.N. Human Rights Council, Working Group on the Universal Periodic Review, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1—Canada*, U.N. Doc. A/HRC/WG.6/4/CAN/1 (Jan. 5, 2009), available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CA/A\\_HRC\\_WG6\\_4\\_CAN\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CA/A_HRC_WG6_4_CAN_1_E.pdf)
- The Continuing Committee does allow for provinces and territories to draft their own submissions to the federal government for inclusion in Canada's periodic treaty reports. Canadian Heritage, *How Canada Works with the United Nations*, [www.pch.gc.ca/pgm/pdp/hrp/inter/un-eng.cfm](http://www.pch.gc.ca/pgm/pdp/hrp/inter/un-eng.cfm) (last visited Jan. 30, 2012).
- 151 See Karen Mosher, Sec'y Gen. of the Can. Human Rights Comm'n, Address During the Plenary Session of Canada's Universal Periodic Review, at the Human Rights Council's 11th Regular Session in Geneva (June 9, 2009), available at [www.chrc-ccdp.ca/media\\_room/speeches-eng.aspx?id=546](http://www.chrc-ccdp.ca/media_room/speeches-eng.aspx?id=546). Despite the existence of a federal body charged with ensuring intra-governmental consultations on human rights, officials in some provinces and territories remain unaware of their human rights obligations, highlighting the need for stronger national mechanisms. U.N. reviews have highlighted the need to raise human rights awareness among these officials. See, e.g., U.N. Human Rights Council, Working Group on the Universal Periodic Review, *Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1—Canada*, ¶ 3, U.N. Doc. A/HRC/WG.6/4/CAN/2 (Dec. 17, 2008), available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CA/A\\_HRC\\_WG6\\_4\\_CAN\\_2\\_E.PDF](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CA/A_HRC_WG6_4_CAN_2_E.PDF); U.N. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Canada*, ¶ 9, U.N. Doc. CRC/C/15/Add.215 (Oct. 3, 2003), available at <http://rightsofchildren.ca/wp-content/uploads/2009/05/canada-co2.pdf>.
- 152 See Treaty Relations Comm'n of Manitoba, Memorandum of Understanding Between Canadian Human Rights Commission and Manitoba Human Rights Commission and Treaty Relations Commission of Manitoba (Apr. 27, 2010), available at [www.trcm.ca/mou/HR.pdf](http://www.trcm.ca/mou/HR.pdf). The National Aboriginal Initiative has its own headquarters in Winnipeg, Manitoba, separate from the National Commission's main offices in Ottawa, Ontario. As part of the Initiative, the Commission engages in legislative and public advocacy, recommends government actions, investigates and resolves complaints, forms policies such as the Aboriginal Employment Preference Program, conducts educational campaigns, and coordinates with provincial commissions on aboriginal initiatives.
- 153 Notably, two of the subnational commissions monitor compliance with their respective human rights legislation. The Australian Capital Territory Commission monitors compliance with the Human Rights Act 2004. See Austl. Capital Territory Human Rights Comm'n, *About the ACT Human Rights & Discrimination Commissioner*, [www.hrc.act.gov.au/humanrights/?PHPSESSID=6cd18394f16ba14d629fe81b882c2fc7](http://www.hrc.act.gov.au/humanrights/?PHPSESSID=6cd18394f16ba14d629fe81b882c2fc7) (last visited Jan. 30, 2012). The Victorian Commission monitors compliance with the Charter of Human Rights and Responsibilities. See Victorian Equal Opportunity & Human Rights Comm'n, *Human Rights Charter*, [www.humanrightscommission.vic.gov.au/index.php?option=com\\_k2&view=item&layout=item&id=19&Itemid=147](http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&layout=item&id=19&Itemid=147) (last visited Jan. 30, 2012).
- 154 Where a complaint falls within both national and local law, a petitioner may choose the forum in which to lodge a complaint. When a subnational commission receives a complaint outside its jurisdiction, it will often refer the complaint to the AHRC. Certain types of discrimination are only covered in national legislation (such as religion, mental illness or political opinion) and a complaint on those grounds may therefore only be dealt with by the AHRC. Equal Opportunity Comm'n of S. Austl., *Where Do I Complain—State or Federal*, [www.eoc.sa.gov.au/eo-you/discrimination-laws/where-do-i-complain-state-or-federal](http://www.eoc.sa.gov.au/eo-you/discrimination-laws/where-do-i-complain-state-or-federal) (last visited Jan. 30, 2012); Austl. Human Rights Comm'n, *A Guide to Australia's Anti-discrimination Laws*, [www.humanrights.gov.au/info\\_for\\_employers/law/index.html](http://www.humanrights.gov.au/info_for_employers/law/index.html) (last visited Jan. 30, 2012).
- 155 E-mail from Cecilia White, Manager, Community and Business Programs, S. Austl. Equal Opportunity Comm'n to Monique Cormier, Researcher, Columbia Law School Human Rights Institute (June 23, 2009, 11:51 EST) (on file with author).
- 156 Its purposes are to "coordinate responses among all members to issues of common interest; and exchange information between agencies and with relevant other Australian, international and non-governmental agencies and organizations working in the human rights area." Austl. Human Rights Comm'n, *Submission of the Human Rights and Equal Opportunity Commission to the Senate Legal and Constitutional Legislation Committee on the Australian Human Rights Commission Legislation Bill 2003* (Apr. 24, 2003), available at [www.hreoc.gov.au/legal/submissions/ahrc/submission.html](http://www.hreoc.gov.au/legal/submissions/ahrc/submission.html) [hereinafter HREOC Submission].
- 157 Press Release, *Anti-Discrimination Commission Queensland, Human Rights Agencies Call for Action on UN Racial Discrimination Report* (Nov. 11, 2010), available at [www.adcq.qld.gov.au/media/10UNreport.html](http://www.adcq.qld.gov.au/media/10UNreport.html).
- 158 See HREOC Submission, *supra* note 156.

- 159 The Commission has made submissions for Australia's review under the ICCPR and the ICESCR. See Austl. Human Rights Comm'n, Submission to the United Nations Human Rights Committee, [www.humanrights.gov.au/legal/submissions/sj\\_submissions/un\\_human\\_rights.html](http://www.humanrights.gov.au/legal/submissions/sj_submissions/un_human_rights.html) (last visited Jan. 30, 2012); Austl. Human Rights Comm'n, Submission to the Committee on Economic, Social and Cultural Rights, [www.humanrights.gov.au/legal/submissions/sj\\_submissions/un\\_econ\\_social\\_cultural\\_rights.html](http://www.humanrights.gov.au/legal/submissions/sj_submissions/un_econ_social_cultural_rights.html) (last visited Jan. 30, 2012).
- 160 Australia had not supported the Declaration at its introduction. Emma Rodgers, *Aust. Adopts UN Indigenous Declaration*, ABC News, Apr. 3, 2009, [www.abc.net.au/news/stories/2009/04/03/2534210.htm](http://www.abc.net.au/news/stories/2009/04/03/2534210.htm).
- 161 See Tom Calma, Aboriginal and Torres Strait Islander Soc. Justice Comm'r, Austl. Human Rights Comm'n, Address at the Launch of the Report of the Steering Committee on the Creation of a New National Representative Body for Aboriginal and Torres Strait Islander Peoples (Aug 27, 2009), available at [www.humanrights.gov.au/about/media/speeches/social\\_justice/2009/20090827\\_our\\_future.html](http://www.humanrights.gov.au/about/media/speeches/social_justice/2009/20090827_our_future.html). Article 18 of the Declaration provides that indigenous peoples "have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions." United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), available at [www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/61/295](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/61/295); see also Austl. Human Rights Comm'n, Questions and Answers on the UN Declaration on the Rights of Indigenous Peoples (April 2009), [www.humanrights.gov.au/social\\_justice/declaration/DRIP\\_Q\\_A\\_03April2009.doc](http://www.humanrights.gov.au/social_justice/declaration/DRIP_Q_A_03April2009.doc); Austl. Human Rights Comm'n, *Human Rights and Aboriginal and Torres Strait Islander Peoples*, available at [www.humanrights.gov.au/letstalkaboutrights/downloads/HRA\\_ATSI.pdf](http://www.humanrights.gov.au/letstalkaboutrights/downloads/HRA_ATSI.pdf).
- 162 The Commissioner established a Steering Committee consisting of 10 leaders from aboriginal communities, who then recruited 100 aboriginal community members to take part in workshops and consultations. The Steering Committee spent a year engaged in consultations, using online surveys and focus groups to widely canvas the indigenous community for input.
- 163 See Austl. Human Rights Comm'n, *In Our Hands: Creating a Sustainable National Representative Body for Aboriginal and Torres Strait Islander People* (Aug. 27, 2009), [www.humanrights.gov.au/social\\_justice/repbody/report2009/report.pdf](http://www.humanrights.gov.au/social_justice/repbody/report2009/report.pdf). The Minister for Indigenous Affairs has stated the government's commitment to establishing the body. The federal government plans to provide initial funding to create the body, and then modest continual funding thereafter. Press Release, Jenny Macklin, Minister for Families, Hous., Cmty. Servs. and Indigenous Affairs, National Representative Body for Indigenous Australians (Aug. 27, 2009), available at [www.jennymacklin.fahcsia.gov.au/transcripts/2009/Pages/parlhousedoorstop\\_27aug09.aspx](http://www.jennymacklin.fahcsia.gov.au/transcripts/2009/Pages/parlhousedoorstop_27aug09.aspx).
- 164 The Commonwealth Secretariat has advised that NHRIs should form alliances with NGOs "to enhance accessibility and effectiveness." Commonwealth Secretariat, *National Human Rights Institutions: Best Practice* 31 (2001). The Paris Principles also highlight the importance of developing partnerships with NGOs. See Paris Principles, *supra* note 40, at "Methods of Operation," § (g); see also *Assessing the Effectiveness*, *supra* note 92, at 15-16, 23 (suggesting a number of concrete ways that NHRIs can work with civil society). The International Council on Human Rights Policy suggests that NHRIs develop formal memoranda of understanding with their stakeholders in this regard. *Id.* at 23.
- 165 See, e.g., *Performance and Legitimacy*, *supra* note 27, at 73, 76-77, 87.
- 166 See, e.g., Anne Smith, *The Unique Position of National Human Rights Institutions: A Mixed Blessing?*, 28 Hum. Rts. Q. 904, 910, 930-33 (2006).
- 167 *Performance and Legitimacy*, *supra* note 27, at 98.
- 168 See, e.g., Brian Burdekin, *National Human Rights Institutions in the Asia-Pacific Region* 14-15 (2007) (citation omitted) [hereinafter *NHRIs in the Asia-Pacific*].
- 169 See, e.g., Human Rights Watch, *Mexico's National Human Rights Commission, A Critical Assessment* 113 (Feb. 2008), available at [www.hrw.org/en/reports/2008/02/12/mexico-s-national-human-rights-commission](http://www.hrw.org/en/reports/2008/02/12/mexico-s-national-human-rights-commission) (noting that the national Commission's failure to fulfill its mandate is due its overall lack of accountability, and its failure to collaborate with civil society and the international community more specifically).
- 170 In 1999 the Asia Pacific Forum hosted a workshop on NHRI and NGO relations that resulted in the adoption of the Kandy Programme of Action, committing participants to take steps to further these relationships. Asia Pacific Forum of National Human Rights Institutions, *The Kandy Program of Action: Cooperation Between National Institutions and Non-Governmental Organisations* (1999), available at <http://bangkok.ohchr.org/files/NHRICSOs-Consultation/Kandy-Conclusions.doc>.
- 171 NGO partners can provide expertise on particular issues, contribute to education and training efforts, and deepen a commission's understanding of the issues that face particular vulnerable groups and communities. See, e.g., *NHRIs in the Asia-Pacific*, *supra* note 168, at 60.
- 172 See Application for New Accreditation of the Equality and Human Rights Commission (Great Britain) to the International Coordinating Committee of National Human Rights Institutions 9-13 (2008) (on file with author) [hereinafter *EHRC Accreditation Application*]; see also E.U. Agency for Fundamental Rights, *supra* note at 120, at 43.
- 173 A task force was put in place to garner support for a unified body and address concerns from various stakeholders. See Sarah Spencer, *Equality and Human Rights Commission: A Decade in the Making*, 79 Pol. Q., Vol. 9 (2008).
- 174 See Equality Act 2006, *supra* note 97, §§ 3, 5, 12, 14. For details on the Codes of Practices, see *supra* notes 131-33 and accompanying text.
- 175 See *id.* §§ 13, 18.
- 176 See *id.* sched. 1, ¶¶ 11-12.

- 177 See *id.* § 17.
- 178 From 2008-2009, the EHRC provided £10.9 million in funding to 285 organizations. See Press Release, Equality & Human Rights Comm'n, Investing in the Future: Commission Announces 10 million Funding Programme for Voluntary and Community Sector (May 15, 2009), available at [www.equalityhumanrights.com/scotland/scottish-news/press-releases-2009/investing-in-the-future-commission-announces-10-million-funding-programme-for-voluntary-and-community-sector/](http://www.equalityhumanrights.com/scotland/scottish-news/press-releases-2009/investing-in-the-future-commission-announces-10-million-funding-programme-for-voluntary-and-community-sector/). This amounted to approximately one-seventh of the EHRC's budget. See EHRC Accreditation Application, *supra* note 172, at 9.
- 179 Alan Travis, *Equality Commission to Face 'Major Surgery'*, Guardian, Mar. 21, 2011, [www.guardian.co.uk/society/2011/mar/21/equality-commission-faces-major-surgery](http://www.guardian.co.uk/society/2011/mar/21/equality-commission-faces-major-surgery).
- 180 According to advocates, little effort has been made to highlight the value of human rights and build support for implementation or to combat negative media. Since its inception, the EHRC has lacked the political will to highlight the complementary nature of equality and human rights law, both internally and externally, and many equality groups maintain a belief that human rights is distinct from their equality-focused work.
- 181 Mexico's national commission also has a Citizen Advisory Council, appointed by the Senate and charged with overseeing and amending the internal guidelines and rules of procedure. See Human Rights Watch, *supra* note 169, at 116-17. Human Rights Watch specifically recommended promoting greater civil society participation in the appointments process for the President of the Commission and the Advisory Council. *Id.* at 9. It has also criticized the Advisory Council's policies, which limit public access to information and meaningful analysis of the Commission's work. *Id.* at 87, 116-18, 122-24.
- 182 See Emilio Alvarez Icaza Longoria, President, Fed. Dist. Human Rights Comm'n (Mexico City), Remarks at Harvard University, John F. Kennedy School of Government Executive Session on Human Rights Commissions and Criminal Justice 18 (May 12, 2006), available at [www.hrccj.org/pdfs/emilio\\_alvarez\\_transcript1.pdf](http://www.hrccj.org/pdfs/emilio_alvarez_transcript1.pdf).
- 183 See *Performance and Legitimacy*, *supra* note 27, at 98. The Federal District Commission has been more successful in its collaboration efforts than the national commission, making it "a more active and sensitive participant in joint activities relating to a variety of vulnerable groups: children, people with disabilities, people with HIV/AIDS, sex workers, the elderly and others." *Id.* at 50-51.
- 184 *Id.*
- 185 See Amnesty International, *supra* note 63, at 8; Carver, *supra* note 29, at 9; see also Paris Principles, *supra* note 40, at "Competence and Responsibilities," §§ 3(b)-(e); Kumar, *supra* note 41, at 274 (noting that the Copenhagen Declaration underscores the role of NHRIs in working to ensure "governments ratify international human rights treaties, remove reservations contrary to the object and purpose of the treaty and ensure consistency between domestic laws, programs and policies and international human rights standards"). The Copenhagen Declaration was adopted at the Sixth International Conference for National Institutions for the Promotion and Protection of Human Rights in 2002. See Sixth Int'l Conference for Nat'l Insts. for the Promotion and Protection of Human Rights, *Copenhagen Declaration* (2002), cited in Kjaerum, *supra* note 31, at 18. NHRIs have more recently laid out principles for engagement at an ICC hosted conference in Berlin (Berlin Recommendations). See *Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies*, U.N. Doc. HRI/MC/2007/3, available at [www.osce.org/odihr/26111](http://www.osce.org/odihr/26111) [hereinafter *Berlin Recommendations*].
- 186 See Carver, *supra* note 29, at 3; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85; Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.
- 187 See Amnesty International, *supra* note 63, at 8-9; Richard Carver, *supra* note 29, at 2. NHRIs themselves have developed guidelines calling on treaty bodies to recognize the independent standing of NHRIs. See *Berlin Recommendations*, *supra* note 185; Paris Principles, *supra* note 40, at "Competence and Responsibilities," §§ 3(d)-(e).
- Several U.N. Committees have issued comments on the appropriate role of NHRIs in reporting efforts, however these are not consistent. See U.N. Comm. on the Elimination of Racial Discrimination, *General Recommendation 17: Establishment of National Institutions to Facilitate the Implementation of the Convention*, ¶ 2, U.N. Doc. A/48/18 (Mar. 25, 1993), available at [www.unhcr.ch/tbs/doc.nsf/0/4872085cc3178e3bc12563ee004beb99](http://www.unhcr.ch/tbs/doc.nsf/0/4872085cc3178e3bc12563ee004beb99) (NHRIs "should be associated with the preparation of reports and possibly included in government delegations in order to intensify the dialogue between the Committee and the State party concerned"); cf. U.N. Comm. on the Rights of the Child, *General Comment No. 2: The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, ¶¶ 20, 21, U.N. Doc. CRC/GC/2002/2, available at [www2.ohchr.org/english/bodies/crc/docs/GC2\\_en.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC2_en.doc) ("NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies" and "it is not appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee"); U.N. Comm. on the Elimination of Discrimination Against Women, *Results of the 40th Session of the Committee on the Elimination of Discrimination Against Women*, ¶ 13, U.N. Doc. E/CN.6/2008/CRP.1 (Feb. 11, 2008), available at [www2.ohchr.org/english/bodies/cedaw/docs/E.CN.6.2008.CRP.1.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/E.CN.6.2008.CRP.1.pdf) (NHRIs should "provide comments and suggestions on a State party's report in any way they see fit").
- 188 See *Performance and Legitimacy*, *supra* note 27, at 100; *Assessing the Effectiveness*, *supra* note 92, at 19.
- 189 See *Performance and Legitimacy*, *supra* note 27, at 101-03; see also Kjaerum, *supra* note 31, at 16-17.

- 190 One example is the Australian Human Rights Commission's participation in Race Relations Roundtables. See *supra* Part IV.B.6. Additionally, the Canadian National Commission provides staff and training to other commissions, including in South Africa, India and Mexico, to foster strengthened institutions and information sharing.
- 191 The Commission gleans this power from its mandate to "encourage good practice in relation to human rights" and "give advice or guidance." See Office of the High Comm'r for Human Rights, Working Paper 27-28 (draft) (on file with author).
- 192 *Id.*
- 193 For a description of the RUDs, see Disability Rights Watch UK, CRPD Reservations, [www.disabilityrightswatchuk.org/front/uk.php](http://www.disabilityrightswatchuk.org/front/uk.php) (last visited Jan. 30, 2012).
- 194 Its participation has included drafting a shadow report after NGO consultation, participation in the review itself and joining NGO briefing sessions. Participation in the 2008 review on U.K. compliance with the Convention on the Elimination of Discrimination Against Women (CEDAW) was particularly robust. See Office of the High Comm'r Working Paper, *supra* note 191 at 28.
- 195 See Austl. Human Rights Comm'n, Protocol of Engagement with U.N. Agencies, [www.hreoc.gov.au/about/protocols/engagement\\_with\\_un\\_agencies.html](http://www.hreoc.gov.au/about/protocols/engagement_with_un_agencies.html) (last visited Jan. 30, 2012).
- 196 Austl. Human Rights Comm'n, *Review of Australia's Fourth Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (2009), available at [www2.ohchr.org/english/bodies/cescr/docs/info-ngos/AHRC\\_Australia\\_42.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/AHRC_Australia_42.pdf).
- 197 *Performance and Legitimacy*, *supra* note 27, at 100 (noting that playing an advisory role requires "a delicate balance").
- 198 See Austl. Human Rights Comm'n, *Taking Stock of Australia's Human Rights Record, Submission by the Australian Human Rights Commission under the Universal Periodic Review Process* 1 n.3 (2010), available at [www.hreoc.gov.au/upr/AHRC\\_UPR\\_guide.pdf](http://www.hreoc.gov.au/upr/AHRC_UPR_guide.pdf).
- 199 See Commonwealth Secretariat, *supra* note 164, at 18 (stating that NHRIs should be granted the power to "do all things that are necessary or convenient to be done in connection with the performance of its functions"); *Assessing the Effectiveness*, *supra* note 92, at 21 (recommending that commissions have the "power to act on individual or collective issues at their own initiative").
- 200 See U.N. Centre for Human Rights, *Professional Training Series No. 4, National Human Rights Institutions, A Handbook on the Strengthening of National Institutions for the Promotion and Protection of Human Rights* 23, ¶ 125 (1995), available at [www.ohchr.org/Documents/Publications/training4en.pdf](http://www.ohchr.org/Documents/Publications/training4en.pdf).
- 201 HREOC Act, *supra* note 83, § 13.
- 202 PHRA, *supra* note 69, ch. III, § 12.
- 203 Canadian Human Rights Act, R.S.C., ch. H(6), ¶ 27(1)(h) (1985).
- 204 It is recommended that commissions with a complaint handling function allow individuals and groups that are directly affected, as well as their representatives, to file complaints. See *Assessing the Effectiveness*, *supra* note 92, at 21 (noting that civil society organizations should be allowed to file complaints if they have prior consent); Commonwealth Secretariat, *supra* note 164, at 21. To some, this function is considered essential. See *Performance and Legitimacy*, *supra* note 27, at 72 (noting that "[t]he Office of the United Nations High Commissioner for Human Rights does not consider an institution to be a proper NHRI if it does not have an individual complaints mechanism" and the function is valuable because it "is much more accessible to the ordinary person than the alternative route of legal proceedings").
- 205 This means that no public body (or private body carrying out public functions) should be excluded from its jurisdiction. Nor should statutes of limitations prevent a commission from reviewing complaints of serious human rights abuses, particularly where there is a reasonable explanation for delay.
- 206 Resolution can occur through publication of recommendations (including for reparations), conciliation, arbitration, a commission's own quasi-judicial procedure or referral to a court or tribunal. See U.N. Centre for Human Rights, *supra* note 200, at 33-34, ¶¶ 268-82.
- 207 See *id.* ¶ 279 ("Even if the actual enforcement power is entrusted to another body, the power to make enforceable orders will benefit the national institution by considerably strengthening its authority with regard to complaints of human rights violations."); see also Center for Global Peace, *Checklist of Considerations for the Establishment of National Human Rights Institutions & Mechanisms* 3, available at [www1.american.edu/cgp/IHRC/pdfs/NHRIEstablish.pdf](http://www1.american.edu/cgp/IHRC/pdfs/NHRIEstablish.pdf).
- 208 See *Performance and Legitimacy*, *supra* note 27, at 71.
- 209 See *id.* at 71-72.
- 210 Justice (Dr.) A.S. Annand, *The Protection Role of the Indian Human Rights Commission, in The Protection Role of National Human Rights Institutions*, *supra* note 66, at 87, 92. In 2004-2005, the Commission disposed of over 85,000 cases, almost half of which were dismissed and many of which were handled by giving directions to authorities for remedial measures. Nat'l Human Rights Comm'n, Annual Report 2004-2005 3, 24 (2005), available at <http://nhrc.nic.in/Documents/AR/ARO4-05ENG.pdf>.
- 211 PHRA, *supra* note 69, ch. III, § 12; ch. VIII, § 36. See Sripati, *supra* note 69, for the contours of the definition of human rights.
- 212 PHRA, *supra* note 69, ch. III, §§ 13, 14.



- 213 *Id.* ch. III, § 18.
- 214 *Id.* ch VIII, § 36.
- 215 This is if the complaint falls within the state commission's jurisdiction. *Id.*
- 216 One constraint on the NHRC's powers is that it is precluded from investigating complaints levied against members of the armed forces. It is only authorized to seek a report from the central government relating to the allegation and to make recommendations based on that report. These recommendations may include the payment of interim compensation. See Annand, *supra* note 210, at 95. Another limitation on the NHRCs ability to conduct investigations is that it must rely on police and government staff. PHRA, *supra* note 69, ch. III, §§ 19, 36; ch. II, § 11(b) (the central government must make available "such police and investigative staff under an officer ... and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission").
- 217 See Sood, *supra* note 89, at 901-02; Annand, *supra* note 210, at 105.
- 218 The Commission is required to send its inquiry report and recommendations to the relevant public official or entity for comment and then to publish the report, any comments and the action taken or to be taken by the relevant authority. PHRA, *supra* note 69, ch. III, § 18. The NHRC's recommendations for payment of compensation have been successful, often complied with. Between 1993 and 2005, the Commission recommended interim relief in 632 cases, with awards totaling \$2.2 million. NHRIs in the Asia-Pacific, *supra* note 168, at 72 n.67.
- 219 Nat'l Human Rights Comm'n, *supra* note 210.
- 220 See Nat'l Human Rights Comm'n, *Annual Report 1995-96* (1996), available at [http://nhrc.nic.in/ar95\\_96.htm](http://nhrc.nic.in/ar95_96.htm); Nat'l Human Rights Comm'n, *Annual Report 1997-98* (1998), available at [http://nhrc.nic.in/ar97\\_98.htm](http://nhrc.nic.in/ar97_98.htm); Asia Pacific Forum, India: NHRC Raises Concerns over Starvation Deaths, Jan. 19, 2011, [www.asiapacificforum.net/news/india-nhrc-raises-concerns-over-starvation-deaths.html](http://www.asiapacificforum.net/news/india-nhrc-raises-concerns-over-starvation-deaths.html) (last visited Jan. 30, 2012).
- 221 See Austl. Human Rights Comm'n, Complaints About Breaches of Human Rights, [www.hreoc.gov.au/complaints\\_information/HREOCA\\_breaches.html](http://www.hreoc.gov.au/complaints_information/HREOCA_breaches.html) (last visited Jan. 30, 2012) [hereinafter Breaches of Human Rights]. Discrimination on grounds of race, color, nationality, social origin, sex, marital status, pregnancy, sexual preferences, religion, disability, trade union activity and criminal record, among others, are prohibited. AHRC Act, *supra* note 73, ch. 3.
- Breaches of human rights refer to actions by the Commonwealth or one of its agencies that infringe upon the human rights instruments referenced in the Australian Human Rights Commission Act. *Id.* § 3. These are the ICCPR, the CRPD, the CRC, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the Declaration on the Rights of Mentally Retarded Persons and the Declaration on the Rights of Disabled Persons. See Austl. Human Rights Comm'n, Human Rights Explained: Fact Sheet 1: Defining Human Rights, [www.hreoc.gov.au/education/hr\\_explained/1\\_defining.html](http://www.hreoc.gov.au/education/hr_explained/1_defining.html) (last visited Jan. 30, 2012). Australia is also a party to CERD, CEDAW and the ICESCR.
- 222 The potential outcomes of conciliation include a formal apology, review of antidiscrimination policies or the payment of compensation. For a general discussion of complaints and conciliation, see Von Doussa, *supra* note 83, at 5-8.
- 223 Breaches of Human Rights, *supra* note 221; AHRC Act, *supra* note 73, § 45-46.
- 224 Graeme Innes AM, Human Rights Comm'r, Remarks at the ANU Conference on Australian Bill of Rights: The ACT and Beyond (June 21, 2006), available at [www.hreoc.gov.au/about/media/speeches/human\\_rights/20062106\\_charter.htm](http://www.hreoc.gov.au/about/media/speeches/human_rights/20062106_charter.htm).
- 225 *Performance and Legitimacy*, *supra* note 27 at 73-74.
- 226 *Assessing the Effectiveness*, *supra* note 92, at 22; see Brian Burdekin, *Human Rights Commissions, in Human Rights Commissions and Ombudsman Offices: National Experiences Throughout the World* 801, 818 (Kamal Hossain et al. eds., 2000) [hereinafter *Human Rights Commissions and Ombudsman Offices*].
- 227 See E.U. Agency for Fundamental Rights, *supra* note 120, at 38 n.302.
- 228 Equality Act 2006, *supra* note 97, § 28(4).
- 229 Section 7 of Britain's Human Rights Act limits standing of victims of human rights violations. Under the Act, the Commission is not authorized to bring a suit, though it may have standing to institute judicial review proceedings on other grounds in the course of which it can cite HRA violations. See Human Rights Act, *supra* note 97.
- 230 These proceedings must be filed within three months of the action that is challenged, giving claimants a small window to pursue their claim.
- 231 Equality Act 2006, *supra* note 97, § 30; Equality & Human Rights Comm'n, Human Rights Legal Powers, [www.equalityhumanrights.com/legal-and-policy/human-rights-legal-powers/](http://www.equalityhumanrights.com/legal-and-policy/human-rights-legal-powers/) (last visited Jan. 30, 2012).
- 232 The Commission intervenes in cases against government bodies in the U.K. and at the European Court of Justice (ECJ). In a 2008 domestic case brought by a minority women's group to challenge a local council's defunding effort, the EHRC intervened, providing submissions on the Council's obligations under the law and codes related to the Race Equality Duty. *R (Kaur and Shah) v. London Borough of Ealing*, [2008] EWHC 2062 (Admin). For a list of ECJ interventions, see Equality & Human Rights Comm'n, Summary of the Commission's Interventions in the European Court of Human Rights, [www.equalityhumanrights.com/uploaded\\_files/humanrights/ecthrs\\_interventions.pdf](http://www.equalityhumanrights.com/uploaded_files/humanrights/ecthrs_interventions.pdf) (last visited Jan. 30, 2012).

- 233 Equality & Human Rights Comm'n, Age Regulations Legal Challenge (The 'Heyday' Case), [www.equalityhumanrights.com/legal-and-policy/legal-updates/age-regulations-legal-challenge-the-heyday-case/](http://www.equalityhumanrights.com/legal-and-policy/legal-updates/age-regulations-legal-challenge-the-heyday-case/) (last visited Jan. 30, 2012).
- 234 PHRA, *supra* note 69, § 18.
- 235 See Annand, *supra* note 210, at 101-03.
- 236 Sonia Cardenas, *Adaptive States: The Proliferation of National Human Rights Institutions* (Carr Center for Human Rights Policy, Working Paper No.T-01-04 23, 2001), available at [www.hks.harvard.edu/cchrp/Web%20Working%20Papers/Cardenas.pdf](http://www.hks.harvard.edu/cchrp/Web%20Working%20Papers/Cardenas.pdf).
- 237 See Annand, *supra* note 210, at 99; Manoj Kumar Sinha, *The Role of the National Human Rights Commission of India in Protection of Human Rights*, 18 J. Int'l L. of Peace & Armed Conflict 200, 204 (2005).
- 238 See Annand, *supra* note 210, at 100; Nat'l Human Rights Comm'n, NHRC Decides to Move the Supreme Court in Best Bakery Case; Transfer Application Also Moved in Respect of 4 Other Serious Cases, [www.nhrc.nic.in/disparchive.asp?fno=60](http://www.nhrc.nic.in/disparchive.asp?fno=60) (last visited Jan. 30, 2012).
- 239 See, e.g., U.N. Centre for Human Rights, *supra* note 200, at 35, ¶¶ 295-96; *Human Rights Commissions and Ombudsman Offices*, *supra* note 226, at 818.
- 240 See *NHRIs in the Asia-Pacific*, *supra* note 168, at 64; Austl. Human Rights Comm'n, Intervention in Court Proceedings: The Australian Human Rights Commission Guidelines, [www.hreoc.gov.au/legal/submissions\\_court/intervention/interventions\\_in\\_court\\_proc.html](http://www.hreoc.gov.au/legal/submissions_court/intervention/interventions_in_court_proc.html) (last visited Jan. 30, 2012) [hereinafter AHRC Intervention Guidelines].
- 241 See, e.g., Justice Steven Breyer, The Supreme Court and the New International Law, Remarks at the American Society of International Law 97th Annual Meeting (Apr. 4, 2003), available at [www.humanrightsfirst.org/wp-content/uploads/pdf/Supreme\\_Court\\_New\\_Interl\\_Law\\_Just\\_Breyer%20.pdf](http://www.humanrightsfirst.org/wp-content/uploads/pdf/Supreme_Court_New_Interl_Law_Just_Breyer%20.pdf).
- 242 Human Rights Commission Act 54 of 1994 § 7(e), available at [www.info.gov.za/view/DownloadFileAction?id=71048](http://www.info.gov.za/view/DownloadFileAction?id=71048) (the Commission "may bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons").
- 243 See Brief of Amici Curiae, ¶ 34, *Government of the Republic of South Africa and Others v. Grootboom and Others* 2000 (11) BCLR 1169 (CC), available at [www.escc-net.org/usr\\_doc/Heads\\_of\\_Arguments\\_of\\_Amici\\_Curiae.doc](http://www.escc-net.org/usr_doc/Heads_of_Arguments_of_Amici_Curiae.doc). The Constitutional Court also tasked the SAHRC with monitoring compliance with its decision in the case. See Judgment of the Constitutional Court of South Africa, ¶ 97, *Government of the Republic of South Africa and Others v. Grootboom and Others* 2000 (11) BCLR 1169 (CC), available at [www.escc-net.org/usr\\_doc/High\\_Court\\_Judgment\\_-\\_Full\\_Text.pdf](http://www.escc-net.org/usr_doc/High_Court_Judgment_-_Full_Text.pdf).
- 244 See S. Afr. Human Rights Comm'n, *11th Annual Report for the Year Ended March 2007* 38 (2007), available at [www.sahrc.org.za/home/21/files/Reports/11th%20Annual%20Report2006\\_2007.pdf](http://www.sahrc.org.za/home/21/files/Reports/11th%20Annual%20Report2006_2007.pdf).
- 245 See S. Afr. Human Rights Comm'n, *Report of the Public Hearings on the Right to Basic Education* 20 (2006), available at [www.sahrc.org.za/home/21/files/Reports/Right%20to%20basic%20education%202006.pdf](http://www.sahrc.org.za/home/21/files/Reports/Right%20to%20basic%20education%202006.pdf).
- 246 "The proceedings must involve intervention issues. These are issues of: (a) human rights (as defined in the Australian Human Rights Commission Act 1986 (Cth) ('AHRC Act')); (b) discrimination in employment (as defined in the AHRC Act and the Industrial Relations Reform Act 1993 (Cth)); (c) racial discrimination (as defined in the Racial Discrimination Act 1975 (Cth)); (d) discrimination on the ground of sex, marital status, pregnancy or family responsibilities or discrimination involving sexual harassment (as defined in the Sex Discrimination Act 1984 (Cth)); (e) discrimination on the ground of disability (as defined in the Disability Discrimination Act 1992 (Cth)); or (f) discrimination on the ground of age (as defined in the Age Discrimination Act 2004 (Cth))." AHRC Intervention Guidelines, *supra* note 240.
- 247 The specific criteria for assessment are spelled out in the AHRC Act, *supra* note 73, § 46PV.
- 248 See *NHRIs in the Asia-Pacific*, *supra* note 168, at 71 n.65.
- 249 See Interview by Graeme Innes with Susan Roberts, Executive Dir., Austl. Human Rights Comm'n (Mar. 1, 2010), [www.humanrights.gov.au/podcasts/podrights\\_transcripts/2010/transcript\\_3\\_2010.html](http://www.humanrights.gov.au/podcasts/podrights_transcripts/2010/transcript_3_2010.html); *Minister of State for Immigration and Ethnic Affairs v. Teoh* (1995) 183 CLR 273 (Austl.), available at [www.unhcr.org/refworld/publisher/AUS\\_HC,,,3ae6b70c8,0.html](http://www.unhcr.org/refworld/publisher/AUS_HC,,,3ae6b70c8,0.html).
- 250 Linda Reif, *The Shifting Boundaries of NHRI Definition in the International System, in Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* 52 (Ryan Goodman & Thomas Pegrum eds., 2011).
- 251 NHRI experts have recognized that independence entails several elements, including a distinct legal personality established by law or constitution, financial autonomy, the ability to make decisions regarding day-to-day functioning (such as internal rules and procedures) and the authority to publish reports and recommendations without review by other entities. See *NHRIs in the Asia-Pacific*, *supra* note 168, at 43-44; U. N. Centre for Human Rights, *supra* note 200, at 10-11, ¶¶ 68-72.
- 252 For an in-depth discussion of the challenges that NHRIs face in maintaining independence from government and civil society while, at the same time, remaining accountable, see Smith, *supra* note 166.
- 253 See Paris Principles, *supra* note 40, at "Composition and Guarantees of Independence and Pluralism," § 2.
- 254 Amnesty International, *supra* note 63, at 23 (noting that funding has been used to punish NHRIs that were out of step with the national government's policies or overly critical and steps should be taken to prevent this).

- 255 U.N. Centre for Human Rights, *supra* note 200, at 11, ¶ 121.
- 256 As some literature notes, it is best to secure funding in founding legislation. *Id.* at 10-11, ¶¶ 73-76, 121. In the U.S., agency funding is determined on an annual basis and cannot be secured in founding legislation.
- 257 Amnesty International, *supra* note 63, at 23.  
Some literature advocates that NHRIs should be authorized to receive funding from private sources and international donors, noting that outside funding may potentially be seen as hindering a commission's independence and guidelines should be created to limit this possibility. See, e.g., *id.* at 23. U.S. agencies are subject to the Federal Antideficiency Act and agencies are unable to make expenditures beyond what is provided in agency regulations or what is authorized through appropriations, unless otherwise authorized by law. See 31 U.S.C. §§ 1341(a), 1342, 1517(a).
- 258 *Assessing the Effectiveness*, *supra* note 92, at 14.
- 259 *Id.* at 14-15; see U.N. Centre for Human Rights, *supra* note 200, at 11, ¶¶ 77-79; Paris Principles, *supra* note 40, at "Composition and Guarantees of Independence and Pluralism," § 1, 3.
- 260 *Assessing the Effectiveness*, *supra* note 92, at 8; Commonwealth Secretariat, *supra* note 164, at 14.
- 261 Amnesty International, *supra* note 63, at 5.
- 262 See *Assessing the Effectiveness*, *supra* note 92, at 14; see also U.N. Centre for Human Rights, *supra* note 200, at 11, ¶ 80.
- 263 Amnesty International, *supra* note 63, at 5; *Assessing the Effectiveness*, *supra* note 92, at 15.
- 264 *Id.* at 14; see also Amnesty International, *supra* note 63, at 5.
- 265 See U.N. Centre for Human Rights, *supra* note 200, at 11-12, ¶¶ 82-85; Amnesty International, *supra* note 63, at 6; Paris Principles, *supra* note 40, at "Composition and Guarantees of Independence and Pluralism," § 1.
- 266 Amnesty International, *supra* note 63, at 5.
- 267 *Id.* at 23.
- 268 See U.N. Centre for Human Rights, *supra* note 200, at 13-14, ¶¶ 98-105.
- 269 See, e.g., NHRIs in the Asia-Pacific, *supra* note 168, at 45-46.
- 270 See U.N. Centre for Human Rights, *supra* note 200, at 13-14, ¶¶ 102-03; *NHRIs in the Asia-Pacific*, *supra* note 168, at 44-45; Amnesty International, *supra* note 63, at 21-22.
- 271 In January of 2011, Barack Obama appointed Roberta Achtenberg and Marty Castro to the Commission. Andrew Ramonas, *Obama Naming Two to Civil Rights Panel*, Main Justice, Jan. 27, 2011, [www.mainjustice.com/2011/01/27/obama-names-two-civil-rights-commission-members/](http://www.mainjustice.com/2011/01/27/obama-names-two-civil-rights-commission-members/) (last visited Jan. 30, 2012).
- 272 Federalism is firmly grounded in the 10th Amendment to the U.S. Constitution, which provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.
- 273 See *supra* note 51 and accompanying text.
- 274 See Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 Am. J. Int'l L. 341, 346 (1995).
- 275 See *Medellin v. Texas*, 552 U. S. 491 (2008) (finding that the Executive lacks authority to compel subnational compliance with a treaty unless there is evidence that the treaty is intended to be self-executing or Congress has acted to create implementing legislation). *Medellin* involved Presidential action to compel state courts to comply with an International Court of Justice (ICJ) decision holding the U.S. in violation of the Vienna Convention of Consular Relations due to the failure of law enforcement officials to inform foreign nationals that they have a right to request that U.S. officials notify the consular office in their home country upon arrest or detention. In response to the decision, President Bush issued a memorandum directing state courts to review the individual cases where the failure to notify had occurred. The Supreme Court held that the international agreements which obligate the U.S. to comply with ICJ decisions are non-self-executing and that the ICJ decision was not directly enforceable in U.S. courts in the absence of implementing legislation.
- 276 *Some Other Means*, *supra* note 53.
- 277 See, e.g., Appendix A.2, *infra*. Notably, many state constitutions offer broader substantive protections than the federal constitution. See generally Martha Davis, *The Spirit of Our Times: State Constitutions and International Human Rights*, 30 N.Y.U. Rev. L. & Soc. Change 359 (2006) (discussing the right to public assistance in New York and North Dakota's provisions for free public education, among others).
- 278 Navajo Nation Human Rights Comm'n, *About Us*, [www.nnhrc.navajo-nsn.gov/](http://www.nnhrc.navajo-nsn.gov/) (last visited Jan. 30, 2012).
- 279 In some instances, however, a tribe itself could be the victim of human rights violations perpetrated by the federal government and would seek advice and recommendations from a national human rights body to address these violations.

- 280 At least one participant raised some concern regarding NHRIs funding state and local agencies, positing that this type of resource allocation structure pre-determines how the commissions will operate and if funding becomes a core NHRI activity, the institution begins to look more like a state entity than an independent body. Additionally, it was stated that funding should come from state and local governments, not the national body.  
The majority of participants, however, supported giving a U.S. human rights commission discretion to providing funding to encourage state and local compliance efforts.
- 281 Such committees should be appointed based on experience and expertise and reflect the diversity of the communities they represent.
- 282 Julie A. Mertus, *Evaluating NHRIs: Considering Structure, Mandate, and Impact*, in *Human Rights, State Compliance, and Social Change*, *supra* note 250, at 74; Peter Rosenblum, *Tainted Origins and Uncertain Outcomes: Evaluating NHRIs*, in *Human Rights, State Compliance, and Social Change*, *supra* note 250, at 297.
- 283 See, e.g., *Assessing the Effectiveness*, *supra* note 92.
- 284 See *supra* Part IV.C.
- 285 The Leadership Conference USCCR Taskforce and the USCCR Subcommittee of the HuRAH Campaign have conducted outreach to USCCR commissioners, as well as to policymakers and legislators, holding panels and briefings on the need to reform and transform the Civil Rights Commission.
- 286 The Taskforce and the Subcommittee have the same chairs and goals. A number of the current reforms proposed jointly by these groups are detailed in Section (b) of this Appendix, *infra*.
- 287 See, e.g., Mary Francis Berry, *supra* note 24; *Behind Every Abuse*, *supra* note 54, at 18, 21; Hesburgh, *supra* note 48, at 303-04.
- 288 *Conscience of a Nation*, *supra* note 43, at 6.
- 289 See, e.g., *id.* at 42; Berry, *supra* note 24; see also Baraka et al., *supra* note 24.
- 290 See generally *Conscience of a Nation*, *supra* note 43; Frye, *supra* note 49. Both pieces provide a nuanced description of the USCCR's history and the factors that have influenced its politicization and decline in productivity. The majority of information provided here is from these two sources. Where other authorities are also relied on, they are referenced in the footnotes.
- 291 Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634 (1957).
- 292 U.S. Comm'n on Civil Rights, *The State of Civil Rights: 1976 35* (1977) ("A clear lesson of the Nation's economic problems of the past few years is that policies designed to achieve full employment and economic stability are as essential in the area of civil rights as they are in improving the economic health and well-being of all Americans.").
- 293 The status of the Commission is such that it has been periodically reauthorized for varying terms throughout its history. See, e.g., Garrine P. Laney, U.S. Congressional Research Serv., *The U.S. Commission on Civil Rights: History, Funding, and Current Issues 2-8* (2009), available at [www.policyarchive.org/handle/10207/bitstreams/20077.pdf](http://www.policyarchive.org/handle/10207/bitstreams/20077.pdf). This lack of permanence has undoubtedly impacted the USCCR staff, who are often unsure of its future.
- 294 See Civil Rights Commission Amendment Act of 1994, Pub. L. No. 103-419, 108 Stat. 4338, § 3(a) (1994).
- 295 The Federal Advisory Committee Act, § 10(5)(e), 5 U.S.C. App. 2 (2000) ("FACA"), provides that advisory committees shall have a life of 2 years but where an Act of Congress establishes a committee, its duration can be provided by law.
- 296 Tensions rose during the Reagan Administration and both the President himself and the Office of Management and Budget sought to limit the Commission's independence.
- 297 See, e.g., Laney, *supra* note 293, at 6. For example, the number of commissioners was increased to eight and the appointments process was changed to allow four Presidential appointments, two House of Representatives appointments and two Senate appointments. Senate confirmations were removed from the process, taking away an important vetting process of potential commissioners.
- 298 See, e.g., Citizens' Comm'n on Civil Rights, *The U.S. Civil Rights Commission During the Bush Administration*, in *New Opportunities: Civil Rights at a Crossroads* 193 (1993).
- 299 In 1983 the Commission had more than 250 full-time permanent employees. By 1991, the staff had been reduced to 79 and the Commission's budget was approximately half of what it had been in the past. The Commission has acknowledged these problems, stating that "[b]ecause the Commission relied upon staff attrition for nearly a decade to forestall budget shortfalls, the agency currently has vacancies in numerous important offices and has little flexibility to fill those positions." U.S. Comm'n on Civil Rights, *Reinvigorating the Nation's Civil Rights Debate: The Strategic Plan of the United States Commission on Civil Rights for Fiscal Years 2008-2013* 9 (2007), available at [www.usccr.gov/pubs/Strategicweb.pdf](http://www.usccr.gov/pubs/Strategicweb.pdf).
- 300 See Laney, *supra* note 293, at 12; U.S. Gov't Accountability Office, *U.S. Commission on Civil Rights: The Commission Should Strengthen Its Quality Assurance Policies and Make Better Use of Its State Advisory Committees 27-31* (2006), available at [www.gao.gov/assets/260/250043.pdf](http://www.gao.gov/assets/260/250043.pdf) [hereinafter GAO Report].

- 301 The closing of regional offices has been blamed for “transform[ing] a relatively decentralized organizational structure with many regional offices into a centralized agency lacking the ability to conduct any significant investigations at the state and local level.” Frye, *supra* note 49, at 495; see also *supra* note 299 (discussing staffing and office cuts).
- 302 See, e.g., Albert McKeon, *Civil Rights Group Faces Rift Over Diversity*, Telegraph (Nashua, N.H.), July 25, 2005, available at 2005 WLNR 27677479 (discussing the 2005 proposal to change State Advisory Committee (SAC) diversity criteria to do away with the requirement that SACs reflect the ethnic, religious and racial diversity of its constituents and noting that “[s]ome [current] SAC chairs suspect partisan politics has come into play” and reporting that the New York SAC chair indicated that “[i]f SACs are not inclusive, committees could have members who possess only business interests”).
- 303 As noted in *Conscience of a Nation*, *supra* note 43, many SACs were unable to function because their charters had expired and were not reauthorized. The Government Accountability Office and the Congressional Research Service have called for an overhaul of the Commission and the SACs in particular. See GAO Report, *supra* note 300; see also Laney, *supra* note 293, at 8, 12-13.
- 304 See Letter from Six Comm’rs of the U.S. Comm’n on Civil Rights to the President and Distinguished Senators (Jun. 16, 2009), available at [www.usccr.gov/correspd/SenateHateCrimes06-16-09.pdf](http://www.usccr.gov/correspd/SenateHateCrimes06-16-09.pdf).
- 305 See U.S. Comm’n on Civil Rights, *Briefing Report: Affirmative Action in American Law Schools* 144, 186-87 (2007), available at [www.usccr.gov/pubs/AALSreport.pdf](http://www.usccr.gov/pubs/AALSreport.pdf).
- 306 *Conscience of a Nation*, *supra* note 43, at 4.
- 307 *Id.* at 43-45.
- 308 *Id.* at 44.
- 309 *Id.* at 43.
- 310 See Appendix A.2.c, *infra* (discussing state and local agency efforts to implement human rights); *Advancing Opportunity and Equality*, *supra* note 53, at 16-17.
- 311 See *Advancing Opportunity and Equality*, *supra* note 53; *Sites for Domestic Implementation*, *supra* note 53; *Some Other Means*, *supra* note 53.
- 312 See *Sites for Domestic Implementation*, *supra* note 53, at 91.
- 313 IAOHRA has both U.S. and Canadian members. There are also national and state-level associations (e.g., National Association of Human Rights Workers and the California Association of Human Relations Organizations).
- 314 The three treaties the U.S. has ratified (the CAT, the ICCPR and CERD) each require the U.S. to report periodically to the relevant U.N. monitoring body, providing information on the status of compliance with the rights set forth in the treaty and progress made since the last reporting period.
- 315 See *supra* notes 51 and 273.
- 316 See San Francisco Human Rights Comm’n, *Discrimination by Omission: Issues of Concern for Native Americans in San Francisco* (2007), available at [www.sf-hrc.org/ftp/uploadedfiles/sfhumanrights/docs/NativeAmericanReport.pdf](http://www.sf-hrc.org/ftp/uploadedfiles/sfhumanrights/docs/NativeAmericanReport.pdf).
- 317 Through its Fair Housing Initiative Program, Education Outreach Initiative, the Department of Housing and Urban Development (HUD) provides discretionary grants to public and private entities to support educational activities that can be national, regional, local, or community-based in scope. HUD provides non-discretionary grants to State and local Fair Housing Enforcement Agencies to support enforcement of housing laws as part of the Fair Housing Assistance Program. See 42 U.S.C. § 3616 (2006); 24 C.F.R. § 125.104.
- 318 See Title VII of the Civil Rights Act § 705(g)(1), 42 U.S.C. § 2000e (2006); 42 U.S.C. § 2000e-8(b) (2006).
- 319 These grants, part of the Department of Justice Immigration Related Unfair Employment Discrimination Education Grant program, are allocated in conjunction with the Equal Employment Opportunity Commission, the Labor Department, and the Small Business Administration. They provide funding to government agencies and non-profit organizations. See 8 U.S.C. § 1324b. The grants require some recipient capacity to meet programmatic objectives and the DOJ Office of Special Counsel provides training to recipients.
- 320 See Letter from Harold Hongju Koh, Legal Adviser, U.S. Dept. of State, to State and Local Human Rights Commissions (May 3, 2010), available at [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) (seeking information for inclusion in the governments periodic reports for the three treaties the U.S. has ratified, CERD, ICCPR and CAT).
- 321 U.S. Human Rights Fund, *supra* note 16, at 40.
- 322 *Id.* at 43-45.
- 323 *Border Policy Report*, *supra* note 55, at 12-19.
- 324 *Id.* at 21.
- 325 For a comprehensive discussion of the recommendations developed by the Border Network for Human Rights, the Border Action Network, and the U.S.-Mexico Border and Immigration Task Force, see *id.* at 21-38.

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- 326 The 2007 STRIVE Act and the 2007 Senate immigration reform proposal reflected some of these recommendations. *Id.* at 5.
- 327 These recommendations are drawn from *Accountability, Community Security*, *supra* note 55, and the *Border Policy Report*, *supra* note 55.
- 328 This includes Customs and Border Protection, Immigration and Customs Enforcement, and Citizenship and Immigration Services.
- 329 See *2008 CERD Observations*, *supra* note 25, ¶ 12.
- 330 If a State Party recognizes the competence of the monitoring committee to receive individual or group communications regarding CERD violations, it has the option to choose that a national body, such as a human rights institution, receive and consider such complaints. See International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195.
- 331 The U.S. has not ratified the Child's Rights Convention itself but has ratified the Optional Protocol on the sale of children, child prostitution and child pornography and the Optional Protocol on the involvement of children in armed conflict.
- 332 See *2008 CRC Observations*, *supra* note 56, ¶ 19.
- 333 Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3. Article 33 further calls for the involvement of civil society in the monitoring process. *Id.* art. 33.3.
- 334 *Experts on People of African Descent Report*, *supra* note 56, at 19, ¶ 88.
- 335 This peer review is based upon three reports: a report submitted by the government of the country under review, a U.N. compilation of all the recommendations made by U.N. human rights mechanisms to the country under review and a U.N. compilation of all the reports submitted by civil society regarding the country's human rights record. For additional information on the Universal Periodic Review (UPR), see [www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx](http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx); [www.state.gov/g/drl/upr/index.htm](http://www.state.gov/g/drl/upr/index.htm); [www.ushrnetwork.org/campaign\\_upr](http://www.ushrnetwork.org/campaign_upr).
- 336 See *UPR Outcomes Report*, *supra* note 25, for these recommendations in full. The eight countries that made general recommendations in this area are Bahrain, Haiti, Germany, Egypt, Ghana, Sudan, Venezuela, Russia. The four countries that focused on the need for state and local coordination are Qatar, the People's Republic of Korea, Ireland and Norway.
- 337 The more than 100 civil society reports submitted as part of the U.S. UPR are available at Office of the High Comm'r for Human Rights, Universal Periodic Review: United States of America: Reference Documents: Contributions for the Summary of Stakeholder's information, [www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUSStakeholdersInfoS9.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUSStakeholdersInfoS9.aspx) (last visited Jan. 30, 2012).
- 338 Reports on the following topics call for a U.S. Human Rights Institution: Treaty Ratification, Racial Health Disparities and Discrimination, the Right to Decent Work, the Right to Education, Racial Discrimination and Civil Rights and From Civil Rights to Human Rights: Implementing US Obligations Under the International Convention on the Elimination of All forms of Racial Discrimination. See U.S. Human Rights Network, Universal Periodic Review: Joint Reports: The United States of America (2010), available at [www.ushrnetwork.org/sites/default/files/USHRN%20Human%20Rights%20Report\\_0.pdf](http://www.ushrnetwork.org/sites/default/files/USHRN%20Human%20Rights%20Report_0.pdf).
- 339 The chart was developed by Karen Tanenbaum, a legal intern at The Leadership Conference during the summer of 2011 and Sakira Cook, Policy Associate and Researcher at the Leadership Conference, under the supervision of June Zeitlin, director of The Leadership Conference/The Education Fund's CEDAW project. Deborah J. Vagins, senior legislative counsel for the American Civil Liberties Union, Washington Legislative Office provided input that shaped the final version included in this report.
- 340 This participant list reflects participants' professional affiliations in August of 2010, when the convening took place.

