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August 2013

# CLOSING THE GAP:

THE FEDERAL ROLE IN RESPECTING  
& ENSURING HUMAN RIGHTS AT  
THE STATE AND LOCAL LEVEL



COLUMBIA LAW SCHOOL

HUMAN RIGHTS INSTITUTE



INTERNATIONAL ASSOCIATION  
OF OFFICIAL HUMAN RIGHTS  
AGENCIES



August 2013

# CLOSING THE GAP:

THE FEDERAL ROLE IN RESPECTING  
& ENSURING HUMAN RIGHTS AT  
THE STATE AND LOCAL LEVEL

Response to the Fourth Periodic Report of the United States to  
the United Nations Human Rights Committee

Prepared by:  
Columbia Law School's Human Rights Institute  
International Association of Official Human Rights Agencies

# ACKNOWLEDGEMENTS

This report was written by the Columbia Law School Human Rights Institute (HRI), under the supervision of JoAnn Kamuf Ward and with the support of the Human Rights Clinic. Djemila Carron, Adriana Garcia, Mickey Hubbard, Elzbieta Matthews, Rumbi Maweni and Joanna Wright, students in the Columbia Law School Human Rights Clinic, conducted research and interviews, and drafting. Columbia Law School's Human Rights Institute interns Amy Sanderson, Brad Maurer and Elizabeth Foydel conducted interviews and also contributed to research and drafting. Greta Moseson, program manager for HRI, oversaw the report's design and production. Many state and local officials and state and local agency representatives shared their expertise and insights during preparation of this report.

HRI is 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.

IAOHRA is a non-profit membership association of over 150 state and local statutory civil and human rights and human relations agencies mandated by state, county or city governments to enforce human and civil rights and/or to conduct research, training, and public education ("Human Rights Agencies").

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# EXECUTIVE SUMMARY

## INTRODUCTION AND ISSUE SUMMARY

Despite international leadership, the U.S. has an inconsistent record of implementing human rights within our nation's borders.

At the core of the United States' failure to fully recognize and implement human rights is the absence of a domestic human rights infrastructure that reaches all levels of government – federal, state and local. There are no transparent, institutionalized and effective mechanisms to translate international human rights law into domestic practice. Many state and local actors are thus unaware of international human rights treaties and their associated obligations. This lack of basic human rights education is compounded by resource and staffing constraints at the state and local level, which further impede the promotion and protection of human rights.

Myriad examples illustrate how the current lack of accountability has led to persistent gaps in human rights protections in areas within state and local jurisdiction.<sup>1</sup> Recent examples include the impact of the recent mortgage crisis, which resulted in disproportionate rates of homelessness in communities of color,<sup>2</sup> and the persistence of employment inequality for women.<sup>3</sup>

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

By ratifying the ICCPR in 1992, the U.S. committed to prevent and protect against discrimination and ensure equal treatment for all, as set forth in Articles 2 and 26.<sup>4</sup> These protections apply to all parts of federal states, “without any limitations or exceptions,” in accordance with Article 50.<sup>5</sup> Indeed, to ensure the full range of

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1 Examples from the 2006 review of U.S. compliance with the International Covenant on Civil and Political Rights include racial segregation in schools and housing, homelessness, racial profiling, criminal justice and detention.

2 See, e.g., James H. Carr et al., Nat'l Community Reinvestment Coalition, *The Foreclosure Crisis and Its Impact on Communities of Color: Research and Solutions* 5 (2011), available at [http://www.ncrc.org/images/stories/pdf/research/ncrc\\_foreclosurewhitepaper\\_2011.pdf](http://www.ncrc.org/images/stories/pdf/research/ncrc_foreclosurewhitepaper_2011.pdf); Debbie Grunstein Bocian et al., Cntr. for Responsible Lending, *Foreclosures by Race and Ethnicity: The Demographics of a Crisis* (2010), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.html>.

3 See, e.g., Maxwell Matite et al., Inst. for Women's Policy Research, *Quantifying Women's Labor Market Experiences: How a Gender Lens Changes the Conversation about the Economy* (2013), available at [http://www.iwpr.org/publications/pubs/the-truth-in-the-data-how-quantifying-women2019s-labor-market-experiences-changes-the-conversation-about-the-economy/at\\_download/file](http://www.iwpr.org/publications/pubs/the-truth-in-the-data-how-quantifying-women2019s-labor-market-experiences-changes-the-conversation-about-the-economy/at_download/file); Press Release, U.S. Equal Emp't Opportunity Comm'n, Outback Steakhouse To Pay \$19 Million For Sex Bias Against Women in 'Glass Ceiling' Suit by EEOC (Dec. 29, 2009), <http://www.eeoc.gov/eeoc/newsroom/release/12-29-09a.cfm>.

4 International Covenant on Civil and Political Rights, arts. 2, 26, Dec. 16, 1966, 999 U.N.T.S. 171, available at <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> [hereinafter ICCPR].

5 *Id.* at art. 50. See also Human Rights Comm., Gen. Comment No. 31, *Nature of the General Legal Obliga-*



rights, the ICCPR requires that governments employ appropriate measures, including through legislation, education and policy.<sup>6</sup> By virtue of our federal system, federal, state and local authorities share responsibility for implementation of the Covenant.<sup>7</sup> Such shared authority is consistent with international law, under which the United States can delegate human rights implementation.<sup>8</sup>

Protecting human rights requires concerted and coordinated government action, in conjunction with community partnerships. State and local authorities are on the front lines of addressing key human rights issues, including housing, employment, criminal justice and education. The over 150 state and local civil and human rights agencies (“Human Rights Agencies”) are natural partners in promoting and protecting human rights. Authority to implement human rights also resides with the full array of state and local decision-makers, including governors, mayors, state legislators, city council members, law enforcement, city, county and town executives, and boards of supervisors.

Indeed, a number of state and local governments already foster U.S. compliance with the ICCPR. Human Rights Agencies and a number of state and local decision-makers are developing proactive initiatives to address and eliminate discrimination and promote and protect rights in housing and employment, specifically related to sexual orientation, gender and national origin discrimination. They also monitor and report on human rights compliance, as well as conduct human rights education. A number of states and localities have explicitly incorporated international human rights standards into local law, policy and practice.

Yet state and local efforts are ad hoc, patchwork and vulnerable to elimination through budget cuts.

The U.N. Human Rights Committee and other U.N. experts have previously called on the U.S. to address these concerns by facilitating more comprehensive reviews of human rights compliance, ensuring federal and state laws comply with human rights treaties and improving human rights monitoring.<sup>9</sup>

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*tion on States Parties to the Covenant*, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), available at <http://www.unhchr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f> [hereinafter General Comment 31].

<sup>6</sup> See ICCPR, *supra* note 4, at art. 2(2); Human Rights Comm., Gen. Comment No. 18, *Non-Discrimination*, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 at 195 (1989), available at <http://www1.umn.edu/humanrts/gencomm/hrcom18.htm> [hereinafter General Comment 18]; General Comment 31, *supra* note 5.

<sup>7</sup> Reservations, Understandings and Declarations to the International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992).

<sup>8</sup> Article 26 of the Vienna Convention on the Law of Treaties states, “every treaty in force is binding upon the parties.” Vienna Convention on the Law of Treaties, art. 26, May 23, 1969, 1155 U.N.T.S. 33, available at [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) [hereinafter Vienna Convention].

<sup>9</sup> See Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America*, ¶¶ 22-25, 28, 39, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/459/61/PDF/G0645961.pdf?OpenElement> [hereinafter 2006 HRC *Concluding Observations*]. See Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, ¶¶ 12, 13, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008), available at <http://www1.umn.edu/humanrts/CERDConcludingComments2008.pdf> [hereinafter 2008 CERD *Concluding Observations*]; Comm. on the Rights of

## RELEVANT QUESTION IN THE COMMITTEE'S LIST OF ISSUES

Recognizing the ongoing need for federal coordination and support for state and local human rights implementation, the Human Rights Committee has asked the United States to articulate:

- The specific actions taken to ensure state and local implementation of the ICCPR,<sup>10</sup> and
- The U.S.' intent to establish institutionalized federal mechanisms to monitor and implement human rights.<sup>11</sup>

## U.S. GOVERNMENT RESPONSE

The U.S. Fourth Periodic Report, while laudable for recognizing the important role of state and local actors in human rights implementation,<sup>12</sup> offers an incomplete picture of the context in which they operate. It fails to acknowledge the existing barriers to state and local human rights monitoring and implementation. These constraints include – and extend beyond – limited knowledge of international human rights standards to broader structural issues. Even where state and local governments have an awareness of international human rights, they have little capacity to engage in human rights work. Further, the U.S. report omits discussion on the ways in which the broad range of state and local actors, such as state and local elected officials and law enforcement personnel, promote and protect human rights, despite the important role these actors can play to ensure human rights treaty compliance at the state and local level.

Significantly, neither the U.S. Report nor the U.S. response to the List of Issues describe how the federal government supports, incentivizes or coordinates state and local efforts to comply with international human rights treaty standards through edu-

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the Child, *Concluding Observations: United States of America*, ¶¶ 13, 19, U.N. Doc CRC/C/OPSC/USA/CO/1 (June 25, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.USA.CO.1.pdf>; Human Rights Council, *Report of the Working Group of Experts on People of African Descent*, ¶ 88, U.N. Doc. A/HRC/15/18 (Aug. 6, 2010), available at <http://www2.ohchr.org/english/issues/racism/groups/african/docs/A-HRC-15-18.pdf> [hereinafter *Report of Working Group of Experts on People of African Descent*].

10 Human Rights Comm., List of Issues to be Taken Up in Connection with the Consideration of the Fourth Periodic Report of the United States, ¶ 1(b), U.N. Doc. CCPR/C/USA/Q/4 (Mar. 2013), available at <http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm> [hereinafter 2013 List of Issues] (inquiring whether the U.S. intends “to reinvigorate Executive Order 13107/1998”).

11 *Id.* at ¶ 1(c) (inquiring whether the U.S. intends “to reinvigorate Executive Order 13107/1998”); *id.* at ¶ 2 (asking if the U.S. intends to establish a national human rights institution with a broad human rights mandate, in line with the principles relating to the status of national institutions for the promotion and protection of human rights).

12 As part of its report to the Human Rights Committee, the U.S. included an Annex, which provides a snapshot of state, local, tribal and territorial human rights organizations and programs and emphasizes that state and local agencies play a “critical role” in human rights implementation. See *Annex A to the Common Core Document of the United States: State, Local, Tribal, and Territorial Human Rights Organizations and Programs, Submitted With the Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights*, ¶¶ 1-3, 124–26 (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179782.htm> [hereinafter *Annex A*].

cation, training and other means. The response to the List of Issues mentions an existing policy process to implement human rights treaties pursuant to Executive Order 13107 (known as the Interagency Working Group on Human Rights).<sup>13</sup> In recent months, the United States has also publicized the existence of the Equality Working Group, newly established by the Obama Administration to coordinate human rights implementation.<sup>14</sup> Yet there is no publicly available information on the mandate, membership or activities of these mechanisms, and to date, they have not engaged with state and local governments. It is also unclear what relationship, if any, these initiatives have to each other.

## RECOMMENDED QUESTIONS

- Please describe the education, legislative, policy and other measures the United States will take to ensure that state and local agencies and officials have the capacity to respect and implement the United States' commitments under the ICCPR and to implement the Committee's Concluding Observations. Specifically, how will the United States (a) effectively communicate these recommendations to state and local agencies and officials to foster greater awareness of, and compliance with, human rights standards; and (b) offer guidance and technical assistance to state and local governments on how treaties such as the ICCPR relate to law and policy at the state and local level.
- Please indicate (a) what measures the United States is taking to create institutionalized, transparent and coordinated mechanisms to monitor and implement human rights at the federal, state and local levels in the long term; and (b) how the federal government, including the federal level Interagency Working Group on Human Rights and the Equality Working Group, coordinate with state and local governments to support and encourage state and local human rights implementation, including through education, training and funding.

## SUGGESTED RECOMMENDATIONS

To ensure that state and local governments can reach their full potential to implement the ICCPR, the United States must develop a more comprehensive and coordinated approach to human rights. Specifically the federal government must:

- **Ensure dedicated staff responsible for coordinating and liaising with state and local actors regarding human rights reporting and imple-**

<sup>13</sup> U.S. Dep't of State, United States Written Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the International Covenant on Civil and Political Rights, ¶ 4 (July 3, 2013), available at <http://www.state.gov/j/drl/rls/212393.htm> [hereinafter U.S. Written Responses to the HRC].

<sup>14</sup> See *id.* at ¶ 3; Periodic Report of the United States of America to the United Nations Comm. on the Elimination of Racial Discrimination Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, ¶ 4 (2013), available at <http://www.state.gov/documents/organization/210817.pdf> [hereinafter 2013 CERD Report].

**mentation**, including identifying and developing best practices at the state and local level and communicating recommendations from international bodies to state and local governments.

- **Provide education and training to state and local officials on international human rights treaty standards and Concluding Observations**, as well as obligations to implement human rights and effective practices to foster compliance with human rights standards.
- **Provide state and local governments with funding to engage in civil and human rights implementation and compliance**, including through grants to Human Rights Agencies, to ensure they have the resources to undertake human rights education, monitoring, reporting and enforcement.
- **Establish institutionalized, transparent and effective mechanisms** to coordinate with state and local officials to ensure comprehensive monitoring and implementation of international human rights standards at the federal, state and local levels, such as a reinvigorated Interagency Working Group on Human Rights and a National Human Rights Institution.

# INTRODUCTION

The United States ratified the International Covenant on Civil and Political Rights (“ICCPR” or the “Covenant”) in 1992, committing to uphold the rights set forth in the Covenant.<sup>15</sup> Yet the United States has failed to respect and ensure ICCPR protections at the state and local level.

State and local actors – on the front lines of promoting and protecting rights – lack the tools necessary to make these rights a reality. While ratified human rights treaties like the ICCPR constitute the supreme law of the land, the federal government fails to support or encourage human rights implementation at the subnational level. The United States lacks a human rights infrastructure or any comprehensive and coordinated approach to translating international human rights standards into domestic practice. As a result, state and local authorities lack the expertise, capacity and resources to protect the rights set forth in the ICCPR.

Despite these barriers, many state and local governments are already engaging in activities that foster U.S. compliance with the ICCPR. In recent years, an increasing number of state and local actors are working together with local communities to address the broad range of human rights issues within their jurisdiction. As described in this report, local governments are taking steps to proactively prevent and eliminate discrimination and inequality, particularly in housing and employment. They also monitor and report on local human rights conditions.

A patchwork of promising state and local initiatives, however, is not enough. The U.S. needs a coordinated and comprehensive approach to human rights implementation. At a minimum, this must include providing state and local government with human rights training and education, as well as resources. Without such guidance and support, the United States will be a human rights laggard rather than a leader.

This report offers an overview of the domestic landscape for human rights implementation and recommends action the United States must take to respect and ensure Covenant rights at the state and local level. This information responds directly to questions posed by the Human Rights Committee as part of the fourth periodic review of the United States, and offers a more complete picture of how the lack of institutionalized support impacts state and local governments. The report further describes a number of promising state and local human rights initiatives and details the myriad barriers that impede more comprehensive and effective state and local implementation.

Part I introduces the general legal framework for ICCPR implementation. It lays out the status of the ICCPR in domestic law and the authority of federal, state and local actors to implement the treaty. This part distills recommendations from the Human

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<sup>15</sup> ICCPR, *supra* note 4.

Rights Committee and other U.N. bodies to ensure an effective domestic human rights infrastructure in the United States. Part II describes gaps in human rights implementation, focusing on current obstacles at the state and local level – information missing from the United States’ report. Part III highlights proactive and preventative state and local initiatives that bolster compliance with the ICCPR. With federal support, these initiatives could be adapted and expanded to address existing gaps in human rights protection. Part IV details the impact of resource constraints on state and local and governments, based on input from state and local agencies and officials. Part V recommends specific ways the federal government can address existing obstacles and strengthen compliance with Articles 2, 26 and 50 of the ICCPR. The United States must provide dedicated staff, training and education, and funding to support state and local human rights implementation. Further, the United States must create institutionalized, transparent and effective federal mechanisms to implement and monitor human rights in coordination with state and local efforts, such as a reinvigorated Interagency Working Group on Human Rights and a U.S. Civil and Human Rights Commission.

## I. GENERAL LEGAL FRAMEWORK

### A. U.S. Obligations Under the ICCPR

The United States ratified the ICCPR in 1992. According to the U.S. Constitution, the ICCPR, as a ratified treaty, constitutes “the supreme Law of the Land.”<sup>16</sup> By virtue of our federal system, federal, state and local authorities share responsibility for implementation of the Covenant. Such shared authority is consistent with international law, which permits the United States to delegate human rights implementation, while remaining ultimately responsible for treaty compliance.<sup>17</sup>

The ICCPR addresses a range of civil and political rights, including obligations to prevent and protect against discrimination and ensure equal treatment for all, pursuant to Articles 2 and 26. In accordance with Article 50, the Covenant applies to all parts of federal states, including states and localities “without any limitations or exceptions.”<sup>18</sup> To ensure protection of the full range of rights, the ICCPR requires that governments employ appropriate measures, including legislation, education and policy.<sup>19</sup>

#### *i. Right to Equality and Non-Discrimination*

Article 2 provides that each State Party must “respect and ensure . . . the rights recognized in the Covenant without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth,

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16 U.S. Const. art. VI.

17 Article 26 of the Vienna Convention on the Law of Treaties states, “every treaty in force is binding upon the parties.” Vienna Convention, *supra* note 8.

18 ICCPR, *supra* note 4, at art. 50. *See also* General Comment 31, *supra* note 5.

19 *See* ICCPR, *supra* note 4, at art. 2(2); General Comment 18, *supra* note 6; General Comment 31, *supra* note 5.

or other status.”<sup>20</sup> Article 26 expands upon this, guaranteeing “equal and effective protection against discrimination” on the same grounds.<sup>21</sup> The Human Rights Committee has clarified that discrimination refers to “*any distinction, exclusion, restriction, or preference . . . on any grounds . . . which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise*” of ICCPR protections.<sup>22</sup> Furthermore, state parties must “take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.”<sup>23</sup>

## B. Federal, State and Local Government Authority to Implement the ICCPR

The text of the ICCPR indicates that the treaty applies to all levels of government within federal systems, including states and localities.<sup>24</sup> As noted above, the United States may delegate treaty implementation to state and local governments, but the federal government remains ultimately responsible for compliance.<sup>25</sup> Accordingly, authority to monitor and implement human rights is shared by all state and local actors, including:

- Governors;
- Mayors;
- State Attorneys General;
- State Legislators;
- City Councilmembers;
- Police Commissioners;
- Sheriffs;
- County Executives;
- Town and Village Trustees;
- Alderman; and
- State and Local Civil and Human Rights Agencies (“Human Rights Agencies”).<sup>26</sup>

Shared authority is consistent with international law and our federal system. When ratifying the ICCPR, the United States included an understanding that the treaty

<sup>20</sup> ICCPR, *supra* note 4, at art. 2.

<sup>21</sup> *Id.* at art. 26.

<sup>22</sup> General Comment 18, *supra* note 6, at ¶ 7; 2006 HRC Concluding Observations, *supra* note 9, at ¶¶ 25, 28 (emphasis added).

<sup>23</sup> General Comment 18, *supra* note 6, at ¶ 10.

<sup>24</sup> ICCPR, *supra* note 4, at art. 50; General Comment 31, *supra* note 5.

<sup>25</sup> See *supra* note 17; General Comment 31, *supra* note 5, at ¶ 4.

<sup>26</sup> There are currently over 150 state and local agencies mandated by state, county, city or local governments to enforce human and civil rights and/or to conduct research, training and public education. See Kenneth L. Saunders & Hyo Eun (April) Bang, Kennedy School of Government, Harvard University, *A Historical Perspective on U.S. Human Rights Commissions* 5 (2007), available at [http://www.hks.harvard.edu/var/ezp\\_site/storage/fckeditor/file/pdfs/centers-programs/programs/criminal-justice/ExecSessionHumanRights/history\\_of\\_hrc.pdf](http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/programs/criminal-justice/ExecSessionHumanRights/history_of_hrc.pdf); Risa Kaufman, State and Local Commissions as Sites for Domestic Human Rights Implementation, in *Human Rights in the United States: Beyond Exceptionalism* 89, 91 (Shareen Hertel & Kathryn Libal eds., 2011).

shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.<sup>27</sup>

As the United States explained in its first report to the Human Rights Committee, this understanding does not alter or limit U.S. obligations under the ICCPR; rather, it clarifies that implementation is subject to the constitutional division of power between federal, state and local governments.<sup>28</sup> The United States further explained that the understanding is notice that the treaty is not meant to alter that allocation of authority.<sup>29</sup>

The U.S. understanding does not limit the domestic applicability of the Covenant or immunize the federal government from its obligations under the ICCPR. As the Human Rights Committee has emphasized, governments cannot invoke “constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty.”<sup>30</sup>

Indeed, state and local governments are critical to fulfilling human rights because human rights are experienced locally.<sup>31</sup> The Obama administration has affirmed this repeatedly. In 2010, then Legal Adviser Harold Koh emphasized that “the best human rights implementation combines overlapping enforcement by . . . the federal government working together with state and local partners.”<sup>32</sup>

Despite recognition of the important role of state and local actors, there is no coordinated federal effort to engage state and local actors in implementation within the U.S. Federal outreach to state and local officials has been limited to obtaining information for treaty reporting.<sup>33</sup> There is no mechanism to share U.N. recommen-

27 Reservations, Understandings and Declarations to the International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992).

28 Human Rights Comm., *Initial Reports of the State Parties: United States of America*, ¶ 4, U.N. Doc CCPR/C/81/Add.4 (Aug. 24, 1994), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/da936c49ed8a9a8f8025655c005281cf?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/da936c49ed8a9a8f8025655c005281cf?Opendocument).

29 *Id.* The United States also noted that the understanding “serves to emphasize domestically” that obligations under the ICCPR will not be used by the federal government to appropriate state authority on a matter falling under state jurisdiction. *Id.*

30 *Id.* See also Vienna Convention, *supra* note 8; Restatement (Third) of Foreign Relations Law § 207(b) reporter’s note 3 (1987); ICCPR, *supra* note 4, at art. 50 (“The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”); Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT’L L. 341, 346 (1995).

31 U.S. Dep’t of State, Report of the United States of America Submitted to the High Commissioner for Human Rights in Conjunction with the Universal Periodic Review 2 (2010), available at <http://www.state.gov/documents/organization/146379.pdf>.

32 Harold Hongju Koh, Legal Adviser, U.S. Dep’t of State, *Response of the United States of America to the Recommendations of the United Nations Human Rights Council* (Nov. 9, 2010), available at <http://www.state.gov/s/l/releases/remarks/150677.htm>.

33 Memorandum from Harold Hongju Koh, Legal Adviser to the U.S. Dep’t of State, to State Gover-



dations or develop guidance on applicable human rights standards. As a result, many state and local governments fail to understand and incorporate human rights into local policy and practice. Recognizing that the lack of coordination leads to gaps in state and local compliance with human rights – directly impacting local communities – U.N. experts have consistently emphasized the need for a more comprehensive and coordinated approach to human rights.

### C. U.N. Recommendations to Strengthen the Federal Role in State and Local Compliance

Addressing the broad lack of accountability for human rights, the Human Rights Committee has asked the United States what specific measures the federal government is taking to ensure compliance with the ICCPR at the state and local level, and about progress made to create institutionalized federal level bodies to implement and monitor human rights.<sup>34</sup>

The need for greater coordination among federal, state and local officials has already been raised by numerous U.N. human rights experts, as well as during the Universal Periodic Review of the United States. These U.N. recommendations echo U.S. civil society calls for a comprehensive, transparent and effective approach to human rights.

#### i. 2006 Human Rights Committee Concluding Observations

In the last review of the United States, over six years ago, the Human Rights Committee highlighted a number of areas where U.S. policy and practice fall short of the requirements of the Covenant, expressing concern about a number of issues within state and local jurisdiction.<sup>35</sup>

The 2006 Concluding Observations addressed racial discrimination in housing and education, employment discrimination on the basis of gender and sexual orientation and the prevalence of hate crimes inflicted upon the LGBT community.<sup>36</sup> Numerous recommendations addressed criminal justice, including discrimination and mistreat-

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nors on U.S. Human Rights Treaty Reports (Jan. 20, 2010), available at <http://www.state.gov/documents/organization/137292.pdf> [hereinafter Memorandum to State Governors]; Letter from Harold Hongju Koh, Legal Adviser to the U.S. Dep't of State, to State and Local Human Rights Commissions (May 3, 2010), available at [http://www.iaohra.org/storage/pdf/human-rights-campaign/Letter\\_from\\_Harold-Koh\\_to\\_Stateand%20LocalCommissions.pdf](http://www.iaohra.org/storage/pdf/human-rights-campaign/Letter_from_Harold-Koh_to_Stateand%20LocalCommissions.pdf) [hereinafter Koh Letter]. The United States included a representative from Human Rights Agencies as an adviser to its 2010 UPR delegation. U.S. Dep't of State, *Common Core Document of the United States of America: Submitted With the Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights*, ¶ 136 (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179780.htm> [hereinafter *Common Core Document*]. Two Attorneys General participated in the recent review of U.S. compliance with the Optional Protocols to the Convention on the Rights of the Child. See U.S. Ambassador Betty King, *Ambassador King's Opening Remarks Before the U.N. Committee on the Rights of the Child Concerning U.S. Implementation of the Optional Protocols to the Convention on the Rights of the Child 2* (Jan. 16, 2013).

<sup>34</sup> 2013 List of Issues, *supra* note 10, at ¶¶ 1(b)-(c).

<sup>35</sup> 2006 HRC Concluding Observations, *supra* note 9, at ¶¶ 4, 22-23, 25, 28, 30, 34-35.

<sup>36</sup> *Id.* at ¶¶ 22, 25, 28. State and local initiatives that fall within these areas, and further compliance with the ICCPR, are described in Part III, *infra*.

ment by law enforcement, sentencing of juveniles to life imprisonment without parole and the collateral consequences of felony convictions.<sup>37</sup>

In addition to these substantive issues, the Committee identified a lack of comprehensive reporting and requested more detailed information on efforts to implement and ensure compliance with the ICCPR at the federal and state levels.<sup>38</sup>

## ii. *Related Treaty Body, UPR and U.N. Expert Recommendations*

In 2008, the Committee on the Elimination of Racial Discrimination expressed concern about the lack of governmental coordination around human rights and recommended that the United States establish a national human rights institution in line with the Paris Principles.<sup>39</sup> In its last review of the United States, the Committee on the Rights of the Child similarly voiced concern over the lack of a national human rights institution.<sup>40</sup> During the 2010 Universal Periodic Review of the United States, a number of countries called for the creation of a national human rights institution, improved federal coordination with state and local governments and increased human rights education and training.<sup>41</sup> After its 2010 U.S. Country visit, the Working Group of Experts on Peoples of African Descent recommended that the United States create a national human rights monitoring body.<sup>42</sup> Most recently, the Working Group on Business and Human Rights noted that incentives for human rights compliance from federal, state and local authorities are needed to bolster respect for human rights among businesses.<sup>43</sup>

## II. LACK OF FEDERAL COORDINATION AND SUPPORT FOR HUMAN RIGHTS

Despite repeated calls by U.N. experts and U.N. member states for the U.S. to establish an institutionalized and effective human rights infrastructure, the U.S. still lacks the necessary mechanisms to ensure that state and local actors are able to monitor, report on and implement, the United States' human rights commitments. Many state and local government actors are unaware of international human rights norms and

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37 *Id.* at ¶¶ 23, 30, 34, 35.

38 *Id.* at ¶ 39.

39 2008 CERD Concluding Observations, *supra* note 9, at ¶¶ 12, 13.

40 Comm. on the Rights of the Child, List of Issues Concerning Additional and Updated Information Related to the Second Periodic Report of the United States of America, ¶ 4, U.N. Doc. CRC/C/OPSC/USA/Q/2 (July 25, 2012), available at <http://www2.ohchr.org/english/bodies/crc/crcs62.htm>.

41 Human Rights Council, Report of the Working Group on the Universal Periodic Review: United States of America, ¶¶ 92.72–92.74, 92.87, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011), available at [http://www.upr-info.org/IMG/pdf/a\\_hrc\\_16\\_11\\_add.1\\_united\\_states\\_e.pdf](http://www.upr-info.org/IMG/pdf/a_hrc_16_11_add.1_united_states_e.pdf).

42 Report of Working Group of Experts on People of African Descent, *supra* note 9, at ¶ 88.

43 See U.N. Working Group on Business and Human Rights, Statement at the End of Visit to the United States (May 1, 2013), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13284&LangID=E>.

how they relate to local governance.<sup>44</sup> Those who are aware of human rights lack federal guidance and support for effective monitoring and implementation.

The U.S. Fourth Periodic Report, while laudable for recognizing the important role of state and local actors in human rights implementation, offers an incomplete picture of the context in which they operate. To fill in some of the gaps left by the U.S. report, section A discusses the absence of institutionalized federal support for implementation of international human rights standards and section B describes key barriers to comprehensive implementation at the state and local level.

### **A. There Are No Effective, Institutionalized and Transparent Federal Human Rights Mechanisms**

Within the United States, no permanent government entities are tasked to coordinate human rights education, monitoring or implementation at the federal, state and local levels. There is no clearinghouse to offer guidance or technical assistance on human rights treaties, or how these treaties, including the ICCPR, relate to law and policy. No focal points exist to collect and disseminate recent developments or to translate international standards into domestic practice. The United States also has no national human rights monitoring body, like an NHRI.<sup>45</sup>

What currently exists at the federal level is an ad hoc approach to human rights reporting and implementation without meaningful avenues for state and local government participation. While some steps have been taken to increase human rights coordination at the federal level, these efforts are marred by a lack of transparency.

The Obama administration has established an Equality Working Group to coordinate human rights implementation, an important step towards institutionalizing human rights within the federal government.<sup>46</sup> Yet there is no publicly available information on the Working Group's mandate, membership or activities, and to date, it has not engaged with state and local governments. It is also unclear what relation-

44 Letter from Ralph Becker, Mayor, Salt Lake City, Utah, et al., to Hon. Hillary Rodham Clinton, U.S. Sec'y of State (Mar. 24, 2011) (on file with Columbia Law Sch. Human Rights Inst.) [hereinafter Letter from Mayor Becker et al.]. In 2008, Human Rights Watch sent letters to the Attorneys General of every state to identify whether they were aware of the International Convention on the Elimination of All Forms of Racial Discrimination and their states' responsibilities under the treaty. The responses they received were limited but illuminating. The Attorney General of Kansas, for example, responded: "It does not appear that Kansas was a party to any agreement or resolution passed by this body or the federal government" and requested a "cite to the pre-emptive federal law and/or Kansas Statute... creating a legal duty." Human Rights Watch, *Submission to the Committee on the Elimination of all Forms of Racial Discrimination During its Consideration of the Fourth, Fifth, and Sixth Periodic Reports of the United States of America CERD 72nd Session 64* (Feb. 2008), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/HRW.pdf> [hereinafter *Human Rights Watch CERD Submission*].

45 The U.S. report acknowledges that calls for a more comprehensive national human rights institution have been made. See *Common Core Document*, *supra* note 33, at ¶ 129.

46 See *2013 CERD Report*, *supra* note 14, at ¶¶ 4, 30; Emily Fleckner, Statement by the Delegation of the United States of America at 20th Session of the Human Rights Council (July 3, 2012), available at <http://geneva.usmission.gov/2012/07/03/open-and-free-expression-exposes-bigotry-and-hatred-to-the-forces-of-reason-and-criticism/>.

ship, if any, the Equality Working Group has to other interagency initiatives related to human rights treaties, namely the Interagency Working Group on the Implementation of Human Rights Treaties (IAWG) created by Executive Order 13107 in 1998 to improve coordination around U.S. treaty obligations, including with state and local actors.<sup>47</sup> The 1998 E.O. was never fully implemented and the Interagency Working Group was effectively disbanded during the Bush administration.<sup>48</sup> Despite the fact that the current status of the E.O. and the IAWG are unknown, the Obama Administration has cited E.O. 13107 as “establishing a framework for implementation of human rights obligations by the executive branch agencies” in its ratification package for the Convention of the Persons with Disabilities.<sup>49</sup> Unfortunately, as with the Equality Working Group, there is no publicly available information on the current mandate, membership or activities of the IAWG. It is also unclear what relationship, if any, the IAWG and the Equality Working Group have to each other.

It is no surprise that many government officials at the state and local level are unaware of their international human rights obligations.<sup>50</sup> Indeed, state and local government requests for guidance and assistance have gone unheeded. In 2011, a number of Human Rights Agencies and mayors wrote to Secretary of State Clinton to request information on their treaty obligations, but received no response.<sup>51</sup>

## **B. Multiple Barriers Inhibit Comprehensive State and Local Level Implementation**

As part of this ICCPR review, the United States submitted its Fourth Periodic Report on compliance along with the Common Core Document of the United States. Annex A to the Common Core Document offers a snapshot of state, local and tribal human

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47 Exec. Order No. 13,107, § 1, 63 Fed. Reg. 68,991 (Dec. 10, 1998). Among its functions, the Working Group was charged with (1) coordinating the preparation of treaty compliance reports to international organizations, including the U.N. and the O.A.S., and the responses to contentious complaints that were lodged with these bodies; (2) overseeing a review of all proposed legislation to ensure conformity with international human rights obligations; (3) ensuring annual review of the reservations, understandings and declarations the U.S. attached to human rights treaties; and (4) considering complaints and allegations of inconsistency with or breach of international human rights obligations. *Id.* at § 4(c). In addition, the group had a public education function: it was responsible for ensuring public outreach and education on human rights provisions in both treaty and domestic law. *Id.* Individual Agencies were also tasked with human rights treaty implementation. *See infra* notes 127-131 and accompanying text.

48 In 2001, President George W. Bush superseded the Working Group with a National Security Presidential Directive establishing a Policy Coordination Committee (PCC) on Democracy, Human Rights, and International Operations, directed by the Assistant to the President for National Security Affairs. The Directive transferred the duties of the Interagency Working Group to that Committee. National Security Presidential Directive: On the Organization of the National Security Council System, NSPD-1 (Feb. 13, 2001), available at <http://www.fas.org/irp/offdocs/nspd/nspd-1.htm>.

49 Barack Obama, *Message From the President Transmitting the Convention on the Rights of Persons With Disabilities* 80 (May 17, 2012) available at <http://www.gpo.gov/fdsys/pkg/CDOC-112tdoc7/pdf/CDOC-112tdoc7.pdf>. This particular convention requires focal points within government to ensure implementation of the treaty. *See* Convention on the Rights of Persons with Disabilities, art. 33, Dec. 13, 2006, 2515 U.N.T.S. 3, available at <http://www.un.org/disabilities/convention/conventionfull.shtml>.

50 *See supra* note 44.

51 Letter from Mayor Becker et al., *supra* note 44.

rights organizations and programs related to the ICCPR, focusing on Human Rights Agencies.<sup>52</sup> It also describes the networks that exist among these organizations and federal agencies and departments.<sup>53</sup> The U.S. response to the List of Issues refers back to Annex A, as well as to other U.S. reports that discuss government coordination around U.S. civil rights laws.<sup>54</sup>

Annex A is an important addition to the U.S. report, as it affirms that Human Rights Agencies play a “critical role in U.S. implementation of the human rights treaties to which the United States is a party.”<sup>55</sup> Notably, it emphasizes the importance of constituent access to these agencies. Indeed, the examples cited in Annex A exemplify the positive impact that Human Rights Agencies can have on U.S. compliance with the IC-CPR by proactively addressing discrimination and fostering equality and opportunity.

While state and local governments hold significant potential for fostering greater human rights compliance, a number of factors significantly limit their ability to realize their full potential. The remainder of this section will describe these factors, which the U.S. report fails to address.

### *i. Resource Constraints Impede Human Rights Work*

Annex A of the U.S. report lauds Human Rights Agencies, but fails to acknowledge the severe constraints they face in efforts to monitor and implement human rights. This extends beyond knowledge of human rights treaties and standards. Even where state and local governments have a broad awareness of international human rights, they have little capacity to engage in human rights work. Human Rights Agencies, for example, are chronically over-burdened and under-resourced. Most of these agencies have experienced budget cuts in recent years and several have been forced to close their doors since 2007.<sup>56</sup> The importance of constituency access to these Agencies – which the U.S. emphasizes – is being curtailed. Limited funding and staff hamper Human Rights Agencies’ efforts to fulfill even their existing civil rights mandates, let alone monitor and implement international human rights. As a result of these constraints, a number of promising initiatives to address discrimination and inequality have been scaled back or simply never implemented.<sup>57</sup>

### *ii. State and Local Governments Receive No Formal Guidance on Implementation*

Despite the Human Rights Committee’s 2006 request for more comprehensive in-

<sup>52</sup> *Annex A, supra* note 12, at ¶ 124.

<sup>53</sup> *See, e.g., id.* at ¶¶ 124–26.

<sup>54</sup> U.S. Written Responses to the HRC, *supra* note 13, at ¶ 3 (citing to the 2013 U.S. CERD Report, *supra* note 14).

<sup>55</sup> *Annex A, supra* note 12, at ¶ 1.

<sup>56</sup> *See infra* Part IV (discussing constraints and limitations faced by state and local governments).

<sup>57</sup> *See infra* Part III (describing state and local initiatives) and Part IV (discussing the impact of resource constraints).

formation on state and local implementation, the U.S. report fails to provide it. The report catalogues a number of Human Rights Agency initiatives but omits discussion of broader efforts within any particular states or human rights implementation by other state and local actors. The lack of comprehensive information on human rights implementation is due in part to the fact that the United States lacks a clearinghouse to gather or share this information.

The U.S. indicates that federal, state and local governments offer “complementary protections” that “reinforce the ability of the United States to guarantee respect for human rights.”<sup>58</sup> Yet the majority of Human Rights Agencies have core mandates and functions oriented primarily around civil rights and antidiscrimination law. They enforce federal, state and local human and civil rights laws and/or conduct research, training and education, and issue policy recommendations.<sup>59</sup> For the most part human rights treaties, such as the ICCPR, do not fall within the existing mandates of these agencies or other state and local actors.<sup>60</sup> Further, state and local actors lack guidance on practices to promote and protect human rights at the local level. Without federal outreach to raise awareness of treaty provisions and support compliance, human rights treaties will remain under-utilized as a source of authority.

Currently, federal engagement with state and local actors regarding human rights is quite limited. While a broad range of government officials have authority to implement human rights,<sup>61</sup> little effort has been made by the federal government to educate and train these actors on human rights standards or to disseminate international human rights treaties or Concluding Observations to them. Indeed, the federal advisor on outreach to state and local communities, The Special Representative for Global Intergovernmental Affairs,<sup>62</sup> is not mandated to address domestic human rights implementation.<sup>63</sup> To date, the federal government has not even disseminated U.N. Concluding Observations or UPR recommendations to state and local government actors.

### a. Communication with Human Rights Agencies

The bulk of federal outreach and communication regarding international human rights has been through the International Association of Official Human Rights Agencies

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58 *Common Core Document*, *supra* note 33, at ¶ 129.

59 *See supra* note 26.

60 Human Rights Watch CERD Submission, *supra* note 44.

61 Authority to implement human rights belongs to all local decision-makers, including governors, mayors, state legislators, city council members, law enforcement, city, county and town executives and boards of supervisors. Indeed, fulfilling the promise of human rights will ultimately require multiple strategies and collaboration among all levels of government. *See supra* Part I.B.

62 *See* Transcript of U.N. Human Rights Council Town Hall Meeting, Universal Periodic Review of the United States Human Rights Record, at 11, Nov. 5, 2010, available at <http://www.charityandsecurity.org/system/files/02.05.10%20UPR%20Town%20Hall%20Transcript.pdf>. More information on the Special Representative is available at <http://www.state.gov/s/srgja/>.

63 *See* Letter from Robin Toma, Exec. Dir., Los Angeles County Human Relations Comm’n, to Reta Jo Lewis, Special Representative for Global Intergovernmental Affairs (May 3, 2011) (on file with Columbia Law Sch. Human Rights Inst.).

(“IAOHRA”), the non-profit membership association of the over 150 subnational Human Rights Agencies. In 2010, the U.S. Legal Adviser took the important step of transmitting a memorandum to IAOHRA members as part of U.S. efforts to gather information for treaty reporting. The memo named the three core human rights treaties ratified by the United States, as well as the areas they address, and requested input for ICCPR reporting.<sup>64</sup> This was a laudable step toward recognizing the role of Human Rights Agencies in implementation and engaging them in treaty reporting. However, the memo is too minimal to be effective in encouraging human rights compliance.<sup>65</sup> First, the memo fails to communicate state and local government obligations to adhere to human rights standards, or articulate what those standards are. Second, the memo was calibrated to gather information for treaty reporting from Human Rights Agencies, not to offer concrete guidance on implementation.<sup>66</sup> Finally, while the memo set a valuable precedent, little formal communication has followed.<sup>67</sup> The federal government has, however, sent representatives to speak about human rights at annual IAOHRA conferences for the past several years, demonstrating another positive, yet limited step.<sup>68</sup>

#### b. Communication with Other State and Local Decision-Makers

Outreach to other state and local actors regarding international human rights treaties has been even more limited than communication with Human Rights Agencies. In 2010, then U.S. Legal Adviser Harold Koh sent a memo to State Governors, with a request to forward it on to relevant agencies and officials.<sup>69</sup> The two-page memorandum aims to make government officials aware of treaties and notes that the U.S. is a party to five human rights treaties, which require the U.S. to report on compliance. The memo further indicates that U.S. treaty obligations “may apply to all levels of government.” Regarding the ICCPR, the memo indicates that it is implemented under existing law. While the Legal Adviser’s memo is a positive step, it offers no information on treaty substance or on how federal, state and local authorities share authority

64 Koh Letter, *supra* note 33.

65 See Letter from the American Civil Liberties Union and the Columbia Law Sch. Human Rights Inst. to Legal Adviser Harold Hongju Koh (Jan. 31, 2011) (on file with Columbia Law Sch. Human Rights Inst.) [hereinafter Letter from ACLU]. The American Civil Liberties Union will be referred to hereinafter as ACLU.

66 The *Common Core Document* notes that the government conducted outreach to state and local actors to request information for treaty reports. *Common Core Document*, *supra* note 33, at ¶¶ 133–34.

67 Letter from Harold Koh, Legal Adviser, U.S. Dep’t of State, to State and Local Human Rights Commissions (Dec. 21, 2010) (on file with Columbia Law Sch. Human Rights Inst.) (requesting information for U.S. CERD and CAT reports).

68 IAOHRA, *2012 Annual Conference Program: Strengthening Our Network for Human Rights* (Aug. 5, 2012), available at [http://www.iaohra.org/storage/2012\\_Conference\\_Program.pdf](http://www.iaohra.org/storage/2012_Conference_Program.pdf); IAOHRA, *2011 Annual Conference Program: Living the Legacy...Honoring the Past* (Aug. 27, 2011), available at [http://www.iaohra.org/storage/IAOHRAProgramBooklet\\_Agenda.pdf](http://www.iaohra.org/storage/IAOHRAProgramBooklet_Agenda.pdf); IAOHRA, *2011 Annual Conference: Biographies* (Aug. 27, 2011), available at [http://www.iaohra.org/storage/iaohraprogramfinal\\_bios.pdf](http://www.iaohra.org/storage/iaohraprogramfinal_bios.pdf); IAOHRA, *2010 Annual Conference Program: The Human Rights Agenda – 2010 and Beyond* (Aug. 29, 2010), available at [http://www.iaohra.org/storage/pdf/IAOHRA\\_2010\\_Conf\\_lores.pdf](http://www.iaohra.org/storage/pdf/IAOHRA_2010_Conf_lores.pdf).

69 Memorandum to State Governors, *supra* note 33.

to implement human rights treaties.<sup>70</sup> A second letter to Governors in the same year requested information on state civil rights laws for U.S. treaty reporting purposes.<sup>71</sup>

Existing networks of officials could serve as valuable conduits for more comprehensive and systematic communication and human rights education. These include the U.S. Conference of Mayors, the National Association of Counties, the National Governors Association, and the National Association of Attorneys General. Indeed, there is a growing recognition among state and local agencies and officials, including mayors, that guidance on international human rights is needed.<sup>72</sup> To date, the multiple networks of state and local decision-makers have not been utilized as avenues for outreach and training on international human rights.

The overall lack of communication about human rights impacts treaty reporting, but more importantly, it impacts implementation. There is no federal oversight to ensure human rights are respected and protected. As a result of the limited scope of communication and outreach, state and local actors working to implement human rights lack the funding, training and capacity to fulfill their promise as effective sites of human rights implementation or to fully meet their obligations under the ICCPR and other human rights treaties.

### III. STATE AND LOCAL INITIATIVES THAT STRENGTHEN COMPLIANCE WITH THE ICCPR

Despite facing multiple barriers, a growing number of state and local governments are in fact implementing human rights subnationally on their own initiative, often working in partnership with local communities.<sup>73</sup>

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70 Letter from ACLU, *supra* note 65.

71 Letter from Harold Hongju Koh, Legal Adviser to the U.S. Dep't of State, to Governors (May 3, 2010) (on file with Columbia Law Sch. Human Rights Inst.).

72 See Letter from Mayor Becker et al., *supra* note 44. Notably, in June of 2013, the U.S. Conference of Mayors passed a resolution promoting and encouraging efforts to uphold and incorporate international human rights into local law and policy. U.S. Conference of Mayors, Res. Promoting and Encouraging International Human Rights, (June 2013), available at <http://www.usmayors.org/resolutions/81st-conference/csj15.asp>.

73 For a more detailed discussion of many of the initiatives described in this Part, see Columbia Law Sch. Human Rights Inst., *Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy* (2012), available at <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf> [hereinafter *Bringing Human Rights Home*]; Columbia Law Sch. Human Rights Inst., *Implementing Recommendations from the Universal Periodic Review: A Toolkit for State and Local Human Rights and Human Relations Commissions* (2011), available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/UPR%20Toolkit\\_0.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/UPR%20Toolkit_0.pdf) [hereinafter *UPR Toolkit*]; Columbia Law Sch. Human Rights Inst. & Int'l Assoc. of Official Human Rights Agencies, *State and Local Human Rights Agencies: Recommendations for Advancing Equality Through an International Human Rights Framework* (2010), available at [http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/45408\\_HRI-Text%20%5Bonline%5D%20-%202nd%20printing%20%28updated%2010.1.09%29.pdf](http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/45408_HRI-Text%20%5Bonline%5D%20-%202nd%20printing%20%28updated%2010.1.09%29.pdf) [hereinafter *State and Local Human Rights Agencies Report*].



State and local governments are fostering U.S. compliance with the ICCPR, particularly articles 2 and 26, by affirmatively identifying and eliminating barriers to equality and alleviating discrimination. This section focuses on efforts to address **housing discrimination, discrimination and violence based on sexual orientation, sex and gender discrimination in employment**, and **national origin discrimination**, issues raised by the Human Rights Committee in the 2006 Concluding Observations.<sup>74</sup> This section also highlights state and local efforts to conduct human rights **reporting, monitoring and education**, as well as participatory approaches to policy-making.<sup>75</sup>

Many of the initiatives described in this report are undertaken by the approximately 150 U.S. Human Rights Agencies, which are uniquely situated to monitor and address discrimination.<sup>76</sup> A number of additional examples are drawn from local decision-makers, including legislatures, city councils, county supervisors, mayors and sheriffs, who are currently incorporating international human rights into law, policy and practice.

The examples described here could be strengthened and adapted in additional jurisdictions as part of a more comprehensive national approach to human rights implementation. Indeed, they demonstrate how state and local actors can incorporate human rights norms locally; assess local policy in light of international standards; monitor and document human rights issues; engage in human rights education; and proactively foster equality and prevent discrimination. All of the examples included here reflect the core principles of a human rights framework and many are based explicitly on international human rights standards.

While existing initiatives offer a promising starting point for strengthening U.S. compliance with the ICCPR, resource constraints impact their continued viability.<sup>77</sup>

## A. Addressing Housing Discrimination

Housing discrimination on the basis of race, national origin, gender, sexual orientation and disability (among other factors) is a pervasive problem nationwide. It is also considered one of the most under-reported forms of discrimination.<sup>78</sup> Despite

<sup>74</sup> See 2006 HRC Concluding Observations, *supra* note 9, at ¶¶ 22 (housing discrimination), 27 (discrimination on the basis of immigration status), 25 (discrimination and violence based on sexual orientation), and 28 (gender and sex discrimination in employment).

<sup>75</sup> A number of state and local initiatives fall within more than one category, such as RSJI's Race and Social Justice Initiative. These initiatives only appear under one category heading to avoid duplication. Details on the initiatives introduced in this Part are included in Appendix A-E, *infra*.

<sup>76</sup> More information on Human Rights Agencies can be found on IAOHRA's website, <http://www.iaohra.org/members/>. See also Saunders & Bang, *supra* note 26; *State and Local Human Rights Agencies Report*, *supra* note 73. The U.S. ICCPR Report also offers a description of Human Rights Agency initiatives. *Annex A*, *supra* note 12.

<sup>77</sup> See Part IV and Appendix F, *infra*.

<sup>78</sup> For example, recent studies by U.S. Department of Housing and Urban Development (HUD) suggest that racial minorities experience consistent adverse treatment in both rental and sale transactions over 20% of the time. The Urban Inst., *Discrimination in Metropolitan Housing Markets: National Results from Phase 1 of HDS2000*, Executive Summary iii-iv (2000), available at <http://www.huduser.org/portal/publications/hsgfin/hds.html>; The Urban Inst., *Discrimination in Metropolitan Housing Markets: National*

under-reporting, it is estimated that more than 3.7 million fair housing violations are committed annually against African Americans, Asian Americans, Latinos, and American Indians.<sup>79</sup> Of reported incidents, discrimination against individuals with disabilities is the most common.<sup>80</sup> Housing discrimination on the basis of sex and gender is also prevalent.<sup>81</sup> LGBT individuals face significant levels of discrimination as well.<sup>82</sup> One recent national study found that nineteen percent of transgendered individuals faced housing discrimination and eleven percent had been evicted.<sup>83</sup>

In the United States, housing discrimination on the basis of race and ethnicity is inextricably linked to a history of residential segregation, which exacerbates inequality. As a result, minority groups live disproportionately in areas of concentrated poverty characterized by substandard housing, high rates of crime and violence, and inadequate access to education, health care, and employment opportunities.<sup>84</sup> Discrimination and social exclusion in housing, combined with inequities in employment and education, contribute to the disproportionate number of homeless minorities.<sup>85</sup> As the Human Rights Committee noted in its 2006 Concluding Observations, African Americans comprise only twelve percent of the U.S. population, but they comprise fifty percent of the homeless population.<sup>86</sup> The Committee called for programs to end “such de facto and historically generated racial discrimination.”<sup>87</sup> Despite existing

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*Results from Phase 2 of HDS2000*, Executive Summary iv (2003), available at <http://www.huduser.org/portal/publications/hsgfn/hds.html>. However, HUD received only 4,516 complaints of housing discrimination based on race or national origin in 2009. U.S. Dep’t of Housing and Urban Dev., *The State of Fair Housing: Annual Report on Fair Housing FY 2009*, 22 (2010), available at <http://www.hud.gov/content/releases/fy2009annual-rpt.pdf> [hereinafter *The State of Fair Housing*].

79 National Fair Housing Alliance, *Dr. King’s Dream Denied: 40 Years of Failed Federal Enforcement* 27 (2008) (citing John Simonson, Cntr. for Applied Pub. Policy, University at Wisconsin-Plattville), available at <http://www.nationalfairhousing.org/LinkClick.aspx?fileticket=qPHxLjtvaGA%3D&tabid=3917&mid=5321>.

80 National Fair Housing Alliance, *Modernizing the Fair Housing Act for the 21<sup>st</sup> Century: 2013 Fair Housing Trends Report* 19 (2013), available at [http://www.nationalfairhousing.org/Portals/33/2013\\_Fair\\_Housing\\_Trends\\_Report.pdf](http://www.nationalfairhousing.org/Portals/33/2013_Fair_Housing_Trends_Report.pdf) [hereinafter *2013 Fair Trends Housing Report*].

81 See *The State of Fair Housing*, *supra* note 78, at 22.

82 Rea Carey, Executive Director for the National Gay and Lesbian Task Force, testified before Congress in 2010 that LGBT people “may experience outright hostility [when looking for housing] ... may be subject to violence or property damage.” *2013 Fair Housing Trends Report*, *supra* note 80, at 8 (citing Testimony of Rea Carey, Exec. Dir. of the National Gay and Lesbian Task Force, before the House Comm. on the Judiciary, Subcomm. on the Const., Civil Rights, and Civil Liberties (Mar. 11, 2010)). Further, a report from Michigan Fair Housing Centers found that LGBT couples experienced discrimination almost 30% of the time in housing transactions in the state, particularly when renting. See Michigan Fair Housing Centers, *Sexual Orientation and Housing Discrimination in Michigan: A Report of Michigan’s Fair Housing Centers*, 9-11, 16 (2007) (finding that discrimination was reduced where housing rights were further protected by a local ordinance), available at [http://www.fhcmichigan.org/images/Arcus\\_web1.pdf](http://www.fhcmichigan.org/images/Arcus_web1.pdf).

83 2013 Fair Housing Trends Report, *supra* note 80, at 12. See also Jaime M. Grant et al. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, Executive Summary (2011) (stating that 19% of transgendered individuals also reported being homeless at some point), available at [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_summary.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_summary.pdf).

84 See National Comm’n on Fair Housing and Equal Opportunity, *The Future of Fair Housing*, 5-6 (Dec. 2008), available at [http://www.civilrights.org/publications/reports/fairhousing/future\\_of\\_fair\\_housing\\_report.pdf](http://www.civilrights.org/publications/reports/fairhousing/future_of_fair_housing_report.pdf).

85 Mary Beth Shinn, *Homelessness, Poverty, and Social Exclusion in the United States and Europe*, 4 Eur. J. Homelessness 19, 30-34 (2010).

86 2006 HRC *Concluding Observations*, *supra* note 9, at ¶ 22.

87 *Id.*

federal and state protections, housing discrimination on the basis of race, disability, sexual orientation, as well as other factors, continues to grow in the United States.<sup>88</sup>

Human Rights Agencies seek to prevent housing discrimination, particularly against immigrants and other vulnerable communities, and institute fair housing policies and practices. Some localities are adopting a human rights-based approach to local housing, recognizing that homelessness and inadequate housing disproportionately affect people of color, members of the LGBT community, the elderly and immigrants. Human Rights Agencies and other state and local decision-makers strive to eliminate housing discrimination through proactive education and outreach and including communities in developing solutions, through hearings, community forums and task forces. Cities and counties are also adopting local resolutions to expand the availability of affordable and accessible housing. These efforts, illustrated by the examples in Appendix A, directly contribute to the United States' efforts to combat discrimination locally and strengthen compliance with the ICCPR.

## B. Eliminating Discrimination and Violence Based on Sexual Orientation

The U.S. recognizes the need to address discrimination against LGBT persons in its report to the Human Rights Committee,<sup>89</sup> noting that U.S. laws already offer protection in this regard.<sup>90</sup> However, like people in many in vulnerable communities, LGBT individuals continue to face discrimination in housing<sup>91</sup> and employment.<sup>92</sup> Yet, federal anti-discrimination laws currently do not fully protect against such discrimination.<sup>93</sup> As the Human Rights Committee emphasized in 2006, federal and state laws should be expanded to address violence related to sexual orientation and to ensure state employ-

88 2013 Fair Housing Trends Report, *supra* note 80, at 4.

89 *Common Core Document*, *supra* note 33, at ¶ 187 (“The status of specific vulnerable groups in the United States, including but not limited to racial and ethnic minorities, women, persons with disabilities, and LGBT persons, is not as it should be.”); *Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights*, ¶ 606 (Dec. 30, 2011), available at <http://www.state.gov/j/drl/rls/179781.htm#iii> (“there is] a significant history of purposeful discrimination against gay and lesbian people, by governmental as well as private entities, based on prejudice and stereotypes” in the United States (citing Letter from Eric Holder, Attorney General, to the Honorable John A. Boehner, Speaker of the House of Representatives, (Feb. 23, 2011))).

90 *Common Core Document*, *supra* note 33, at ¶ 151 (“Lesbian, Gay, Bisexual and Transgender persons are also protected under U.S. law.”); *Fourth Periodic Report*, *supra* note 89, ¶ 606 (“all three branches of the federal government have taken important steps to combat this discrimination and further protect the human rights of lesbian, gay, bisexual and transgender people”).

91 *See supra* Part III.A.

92 *See* M.V. Lee Badgett et al., The Williams Inst., *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination* 21 (2007), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Sears-Lau-Ho-Bias-in-the-Workplace-Jun-2007.pdf>.

93 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (2012) (Pub. L. 88-352) (prohibiting discrimination on the basis of race, color, sex, and national origin); 42 U.S.C. §§ 3601-3619, 3631 (2012) (prohibiting discrimination on the basis of race or color; religion; national origin; familial status or age; disability or handicap; or sex). Since 2009 there has been legislation before Congress, the Employment Non-Discrimination Act, that would prohibit discrimination against LGBT individuals in employment. This legislation, however, has not been passed. *See Employment Non-Discrimination Act*, ACLU, <http://www.aclu.org/hiv-aids-lgbt-rights/employment-non-discrimination-act> (last visited Apr. 30, 2013).

ment laws prohibit discrimination on this basis.<sup>94</sup> In recent years, despite the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, teen suicides and pervasive school bullying demonstrate the prevalence of violence based on sexual orientation.<sup>95</sup>

A number of state and local governments are currently working to provide greater protection and support to LGBT communities, and to foster equality and tolerance. Appendix B contains specific examples of Human Rights Agency efforts to address LGBT discrimination and abuse. Agencies facilitate intra-governmental coordination and conduct community outreach and hearings to identify needs and gaps in protection. They also support passage of local laws that prohibit discrimination on the basis of gender and sexual orientation, as well as laws expanding the availability of benefits, including in the arena of healthcare. These initiatives directly contribute to U.S. compliance with the ICCPR.

### C. Combating Sex and Gender Discrimination in Employment

Employment discrimination on the basis of sex, gender and sexual orientation violate Articles 2 and 26 of the ICCPR, as well as Article 3, which obligates state parties to ensure equal enjoyment of all civil and political rights among men and women.<sup>96</sup>

Despite U.S. efforts to protect against sex and gender discrimination in the workplace, including through enforcement of domestic legislation such as Title VII of the Civil Rights Act,<sup>97</sup> recent studies indicate that such discrimination is ongoing and more is needed to ensure equality in this arena.<sup>98</sup> The Human Rights Committee has previously directed the United States to “take all steps necessary, including at state level, to ensure the equality of women before the law and equal protection of the law,” and called for greater protections for sex-based discrimination.<sup>99</sup> The Committee emphasized the need to address discrimination against women in the workplace.<sup>100</sup>

State and local governments are addressing sex and gender discrimination through

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94 2006 HRC *Concluding Observations*, *supra* note 9, at ¶ 25.

95 See, e.g., Jesse McKinley, *Suicides Put Light on Pressures of Gay Teenagers*, N.Y. Times, Oct. 4, 2010, at A9, available at [http://www.nytimes.com/2010/10/04/us/04suicide.html?\\_r=0](http://www.nytimes.com/2010/10/04/us/04suicide.html?_r=0).

96 ICCPR, *supra* note 4, at art. 3.

97 Title VII, *supra* note 93, § 2000e-2 (2012).

98 See Francine D. Blau & Jed Devaro, *New Evidence on Gender Differences in Promotion Rates: An Empirical Analysis of a Sample of New Hires*, 46 *Indus. Relations* 511, 530-31 (2007); U.S. Dep’t of Labor, Bureau of Labor Statistics, *Women at Work* <http://www.bls.gov/spotlight/2011/women/> (last visited June 6, 2011) (showing the wage gap between women and men); U.S. Equal Emp’t Opportunity Comm’n, *Sexual Harassment Charges: EEOC & FEPAs Combined: FY 1997 - FY 2010* [http://www.eeoc.gov/eeoc/statistics/enforcement/sexual\\_harassment.cfm](http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm) (showing that women face sexual harassment and violence at work); Badgett, *supra* note 92, at 21. See also City and Cnty. of S.F. Dep’t on the Status of Women, *The Status of Women in San Francisco: 2009*, 13-16 (2010), available at [http://www.sfgov3.org/ftp/uploaded-files/dosw/reports/StatusofWomeninSF2009\\_FINAL\\_06.05.09.pdf](http://www.sfgov3.org/ftp/uploaded-files/dosw/reports/StatusofWomeninSF2009_FINAL_06.05.09.pdf) (stating that the wage gap persists between men and women in San Francisco).

99 2006 HRC *Concluding Observations*, *supra* note 9, at ¶ 28.

100 *Id.*

training programs, community surveys and dialogues that inform policy recommendations. They are also conducting gender equity assessments of city agencies, as well as public education programs to prevent such discrimination. In San Francisco and Salt Lake City, these efforts are based on principles from the Women’s Equality Treaty (CEDAW). Appendix C describes the range of state and local initiatives which contribute to the United States’ efforts to ensure equality, strengthening compliance with the ICCPR.<sup>101</sup>

#### D. Eradicating National Origin Discrimination

U.S. immigration and border security policies have raised numerous concerns regarding discrimination on the basis race, citizenship status and national origin.<sup>102</sup> Despite existing federal, state and local laws that explicitly prohibit discrimination based on national origin,<sup>103</sup> discriminatory practices and policies persist. Indeed, the United States has acknowledged the potential human rights implications of state and local laws that permit or mandate law enforcement to make immigration status determinations as part of routine stops.<sup>104</sup>

Profiling on the basis of religion, race and ethnicity serves as a prominent example of how discrimination destabilizes communities.<sup>105</sup> In general, individuals of color are more likely to be stopped by police and have difficulties flying or crossing the border.<sup>106</sup> Profiling can have destructive effects on communities of color, as detentions and deportations separate families, isolate them and expose them to undue suspicion, threats, violations of privacy and harm. In immigrant communities, these concerns extend beyond the U.S. to an individual’s home country.<sup>107</sup> Racial profiling also erodes trust between law enforcement and already vulnerable communities. It has a “negative overall impact on public safety”<sup>108</sup> and a chilling effect on communi-

<sup>101</sup> See Part II.B, *supra* and Appendix B, *infra*, for related initiatives by the Philadelphia Human Relations Commission, the San Francisco Human Rights Commission and the Seattle LGBT Commission that address sexual orientation discrimination.

<sup>102</sup> See, e.g., *Arizona’s SB 1070*, ACLU, <http://www.aclu.org/arizonas-sb-1070> (last visited Apr. 17, 2013); Written Statement from the ACLU to the Office of the High Commissioner for Human Rights, *Human Rights Violations on the U.S.-Mexico Border* (Oct. 25, 2012), available at [http://www.aclu.org/files/assets/121024\\_aclu\\_written\\_statement\\_ochcr\\_side\\_event\\_10\\_25\\_12\\_final\\_0.pdf](http://www.aclu.org/files/assets/121024_aclu_written_statement_ochcr_side_event_10_25_12_final_0.pdf); Border Network for Human Rights, *Accountability, Community Security and Infrastructure on the U.S.-Mexico Border* (2009), available at <http://www.bnhr.org/reports/accountability-community-security-and-infrastructure-on-the-u-s-mexico-border>.

<sup>103</sup> See Title VII, *supra* note 93. See also, e.g., Or. Rev. Stat. § 659A.030 (2011); S.F., Cal., Police Code art. 33 (2011).

<sup>104</sup> Human Rights Comm., *Considerations of Rep. Submitted by States Parties Under Art. 40 of the Covenant: Fourth Periodic Rep. U.S.A.* ¶¶ 636-40, U.N. Doc. CCPR/C/USA/4 (Dec. 30, 2011), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/429/66/PDF/G1242966.pdf?OpenElement>.

<sup>105</sup> *Racial Profiling: Definition*, ACLU, <http://www.aclu.org/racial-justice/racial-profiling-definition> (Nov. 23, 2005).

<sup>106</sup> ACLU, *Worlds Apart: How Deporting Immigrants after 9/11 Tore Families Apart and Shattered Communities 12-13* (Dec. 2004), available at <http://www.aclu.org/FilesPDFs/worldsapart.pdf>.

<sup>107</sup> *Id.* at 2-3.

<sup>108</sup> ACLU and the Rights Working Group, *The Persistence of Racial and Ethnic Profiling in the United States: A Follow-Up Report to the U.N. Committee on the Elimination of Racial Discrimination 26*

ties. As a party to the ICCPR, the United States is required to take action to comply with the prohibition of discrimination on the grounds of national or social origin found in Articles 2 and 26, including, but not limited to, the elimination of racial profiling and immigration policy reform.

Government actors in states and localities with large immigrant populations are in a unique position to address discrimination and inequality on the basis of national origin and to educate the community about related human rights issues. Appendix D contains a number of initiatives undertaken by Human Rights Agencies, law enforcement, state legislatures and mayor's offices to address national origin discrimination. Working in partnership with local communities, state and local actors are engaging in community-oriented policing, developing language access initiatives, documenting migrant worker housing conditions and engaging in dialogue and awareness-raising campaigns. Additionally, local legislation has been used as a tool to prohibit profiling and surveillance over-reach. State level universal healthcare legislation has offered access to healthcare to undocumented persons. These efforts directly contribute to the United States' efforts to combat national origin discrimination in local communities, as required under Articles 2 and 26 of the ICCPR.

## **E. Meeting General Monitoring, Reporting and Education Obligations**

In its last review of the United States, the Human Rights Committee expressly called for more information on ICCPR implementation at the state level. The Committee also highlighted the need for mechanisms to ensure follow-up on the Concluding Observations.<sup>109</sup> The U.N. Secretary General, too, has advised governments to include information on how they promote awareness of international human rights norms in reporting.<sup>110</sup>

Periodic human rights monitoring and reporting is not only required by the ICCPR, it is essential to assess strengths and weaknesses in domestic implementation and inform policy moving forward.<sup>111</sup> Subnational monitoring and reporting ensure that there is a more complete and nuanced picture of how human rights are being fulfilled on the ground throughout the country. By engaging state and local officials in monitoring and reporting, the United States can raise awareness of human rights standards and foster a more dialogical approach to human rights implementation.

Effective reporting will require greater training and education on human rights stan-

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(Aug. 2009), available at [http://www.aclu.org/files/pdfs/humanrights/cerd\\_finalreport.pdf](http://www.aclu.org/files/pdfs/humanrights/cerd_finalreport.pdf).

109 2006 HRC Concluding Observations, *supra* note 9, at ¶¶ 25, 39.

110 U.N. Secretary-General, Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, chap. I (4), U.N. Doc. HRI/GEN/2/Rev.2 (May 7, 2004), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/255f04bfca51adb802568f6005bc482?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/255f04bfca51adb802568f6005bc482?Opendocument).

111 See Sonia Cardenas, *Constructing Rights? Human Rights Education and the State*, 26 Int'l Pol. Sci. Rev. 363, 366, 375 (2005); ICCPR, *supra* note 4, at art. 40.

dards. Such training and education of state and local officials is critical for comprehensive implementation as well. It can help prevent and correct human rights violations by emphasizing the role of government officials in respecting and ensuring human rights.<sup>112</sup>

State and local actors are well positioned to document, analyze and report on human rights conditions. Human Rights Agencies monitor local conditions and develop and implement human rights and equity assessment tools for use in city government. Several agencies participate directly in treaty reporting and others conduct human rights education. State actors, too, can play a key role. California recently passed the first state resolution to support government reporting, but it has not yet been implemented. In 2012, Vermont adopted human rights principles into the state budget. These initiatives, detailed in Appendix E, demonstrate state and local government potential to strengthen ICCPR compliance and fulfill treaty obligations locally.<sup>113</sup>

## F. Fostering Participation in Policy-Making

Public participation is an important component of a human rights approach. Engaging community stakeholders in policy planning, implementation and evaluation fosters government accountability and transparency. It can also help ensure that policies and programs respond to local needs and achieve their intended results. While not explicitly mandated by the ICCPR, a right to participate in governance, on an equal basis and free from discrimination, is grounded in a number of the Covenant's provisions. Articles 2, 3, 19, 21, 22(2), 25, and the preamble<sup>114</sup> have been interpreted to call for participatory governance.

A number of state and local government initiatives contained in the Appendices, including Seattle's Race and Social Justice Initiative, community policing in El Paso and Vermont's human rights budgeting, demonstrate ways that community engagement and accountability can bolster decision-making.<sup>115</sup>

As the examples in this report illustrate, state and local governments, and Human Rights Agencies in particular, are instrumental in bringing the U.S. into compliance with the ICCPR. They are well situated to proactively identify and eliminate policies and programs that have a disparate impact on particular groups, in partnership with impacted communities.

Yet, while the initiatives throughout this report are promising, they are ad hoc, and

112 See, e.g., Cardenas, *supra* note 111.

113 Examples contained elsewhere in this report, such as the San Francisco gender assessment tool, further demonstrate how Human Rights Agencies can support human rights monitoring and compliance. See *infra* Appendix C.

114 ICCPR, *supra* note 4, at art. 2 (freedom from discrimination), art. 3 (freedom from discrimination), art. 21 (the right to peaceful assembly), art. 22(2) (freedom of association), art 19 (freedom of opinion and expression, and the right to seek, receive and impart information), art. 25 (right to vote and take part in public affairs), preamble, ("Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant").

115 See *infra* Appendix D and Appendix E.

lack the coordination and resources necessary to ensure their sustainability and impact. The next Part highlights how existing limitations inhibit state and local actors from undertaking more robust human rights monitoring and implementation.

## IV. IMPACT OF RESOURCE CONSTRAINTS ON HUMAN RIGHTS IMPLEMENTATION

For states and local governments to fulfill their potential as effective sites for human rights monitoring and implementation, they must be equipped to do this work. Yet there are multiple obstacles to robust state and local human rights compliance.<sup>116</sup>

This Part details how existing constraints impact state and local governments, focusing on Human Rights Agencies. The information that follows underscores that while a number of agencies have an interest in human rights monitoring and implementation, they currently lack the capacity to undertake human rights work. Human Rights Agencies have called for additional expertise, guidance, funding and resources in order to conduct more international human rights outreach, education and implementation.<sup>117</sup> Recent office closings and budget cuts further exemplify the need for federal support.

While the information below is drawn from Human Rights Agencies, it reflects the broader context in which the range of state and local actors operate: they share authority to implement human rights, but lack the tools needed to do so effectively.

### A. Lack of Training and Education on International Human Rights

Little has been done to communicate human rights treaty standards, Concluding Observations, or other international recommendations and norms to state and local level governments. As a result, state and local governments lack basic awareness of ratified treaties,<sup>118</sup> and the international system.<sup>119</sup>

Several Human Rights Agencies have remarked on gaps in knowledge regarding international human rights standards and effective practices. Appendix F details the impact of resource constraints on a number of agencies, including specific requests for training and education. These examples demonstrate the type of federal support that could fill existing needs.

### B. Severe Funding and Staffing Constraints

Human Rights Agencies face significant resource constraints in carrying out existing

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116 See *supra* Part II (describing existing barriers to state and local implementation and highlighting the lack of federal guidance, support or resources for human rights monitoring and implementation).

117 See Surveys of U.S.-Based IAOHRA Members by Columbia Law Sch. Human Rights Inst. in conjunction with IAOHRA (Dec. 2010 and Dec. 2012) (regarding resource constraints) (on file with Columbia Law Sch. Human Rights Inst.).

118 Human Rights Watch CERD Submission, *supra* note 44; see generally *supra* Part II.B.ii.

119 Letter from Mayor Becker et al., *supra* note 44.



mandates, which are grounded first and foremost in civil rights and anti-discrimination laws.<sup>120</sup> Many of these offices are understaffed, and a number have been closed in recent years. Agency staff emphasize the need for additional resources, including funding and staff, to support their efforts to implement human rights. Examples in Appendix F illustrate how resource constraints hamper the effectiveness of several agencies and impede innovative initiatives. Appendix F further discusses recent agency closures.

As dwindling tax revenues and poor economic conditions hamper state and local governments, human rights programs remain in jeopardy. Human Rights Agencies are in need of significantly more support – both financial and institutional – if they are to maintain their current functions, let alone incorporate human rights monitoring and implementation.

Part V, the final section of this report, details steps the federal government must take to ensure that state and local actors have the knowledge, capacity and tools to promote and protect human rights within the United States.

## V. RECOMMENDATIONS TO THE FEDERAL GOVERNMENT

As critical partners in implementation, state and local governments must be equipped with information on the United States' existing human rights obligations as well as appropriate means to meet them. The federal government – ultimately responsible for ensuring compliance with the ICCPR on an international level – has a key role to play in coordinating, encouraging and supporting state and local efforts to monitor human rights and ensure equality and non-discrimination for all.

To fulfill its obligations under the ICCPR, the United States must foster more effective and comprehensive human rights implementation. Efforts to communicate with state and local government to date have been laudable, yet limited. An effective domestic human rights infrastructure requires sustained and meaningful support for state and local governments as well as transparent, institutionalized federal mechanisms to monitor and implement human rights. By taking the following concrete steps, the United States can develop the intergovernmental coordination and collaboration necessary to address existing gaps in human rights protection.

### A. Ensure Sustained Federal Coordination and Support

A comprehensive approach to human rights implementation requires, at a minimum, that the federal government provide (1) staff dedicated to liaise with state and local governments, (2) education and training on international human rights and (3) funding. Such support is necessary to make international standards actionable and accessible for state and local actors.

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<sup>120</sup> See *supra* note 26 and accompanying text; Part II.B.i.

### *i. Dedicate Staff to State and Local Coordination*

At the federal level, dedicated staff would serve as essential focal points for human rights reporting and implementation. Such staff would liaise with states and municipalities on an ongoing basis in order to identify and develop best practices for state and local level implementation and communicate recommendations from international bodies to state and local governments. To do this effectively, dedicated staff should have a number of functions. At a minimum, they should:

- receive reports, suggestions and recommendations from state and local actors, on particular international human rights matters;
- solicit input from, and consult with, state and local actors on reports to international and regional human rights bodies;
- initiate and forward advice and recommendations to state and local actors on matters such as observations or reports received from international and regional human rights bodies;
- facilitate state and local participation in consultations as part of international reviews of the U.S. human rights record;
- assist state and local governments in their own efforts to:
  - collect information and report on human rights compliance at the state and local level, and analyze data to determine where compliance is strong, and where it needs improvement;
  - organize and hold hearings on issues of state and local concern, including state and local policy in light of recommendations issued by international and regional human rights bodies and other relevant international human rights standards;
  - engage in educational efforts with the public and with Human Rights Agencies to raise awareness of international human rights standards;
  - identify best practices in other jurisdictions for human rights compliance and implementation;
  - provide recommendations and guidance to governmental agencies on taking international human rights standards into account when creating new policies and legislation; and
  - convene and work with key partners (police, schools, local NGOs and community members) to implement, via training, education and other means, the institutional changes recommended by federal level human rights mechanisms or international bodies; and
- be readily identifiable and accessible to consult with state and local agencies and officials regarding international human rights norms and standards.

### *ii. Provide Human Rights Education and Training*

Although there are various state and local networks, like IAOHRA, that provide Human Rights Agencies with training opportunities, there are no formal or dedicated

avenues for human rights training. To fill this gap, the federal government should engage in direct outreach to state and local actors to raise awareness of human rights standards, including U.S. obligations under ratified treaties and relevant international, regional and national human rights mechanisms. Education and training by the federal government should equip state and local governments to review and improve human rights compliance. These efforts should include:

- consistent state and local level human rights training sessions with specific guidance on state and local obligations and effective reporting, monitoring and implementation practices;
- guidance to help state and local actors develop an understanding of the obligations they are expected to undertake, and to facilitate dialogue with international and regional human rights bodies;<sup>121</sup>
- assistance with data collection and analysis;
- periodic updates of relevant human rights policy, including the results of treaty review processes, U.N. recommendations to the United States and relevant human rights decisions by international and regional mechanisms. Such updates should emphasize the implications of evolving human rights norms on state and local policy; and
- dissemination of effective implementation practices and resources for state and local implementation and monitoring and implementation.

### *iii. Provide Funding*

Without additional funding, state and local governments will remain limited in their ability to effectively engage in human rights compliance. Several Human Rights Agencies have closed their doors due to budget cuts in recent years and many, if not all, face staffing and funding constraints. Indeed, almost all state and local actors currently lack the financial resources to monitor, report on, or implement human rights.<sup>122</sup>

Federal agencies and departments should provide grants to encourage and support Human Rights Agencies and other state and local actors in their efforts to implement human rights into local policy, and to monitor and report on compliance.

There are several federal grant programs that provide funding and training to state and local actors to assist with implementation and enforcement of federal law.<sup>123</sup> Models include contracts between the federal Equal Employment Opportunity Commission and state and local Fair Employment Practice Agencies to enforce

<sup>121</sup> See, e.g., *2008 CERD Concluding Observations*, *supra* note 9, at ¶ 36 (“The Committee recommends that the State party organize public awareness and education programmes on the Convention and its provisions, and step up its efforts to make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party under the Convention, as well as the mechanisms and procedures provided for by the Convention in the field of racial discrimination and intolerance.”).

<sup>122</sup> See Part IV and Appendix F, *infra*.

<sup>123</sup> Risa Kaufman, *supra* note 25, at 101.

federal anti-discrimination laws,<sup>124</sup> grants from the federal Department of Housing and Urban Development Fair Housing Initiatives Program to Human Rights Agencies and other actors to conduct fair housing education and outreach,<sup>125</sup> and federal Safe Schools/Health Students Initiative Grants promoting collaboration between local agencies, schools and community groups to promote child development and prevent violence and substance abuse.<sup>126</sup>

## **B. Establish Transparent and Effective Federal Monitoring and Implementation Mechanisms**

The recommendations detailed in the previous section can be achieved through transparent and institutionalized federal mechanisms mandated to coordinate with state and local actors to ensure comprehensive monitoring and implementation of international human rights standards at the federal, state and local levels. An effective domestic human rights infrastructure should include a federal level implementation body, such as a reinvigorated Interagency Working Group on Human Rights, and a monitoring body, such as a national human rights commission, or other similar institutional mechanisms.

A revived and institutionalized Interagency Working Group on Human Rights and a transformed and strengthened U.S. Civil and Human Rights Commission would help ensure that human rights are built into the baseline of government, and that the U.S. approach to human rights compliance is coordinated and effective.<sup>127</sup> These two mechanisms would support a comprehensive approach to human rights, characterized by federal partnerships with states and localities, including with Human Rights Agencies.

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124 See Title VII, *supra* note 93, § 2000e-8(b) (giving the EEOC authority to cooperate with local human rights commissions, including the ability to “engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission”).

125 Housing and Community Development Act of 1987, 42 U.S.C. § 3616, Pub. L. No. 100-242, *amended by* Housing and Community Development Act of 1992, Pub. L. No. 102-550, 106 Stat. 3672.

126 Elementary and Secondary Education Act of 1965, Elementary and Secondary Education Act of 1965, 20 U.S.C. § 7131 (2000) (Pub. L. No. 89-10, 79 Stat. 27) (providing federal grants for innovative initiatives). See also Substance Abuse and Mental Health Services Administration, *FY 2013 Grant Request for Applications: Safe Schools/Healthy Students State Planning, Local Education Agency, and Local Community Cooperative Agreements* (2013), available at <http://www.samhsa.gov/grants/2013/sm-13-006.aspx>.

127 See Catherine Powell, American Constitution Society for Law and Policy, *Human Rights at Home: A Domestic Policy Blueprint for the New Administration* (Oct. 2008), available at <http://www.acslaw.org/files/Powell%20full%20combined.pdf> [hereinafter *Blueprint*] (recommending that the incoming presidential administration “reconstitute and revitalize” the Interagency Working Group on Human Rights as a focal point for implementing human rights domestically, as well as create a monitoring body in the form of a national human rights commission). See also The Leadership Conference on Civil Rights, *Restoring the Conscience of a Nation: A Report on the U.S. Commission on Civil Rights* (Mar. 2009), available at [http://www.protectcivilrights.org/pdf/reports/commission/lccref\\_commission\\_report\\_march2009.pdf](http://www.protectcivilrights.org/pdf/reports/commission/lccref_commission_report_march2009.pdf) (recommending changing the name and mandate of the U.S. Civil Rights Commission to the U.S. Civil and Human Rights Commission); Columbia Law Sch. Human Rights Inst. & The Leadership Conference on Civil and Human Rights, *The Road to Rights: Establishing a Domestic Human Rights Institution in the United States* (2012), available at [http://www.law.columbia.edu/ipimages/Human\\_Rights\\_Institute/The%20Road%20to%20Rights%20Final.Date%20Inside.pdf](http://www.law.columbia.edu/ipimages/Human_Rights_Institute/The%20Road%20to%20Rights%20Final.Date%20Inside.pdf) [hereinafter *The Road to Rights*].

### *i. Reinvigorated Interagency Working Group on Human Rights*

An Interagency Working Group on Human Rights mandated to coordinate with state and local governments would serve as a focal point of federal, state and local government around human rights implementation. Currently, no federal entity has an explicit mandate to engage with state and local officials about international human rights.<sup>128</sup> President Clinton sought to institutionalize implementation through an Interagency Working Group (IAWG) with the goal of “providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights,” but this IAWG was never fully operationalized.<sup>129</sup>

By revitalizing and strengthening Executive Order 13107, which established the IAWG, the U.S. will take an important step toward effective and transparent state and local implementation. The Obama Administration has signaled its intent to improve treaty implementation through a recently created Equality Working Group, but this effort falls short of what is needed – it includes no state and local government coordination function.<sup>130</sup>

Significantly, Executive Order 13107 charged a number of federal agencies with responsibility for questions concerning implementation and required them to “designate a single contact officer” to oversee implementation. The IAWG was tasked with developing additional mechanisms to enhance human rights monitoring in states and localities, reviewing laws for compliance with human rights treaties and collecting information for reporting purposes.<sup>131</sup>

An institutionalized and strengthened IAWG<sup>132</sup> must be formally operationalized and mandated to coordinate with state and local actors. To facilitate meaningful coordination, the IAWG should ensure that the federal government provides dedicated staff, education and training to state and local governments, along with much needed funding.<sup>133</sup>

### *ii. U.S. Commission on Civil and Human Rights*

The United States should establish a national body to monitor and promote compliance with international human rights standards. U.S. civil society<sup>134</sup> and U.N. ex-

128 See *supra* Part II.A.

129 See *supra* notes 47-48 and accompanying text (describing the functions and status of the Interagency Working Group created through Exec. Order No. 13107).

130 *Supra* Part II.A.

131 Exec. Order No. 13,107, § 1, 63 Fed. Reg. 68,991 (Dec. 10, 1998).

132 See ACLU, *A Civil Liberties Agenda to Move Forward: Recommendations for the Second Term of President Barack Obama* 276-77 (Jan. 2013), available at [http://www.aclu.org/files/assets/a\\_civil\\_liberties\\_agenda\\_to\\_move\\_forward.pdf](http://www.aclu.org/files/assets/a_civil_liberties_agenda_to_move_forward.pdf); *Blueprint*, *supra* note 127, at 16-18.

133 See Part II.B, *supra* and Part V.A, *infra*.

134 See, e.g., Columbia Law Sch. Human Rights Inst. et al., *Treaty Ratification: United States of America, Submission to the United Nations Universal Periodic Review*, Ninth Session of the Working Group on the UPR, Human Rights Council 10 (2010), available at <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/HRI%20Cluster%20report%20UPR.pdf>. See also *The Road to Rights*, *supra* note 127 (recommending that the U.S. establish a national human rights commission by reforming the U.S. Civil Rights Commission into a Civil and Human Rights Commission).

perts<sup>135</sup> have repeatedly called on the U.S. to establish an independent national body to monitor U.S. compliance with international human rights standards and to ensure human rights become a reality at home.

Independent, autonomous national human rights institutions have been established in countries around the world to promote and protect human rights through a number of core functions, including: fact-finding and research; advising government on how to harmonize law and policy with human rights obligations; raising awareness of human rights; and interfacing with regional and international institutions.<sup>136</sup>

The United States could create such an institution by reforming and transforming the current U.S. Civil Rights Commission (USCCR) into a U.S. Civil and Human Rights Commission. By expanding and strengthening the USCCR, the U.S. could build on its important legacy and strengthen human rights accountability.<sup>137</sup> With an expanded mandate, this body could monitor and promote U.S. compliance with international human rights, in addition to its existing civil rights mandate. A U.S. Commission on Civil and Human Rights would also be fully independent from the U.S. government, non-partisan and adequately funded to fulfill its mandate.

An effective U.S. Civil and Human Rights Commission would have a multiplicity of functions. As a national clearinghouse of information, it would conduct human rights fact-finding and assessments through investigations and hearings into human rights concerns; issue reports and recommendations to the executive branch, Congress and local governments; and undertake and promote research and human rights education and awareness. It would also contribute information to reviews of the U.S. human rights record, including U.N. treaty reviews, the UPR and hearings at the Inter-American Commission on Human Rights. Relatedly, a Civil and Human Rights Commission could facilitate official visits from international and regional human rights experts.

To be effective in assessing policy on the ground, a U.S. human rights monitoring body should be empowered to partner with Human Rights Agencies and other state and local actors.<sup>138</sup> Such partnerships would enable a domestic human rights body to remain apprised of human rights conditions throughout the country and responsive to local needs. Through collaboration, Human Rights Agencies would deepen their

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135 See *supra* Part I.C.

136 See generally Int'l Council on Human Rights, *Policy, Performance and Legitimacy: National Human Rights Institutions* (2d ed. 2004), available at [http://www.ichrp.org/files/reports/17/102\\_report\\_en.pdf](http://www.ichrp.org/files/reports/17/102_report_en.pdf); Morten Kjaerum, *National Human Rights Institutions Implementing Human Rights* (2003), available at [http://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); Amnesty International, *National Human Rights Institutions: Amnesty International's Recommendations on Effective Protection and Promotion of Human Rights* (2001), available at <http://www.amnesty.org/en/library/asset/IOR40/007/2001/en/2f94804b-d8e3-11dd-ad8c-f3d4445c118e/ior400072001en.pdf>. The U.N. has adopted guiding principles as a framework for establishing these institutions: 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 <http://www.un.org/documents/ga/res/48/a48r134.htm>.

137 The recommendations for establishing a U.S. Civil and Human Rights Commission are distilled directly from *The Road to Rights*, *supra* note 127. They also draw from the *Blueprint*, *supra* note 127.

138 See *The Road to Rights*, *supra* note 127, at 22, 36, 42-45.

human rights awareness, share their expertise and amplify effective practices. Coordination would also expand the knowledge of international experts and could inspire locally-based solutions to be shared around the world.

By establishing these institutionalized, effective and transparent structures – a reinvigorated and reconstituted Interagency Working Group on Human Rights, and a strengthened and transformed U.S. Civil and Human Rights Commission – the United States would provide critical support for human rights monitoring and implementation at the state and local level, responding to growing calls for improved domestic accountability for human rights.

## CONCLUSION

Ratified human rights treaties like the ICCPR constitute the supreme law of the land. While the federal government is ultimately responsible for treaty compliance throughout and within the United States, respecting and ensuring human rights requires concerted government action at all levels of government, in conjunction with community partnerships. Yet the United States currently lacks a human rights infrastructure or any comprehensive approach to translating international human rights standards into domestic practice. As a result, state and local authorities – on the front lines of promoting and protecting rights – lack the expertise, capacity and resources to protect the rights set forth in the ICCPR.

Despite resource and capacity constraints, many state and local governments already engage in activities that foster U.S. compliance with the ICCPR. An increasing number of state and local actors are working with local communities to address the broad range of human rights issues within their jurisdiction. As described throughout this report, local governments are taking steps to proactively prevent and eliminate discrimination and inequality, and to monitor and report on local human rights conditions. While promising, existing state and local human rights efforts are patchwork and ad hoc, falling well short of U.S. obligations under articles 2, 26 and 50 of the ICCPR.

To ensure that state and local governments can reach their full potential to implement the ICCPR, the United States must develop a more comprehensive and coordinated approach to human rights implementation. Specifically, the federal government must support, encourage and incentivize state and local human rights monitoring and implementation through (1) staff dedicated to coordinate with state and local actors around human rights; (2) international human rights education and training; (3) funding to engage in civil and human rights implementation and compliance and (4) institutionalized, transparent and effective federal human rights mechanisms mandated to coordinate with state and local governments, such as reinvigorated Interagency Working Group on Human Rights and a U.S. Commission on Civil and Human Rights.

# APPENDIX A: INITIATIVES TO ADDRESS HOUSING DISCRIMINATION

## HUMAN RIGHTS AGENCIES

### *i. Illinois Department of Human Rights*

The Illinois Department of Human Rights (“IDHR”) is a state agency that implements the Illinois Human Rights Act, which prohibits discrimination in multiple areas, including public accommodations.<sup>139</sup> The IDHR investigates allegations of discrimination and conducts public education about discrimination.<sup>140</sup>

The IDHR is particularly active in outreach to underserved communities, including African Americans, persons with disabilities, LGBT persons and various immigrant groups, all of whom may be vulnerable to housing discrimination. From 2007 to 2010, the IDHR conducted outreach efforts within the Polish immigrant community through a monthly fair housing column in a local Polish-language newspaper.<sup>141</sup>

The IDHR conducts substantial outreach to raise awareness of its protection of LGBT rights in housing. The IDHR has collaborated with the Assistant Secretary of the U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity to this end. In June of 2012, they sent a joint letter to LGBT news outlets describing federal and local legal protections and noting that despite the laws and regulations in place, discrimination continues. The letter underscores the importance of federal and local partnerships in proactively addressing the existing gaps in protection. To address such gaps, the IDHR undertook a campaign to garner media attention to the letter and related discrimination through LGBT print and television outlets.<sup>142</sup>

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139 The Act prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, citizenship status (with regard to employment), familial status (with regard to real estate transactions), age, marital status, physical or mental disability, military service, unfavorable military discharge, as well as order of protection status. The Illinois Human Rights Act also protects against sexual harassment in employment and higher education as well as providing safeguards against retaliatory measures taken after a discrimination charge is filed. 775 Ill. Comp. Stat. 5/1-102 (2010), 6-101 (2011).

140 *Introduction to the IDHR*, Ill. Dep’t of Human Rights, [http://www.state.il.us/dhr/DHR\\_Int/DHR\\_Inte.htm](http://www.state.il.us/dhr/DHR_Int/DHR_Inte.htm) (last visited Aug. 1, 2013).

141 Telephone Interview with Bobbie Wanzo, Deputy Dir., Ill. Dep’t of Human Rights, and Marian Honel, Manager of the Fair Hous. Div., Ill. Dep’t of Human Rights (Mar. 11, 2011). All telephone interviews were conducted by students working with the Human Rights Clinic or the Human Rights Institute at Columbia Law School.

142 Rocco J. Claps, Director, Ill. Dep’t of Human Rights, Submission by the Illinois Department of Human Rights for the United States Department of State Concerning Its Report to the United Nations on the Implementation of U.S. Obligations Under the International Covenant on Civil and Political Rights (IC-CPR) (June 10, 2013) (on file with Columbia Law Sc. Human Rights Inst.) [hereinafter *IDHR Submission*].



To coordinate activity around fair housing, the IDHR is also part of a number of local coalitions, such as the Chicago Area Fair Housing Alliance. In 2012 and 2013, the IDHR conducted several Fair Housing Advocacy Trainings for community organizations to address prevalent housing issues. Public events have also covered issues such as challenges faced by migrant communities and veterans.<sup>143</sup>

Notably, the IDHR has also served as a bridge between the U.N. and local decision-makers. In 2009, the Department hosted the U.N. Special Rapporteur on Adequate Housing, convening a dialogue with local officials on fair housing and housing choice programs. This type of meeting provides a platform to raise awareness of how human rights standards apply locally. IDHR has held public events around United Nations Day (October 10), which local consulate officials have attended.<sup>144</sup>

## ii. San Francisco Human Rights Commission

The San Francisco Human Rights Commission (“S.F. Commission”) is mandated to mediate intergroup tensions and enforce the city’s local anti-discrimination laws, including fair housing provisions.<sup>145</sup> In addition to processing discrimination complaints in housing predicated on city law, the S.F. Commission undertakes multiple initiatives to foster equal access to housing.

For example, in 2005, in an effort to address discrimination against Native Americans, the S.F. Commission created the Native American Task Force (“NATF”). The NATF surveyed Native American communities for a year, then held a hearing on specific community concerns, including accessible and adequate housing. This culminated in a report recommending that the city create more affordable, culturally competent housing, appropriate for Native American people, and more funding to mitigate the high number of Native American homeless persons.<sup>146</sup>

Addressing housing discrimination on the basis of income and on sexual orientation is a specific focus of the S.F. Commission’s work. Through its LGBT Advisory Committee, the S.F. Commission addresses the unique issues faced by homeless and marginally-housed LGBT persons, with a focus on transgender shelter residents.<sup>147</sup> The Commission recently made recommendations to improve training for city staff

143 Telephone Interview with Bobbie Wanzo and Marian Honel, *supra* note 141.

144 E-mail from Marian Honel, Manager of the Fair Hous. Div., Ill. Dep’t of Human Rights, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (July 12, 2013). All e-mails cited in this report are on file with Columbia Law School’s Human Rights Institute, unless otherwise noted.

145 A number of laws govern the S.F. Human Rights Commission jurisdiction. See *Governing Laws*, San Francisco Human Rights Comm’n, <http://sf-hrc.org/index.aspx?page=217> (last visited Aug. 1, 2013); S.F. Police Code art. 33, *supra* note 103; S.F., Cal., Police Code art. 1.2 (2008), available at <http://sf-hrc.org/modules/showdocument.aspx?documentid=1774> (“Discrimination in Housing Against Families with Minor Children”).

146 S.F. Human Rights Comm’n, *Discrimination by Omission: Issues of Concern for Native Americans in San Francisco* 21 (2007), available at <http://sf-hrc.org/Modules/ShowDocument.aspx?documentID=1796>.

147 E-mails from Theresa Sparks, Exec. Dir., & Taraneh Moayed, Budget and Policy Coordinator, S.F. Human Rights Comm’n, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (July 25, 2013).

and strengthen complaint tracking, which the S.F. Commission and city agencies are implementing.<sup>148</sup> In 2013, the HRC is educating San Francisco housing providers regarding applicants and tenants to alleviate the problem of discrimination on the basis of source of income, which continues to occur in violation of city housing laws.<sup>149</sup>

## OTHER STATE AND LOCAL DECISION-MAKERS

### *i. Eugene, Oregon's Mayor and City Council*

At the end of 2011, the Mayor and City Council created the Opportunity Eugene Community Task Force on Homelessness, comprised of city councilors, city staff, local service providers and advocacy groups, as well as community members. The Task Force researched and developed strategies and recommendations to remedy the issue of homelessness in the city, and proclaimed “housing is a basic human right.”<sup>150</sup> In 2012, the Task Force completed its final report, with recommendations to ensure that homeless persons are treated with dignity.<sup>151</sup> The report was submitted to the Mayor and City Council, who are exploring ways to address the recommendations.<sup>152</sup> These efforts are supported by Eugene’s Human Rights Commission (“EHRC”), which has a mandate to address human rights issues.<sup>153</sup> The EHRC’s follow-up proposal for Eugene to create a standing commission on homelessness is currently pending with the City Council.<sup>154</sup>

### *ii. Madison, Wisconsin City Council & Dane County Board of Supervisors*

In the past two years, two localities in the state of Wisconsin have passed resolutions recognizing housing as a human right and prioritizing efforts to meet the basic need for housing.

In 2011, the Madison City Council passed a resolution highlighting the prevalence of homelessness and the interrelated nature of homelessness, joblessness and poverty,

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148 S.F. Human Rights Comm’n, *Annual Report 2012* 5 (2012), available at <http://sf-hrc.org/modules/showdocument.aspx?documentid=2155> [hereinafter S.F. HRC *Annual Report 2012*].

149 S.F. Human Rights Comm’n, *Know Your Rights!: Setting the Record Straight on Section 8* (2013), available at <http://sf-hrc.org/modules/showdocument.aspx?documentid=2379>.

150 *Opportunity Eugene Task Force, Opportunity Eugene: A Community Task Force on Homelessness Final Report and Recommendations* (2012), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/4272>.

151 *Id.* The six recommendations were: 1) identify and establish safe and secure sites for the homeless; 2) create and support day use community centers; 3) improve healthcare access for the homeless; 4) continue and expand existing services to the homeless; 5) improve laws and ordinances that criminalize and block homeless individuals; and 6) create a commission to continue to explore homelessness solutions. *Id.* at 1–4.

152 Eugene Council Ordinance No. 20481 (Nov. 29, 2011), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/493>; E-mail from Ken Neubeck, Vice-Chair, City of Eugene Human Rights Comm’n, to JoAnn Kamuf Ward, Assoc. Dir., Human Rights in the U.S. Project, Columbia Law Sch. Human Rights Inst. (Oct. 16, 2012).

153 See Memorandum From Toni Gyatso, Chair, Eugene Human Rights Comm’n, to the Mayor and City Council (June 13, 2012) (on file with Columbia Law Sch. Human Rights Inst.).

154 E-mail from Lindsey Foltz, Equity and Human Rights Analyst, Eugene Human Rights Comm’n, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (Aug 2, 2013).

which disproportionately affect minorities. The resolution underscored that Madison has an obligation to promote fair housing and that several treaties ratified by the United States, including the ICCPR, require the city to eliminate policies with a racially discriminatory effect.<sup>155</sup> The resolution calls for an assessment of affordable and accessible housing needs, the creation of a staff position to oversee the assessment, and a long term housing strategy. It also calls for public funds to increase affordable and available housing.<sup>156</sup>

Building on the City Council's effort, the Board of Supervisors of Dane County (which encompasses Madison) passed a 'housing is a human right' resolution in 2012.<sup>157</sup> This resolution also prioritizes providing shelter. It sets out a concrete goal for the County: a local housing plan that aims to improve the availability of adequate housing, reduce the number of homeless children in local schools and prevent the criminalization of homelessness.<sup>158</sup> A body comprised of local officials and residents is charged with implementing the housing plan.<sup>159</sup> To ensure accurate data is available, the resolution calls for an annual assessment of housing needs.<sup>160</sup>

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155 City of Madison Res. on Housing as A Human Right, Legislative File 23825 (Version 1) (Sept. 6, 2011), available at <http://legistar.cityofmadison.com/attachments/a584992f-510c-46d1-b709-c81372062ac0.pdf>

156 *Id.* See also Pat Schneider, *Grass Roots: Madison Recognizes Housing as a Human Right*, The Cap Times, Dec. 2, 2011, [http://host.madison.com/ct/news/local/article\\_30d9d280-1c7b-11e1-858a-001871c3ce6c.html](http://host.madison.com/ct/news/local/article_30d9d280-1c7b-11e1-858a-001871c3ce6c.html).

157 Telephone Interview by Meredith Firetog with Heidi Wegleitner, Dane County Supervisor and Attorney, Legal Action of Wisconsin (July 17, 2012).

158 Dane County Recognizes Housing As A Human Right, Res. 292, 11-12. See Dane County Board of Supervisors Zoning & Land Regulation Comm. Work Meeting Agenda (June 12, 2012) at 103-4 for the resolution text, <http://pdf.countyofdane.com/plandev/zoning/June%2012%20ZLR%20Work%20Meeting.pdf>.

159 Interview with Heidi Wegleitner, *supra* note 157.

160 City of Madison Housing Resolution, *supra* note 155.

# APPENDIX B: INITIATIVES TO ELIMINATE DISCRIMINATION AND VIOLENCE BASED ON SEXUAL ORIENTATION

## HUMAN RIGHTS AGENCIES

### *i. Philadelphia Human Relations Commission*

The Philadelphia Commission on Human Relations Commission (“PCHR”), the oldest municipal human relations commission in the U.S., enforces civil rights and advocates for equal access to services, such as housing, as well as promoting intergroup relations.<sup>161</sup> The PCHR enforces the City’s Fair Practices Ordinance (FPO), which prohibits discrimination in employment, housing, the use of public accommodations and the delivery of city services on sixteen bases, including sexual orientation and gender.<sup>162</sup> The current FPO builds on Philadelphia’s history of strong legal protections for members of the lesbian, gay, bisexual and transgender community, who lack the same legal protections under state and federal law.

Among its many functions, the PCHR has raised awareness of gender identity discrimination and helped strengthen existing legal protections. While the FPO included sexual orientation and gender identity as protected categories for over a decade,<sup>163</sup> it was overhauled in 2011 to expand protections, and to increase existing fines and penalties, as well as to streamline the Commission’s functions.<sup>164</sup> One important change was the addition of domestic and sexual violence victim status as a protected category. As a result, victims, regardless of their sexual orientation or gender identity, are protected from discrimination in employment, housing and public accommodations in the city.

The PCHR has also advocated for a number of legislative changes to foster greater equality for all, regardless of gender identity or sexual orientation. In 2013, Philadelphia amended its laws in a number of ways to protect the transgender community. Significantly, the amendments provide for gender neutrality in certain city forms; ensure gender neutral bathrooms in newly constructed city or city-controlled buildings; reinforce the rights of transgender individuals to request name and gender changes

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161 E-mail from Rue Landau, Exec. Dir., Phila. Human Relations Comm’n, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (Aug. 8, 2013).

162 Phila. Code §§ 9-1102(1)(i), 1103, 1106, 1108.

163 In 1982, the Fair Practices Ordinance was amended to include sexual orientation as a protected basis, and in 2002, gender identity was added as a protected category. See E-mail from Rue Landau, *supra* note 161.

164 Philadelphia Commission on Human Relations, *The Philadelphia Fair Practices Ordinance: Prohibitions Against Unlawful Discrimination – Chapter 9-1100 of the Philadelphia Code (2011)*, available at [http://www.phila.gov/HumanRelations/PDF/Fair%20Practices%20Ordinance%2010\\_26\\_2011.pdf](http://www.phila.gov/HumanRelations/PDF/Fair%20Practices%20Ordinance%2010_26_2011.pdf).

on pertinent records and to have equal access to all public accommodations.<sup>165</sup> These amendments also established two practices that are a first in the United States: transgender-inclusive health benefits for city employees, and tax credits to encourage employers to expand benefits to transgender employees and employees' Life Partners.<sup>166</sup>

### ii. San Francisco Human Rights Commission

The S.F. Commission addresses discrimination in employment based on sexual orientation, gender identity, HIV status and domestic partnership status.<sup>167</sup> The S.F. Commission has an LGBT Advisory Committee that explicitly uses a human rights framework to raise awareness and engage the community on LGBT issues.<sup>168</sup> For example, the Commission has held a public hearing on intersex issues and published a report to document the testimony and provide findings and recommendations.<sup>169</sup> The Commission supports legislation to ensure equality for non-traditional families, and has held forums with professional experts and community members to develop specific recommendations.<sup>170</sup> Working to improve access to healthcare for transgender populations, the S.F. Commission advocated to expand the city's healthcare coverage for transgender persons and is currently working with advocates and the San Francisco Department of Public Health to implement more comprehensive access to healthcare services for this community.<sup>171</sup> The Commission collaborates with the various community groups and city agencies, including the District Attorney's office and Board of Supervisors, to address violence and related safety concerns that impact the San Francisco transgender community through public education and programming.<sup>172</sup>

### iii. Seattle LGBT Commission

The Seattle Lesbian Gay Bisexual and Transgender Commission ("the LGBT Commission") is a volunteer group that advises the Mayor, City Council, and city departments regarding issues that affect the lesbian, gay, bisexual and transgender community in Seattle. The Commission receives staff support from the Seattle Office of Civil Rights.<sup>173</sup>

165 Phila., PA, Bill 130224 (May 5, 2013).

166 Since 1998, the FPO has included a Life Partnership registry for same-sex and same-gender couples. See E-mail from Rue Landau, *supra* note 161.

167 S.F. Human Rights Comm'n, *How to File a Discrimination Complaint*, SF-HRC.org, [http://sf-hrc.org/index.aspx?page=85#What are protected classes in employment?](http://sf-hrc.org/index.aspx?page=85#What%20are%20protected%20classes%20in%20employment?) (last visited Apr. 30 2013).

168 See S.F. Human Rights Comm'n, <http://www.sf-hrc.org/> (last visited Aug. 2, 2013).

169 See S.F. Human Rights Comm'n, *A Human Rights Investigation into the Medical "Normalization" of Intersex People* (2005), available at [http://www.sf-hrc.org/ftp/uploadedfiles/sfhumanrights/Committee\\_Meetings/Lesbian\\_Gay\\_Bisexual\\_Transgender/SFHRC%20Intersex%20Report%281%29.pdf](http://www.sf-hrc.org/ftp/uploadedfiles/sfhumanrights/Committee_Meetings/Lesbian_Gay_Bisexual_Transgender/SFHRC%20Intersex%20Report%281%29.pdf).

170 S.F. Human Rights Comm'n, *Beyond Marriage: Unrecognized Family Relationships* (2011), available at <http://sf-hrc.org/modules/showdocument.aspx?documentid=1017>.

171 *S.F. HRC Annual Report 2012*, *supra* note 148, at 18.

172 The Commission has received funding to support this work. See S.F. Human Rights Comm'n, *Quarterly Performance Data for FY 12-13*, 18, 32 (2013), available at <http://sf-hrc.org/modules/showdocument.aspx?documentid=2386>; S.F. Human Rights Comm'n, *FY 13-15 Budget* (2013), available at <http://sf-hrc.org/modules/showdocument.aspx?documentid=2389>.

173 E-mail from Marta Idowu, Policy Analyst, Seattle Office for Civil Rights, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (July 30, 2013).

The LGBT Commission fosters community engagement and promotes policy change to tackle discrimination and inequality.

The LGBT Commission supports local legislation that advances protection for human rights. One example is the Equal Benefits Ordinance, which prohibits discrimination in the provision of benefits in a number of city contracts.<sup>174</sup> The Commission also engages in policy implementation. In 2010, the Seattle City Council passed a resolution reaffirming the city's commitment to equal rights for all residents and employees regardless of sexual orientation or gender identity.<sup>175</sup> As a result, city departments work with the LGBT Commission to identify and address community concerns.<sup>176</sup> After the resolution passed, the LGBT Commission conducted a formal assessment of community needs regarding housing, education, health, safety and inclusion. Commissions, city departments, civil society and businesses will use the data to reform local policy and practice.<sup>177</sup>

In addition, the Seattle LGBT Commission has successfully participated in efforts to add a private right of action to the city's employment discrimination ordinance, allowing individuals alleging employment discrimination on the basis of sexual orientation or gender identity to seek a remedy in court.<sup>178</sup> This right is not available under applicable state laws.

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174 *Past Achievements*, Seattle LGBT Comm'n, [http://www.seattle.gov/LGBT/past\\_achievements.htm](http://www.seattle.gov/LGBT/past_achievements.htm) (last visited Aug. 2, 2013).

175 Seattle, Wash., Res. No. 31224 (2010), available at <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s3=31224&l=20&Sect5=RESNY&Sect6=HITOFF&d=RESF&p=1&u=%2F~public%2FRESNy.htm&r=1&f=G>.

176 *Id.*

177 See Seattle LGBT Comm'n, <http://www.seattle.gov/lgbt/> (last visited Aug. 2, 2013). The Commission documented the survey results from the six-week consultation process. See Seattle LGBT Comm'n, *Seattle LGBT Commission Report of Needs Assessment Survey 2010* (2011), available at [http://www.seattle.gov/LGBT/documents/Rpt\\_SnapShotSEATTLE.pdf](http://www.seattle.gov/LGBT/documents/Rpt_SnapShotSEATTLE.pdf).

178 See *About Us*, Seattle LGBT Comm'n, <http://www.seattle.gov/LGBT/about.htm> (last visited Aug. 2, 2013).

## APPENDIX C: INITIATIVES TO COMBAT SEX AND GENDER DISCRIMINATION IN EMPLOYMENT

### HUMAN RIGHTS AGENCIES

#### *i. San Francisco Commission on the Status of Women & Department on the Status of Women*

The San Francisco Department on the Status of Women’s mission is to ensure gender equity and “foster the advancement of women and girls throughout San Francisco through policies, legislation, and programs, both within city and county government and in the private sector.”<sup>179</sup>

In 1998, as the result of advocacy by community groups, including Women’s Institute for Leadership Development for Human Rights (WILD), Amnesty International, Women’s Foundation of California and the San Francisco Commission on the Status of Women, San Francisco adopted an ordinance based on the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), which requires the city to “integrate gender equity and human rights principles into all of its operations.”<sup>180</sup> The ordinance requires the city departments to conduct gender analyses of their budget, services and employment practices to identify barriers and discrimination against women, with the support of a Task Force staffed by the Department.<sup>181</sup> Through these assessments, the city can identify discriminatory practices and barriers to employment, and institute recommendations and policies to correct any inequalities.<sup>182</sup> The results include improvements in data collection, service delivery and gender equity in employment in a number of departments.<sup>183</sup> Citywide work-life balance studies were used to support new policies and laws establishing flexible work arrangements and paid parental leave.<sup>184</sup> These measures

179 See *Commission on the Status of Women*, City & Cnty. of S.F. Dep’t on the Status of Women, <http://www.sfgov3.org/index.aspx?page=12> (last visited Apr. 21, 2013). San Francisco has a Department on the Status of Women, which was created to carry out the policies of the Commission on the Status of Women. *A Message from the Executive Director*, San Francisco Dep’t on Status of Women, <http://www.sfgov3.org/index.aspx?page=78> (last visited Apr. 30 2013).

180 S.F., Cal., Admin. Code § 12K (1998), available at <http://www.sfgov3.org/index.aspx?page=130> (“Local Implementation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women”); *State and Local Human Rights Agencies Report*, *supra* note 73, at 8.

181 *State and Local Human Rights Agencies Report*, *supra* note 73, at 8.

182 Anu Menon, S.F. 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 <http://www.sfgov3.org/Modules/ShowDocument.aspx?documentid=314>.

183 *Id.* at 7.

184 *Gender Analysis*, S.F. Dep’t on the Status of Women (2006), <http://www.sfgov3.org/index.aspx?page=125>.

have reduced the disparate impact of city practices on women. The Department has also created a government and private sector initiative to bring CEDAW principles to the private sector.<sup>185</sup>

## ii. Illinois Department of Human Rights

The Illinois Department of Human Rights (“IDHR”) has implemented educational programs focusing specifically on the issue of sex and gender discrimination in the workplace. These programs target state agencies and private entities throughout Illinois.<sup>186</sup> In 2011 and 2012, the IDHR Institute for Training held over 100 trainings, reaching over 2,000 people. These trainings included sessions specifically on “Gender Identity and Sexual Orientation in the Workplace” and “Preventing Sexual Harassment.”<sup>187</sup>

In 2011, the IDHR partnered with local advocates to host an event where Governor Quinn proclaimed April 12 as Equal Pay Day<sup>188</sup> in an effort to increase awareness of the state’s equal pay law and to highlight the importance of pay equity between men and women.<sup>189</sup> The Department has also honored advocates who have fought for equal pay for women, such as Lily Ledbetter.<sup>190</sup>

## OTHER STATE AND LOCAL DECISION-MAKERS

### i. Salt Lake City Mayor’s Office of Diversity and Human Rights

The Salt Lake City Mayor’s Office of Diversity and Human Rights (“ODHR”) aims to “protect the basic human rights of all Salt Lake City residents.”<sup>191</sup> In its work, the Mayor’s Office collaborates with other city agencies and the community.<sup>192</sup> One example is ODHR’s efforts to address discrimination, which has involved city residents, the Salt Lake City Human Rights Commission and members of the City Council.<sup>193</sup>

185 E-mail from Ann Lehman, Policy Director, S.F. Dep’t on the Status of Women, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (July 7, 2013).

186 Ill. Dep’t of Human Rights, <http://www2.illinois.gov/dhr> (last visited Aug. 7, 2013).

187 *IDHR Submission*, *supra* note 142.

188 Press Release, Ill. Dep’t of Labor, State Marks Equal Pay Day at Rally in Chicago: Governor Quinn Proclaims Equal Pay Day in Illinois (Apr. 12, 2011), <http://www3.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=50&RecNum=9332>.

189 *Id.*

190 Press Release, Ill. Dep’t of Labor, Governor Quinn Proclaims October 14 Lilly Ledbetter Day in Illinois: Honors Lilly Ledbetter, Pioneer for Equal Pay for Women (Oct. 14, 2010), <http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?RecNum=8966&SubjectID=50>.

191 *Mayor’s Anti-Discrimination Campaign*, Salt Lake City Mayor’s Office of Diversity & Human Rights, <http://www.slccgov.com/odhr/ad> (last visited Aug. 2, 2013).

192 *Your Human Rights*, Salt Lake City Mayor’s Office of Diversity & Human Rights, <http://www.slccgov.com/odhr/hr> (last visited Aug. 2, 2013).

193 Telephone Interview by Elizabeth Skeen with Yolanda Francisco-Nez, Coordinator, Salt Lake City Mayor’s Office of Diversity & Human Rights (Mar. 29, 2012); Yolanda Francisco-Nez, *Salt Lake City Human Rights Commission: Discrimination Report* (2009), available at <http://www.slcdocs.com/ODHR/discrimination2009.pdf> [hereinafter *Salt Lake City Report*].



To assess constituent needs and understand how to respond effectively, the Human Rights Commission sponsored a series of community dialogues on discrimination.<sup>194</sup>

Through these dialogues, local officials discovered that many women in Salt Lake had concerns that were not being addressed, including unequal educational opportunities and employment. In response, Salt Lake City has begun to consider using CEDAW (the Women's Equality Treaty) as a framework for creating more equitable gender policies. Since 2010, the Human Rights Commission and the City Council, together with the Mayor's Office of Diversity and Human Rights, created a Committee on Women to focus on implementing CEDAW principles within city policy.<sup>195</sup> The Committee has sponsored targeted dialogues to gather information that will inform policy moving forward and to provide information to community members on CEDAW.<sup>196</sup>

In May 2013, the Human Rights Commission released its report *The Status of Women in Salt Lake City*, offering policy recommendations to improve the political, social and economic status of women, as well as women's education, health and safety. In addition, the report recommends that Salt Lake establish a well-resourced Women's Commission within city government to ensure comprehensive CEDAW implementation and "to bring action, political will and clout to the cause of women's equality."<sup>197</sup> The report has been transmitted to the City Council.

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194 *Salt Lake City Report*, *supra* note 193, at 4.

195 E-mail from Yolanda Francisco-Nez, Coordinator, Office of Diversity and Human Rights, Salt Lake City, to Elzbieta Matthews, Columbia Law Sch. Human Rights Inst. (May 2, 2013).

196 *See* Press Release, Salt Lake City Mayor's Office of Diversity and Human Rights, Mayor, Human Rights Commission to Release Report on Women in Salt Lake City (May 28, 2013), <http://www.ci.sl.c.ut.us/mayor-human-rights-commission-release-report-women-salt-lake-city>; Interview with Yolanda Francisco-Nez, *supra* note 193.

197 Salt Lake City Human Rights Comm'n, Mayor's Office of Diversity and Human Rights, *The Status of Women in Salt Lake City* 27 (2013), available at [http://www.slcdocs.com/ODHR/SLC\\_Women\\_Report.pdf](http://www.slcdocs.com/ODHR/SLC_Women_Report.pdf).

# APPENDIX D: INITIATIVES TO ERADICATE NATIONAL ORIGIN DISCRIMINATION

## HUMAN RIGHTS AGENCIES

### *i. Eugene Human Rights Commission*

In December 2011, the Eugene Human Rights Commission's ordinance was expanded to explicitly include the Universal Declaration on Human Rights and other human rights treaties.<sup>198</sup> The EHRC now works with city government and the community to “respect, protect, and fulfill” the human rights enumerated in the Universal Declaration,<sup>199</sup> and human rights have been incorporated into its work plan.<sup>200</sup>

The EHRC promotes education and awareness of human rights, and has a particular focus on national origin discrimination. For example, the EHRC created and disseminated an advocacy toolkit<sup>201</sup> on the Development, Relief and Education for Alien Minors (“DREAM”) Act.<sup>202</sup> The EHRC also hosts public events that raise awareness of immigrants' rights as human rights, including myths about the causes and consequences of migration and current paths to citizenship in the United States.<sup>203</sup> The EHRC has also established an Immigrant Integration Work Group, which partners with the Lane County Network for Immigrant Integration.<sup>204</sup> In 2012, the Working Group produced a short video on immigrants' rights, featuring individuals from the community, which has also been used in city staff training and public events.<sup>205</sup>

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198 Eugene Council Ordinance No. 20481 (Nov. 29, 2011), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/493>.

199 *Id.*

200 Eugene Human Rights Comm'n, *City of Eugene Human Rights Comm'n FY 12/13 Work Plan 3* (2011), available at <http://www.eugene-or.gov/DocumentCenter/View/2710> [hereinafter *Eugene FY 12/13 Work Plan*].

201 E-mail from Lindsey Foltz, *supra* note 154.

202 The DREAM Act provides a path to legal permanent residency for undocumented youth who have attended high school in the U.S. and have been accepted to a higher education institution or the military. See Dream Act Portal, <http://dreamact.info/> (last visited Aug. 2, 2013); National Immigration Law Center, *Dream Act: Summary* (2011), available at <http://nilc.org/dreamsummary.html>.

203 *Human Rights Commission: Meeting and Commission Information*, City of Eugene, <http://www.eugene-or.gov/hrc> (last visited Aug. 2, 2013); E-mail from Lindsey Foltz, Equity and Human Rights Analyst, Eugene Human Rights Comm'n, to Elizabeth Foydel, Columbia Law Sc. Human Rights Inst. (June 13, 2013).

204 The EHRC officially supports community group efforts to make the region safer and more welcoming for immigrants and has successfully lobbied the City Council to do the same. City Council of Eugene, Res. 5073, A Resolution in Support of a Statement of Principles for Immigrant Integration, available at <http://www.eugene-or.gov/documentcenter/view/11013>.

205 E-mail from Lindsey Foltz, *supra* note 154.

## ii. San Francisco Human Rights Commission

As noted in Appendix A, the S.F. Commission has authority to mediate intergroup tension. This includes addressing incidents of systemic discrimination. The S.F. Commission has used its authority to address tensions between the Chief of Police and the Arab and Muslim communities of San Francisco.<sup>206</sup> Following what was perceived by some members of the San Francisco community to be discriminatory remarks by the San Francisco Police Chief George Gascon, the S.F. Commission conducted a public hearing, soliciting testimony related to concerns about surveillance, and racial and religious profiling experienced by Arab, Middle Eastern, Muslim and South Asian American (AAMEMSA) communities.<sup>207</sup>

Following the hearing, the S.F. Commission published a report that includes official findings of surveillance and intimidation by the FBI, discrimination at borders and airports, as well as general community distrust of law officials as a result of perceived or experienced discrimination.<sup>208</sup> The report also contains specific recommendations for improving local policies, such as greater transparency and oversight of the San Francisco Police Force and the installation of an ombudsperson at San Francisco Airport, as well as strategies for San Francisco to partner with the federal government to eradicate racial profiling.<sup>209</sup>

The Commission also works with the Coalition for a Safe San Francisco to protect civil rights and combat racial, religious and ethnic profiling by local and federal law enforcement agents, focusing particularly on AAMEMSA communities.<sup>210</sup> In 2012, this effort led to unanimous passage of the Safe San Francisco Civil Rights Ordinance, which prohibits local involvement in over-reaching and secretive intelligence gathering. The Ordinance codifies local policy protections and ensures that they apply to local police, even when working with the FBI. It also fosters transparency by requiring the Chief of Police to authorize intelligence gathering related to political or religious affiliations in writing.<sup>211</sup>

206 George Gascón has since been appointed to be District Attorney of San Francisco. See City & Cnty. of S.F. Dist. Attorney, <http://www.sfdistrictattorney.org/> (last visited Aug. 2, 2013); Heather Knight, *Police Chief's Remarks on Terrorism Anger Arabs*, San Francisco Chronicle, Mar. 26, 2010, available at [http://articles.sfgate.com/2010-03-26/news/19477558\\_1\\_arab-americans-terrorism-city-hall](http://articles.sfgate.com/2010-03-26/news/19477558_1_arab-americans-terrorism-city-hall). The remarks led to a mobilization of concerned community members, who formed the Coalition for a Safe San Francisco, bringing together members of Arab, Middle Eastern, Muslim and South Asian American communities and civil rights organizations to raise awareness and demonstrate concern over perceived racial and religious profiling of these communities by the San Francisco Police Department. The San Francisco Human Rights Commission, per its mission, intervened to help mediate a discussion between the San Francisco Police Department and the Coalition for a Safe San Francisco. *Id.*

207 S.F. Human Rights Comm'n, *Community Concerns of Surveillance, Racial and Religious Profiling of Arab, Middle Eastern, Muslim, and South Asian Communities and Potential Reactivation of SFPD Intelligence Gathering* 5 (2011), available at <http://sf-hrc.org/Modules/ShowDocument.aspx?documentid=983>.

208 *Id.* at 37-39.

209 *Id.* at 40-41.

210 S.F. HRC Annual Report 2012, *supra* note 148, at 10.

211 *Id.* See also Coalition for a Safe San Francisco, *Safe San Francisco Civil Rights Ordinance: Preventing Local Involvement in FBI Intelligence Abuses* (2012), available at <http://www.safesf.org/wp-content/up->

### iii. Seattle Office for Civil Rights

The Seattle Office for Civil Rights enforces anti-discrimination civil rights laws and is the umbrella organization responsible for the City's progressive Race and Social Justice Initiative ("RSJI").<sup>212</sup> RSJI is a collaborative effort across city departments, which aims to eliminate race-based disparities in education, jobs, housing, health, criminal justice and the environment, while promoting equitable development. RSJI focuses on systemic causes of institutional racism rather than creating social programs to remedy its symptoms.<sup>213</sup> RSJI includes the provision of intensive training on institutional racism for all city departments, who work together to coordinate the central components of the initiative.<sup>214</sup>

A key component of RSJI is the Immigrant and Refugee Initiative ("IRI"),<sup>215</sup> created to improve immigrant and refugee access to, and engagement with, city services.<sup>216</sup> The initiative ensures that key service documents are translated into the city's most common languages and that interpreters are provided where necessary.<sup>217</sup> IRI has had positive outcomes, including increasing non-English speaker phone calls to the Customer Services Bureau four fold.<sup>218</sup> IRI also reaches out to immigrant and refugee communities to foster civic engagement and communication with senior staff and elected officials. Since its inception IRI has been transformed into a city department, the Office for Immigrant and Refugee Affairs, which continues the work started through the initial initiative.<sup>219</sup>

### iv. Washington State Human Rights Commission

The Washington State Human Rights Commission ("WSHRC") seeks to eliminate discrimination through education, outreach, policy recommendations and enforcement of anti-discrimination laws.<sup>220</sup> A significant part of this work is focused on upholding im-

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[loads/2012/02/SF-Civil-Rights-Ordinance-one-page-summary-1.pdf](#).

212 E-mail from Julie Nelson, Dir., Seattle Office for Civil Rights, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (July 9, 2013).

213 See *Race and Social Justice Initiative*, Seattle.gov, <http://www.seattle.gov/rsji/why.htm> (last visited Aug. 2, 2013).

214 The RSJI has several components or "Central Concerns," each under the control of a specific city government department: (1) Workforce Equity; (2) Economic Equity; (3) Immigration and Refugee Services; (4) Public Engagement; and (5) Capacity Building. See Julie Nelson & Glenn Harris, City of Seattle Office for Civil Rights, *City of Seattle Race and Social Justice Initiative 19-23* (2008), available at [http://iaohra.squarespace.com/storage/2008-annual-meeting/pdf/Julie\\_Nelson\\_presentation.pdf](http://iaohra.squarespace.com/storage/2008-annual-meeting/pdf/Julie_Nelson_presentation.pdf).

215 See *Race and Social Justice Initiative*, *supra* note 213.

216 See *Race and Social Justice Initiative, Immigrant and Refugee Access*, Seattle.Gov, <http://www.seattle.gov/rsji/immigrants/> (last visited Apr. 21, 2013); City of Seattle, *Immigrant and Refugee Initiative: 2010 – 2012 Action Plan*, 4-5 (2010), available at [http://www.seattle.gov/rsji/immigrants/docs/2010\\_2012ActionPlanFINAL120610.pdf](http://www.seattle.gov/rsji/immigrants/docs/2010_2012ActionPlanFINAL120610.pdf) [hereinafter *Seattle Immigrant and Refugee Initiative Action Plan*].

217 Seattle Immigrant and Refugee Initiative Action Plan, *supra* note 216.

218 *Id.* at 2-3.

219 E-mail from Julie Nelson, Dir., Seattle Office for Civil Rights, to Elzbieta Matthews, Columbia Law Sch. Human Rights Inst. (Apr. 26, 2013).

220 E-mail from Sharon Ortiz, Exec. Dir., Wash. State Human Rights Comm'n, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (July 31, 2013).

migrants' rights in the area of employment and housing.<sup>221</sup> Washington is one of the largest agricultural states in the U.S. and discrimination against farmworkers, including lack of affordable housing, sexual harassment and unlawful termination, is pervasive.<sup>222</sup>

In 2007, the WSHRC published a report documenting, analyzing and offering recommendations to address the pervasive lack of farmworker housing.<sup>223</sup> The WSHRC characterizes the severe problem as a “homelessness issue” that threatens other vital areas of livelihood and grounded the report’s recommendations in Article 25 of the UDHR, which entitles everyone to an adequate standard of housing.<sup>224</sup> The report concludes that the lack of housing leads to poor student attendance outcomes and negatively affects health. It also highlights that because “housing security is vital in order for people to succeed in other areas such as employment, education, and civic engagement,”<sup>225</sup> changes in law and policy are needed to improving farmworker housing.<sup>226</sup> To address discrimination against farmworkers, the WSHRC provides training to workers and front line supervisors in agri-business in Spanish. The Commission also conducts a weekly statewide Spanish language radio program.<sup>227</sup>

## OTHER STATE AND LOCAL DECISION-MAKERS

### *i. El Paso County, Texas Sheriff's Office*

In 2011 and 2012, El Paso was ranked one of the safest cities in America with a population over 500,000.<sup>228</sup> Locally, this success has been attributed to recent community policing efforts.<sup>229</sup> But historically, local and federal law enforcement officials in this border community have wrestled with allegations of racial and ethnic profiling.

The current Sheriff embarked on a policy of engagement to respond to resident concerns about discrimination and criminalization of communities of color.<sup>230</sup> A

221 Washington State Human Rights Comm’n, *Farm Worker Housing and the Washington Law Against Discrimination 2* (2007), available at <http://content.knowledgeplex.org/kp2/cache/documents/17830/1783061.pdf> [hereinafter *Washington Farm Worker Report*] (“There is a prevalent myth that immigrants do not contribute to the economy . . . immigrant farmworkers [provide many economic benefits . . . in addition to supporting the agricultural industry.]”).

222 See E-mail from Sharon Ortiz, *supra* note 220.

223 See *Washington Farm Worker Report*, *supra* note 221.

224 *Id.* at 2, 14.

225 *Id.* at 14.

226 The Commission is still working on the issue of affordable housing for farm workers, as it is still a big concern. E-mail from Sharon Ortiz, Exec. Dir., Washington State Human Rights Comm’n, to Elzbieta Matthews, Columbia Law Sch. Human Rights Inst. (Apr. 29, 2013).

227 E-mail from Sharon Ortiz, *supra* note 220.

228 See, e.g., CQ Press, *City Crime Rankings 2011-2012: Rankings by Population Categories* (2012), available at <http://os.cqpress.com/citycrime/2011/CityCrimePopRank2011.pdf> (ranking El Paso as first on the “Lowest Crime Rate Ranking”); CQ Press, *City Crime Rankings 2010-2011: Rankings by Population Categories* (2011), available at [http://os.cqpress.com/citycrime/2010/City\\_Crime\\_Rankings\\_bypop\\_2011-2011.pdf](http://os.cqpress.com/citycrime/2010/City_Crime_Rankings_bypop_2011-2011.pdf) (also ranking El Paso as first); CQ Press, *City Crime Rankings 2009-2010: Rankings by Population Categories* (2010), available at [http://os.cqpress.com/citycrime/2009/Rankings2009\\_Population.pdf](http://os.cqpress.com/citycrime/2009/Rankings2009_Population.pdf) (ranking El Paso second).

229 The City of El Paso, *El Paso, Texas – The Safest City in the United States*, [http://www.elpasotexas.gov/homepage\\_safest\\_city.asp](http://www.elpasotexas.gov/homepage_safest_city.asp) (last visited Aug. 3, 2013).

230 Addressing profiling and discrimination in El Paso required a broad range of actors, including local

number of El Paso residents challenged immigration enforcement policies on the basis that they undermined community safety by discriminating against persons perceived to be undocumented, alienating a large number of community members.<sup>231</sup> In 2009, upon taking office, the new Sheriff decided to address these concerns head-on through outreach and dialogue to identify local concerns and develop effective approaches to creating a safer community. Through collaboration, the Sheriff's Office embarked on a new approach to immigration enforcement, including greater cooperation in crime reporting, which improved community relationships and influenced local practice.<sup>232</sup> In recent years, a number of El Paso officials have opposed proposed state legislation mandating local enforcement of federal immigration law on the basis that it would erode trust and threaten community safety.<sup>233</sup>

## ii. Salt Lake City Mayor's Office of Diversity and Human Rights

Like many American cities, Salt Lake City has experienced exponential growth in ethnic diversity in the past decade.<sup>234</sup> As the immigrant population expands, the Mayor's Office of Diversity and Human Rights is taking steps to foster immigrant integration into the local community.

The ODHR engages locally, nationally and internationally to share areas of concern and shape effective solutions to immigration. In June, for example, the Mayor and a City Councilman convened a group of local stakeholders in Salt Lake – businesses, state and local government and members of Salt Lake's immigrant communities – to discuss community needs and generate recommendations for federal immigration reform.<sup>235</sup> The Mayor's Office has also joined national and transatlantic dialogues aimed at strengthening local approaches to immigrant integration.<sup>236</sup> Nationally, the ODHR

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and national human rights organizations. See The U.S. Human Rights Fund, *Perfecting Our Union: Human Rights Success Stories from Across the United States* 39-45 (2010), available at <http://www.cadre-la.org/core/wp-content/uploads/2013/07/Perfecting-our-Union-0209-314-CST.pdf>.

231 E-mail from Jose Manuel Escobedo, Policy Dir., Border Network for Human Rights (BNHR), to JoAnn Kamuf Ward, Assoc. Dir., Human Rights in the U.S. Project, Columbia Law Sch. Human Rights Inst. (Sept. 20, 2012).

232 See e.g., Written Statement from the Border Network for Human Rights, *El Paso Named Safest U.S. City* (Nov. 22, 2010), available at <http://immigrantsandiego.org/2010/11/22/bnhr-statement-el-paso-named-safest-u-s-city/>.

233 *Securing the Border: Progress at the Local Level, Hearing Before the Senate Comm. on Homeland Security and Governmental Affairs*, 112th Cong. (Apr. 7 2011) (testimony of El Paso County Judge Veronica Escobar), available at <http://www.co.el-paso.tx.us/judge/documents/TestimonyforSenCommonHomelandSecurityandGovernmentalAffairsHearing372011.pdf>.

234 *Salt Lake City Report*, *supra* note 193, at 1, 4.

235 See Press Release, Salt Lake City Mayor's Office of Diversity and Human Rights, Mayor, Community Leaders to Join for Immigration Roundtable (June 11, 2013), <http://www.slcgov.com/mayor-community-leaders-join-immigration-roundtable>.

236 This two-day meeting in April 2013 was sponsored by the Office of New York Mayor Michael Bloomberg. See E-mail from Yolanda Francisco-Nez, Coordinator, Office of Diversity & Human Rights, Salt Lake City, to JoAnn Kamuf Ward, Assoc. Dir., Human Rights in the U.S. Project, Columbia Law Sch. Human Rights Inst. (May 10, 2013). See also *Blueprints for Immigrant Integration, Local Government Models*, NYC Mayor's Office for Immigrant Affairs, NYC.gov, <http://www.nyc.gov/html/imm/bii/html/resources/models.shtml> (last visited Aug. 2, 2013).

recently joined over 20 city governments to exchange information and inform emerging municipal agendas on immigration.<sup>237</sup> Locally, the Mayor's Office offers classes to immigrant and refugee communities through a customized curriculum that includes topics such as employment rights, sexual violence prevention, U.S. citizenship and an introduction to law enforcement. Classes aim to address numerous barriers faced by immigrants and refugees, and translation is provided.<sup>238</sup>

### iii. Vermont State Legislature

Vermont is the first state to pass a law that creates a system intended to provide healthcare for all residents, including residents with undocumented immigration status. In 2011, the Vermont Legislature approved Green Mountain Care, a framework to “provide, as a public good, comprehensive, affordable, high-quality, publicly-financed healthcare coverage for all Vermont residents,” without regard to their financial status or health.<sup>239</sup> A key catalyst for Green Mountain Care was the Vermont Workers' Center's statewide campaign for healthcare as a human right.<sup>240</sup> The campaign advocated for healthcare based on core human rights principles: universality, equity, transparency, accountability, and participation.<sup>241</sup>

While the system was under review, an amendment was proposed to limit coverage by excluding undocumented immigrants. The amendment was abandoned after a strong public response that emphasized universality as a core component of the new healthcare system, and that care should be available to all Vermont residents.<sup>242</sup> Instead, the Green Mountain Care Board was charged with reviewing the potential costs and benefits of covering undocumented residents.<sup>243</sup> The results, presented to the General Assembly in 2013, found that the costs would be low and stated that “Act 48 appears to extend Green Mountain Care to all Vermont residents, without distinguishing based on immigration status.”<sup>244</sup>

237 In April 2013 the ODHR joined officials from New York City, Pittsburgh, Chicago, Salt Lake City, Turin, Stuttgart, Birmingham, and Bilbao, as well as advocates, in Turin, Italy as part of a conference entitled *Shifting Economies, Shifting Migration Patterns: Local Impacts and Policy Responses*. See Astrid Ziebarth, *Events: Shifting Economies, Shifting Migration Patterns*, The German Marshall Fund of the United States (Apr. 11, 2013), <http://www.gmfus.org/archives/shifting-economies-shifting-migration-patterns-local-impacts-and-policy-responses/#sthash.NIrl4p1f8vg7OM29.dpuf>. See also E-mail from Yolanda Francisco-Nez, *supra* note 236.

238 E-mail from Yolanda Francisco-Nez, Coordinator, Office of Diversity & Human Rights, Salt Lake City, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (July 26, 2013).

239 See An Act Relating to a Universal and Unified Health System, Vt. Act 48 (2011), available at <http://www.leg.state.vt.us/docs/2012/Acts/ACT048.pdf>. See also Mariah McGill, *The Human Right to Health Care in the State of Vermont*, Vermont Bar Journal 28-30 (Summer 2011), available at <http://www.north-eastern.edu/law/pdfs/academics/phrge-mariah-mcgill-vtbar.pdf>.

240 *Healthcare Is a Human Right Campaign*, Vermont Workers' Cntr., <http://www.workerscenter.org/healthcare> (last visited Apr. 30, 2013).

241 *Id.*

242 See, e.g., Dave Gram, *Vt. Lawmakers Resolve Immigrant Health Care Issue*, Forbes Magazine (May 3, 2011), available at <http://www.pnhp.org/news/2011/may/activists-decry-exclusion-of-undocumented-workers-from-vermonts-h202>; Telephone Interview by Zoha Khalili with Mary Gerisch, Vermont Workers' Cntr. (Mar. 5, 2012).

243 Vt. Act 48, *supra* note 239, at § 4(c).

244 Green Mountain Care Bd., *Report Regarding the Costs of Health Services Provided to Undocumented Immi-*

# APPENDIX E: REPORTING, MONITORING AND EDUCATION INITIATIVES

## HUMAN RIGHTS AGENCIES

### *i. Berkeley Peace and Justice Commission*

In 2009, the City of Berkeley passed a resolution that enables the Berkeley Peace and Justice Commission (“BPJC”) to prepare reports regarding Berkeley’s compliance with U.N. Human Rights treaties.<sup>245</sup> According to the resolution, once approved by City Council, the reports should be submitted to the relevant treaty bodies, including the Human Rights Committee, as well as the U.S. State Department. In 2010, the BPJC gathered information through a public forum and attempted to cover the subject of civil and political rights on a comprehensive basis, reviewing issues of housing, homelessness, health, police, women’s rights, LGBT issues, labor, disability and environmental justice.<sup>246</sup> The resulting draft report on ICCPR compliance indicates a need for better monitoring of crimes against homeless individuals<sup>247</sup> and highlights that disparities continue to exist between the educational outcomes of white and African American students,<sup>248</sup> all areas of concerns echoed by the Human Rights Committee. Reports were also prepared on CAT and CERD compliance. These local reporting efforts heighten awareness of human rights within the local government and offer recommendations for change.<sup>249</sup> While promising, the local ICCPR report has not been reviewed by the City Council. Until it comes before the City Council, the report cannot be sent to the U.N. Committee or the State Department to inform the ICCPR review.<sup>250</sup> This is one example in which federal encouragement and support could prompt local action.

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grants 3 (2013), available at <http://www.leg.state.vt.us/reports/2013ExternalReports/286249.pdf>.

245 See Submission from Eric Brenman, Secretary, City of Berkeley Peace and Justice Comm’n, to Mayor and Members of City Council (Sept. 29, 2009), [http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2009/09Sep/2009-09-29\\_Item\\_19\\_United\\_Nations\\_Treaty\\_Reports.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_City_Council/2009/09Sep/2009-09-29_Item_19_United_Nations_Treaty_Reports.pdf).

246 Media Release, City of Berkeley Peace and Justice Comm’n, Peace and Justice Comm’n Public Forum on the Status of Human Rights in Berkeley (Apr. 9, 2010), <http://www.ci.berkeley.ca.us/PressReleaseMain.aspx?id=52230>. See also E-mail from George Lippman, Vice-Chair, Berkeley Peace and Justice Comm’n, to Elzbieta Matthews, Columbia Law Sch. Human Rights Inst. (Apr. 26, 2013).

247 City of Berkeley Peace and Justice Comm’n, Draft Report to United Nations Human Rights Committee: Compliance with International Covenant on Civil and Political Rights ¶ 30 (2010) (on file with Columbia Law Sch. Human Rights Inst.).

248 *Id.* at ¶¶ 47-48.

249 U.S. Human Rights Network, *Human Rights and Local Obligations: Ensuring Effective Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination* 24 (Mar. 2012) (on file with Columbia Law Sch. Human Rights Inst.).

250 E-mail from George Lippman, Chair, Berkeley Peace and Justice Comm’n, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (June 28, 2013).



### ii. Eugene Human Rights Commission

The EHRC is committed to educating both city employees and the wider community on human rights standards and issues. The EHRC has sponsored trainings for city executives, managers and staff, as well as community-volunteer members of city-appointed advisory boards and commissions, on universal human rights and their implementation. The EHRC also undertakes robust community education and outreach efforts aimed at raising awareness of the potential for an international human rights framework to advance the equality and dignity of local residents. The EHRC's new work plan calls on the EHRC to provide broader training on the human rights framework and empowers the EHRC to educate the local community on CERD, as well as to report to the City Council on local progress implementing CERD.<sup>251</sup> To this end, the EHRC conducted research on international human rights standards to inform a local mapping project: the "Equity and Opportunity Assessment."<sup>252</sup>

### iii. Los Angeles County Human Relations Commission

The Los Angeles County Human Relations Commission ("LACHRC") is committed to "justice, equity, opportunity, accountability, respect, and dignity."<sup>253</sup> The LACHRC has furthered human rights awareness by drawing on human rights standards on shelter and housing in a campaign to address violence against people who are homeless. The LACHRC is also providing leadership in Los Angeles County government by seeking systemic changes. The Commission is among the first to regularly collect and analyze relevant data on the crime of victimization of the homeless and engage in public education on the fundamental human rights of the homeless. The LACHRC has also recently integrated human rights into its agency vision and strategic priorities.<sup>254</sup>

Since 1980, the LACHRC has worked to eliminate hate crimes through monitoring and data collection. The Commission compiles, analyzes and produces an annual report of hate crime data in L.A. County based on information provided by a number of stakeholders from both the government and community.<sup>255</sup> The LACHRC distributes the annual report to decision-makers, law enforcement agencies, educators and community groups throughout L.A. County and across the nation in an effort to raise

251 Telephone Interview by Elizabeth Skeen with Raquel Wells, Equity and Human Rights Manager, City of Eugene (Mar. 29, 2012); *Eugene FY 12/13 Work Plan*, *supra* note 200, at 12 (with respect to addressing systematic and individual racism, the HRC plans to "[p]rovide community education on the Convention on the Elimination of Racial Discrimination, ascertain how the local situation conforms to CERD, and report to Council.").

252 The Assessment was produced by the Lane County Livability Consortium. E-mail from Lindsey Foltz, *supra* note 203.

253 See *About the Commission*, L.A. Cnty. Human Relations Comm'n, <http://lahumanrelations.org/about/> (last visited Aug. 2, 2013).

254 E-mail from Robin Toma, Exec. Dir., L.A. Cnty. Human Relations Comm'n, to Elizabeth Foydel, Columbia Law Sch. Human Rights Inst. (July 3, 2013).

255 See *Hate Crime Reports*, L.A. Cnty. Human Rights Comm'n, <http://lahumanrelations.org/hatecrime/hatecrimereport.htm> (last visited Aug. 2, 2013).

awareness about hate crimes and thereby increase accountability.<sup>256</sup>

The LACHRC has also engaged in reporting at the international level. After partnering with the U.S. State Department to hold a preparatory conference for the U.N. World Conference on Racism, Xenophobia and Other Forms of Intolerance, the Executive Director of the Commission was invited to be part of the U.S. delegation. Even though the United States did not ultimately participate, the LACHRC still sent staff and commissioners to report about their work on racism and discrimination.<sup>257</sup>

#### iv. Michigan Civil Rights Commission

The Michigan Civil Rights Commission (“MCRC”) is mandated to end discrimination and ensure equal protection of civil rights.<sup>258</sup> In 2007 and 2009, the MCRC held public hearings on the situation of farm workers in Michigan. The hearings uncovered particular concerns about living conditions, prompting the MCRC to investigate further. The MCRC coordinated a team of state agency and civil society representatives to visit farm worker camps, host public forums in areas with high concentrations of migrant and seasonal farm workers, and collect testimony. This research formed the basis for the 2010 MCRC *Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan*.<sup>259</sup>

The report highlights that migrants and seasonal farm workers face discrimination in housing, employment and health care, on the basis of race and national origin, as well as gender. It further emphasizes the negative impact of language barriers. In addition to documenting human rights violations, the report offers myriad recommendations to the Michigan Department of Civil Rights, including the need for interagency cooperation and non-governmental partnerships.<sup>260</sup> As the first step toward implementation, the MCRC brought together a team to monitor compliance with the report’s recommendations.<sup>261</sup>

#### v. Pennsylvania Human Relations Commission

In February 2008, the United States reported on its compliance with CERD. While the official U.S. government report was largely developed inside the U.S. State Department, it included information from the Pennsylvania Human Relations Commission on its efforts to address civil tension. The Commission has a database that tracks incidents of bias, disaggregating detailed information about the nature, location and

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256 See *Hate Crimes*, L.A. Cnty. Human Rights Comm’n, <http://lahumanrelations.org/hatecrime/index.htm> (last visited Aug. 2, 2013).

257 Telephone Interview by Joie Chowdhury with Robin Toma, Exec. Dir., L.A. County Human Relations Comm’n (Apr. 13, 2009).

258 Mich. Const. art. I, § 2.

259 Michigan Civil Rights Comm’n, *A Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan* (2010), available at [http://www.michigan.gov/documents/mdcr/MSFW-Conditions2010\\_318275\\_7.pdf](http://www.michigan.gov/documents/mdcr/MSFW-Conditions2010_318275_7.pdf).

260 *Id.*

261 Telephone Interview with Alberto Flores, Dir., Community Relations Division of the Michigan Department of Civil Rights (Mar. 9, 2011).

parties involved in such incidents in order to track bias motivation (*e.g.*, based on race, religion, gender and disability). The Commission itself distributes this data to members of the state's Interagency Task Force on Civil Tension to assist in developing local community prevention and response strategies.<sup>262</sup>

#### *vi. Seattle Office for Civil Rights*

A signature project of Seattle's Race and Social Justice Initiative (RSJI) is the Racial Equity Toolkit, which promotes the "goal of eliminating racial inequity [by] incorporating a racial equity analysis and best practices into program, policy and procedure decisions."<sup>263</sup> Members of a roundtable convened by RSJI, including community group representatives, state and local government officials, the school superintendent and funders, use this toolkit internally to make policy, programmatic and budgetary changes that result in increased opportunities and success rates for communities of color.<sup>264</sup>

Two examples illustrate how the Toolkit is fostering greater equity in local policy. The Seattle Office for Civil Rights is currently using the Toolkit to implement the city's Jobs Assistance Legislation, which increases employment protections for people with criminal backgrounds by limiting the consideration of background checks in order to facilitate reentry and reduce racial disparities. The Office is using the Toolkit to develop the administrative rules for implementation and appropriate outreach strategies, working in partnership with a range of community stakeholders.<sup>265</sup> Additionally, the Toolkit has been valuable in addressing budget cuts. In 2010, Seattle faced a \$70 million shortfall. The city used the toolkit to analyze the ways possible budget cuts would specifically impact communities of color. Based on the analysis, budget cuts for community centers in low income areas were lessened, since these centers are an important part of livelihood and development.<sup>266</sup>

The Toolkit also has a monitoring and education component. It instructs city agencies, public entities and NGOs to document community conditions, and to regularly monitor the status of vulnerable populations, as well as gauge the success of implemented programs. The Toolkit further calls on government and organizations to educate their staff members and the public on racial issues, and to raise racial consciousness. In an effort to enhance transparency and accessibility for Seattle's racial equity work, the city has created a website to monitor RSJI related-activities and outcomes.<sup>267</sup>

<sup>262</sup> See UPR Toolkit, *supra* note 73, at 6.

<sup>263</sup> See Race and Social Justice Initiative, *Racial Equity Toolkit for Policies, Programs, and Budget* (2009), available at <http://api.ning.com/files/GZ8GmQMBKY4BJDCFnQitSBLmzsEthYXack8ldMDXUck-vRc1WQe3i17cQHAhln7yCPI2FRrcZyQpmNgAWux9X5uVTgrJ8C-3k/SeattleRaceSocialJusticeToolkit1009.pdf>.

<sup>264</sup> E-mail from Julie Nelson, *supra* note 212.

<sup>265</sup> Press Release, Seattle City Councilmember Bruce A. Harrell, Seattle City Council Passes Jobs Assistance Bill: Legislation to Increase Public Safety and Improve Access to Jobs (June 10, 2013), [http://www.seattle.gov/news/newsdetail\\_council.asp?ID=13721](http://www.seattle.gov/news/newsdetail_council.asp?ID=13721).

<sup>266</sup> Telephone Interview with Julie Nelson, Dir., Seattle Office for Civil Rights (Mar. 7, 2011).

<sup>267</sup> Meeting Minutes, Citizens' Telecommunications and Technology Advisory Board, City of Seattle (June 11, 2013), [http://www.seattle.gov/cttab/2013minutes/6-11\\_CTTAB\\_Minutes\\_draft.pdf](http://www.seattle.gov/cttab/2013minutes/6-11_CTTAB_Minutes_draft.pdf).

## OTHER STATE AND LOCAL DECISION-MAKERS

### *i. California State Legislature*

In 2010, the State of California adopted a resolution, ACR 129, aimed at raising awareness of ratified treaties and facilitating statewide reporting.<sup>268</sup> ACR 129 calls on the California Attorney General to prepare templates, which cities, counties and state agencies can use to assess their own compliance with human rights treaties ratified by the United States.<sup>269</sup> Advocates have noted that reporting could have a positive influence on California policies in a number of areas, such as sex trafficking, child labor and criminal justice.<sup>270</sup> At the time of writing, the California Attorney General had not yet taken steps to implement the resolution, citing lack of funding.<sup>271</sup> ACR 129 – touted in the U.S. government report<sup>272</sup> – has not led to any change in practice. With federal guidance and resources, what ACR 129 promises on paper could turn into action: comprehensive statewide reporting.

### *ii. Eugene City Government*

In Eugene, a number of city departments provided input into the development of a tool to inform decision-making, known as the Triple Bottom Line (“TBL”),<sup>273</sup> which is used across city government.<sup>274</sup> The TBL is used to analyze how a proposed policy or decision will impact social equity, the environment and economic prosperity. The TBL analysis reflects human rights principles throughout, and the social equity prong explicitly prioritizes “protecting, respecting and fulfilling the full range of universal human rights, including civil, political, social, economic, and cultural rights.”<sup>275</sup> Consistent with a human rights approach, the process of conducting a TBL analysis calls for community participation.<sup>276</sup>

The TBL has played a valuable role in internal decision-making, including within certain departments. For example, when facing fiscal challenges, the Recreation De-

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268 Telephone Interview by Elizabeth Skeen with Ann Fagan Ginger, Dir. Emeritus, Meiklejohn Civil Liberties Inst. (Apr. 5, 2012).

269 See Assembly Concurrent Resolution No. 129, Cal. Legislature, Legislative Counsel’s Digest (2010), available at [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0101-0150/acr\\_129\\_bill\\_20100914\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0101-0150/acr_129_bill_20100914_chaptered.pdf). See also *Bringing Human Rights Home*, *supra* note 73, at 20-21; Marjorie Cohn, *California Assembly Votes to Report on Human Rights to U.N. Committees*, Huffington Post (Aug. 19, 2010, 21:36 EST), [http://www.huffingtonpost.com/marjorie-cohn/california-assembly-votes\\_b\\_688489.html](http://www.huffingtonpost.com/marjorie-cohn/california-assembly-votes_b_688489.html).

270 *Bringing Human Rights Home*, *supra* note 73, at 20-21.

271 E-mail from Edward Hasbrouck, The Identity Project, to JoAnn Kamuf Ward, Assoc. Dir., Human Rights in the U.S. Project, Columbia Law Sch. Human Rights Inst. (Mar. 15, 2013).

272 See *Common Core Document*, *supra* note 33.

273 Telephone Interview with Raquel Wells, *supra* note 251.

274 Telephone Interview by Naz Ahmad with Lindsey Foltz, Equity and Human Rights Analyst, Equity and Human Rights Cntr.; Babe O’Sullivan, Sustainability Liaison, Eugene Office of Sustainability; Kevin Finney, Natural Resource Manager, City of Eugene; Matt McCrae, Climate and Energy Action Coordinator, City of Eugene (Jan. 24, 2013).

275 *Triple Bottom Line Analysis Tool*, City of Eugene, <http://www.eugene-or.gov/index.aspx?NID=512> (last visited Aug. 2, 2013).

276 Telephone Interview with Raquel Wells, *supra* note 251.

partment used the TBL analysis to develop a budget that minimized the impact on services and accessibility while increasing revenue.<sup>277</sup> The City's Community Development Division is also utilizing the TBL analysis in the prioritization of brownfield assessments, which are conducted by the City of Eugene in conjunction with the City of Springfield and Lane County.<sup>278</sup>

### iii. Vermont State Legislature

In 2012, the Vermont State Legislature adopted key human rights principles into the state budget, in an effort to create more transparent and accountable budgeting. The Legislature declared, "the state budget should be designed to address the needs of the people of Vermont in a way that advances human dignity and equity."<sup>279</sup> The new budget also calls for ongoing and participatory monitoring and evaluations based on human rights and the principles of sustainability and stability.<sup>280</sup>

Moving forward the Vermont Legislature must undertake a needs assessment to determine how a human rights-based budget can be designed to meet residents' needs and develop indicators to measure success. Both the assessment and the creation of indicators will be done with community participation.<sup>281</sup> Vermont's approach to budgeting is one example of how human rights principles can be used as a metric to monitor how government policies are meeting constituents' fundamental needs. It also demonstrates how governments and residents can collaborate to develop policy.

277 Telephone Interview by Elizabeth Skeen with Ken Neubeck, Vice-Chair, City of Eugene Human Rights Comm'n (Mar. 7, 2012).

278 *Brownfield Redevelopment*, City of Eugene, <http://www.eugene-or.gov/index.aspx?nid=2080> (last visited Aug. 4, 2013); E-mail from Lindsey Foltz, Equity and Human Rights Analyst, Eugene Human Rights Comm'n, to Elizabeth Foydel, Columbia Law Sc. Human Rights Inst. (Aug. 5, 2013).

279 An Act Relating to Making Appropriations for the Support of Government, Vt. Act 162 (2012), Sec. E.1001.1 32 V.S.A. § 306(a), available at <http://www.leg.state.vt.us/docs/2012/Acts/ACT162.pdf>. See also Anja Rudiger, *Toward a People's Budget: Vermont Adopts New Vision for State Spending and Revenue Policies*, Huffington Post (May 4, 2012), [http://www.huffingtonpost.com/anja-rudiger/vermont-state-spending\\_b\\_1477641.html](http://www.huffingtonpost.com/anja-rudiger/vermont-state-spending_b_1477641.html).

280 Vt. Act 162, *supra* note 279, at Sec. E.1001.1 32 V.S.A. § 306(e), Sec. E.100.2 (a).

281 See Rudiger, *supra* note 279.

## APPENDIX F: SPECIFIC EXAMPLES OF THE IMPACT OF RESOURCE CONSTRAINTS

### A. Need for Training and Education on International Human Rights

Human Rights Agencies themselves have called for resource and capacity building focused on enhancing their knowledge of human rights and their ability to incorporate human rights standards into local initiatives.

The S.F. Commission is tasked with creating the materials to educate the city government, the public and the media about international human rights standards. The Commission would benefit specifically from “ready-made” training materials, guidelines and interpretations of human rights standards, treaties and U.S. obligations resulting from treaty ratification.<sup>282</sup> The Sioux City Human Rights Commission has indicated that its work would be more effective with more opportunities for public education and materials to support it.<sup>283</sup>

The Seattle LGBT Commission specifically expressed a need for templates to enhance its advocacy for legislation at the city level and support with network building and resource sharing. Specifically, sample ordinances, city resolutions, and program materials would promote information sharing and more efficient and consistent efforts.<sup>284</sup>

### B. Severe Funding and Staffing Constraints

Jurisdictions all across the country illustrate how access to Human Rights Agencies is being curtailed, as well as how resource limitations hamper efforts to proactively identify and eliminate discrimination and foster equality. Not only are entire offices closing, initiatives that could be expanded and strengthened to improve compliance with the ICCPR, are instead being reduced or eliminated.

#### *i. Office Closures Demonstrate the Vulnerability of Human Rights Agencies*

Lancaster County’s (Pennsylvania) Human Relation Commission was disbanded on December 10, 2010.<sup>285</sup> The City Council of Topeka, Kansas voted to approve a mea-

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282 Telephone Interview with Nadia Babella, Discrimination Investigator and Mediator, San Francisco Human Rights Commission (Mar. 18, 2011).

283 Response to 2012 Survey to IAOhRA Members on Resource Constraints (Jan. 28, 2013) (on file with Columbia Law Sch. Human Rights Inst.).

284 Telephone Interview with Bradley Hoover, Co-Chair, Seattle LGBT Comm’n (Apr. 4, 2011).

285 E-mail from Jonathan Paul Fox, Human Relations Representative & Liaison, Lancaster County Human Relations Comm’n, to IAOhRA Members (Dec. 16, 2010).

sure that effectively eliminated the city's Human Relations Commission and Department, as well as its enforcement and investigative activities.<sup>286</sup> The closure went into effect on June 21, 2010. In 2007, a local ordinance was repealed in St. Petersburg, Florida, terminating many of the functions of the local Human Rights Commission.<sup>287</sup>

More recently, in 2011, the Oklahoma Legislature passed Senate Bill 763, which eliminated the Oklahoma Human Rights Commission. Its duties, functions and contracts were passed on to the Office of the Attorney General.<sup>288</sup> One impact of this change is that local government will now have less coordination with IAOHRA, the membership association of Human Rights Agencies.

### *ii. Resource Limitations Prevent Effective Implementation*

Limited financial resources and personnel currently hamper the Seattle Office of Civil Rights' RSJI Initiative. Staff lack the capacity to measure the actual impact of policy changes and institutional reforms in the community. This limits efforts to ensure RSJI programs are reaching their intended beneficiaries and having a net positive impact. Without additional resources, RSJI is unable to track statistics directly related to its education initiatives or carry out long-term planning consistent with its mission and goals.<sup>289</sup> The Office faces additional difficulties with funding and training in its short-term, day-to-day work. These challenges further impede longer term planning "to bring about more systemic and structural changes."<sup>290</sup> Specifically, Seattle government staff would like to expand dissemination of its Racial Equity Toolkit, and equity training for organizations and local governments, but it lacks the staffing and funding to do so.

The S.F. Commission, which is supported by city funds, experienced significant cut-backs in the last few years due to the budgetary constraints. The number of discrimination complaints it can process and the number of policy initiatives it can undertake annually is tied directly to its available staffing resources.<sup>291</sup>

The Washington State Human Rights Commission ("WSHRC") has experienced severe budget cuts since 2008. The agency's budget has been cut more than thirty percent.<sup>292</sup> As a result, the WSHRC was unable to carry out plans to open an office focused specifically on working migrants and the multiple barriers they face, particularly

286 E-mail from James Stowe, Dir., Montgomery County's Office of Human Rights, to IAOHRA Members (June 7, 2010).

287 E-mail from Theresa D. Jones, Community Affairs Manager & ADA Coordinator, Human Resources Department, St. Petersburg, FL, to IAOHRA Members (June 8, 2010).

288 Letter from John D. Carrington, Exec. Dir., Oklahoma Human Rights Comm'n, to Shawn Martell Moore, President, IAOHRA (June 25, 2012) (on file with Columbia Law Sch. Human Rights Inst.).

289 Telephone Interview with Julie Nelson, *supra* note 266.

290 Response to 2012 Survey of IAOHRA Members on Resource Constraints (Dec. 21, 2013) (on file with Columbia Law Sch. Human Rights Inst.).

291 Telephone Interview with Nadia Babella, *supra* note 282; E-mails from Theresa Sparks & Taraneh Moayed, *supra* note 147. The S.F. Commission is in its 50th year. S.F. HRC *Annual Report 2012*, *supra* note 148, at 1.

292 E-mail from Sharon Ortiz, *supra* note 220.

poor working conditions and hostility from local communities. This new office was to be situated in an area that would improve accessibility to farmworkers; however, lack of funds prevented its opening. Budget cuts also led to office closures in Seattle, Yakima and Vancouver in 2009 and 2010. Despite these limitations, the WSHRC is committed to re-establishing a presence in the agricultural areas of the state. In an effort to ameliorate the impact of resource constraints, the WSHRC has partnered with the Department of Labor and Industries and uses their office space free of charge.<sup>293</sup>

Eugene, Oregon's Office of Sustainability, Neighborhood Services and Equity and Human Rights Office faced the possibility of serious budget cuts in 2013. This builds on four consecutive years of cuts from the City's general fund – at approximately \$6 million per year.<sup>294</sup> Had the proposed 2013 cuts been imposed, funding for human rights programs would have been significantly impacted.<sup>295</sup> To limit the impact on services, the City Council proposed a City Service Fee, which was ultimately rejected by voters. To fill the gap, the City Council approved a Budget Committee recommendation to make a one-time reallocation from reserves and other sources. This one-time funding is available as a complete budget review for FY 2015 is being conducted. The consistent gap between revenue and expenditures in Eugene makes future cuts to services a possibility. Meanwhile, the EHRC is advocating for the City to consider human rights principles as they conduct their budget review.<sup>296</sup>

The Illinois Department of Human Rights, like many Human Rights Agencies, depends on the U.S Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development for funding to support its investigations into claims of housing and employment discrimination. This federal funding alleviates the pressure on state funds, and permits the IDHR to conduct vital outreach and research to fulfill its exiting mandate. However, even with these resources, the IDHR is challenged to incorporate international human rights into its work.<sup>297</sup>

The Sioux City Human Rights Commission relies on an internal investigator to investigate civil and human rights abuses in a timely manner, and inform the work of the Commission. However, due to resource constraints, the commission has had to cut the investigator's weekly hours by 25 percent and offers no benefits or health insurance.<sup>298</sup> The Des Moines Human Rights Commission has experienced a reduction of staff and budget and sees improved cooperation with both federal and state agencies as a means to enhance its work.<sup>299</sup>

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293 *Id.*

294 E-mail from Lindsey Foltz, *supra* note 154.

295 City of Eugene, *FY14 Proposed Budget* (2013), available at <http://www.eugene-or.gov/DocumentCenter/View/12423>.

296 E-mail from Lindsey Foltz, *supra* note 154.

297 Telephone Interview with Bobbie Wanzo and Marian Honel, *supra* note 141.

298 Response to 2012 Survey of IAOhRA Members on Resource Constraints (Jan. 28, 2013) (on file with Columbia Law Sch. Human Rights Inst.).

299 Response to 2012 Survey of IAOhRA Members on Resource Constraints (Feb. 4, 2013) (on file with Columbia Law Sch. Human Rights Inst.).



CLOSING THE GAP: THE FEDERAL ROLE IN RESPECTING &  
ENSURING HUMAN RIGHTS AT THE STATE AND LOCAL LEVEL

Response to the Fourth Periodic Report of the United States  
to the United Nations Human Rights Committee  
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Prepared by:  
Columbia Law School's Human Rights Institute  
International Association of Official Human Rights Agencies