

Local government and human rights

QUESTIONNAIRE

As part of the consultations undertaken by the Human Rights Council Advisory Committee with governments, national human rights institutions and non-governmental organizations with a view to preparing a report on the role of local government in the promotion and protection of human rights, pursuant to Council resolution 24/2.

Background:

Human Rights Council resolution 24/2, adopted in September 2013, took note of the research proposals made by the Advisory Committee in August 2012, which included a research proposal on local government and human rights, and mandated the Committee to prepare a research-based report on the role of local government in the promotion and protection of human rights, including human rights mainstreaming in local administration and public services, with a view to compiling best practices and main challenges, and to present a progress report thereon to the twenty-seventh session of the Council (September 2014).

The Committee is also requested to seek the views and inputs of Member States, relevant international and regional organizations, the OHCHR and relevant special procedures, as well as national human rights institutions and non-governmental organizations, in order to prepare the above-mentioned report.

It is therefore in this context that the Advisory Committee decided, at its twelfth session held in February 2014, to appoint a drafting group in charge of the preparation of this report and elaborated the hereunder questionnaire for governments, national human rights institutions and non-governmental organizations.

QUESTIONNAIRE

- How is local government organised in your country? Please describe the existing legal framework for the organisation, functioning, competences and financial resources of local government in your country.

The United States is a federalist country. Local government is organized at the state, county, city and municipal levels. The organization, functioning, competencies and financial resources vary state by state and within states as well.

There are 50 states, one Federal District (The District of Columbia) and five territories with Commonwealth Status (American Samoa, Guam, Northern Marianas Islands, Puerto Rico, U.S. Virgin Islands). There are almost 90,000 county and municipal governments.

- Is local government in your country required by legislation to promote and protect human rights? Please describe how local government in your country is involved in the implementation of human rights obligations.

Treaties ratified by the United States are the supreme law of the Land under the United States Constitution. However, the United States typically ratifies treaties along with a reservation indicating that they are not self-executing, which means that they are not directly enforceable in U.S. courts. Additionally, the United States includes an understanding that the treaty

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.

There is, however, no specific federal law that requires promotion and protection of human rights. At the local level, many states and cities have laws called "Human Rights Acts". For the most part, these are not based in international human rights principles, but rather, offer a range of non-discrimination protections and are civil rights focused.

Further, the United States has ratified only three of the core human rights treaties (CERD, ICCPR and CAT). So, while ratification of treaties is a vital step towards improving human rights compliance, ratification does not overcome the multiple barriers to implementation. As described below, in order to ensure implementation, greater coordination is needed between federal, state and local governments, and the federal government must take steps to provide resources, training and education to this end.

- Is there any cooperation between local government and the central government in your country regarding the implementation of human rights at local level? If yes, please describe the existing cooperation framework.

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, 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, is not mandated to address domestic human rights implementation. To date, the federal government has not even disseminated U.N. Concluding Observations or UPR recommendations to state and local government actors. As described here, outreach and communication has been limited.

- *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 ("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. 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. 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. Finally, while the memo set a valuable precedent, little formal communication has followed. 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.

- *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. 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 to implement human rights treaties. A second letter to Governors in the same year requested information on state civil rights laws for U.S. treaty reporting purposes.

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. 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.

4. Do you have human rights protection mechanisms at the local level in your country (e.g. ombudspersons, human rights commissions, mediators, etc.)?

The International Association of Official Human Rights Agencies (IAOHRA) works to improve coordination and cooperation among the variety of human rights institutions with diverse mandates, powers and functions. It includes approximately 160 human rights bodies in the United States and Canada. These are 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.

- What initiatives have been taken to include human rights mainstreaming in local administration and public services?

Details on most of the following initiatives in [Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy](#)

- **Aspirational Commitments to, and Raising Awareness of, Human Rights.** By adopting resolutions that focus on particular substantive issues, local governments affirm the role of human rights in ensuring equality and dignity in local communities. Some localities approve resolutions to express local support for specific international conventions, like the Convention on the Rights of the Child (CRC). Others adopt proclamations declaring that they are human rights cities, affirming local commitments to securing, protecting, and promoting human rights. Almost a dozen localities have adopted resolutions declaring freedom from domestic violence as a human right. While largely symbolic and not legally binding, resolutions and proclamations offer an opportunity to articulate the valuable role of state and local government in this work and to emphasize local priorities.
 - Resolutions on the Convention on the Rights of the Child, Hawai'i, Los Angeles, CA & Chicago, IL
 - Human Rights as Guiding Principles, Carrboro & Chapel Hill, NC
 - Human Rights Cities, Pittsburgh, PA & Eugene, OR, Seattle, WA, Washington, DC
- **Reframing Local Concerns as Human Rights Issues.** Using human rights to frame a conversation can increase public support, attract new allies and promote a more active approach to addressing particular concerns. States, cities and counties are drawing on the human rights framework to inform their responses to issues such as health disparities, lack of affordable and adequate housing, and domestic violence. These efforts are reflected in local resolutions, as well as more comprehensive legislative and policy changes. Almost a dozen localities have adopted resolutions declaring freedom from domestic violence as a human right. Two states are addressing healthcare as a human right
 - The Right to Health, Vermont & Connecticut
 - The Right to Housing, Madison & Dane County, WI & Eugene, OR
 - Freedom From Domestic Violence, Cincinnati, OH, Baltimore, MD & Seattle, WA, Travis County, TX, Albany, NY, Erie County, NY, Miami Springs & Miami-Dade, FL, Washington, DC
- **Reporting on Local Compliance with Human Rights Treaties.** Local officials can engage the periodic human rights treaty reporting process to assess their own compliance with human rights principles and use treaty standards to develop a blueprint for progress. Berkeley, California is the first U.S. city to file periodic reports on compliance with human rights treaties the U.S. has ratified. Berkeley has used reporting to highlight the City's leadership in addressing homelessness, as well noting an achievement gap in education and LGBT issues, among others. The California State Assembly recently followed Berkeley's example, passing a resolution that calls on the State Attorney General to publicize treaty texts and help state and local agencies gather information for the purposes of treaty reporting. The Pennsylvania Human Rights Commission has submitted information for the review of U.S. compliance with the CERD.
- **Conducting Human Rights Based Audits and Impact Assessments.** A number of governments are using human rights standards as benchmarks to understand the potential impact of their policies and decisions, to measure program effectiveness and to identify barriers to reaching intended beneficiaries. These assessments can help to ensure that state and local authorities properly weigh human rights concerns of all community members when formulating and executing policies. Some towns, cities and states draw from the UDHR to evaluate local programs and policies. Other cities and counties use human rights principles found in CEDAW (the women's rights treaty) to evaluate budgets, employment and services.
 - Human Rights Based Budgeting, Vermont
 - Auditing Budget, Services and Employment in City Agencies Based on the Women's Treaty, San Francisco, CA
 - Assessing Decision-Making with Human Rights Standards, Eugene, OR;
- **Fostering Participatory Governance.** By engaging community stakeholders to identify local concerns and formulate means to address them, local governments can improve their policies and programs. Greater public participation in policy development, implementation and evaluation can enhance a government's ability to collect quantitative and qualitative data and help ensure policies are achieving intended results. Examples include efforts by local law enforcement and city governments to foster community participation by proactively engaging community members in efforts to develop and evaluate local policies in areas of immigration enforcement and education.
 - Engaging the Community to Achieve Race & Social Justice and address structural racism through decision-making, Seattle, WA
 - A Participatory Approach to Law Enforcement, El Paso, TX
 - Addressing Women's Human Rights Through Dialogue, Salt Lake City, UT

The remaining examples discussed below are detailed in [Closing the Gap: The Federal Role in Respecting and Ensuring Human Rights at the State and Local Level](#)

- **Additional Reporting, Monitoring and Education Initiatives By State and Local Agencies.** 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. 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, and hold hearings on human rights issues.
 - Human Rights education and training for city government and civil society, Eugene Human Rights Commission
 - Including human rights in hate crime data reports and participating in international reporting, Los Angeles County Human Relations Commission
 - Hosting UN Special Rapporteur Visits, Seattle Human Rights Commission and Illinois Department of Human Rights

- Holding Hearings on Human Rights at the State Level, *Tennessee Human Rights Commission*

Yet state and local efforts are ad hoc, patchwork and vulnerable to elimination through budget cuts. As a general matter, state and local actors 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.

- What is the role of civil society in the planning and implementation of activities for the protection and promotion of human rights at local level in your country?

Civil Society plays an essential role in the planning and implementation of human rights and efforts to monitor and implement human rights. The U.S. Human Rights Network is one organization that has spearheaded engagement in treaty review processes and the UPR. This Network, comprised of national and local no-profit groups (<http://www.ushrnetwork.org/our-work>) along with the Human Rights at Home Campaign (<http://www.nesri.org/programs/human-rights-at-home-campaign>), and many others, are working to ensure human rights accountability across the United States

- What is the role and programme of your organization for promotion and protection of human rights at local level or in enhancing local governance for human rights?

The Human Rights Institute (HRI) serves as the focal point of international human rights education, scholarship and practice at Columbia Law School. The Institute's Human Rights in the U.S. project works to promote human rights at home and ensure U.S. compliance with international human rights standards. The project advocates for greater coordination of federal, state and local efforts to promote and protect human rights within the United States. The Institute works directly with state and local agencies and officials to build their capacity to implement human rights by raising awareness of U.S. human rights obligations and developing strategies to incorporate human rights locally. HRI also advocates for institutionalized federal support for local efforts, including funding, education and training and dedicated staff.

Many of the responses here are taken from a shadow report we submitted to the Human Rights Committee jointly with the International Association of Official Human Rights Agencies, [Closing the Gap: The Federal Role in Respecting and Ensuring Human Rights at the State and Local Level](#) and a 2012 report [Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy](#).

- What are the main challenges faced by local government in your country in the promotion and protection of human rights?

Despite federal 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. There is no mechanism to share U.N. recommendations 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.

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.

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. Yet there is little 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 relationship, 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. The 1998 E.O. was never fully implemented and the Interagency Working Group was effectively disbanded during the Bush administration. 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. 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. 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.

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.

- *Resource Constraints Impede Human Rights Work*

Severe constraints extend beyond incomplete 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. 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.

- *State and Local Governments Receive No Formal Guidance on Implementation*

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." 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. 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. 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.

- Please provide any best practices with regard to the above-mentioned issues.

The recent ICCPR review of the United States offers some promising practices. The delegation included three representatives of state and local government: a Mayor from Salt Lake City, Utah; a State Attorney General from Mississippi and an IAOHRA member, from the Salt Lake City Mayor's Office of Diversity and Human Rights. Greater inclusion of state and local actors in U.S. delegations will be an important step in raising awareness of human rights. During the review, the United States committed to disseminate the Concluding Observations from the Human Rights Committee. Such dissemination, along with an explanation of how the observations relate to state and local governments duties and responsibilities and recommendations for implementation would constitute a promising step forward.

Many examples of how state and local governments are using human rights strategies are in their early stages, yet they illustrate that integrating human rights can advance policy goals and respond to community needs. Human rights audits and assessments, which mainstream human rights into decision-making offer a positive practice. State and local laws that implement human rights principles, including efforts to advance universal healthcare, to implement CEDAW principles, are also a valuable means to giving human rights local meaning. Local efforts to hold government accountable, through hearings and monitoring and document of human rights compliance, too, are a means to advance human rights promotion and protection. Finally, local resolutions and efforts to reframe local concerns as human rights issues play an important role in raising awareness of human rights principles and highlighting government responsibility to respect, protect and fulfill human rights.

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

- *Ensure dedicated staff responsible for coordinating and liaising with state and local actors regarding human rights reporting and implementation, including identifying and developing best practices at the state and local level and communicating recommendations from international bodies to state and local governments.*
- *Provide education and training to state and local officials on international human rights treaty standards and Concluding Observations, as well as 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.*

Deadline for submission of responses to the questionnaire:

In order to give the Drafting Group the opportunity to take into account the different contributions, all parties are encouraged to submit their responses as soon as possible and at the latest by **11 April 2014**.

Answers can be submitted via email to the following address:

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OR

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Thank you for your contribution.

For more information on the Advisory's mandate: <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx>