

Implementing Recommendations from the Universal Periodic Review

A Toolkit for State and Local Human Rights
and Human Relations Commissions

Prepared by the Columbia Law School Human Rights Institute
for the International Association of Official Human Rights Agencies

UNDER THE AUSPICES OF
The Human Rights at Home Campaign
August 2011

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Introduction

The United States' international leadership in promoting human rights around the world is strengthened by state and local officials' efforts to employ and advance human rights close to home. Indeed, state and local human rights and human relations commissions can play a pivotal role in helping the U.S. meet its own human rights obligations by ensuring fairness, dignity and opportunity for all in their communities.

This Toolkit provides information about a recent review of the United States' human rights record under the United Nations' Universal Periodic Review ("UPR"), which revealed a number of areas in which the United States can improve local conditions on issues that state and local agencies confront on a routine basis. Included here is a brief background on the UPR, information regarding the core human rights treaties the United States has ratified and a discussion of the role that state and local governments play in fulfilling the United States' human rights commitments. Included, too, are practical suggestions for how state and local human rights and human relations agencies and commissions can work to address human rights concerns in the following areas:

- Employment Discrimination
- Housing Discrimination
- Racial Profiling

The Universal Periodic Review

On November 5, 2010, the human rights record of the United States was reviewed for the first time as part of a process known as the Universal Periodic Review ("UPR"). The UPR, established by the United Nations' Human Rights Council in 2006, requires that the human rights record of each of the 192 countries belonging to the U.N. be reviewed once every four years.

The UPR is a peer review process. First, the country under review offers an assessment of its own human rights record. Then, the other U.N. member countries have an opportunity to review the assessment, along with a compilation of United Nations findings and reports from civil society, including community groups and advocacy organizations, and make recommendations for improvement.

During the United States' first UPR, many United Nations member countries praised the United States for its engagement with the U.N. Human Rights Council and its contributions and long-standing commitment to promoting human rights around the world. Nevertheless, the review resulted in 228 recommendations for ways in which the United States can improve human rights conditions domestically. Many of these recommendations relate to issues of state and local concern in areas including:

- Criminal justice and law enforcement, including juvenile justice, violence against women, racial profiling and detention
- Discrimination in access to housing, employment, education, and the environment
- Protections for economic and social rights, including in the areas of healthcare, housing and employment

The recommendations resulting from the UPR are in many instances remarkably similar to recommendations that were made by U.S. civil society groups in the course of the review. Over 79 U.S. civil society stakeholder reports were filed in conjunction with the U.S. UPR, on issues ranging from the protection of pregnant women in the workplace, to the equal protection of indigenous rights, to the need for national human rights education.¹

In formally adopting the UPR report, the United States accepted many of the recommendations and noted "the best human rights implementation combines overlapping enforcement by all branches of the federal government working together with state and local partners."²

What Is Meant by “Human Rights?”

Human rights are internationally recognized and accepted norms and values that recognize and promote dignity, fairness and opportunity for all people and enable individuals to meet their basic needs. These norms recognize the inherent interrelationship between civil, political, social, economic and cultural rights. Furthermore, a human rights framework places an affirmative obligation on governments to respect, protect and fulfill these rights.

The UPR assesses the United States’ record in light of standards set forth in human rights declarations and treaties that establish these rights for every person, by virtue of their humanity.³ These include the Universal Declaration of Human Rights (“UDHR”)⁵ and the three main international human rights treaties ratified by the United States: the International Covenant on Civil and Political Rights (“ICCPR”), the Convention on the Elimination of Racial Discrimination (“CERD”)⁶ and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”).⁷

Universal Declaration of Human Rights

The UDHR, adopted by the United Nations General Assembly on December 10, 1948, is the landmark document setting forth the full panoply of fundamental human rights and recognizing that human rights are inherent to all and the concern of the entire international community. The U.S. played a key role in drafting and promoting this historic document. The UDHR consists of 30 articles, which are further developed in international treaties, regional human rights instruments, national constitutions and laws. The Declaration and its core values, including non-discrimination, equality, fairness and universality, apply to everyone, everywhere and always. Of particular interest to state and local human rights and relations commissions are articles protecting the rights to free choice of employment and favorable working conditions, and to take part in government and equally access public services.⁸ The UDHR also contains provisions protecting the right to an adequate standard of living (including food, clothing, housing and medical care) and the right to social security.⁹ A number of the Declaration’s articles relate

to law enforcement and call for equal protection under the law, protections against torture and arbitrary detention, and the right to a fair and public hearing.¹⁰ The Declaration also includes special protections for women and children.¹¹

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (“ICCPR”) is the international human rights treaty, ratified by the United States in 1992, that provides a range of protections for civil and political rights. The ICCPR includes protections for basic human rights such as the right to life and to human dignity, freedom of speech and association, freedom from torture and arbitrary detention, fair trial and minority rights. The ICCPR prohibits discrimination and guarantees equality before the law and equality between men and women. The ICCPR includes two general non-discrimination provisions:

- 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 or other status.”¹²
- Article 26 expands upon this, prohibiting institutional discrimination, guaranteeing “to all persons equal and effective protection against discrimination on” the same grounds laid out in article 2.¹³

The Covenant compels governments that have ratified it to take administrative, judicial and legislative measures necessary to protect the rights enshrined in the treaty.¹⁴

Convention on the Elimination of Racial Discrimination

The Convention on the Elimination of Racial Discrimination (“CERD”) is the principal international treaty for the elimination of racism, racial discrimination, and other forms of intolerance. The United States ratified CERD in 1994. CERD defines discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”¹⁵ CERD obliges countries:

- “to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms,”¹⁶ notably by taking “effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists,”¹⁷ and
- “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination [...].”

Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”) is an international human rights treaty, ratified by the United States in 1994, that requires each ratifying country to take measures to end torture within its territorial jurisdiction and to criminalize all acts of torture. CAT generally defines torture as the infliction of severe physical and/or mental suffering committed under the color of law.¹⁸ CAT allows for no circumstances or emergencies where torture could be permitted.¹⁹ CAT also requires ratifying countries to take action to prevent acts of cruel, inhuman, or degrading treatment by public officials. As part of these efforts, countries must educate and train officials, as well as investigate alleged incidents of torture or cruel, inhuman, or degrading treatment.

“We believe the best human rights implementation combines overlapping enforcement by all branches of the federal government working together with state and local partners.”

—Harold Hongju Koh, Legal Adviser to the U.S. Department of State, Response of the United States to the Recommendations of the United Nations Human Rights Council, Geneva Switzerland (Nov. 9, 2010)

The Valuable Role of State and Local Agencies and Officials in Human Rights Monitoring and Implementation

International law anticipates that the federal government may delegate implementation of human rights treaty provisions to states and localities.²² And, in ratifying human rights treaties, the United States does so with the understanding that the federal government shares responsibility for human rights implementation with state and local authorities. For example, when ratifying the ICCPR, the U.S. attached the following statement:

That the United States understands that this Covenant 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.

Nevertheless, the federal government remains internationally responsible for a state's failure to implement treaty obligations.²⁴

The recommendations made during the U.S. UPR, many of which touch upon issues of state and local concern, underscore the critical role that state and local agencies and officials play in ensuring U.S. compliance with its international human rights obligations.

U.S. federal officials likewise acknowledge that effective and broad-based human rights implementation and monitoring requires the participation of state and local agencies and officials. After the UPR, Assistant Secretary of the U.S. Department of Housing and Urban Development ("HUD"), John Trasviña, underscored the way in which state and local agencies are key to HUD's success: "We cannot do our work on fair housing, ending housing discrimination without [state and local government]."²⁵

State and local agencies and officials can use a range of strategies to help bring the United States into compliance with its international human rights commitments.²⁶ They can:

- Monitor and document human rights issues;
- Assess local policy and practice in light of international standards;
- Engage in human rights education;
- Incorporate human rights principles into advocacy efforts;
- Investigate human rights complaints; and
- Coordinate and implement local policy to integrate human rights principles.

Each of the following sections highlights specific ways state and local human rights agencies can use human rights standards and strategies to promote and protect human rights in their communities. Each section focuses on an area addressed by the recommendations made in the course of the UPR, pertaining to issues that many state and local agencies deal with every day. Specifically, each summarizes the issue and applicable international standards, sets forth the recommendations made to the U.S. during the UPR, and suggests concrete ways state and local agencies can help implement the recommendations locally, drawing on existing examples and the strategies listed above.

"Human rights are universal, but their experience is local."

Hillary Clinton, Secretary of State, Remarks to the Press on the Release of the 2009 Country Reports on Human Rights Practices, U.S. Department of State, March 11, 2010

Strategies to Improve Human Rights Locally

Employment Discrimination

Employment discrimination based on grounds including sex or gender,²⁷ race, national origin, age, disability and sexual orientation is frequently reported across the U.S.²⁸ Discrimination may manifest as unfavorable treatment during any part of the employment process, or a hostile work environment through harassment or other means.²⁹ For example, statistics show that women in the U.S. are paid less than their male counterparts, denied promotions and regularly experience sexual harassment, and even assault, in the workplace.³⁰ Similar discrimination occurs on the basis of sexual orientation and gender identity.³¹ Statistics further show that minorities, including African American, Hispanic and Latino individuals, have lower average weekly wages and higher unemployment rates.³² Recent immigrants and other minorities face many obstacles, including language barriers, which make it difficult to find employment, as well as access information about their rights.³³ Discrimination on the basis of age may be reflected in the fact that older workers who are unemployed take longer to find new jobs.³⁴ Disabled individuals also face significant discrimination, manifesting as higher unemployment rates and a higher percentage of part-time workers.³⁵

Applicable International Human Rights Standards

Everyone is entitled to the rights and freedoms contained in the UDHR, including the right to free choice of employment and favorable working conditions, “without distinction of any kind, such as race, colour, sex, language, ... , national or social origin, ... , or other status.”³⁶ Many international human rights treaties, including the ICCPR, contain similarly broad protections against discrimination.³⁷

Article 3 of the ICCPR speaks specifically to sex and gender discrimination, calling on the U.S. to “ensure the equal right of men and women”³⁸ in all the rights it protects and to take affirmative steps “to diminish or eliminate conditions which

cause or help to perpetuate discrimination.”³⁹ In a General Comment on the ICCPR, the Human Rights Committee stated that “the term ‘discrimination’ as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, ... , national or social origin, ... , or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”⁴⁰

Article 5 of CERD obliges states to protect “the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration,” regardless of “race, colour, or national or ethnic origin.”⁴¹ The Committee on the Elimination of Racial Discrimination has further called upon countries to “[t]ake measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.”⁴²

UPR Recommendations and U.S. Reply

The following recommendations related to employment discrimination were raised during the U.S. UPR:

- “[T]he [U.S.] should take all steps necessary to ensure the equality of women before the law and effective protection against discrimination on the ground of sex, particularly in employment.”⁴³
- The U.S. should “tak[e] the necessary measures in favor of the right to work and fair conditions of work so that workers belonging to minorities, in particular women and undocumented migrant workers, do not become victims of discriminatory treatment and abuse in the work place and enjoy the full protection of the labour legislation.”⁴⁴
- The U.S. should “tak[e] further measures in the areas of economic and social rights for women and minorities, including providing equal access to decent work.”⁴⁵

The United States responded by accepting the recommendations to:

- “consider taking further action to better ensure gender equality at work”⁴⁶
- “take further measures “in the areas of economic and social rights for women and minorities, including providing equal access to decent work”⁴⁷

The United States’ acceptance of these recommendations demonstrates a commitment to work to improve the economic and social rights protections for women and minorities and ensure greater protection against workplace discrimination. State and local human rights commissions can engage in efforts to bring the U.S. into compliance with its human rights obligations relating to employment discrimination by engaging in the activities described below.

What State and Local Agencies Can Do

State and local commissions can monitor, document and report instances of discrimination in the workplace; conduct education and training about international standards that prohibit discrimination in the workplace on the basis of sex or gender, race, ethnicity, national origin, disability and age; hold hearings to raise awareness of international standards prohibiting employment discrimination and assess local compliance; and work with civil society groups to advocate for policies and practices to take international standards into account in prohibiting employment and workplace discrimination.

The following are examples of ways in which state and local commissions are already actively combating discrimination in employment through human rights education, advocacy and monitoring.

- Advocacy by the San Francisco Commission on the Status of Women resulted in passage of an ordinance requiring the city to “integrate gender equity and human rights principles into all of its operations.”⁴⁸ Based on the international women’s rights treaty, CEDAW, the ordinance requires the Commission to conduct gender analyses of the budget, services and employment practices of city departments to identify barriers and discrimination against women.⁴⁹ Through these analyses, the Commission identified discriminatory practices and barriers to employment, and then helped departments institute policies to correct these employment inequalities.⁵⁰ In addition, focused efforts to expand the recruitment pool to include women and minorities have resulted in increased numbers of women being employed.⁵¹
- The Philadelphia Commission on Human Relations (PCHR) enforces the civic Fair Practices Ordinance, which protects against discrimination in many areas, including employment. In March of 2011, PCHR introduced legislation, passed by the City Council and signed by the mayor, to amend the city’s Fair Practices Ordinance. This gives the PCHR greater capacity to address discrimination and enforce the ordinance, including new protections for LGBT individuals.⁵² In order to address common questions regarding gender identity discrimination in employment, particularly under the Fair Practices Ordinance, PCHR created a Gender Identity Guide.⁵³
- The Pennsylvania Human Relations Commission has engaged with U.N. human rights mechanisms by reporting on human rights concerns, including discrimination in employment, within the state. In 2007, specific information about the Commission’s prevention of and response to actual or potential civil tension was included in the U.S. submission to the U.N. Committee on the Elimination of Racial Discrimination as part of the review process under CERD. This included some of the disaggregated data the Commission collects and uses to generate reports with detailed information about individual bias incidents and the motivation behind them. The data includes incidents of discrimination based on race, color and national origin in employment, as well as in housing accommodation and education.⁵⁴ Reports, distributed to member agencies of the Pennsylvania Inter-Agency Task Force on Civil Tension, for which the Commission has oversight, are used in assisting local communities to implement prevention and response strategies.
- The City of Seattle’s Race and Social Justice Initiative (RSJI) is a collaborative effort across city departments aiming to remedy discrimination in several areas including employment, and race-based disparities in economic equity and education. RSJI focuses on systemic causes of

institutional racism rather than creating social programs to remedy its symptoms.⁵⁵ RSJI has created, utilizes and distributes a 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.”⁵⁶ City departments, local government agencies, community groups and the school board use this Toolkit internally to make policy, programmatic, and budgetary changes that result in increased opportunities and success rates for minorities. In particular, city departments have been working together to increase workforce and contracting equity and ensure that immigrants and refugees can access public services. As a result of this initiative, the City has increased opportunities for minority businesses to compete for city contracts and doubled the percentage of women and minority-owned businesses who win contracts for non-construction goods and services.⁵⁷

Housing Discrimination

Housing discrimination based on race, color, national origin, religion, sex or gender, sexual orientation, family status, or disability is a pervasive problem nationwide and also considered one of the most under-reported discriminatory practices.⁵⁸ Of reported incidents, discrimination against individuals with disabilities is the most common and may partly be a result of ignorance of federal law preventing housing discrimination based on a disability.⁵⁹ Discrimination in housing on the basis of sex and gender is also common,⁶⁰ with a recent national study finding that 19% of transgendered individuals faced housing discrimination and 11% had been evicted based on their gender.⁶¹ LGBT individuals, too, face significant levels of discrimination.⁶² It is estimated that more than 3.7 million fair housing violations are committed annually against African Americans, Asian Americans, Latinos, and American Indians.⁶³ Such housing discrimination and the resulting residential segregation exacerbates other inequalities, with the result being that 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.⁶⁴

Applicable International Human Rights Standards

The UDHR states that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing.”⁶⁵ Several other covenants grant similar protections.⁶⁶ There is a general understanding that the right to housing is tied to enjoying other rights including the rights to freedom of association and freedom of movement, to participate in public decision-making, to security of person, and the right to privacy.⁶⁷ Further, housing is the foundation for fundamental rights including the rights to family, food and water, education, and physical and mental health.

The ICCPR obligates the federal government to ensure that all persons are “guaranteed equal and effective protection against discrimination,”⁶⁸ in regards to housing.⁶⁹

Article 5 of CERD requires that State Parties “guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of [...] the right to housing.”⁷⁰ Although Article 1 of CERD allows for differentiation between citizens and non-citizens, General Recommendation 30, issued by the Committee on the Elimination of Racial Discrimination, makes clear that the Article “must be construed so as to avoid undermining the basic prohibition of discrimination.”⁷¹ To that end, the Committee calls upon countries to “[e]nsure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status.”⁷²

UPR Recommendations and U.S. Reply

The following recommendations related to housing discrimination were raised during the U.S. UPR:

- The U.S. should “intensify its efforts aimed at reducing the phenomenon of residential segregation based on racial, ethnic and national origins.”⁷³
- The U.S. should review and reform its “federal and state laws, in consultation with civil society, to comply with the protection of the right to non-discrimination established by” CERD, notably in housing.⁷⁴
- The U.S. should take “legislative and administrative measures to address a wide range of racial discrimination and inequalities,” in housing.⁷⁵

- The U.S. should continue “its efforts in the domain of access to housing, vital for the realization of several other rights, in order to meet the needs for adequate housing at an affordable price for all segments of the American society; and reinforce[e] a broad range of safeguards in favor of the most vulnerable groups such as persons with disabilities and the homeless to allow them the full enjoyment of their rights and dignity.”⁷⁶

The United States responded by accepting the recommendations to:

- “continue its efforts in the domain of access to housing, vital for the realization of several other rights, in order to meet the needs for adequate housing at an affordable price for all segments of the American society”⁷⁷

The United States’ support for this recommendation demonstrates its commitment to improve its record on housing discrimination. The U.S. acknowledges that access to housing affects many other rights and thus, is an issue of great importance to be addressed by all levels of government.

What State and Local Agencies Can Do

State and local commissions can monitor, document and report on instances of housing discrimination practices; conduct education and training about international standards that prohibit such discrimination; hold hearings to assess how various communities, including immigrant communities, are impacted by housing discrimination; and advocate for policies and practices that take international standards into account in prohibiting such discrimination. Commissions can also engage in outreach to particularly vulnerable populations, including immigrant populations and persons with disabilities, who are affected by housing discrimination; monitor housing discrimination practices against vulnerable communities; and educate the general public about these issues. In addition, commissions can engage more broadly with the U.N. system on issues of concern. Related to these initiatives, commissions can engage more broadly in advocating for the rights of homeless individuals, including protecting their rights to basic needs such as water and hygiene, personal security and freedom of movement.

The following are examples of ways in which state and local commissions are actively addressing housing discrimination, particularly as faced by immigrants and other vulnerable communities, including through human rights monitoring and education, as well as coordinating with civil society.

- The Illinois Department of Human Rights (IDHR) is particularly active in outreach to immigrant groups affected by housing discrimination. From 2007 to 2010, the IDHR’s Manager of Fair Housing conducted outreach to the Polish immigrant community through a monthly column to the free Polish-language housing newspaper. Articles featured information on various topics related to fair housing, such as protection for families with children, people with disabilities, and gay and transgender persons, landlord rights and responsibilities, promoting fair housing in the community, and renters’ rights in foreclosure. In addition, IDHR features a wide range of events on housing discrimination during the National Fair Housing Month. For instance, in 2009, IDHR conducted an event on issues faced by the Polish, Latino and African migrant communities in the wake of the housing crisis.⁷⁸ In 2009, the Department hosted a meeting with the U.N. Special Rapporteur on Adequate Housing with human rights officials from Illinois. The meeting focused on IDHR’s role in providing fair housing and housing choice to Illinois residents. This type of meeting fosters dialogue between local and international officials and provides a platform to raise awareness of how human rights standards can be applied locally.
- The Iowa Civil Rights Commission created a brochure titled “Fair Housing and You,”⁷⁹ listing the federal, state, and local laws that protect against housing discrimination and explaining the different steps that people should take if they’ve been a victim of such discrimination. The brochure presents a series of examples that help the readers determine if they’ve been victims of housing discrimination and has been translated to English, Spanish, Arabic, Bosnian, Laotian, Somali, and Vietnamese.⁸⁰

- In 2010, the Michigan Civil Rights Commission issued a Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan.⁸¹ The Report highlights issues faced by migrants and seasonal farm workers in various areas, notably discrimination in housing, employment and health care, as well as concerns regarding language barriers. In addition to documenting human rights concerns, the Report identifies a number of recommendations for strategies to address concerns raised in the report.⁸² Shortly following the release of the report, the Commission assigned a staff member to work closely with government agencies and civil society to implement the recommendations and monitor progress.⁸³
- In 2007, the Washington State Human Rights Commission (WSHRC) generated a briefing paper documenting, analyzing, and addressing the “severe lack of housing for farm workers in the state.”⁸⁴ In developing the paper, the WSHRC was guided by its mandates to enforce prohibitions against discrimination based on race and nationality contained in state and federal statutes. In addition to drawing upon domestic legal standards, in writing the report, the WSHRC incorporated international standards for adequate housing, including Article 25 of the UDHR (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.”).⁸⁵ This briefing paper is part of WSHRC’s ongoing enforcement of laws against discrimination.⁸⁶
- The Los Angeles County Human Relations Commission (LACHRC) has embarked on a campaign to address rising violence against the homeless by drawing on international human rights standards regarding shelter and housing.⁸⁷ The campaign encourages law enforcement agencies to collect relevant data and engage in public education through youth initiatives, websites, and curricula highlighting human rights that require attention and protection, such as the right to housing. Investigation and reporting of hate crimes, including those against homeless individuals, conducted by LACHRC, public officials, and other groups and individuals involved with human rights contributes to the publication of an annual report.⁸⁸

Racial Profiling

Racial profiling is the discriminatory practice by which law enforcement or private security officials⁸⁹ use race, ethnicity, religion or national origin as a basis for criminal suspicion.⁹⁰ An example of racial profiling is the use of race as a factor for determining which drivers to stop for minor traffic violations. One of the most prevalent forms of racial profiling in the last decade is the targeting of Arabs, Muslims and South Asians for investigation and detention. In general, members of minority groups are more likely to be stopped by police and have difficulties flying or trying to cross the border.⁹¹ Racial profiling can have destructive effects on communities of color, as detentions and deportations separate families, isolate them and expose them to undue suspicions, threats, violations of privacy and harm both in the U.S. and their home countries, and perpetuates distrust and stereotyping.⁹² Racial profiling erodes trust between law enforcement and minority communities, which has a “negative overall impact on public safety.”⁹³

Applicable International Human Rights Standards

In addition to the general prohibition of discrimination of Article 26 ICCPR, Article 2 of the Covenant ensures that all rights in the ICCPR must be guaranteed to all individuals within the territory and subject to the jurisdiction of all State Parties to the Covenant without distinction of any kind, such as race, color, language, national or social origin, birth or other status.

Article 5 of CERD requires that State Parties “guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of [...] the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.”⁹⁴ General Recommendation 30 further calls upon countries to ensure “that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.”⁹⁵

UPR Recommendations and U.S. Reply

The following recommendations related to racial profiling were raised during the U.S. UPR:

- The U.S. should clarify to law enforcement officials the obligation of equal treatment and, in particular, the prohibition of racial profiling, and recommend that adequate consultation mechanisms be put in place for a coordinated approach at the federal, state and local levels of government.⁹⁶
- The U.S. should avoid the criminalization of migrants and ensure “the end of police brutality, through human rights training and awareness-raising campaigns, especially to eliminate stereotypes and guarantee that the incidents of excessive use of force be investigated and the perpetrators prosecuted.”⁹⁷
- The U.S. should prohibit and punish “the use of racial profiling in all programs that enable local authorities with the enforcement of immigration legislation and providing recourse to remedy human rights violations occurred under these programs.”⁹⁸
- The U.S. should attempt “to restrain any state initiative which approaches immigration issues in a repressive way towards the migrant community and that violates its rights by applying racial profiling, criminalizing undocumented immigration and violating the human and civil rights of persons.”⁹⁹

The United States responded by accepting the recommendations to:

- “continue to both conduct human rights training and awareness campaigns and, where appropriate, bring civil or criminal actions regarding racial profiling, police brutality, and excessive use of force, and other actionable civil rights violations against immigrants”¹⁰⁰
- “[m]ake further efforts in order to eliminate all forms of discrimination and the abuse of authority by police officers against migrants and foreigners”¹⁰¹
- “[t]ake appropriate legislative and practical measures to prevent racial bias in the criminal justice system”¹⁰²

The United States’ acceptance of these recommendations demonstrates a commitment to addressing discriminatory practices, including racial profiling, by law enforcement agencies. State and local commissions can directly address

racial profiling practiced by state and local law enforcement by engaging in the activities described below, helping the U.S. comply with its human rights obligations.

What State and Local Agencies Can Do

State and local commissions can monitor, document and report on instances of racial profiling; conduct education and training about international standards that prohibit racial profiling; hold hearings to assess local law enforcement’s relations with minority communities; raise awareness of international protections; and work with civil society groups to advocate for policies and practices influenced by international standards that prohibit racial discriminatory practices. They can also stem racial profiling by cultivating better relations between law enforcement officials and the community.

The following are examples of ways in which state and local commissions are actively using human rights strategies to address the problem of racial profiling.

- The mandate of San Francisco’s Human Rights Commission includes investigating and mediating complaints of discrimination and resolving community disputes involving individual or systemic discrimination. A recent initiative by the Human Rights Commission involved the mediation of tensions between the Chief of Police and the Arab and Muslim communities of San Francisco.¹⁰³ A public hearing was conducted in order to solicit testimony regarding concerns of undue surveillance and racial and religious profiling experienced by Arab, Middle Eastern, Muslim and South Asian American communities, and to prepare findings and recommendations to address these concerns.¹⁰⁴ Following the hearing, a report was published which includes official findings of surveillance and intimidation by the FBI, discrimination at borders and airports, and general community distrust of law officials as a result of perceived or experienced discrimination.¹⁰⁵ It also contains 15 recommendations by the Human Rights Commission. These recommendations focus on local practice (including recommendations for greater transparency and oversight of the San Francisco Police Force, and the installation of an ombudsperson at San Francisco Airport), as well as offer suggestions for how San Francisco can advocate with the federal government to eradicate racial profiling.¹⁰⁶

- The City of Seattle’s Race and Social Justice Initiative (RSJI) recognizes and aims to eliminate racial inequity across key sectors including criminal justice by focusing on the elimination of institutional and structural racism. One initiative includes partnering with the Seattle Police Department to implement use of the Racial Equity Toolkit.¹⁰⁷ The Toolkit is used as a means to review underlying policies and ensure the Department is working to eliminate inequities. In addition, all City employees, including members of the Police Department, participate in RSJI training sessions to ensure they have a common understanding of institutional racism and the tools necessary to eliminate it.
- The City of Portland, Oregon created a Human Rights Commission sub-committee dedicated to Community and Police Relations.¹⁰⁸ By bringing together police officers and members of the diverse Portland communities, the sub-committee aims to improve communication and cooperation between law enforcement officers and the communities they serve. The committee meets once a month and meetings are open to the public. Community members may also contact the Community and Police Relations Committee by phone, fax or email, all of which are available on the Portland Human Right’s Commission’s website. Additionally, the Commission’s website provides a link to the Portland Police Bureau’s 2009 report on its plan to address racial profiling in policing.¹⁰⁹
- In 2009, the City of Berkeley passed a resolution to enable the City to prepare a report on Berkeley’s compliance with U.N. Human Rights treaties. The City of Berkeley Peace and Justice¹¹⁰ Commission conducted a public forum and drafted a report that focuses on, among other issues, police and criminal justice. The Commission found that although African Americans made up only 13.6% of the population, they accounted for over half of the arrests made in Berkeley in 2008.¹¹¹

Conclusion

The UPR resulted in a broad range of recommendations for how the United States can improve its human rights record. State and local human rights and human relations commissions can, and do, play an important role in helping the United States fulfill the promise of human rights in every community. This toolkit highlights several strategies that state and local commissions can use, including engaging in human rights education, monitoring, advocacy and investigation, to help ensure that the United States meets its human rights commitments, and that all people can access and enjoy their rights.

“In advancing human rights, in this country and around the world, we can and should draw from our own domestic experience and lead by example, providing a model for the advancement of human rights that other countries can emulate.”

—Michael H. Posner, Assistant Secretary of State for Democracy, Human Rights and Labor, Senate Judiciary Human Rights and the Law Subcommittee, “The Law of the Land: U.S. Implementation of Human Rights Treaties,” December 16, 2009.

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- 37 ICCPR, *supra* note 5, art. 2, 26. See also Convention on the Rights of the Child art. 2, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") is the most comprehensive treaty addressing sex and gender discrimination, however the US has only signed, not ratified it. Of particular relevance are CEDAW's employment discrimination provisions (Article 11), which encompass rights to equal employment opportunities, training, remuneration, benefits, job security, and safe working conditions.
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