



# General Assembly

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## Human Rights Council

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Universal Periodic Review

### **Written statement\* submitted by the American Civil Liberties Union, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2011]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## Civil society response to US Universal Periodic Review\*\*

The UPR process has illuminated how states and localities are very often the sites of human rights concerns, and the need for a comprehensive, coordinated approach to human rights implementation within the United States.

Many of the recommendations resulting from the UPR relate to issues that fall within the jurisdiction of state and local government. These issues include:

- criminal justice and law enforcement, including discrimination, juvenile justice and violence against women, racial profiling and detention
- discrimination in access to housing, employment, education, and environmental justice
- disparities in access to healthcare, housing and employment

During the Review in November, the U.S. Delegation underscored the value of implementation at all levels of government. In his preliminary response to the recommendations, Harold Koh, the Legal Adviser to the U.S. State Department, affirmed the need for coordination when he stated that “[w]e believe the best human rights implementation combines overlapping enforcement by all branches of the federal government working together with state and local partners.”

Indeed, federal partnership with state and local entities for human rights implementation is essential under the U.S.’s federal system. In ratifying each of the human rights treaties that it has signed, the United States Senate has ratified with the understanding that human rights treaty obligations will be implemented by state and local governments to the extent that they exercise jurisdiction over such matters.<sup>1</sup> At the same time, the United States recognizes its ultimate obligation to ensure that state and local governments implement their treaty obligations.<sup>2</sup> Under international law, the United States remains internationally responsible for any failure of its states to properly implement treaty obligations.<sup>3</sup>

We therefore urge the federal government to take concrete steps to educate, coordinate with and support state and local government in fulfilling its human rights commitments.

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\*\* Columbia Law School’s Human Rights Institute, an NGO without consultative status, also shares the views expressed in this statement.

<sup>1</sup> Cong. Rec. 138 (1992): 807, setting forth understanding that state and local governments shall implement obligations under the International Covenant on Civil and Political Rights (ICCPR) in areas within their jurisdiction; Cong. Rec. 140 (1994) 14326, same understanding regarding International Convention on the Elimination of all Forms of Race Discrimination (CERD); Cong. Rec. 136 (daily ed. Oct. 27, 1990): S17486, same understanding for Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

<sup>2</sup> The Federal government has assumed this responsibility, for example by including in the “federalism understanding” added to CERD the recognition that it assumes the obligation to, “as necessary, take appropriate measure to ensure the fulfillment of the Convention” by state and local authorities. (Cong. Rec. 1994, 140:S7634-02) (United States Reservations, Declarations, and Understandings, International Convention on the Elimination of All Forms of Racial Discrimination).

<sup>3</sup> Article 2(1) of CERD obligates the United States to “ensure that all public authorities and public institutions, national and local, shall act in conformity” with the convention and to “take 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.” (CERD, art. 2 [1](a) & (c) 1965).

An essential first step is to communicate clearly with state and local authorities, clarifying their obligation to adhere to the standards that are set forth in the relevant human rights treaties and take concrete action to implement them, especially in areas that traditionally fall within their jurisdiction. When informing state and local officials of their obligation to implement human rights commitments, the federal government must be clear about what those commitments are and set the “floor” below which states may not fall. The Administration will strengthen the case for state and local implementation of human rights commitments by presenting the strong policy arguments in favor of compliance, as well.

In addition, the Administration should identify those officials with the jurisdiction over particular matters and engage in affirmative outreach efforts to raise awareness of and build capacity to implement human rights obligations at the state and local level.

Moreover, the federal government should establish formal and effective mechanisms that coordinate with and support state, local, and tribal governments and agencies in their efforts to promote, monitor and implement human rights by providing education, training and resources. Such mechanisms have long been called for by human rights and social justice groups in the U.S., especially the Human Rights at Home Campaign<sup>4</sup>, should include:

(1) a new federal Inter-Agency Working Group on Human Rights to coordinate implementation among federal agencies and departments, as well as with state, local and tribal officials—an entity that can be established by a Presidential Executive Order. Among other things, the Executive Order should mandate the creation of an action plan to fully implement and incorporate human rights obligations into domestic and foreign policy, including follow-up on recommendations made by human rights bodies such as the U.N. Committee on the Elimination of Racial Discrimination and the Human Rights Council following the Universal Periodic Review of the U.S.

(2) a national human rights institution to monitor human rights implementation throughout the country and support state and local agencies already doing this work. A national human rights institution could be created by transforming and strengthening the existing Civil Rights Commission into a new U.S. Civil and Human Rights Commission. This body would operate as an independent and non-partisan federal civil and human rights monitoring body, which would include as part of its mandate an examination of the United States’ compliance with international treaties and other international human rights obligations. This enhanced Commission would be mandated to coordinate and support the efforts of states and localities to implement human rights.

Both these bodies should be further mandated to: (1) dedicate staff to working with state and local officials; (2) provide comprehensive education and training to ensure officials at every level of government understand the U.S.’s human rights commitments; (3) provide funding for state and local governments and commissions to undertake human rights implementation; and (4) share best practices that emerge around the country.

By articulating clear obligations and strong policy arguments for complying with the U.S.’s human rights treaty commitments and providing the support outlined here, the U.S. will build both the capacity and likelihood of state, local and tribal officials to engage as full partners with the federal government in robust human rights compliance and work towards greater accountability for human rights at every level of government.

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<sup>4</sup> <http://www.hurahcampaign.org/>