

Human Rights & Local Obligations

Ensuring Effective Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination

A Report by the US Human Rights Network

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**US HUMAN RIGHTS
NETWORK**

BUILDING A PEOPLE-CENTERED MOVEMENT

ABOUT

The US Human Rights Network is a national network of organizations and individuals working to strengthen a human rights movement and culture within the United States led by the people most directly impacted by human rights violations. We work to secure dignity and justice for all.

USHRN works to realize human rights by:

- Engaging, connecting and mobilizing communities, Peoples, workers, and diverse sectors across issue areas, constituencies, and regions to uphold and defend human rights and hold government accountable;
- Building the capacity and leadership of grassroots groups and individuals to effectively apply the human rights framework in developing strategy and making long-term structural shifts to achieve justice;
- Raising the visibility of local human rights concerns and activism to shape the public discourse locally, nationally, and internationally; and
- Facilitating effective collective action to secure the structural change needed to fully realize human rights.

These strategies are designed to grow and strengthen a people-centered human rights movement; a movement that popularizes a universal recognition of and respect for the inherent dignity of every human being and that uplifts the positions and perspectives of those most directly impacted by human rights violations.

The CERD Taskforce, a structure of the US Human Rights Network, was formed in 2007 to coordinate the submission and follow-up of a national civil society shadow report that was submitted to the United Nations Committee on the Elimination of Racial Discrimination in 2008. The Taskforce is made up of organizations that represent the leading voices in human rights and racial justice. The core objective of the Taskforce is to ensure the effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and its key obligations at the national, regional, and local levels.

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Foreword from the USHRN

Moving to the Next Phase of the Struggle

Following the passage of the Civil Rights Act of 1964, the epic Selma to Montgomery March of 1965, and the passage of the Voting Rights Act of 1965, Dr. Martin Luther King, Jr., began articulating what many in the Black Freedom Movement had begun to realize, namely that the struggle for freedom and justice was entering a new critical phase in its development. Dr. King articulated this best in May 1967 when he stated:

We have moved from the era of civil rights to the era of human rights, an era where we are called upon to raise certain basic questions about the whole society. We have been in a reform movement... But after Selma and the voting rights bill, we moved into a new era, which must be the era of revolution. We must recognize that we can't solve our problem now until there is a radical redistribution of economic and political power... this means a revolution of values and other things. We must see now that the evils of racism, economic exploitation and militarism are all tied together...you can't really get rid of one without getting rid of the others... the whole structure of American life must be changed. America is a hypocritical nation and must put its own house in order.

Despite its ebb in the 1970s and 1980s, the domestic human rights movement in the United States gained new momentum in the 1990s with the ratification of two major human rights treaties, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Some of the driving forces behind this new tide of resistance were the World Conference of Indigenous Peoples in Kari-oca, Brazil, in 1992, the Earth Summit in Rio de Janeiro, Brazil, in 1992, the World Conference on Human Rights in Vienna, Austria, in 1993, the Women's Conference in Beijing, China, in 1996, the World Trade Organization Summit in Seattle, Washington, in 1999, and the World Conference Against Racism in Durban, South Africa, in 2001. This new wave reached a new height in the late 1990s and early 2000s with the development and growth of numerous organizations dedicated to human rights, such as WILD for Human Rights, National Center for Human Rights Education, Mississippi Workers' Center for Human Rights, Ella Baker Center for

Human Rights, Poor People's Economic Human Rights Campaign, the Human Rights Project at the Urban Justice Center, National Economic and Social Rights Initiative, and many others.

The formation of the US Human Rights Network in 2003 marked the coming of age of the movement, as the Network functioned as a link between the work and struggles of these and even older organizations and as a vehicle to further grow and advance the human rights movement within the United States. With the emergence of the US Human Rights Network, the human rights movement in the United States steadily advanced in scale and scope of both national coordination and international engagement. Starting in 2005, the US Human Rights Network began coordinating the participation of human rights, civil rights, and other social justice groups in the submission of civil society shadow reports to ensure the implementation of international treaties accepted as law by the United States. These civil society shadow reports provide on-the-ground, fact-based information to supplement the official reports submitted by the U.S. Government to the United Nations (UN) committees responsible for overseeing compliance with the various treaties the U.S. has ratified. The US Human Rights Network also coordinated international advocacy initiatives pertaining to the rights of internally displaced persons from the Gulf Coast by Hurricanes Katrina and Rita. This phase of development in the human rights movement was highlighted in the successful shadow reporting and social mobilization processes coordinated by the US Human Rights Network for the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) review in 2007-2008, and the Universal Periodic Review (UPR) in 2010-2011.

Following the success of shadow reporting initiatives from 2007-2011, the domestic human rights movement in the United States is now starting to move towards a new phase in its development. One that is aiming to build on the education, monitoring, shadow reporting, and social mobilization that defined the previous phase to emphasize organizing on all levels for the implementation of human rights, including through the building of autonomous institutions of enforcement and accountability, and the reformation, enactment, or, where necessary, repeal of government policy to fulfill their obligations under universally accepted human rights law.

“Human Rights and Local Obligations for Racial Equity: Ensuring Effective Implementation of the International Convention on the Elimination All Forms of Racial Discrimination” is a critical tool that will help this developing and transforming movement make the critical intellectual and conceptual advances it needs to move from the phase of education and mobilization to one of organizing and implementation. “Human Rights and Local Obligations for

Racial Equity” should be used in conjunction with *“Born of Struggle, Implemented Through Struggle: Reflections on Organizing and Building a People-Centered Human Rights Movement in the United States,”* released by the US Human Rights Network in December 2011, as orientation tools for anyone seeking to play a critical role in the next phase of the struggle for the full realization of human rights in the United States.



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Introduction

Human rights are fundamentally ensured by the relationship between individuals, groups, Peoples, and the government;¹ therefore, in human rights law, the state party (i.e., government that ratifies a law) is the duty-bearer, or the entity ultimately responsible for the obligation to respect, protect, and fulfill human rights.² The role of federal, state, and local governments in a highly integrated system, such as the one in the United States, requires that the fulfillment of human rights obligations rests with government at every level. Some obligations require governments to take positive action in fulfilling rights, such as the right to healthcare or clean air. In that regard, governments have to take proactive action and provide the necessary conditions for the enjoyment of these rights. On the other hand, there are some obligations that require governments to protect people from human rights violations, such as torture and discrimination. These types of obligations require governments to refrain from and shelter individuals from certain practices that violate their rights.³

The United States has been a leader in shaping international law. From trade to development to human rights, international treaties play an important role in international cooperation. Human rights, which encompass civil, political, economic, cultural, social, and environmental rights, are fundamental to the development of democratic societies. The protections and obligations that human rights treaties promote enable realization and ensure protection of universally agreed upon standards. While the United States falls behind other industrialized countries in international human rights treaty ratification, it formally accepted several key treaties, including the International Convention on the Elimination of All Forms of Discrimination (ICERD or “Treaty”).⁴ Among its many advantages, ICERD serves to strengthen and support the anti-discrimination legal system in the United States, and to enhance the Civil Rights Act of 1964. The ICERD requires ratifying countries to combat contemporary forms of racial discrimination and inequality.

This guide aims to raise awareness of the government’s obligations under the ICERD,



especially at the state and local levels, and to assist local representatives and policy makers in taking action to implement its important provisions, with the goal of reducing racial disparities and, ultimately, achieving racial equality.

“Racial Justice is the proactive reinforcement of policies, practices, attitudes and actions that produce equitable power, access, opportunities, treatment, impacts and outcomes for all.”

Structural Racism and Community Building, The Aspen Institute
Roundtable on Community Change

Overview of the ICERD

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is the principal international treaty for the elimination of racism, racial discrimination, and other forms of intolerance.⁵ The United States ratified the ICERD in 1994 under President Bill Clinton. While the United States Constitution makes all ratified treaties “the law of the land,”⁶ the U.S. accepted this treaty with a number of qualifications that limit its domestic application.⁷ ICERD, however, calls for a UN Committee on the Elimination of Racial Discrimination (also referred to as the “Committee” in this document) to review governments that have ratified the treaty on their compliance with it. The U.S. Government must therefore submit compliance reports or State reports to the Committee every two years, in response to which social justice groups and other non-governmental organizations (NGOs) submit alternative and shadow reports, and then the U.S. appears before the Committee for an in-person review of its record. Together, these pieces make up the review process for the ICERD.

The review process is intended to provide an opportunity for the Committee to assess government compliance with the treaty. The State reports outline the laws that ensure compliance with the provisions of the convention, as well as government policies and actions that contribute to the fulfillment of the rights set out in the treaty. Since its ratification of ICERD, the United States has submitted two reports to the Committee, the first was in 2001 and the second was in 2007. Past reports can be found on the State Department's website at (http://www.state.gov/j/drl/rls/cerd_report/index.htm).

Racial Discrimination shall mean 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 equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

International Convention on the Elimination of all forms of Racial Discrimination

The ICERD committee is made up of 18 independent experts, “who are of high moral standing and acknowledge impartiality.”⁸ They are elected every four years by a group of representatives from countries that have ratified the treaty. The Committee meets twice every year in Geneva, generally in February/March and August.

The Committee sessions are devoted to reviewing State reports and drafting concluding observations, which are recommendations for improved implementation.

Substantive Obligations Under the ICERD

The Convention sets obligations for governments to take all appropriate steps to prevent, remedy, and eliminate all forms of racial discrimination. Most importantly, Article 1 of the treaty recognizes that contemporary forms of racial discrimination can manifest in intended and unintended policies and practices, and therefore 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 limiting the full enjoyment of human rights. Furthermore, Article 1 permits “special measures,” such as narrowly constructed affirmative action programs⁹ “taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals.”¹⁰

Article 2 articulates proactive approaches to the elimination of racial discrimination. In addition to prohibiting governments from engaging in or sponsoring discrimination, it requires State parties, i.e., governments that ratify the treaty, to take effective measures to review, amend, rescind, or nullify any laws and regulations which have the “effect of creating or perpetuating racial discrimination wherever it exists.” Article 3 condemns and calls for the eradication of racial segregation, and Article 4 prohibits propaganda and organizations that promote racial hatred and discrimination. The U.S. Government submitted reservations with respect to Article 4, arguing that it would not accept any limits on free speech that are inconsistent with the U.S. Constitution.

Article 5 instructs governments to ensure the enjoyment of civil, political, economic, social, and cultural rights without distinction based on race, color, or national or ethnic origin. It raises important implications for government responsibility in addressing and eradicating persistent racial disparities in key social and economic indicators such as poverty, incarceration, educational attainment, and health outcomes. Article 6 requires governments to ensure that everyone has access to competent tribunals or courts to protect and remedy racial discrimination effectively. Article 7 calls on governments to combat prejudice and promote racial tolerance and understanding through human rights education, using the purposes and principles of ICERD as well as the Universal Declaration of Human Rights (UDHR).

The combination of obligations set out in ICERD and in particular Articles 2 and 5 produces a powerful policy framework for addressing contemporary forms of racial discrimination and reducing racial disparities. Under ICERD, both federal and local governments are empowered to craft effective laws and policies to implement the key provisions of the treaty.

Contemporary Forms of Racial Discrimination and Disparate Impact

Despite substantial gains in civil rights protections rooted in the Civil Rights Act of 1964, race in America continues to be a salient and determinative factor of social and economic mobility.¹¹ Legal scholars and social scientists alike agree that race continues to influence one's human development in America.¹² The late historian Manning Marable wrote that the continuation of racial inequalities that are “measured in social outcomes is not a product of the lack of individual initiative, but reflect the deep structural barriers that continue to be maintained through the pervasive power of white privilege. Racial inequality therefore presents itself [...] as an informal aspect of the general social fabric of American society.”¹³ For legal practitioners, policy makers, and advocates concerned with racial discrimination, inequality is an overarching concern. Numerous legislative and policy initiatives¹⁴ continue to be aimed at rectifying the impact of structural discrimination and disparities, yet statistics reveal that inequality among the races is growing, not declining.¹⁵

Racial disparities, which exist in almost all spheres of life in the United States, are often linked to seemingly neutral policies or laws that have a discriminatory effect on

“It has become easier to coat various forms of discrimination with the appearance of propriety, or to ascribe some other less odious intention to what is in reality discriminatory behavior. In other words, while discriminatory conduct persists, violators have learned not to leave the proverbial ‘smoking gun’ behind.”

Aman v. Cort Furniture Rental Corp., 85 F.3d 1074, 1081-82 (3d Cir. 1996; cf. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973))



a particular group. Domestic civil rights law is most effective when dealing with intentional acts of discrimination, but is limited in addressing facially neutral policies that have a discriminatory impact. Claims arising from policies that disproportionately affect some groups but not others have been heavily contested in the courts, and recent Supreme Court cases, such as *Alexander v. Sandoval*, have led to the rollback of important civil rights protections in this area.¹⁶ In particular, individuals' right to bring such disparate impact claims has been curtailed, leaving limited avenues to seek remedies where there is clear violation.¹⁷ Legal practitioners have found it exceedingly difficult in the post-Sandoval era to "convince courts to take action against disparate racial outcomes without proof of discriminatory intent, even where disparate impact is prohibited by law."¹⁸

Alternatively, ICERD provides a framework—for the public, as well as the administrative, legislative, and judicial arenas—for a broader understanding of discrimination, and a system for compliance to hold the government accountable to reducing racial disparities. The human rights approach under ICERD allows advocates to move past the dilemma of proving intent to discriminate to focusing on remedial action to address discriminatory impacts. Where racial disparities exist, it unequivocally requires governments to take actions that produce visible results. This outcome-oriented approach allows governments to focus on solutions without the distraction of assigning blame. Once a violation is identified, the treaty allocates responsibility to "amend, rescind, or nullify the policies" to the government, the body generally best situated to remedy the problem. Furthermore, it creates a duty for governments at the federal, state, and local levels to take appropriate legislative action to bring to an end racial discrimination. The statutory definition of discrimination under civil rights law in the United States and its approach to disparate impact are not in full alignment with ICERD obligations, but strategic policy initiatives and local innovation provide opportunities to harmonize the doctrines and bring the United States into full compliance with ICERD.

The Problem	The Value Added of ICERD
➤ Persistent Racial Inequality in key social and economic indicators ➤ Inequality is often the result of "unintended consequences" of "neutral policies" that do not have sufficient remedies under current domestic law	The definition of “racial discrimination” under ICERD encompasses policies and practices that ➤ have the intent and result of denying groups the enjoyment of human rights.
➤ Limited data collection and access by subgroups	The Committee on the Elimination of Racial Discrimination requires governments to collect data and review for discriminatory policies in all their territories.
➤ Lack of a framework to address disparities in economic and social rights.	Article 5 of ICERD protects against discrimination in the area of economic and social rights, including the right to decent work, the right to an adequate education, and the right to an adequate standard of living.
➤ Inadequate national coordination of treaty implementation ➤ No comprehensive plan to address persistent race disparities in almost all spheres of life	The Committee on the Elimination of Racial Discrimination has urged the U.S. to institute a national Human Rights Institution to coordinate treaty obligations across the federal government and states. The Committee on the Elimination of Racial Discrimination has called for the adoption of National Plans of Action to address racial discrimination

Local Strategies for ICERD

Implementation

Shadow Reporting

Upon the ratification of ICERD, the United States became obligated to submit regular periodic reports on its compliance with this treaty. These periodic or State reports are submitted to the Committee—or the treaty monitoring body (Committee on the Elimination of Racial Discrimination)—that was established under Article 8 of ICERD. The U.S. Government filed State reports in 2001 and 2007, which are available here

(http://www.state.gov/j/drl/rls/cerd_report/index.htm). While State reports must be submitted every two years, the U. S. generally submits its report every five to six years. One year after the review of the report by the Committee, the United States is required to provide another follow-up report related to the Committee’s concluding observations or recommendations for improving compliance. Subsequent reporting requirements urge the United States to address issues raised in the previous years’ concluding observations. Reports on behalf of the government are prepared by the State Department, in consultation with other branches and departments. The State Department has recently begun to engage other State institutions, including civil and human rights commissions and regional offices of the Department of Justice to gather information to include in its reports to the Committee.

The shadow reporting process is a crucial and important piece of holding the U.S. accountable to its obligations under ICERD. The process is an opportunity for civil society and non-governmental organizations to submit alternative reports to the Committee. These civil society reports often address omissions, deficiencies, or inaccuracies in the State report. They also allow advocates to highlight testimonies, data, and particularly egregious issues, such as the human rights impact of Hurricane Katrina and other disasters. Shadow reports by organizations can be submitted directly to the

ICERD Reporting Obligations

United States Government submits State report to the Committee every two years (State Department consults with NGOs)



Committee reviews report and issues questions to the government



Committee receives NGO shadow reports



Committee schedules hearing in Geneva



U.S. Government sends delegation to Geneva for hearing (NGOs allowed to observe hearing)



Committee drafts a set of concluding observations and recommendations



One-year follow-up report on concluding observations

Committee. Submissions are considered by the Committee in drafting questions to the United States delegation during the in-person review, and in formulating recommendations for the concluding observations. (See Annex)

The US Human Rights Network coordinates the national shadow reporting process in order to support effective participation and representation of United States NGOs in the review process, and to influence the Committee's final recommendations. The Committee relies on shadow reports for a more complete picture of a state's policies and to gain a better understanding of the level of racial discrimination in the country. The process also provides a meaningful way for civil society to participate in the review process, especially at the local level. It also provides an additional avenue to raise awareness of racial discrimination in different communities. For NGOs, the shadow reporting process allows civil society to bring international attention to local issues. Important issues such as immigration laws, Katrina reconstruction, and tribal land rights are issues that have been raised at ICERD reviews. Most importantly, shadow reports offer an opportunity for social justice groups to document and bring attention to human rights violations in the United States, and to demand remedies in line with universally accepted human rights norms.

For examples of shadow reports and to download the 2008 USHRN National Shadow Report, please go to <http://www.ushrnetwork.org/news-updates/cerd-newsletter-one-2008-cerd-shadow-reports-compilation>.

Local Engagement in Shadow Reporting

Participation of states and municipalities in the shadow reporting process is also an important step in holding the government accountable under international human rights law. Local government agencies that are charged with enforcing civil and human rights laws may provide information directly to the State Department or produce a shadow report and submit it directly to the Committee on the Elimination of Racial Discrimination. A May 2010 Advisory from the State Department to state and local human rights commissions requested information on local programs and activities to include in upcoming periodic reports. This came as an encouraging sign that the State Department is committed to consulting with civil society prior to reporting. The Advisory confirms that "implementation of U.S. human rights treaty obligations is carried out not only by the federal government, but also by state and local governments."

Local participation in treaty implementation does not end with shadow reporting. Innovative local agencies are becoming increasingly interested in using human rights and ICERD to achieve equity in local policy making and practice.

Specific Examples to Local Implementation of ICERD	
Action	Example
Draft a local shadow report on a specific issue	Entities and organizations from across the country submitted shadow reports for the 2008 review. See example of Chicago's Shadow Report & New York City Report .
Send a delegation or representative of your state to the Committee review of the United States	Several state human rights commissioners joined the government delegation in Geneva in 2008.
Inform the State Department of your local initiatives and activities to combat racial discrimination	Produce a report with data and information about local initiatives and activities and forward to the State Department. See example from the city of Berkeley, CA .
Engage with the Department of Justice and other relevant federal agencies to discuss your shadow report and implementation of ICERD at the local level	Local and state representatives were invited to participate in the consultations organized by the State Department and Department of Justice for the Universal Periodic Review (UPR) process in 2010.
Hold a local hearing to discuss the Concluding Observations and identify opportunity for local action	Pennsylvania has passed two resolutions authorizing state representatives to hold a series of public hearings investigating human rights abuses in Pennsylvania, and to create a commission to investigate ways to integrate human rights standards of ICERD into state laws and policies.
Enact local legislation that implements the principles and standards found in ICERD (or other ratified treaties)	Articulating principles from ICERD and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Board of Commissioners of Cook County (Chicago, Illinois) passed a resolution recognizing housing as a human right, which led to increased funding for affordable housing from the state.

Specific Examples to Local Implementation of ICERD	
Action	Example
Develop a local Action Plan to address racial disparities in your city or on a particular issue	National Action Plans to Combat Racism are a frequently used tool. Canada, Ireland, Australia all have national action plans. The U.S. uses a similar model in the <u>National HIV/AIDS Strategy</u> . The USHRN is calling on the Administration to develop a National Action Plan (discussed below).
Modify your local agencies definition of ‘racial discrimination’ to be aligned with the internationally accepted standard found in ICERD	State and local agencies may be able to enhance their ability to address racial disparities. For example, the mandate of the New York City Human Rights Commission and its definition of discrimination is broader than at the state or federal levels.

State and Municipal Steps Towards Racial Equity

Treaty ratification is only the first step to treaty compliance and implementation. Both national and local efforts have to be carried out to achieve greater implementation of ratified treaties, including ICERD. Local implementation of treaty standards is done in a number of ways. Localities often use treaty norms and substantive provisions to inform policy efforts or to change existing laws. Treaty integration does not always require legislative processes. Often, implementation is a matter of collecting data, reviewing policies, and setting priorities. Advocates have championed the use of equity impact statements as a way to review policies for disparate impact. Equity impact statements¹⁹ emerge from the international definition of racial discrimination found in ICERD and are mandated by Article 2.1 (c), requiring parties to take effective measures to review, amend, rescind or nullify any laws and regulations which have the “effect of creating or perpetuating racial discrimination wherever it exists.” Equity impact statements and action plans are just two important examples of effective implementation of Article 2.

Several state initiatives are already taking steps to address racial disparities, opening up an opportunity to integrate ICERD obligations.²⁰

- Chicago Governor Signs Bill Creating Commission to Research Disparity in the African-American Community: Commission Will Explore Inequalities Across a Wide Variety of Areas (available at <http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&RecNum=9632>)
- Commission on Reducing Racial Disparities in the Wisconsin Justice System (available at <http://www.wistatedocuments.org/cdm/singleitem/collection/p267601coll4/id/977/rec/10>)
- Leading for Racial Equity An Emerging Agenda for Minnesota, a Legislative Report Card (available at http://www.oaproject.org/sites/default/files/attachments/OAP_RC2009.pdf)
- Toolkit for Reducing Racial and Ethnic Disparities: A Quality Improvement Initiative in Medicaid Managed Care (available at <http://www.rwjf.org/qualityequality/product.jsp?id=28878>)

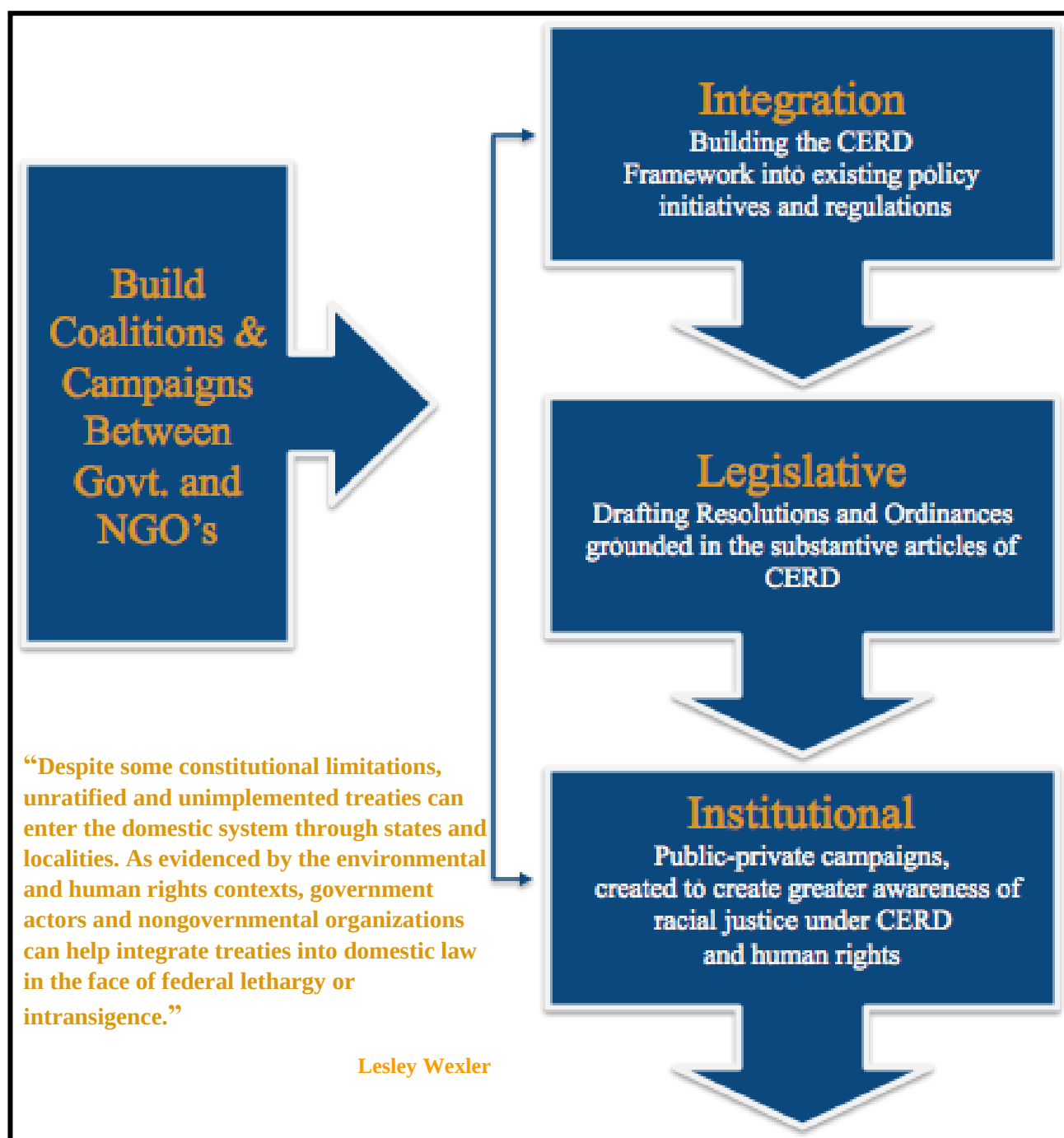
Partnerships between government and human rights organizations have proven successful in pushing for systemic change and local treaty implementation. Both local government officials and social change advocates are necessary actors to ensure full implementation of ICERD. Joint partnerships provide a way to effectively allocate responsibilities and tasks associated with an implementation campaign or initiative. Organizations can help to define the problem, conduct research and facilitate community education and outreach, and inform solutions, while local government officials can ensure access to legislative measures. Successful partnerships for local integration of human rights treaties have taken place in the cities of San Francisco, Eugene, New York, Los Angeles, and Chicago, as well as in the state of Massachusetts.

“The human rights law now on the books does not mandate that City departments routinely assess their performance with respect to ensuring that their missions are discharged equitably. Rather, it provides redress for discrimination, after the fact. While this legal tool is essential, Introductory 512 offers an additional tool for addressing rights violations and promoting equality by imposing an affirmative obligation on the government to prevent discrimination before it occurs. Introductory 512 asks that every City department conduct an assessment of its mission with an eye to preventing discrimination and promoting equality.”

Comment from Former New York City Mayor David Dinkins in response to proposed Human Rights Legislation to implement ICERD principles into NYC government operations.

- In Los Angeles, a local coalition for the right to housing has successfully campaigned to include the human right to housing as one of seven guiding principles of Los Angeles' 10-year plan to end homelessness (available at <http://www.ushrnetwork.org/resources-media/bring-la-home-ten-year-strategy-end-homelessness>).
- In Chicago, the Chicago Coalition to Protect Public Housing and Cabrini Green residents brought the first lawsuit in the city's history to cite international legal standards against the Chicago Housing Authority, which closed half of the public housing.
- In New Mexico, a bill was introduced on the principles of ICERD to induce state agency action to address institutional racism 2011 NM H.J.M. 32 (NS) (available at <http://www.nmlegis.gov/sessions/11%20regular/memorials/house/HJM032.html>

For a more complete list of treaty implementation efforts by state human rights commissions, see Human Rights Institute, Columbia Law School, State and Local Human Rights Agencies: Recommendations for Advancing Opportunity and Equality Through an International Human Rights Framework (available at http://www.law.columbia.edu/null/download?&exclusive=filemgr.download&file_id=153843)



A National Action Plan Under ICERD

When the United States ratified the ICERD, Congress did so with some reservations, declarations, and understandings. One of the most constraining declarations made during the ratification is the declaration that ICERD is a non-self-executing treaty in the United States, meaning individuals will not be able to seek legal remedy under its provisions in United States courts. The Committee on the Elimination of Racial Discrimination has consistently requested that the United States remove this condition; however, the U.S. continues to assure the Committee that its own civil rights laws provide a wider scope of protection for individuals. In order for ICERD to be actionable in United States courts, Congress would need to pass implementing legislation. In the absence of implementing legislation, the United States can and should adopt a national action plan to combat racial discrimination and racism. The treaty calls on states to take pro-active measures to especially combat persistent racial disparities in the social and economic areas. The Committee has also consistently requested that the United States government adopt a national action plan. By adopting a national action plan the U.S. would not only be in line with Canada, Ireland, and Australia, but it would also be heeding calls by its own domestic agencies.

“The most convincing rationale for adopting a National Action Plan . . . is federal precedent in adopting action plans to accomplish national policy priorities.”

Action plans provide a comprehensive framework to set national policy goals and coordinate resources across agencies to effectively reach those goals. The most convincing rationale for adopting a national action plan to combat racial disparities is federal precedent in adopting action plans to accomplish national policy priorities. Over the last five years, U.S. government agencies have employed several action plans to implement important policy priorities from health to environmental rights.

- U.S. National Action Plan (NAP) on Women, Peace, and Security, President Obama signed an executive order instructing U.S. government agencies to implement the plan, White House, March 2012
- HHS Action Plan to Reduce Racial and Ethnic Health Disparities, Health & Human Services, 2011
- National Ocean Policy, Action Plan, Executive Order 13547, January 2012
- Open Government Partnership U.S. National Action Plan, White House, 2011
- National HIV/AIDS Strategy and Implementation Plan, White House, 2011

- A National Action Plan for Cancer Survivorship: Advancing Public Health Strategies, Center for Disease Control and Prevention (CDC), 2004

For information on national plans of action, see Handbook on National Human Rights Plans of Action, published by the United Nations Office of High Commissioner on Human Rights. (<http://www.ohchr.org/Documents/Publications/training10en.pdf>)

The CERD Taskforce of the US Human Rights Network and the Human Rights at Home

Campaign have urged the current administration to adopt a

National Plan of Action for Racial Justice. On March 21, 2013, the International Day for the Elimination of Racial

Discrimination, the Taskforce launched a campaign, calling on the Obama Administration to adopt such a plan. The goal of the campaign is to galvanize support for a plan of action from grassroots to national organizations to put pressure on the Administration to prioritize and act on persistent systemic issues of racial inequality and inequity. Due to the breadth of racial disparities, coordinated action across federal agencies has to be

encouraged and can produce more efficient and effective results. Rather than piecemeal agency initiatives, an action plan will provide an outcome driven blueprint for systemic policy change in compliance with ICERD. Adopting a national plan would provide an opportunity for the government at all levels in conjunction with civil society to set high-level priorities and take concrete steps to reduce racial disparities in key areas of concern, including incarceration, poverty, education, and health outcomes.

The Committee on the Elimination of Racial Discrimination has recommended that the United States takes steps to reduce disparities caused by racial discrimination. Specifically, they recommended that the U.S.:²¹

- establish appropriate mechanisms to ensure a coordinated approach towards the implementation of the Convention at the federal, state and local levels, and
- take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice, including further studies to determine

The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.

Vienna Declaration and
Programme of Action,

Part II, paragraph 71

the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.

Additional recommendations aimed at the Administration include that the U.S.:

- review the definition of racial discrimination used in the federal and state legislation and in court practice, so as to ensure – in light of the definition of racial discrimination provided for in article 1, paragraph 1, of the Convention – that it prohibits racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect.
- adopt and strengthen the use of [special] measures when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms and ensure the adequate development and protection of members of racial, ethnic and national minorities.
- discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.
- increase significantly its efforts to eliminate police brutality and excessive use of force against persons belonging to racial, ethnic or national minorities, as well as undocumented migrants crossing the U.S.-Mexico border, *inter alia* by establishing adequate systems for monitoring police abuses and developing further training opportunities for law enforcement officials.

A complete list of recommendations from the 2008 Concluding Observations for the ICERD is available at:

http://www.ushrnetwork.org/sites/ushrnetwork.org/files/concluding_observations_of_the_cerd_committee_to_the_us_government_2008.pdf

Operationalizing Human Rights: Eugene Oregon

The Human Rights Commission & the Equity and Human Rights Center

The City of Eugene has taken its commitment to human rights seriously, integrating human rights standards in all areas of government with the assistance the Human Rights Commission and the city-staffed Equity and Human Rights Center. Over the last decade, with the support of strong human rights advocates, the city has become a model of good governance and operationalizing human rights.

One way in which the city realizes its human rights obligations is through its Diversity and Equity Strategic Plan (DESP), guided by an Equity and Human Rights Board on which the commission, the center, and all city departments are represented. The DESP is viewed as a way to transform thinking about diversity and equity in connection with core values integrated into the very fiber of the city organization. Six values guide the plan: accountability, collaboration, engagement, innovation, stewardship and sustainability. A key action item in the plan is to integrate human rights concepts into city policies and procedures. (Plan available at <http://www.eugene-or.gov/DocumentCenter/Home/View/515>)

Elected officials and city staff are using a Triple Bottom Line (TBL) tool to assess implications for social equity, economic development, and sustainability in making policy and budget decisions. The TBL includes addressing how civil, political, economic, social, and cultural human rights would be affected. (TBL tool available at <http://www.eugene-or.gov/DocumentCenter/Home/View/1100>)

The work of the Commission, which receives staff support from the Center, is guided by a human rights ordinance approved by City Council in 2012. The ordinance states “The Commission shall affirm, encourage and initiate programs designed to place priority upon protecting, respecting, and fulfilling the full range of human rights as enumerated in the University Declaration of Human Rights.” (Ordinance available at <http://www.eugene-or.gov/DocumentCenter/Home/View/493>)

The Commission’s work plan for 2012-13 developed out of a five-month Human Rights Listening Project in which both commissioners and city staff participated. That plan prioritizes addressing human rights issues pertaining to the integration of immigrants in the community, racism/hate/bias, homelessness, and issues faced by youth.

One of the specific tasks included in the commission’s work plan calls for the Human Rights Commission to “provide community education on the Convention on the Elimination of Racial Discrimination, ascertain how the local situation conforms to CERD, and report to Council.” (Work Plan available at <http://www.eugene-or.gov/DocumentCenter/Home/View/2710>)

Endnotes

¹ Human Rights Handbook for Parliamentarians. Office of the UN High Commissioner for Human Rights. (2005) (available at www.ohchr.org/Documents/Publications/training13en.pdf).

² *Ibid.*

³ Sean Pevsner, Reasonable Accommodations As Constitutional Obligations, 7 Tex. F. on C.L. & C.R. 317, 338 (2002) (discussing the need to recognize the positive rights aspects of civil rights law and identifying affirmative action as a positive right.)

⁴ There has been an explosion of activity in the harmonization of international norms related to commercial law. See UNCITRAL Model Law on Insolvency. See also Michael George Egge, The Harmonization of Competition Laws Worldwide, 2 Rich. J. Global L. & Bus. 93 (2001)

⁵ ACLU, Frequently Asked Questions: Convention on the Elimination of All Forms of Racial Discrimination (N.D.), (available at http://www.aclu.org/files/pdfs/humanrights/cerd_faqs.pdf).

⁶ U.S. Constitution, Article VI, Cl. 2. “A treaty is the supreme law of the land and is binding on the courts in every state, anything in the constitution or laws of any state to the contrary notwithstanding.”

⁷ See Audrey Daniel, The Intent Doctrine and Cerd: How the United States Fails to Meet Its International Obligations in Racial Discrimination Jurisprudence, 4 DePaul J. for Soc. Just. 263, 273 (2011) (discussing in detail the Reservations, Understandings, Declarations under ICERD).

⁸ Current CERD Committee member from the United States, Mr. Carlos Manuel, Vazquez.

⁹ See *Gutter v. Bollinger*, 539 U.S. 306, 344, 123 S. Ct. 2325, 2347, 156 L. Ed. 2d 304 (2003) (Justice Ginsburg with Justice Breyer concurring) (citing ICERD’s Article (4) in support of special measures taken to ensure equal enjoyment or exercise of human rights).

¹⁰ Fact Sheet *supra* note 9.

¹¹ See Sarah Burd-Sharps, Kristen Lewis & Eduardo Borges Martins, The Measure of America: American Human Development Report 2008-2009, (2008) (utilizing a “human development model” based on a broad array of socio-economic indicators).

¹² See Girardeau A. Spann, *The Dark Side of Gutter*, 21 Const. Comment. 221, 223 (2004) (arguing that race neutrality is dangerous where race continues to play a significant role in society.) See also *The Colors of Poverty: Why Racial & Ethnic Disparities Persist*, National Poverty Center.

¹³ Manning Marable, Structural Racism and American Democracy, Historical and Theoretical Perspectives. UNRISD, Durban South Africa September 2001. (available at [http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/4DAC9FF0A00C10F680256B6D0057879C/\\$file/dmaable.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/4DAC9FF0A00C10F680256B6D0057879C/$file/dmaable.pdf)).

¹⁴ See Leading for Racial Equity An Emerging Agenda for Minnesota, OA Project (available at www.oaproject.org/sites/default/files/all_prea_print.pdf) See also Texas A&M, The Project for Equity, Representation, and Governance (<http://perg.tamu.edu/PERG/Home.html>)

¹⁵ See Ann Chih Lin and David R. Harris, editors National Poverty Center Series on Poverty and Public Policy, The Russell Sage Foundation, <http://www.russellsage.org/publications/books/080117.709458>

¹⁶ See *Alexander v. Sandoval*, 532 U.S. 275, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001) (holding that there is no private right of action to enforce disparate-impact regulations promulgated under Title VI of Civil Rights Act of 1964).

¹⁷ Benjamin Labow, Federal Courts: *Alexander v. Sandoval*: Civil Rights Without Remedies, 56 Okla. L. Rev. 205, 229 (2003) (finding that the Court’s decisions in *Gonzaga* and *Sandoval* will preclude future litigants from enforcing section 602 disparate impact regulations under.).

¹⁸ Zachary W. Best, Derailing the Schoolhouse-to-Jailhouse Track: Title VI and A New Approach to Disparate Impact Analysis in Public Education, 99 Geo. L.J. 1671, 1674 (2011) (discussing the need for an alternative approach to remedying racial discrimination in schools by focusing on the social phenomenon causing the harm and which party is in the best position to remedy it, instead of attempting to identify who is culpable.).

¹⁹ See Applied Research Center's Toolkit on Equity Impact Statements (available at <http://www.arc.org/content/view/744/167/>). See also Developing an Equity Impact Statement, Praxis Project (available at <http://www.scribd.com/doc/44610712/Developing-an-Equity-Impact-Statement>).

²⁰ See Columbia Law School, Human Rights Institute. (<http://www.law.columbia.edu/human-rights-institute/publications>).

²¹ The 2008 CERD Concluding Observations. (available at <http://www2.ohchr.org/english/bodies/cerd/cerds72.htm>).