

U.S. CERD Obligations and Domestic Implementation —Article 2—

Response to the Periodic Report of the United States
to the United Nations Committee on the Elimination
of Racial Discrimination

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**A Report to the
Committee on the Elimination of Racial Discrimination on:

U.S. CERD Obligations and Domestic Implementation
—Article 2—**

Submitted December 10, 2007

EXECUTIVE SUMMARY

As reflected in the accompanying alternative reports submitted by U.S. civil society, the United States has failed to take adequate measures, consistent with CERD article 2, to ensure that the provisions of CERD have domestic legal effect in the internal jurisdiction. This report analyses that failure along five key lines, each summarized below. Each of these, it is concluded, can be traced to the lack of any comprehensive human rights coordination in the United States, and the lack of a body or bodies at both the national and state levels with powers to monitor treaty implementation, issue recommendations to a range of authorities, collect and assess statistics, hold thematic hearings, and undertake promotional and educational initiatives throughout the nation.

1. The U.S. has failed to adopt appropriate implementing legislation to give treaty guarantees domestic legal effect.

Although Article VI of the U.S. Constitution incorporates international treaties as part of “the supreme Law of the Land,” binding on all local, state and federal authorities, the U.S. ratified the CERD with an understanding that the treaty was “non-self-executing.” As a result, domestic courts cannot invoke the CERD for purposes of directly enforcing its provisions or, consistent with articles 2 and 6, providing legal remedies to victims of its violation. The U.S. has not, moreover, adopted any specific implementing legislation that would give the treaty’s provisions domestic legal effect and allow its provisions to be enforced by domestic actors, including through statutory causes of action.

2. The U.S. has failed to systematically review government policies and practices, and with the full participation of civil society partners, to identify gaps in protection and to monitor levels of compliance, including at the state and local levels.

Meaningful implementation of CERD requires a permanent institutional mechanism to monitor domestic compliance with the CERD, conduct awareness-raising on it, and ensure that treaty commitments are in fact being fulfilled by federal, state, and local authorities. It also requires a process for review of existing and new legislation and policy, at the federal, state and local levels. However, the United States lacks any national mechanism to review systematically government policies and practices for compliance with the CERD.

3. The U.S. has failed to oversee, coordinate and facilitate compliance initiatives at the state and local levels.

The U.S. has an obligation to take appropriate measures to implement the CERD at the state and local levels. However, the U.S. report does not adequately report on CERD implementation at the state and local level, as requested by the Committee. This omission results in part from the lack of permanent institutional mechanisms to monitor domestic compliance by state and local authorities. The United States has, accordingly, failed to oversee and promote compliance initiatives at every level of the nation's governmental structures, in function of federalism principles.

4. The U.S. has failed to raise public awareness of the Convention's guarantees.

Directly related to the need for a comprehensive system of collecting information from the states is the need to actively promote understanding of CERD obligations to state officials, as well as federal agencies, judges, and the general public. Domestic implementation of the CERD's obligations relies on public knowledge about the treaty and the rights it protects. The U.S. has failed in this respect by not educating government officials, judges, or the public about the Convention's obligations.

5. The U.S. has failed to review its reservations, understandings and declarations (RUDS) to determine their continuing necessity or relevance.

Although the Policy Coordination Committee on Democracy, Human Rights, and International Operations has a mandate to oversee an annual review of U.S. reservations, declarations, and understandings (RUDS) to human rights treaties to determine their continuing relevance, no effort has been domestically publicized or reported to the Committee that the U.S. government has undertaken any such review. This type of review is an essential tool for progressing toward a more sophisticated understanding of the governmental actions needed to implement the treaty's standards.

RECOMMENDATIONS

To address these failures and to comply with the obligations the U.S. assumed upon ratification of the CERD, the U.S. should adopt specific implementing legislation that would allow victims of human rights violations to claim violation of their CERD-protected rights before state and federal courts. The U.S. needs a comprehensive system for monitoring compliance with CERD obligations and reviewing the Committee's concluding observations and recommendations. The role of state human rights commissions needs to be considered, as well as the possibility of a national human rights commission with a mandate to monitor compliance with human rights treaties, including CERD. Initiatives focused on state and local implementation of and compliance with the CERD's provisions are needed, particularly state and local human rights commissions. Finally, greater public education efforts on the CERD should be undertaken, including training for government officials, judges, and legislators.

**A Report Submitted by U.S. Civil Society to the
Committee on the Elimination of Racial Discrimination:**

**United States Treaty Obligations under CERD:
Domestic Implementation of Treaty Norms
—Article 2—**

December 10, 2007

I. Introduction

When the United States ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) on October 21, 1994, it committed to condemn racial discrimination and to “pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.”¹ To implement this policy, the federal government committed to “engage in no act or practice of racial discrimination” and to “prohibit and bring to an end, by all appropriate means, . . . racial discrimination by any persons, group or organization.”² Most importantly, it committed to “ensure that *all public authorities* and public institutions, *national and local*, shall act in conformity with this obligation”³ 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.”⁴

As the alternative reports submitted by U.S. civil society make clear, the United States has failed to give meaningful legal effect to the substantive provisions of CERD and to eliminate racial discrimination within its jurisdiction through all appropriate means. While reports authored by other civil society groups look at the United States’ specific failures to give legal effect to the rights recognized in articles 3 through 7 of the Convention—i.e., those protecting the right to be free from discrimination in the exercise of the full scope of civil, economic, cultural, political and social rights—this report looks more broadly at the U.S. failures to ensure that the treaty is meaningfully implemented throughout its jurisdiction, including at the state and local levels.

These failures can be divided into five major types:

- failure to adopt appropriate implementing legislation to give treaty guarantees domestic legal effect;

¹ CERD, art. 2(1), 660 U.N.T.S 195, *entered into force* Jan. 4, 1969.

² *Id.* art. 2(1)(a), (d). It likewise committed not to “sponsor, defend or support racial discrimination by any persons or organizations.” *Id.* art. 2(1)(b).

³ *Id.* art. 2(1)(a) (emphasis added).

⁴ *Id.* art. 2(1)(c) (emphasis added).

- failure to systematically review government policies and practices and, with the full participation of civil society partners, identify gaps in protection and monitor levels of compliance, including at the state and local levels;
- failure to oversee, coordinate, and facilitate compliance initiatives at the state and local levels, in function of federalism principles;
- failure to raise public awareness of the Convention’s guarantees; and
- failure to review U.S. reservations, understandings and declarations (RUDS) to determine their continuing necessity or relevance.

Each of these omissions can be traced to the lack of any comprehensive human rights coordination in the United States, and the lack of a body or bodies at both the national and state levels with powers to monitor treaty implementation, issue recommendations to a range of authorities, collect and assess statistics, hold thematic hearings, and undertake promotional and educational initiatives throughout the United States.

II. The United States has failed to take appropriate measures to give domestic legal effect to the CERD through the adoption of appropriate implementing legislation

Although Article VI of the U.S. Constitution incorporates international treaties as part of “the supreme Law of the Land,” binding on all local, state and federal authorities, the U.S. ratified the CERD with an understanding that the treaty was “non-self-executing.”⁵ Given this, domestic courts cannot directly invoke the CERD for purposes of enforcing its provisions or, consistent with articles 2 and 6,⁶ providing legal remedies to victims of its violation.

Rather, direct legal effect can be given to CERD provisions only through independent implementing legislation understood to cover the terms of CERD.⁷ The U.S. has not, however, adopted any such implementing legislation over the thirteen years since it ratified the treaty. Indeed, in its 2001 Concluding Observations on the United States’ report, this Committee correctly noted “the absence of specific legislation implementing the provisions of the Convention in domestic laws,” and recommended that the U.S. take the necessary steps “to ensure the consistent application of the provisions of the Convention at all levels of government.”⁸ In response to the Committee’s concerns, the U.S. has responded that it “has taken, and continues to take, necessary measures to ensure the application of the provisions of

⁵ 140 CONG. REC. S7634-02 (daily ed., June 24, 1994) (United States Reservations, Declarations, and Understandings, International Convention on the Elimination of All Forms of Racial Discrimination) [hereinafter U.S. RUDs to CERD], ¶ III.

⁶ CERD article 6 requires States Parties to “assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

⁷ Technically, the CERD can be given indirect effect through independent statutory or common law causes of action that are interpreted for consistency with the treaty, under the *Charming Betsy* doctrine. Nonetheless, the U.S. has made no effort to educate judges about the binding nature of the CERD and the appropriateness of taking it into account in state and federal judicial decisionmaking. See discussion in Part V.B *infra*.

⁸ Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, U.N. Doc. CERD/C/59/Misc.17/Rev.3 (2001) [hereinafter “Concluding Observations”], ¶ 11.

the Convention at all levels of government, consistent with the U.S. constitutional structure.”⁹ Nowhere in the report, however, does the U.S. point to a single law or policy adopted for the specific purpose of implementing CERD obligations. Rather, the U.S. report focuses on laws implementing the U.S. constitutional provisions prohibiting certain types of racial discrimination.

While U.S. constitutional guarantees provide important safeguards against racial discrimination, they do not protect against all forms of discrimination prohibited by the CERD. It is this gap in protection between the U.S. Constitution, intended as a minimum floor of protection for individual rights, and the more expansive CERD guarantees, which the U.S. has recognized as a matter of federal treaty law, that requires immediate correction. Current U.S. statutory law simply has not been updated to reflect the protections of the CERD. The evidence of continuing racial discrimination in the U.S. provided to this Committee in the accompanying reports, as well as the lack of effective remedies for it, strongly undermines the Government’s assertion that no implementing legislation is needed.

So long as legal remedies for all violations of CERD’s protections are not available within the U.S., full implementation of the Convention will remain elusive. The Committee should reiterate its recommendation that the U.S. adopt specific implementing legislation for the CERD, and that civil society be involved in the process of identifying areas where such legislation is needed.

III. The United States lacks any national mechanism to systematically review government policies and practices for compliance with the CERD

Meaningful implementation of CERD requires a permanent institutional mechanism to monitor domestic compliance with the CERD, conduct awareness-raising on it, and ensure that treaty commitments are in fact being fulfilled by federal, state, and local authorities. It also requires a process for review of existing and new legislation, policies and practices, at the federal, state and local levels. Such monitoring and oversight would reveal when new measures were required to ensure the right to non-discrimination, opening the door to a process of domestic debate to determine the best means to implement the treaty.

This Committee previously noted the positive development of the Interagency Working Group on the Implementation of Human Rights Treaties, created in 1998 by Executive Order 13107.¹⁰ The Interagency Working Group was mandated to undertake a variety of coordination and oversight functions vis-à-vis the federal government, including overseeing a review of all proposed legislation to ensure its conformity with international human rights obligations and ensuring that all non-trivial complaints or allegations of inconsistency with or breach of international human rights obligations are reviewed to determine whether any modifications to U.S. practice or laws are in order.¹¹ The Interagency Working Group’s mandate did not include specific directives to monitor, facilitate and promote state and local compliance.¹²

⁹ See e.g., U.S. Fourth Periodic Report, ¶ 310.

¹⁰ Concluding Observations, ¶¶7, 23.

¹¹ Executive Order 13,107, §§2-4, Fed. Reg. 68,991 (1998), 38 ILM 493 (1999).

¹² The full list of its mandated functions include:

- Maintaining among all executive departments and agencies “a current awareness of United States international human rights obligations” relevant to their functions, and ensuring that such functions are

Despite its promise, the Interagency Working Group was never, however, operationalized. In February 2001, several months before the Committee issued its Concluding Observations to the United States, President George W. Bush abolished the Working Group.¹³ The formal functions of the Working Group were transferred to a Policy Coordination Committee (PCC) on Democracy, Human Rights, and International Operations, an ad-hoc body to be directed by the Assistant to the President for National Security Affairs under the Presidential National Security Council. The United States' Fourth Periodic Report states that the PCC now coordinates U.S. treaty reporting activity and provides a point of contact for U.S. agencies regarding treaty-related discussions at the United Nations, but does not explain how the PCC is furthering implementation of the CERD, whether the PCC has been granted any specific powers enabling it to implement human rights treaties, or "the impact of its activities."¹⁴

Unfortunately, the PCC has never implemented the mandates in Executive Order 13107. The PCC was non-operational until 2003 when it came together in an ad hoc manner to deal with the United States' overdue treaty reports.¹⁵ Without dedicated staff and resources for human rights treaty monitoring, it has functioned only to prepare periodic reports for treaty body consumption and to otherwise coordinate the external presentation of U.S. government engagements with international bodies. As discussed below in Section V, no meaningful actions have been undertaken to inform the U.S. public about U.S. treaty obligations, promote awareness within the various levels of government about those obligations, or coordinate a systematic review of domestic legislation to ensure its conformity with the CERD. The PCC remains the only federal body charged even minimally with overseeing U.S. obligations under the CERD. The internal obligations of the U.S. under the CERD are thus not being fulfilled.

Given the failure of the PCC to assist in the meaningful implementation of the treaty at the domestic level, the U.S. should develop a comprehensive system to integrate its CERD obligations (as well as those in other human rights treaties) into its federal, state, and local policy

performed "so as to respect and implement those obligations fully";

- responding to inquiries, requests for information and complaints about violations of human rights obligations that fall within each authority's areas of responsibility;
- coordinating the preparation of treaty compliance reports to the UN, OAS, and other international organizations;
- coordinating responses to contentious complaints lodged with the same organizations;
- overseeing a review of all proposed legislation to ensure its conformity with international human rights obligations;
- ensuring that plans for public outreach and education on human rights provisions in treaty-based and domestic law are broadly undertaken;
- ensuring an annual review of U.S. reservations, declarations, and understandings to human rights treaties; and
- ensuring that all non-trivial complaints or allegations of inconsistency with or breach of international human rights obligations are reviewed to determine whether any modifications to U.S. practice or laws are in order. *Id.*

¹³ President George W. Bush, National Security Presidential Directive-1: Organization of the National Security Council System, February 13, 2001 (abolishing the system of Interagency Working Groups established under the Clinton administration).

¹⁴ U.S. Fourth Periodic Report, ¶352, in response to Concluding Observations, ¶23.

¹⁵ See Tara J. Melish, *From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies*, in *THE SWORD AND THE SCALES: THE UNITED STATES AND INTERNATIONAL COURTS AND TRIBUNALS* (ed., Cesare Romano, 2008), available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1001328>.

and legislation. A system for implementing the Committee’s concluding observations and recommendations should also be established to ensure continuing progress toward the goals of eliminating racial discrimination embodied in the CERD. In developing such a system, the U.S. should consider the creation of institutions that (1) monitor CERD compliance, review legislation and recommend appropriate policy modifications, (2) have the power to oversee and encourage compliance at the state and local level, and (3) have sufficient staff and resources to achieve their mandate. In this regard, the U.S. should consider the possibility of developing a National Human Rights Commission in addition to strengthening the institutional framework of the Inter-Agency Working Group or Policy Coordination Committee. If the PCC mandates set forth in Executive Order 13107 are extended, they should be explicitly expanded to include sufficient powers to monitor, facilitate and encourage state and local compliance with the terms of the CERD. The state and local issue is addressed in more detail in the next section.

IV. The United States has failed to take appropriate measures to oversee, promote, and coordinate CERD compliance initiatives at the state and local levels

In ensuring that the provisions of the CERD have domestic effect, the U.S. has an obligation to take appropriate measures with respect to implementation at the state and local levels. Indeed, in ratifying the CERD, and thereby committing to give it legal effect throughout the domestic jurisdiction, the United States attached a “federalism understanding” to the treaty. That understanding affirmed that the Federal Government shall implement the Convention “to the extent that it exercises jurisdiction over the matters covered therein.” Otherwise, the treaty shall be implemented by the state and local governments. In this latter case, however, the Federal Government expressly assumes the obligation to, “as necessary, take appropriate measures to ensure the fulfillment of the Convention” by state and local authorities.¹⁶ Importantly, this view is consistent with the Committee’s position that “irrespective of the relationship between the federal authorities on one side, and the states, having extensive jurisdiction and legislative powers on the other, with regard to its obligation under the Convention, the Federal Government has the responsibility to ensure its implementation on its entire territory.”¹⁷

By ratifying the CERD, the United States formally recognized the supervisory and facilitative responsibility of the Federal Government over local and state jurisdictions in implementing the CERD. Article 2(1) of the CERD expressly obligates the United States not only to “ensure that all public authorities and public institutions, *national and local*, shall act in conformity” with the Convention but 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.”¹⁸

¹⁶ The “federalism understanding” provides:

That the United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises 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, as necessary, take appropriate measures to ensure the fulfillment of the Convention.

¹⁷ Concluding Observations, ¶4.

¹⁸ CERD, art.2(1)(a) & (c) (emphasis added).

Consistent with these textual commitments, the United States has underscored in each of its periodic reports on U.S. CERD compliance that the United States’s federalism understanding “is not a reservation”: “It does not condition or limit the international obligations of the United States. Nor can it serve as an excuse for any failure to comply with those obligations as a matter of domestic or international law.”¹⁹ To the contrary, the U.S. retains full competence and an affirmative legal duty to monitor state and local laws, policies, practices, and regulations to ensure that they are consistent with the treaty obligations assumed under federal law and applicable to the States and localities through the Supremacy Clause.

A. The United States’ report inadequately reports on CERD implementation at the state and local level, as requested by the Committee

Following its review of the U.S.’s Initial Report, the CERD Committee noted that the United States primarily focused on implementation of the Convention at the federal level. It recommended that “the next periodic report contain comprehensive information on its implementation on the State and local levels and in all territories under United States jurisdiction.”²⁰ In particular the Committee noted the absence of data regarding state prisons and jails.

Despite this Committee’s request for “comprehensive information on [the CERD’s] implementation on the state and local level and in all territories under United States jurisdiction,”²¹ the U.S. Fourth Periodic Report (which was coordinated by the PCC) does not include a comprehensive report on state and local implementation of the CERD. Instead, the U.S. report offers selective examples of implementation from a few states, on the reasoning that “*reporting at length on all 50 separate states and the territories would be extremely burdensome and so lengthy as to be unhelpful to the Committee.*”²² This statement does not absolve the U.S. of its failure to provide a complete report and only reinforces the urgent need to develop an integrated reporting and implementation system.

Although the U.S. has attempted to include more information from the state and local level, which is positive, it has tended to focus on formal procedures, structures, and case statistics of a narrow and individual nature rather than the impacts of policies or lack thereof on distinct racial groups.²³ This is certainly the case of the four case studies presented in Annex 1, which describe the legal and technical procedures available for lodging a narrow set of individual non-discrimination claims before municipal authorities in four states (Illinois, New Mexico,

¹⁹ Third periodic reports of States parties due in 1999 Addendum United States of America, CERD/C/351/Add.1 (hereinafter “Initial U.S. Report”), ¶ 167; 2007 Periodic Report, ___.

²⁰ Committee Conclusions, ¶402.

²¹ Concluding Observations, ¶23

²² U.S. Report, ¶353.

²³ The report provides three main types of information about state and local implementation: (1) select instances where the federal government has taken action against state and local authorities for discrimination (in hiring, education, prisons, elections, policing) [e.g., ¶¶62, 70, 154, 157, 173-78, 207]; (2) federal programs designed to support state anti-discrimination initiatives including federal grant programs to strengthen protections against racial profiling and hate crimes as well as technical assistance to police forces and other training efforts [¶¶133, 155-56, 158-59, 189], although there is no indication of how many states actually participate in the programs; and (3) a handful of random state initiatives to promote tolerance [¶¶ 124, 145].

Oregon, and South Carolina), but fail to discuss general statistical disparities between racial groups, their causes, and what states and localities are doing to redress those disparities. The failure to provide comprehensive and uniform information about state programs undermines its usefulness.

Likewise, the United States suggests that efforts to eliminate racial discrimination at the local level usually rely on state or local agencies for administrative enforcement—e.g., through a state civil rights or human rights commission or office.²⁴ It, however, only provides information about the case load of eleven state commissions without further information on their effectiveness or any information about commissions in the other thirty-nine states. At least three states, Alabama, Arkansas and Mississippi do not have a human rights or human relations commission,²⁵ and none of these commissions at the state and local levels currently interprets its jurisdictional mandate as requiring it to actively monitor local implementation of the CERD.²⁶ Just as alarmingly, the U.S. Department of Justice last revised its “Guidelines for Human Relations Commissions,” which encompass state human rights commissions, in 2003—after the CERD Committee issued its country conclusions urging the U.S. to report on state and local implementation of the CERD. The revised Guidelines nonetheless continue to omit any mention at all of the CERD or the obligation to monitor compliance with any human rights treaty for that matter.²⁷

As a result, other than limited information about state hate legislation and statistics,²⁸ there does not appear to be any systematic effort to compile relevant statistics concerning discrimination at the state and local level. For the most part, the report fails to go further than list a handful of voluntary state initiatives. While this may be a useful first step, there is no indication of whether other states have adopted similar programs or whether states’ failure to adopt such programs adversely affects racial minorities in their jurisdiction. Further, where such state initiatives are listed, there is no assessment of their effectiveness or impact.

B. The United States currently lacks permanent institutional mechanisms to monitor domestic compliance with the CERD by state and local authorities

As discussed above, the United States does not have any permanent institutional mechanisms to facilitate monitoring CERD compliance at the state and local levels, to promote awareness of its protections, or to train state and local authorities about it. Rather, as the U.S. report reveals, compliance is left largely to the unchecked discretion of state and local authorities, without significant federal oversight. While the United States lauds these state and local authorities, including those in state- and city-level “human rights commissions,” for fulfilling U.S. obligations under the CERD, these authorities tend to operate exclusively by reference to municipal law, in the form of statutory and constitutional non-discrimination provisions, unmediated by the CERD and often substantially narrower and more restricted than

²⁴ See, e.g., U.S. Periodic Report, ¶3.

²⁵ Kenneth L. Saunders and Hyo Eun (April) Bang, “A Historical Perspective on U.S. Human Rights Commissions,” *Executive Session Papers Human Rights Commissions and Criminal Justice*, No. 3 (June 2007), p.11.

²⁶ The single exception at the city-level is the Commission on Peace and Justice in Berkeley, California.

²⁷ See Dpmt of Justice, “Guidelines for Human Relations Commissions,” available at <http://www.usdoj.gov/crs/pubs/gehrc.htm> (last visited Sept. 15, 2007).

²⁸ U.S. Periodic Report, ¶¶181, 185, 192-97.

those provided for in the Race Convention. Indeed, state and local human rights commissioners often lack even a basic knowledge of CERD provisions and are reticent to refer to them at all in their work. While some non-governmental organizations and private academic institutions are trying to work with such commissioners to educate them about human rights treaties and their obligations therein, this work—unfacilitated by the U.S. government—is slow and without significant successes to date.

The lack of oversight of state and local implementation has led to a hodge-podge of enforcement efforts that operate at highly variable levels and under a diversity of standards. Meaningful state and local implementation requires the creation of state institutions to monitor and encourage local treaty implementation. Some innovative attempts to create such structures are discussed in the next section. However, state implementation mechanisms must be encouraged, coordinated, supported and monitored by the federal government. Within this context, the failure of the U.S. government to establish a permanent national human rights body with a monitoring, data-collection, and support role stands as a glaring omission in U.S. domestic human rights policy.

The United States has a clear obligation under CERD to monitor state and local implementation of the treaty closely and systematically to ensure compliance. To ensure uniformity, this should generally be done by a national human rights monitoring body or commission with a congressional mandate to collect statistics on national, state and local progress and to publish reports and recommendations. Where either lack of compliance is detected or unjustified regressions perceived at the state level, and they are not promptly remedied, some form of assistive intervention must be forthcoming from the federal level. In this way, federal treaty law may be respected while ensuring, in recognition of the sensitivities inherent in the U.S. political structure, that a respectful degree of latitude and discretion be given to state and local communities to interpret and implement human rights in ways that authentically accord with local understandings, particularized conditions, and democratic experimentation. This follows not only from the fact that local needs are best appreciated by local actors, but from the fact that we live in a plural world in which the value of human dignity can be instantiated in a diversity of ways. Federal coordination and facilitation is, however, of paramount importance to ensure that local efforts are in fact consistent with the values and norms of the CERD enshrined in federal treaty law.

Nonetheless, the only formal federal body that currently exists to oversee U.S. obligations under the CERD is the unstructured, nontransparent, and ad-hoc Policy Coordination Committee (PCC) on Democracy, Human Rights and International Operations. As discussed above, this PCC has not played any role in coordinating state and local initiatives. Rather, it has concentrated only on formal procedural engagements between the federal government and international treaty bodies.

C. The United States has failed to oversee, coordinate and facilitate compliance initiatives at the state and local levels, in function of federalism principles

In the absence of Federal Government action to adequately give effect to article 2(1) of the CERD, some state and local governments have acted in partnership with non-governmental

organizations to assess levels of state or local compliance with international human rights treaties, including CERD, or to adopt such treaties into municipal law.²⁹

These important first steps in developing mechanisms for state and local implementation have developed without U.S. government facilitation, promotion or coordination. Across the board, state and local governments need the support and guidance of the federal government in affirming the validity of laws based on CERD, and the resources for their proper and adequate implementation. At the same time, the U.S. government could play an important role in creating broader national awareness about “best practices” at the local level and in stimulating creative local responses to the challenge of implementing CERD throughout the national territory in the most responsive and effective ways possible. This could be accomplished, in part through better utilization of the Federal government’s Spending Power to encourage state implementation of CERD guarantees.³⁰ It could also be done more directly through federal legislation enacted under the Commerce Clause, treaty power, or section 5 of the Fourteenth Amendment.

Below, some of the state and local initiatives being pursued are highlighted. Several of these initiatives would create commissions to review the possibilities of integration of human rights standards into state and local law and policies and/or give state legislatures the power to investigate and hold hearings concerning human rights violations. Inspired by efforts in Berkeley, California, other cities are considering compiling and submitting treaty compliance reports directly to the CERD Committee. While these initiatives are important steps to implement treaty obligations at the state and local level, many are still pending before state and local legislative bodies, and such initiatives have been undertaken in only a handful of states. Within this context, the facilitating role of the federal government in encouraging greater implementation efforts at the state and local levels is imperative.

Massachusetts. In Massachusetts, a human rights bill was proposed in 2005—House Bill 706 (HB 706)—that would establish a special commission to review the integration of international human rights standards into the commonwealth’s laws and policies.³¹ Currently under consideration by the Massachusetts legislature, HR 706 would, if passed, begin a process of incorporating the principles of CERD and other international human rights treaties into state law

²⁹ CERD article 2(1) requires that the Federal Government “ensure that all public authorities and public institutions, *national and local*, shall act in conformity” with the Convention, and “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.”

³⁰ A recent decision by the California Court of Appeals illustrates the Federal government’s failure to use the Spending Power effectively to encourage state compliance with CERD, even where that possibility was firmly in place. In *Coral Construction v. City and County of San Francisco*, the California Court of Appeals rejected an argument that race-based temporary special measures in a public contracting program, which were prohibited under the California Constitution (through Proposition 209), fell within a “federal funding exception.” The exception allowed race-based special measures in California if federal monies, provided under the Spending Power, could be taken away from the state if it failed to adopt the measures. The U.S. government, in turn, did not intervene to threaten the removal of funding if the special measures were discontinued. *Coral Construction* thus demonstrates the failure of the Federal government to fully use the spending power as an enforcement tool and, at the same time, that states have no fear that federal funds will be removed if they do not adopt remedial measures required under CERD.

³¹ The General Assembly of Massachusetts, House Bill No. 706. Session of 2005.

and, as part of this process, authorize state legislatures to investigate human rights abuses in Massachusetts through a series of public hearings.³²

Pennsylvania. The state of Pennsylvania has successfully passed two resolutions in the House of Representatives, which established a committee to investigate ways to integrate human rights standards into state laws and policies. The first resolution, House Resolution 473 (HR 473), was passed in 2002 and established a committee of the House of Representatives to “study and investigate the integration of human rights standards in Pennsylvania’s laws and policies.”³³ In 2003, the House of Representatives passed HR 144, which re-established the select committee to continue its work.³⁴ While the resolutions do not explicitly reference the CERD, a report issued by the select committee recognized “that action must be taken to assure the well-being of the citizens.... and this includes supporting the inherent dignity of each individual – regardless of their [race].” Furthermore, the report found that “...for development of economic and social policy to address the issues brought forth in these hearings, it is critical to define human economic rights as those basic individual rights to healthcare, nutrition, housing, quality education and sustainable employment at a living wage.”³⁵ While the hearings resulted in significant findings of noncompliance with human rights guarantees in the State of Pennsylvania, collected in a final report of the Select Committee, they have not yet resulted in significant policy changes or new state legislation.

New York City. In late 2004, a bill that would implement principles based on the CERD and the CEDAW was introduced at the New York City Council. The bill, Int. 512-A, also known as the “New York City Human Rights Government Operations Audit Law, would have adopted the definition of discrimination in the CERD, and required that city government departments and programs review their policies and programs to determine their effects on racial minorities. Their reports would then be reviewed by a city task force. Nonetheless, despite determined efforts by non-governmental organizations in support of the bill, it failed to get through the City Council in 2005. It is currently up for re-introduction in 2007.

California. The two most successful examples of local incorporation of CERD’s guarantees at the municipal level have to date occurred in California—in the cities of San Francisco and Berkeley, respectfully.

San Francisco. In 2000, the city of San Francisco incorporated principles of the CERD into an existing municipal ordinance that, in 1998, had adopted the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) as municipal law. This policy change came into effect after a nearly two-year campaign launched by a coalition of advocacy groups. The ordinance specifically establishes a local Task Force, composed of elected representatives from both government and civil society, to work with the Human Rights Commission and city departments to identify discrimination in city policies and programs and to implement human

³² See “Human Rights for All,” The Massachusetts CEDAW Project, (endorsement packet), April, 2005.

³³ The General Assembly of Pennsylvania. House Resolution No. 473. Session of 2002.

³⁴ The General Assembly of Pennsylvania. House Resolution No. 144. Session of 2003.

³⁵ Quoted in, Heartland Alliance for Human Rights and Human Needs, *Extreme Poverty and Human Rights: A Primer*, 15 (2007), citing The General Assembly of Pennsylvania. (2004, November 30). Report of the Select Committee on House Resolution 144 investigating the integration of human rights standards in Pennsylvania laws and policies. Pennsylvania: Author.

rights principles at the city level.³⁶ The Task Force produces an annual report on areas of concern and where improvements are being made.

Berkeley. The City Council of Berkeley, for its part, has agreed to compile and submit a periodic report of its own to the CERD Committee, which will also be sent to the Attorney General of California.³⁷ To facilitate this process, the Office of the City Manager created a template and sent it to every city agency in Berkeley seeking information on racial discrimination and also informing city agencies on the reporting process adopted by the City. It announced:

This initial report by the City of Berkeley is intended to provide an overview of the efforts taken by the City to prevent racism and racial discrimination rather than a comprehensive, in-depth survey. Future reports will include greater detail on local measures taken by the Berkeley Unified School District (BUSD), non-governmental organizations, and other entities to prevent racism in the Berkeley community.³⁸

Importantly, some city officials have found the CERD reporting process to be helpful and worthwhile for the city and have since requested that the Berkeley Peace and Justice Commission prepare a system for filing periodic reports with the other U.N. committees that oversee compliance with U.S.-ratified human rights treaties. In Berkeley, as in San Francisco, it was found that city government employees only became aware of CERD when their participation in providing information for the city report was sought. This demonstrated that local human rights reporting provides an effective and periodic reminder to government officials of the treaties and their responsibilities, as well as continuing education about the United Nations framework. The future participation of local NGOs will further boost the effectiveness and completeness of local reports. Such NGOs will assist local and state governments in submitting accurate and concise reports, which include detailed statistical data, disaggregated by sex, ethnicity, nativity, employment status, education status, and voting status. Similar efforts are underway in the cities of San Francisco, California; Portland, Oregon; and Milwaukee, Wisconsin.

* * *

Each of the above initiatives have been led by civil society organizations, without the assistance of the U.S. government. Pursuant to its obligations under CERD article 2, the United State should be encouraged to play an active role in supporting these local and state efforts to implement the CERD, by providing material, moral and financial support, by sharing experiences and “best practices” among states and cities—such as through national associations of Governors, Mayors, Attorney Generals, and human rights commissions—and by educating the public and government officials at all levels about the U.S.’s obligations under the CERD.

³⁶ For related documents, see <http://www.sfgov.org/site/dosw_page.asp?id=19725> (visited Apr. 20, 2007).

³⁷ Berkeley City Council, Resolution No. 63,596-N.S. Eliminating Racial Discrimination, adopted February 27, 2007. (The Berkeley CERD report was submitted on June 26, 2007.)

³⁸ Office of the City Manager of Berkeley, CA, *Information Calendar: Resolution on Eliminating Racial Discrimination*, February 27, 2007, <<http://209.232.44.21/citycouncil/2007citycouncil/packet/022707/2007-02-27%20Item%2014b%20Resolution%20to%20End%20Discrimination%20-%20TBD.pdf>>. (accessed September 13, 2007).

V. The United States has failed to raise public awareness of the Convention's guarantees

Directly related to the need for a comprehensive system of collecting information from the states is the need to actively promote understanding of CERD obligations to state officials, as well as federal agencies, judges, and the general public. Domestic implementation of CERD obligations relies on public knowledge about the treaty and the rights it protects. The U.S. has failed in its duties under the CERD in this respect by not educating government officials, judges, or the public about the Convention's obligations.

A. The Failure to Educate the Public

Public opinion surveys have concluded that a majority of people in the U.S. support human rights treaties and U.S. compliance with them, but that they do not know about the treaties that have been ratified or how they are enforced.³⁹ A 2007 national opinion survey, for example, found that eight in ten (81%) Americans agree that “we should strive to uphold human rights in the U.S. because there are people being denied their human rights in our country.”⁴⁰ And, three-quarters of the public (77%) want the U.S. to work on making regular progress on human rights.”⁴¹ When one survey of Americans conducted in 1997 asked, nevertheless, “is there an official document that sets forth human rights for everyone worldwide?” only 8% could name the Universal Declaration of Human Rights.⁴² However, when informed of the existence of the Declaration, 83% felt that the fact that the U.S. had agreed to the Universal Declaration of Human Rights was a very strong or fairly strong reason for the U.S. to do “more to protect human rights in the US.”⁴³

These studies and others like them suggest that if the American people were better educated about their rights in treaties like CERD, they would expect their government to implement the treaty. As it stands now, however, Americans generally do not know that the treaties exist, that the U.S. has ratified them, or what rights exist under those treaties. Full domestic implementation of the CERD's obligations depends on public understanding of the Convention and the international system within which it operates. Thus, the U.S. is obligated to make greater efforts to publicize the CERD and the government's responsibilities arising from it as an international human rights treaty.

The educational actions the U.S. has described to the Committee regarding compliance with Article 7 are not the result of a planned effort to promote U.S. obligations under

³⁹ See, e.g., WorldPublicOpinion.Org/Knowledge Networks, Americans on International Courts and Their Jurisdiction Over the U.S. (May 11, 2006), available at http://www.worldpublicopinion.org/pipa/pdf/may06/Tribunals_May06_rpt.pdf.

⁴⁰ The Opportunity Agenda, *Human Rights in the U.S.: Opinion Research with Advocates, Journalists and the General Public* (August 2007), page 3 (national survey conducted by Belden Russonello & Stewart).

⁴¹ *Id.*

⁴² Peter D. Hart Research Associates, 1997, cited by WorldPublicOpinion.org, <http://www.americans-world.org/digest/global_issues/human_rights/HRinGen.cfm>.

⁴³ *Id.*

international treaties. The U.S. Constitution and federal civil rights legislation implementing it require most of the educational programs, and in fact some of the programs listed in the report resulted from lawsuits brought in U.S. courts to enforce constitutional rights. The educational programs named in the report are important steps to reduce racial discrimination, but because they arise from a constitutional approach, rather than the international framework embodied by CERD, which extends beyond the minimum required by the U.S. Constitution, these efforts are incomplete. The Fourth Periodic Report trumpets the fact that civil society groups like Amnesty International USA and the U.S. Human Rights Network have created successful “human rights education and training models in schools, universities, and other educational settings.”⁴⁴ However, the responsibility of developing educational programs such as these should not fall exclusively to NGOs. Having non-governmental entities sponsor, write, and promote these programs sends a very different message than if the government is endorsing the international conception of the right to be free from racial discrimination. These school programs are only needed because the government has not fulfilled its obligation to take appropriate measures to inform the public of the nation’s international treaty obligations, or to play any active role in coordinating private-public partnerships in this area. If the U.S. would like to engage with civil society and solicit assistance in developing these types of educational programs, numerous NGOs stand ready to work closely with the government in preparing action plans and ensuring their effective implementation.

In its 2001 Concluding Observations, the Committee recommended that the U.S. make its reports “readily available to the public from the time they are submitted and that the Committee’s observations on them be similarly publicized.”⁴⁵ Simply putting the report on a government website, however, does not adequately achieve the Committee’s purpose for publicizing the reports and observations, which is to increase an understanding of individual rights among the people the CERD is intended to protect and the international mechanisms available to assist them. At the same time, it must be noted that the U.S. does not include *all* of its CERD reports on its website, nor any of the Committee’s concluding recommendations. Rather, it makes available to the public only the *current* U.S. periodic report, removing the prior report upon posting of the new one. This prevents the public from comparing U.S. claims from one reporting cycle to the next, or comparing U.S. reports to the Committee’s prior Concluding Recommendations. This serves only to further stifle domestic understanding and debate on the CERD.

The fact that the U.S. makes its periodic reports available only on the State Department website also raises racially-disparate accessibility concerns given the racial aspects of the digital divide. Successfully raising public awareness about U.S. commitments under the CERD among all social and racial groups in the United States requires that multiple strategies be pursued that can accommodate a wide variety of circumstances and accessibility needs.

B. The Failure to Educate Judges and Government Officials

The U.S. Government has reported that it fulfills its obligations to inform judges and legislators of their obligations under the CERD by distributing its reports to “federal judicial

⁴⁴ U.S. Report, ¶¶ 293-94.

⁴⁵ Concluding Observations, ¶ 27.

authorities” and “relevant” members of Congress and their staffs.⁴⁶ Merely distributing the report to repositories and selected Congressional offices does not, however, meaningfully promote the CERD’s provisions nor help judges and legislators gain a fuller understanding of their own role in implementing those provisions.

While it is encouraging that the U.S. Supreme Court has affirmed the importance of customary international law⁴⁷ and, in a few limited cases, looked to international law for guidance in interpreting the U.S. Constitution as it applies to some of the most important social issues in the U.S. (including racial discrimination),⁴⁸ the Supreme Court has not specifically relied on the CERD to define U.S. legal obligations, nor have other lower federal courts. This is due, in part, to the fact that judges are not provided with any government-coordinated training on the CERD or other human rights treaties.⁴⁹ Instead, non-profit organizations, on their own, have taken the lead in training the judiciary about U.S. treaty obligations and customary international law. For example, the American Society of International Law’s Judicial Outreach Program provides workshops to U.S. federal and state-level judges on the domestic application of international treaties and customary law.⁵⁰ Further, the National Association of Women Judges offers educational courses in the application of international treaties and customary law as well as how to draw from international legal decisions in their state and federal decision making.⁵¹ Additionally, The Justice and Society Program at the Aspen Institute, a non-profit policy and advocacy organization, offers seminars to U.S. federal judges and to other leaders from the U.S. government, the private sector, and nongovernmental and intergovernmental agencies on international law, international norms and human rights. To date, most of those efforts have dealt almost exclusively with customary international law principles and their application to non-citizens through the use of the Alien Tort Statute/Alien Tort Claims Act (ATS or ATCA). The U.S. should use its Federal Judiciary Center and state judicial centers to increase judicial awareness of the Convention.

It is imperative that the U.S. government incorporate training about the CERD and international law into its own formal trainings for judges, such as those promoted through the National Judicial College in Reno, Nevada. Further, as part of its efforts to implement the

⁴⁶ U.S. Report, ¶50.

⁴⁷ *Sosa v. Álvarez-Machain*, 124 S. Ct. 2739 (2004).

⁴⁸ *Roper v. Simmons*, 543 U.S. 551 (2005); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Grutter v. Bollinger*, 539 U.S. 306 (2003).

⁴⁹ The Federal Judicial Center was created by a mandate of Congress in 1967 to offer federal judges and staff education and training. Nonetheless, none of the official trainings offer assistance in the understanding or application of the CERD. For more information on the Federal Judicial Center, see <http://www.fjc.gov/public/home.nsf>.

⁵⁰ ASIL is the leading non-profit organization in the United States on matters of international law. ASIL offers twenty seminars throughout the year on different aspects of international law, including “The Role of International Law in U.S. Domestic Courts: An Overview,” which includes discussion of treaty law. ASIL would be a major resource for any U.S. government agency’s attempt to create a program for judicial training on international treaty law. Available at <http://www.asil.org/judicial/workshops.html>.

⁵¹ See The National Association of Women Judges, available at <<http://www.nawj.org/education/programs.html>>; see also

<http://www.aspeninstitute.org/site/c.huLWJeMRKpH/b.612043/k.8BEB/Justice_and_Society_Program.htm>.

Unfortunately, the American Bar Association, ABA, does not have an initiative to educate and train the U.S. judiciary in the obligations and rights secured under the CERD, although it runs several international treaty training programs. See, e.g. <http://www.abanet.org/ceeli/publications/lpri/lpri_tajikistan_2006.pdf>.

CERD, the U.S. Solicitor General's Office could begin filing amicus briefs discussing the treaty in appropriate domestic cases. Such an action would alert the judiciary to the U.S.'s obligations to enforce this treaty.

The lack of education about U.S. treaty obligations is also a concern in the U.S. Congress. The level of misunderstanding about international treaty obligations is illustrated by recent attempts by members of the U.S. Congress to discourage and prevent federal judges from relying on or considering international law.⁵² Such proposed legislation has been criticized for infringing on constitutional separation of powers, even by Justices on the U.S. Supreme Court that oppose use of international law sources, such as Justice Antonin Scalia.⁵³ However, the fact that members of Congress deem such legislation appropriate indicates the need to educate all members of Congress, not only those chosen as "relevant" by the executive branch, on the relationship between international and domestic law and U.S. treaty obligations.

C. The Failure to Educate Officials at the State and Local Level

As discussed above, in addition to failing to develop an adequate structure and devote adequate resources to obtaining information at the state and local level, the federal government has failed to take steps to encourage, support and ensure local implementation. In particular, the U.S. has failed to adopt an effective system for communicating human rights obligations to state and local officials.

The failure to communicate human rights obligations is illustrated by a recent case decided by the California Court of Appeal, *Coral Construction v. City and County of San Francisco*, Cal. Rptr.3d (2007). The case rendered CERD protections under article 2(2) effectively illusory within California, thwarting repeated attempts by local authorities to give effect to CERD provisions.

Coral Construction involved a private challenge to a San Francisco ordinance that granted race-based preferences in public contracting as a last-resort remedy for pervasive, persistent, well-established racial discrimination in City contracting. The City argued that U.S. ratification of CERD prompted federal preemption of a state constitutional amendment, adopted under a 1996 ballot initiative known as Proposition 209, that prohibited race from being taken into consideration in contracting decisions. Relying principally on U.S. government statements to the CERD Committee of a general nature, the California Appeals Court found no preemption based upon its view that the State Department interpreted CERD to "permit but not require" race conscious temporary special measures. Based on this interpretation, the court concluded that CERD and the California Constitution can be reconciled, avoiding the issue of federal preemption. The interpretation attributed to the State Department appears inconsistent with the U.S.'s statement in its Fourth Periodic Report that the Committee "misinterpreted" its earlier remarks on temporary special measures as not required under the Convention,⁵⁴ and reflects a

⁵² See <http://www.house.gov/list/press/fl24_feeney/IntLawRes.shtml>, <<http://www.law.com/jsp/article.jsp?id=1147943135671>>.

⁵³ See <<http://www.law.com/jsp/article.jsp?id=1147943135671>>.

⁵⁴ If the U.S. takes the position that race conscious temporary special measures are not required by CERD, it should unequivocally state its position to the CERD Committee.

failure of the U.S. government to clarify its position on special measures under CERD at the state and national level. In this circumstance, the U.S. government had an obligation to step in and clarify its statement, raising public awareness about its position that race-based remedies are not only permissible but in fact *required*, under federal (treaty, statutory, and constitutional) law when “circumstances so warrant.”

On August 22, 2007, the California Supreme Court accepted review of the case. It is now more critical than ever that the federal government step in and send a positive message to the State of California about its obligations under the CERD. It must make it very clear that “special measures” *are required* where, based on evidence (such as that collected by city officials in San Francisco) other forms of “appropriate measures” adopted under article 2(1) have proved incapable of eliminating persistent patterns of racial discrimination in any area of social life and the “special measure” is narrowly tailored to serve the compelling state interest in eliminating that persistent discrimination.⁵⁵ At a minimum, the U.S. government must send an unequivocal message that any across-the-board prohibition on “special measures” is inconsistent not only with the U.S. Constitution, but also with U.S. treaty obligations under the CERD.

VI. The United States has failed to review U.S. reservations, understandings and declarations to determine their continuing necessity or relevance

Executive Order 13107 expressly mandated the Inter-agency Working Group on Human Rights Treaties—now the PCC on Democracy, Human Rights, and International Operations—to ensure that an annual review of U.S. reservations, declarations, and understandings (RUDS) to human rights treaties takes place in the United States. Although this mandate was formally extended to the current PCC, no effort has been publicized domestically or reported to the Committee that the U.S. government has undertaken any such review. This type of review is an essential tool for progressing toward a more sophisticated understanding of the governmental actions needed to implement the treaty’s standards.

This apparent failure to review the continuing necessity or relevance of the RUDs is especially troubling in light of the Committee’s expressed concern about the U.S.’s “far-reaching” RUDs. In its Concluding Observations, the Committee highlighted the U.S.’s positions on discriminatory speech,⁵⁶ prohibiting and punishing private discriminatory conduct,⁵⁷ and the discriminatory impact of practices and legislation.⁵⁸ The U.S. should be encouraged, as it has been in the past, to undertake a thorough review of its RUDS and, with the participation of civil society, determine whether there is any continuing need to retain them.

⁵⁵ Such a determination should generally be left up to the local authorities in the first instance who are in the best position to understand when non-race-conscious measures have proved ineffective and temporary race-conscious measures are required under article 2(2). Such a determination can be challenged through ordinary procedure under the strict scrutiny test. What the U.S. Government must make clear, however, is that any across-the-board prohibition on “special measures” is inconsistent not only with the U.S. Constitution, but also with CERD.

⁵⁶ Concluding Observations, ¶ 12.

⁵⁷ Concluding Observations, ¶ 13.

⁵⁸ Concluding Observations, ¶ 14.

As discussed in previous sections, the United States has entered a declaration stating that the treaty is not self-executing. It has also failed to adopt implementing legislation granting courts jurisdiction to hear claims concerning CERD violations or to create a national human rights commission to hear complaints in addition to assessing indicator-based progress and setbacks through a national monitoring function. As a result, there is no court or institution in the United States empowered to resolve individual or group complaints alleging violation of the treaty obligations. Under such circumstances, the United States should consider declaring the CERD Committee's competence under Art. 14 to receive and consider individual communications claiming violations of the of the rights set forth in the treaty. The U.S. should also consider withdrawing its reservation that the U.S. must provide specific consent to jurisdiction of the International Court of Justice to resolve disputes related to the treaty.

VII. Conclusions and Recommendations

This report is submitted to the Committee along with other civil society reports that detail many human rights abuses in which the U.S has, in violation of specific provisions of the CERD, failed to take appropriate measures to prevent or respond to racial discrimination. The U.S.'s failure to give legal effect to the Convention—including through the adoption of appropriate implementing legislation and recognition of causes of action for breach of CERD guarantees—allows abuses for which there is no Constitutional or other domestic remedy to continue, without appropriate judicial redress. The U.S. legal system is not adequately responding to remedy the multitude of violations documented in these NGO reports because the U.S has not taken the steps necessary to ensure domestic enforcement of the CERD.

To comply with the obligations the U.S. has assumed upon ratification of the CERD, the U.S. should undertake the following appropriate measures:

1. Adopt specific implementing legislation for the CERD that would allow victims of human rights violations to seek remedies for violation of their CERD-protected rights before state and federal courts or other appropriate authorities.
2. Develop a comprehensive federal-level system for monitoring compliance with CERD obligations at the federal, state, and local levels. The government should fully fund and staff the Policy Coordination Committee, operating under the functional mandates of Executive Order 13107, as well as a more comprehensive national human rights commission or supervisory body, to coordinate reporting and implementation on a continuous scale at both the federal and state and local level, with particular attention to tasks designated in Sec. 4(c)iv and v. All reports created under this order should be annually updated in a central location to be drawn upon for all treaty reports, accessible to the public.
3. Enact a system for reviewing the Committee's concluding observations and recommendations at all levels of government.

4. Develop a comprehensive plan (a) to encourage state implementation of CERD obligations, and (b) to systematize reporting from the states and dissemination of information to the states.
5. Encourage state and local initiatives such as local statutes and ordinances, and state and local level reporting on compliance with the CERD.
6. Make greater efforts to educate members of Congress, state and federal public officials, including state and federal judges and attorney generals, about their obligations arising under the CERD.
7. Engage in greater public education efforts.
8. Distribute the Convention and Concluding Observations to state and local human rights commissions to promote discussion about local obligations of the Convention and review of local policy for compliance.
9. Designate representatives in each state's attorney general's office as point persons for treaty compliance to correspond with the PCC. These representatives should review state policy for compliance with the Convention, and submit periodic compliance reports.
10. Investigate role of state human rights commissions, and consider national human rights commission with monitoring mandate over CERD.
11. Hold hearings before the newly-created Human Rights and the Law Subcommittee of the Senate Judiciary Committee, as well as in other public fora, on future U.S. reports before they are submitted to ensure adequate public discussion of the content of the report. Similar hearings should be held after the Concluding Observations are released, to ensure the legislative branch has the opportunity to examine the Observations and assess the necessity for new legislation to promote compliance.
12. Evaluate the systems it develops to monitor and promote local compliance with CERD and provide written reports to Congress and the public on their efficacy.

We thank the Committee for its consideration of this report in evaluating the U.S.'s compliance with the CERD.

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Human Rights Project at Urban Justice Center

Center for the Study of Race and Law, University of Virginia School of Law

World Organization for Human Rights USA – International Justice Project

Meiklejohn Civil Liberties Institute

Heartland Alliance for Human Needs & Human Rights

The Lesbian, Gay, Bisexual & Transgender Community Center (NYC)

Developing Government Accountability to the People (Chicago)

Jewish Council on Urban Affairs

Minnesota Advocates for Human Rights

Allard K. Lowenstein International Human Rights Clinic, Yale Law School

The Human Rights and Genocide Clinic, Benjamin N. Cardozo School of Law

International Indian Treaty Council

Coalition to Protect Public Housing (Chicago)

Communities United Against Police Brutality (Minneapolis, MN)

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African American Institute for Policy Studies & Planning

Centre on Housing Rights and Evictions (COHRE)

Advocates for Environmental Human Rights

Sex Workers Project at the Urban Justice Center

Education Law and Policy Society, New York University School of Law

Parents in Action

American Friends Service Committee

Worldrights

National Lawyers Guild

United Electrical, Radio & Machine Workers of America (UE)

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