



THE FLORIDA STATE UNIVERSITY

COLLEGE of LAW

Public Interest Law Center

Children's Advocacy Clinic

International Human Rights Advocacy Clinic

Farmworker & Immigration Rights Clinic

Claude Pepper Elder Law Clinic

September 29, 2023

United Nations

Human Rights Office of the High Commissioner

Human Rights Officer

OHCHR Geneva

Re: *Call for inputs: Human Rights Council resolution 51/12 on local government and human rights*

Dear Officer:

Please accept the enclosed submission on behalf of the Florida State University College of Law Public Interest Law Center's (PILC) International Human Rights Advocacy Clinic (IHRAC).

IHRAC offers students hands-on experience representing individual human rights survivors and international non-governmental organizations engaged in human rights advocacy. Participating students gain experience in areas including fact-finding, evidence collection, research, reports, policy briefs, litigation, UN standard setting, and norm development. Students develop a variety of skills including interviewing, persuasive writing, media, collaboration, leadership, professional identity, trauma-informed advocacy, and methods to cope with vicarious trauma. Students discuss current events in human rights and the role lawyers play in the human rights movement.

It is an honor for our organizations to provide input on this important issue. Thank you for your commitment to developing the capacity of local governments to advance international human rights law and norms. Should we be able to provide further assistance or support to your work, please do not hesitate to contact us.

We wish to acknowledge that work of many prior clinic students contributed to this submission.

Gratefully,

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Capacity building Initiatives that have been Implemented / Incorporated for Human Rights in Local Administration

The United States is not typically bound by enforcement mechanisms at both the national and international level for violations of human rights treaties. This lack of enforcement by the federal and state governments has left a void for the protection of human rights in the United States, and a grassroots approach has emerged where local governments bind themselves to international human rights laws and customs through the creation of Human Rights Cities (HRC). This approach to protecting human rights at the local level bypasses both federal and state governments who refuse to participate in the social contract between governments and their citizens to protect individuals' fundamental rights enshrined in the various human rights treaties.

Information on Institutional Structures for Coordination and Harmonization of Capacity Building Initiatives: *Advancing Human Rights Through Human Rights Cities*

The designation of a HRC facilitates the advancement of local policy for the simple reason that in order to become an HRC, cities must make concerted efforts to detect and protect the concerns and implicated human rights that are most pressing to the local constituency and community. Community involvement is a theoretical byproduct of the HRC declaration process. Generally, the city's elected officials are community members who have been elected to take action to enhance the welfare of the community. This signifies that these officials are directly accountable to their constituents, and there should be a closer nexus between the concerns voiced and the ordinances taken to rectify those concerns. At the state and federal level, members of the legislature must often split their limited focus, resources, and advocacy among myriad issues in their larger constituencies. This often means that at a state and federal level many local policies slip between the cracks. Cities are perfectly situated to catch and implement these omitted local policies that fall on deaf ears at the state and federal level. An HRC, by its very nature, must have a tighter connection to the community it represents; this is the case as an HRC's designation hinges on the continued protection of human rights.

This receptiveness to community concerns is often manifested by the city's devoted commitment to developing the requisite foundations, structures, and balanced allocation of resources that will protect human rights within the city. An HRC that employs human rights foundations will formalize a city's commitment to complying with the full range of human and fundamental rights. Cities do this by working human rights instruments into the ordered scheme of its code or by way of an ordinance. The HRCs which develop such human rights frameworks do not do so in isolation; HRCs listen to local advocates, affected community members, and other stakeholders when making determinations about which human rights need to be memorialized into local law. As a result, the declaration of an HRC amplifies community and stakeholder involvement in local legislation, thus improving a city's commitment to advancing local policy. This makes sense because human rights and good governance are mutually beneficial. The lens of human rights can help both government actors and their constituents more fully see the interconnectedness of local issues and promote more comprehensive problem-solving to improve the quality of life for all members of a community.

Information on the involvement of civil society, the private sector, academia, etc. in capacity building initiatives: *Membership with an Association, Alliance, or Network of Human Rights Cities*

A Human Rights City network/alliance is a group that offers local, regional, or global membership to HRCs to facilitate both the discourse amongst these cities and the creation of a community of HRCs. These alliances/networks are predicated on creating procedural and substantive improvements for HRCs by facilitating accountability amongst HRCs and pushing for the formation and subsequent alliance/network membership of other HRCs. This benefit is theoretical given the fact that these alliance/network objectives have mostly been aspirational. With that said, there is an associated benefit to being part of these alliances/networks. These groups have managed to recruit membership from private institutions, non-governmental organizations, academic institutions, and human rights advocates with the hopes of focusing discussion on HRCs and eventually devising international norms that will serve to govern these HRCs. Finally, these alliances/networks often convene meetings to encourage discussion amongst HRCs about the successful and unsuccessful practices being utilized.

Information on monitoring and evaluation mechanisms assessing the effectiveness of capacity building initiatives and their impact on the promotion and protection of human rights at the local level: *Rules that Govern the Creation of Human Rights Cities*

There is no international framework that governs, promulgates, and enforces foundational prerequisite steps that cities must follow to become HRCs. Cities are free to devise and tailor their own strategies for declaring themselves as HRCs. This means that any city can declare itself an HRC, even if the city does so by simply proclaiming itself as one. Moreover, there is no formal enforcement mechanism for those cities who make empty declarations; these are cities that declare themselves as a Human Rights City but fail to make any concerted efforts to protect human rights or fail to adopt ordinances or laws that mirror international human rights instruments. Likewise, there exists no formal body that holds HRCs accountable for lapses in their efforts to protect human rights. This also signifies that cities that cannot keep up their obligations to protect human rights may not be stripped of their title as Human Rights Cities.

Capacity building gaps and needs of local governments in relation to implementing / incorporating human rights at the local level

Currently, there is no formal requirement governing the process by which a city can declare itself a Human Rights City. As a result, human rights advocates and scholars have tried to frame the obligation of a Human Rights City as an affirmative commitment to respecting, protecting, fulfilling, and promoting the rights and dignity of everyone living there. Like the standards governing the declaration process, this minimum threshold is ambiguous and aspirational; there is no one-size-fits-all methodology for meeting this minimum threshold. Likewise, there is no formal body that gauges and stipulates the degree to which HRCs must protect, fulfill, and promote human rights.

Measures needed to further strengthen the capacity of local governments to implement / incorporate human rights at the local level

There should be recommended standards created by either treaty bodies or human rights scholars to facilitate a more universal concept of what an ideal Human Rights City should look like. The creation of these standards would develop guidelines for cities who want to conform to international human rights law and norms. Civil societies could also advance the development of Human Rights Cities by using strategic litigation to implement human rights norms through the use of persuasive authority in cases brought before municipal and local courts. A two prong approach of Human Rights Cities enacting ordinances and attorneys advocating human rights treaties as persuasive authority would strengthen the position of human rights committees and commissions at the local level.

Existing procedures and practices for engaging local governments in the work of the United Nations human rights mechanisms and in implementing, reporting, and following up on relevant recommendations, and how existing level of engagement could be enhanced: *Addressing Basic Human Needs and Strengthening Community Resilience*

Human Rights Cities are often well-equipped to redress deficiencies with regards to fundamental needs of community members. Knowing that the city will act to ensure basic human rights helps foster social cohesion and community resilience. In theory, a Human Rights City will have the structural mechanisms and bodies that integrate the human rights commitments into the city's work. These include, for instance, a formal declaration of being a human rights city, setting up a human rights office and advisory council, or creating a commission that can provide access to legal remedies. The working assumption here is that an HRC will do more than other cities to redress any decline of basic human rights within the community. A community that has its basic human rights protected for all members will be inherently stronger than those communities where some members do not have access to basic rights, and where the local government fails to step in and protect these rights. Moreover, beyond protecting basic rights HRCs help instill social cohesion amongst communities. The human rights framework provides an alternative normative foundation that can unite residents around collective identities and foster mutual understanding, respect, equity, and cooperation while actively contesting the hegemony of capitalist principles of individualism, exploitation, hierarchy, and competition.

Main challenges in the United States in the promotion and protection of human rights at the local level

The Failure to Ratify the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Failure to Promulgate Legislation on the International Covenant on Civil and Political Rights (ICCPR)

The United States has taken the position that the ICCPR is non-self-executing. Victims of human rights violations who should be protected by this treaty have no way to seek remedy because of this and the federal court system continues to disfavor the implementation of international human rights law in its jurisprudence. Technically, the ICCPR is the supreme law of the land through article VI of the U.S. Constitution, but without implementing legislation

following its ratification it remains merely a form of persuasive authority in federal and state courts. Additionally, when opining on the International Covenant on Economic Social and Cultural Rights (ICESCR), which has failed to even be ratified by the United States, former United States Presidents have claimed that the rights within the treaty are not rights at all, but merely aspirational goals that we hope to one day achieve. Until all human rights are recognized by the federal government and the treaties become self-executing through legislation, the grassroots approach of local governments creating Human Rights Cities is a viable practice of ensuring human rights in the United States.

Bypassing the Stagnation or Inactivity with regards to Human Rights Legislation at the State or National Level

The structure of our state and federal governments is not conducive to the recognition and legislation of affected human rights. By adopting a veto-gate view on the legislative process of human rights treaties like the ICCPR, it is evident that legislation at the state and federal level is a far more complicated and lengthy process than it is at a local level. Competing interests are more pronounced at these levels of government, such that human rights legislation is often thwarted by countervailing interests or factional dissonance within our legislature. When the federal or state governments fail to pass human rights legislation, local governments can take action to ensure that such omitted protections receive appropriate attention and are legislated for the interests of the community. Finally, our federal and state governments are inherently reactionary; often these governments do not pre-emptively legislate, nor can they – given the sheer number of issues that have already been backlogged and weigh against the passing of proactive legislation. Local governments have a greater capacity to legislate pre-emptively: they have fewer competing interests at the community level; they can better investigate local concerns and legislate them before they mount and become serious local issues; and local officials are more accountable to an individual community than state and federal legislators.

Examples, good practices, challenges, and recommendations with regard to the above-mentioned issues

Creation of a Human Rights Commission

Some cities have created a Human Rights Commission to protect human rights at the community level. These commissions have varying levels of power when it comes to enforcing, reporting, and rendering judgments in response to human rights violations. It is important to note that the creation of a commission need not coincide with a city's declaration as a Human Rights City. For example, Miami-Dade County has chosen to forego the formal declaration process and has chosen to operate without the label of a Human Rights City.

The varying powers of Human Rights Commissions in the United States:

i. Strong Human Rights Commission: Miami-Dade County, Florida

Miami-Dade County has its own Human Rights Commission that was established pursuant to Miami-Dade County Ordinance No. 97-17. This commission operates within its

bylaws in an advisory and quasi-judicial capacity. Miami-Dade County's Human Rights Commission can take necessary actions to protect and maintain basic human rights without the monitored oversight found in other Human Rights Commissions. Actions taken by the Miami-Dade Human Rights Commission have prompted stronger legislative efforts to address outstanding gaps in human rights policy within the county.

ii. Intermediate Human Rights Commission: Seattle, Washington

Seattle consults with and makes recommendations concerning the development of programs which promote equality and justice. Although it can hold hearings and conduct appeals, these quasi-judicial functions are limited in scope to issues involving racial tension and discrimination. This form of commission is stronger than others because the commission has the ability to impact human rights at the city level without fully restrictive oversight by the city government.

iii. Weak Human Rights Commission: Eugene, Oregon

Eugene's Human Rights Commission serves in an advisory capacity to the City Council; its function is to propose a work plan that will be reviewed and decided upon by the council. Within this work plan are recommendations for city actions that ought to be taken to promote the implementation of universal human rights values and principles within the city. Although the Commission has no legislative or judicial power to take direct action, the Commission's members can still create work groups, designate liaisons, craft resolutions and statements, follow response protocols, and facilitate collaboration and partnerships to achieve specific, targeted outcomes.

Enacting Human Rights Codes through Local Ordinances

Many cities have developed a legislative body of ordinances and codes that implicates the city's commitment to the protection of human rights. Cities may have just one ordinance covering human rights; some have a chapter dedicated to the protection of human rights; and others have created their own human rights code that operates and governs as a municipal code would. Another city-by-city variance to this methodology is the breadth of individual human rights covered within these forms of local legislation. Cities do not share the same views on which human rights, if any, should be protected by local rules and ordinances. Below is the areas of concern covered for some of the United States Human Rights Cities:

- Boston: Discriminatory Practices Regarding Employment and other Labor Practices
- Eugene: Discriminatory Practices Regarding Employment; Housing Practices; Public Accommodations
- Pittsburgh: Unlawful Employment Practices; Housing Practices; Public Accommodations
- Seattle: Fair Contracting Practices; Unfair Housing Practices; Unfair Public Accommodations Practices; Fair Employment Practices

Citing Human Rights Treaty Language in Local Human Rights Legislation

Some cities have managed to declare themselves a Human Rights City by committing themselves to specific rights and using any accompanying international instruments that reinforce the protection of those rights. Many cities refer to international human rights treaties within their declaration or proclamation as an HRC; few will take these treaties and incorporate them into local legislation/ordinances. San Francisco is one of the cities that has declared itself both a CEDAW city as well as a HRC. San Francisco has taken the language of the Convention on the Elimination of all forms of Discrimination Against Women and created its own local ordinance that expounds on its principles. Specifically, San Francisco's Chapter 33A of its Municipal Code sets forth the "LOCAL IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)." Many of the provisions found in the treaty have been adopted within the municipal code, but there have been some notable differences. For one, San Francisco has created a CEDAW Task Force that shall have all powers and duties necessary to carry out the local implementation of CEDAW.

Carrboro's declaration as a Human Rights City stems in part from the promulgation of a resolution wherein the city adopts the Universal Declaration of Human Rights. Within this resolution, Carrboro has eliminated the gendered language of the UDHR to ensure that the rights contained therein are applicable to everyone, rather than to exclusively men. For example, the city has removed words like mankind or him, his, and himself to include gender-inclusive terms such as humankind, them, and themselves.

Creation of Human Rights Centers

Carrboro and Chapel Hill, two contiguous cities in North Carolina, have created a joint Human Rights Center to serve the local community and provide Human Rights Advocacy to those who need it. Amongst their core objectives, the Center seeks to promote inter-cultural understanding and peoples' full recognition of the dignity and fundamental rights of others – across the many lines that divide us: race, ethnicity, class, nationality, religion, etc. Additionally, the center strives to provide advocates and resources for those who suffer exploitation and abuses of power. Sponsored in part by the University of North Carolina, this Human Rights Center also seeks to encourage students to take courses on immigration, poverty, and inequality. Although this center does not have any meaningful legislative or adjudicative function, it works tirelessly to address human rights concerns with direct communication within the community, often building rapport with community organizations and local residents to combat poverty, racism, exclusion, abuse of workers and tenants, sexism, xenophobia, and homophobia in the broader communities of Chapel Hill and Carrboro.

Conclusion

In the United States, where states and the federal government have often failed, local communities have stepped in to ensure that protections enshrined in international human rights law and norms apply to their residents in meaningful ways. Local communities have implemented a variety of methodologies to achieve this goal. Enhancing capacity-building for local communities and developing guidance tools on human rights education for local

governments will ensure these efforts continue and enhance their impact across the United States.

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