

# LOCALIZING HUMAN RIGHTS IN CITIES

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## I. INTRODUCTION

The recent White House insurrection has brought home the fragility of our norms.<sup>1</sup> We live in a world where norms can all too easily disintegrate, and realities are increasingly splintered with individually tailored social media, news sources, and search engines. International human rights can serve as a needed moral and legal compass, connecting us to global conversations and standards. They further provide the opportunity to contribute lessons and build on the experiences of others.

At the same time, to be meaningful, human rights standards must be interpreted by communities to address local needs.<sup>2</sup> This article posits that international human rights standards provide a useful minimum core on which communities can build.<sup>3</sup> While human rights are embedded in international treaties, which function as contracts between states, their primary beneficiaries are third parties—the states’ inhabitants.<sup>4</sup> There is thus a particular need for local initiatives to implement rights.

Over the last two decades, cities throughout the world have espoused international human rights in various forms. This development has also caught on in the United States with close to a dozen self-designated human rights cities and a vibrant “Cities for CEDAW” movement, focused on protecting women’s rights. This article probes the growing phenomenon of cities as human rights actors and its particular relevance in the U.S.

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<sup>1</sup> For a description of the White House Insurrection, please see Lauren Leatherby, Arielle Ray, Anjali Singhvi, Christiaan Triebert, Derek Watkins & Haley Willis, *How a Presidential Rally Turned into a Capital Rampage*, N.Y. TIMES (Jan. 12, 2021), <https://www.nytimes.com/interactive/2021/01/12/us/capitol-mob-timeline.html> [https://perma.cc/96E5-7AKE].

<sup>2</sup> See JoAnn K. Ward, *Challenging a Climate of Hate and Fostering Inclusion: The Role of U.S. State and Local Human Rights Commissions*, 49 COLUM. HUM. RTS. L. REV. 129, 173 (2017) [hereinafter *Challenging a Climate of Hate*] (“[I]n the process of incorporating international human rights standards into local policy and practice, it is inevitable that commissions and communities will engage in their own process of ‘interpreting and elaborating human rights.’”).

<sup>3</sup> *Id.* at 133–36.

<sup>4</sup> DOUGLAS L. DONOHO, INTERNATIONAL HUMAN RIGHTS LAW 63 (2017).

context. It argues that cities provide a critical vehicle to negotiate the inherent tension between the universality of human rights and respect for cultural and regional diversity. Cities are further particularly important as human rights actors in the U.S. context, where federalism limits the reach of international treaties to address issues touching on social welfare, family relations, or criminal law. Additionally, cities can play a crucial role in realizing women's equality, often bound up with cultural norms. However, engagement with cities as human rights actors at both the international and national levels is still in its infancy.

This article posits that human rights cities are a critical frontier, bringing a local orientation to our understanding of rights and enabling a human rights approach to governance. Cities can thus play an important role in the implementation and development of international human rights law. Part II provides a conceptual and historical overview, tracing the emergence of cities as human rights actors. This encompasses the influence of three different but converging concepts: the "human rights city," "human rights in the city," and the "right to the city." Part III contends that human rights implementation at the city level facilitates a human rights approach to governance that prioritizes participation and equality. Closer to communities, human rights cities can democratize rights, address federalism concerns, and move beyond the citizen construct at the national level to embrace all inhabitants. A focus on human rights by cities further advances equality by addressing disparate impacts and jurisdictional barriers to women's rights. Parts IV through VI then explore the roles of cities as human rights actors in the international sphere, in the United States, and among peers, highlighting gaps and providing recommendations for better engagement.

## II. THE EMERGENCE OF CITIES AS HUMAN RIGHTS ACTORS

Over the last two decades, cities have emerged as human rights actors of increasing importance on both the international and domestic stages. While not all cities are necessarily proponents of human rights,<sup>5</sup> an

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<sup>5</sup> One example is the water shutoffs faced by poor and vulnerable residents in Flint and Detroit, Michigan unable to pay expensive water bills. The situation was so dire that advocates invited the U.N. Special Rapporteurs on water and sanitation and on adequate housing to host an informal tribunal, bringing attention to these human rights violations. See, e.g., Press Release, U.N. Hum. Rts. Off. of the High Comm'r (Oct. 20, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188> [<https://perma.cc/5UNS-RA57>]; *UN Officials Criticize Detroit Water Shutoffs*, BBC NEWS (Oct. 20, 2014), <https://www.bbc.com/news/world-us-canada-29697767> [<https://perma.cc/N8Y5-UXJ4>]; Alana Semuels, *Detroit Water Cutoffs for Unpaid Bills a Human Rights Issue*, U.N.

increasing number of cities have articulated a commitment to international human rights standards, influencing their policies and practice. This section explores the conceptual underpinning of this emerging movement and situates developments in the United States within a global landscape. Since human rights city is a self-designation, there is no standardization as to what this means. This designation also reflects the influence of several concepts that intertwine—the “human rights city,” “human rights in the city,” and the “right to the city.” Additionally, a growing number of city initiatives focus on particular rights. In all these efforts, local advocates have played a central role.<sup>6</sup>

#### A. THE HUMAN RIGHTS CITY

The term, “human rights city,” emphasizes the building of a local human rights community. As documentation of this movement describes, “[a] Human Rights City is a community, all of whose members—from ordinary citizens and community activists to policy-makers and local officials—pursue a community-wide dialogue and launch actions to improve the life [sic] and security of women, men and children based on human rights norms and standards.”<sup>7</sup> This concept comes from the People’s Movement for Human Rights Learning (“PDHRE”), an international NGO focused on human rights education and formerly known as the People’s Decade for Human Rights Education.<sup>8</sup> PDHRE launched the “human rights city” movement in the wake of the 1993

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*Says*, L.A. TIMES (June 25, 2014, 2:31 PM), <https://www.latimes.com/nation/nationnow/la-na-nn-detroit-water-cutoffs-united-nations-20140625-story.html> [<https://perma.cc/ZHG6-HPST>].

<sup>6</sup> As the U.S. Human Rights Network underscored, “[t]he key point is residents’ intention of using human rights as a framework for community governance and the active engagement of popular groups in support of this aim.” *The Human Rights Cities Movement: A Brief History*, U.S. HUM. RTS. NETWORK [hereinafter *The Human Rights Cities Movement*], [http://wiki.pghrights.mayfirst.org/images/b/b7/The\\_Human\\_Rights\\_Cities\\_Movement\\_Introduction.pdf](http://wiki.pghrights.mayfirst.org/images/b/b7/The_Human_Rights_Cities_Movement_Introduction.pdf) [<https://perma.cc/X7TZ-5XNF>].

<sup>7</sup> STEPHEN P. MARKS, KATHLEEN A. MODROWSKI & WALTHER LICHEM, HUMAN RIGHTS CITIES: CIVIC ENGAGEMENT FOR SOCIETAL DEVELOPMENT 45 (2008).

<sup>8</sup> See *About the People’s Movement for Human Rights Learning*, PEOPLE’S MOVEMENT FOR HUM. RTS. LEARNING, <http://pdhre.org/about.html> [<https://perma.cc/A9UY-9TEH>]; see also *Human Rights Cities: A Practical Way to Learn and Chart the Future of Humanity*, PEOPLE’S MOVEMENT FOR HUM. RTS. LEARNING, <http://pdhre.org/projects/hrcommun.html> [<https://perma.cc/CWS3-G2JH>] (“PDHRE was founded in 1989 as a non-profit, international service organization with a deep belief in the power of human rights learning for economic and social transformation.”).

World Conference on Human Rights in Vienna.<sup>9</sup> While not all self-declared human rights cities follow PDHRE's model, PDHRE has helped develop at least seventeen human rights cities, predominantly in the Americas and Asia,<sup>10</sup> working with civil society and local governments.<sup>11</sup> In 1997, the City of Rosario in Argentina became the first human rights city in the world.<sup>12</sup> In 2008, Washington, D.C. became the first human rights city in the United States.<sup>13</sup> In 2010, Gwangju in the Republic of Korea became Asia's first human rights city.<sup>14</sup> It now hosts an annual gathering of the World Human Rights Cities Forum, further developing this concept.<sup>15</sup> In 2011, the Forum adopted the Gwangju Declaration on Human Rights City, defining a human rights city as "both a local community and a socio-political process in a local context where human rights play a key role as fundamental values and guiding principles."<sup>16</sup>

As the Gwangju Declaration captures, the human rights cities movement emphasizes a "socio-political process" and the development of a "local community," guided by international human rights standards.<sup>17</sup> Under PDHRE's model, the first step in creating a human rights city is to establish a democratically functioning steering committee that represents various segments of the population—giving special attention to historically marginalized groups—as well as the city government and United Nations ("U.N.") agencies.<sup>18</sup> The steering committee then

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<sup>9</sup> *The Human Rights Cities Movement*, *supra* note 6, at 1; Rep. of the Hum. Rts. Council, ¶ 42, U.N. Doc. A/HRC/30/49 (Aug. 7, 2015) [hereinafter *HRC August 2015 Report*].

<sup>10</sup> Barbara M. Oomen, *Introduction: The Promise and Challenges of Human Rights Cities to GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES* 1, 6 (Barbara M. Oomen et al. eds., 2016); Cynthia Soohoo, *Human Rights Cities: Challenges and Possibilities*, in *GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES*, *supra*, at 257, 264.

<sup>11</sup> Oomen, *supra* note 10, at 6.

<sup>12</sup> Soohoo, *supra* note 10, at 271.

<sup>13</sup> Kenneth J. Neubeck, *In a State of Becoming Global a Human Rights City: The Case of Eugene, Oregon*, in *GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES*, *supra* note 10, at 237, 240.

<sup>14</sup> *HRC August 2015 Report*, *supra* note 9, ¶ 61.

<sup>15</sup> *Id.* ¶ 42. Representatives of 159 countries have participated in this forum. World Human Rights Cities Forum 2017, *Do We Live in Peace? Human Rights Cities, Democracy and Practice*, ¶ 3 (Sept. 17, 2017), [https://www.uclg-cisdp.org/sites/default/files/WHRCF\\_2017\\_concept\\_note\\_1.pdf](https://www.uclg-cisdp.org/sites/default/files/WHRCF_2017_concept_note_1.pdf) [<https://perma.cc/3WP3-K93D>].

<sup>16</sup> World Human Rights Cities Forum 2011, *Gwangju Declaration on Human Right City*, ¶ 3 (May 17, 2011) [hereinafter *Gwangju Declaration*], [https://www.uclg-cisdp.org/sites/default/files/Gwangju\\_Declaration\\_on\\_HR\\_City\\_final\\_edited\\_version\\_110524.pdf](https://www.uclg-cisdp.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524.pdf) [<https://perma.cc/QW42-89DBJ>].

<sup>17</sup> *Id.*

<sup>18</sup> Neubeck, *supra* note 13, at 240.

develops a plan of action to prioritize human rights requiring attention, conduct human rights education, and evaluate city sectors against human rights goals.<sup>19</sup> PDHRE’s name itself reflects its focus on education and popular engagement, complementing the traditional emphasis on government enforcement.

Most recently, in October 2021, the European Union Agency for Fundamental Human Rights developed detailed guidance, proposing “a framework for becoming, and functioning as, a human rights city in the European Union.”<sup>20</sup> This guidance (“EU Framework for Reinforcing Rights Locally”) is aimed at mayors, city administrators, and civil society groups interested in reinforcing human rights locally.<sup>21</sup> It includes “foundations” affirming the city’s commitment to human rights; “structures” or procedures integrating human rights into daily city life; and “tools” supporting ongoing human rights work by cities.<sup>22</sup>

Human rights cities have also developed in the United States. Starting with Washington D.C. in 2008, U.S. human rights cities now include Carrboro and Chapel Hill, North Carolina;<sup>23</sup> Richmond, California;<sup>24</sup> Eugene, Oregon;<sup>25</sup> Boston, Massachusetts;<sup>26</sup> Pittsburgh, Pennsylvania;<sup>27</sup> Seattle, Washington;<sup>28</sup> Jackson, Mississippi;<sup>29</sup> Edina,

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<sup>19</sup> *Id.*; Oomen, *supra* note 10, at 9; MARKS ET AL., *supra* note 7, at 47–49.

<sup>20</sup> EUR. UNION AGENCY FOR FUNDAMENTAL RTS., HUMAN RIGHTS CITIES IN THE EU: A FRAMEWORK FOR REINFORCING RIGHTS LOCALLY 5 (2021) [hereinafter EU Framework], <https://fra.europa.eu/en/publication/2021/human-rights-cities-framework> [https://perma.cc/5WMS-ZUUX].

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Judith Blau, *Human Rights Cities: The Transformation of Communities or Simply Treading Water?*, in COMMUNITY INTERVENTION: CLINICAL SOCIOLOGY PERSPECTIVES 167, 167 (Jan M. Fritz & Jacques Rheaume, eds., 2014). Carrboro’s 2009 resolution declares that principles of the Universal Declaration of Human Rights “will guide the spirit of the laws, practices, and policies carried out,” and while not legally enforceable, it provides for an advisory board to monitor and report on human rights conditions. COLUM. L. SCH. HUM. RTS. INST., BRINGING HUMAN RIGHTS HOME: HOW STATE AND LOCAL GOVERNMENTS CAN USE HUMAN RIGHTS TO ADVANCE LOCAL POLICY 11 (2012) [hereinafter BRINGING HUMAN RIGHTS HOME], <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf> [https://perma.cc/YZU9-DVRB].

<sup>24</sup> Robert Rogers, *Richmond Becomes a “Human Rights City”*, RICH. CONFIDENTIAL (Dec. 1, 2009), <http://richmondconfidential.org/2009/12/01/richmond-becomes-human-rights-city/> [https://perma.cc/PSX2-YUGL].

<sup>25</sup> *Human Rights in Eugene*, CITY OF EUGENE OR., <https://www.eugene-or.gov/525/Human-Rights-in-Eugene> [https://perma.cc/KHC7-AV3D].

<sup>26</sup> Beatrice Bell, *Boston: Human Rights City*, SPARE CHANGE NEWS (July 27, 2012), <http://sparechangenews.net/2012/07/boston-human-rights-city/> [https://perma.cc/2XUH-JSN8].

<sup>27</sup> Pittsburg, Pa., Human Rights Proclamation (Apr. 6, 2011).

Minnesota;<sup>30</sup> and Mountain View, California in 2016.<sup>31</sup> In 2017, Dallas County, Texas designated itself a human rights county,<sup>32</sup> and in 2019, Pottage, Michigan affirmed the city's human rights commitment to all its residents.<sup>33</sup> Efforts are further underway to make Birmingham, Alabama a human rights city.<sup>34</sup> With support from the U.S. National Human Rights Network, these U.S. cities are further coordinating and have formed the National Human Rights Cities Alliance to share experiences and "advance knowledge about effective models and practices for local implementation of human rights."<sup>35</sup> Additionally, in 2007, Berkeley, California became the first U.S. city to produce a report on local compliance with the human rights treaties the United States has ratified,<sup>36</sup> and from 2009, it instituted regular reporting for the International Covenant on Civil and Political Rights ("ICCPR"),<sup>37</sup> International Covenant on the Elimination of All

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<sup>28</sup> Seattle, Wash., Resolution 31420 (Dec. 5, 2012) (proclaiming Seattle to be a Human Rights City in celebration of the 64th anniversary of the Universal Declaration of Human Rights); see also *What Does It Mean for Seattle to be a "Human Rights City"?*, SEATTLE HUM. RTS. COMM. (July 31, 2020), <https://www.seattlehumanrights.org/post/what-does-it-mean-for-seattle-to-be-a-human-rights-city> [<https://perma.cc/W9C6-YFX2>].

<sup>29</sup> *Historic Human Rights City Resolution Passed in Jackson, MS to Create 1st Human Rights Charter and Commission in the South*, KUWASI BALAGOON CTR. FOR ECON. DEMOCRACY & SUSTAINABLE DEV. (Jan. 10, 2015), <http://www.cooperationjackson.org/announcementsblog/2015/1/10/historic-human-rights-city-resolution-passed-in-jackson-ms-to-create-1st-human-rights-charter-and-commission-in-the-south> [<https://perma.cc/HMF7-YJVV>].

<sup>30</sup> Press Release, City of Edina, Edina Declared a Human Rights City (Aug. 11, 2016).

<sup>31</sup> Press Release, Santa Clara L. Int'l Hum. Rts. Clinic, While Tech Leaders Meet with Trump, City Council Approves Human Rights City Resolution in Silicon Valley (Dec. 14, 2016), <http://law.scu.edu/wp-content/uploads/161214-MV-HRC-press-release.pdf> [<https://perma.cc/2XWW-ANMR>].

<sup>32</sup> *Dallas Becomes First Human Rights County in Texas*, WBAP NEWS TALK (July 5, 2017), <http://www.wbap.com/2017/07/05/dallas-county-becomes-first-human-rights-county-in-texas/> [<https://perma.cc/5X8K-GJZP>].

<sup>33</sup> *Portage MI—A Safe Haven for Human Rights*, HUM. RTS. AT HOME BLOG (Nov. 20, 2019), [https://lawprofessors.typepad.com/human\\_rights/2019/11/portage-mi-a-safe-haven-for-human-rights.html?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+HumanRightsAtHome+%28Human+Rights+at+Home+Blog%29](https://lawprofessors.typepad.com/human_rights/2019/11/portage-mi-a-safe-haven-for-human-rights.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+HumanRightsAtHome+%28Human+Rights+at+Home+Blog%29) [<https://perma.cc/ZP8K-5QK8>].

<sup>34</sup> Kirsteen Shields, *Human Rights Cities*, AM. SOC'Y INT'L L. BLOG (Apr. 2, 2016, 11:52 AM), <https://asil.org/blogs/human-rights-cities>.

<sup>35</sup> *How We Work*, HUM. RTS. CITIES NETWORK, <https://humanrightscities.net/how-we-work/> [<https://perma.cc/3E5Z-WBTD>].

<sup>36</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 20 & n.153.

<sup>37</sup> *Id.* at 20 & n.154; see also International Covenant on Civil and Political Rights, *ratified* June 8, 1992, 999 U.N.T.S. 171 [hereinafter ICCPR].

Forms of Racial Discrimination (“ICERD”),<sup>38</sup> and Convention against Torture (“CAT”),<sup>39</sup> requiring all city departments to contribute data, share progress, and identify remaining gaps.<sup>40</sup> Berkeley then sends these reports to both the U.S. State Department and the relevant international treaty body.<sup>41</sup>

In the United States, adoption of an international human rights framework has important implications for both the content of rights and their enforcement. The Universal Declaration of Human Rights (“UDHR”),<sup>42</sup> the foundational human rights document, includes civil and political rights enshrined in the U.S. Constitution, such as the rights to due process, freedom of expression and religion, and political participation.<sup>43</sup> It further includes social and economic rights, such as rights to housing, health, and education.<sup>44</sup>

Unlike the generally negative conception of rights in the United States,<sup>45</sup> which focuses on freedom from government interference,<sup>46</sup> the international human rights framework recognizes three levels of state obligations: (1) *to respect*, or the obligation not to violate a right itself; (2) *to protect*, or the obligation to ensure other parties do not violate a right; and (3) *to fulfill*, or the obligation to create the conditions necessary for exercising a right—perhaps the most challenging.<sup>47</sup> Thus, ensuring

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<sup>38</sup> International Convention on the Elimination of All Forms of Racial Discrimination, *ratified* October 21, 1994, 660 U.N.T.S. 195 [hereinafter ICERD].

<sup>39</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *ratified* October 21, 1994, 1465 U.N.T.S. 85 [hereinafter CAT].

<sup>40</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 20.

<sup>41</sup> *Id.* at 20, 21.

<sup>42</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Seth F. Kreimer, *Allocational Sanctions: The Problem of Negative Rights in a Positive State*, 132 U. PA. L. SCH. 1293 (1984) (recounting conception of negative rights in the United States).

<sup>46</sup> Tamar Ezer, *A Positive Right to Protection for Children*, 7 YALE HUM. RTS. & DEV. L.J. 1, 4 (2004) (“Negative, or non-interference rights, prevent the state from violating individual autonomy, while positive, or integrative rights, impose a duty on the state to provide certain goods and services . . . . This differentiation also reflects two conceptions of liberty: negative liberty, or liberty from, and positive liberty, or liberty to.”).

<sup>47</sup> Vienna Declaration and Programme of Action, *adopted* June 25, 1993, U.N. Doc. A/CONF.157/23; COLUM. L. SCH. HUM. RTS. INST., GENDER EQUITY THROUGH HUMAN RIGHTS: LOCAL EFFORTS TO ADVANCE THE STATUS OF WOMEN AND GIRLS IN THE UNITED STATES 4 (2017) [hereinafter GENDER EQUITY THROUGH HUMAN RIGHTS], [https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/gender\\_equity\\_through\\_human\\_rights\\_for\\_publication.pdf](https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/gender_equity_through_human_rights_for_publication.pdf) [https://perma.cc/PXL4-4SGR].



rights requires not only addressing violations, but also taking preventive action and a proactive role to create the conditions for the fulfillment of rights.

While in many U.S. cities the human rights designation is mostly symbolic, some cities have taken concrete steps towards implementation. In 2011, the City Council of Eugene, Oregon unanimously voted to revise its Human Rights Ordinance so that its Human Rights Commission addresses the full range of rights in the Universal Declaration of Human Rights.<sup>48</sup> Portland, Oregon's Human Rights Commission has likewise incorporated the UDHR into its bylaws,<sup>49</sup> and the Los Angeles County Human Relations Commission and Berkeley's Peace and Justice Commission draw on international human rights standards in their work.<sup>50</sup> Additionally, Eugene has developed a human rights framework to internalize human rights standards in all city operations and departments, which calls on officials to proactively identify human rights issues and seek solutions, establish mechanisms for public participation and accountability, and educate all residents on human rights and avenues for redress.<sup>51</sup> As Eugene is integrating human rights in governance, local groups have also adopted human rights framing, which includes positive obligations by government to fulfill social and economic rights.<sup>52</sup> For instance, local advocates used the right to housing to push the city to address homelessness by making city property available for camping or building homes and providing support for emergency shelters.<sup>53</sup>

Moreover, some city governments have used human rights standards as an accountability frame. As Columbia Law School's Human Rights Institute describes, cities draw on human rights "as benchmarks to understand the potential impact of their policies and decisions, to measure program effectiveness and to identify barriers to reaching intended beneficiaries."<sup>54</sup> Eugene, for instance, has developed a Triple Bottom Line Analysis Tool ("TBL") grounded in the UDHR to assess the social

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<sup>48</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 12; *Human Rights in Eugene*, *supra* note 25.

<sup>49</sup> Risa E. Kaufman, "By Some Other Means": Considering the Executive's Role in Fostering Subnational Human Rights Compliance, 33 CARDOZO L. REV. 1971, 2004 (2012) [hereinafter *By Some Other Means*].

<sup>50</sup> *Id.* at 2005.

<sup>51</sup> Neubeck, *supra* note 13, at 242.

<sup>52</sup> *Id.* at 254.

<sup>53</sup> *Id.* at 251–52.

<sup>54</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 7.

equity, environmental, and economic implications of city decisions.<sup>55</sup> The social equity dimension entails a human rights assessment, “[p]lacing priority upon protecting, respecting, and fulfilling the full range of universal human rights, including civil, political, social, economic, and cultural rights.”<sup>56</sup> Additionally, both the environmental health and economic development dimensions reference human rights, recognizing the interrelationship among the three components.<sup>57</sup> Community participation is also an important part of this process.<sup>58</sup> Eugene has used TBL analysis to assess policies, leading to improved youth recreation and public amenities and increased investment in health, particularly for low-income families.<sup>59</sup>

#### B. HUMAN RIGHTS IN THE CITY

In parallel with the human rights cities movement, cities have mobilized around the concept of “human rights in the city,” which focuses on the role of local government in protecting rights. This initiative emerged out of a meeting by several European cities in 1998 to commemorate the 50th anniversary of the UDHR.<sup>60</sup> Seeking to affirm their commitment to advance human rights at the local level and highlight the critical role of cities in human rights protection, they drafted the European Charter for the Safeguarding of Human Rights in the City in 2000.<sup>61</sup> They then entrusted follow up to United Cities and Local Governments (“UCLG”), the international organization of cities.<sup>62</sup> With leadership from Barcelona and Nantes, the UCLG subsequently developed and adopted the Global-Charter Agenda for Human Rights in the City at its 2011 World Council.<sup>63</sup> These documents focus on protection of rights by local government and set out a human rights approach to local

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<sup>55</sup> Neubeck, *supra* note 13, at 244.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 23.

<sup>59</sup> *Id.*; GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 16.

<sup>60</sup> United Cities & Loc. Gov’ts, *1st World Summit of Local Governments for the Right to the City: Presentation*, at 1 (2012), [https://www.uclg-cisdp.org/sites/default/files/presentation\\_Summit\\_Saint\\_Denis\\_0.pdf](https://www.uclg-cisdp.org/sites/default/files/presentation_Summit_Saint_Denis_0.pdf) [https://perma.cc/8B7L-Y28B].

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

policies.<sup>64</sup> The Global-Charter Agenda for Human Rights in the City further includes suggested action plans and benchmarks for local government under each right.<sup>65</sup> To become effective, it calls for a consultation process in each city to allow inhabitants to adapt it to local conditions and set up implementation bodies.<sup>66</sup>

Complementing this city-driven movement, Europe's intergovernmental organizations have clarified the responsibilities of cities in realizing rights. In a series of conventions and resolutions, the Council of Europe's Congress of Local and Regional Authorities developed a body of law addressed at local authorities, including the European Urban Charter adopted in 1992.<sup>67</sup> It also held a forum of exchange among them in 2015.<sup>68</sup> Likewise, the European Union's Committee of the Regions passed a Charter for Multilevel Governance in Europe in 2014, aimed at coordinated action with regional and local authorities.<sup>69</sup>

### C. THE RIGHT TO THE CITY

The third and perhaps most radical concept underlying the city's relation to human rights is the "right to the city," which sets out a collective right of inhabitants to own, manage, and develop their city according to human rights principles. This concept has roots that go back to the late 1960s and the work of French sociologist and philosopher, Henri Lefebvre.<sup>70</sup> He coined this term in *Le Droit à la Ville*, which criticizes capitalism's impact on urban life, articulating an alternate vision of the city as a social unit.<sup>71</sup> Specifically, Lefebvre noted that "collective

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<sup>64</sup> United Cities & Loc. Gov'ts Comm. on Soc. Inclusion, Participatory Democracy & Hum. Rts., *European Charter for the Safeguarding of Human Rights in the City* (Oct. 2000) [hereinafter European Human Rights Charter]; United Cities & Loc. Gov'ts Comm. on Soc. Inclusion, Participatory Democracy & Hum. Rts., *Global Charter-Agenda for Human Rights in the City* (Dec. 11, 2011) [hereinafter Global Charter-Agenda].

<sup>65</sup> Global Charter-Agenda, *supra* note 64.

<sup>66</sup> *Id.* art. 12; *see also* European Human Rights Charter, *supra* note 64, art. 18, ¶ 3.

<sup>67</sup> Eur. Consult. Ass., *European Urban Charter* (Mar. 18, 1992) [hereinafter European Urban Charter], <https://wcd.coe.int/ViewDoc.jsp?p=&id=887405&direct=true> [<https://perma.cc/E2KC-YRZF>].

<sup>68</sup> Klaus Starl, *Human Rights and the City: Obligations, Commitments and Opportunities*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES, *supra* note 10, at 199, 200.

<sup>69</sup> *Id.*; Eur. Union Comm. of the Regions [COR], *Charter for Multilevel Governance in Europe*, COR-2014-01728-00-00-RES-TRA (Apr. 3, 2014).

<sup>70</sup> Oomen, *supra* note 10, at 5.

<sup>71</sup> *Id.*; Eva G. Chueca, *Human Rights in the City and the Right to the City: Two Different Paradigms Confronting Urbanization*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS, *supra* note 10, at 103, 112.

space belong[s] to all who live in it.”<sup>72</sup> Under this concept, urban planning should be democratic and participatory and aimed at just and sustainable development.<sup>73</sup>

Both the European Charter for the Safeguarding of Human Rights in the City and the Global-Charter Agenda for Human Rights in the City incorporate the right to the city, dedicating their first article to this right.<sup>74</sup> The European Charter specifically affirms the city as “a collective space belonging to all who live in it.”<sup>75</sup> The Global-Charter Agenda recognizes city inhabitants as “full-fledged actors of the life of the city” and “active citizens” with “the right to participate in the configuration and coordination of territory as a basic space.”<sup>76</sup> The Council of Europe’s European Urban Charter also mentions the right to the city in the preamble, but only in the French version.<sup>77</sup>

However, the right to the city remains a peripheral paradigm in Europe, playing a more central role in Latin America. Urban justice movements in Latin America rallied around this concept since the 1980s.<sup>78</sup> Both Brazil and Columbia adopted elements of this concept. Brazil’s Constitution, enacted in 1988, acknowledges the “social function” of property,<sup>79</sup> which Brazil’s City Statute translated into urban planning policies in 2001.<sup>80</sup> Then, in 2006, Brazil established the Council of Cities to provide for citizen participation in urban policies.<sup>81</sup> Likewise, the Colombian Constitution, enacted in 1991, acknowledges the “social dimension” of property,<sup>82</sup> further developed in a 1997 law on land use planning.<sup>83</sup> In 2008, Ecuador’s Constitution explicitly referenced the right to the city, recognizing inhabitants’ “right to fully enjoy the city and its

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<sup>72</sup> Oomen, *supra* note 10, at 6.

<sup>73</sup> *Id.* at 5.

<sup>74</sup> European Human Rights Charter, *supra* note 64, art. 1, ¶ 1; Global Charter-Agenda, *supra* note 64, art. 1, ¶ 1.

<sup>75</sup> European Human Rights Charter, *supra* note 64, art. 1, ¶ 1.

<sup>76</sup> Global-Charter Agenda, *supra* note 64, art. 1, ¶ 1.

<sup>77</sup> Chueca, *supra* note 71, at 113.

<sup>78</sup> *Id.* at 114. In 2005, protests in the settlements of Durban, South Africa also used the right to the city in their call for better living conditions for the urban poor. *Id.* at 118.

<sup>79</sup> Constituição Federal [C.F.] [Constitution] Oct. 5, 1988, art. 5, ¶ 23 (Braz.) (“Property shall observe its social function.”).

<sup>80</sup> Chueca, *supra* note 71, at 115.

<sup>81</sup> *Id.*

<sup>82</sup> Constitución Política de Colombia [C.P.] July 4, 1991, art. 58 (“Property has a social dimension that implies obligations.”).

<sup>83</sup> Chueca, *supra* note 71, at 115.

public spaces” and noting, “[e]xercising the right to the city is based on the democratic management of the city, with respect to the social and environmental function of property.”<sup>84</sup>

The 2001 World Social Forum in Brazil further stimulated a global endorsement of the right to the city and the drafting of the World Charter to the Right to the City (“World Charter”), finalized in 2005.<sup>85</sup> U.N.-Habitat (“United Nations Human Settlements Programme”) espoused the right to the city as a framework with potential to address urban problems comprehensively.<sup>86</sup> United Nations Educational, Scientific and Cultural Organization (“UNESCO”) likewise endorsed this framework and participated in its development.<sup>87</sup> The World Charter explains that the right to the city includes “all the civil, political, economic, social, cultural and environmental rights which are already regulated in the international human rights treaties.”<sup>88</sup>

However, it also goes further and defines a “collective right” of inhabitants to “equitable usufruct [or enjoyment] of cities within the principles of sustainability, equity, and social justice.”<sup>89</sup> It recognizes the city’s “primary purpose” as a “social function,”<sup>90</sup> requiring “democratic management”<sup>91</sup> and all inhabitants to benefit from its resources.<sup>92</sup> The city is thus collectively owned and constructed.

In 2010, Mexico City became the first municipality to adopt a full Charter for the Right to the City.<sup>93</sup> This comprehensive instrument sets out the background to its adoption, guiding principles, the various components of the right to the city, state responsibilities, and the

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<sup>84</sup> Constitución de la República del Ecuador [C.R.] Oct. 20, 2008, art. 31.

<sup>85</sup> Chueca, *supra* note 71, at 116.

<sup>86</sup> Ana M. Sánchez Rodríguez, *The Right to the City in Mexico City: The Charter*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES, *supra* note 10, at 220, 229; *see also* Anna Kajumulo Tibaijuka, *Preface* to MARKS ET AL., HUMAN RIGHTS CITIES: CIVIC ENGAGEMENT FOR SOCIETAL DEVELOPMENT, *supra* note 7, at 7 (referencing “UN-HABITAT’s strategy for sustainable urban development, which lays emphasis on the need for inclusionary urban governance”).

<sup>87</sup> *HRC August 2015 Report*, *supra* note 9, ¶ 47.

<sup>88</sup> Int’l All. Inhabitants, *World Charter for the Right to the City*, art. 1, ¶ 2 [hereinafter *World Charter for the Right to the City*]; *see also id.* art. 7, ¶ 47.

<sup>89</sup> *World Charter for the Right to the City*, *supra* note 88, art. 1, ¶ 2.

<sup>90</sup> *Id.* art. 2, ¶ 2.

<sup>91</sup> *Id.* art. 2, ¶ 1.

<sup>92</sup> *Id.* art. 2, ¶¶ 1, 2.

<sup>93</sup> Mexico City Charter for the Right to the City, July 2010 [hereinafter *Mexico City Charter*]; Chueca, *supra* note 71, at 118.

commitments of different stakeholders.<sup>94</sup> Although the Charter is not enforceable in court, it is recognized by the local government and social movements have incorporated it in their advocacy.<sup>95</sup> Development of the Charter entailed an extensive participatory process, including public events, over thirty consultations, workshops, radio programs, and even a children’s painting contest on “the city we want.”<sup>96</sup>

The Mexico City Charter for the Right to the City (“Mexico City Charter”) draws on the World Charter, similarly highlighting the interdependence of the right to the city with “all the civil, political, economic, social, cultural and environmental rights regulated in the international human rights treaties,”<sup>97</sup> and defining a “collective right” to “equitable usufruct of cities within the principles of sustainability, democracy, equity, and social justice.”<sup>98</sup> As “[s]trategic foundations” to the right to the city, it identifies “[f]ull exercise of human rights in the city”—referencing the human rights in the city movement, the “[s]ocial function of the city,” “[d]emocratic management of the city,” “[s]ustainable and responsible management” of resources, “[d]emocratic and equitable enjoyment of the city,” and “[d]emocratic production of the city and in the city.”<sup>99</sup>

#### D. CITY ADOPTION OF PARTICULAR HUMAN RIGHTS

Finally, the last two decades have seen the growth of city initiatives centered on particular rights. In the United States, the most developed is the city movement on implementing the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”)<sup>100</sup> through city ordinances and resolutions.<sup>101</sup> San Francisco led the way with its CEDAW Ordinance in 1998 and helped launch the Cities for CEDAW

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<sup>94</sup> Mexico City Charter, *supra* note 93.

<sup>95</sup> Rodríguez, *supra* note 86, at 233.

<sup>96</sup> Mexico City Charter, *supra* note 93, at 3.

<sup>97</sup> *Id.* art. 1; *see also id.* art. 1, ¶ 1.4 (“While the Right to the City is not explicitly mentioned in the current human rights instruments, these instruments are considered the legal framework of reference and support of the Right to the City.”); *id.* art. 3 (emphasizing “the integrality and interdependence of human rights”); *id.* at 32 (calling on the judiciary to “[a]pply the international human rights instruments ratified by Mexico”).

<sup>98</sup> *Id.* art. 1.

<sup>99</sup> *Id.* art. 2.

<sup>100</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* December 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

<sup>101</sup> *Cities for CEDAW: Resources*, WOMEN’S INTERCULTURAL NETWORK, <http://citiesforcedaw.org/resources/> [<https://perma.cc/H3KK-C4Z6>].

Campaign in 2014.<sup>102</sup> There are currently nine U.S. cities and counties with binding CEDAW ordinances, and over thirty others have passed resolutions in support of CEDAW, signaling their commitment to women's human rights.<sup>103</sup>

Cities with CEDAW ordinances have used them as a basis for gender assessments of city programs and policies, including budgets, service delivery, and employment practices.<sup>104</sup> Under San Francisco's CEDAW Ordinance, city departments participate in gender assessments, examining budgets, service delivery, and employment practices to identify barriers to women's equality and shape better policies.<sup>105</sup> San Francisco has also developed a gender analysis tool to assist city departments in these assessments<sup>106</sup> and a set of principles to guide self-assessments by private companies.<sup>107</sup>

In 2000, San Francisco amended its CEDAW Ordinance to incorporate the principles of ICERD and include the "unique experiences of women of color" in its analysis.<sup>108</sup> Starting in 2003, when faced with

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<sup>102</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 22.

<sup>103</sup> CITIES FOR CEDAW: STATUS OF LOCAL ACTIVITIES, WOMEN'S INTERCULTURAL NETWORK, <http://citiesforcedaw.org/wp-content/uploads/2020/03/Landscape-Cities-for-CEDAW-Branded-for-Website-June-27-2019.pdf> [https://perma.cc/7GCP-LVAP] (last updated June 27, 2019).

<sup>104</sup> Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 YALE L.J. 1564, 1655 (2006) [hereinafter *Law's Migration*]; ANU MENON, HUMAN RIGHTS IN ACTION: SAN FRANCISCO'S LOCAL IMPLEMENTATION OF THE UNITED NATIONS' WOMEN'S TREATY (CEDAW) 3 (2010), [https://sfgov.org/dosw/sites/default/files/Documents/dosw/Reports/CEDAW\\_report\\_101810.pdf](https://sfgov.org/dosw/sites/default/files/Documents/dosw/Reports/CEDAW_report_101810.pdf) [https://perma.cc/FU7Z-475M].

<sup>105</sup> San Francisco's CEDAW Ordinance calls for a gender analysis in "selected City departments, programs, policies, and private entities to the extent permitted by law." S.F., CAL., ADMIN. CODE, § 33A.4(b) (1998). This analysis shall include "an evaluation of gender equity in the entity's operations, including its budget allocations, delivery of direct and indirect services and employment practices" leading to development of an "Action Plan that contains specific recommendations on how it will correct any identified deficiencies and integrate human rights principles and the local principles of CEDAW into its operations." *Id.*

<sup>106</sup> MENON, *supra* note 104, at 3–10. The gender analysis consists of five steps: (1) envisioning a program with full equality and freedom from all forms of discrimination, (2) collecting disaggregated data and identifying trends and gaps, (3) identifying effective practices and areas for improvement, (4) evaluating and prioritizing options and creating an action plan, and (5) monitoring implementation of the action plan. *Id.* at 3–4.

<sup>107</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 22.

<sup>108</sup> Martha F. Davis, *Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights*, in BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 258, 269 (Cynthia Soohoo et al. eds., abr. ed. 2009) [hereinafter *Thinking Globally, Acting Locally*]; JoAnn K. Ward, *From Principles to Practice: The Role of*

severe budget cuts, San Francisco adopted gender-responsive budgeting and assessed the impact of budgeting decisions on employment and public services, disaggregated by identities such as gender and race.<sup>109</sup> In Los Angeles, Mayor Eric Garcetti, building on the city’s CEDAW Ordinance of 2003, issued an Executive Directive on Gender Equity in City Operations in 2014.<sup>110</sup> This directive requires city departments to collect and analyze data on gender in recruitment, employment, work contracts, and services and to develop gender equity plans to address gaps.<sup>111</sup> These plans then inform budgeting requests and expenditures by city departments, and the city leadership’s progress is evaluated under these plans.<sup>112</sup>

The CEDAW Ordinance in San Francisco has had impact in small but practical ways significant in the daily lives of women affected. A number of changes relate to employment practices, including new policies for paid parental leave, telecommuting, and flex time; expansion of sexual harassment training; and increased job training to support women’s entry into nontraditional positions.<sup>113</sup> In implementing these policies, the Department of Environment reported that women now comprise over fifty percent of personnel, including technical staff.<sup>114</sup> Additionally, the city updated its system for allocating street artist licenses to no longer require in-person lottery attendance, which had disadvantaged those with childcare responsibility.<sup>115</sup> Gender assessments also resulted in small changes to the city’s configuration by adding sidewalk cuts for strollers and placing more streetlights closer together for safety.<sup>116</sup> The gender

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*US Mayors in Advancing Human Rights, in* GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES, *supra* note 10, at 81, 97 [hereinafter *From Principles to Practice*].

<sup>109</sup> MENON, *supra* note 104, at 8.

<sup>110</sup> Los Angeles, Cal., Executive Directive No. 11 (Aug. 26, 2015) [hereinafter Los Angeles Executive Directive No. 11] (“Gender Equity must permeate every level of City operations—as leaders, employers, and service providers.”). In October 2021, Los Angeles County passed its own ordinance to “locally implement the principles of CEDAW in order to promote gender equity and address discrimination against women and girls in Los Angeles County,” building on the work at city level. Los Angeles County, Cal., Ordinance 2021-0063 (Nov. 30, 2021).

<sup>111</sup> GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 5.

<sup>112</sup> *Id.* at 10.

<sup>113</sup> MENON, *supra* note 104, at 5, 8, 10; BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 22; Lesley Wexler, *The Promise and Limits of Local Human Rights Internationalism*, 37 FORDHAM URB. L.J. 599, 619–20 (2010) [hereinafter *The Promise and Limits of Local Human Rights*]; *Thinking Globally, Acting Locally*, *supra* note 108, at 271.

<sup>114</sup> BRINGING HOME, *supra* note 23, at 22.

<sup>115</sup> MENON, *supra* note 104, at 1, 6.

<sup>116</sup> *The Promise and Limits of Local Human Rights*, *supra* note 113, at 619; *Thinking Globally, Acting Locally*, *supra* note 108, at 270; MENON, *supra* note 104, at 5.



assessments further led to increased services. For instance, the Juvenile Probation Department started providing sexual assault and family planning services.<sup>117</sup> The city also created a special “Girls Unit” in Juvenile Hall to provide girls with gender-specific trauma services.<sup>118</sup> Moreover, according to city staff, “the very process of conducting a CEDAW gender analysis created a new awareness of gender-related issues.”<sup>119</sup>

Thus, while human rights cities differ greatly, they all reference international human rights standards and aspire for these standards to guide the city’s operations, including the conduct of both local government and city inhabitants.<sup>120</sup> They further draw on the different concepts of the “human rights city,” which emphasizes process and building a local human rights community; “human rights in the city,” which focuses on the responsibility of local government to realize human rights; and the “right to a city,” which articulates a collective right by inhabitants to develop a human rights-oriented city. While self-designation of a human rights city often takes the form of resolutions or proclamations that lack the force of law, this can set up a basis for institutionalization, resources, and accountability and facilitate advocacy.<sup>121</sup>

#### E. A HUMAN RIGHTS APPROACH TO GOVERNANCE

Human rights will never be a reality unless they are meaningful at the local level. Eleanor Roosevelt famously captured this: “Where, after all, do universal human rights begin? In small places, close to home . . . Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.”<sup>122</sup>

Cities are on the frontlines of rights’ enforcement. At the bottom of the governmental hierarchy, cities are where laws intersect with people, and where people experience rights and violations. As Michele Grigolo

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<sup>117</sup> *Thinking Globally, Acting Locally*, *supra* note 108, at 270.

<sup>118</sup> MENON, *supra* note 104, at 5.

<sup>119</sup> *Id.*

<sup>120</sup> Neubeck, *supra* note 13, at 238; *see also* BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 11 (“A human rights city is a community where elected officials and residents commit to using human rights norms and strategies to improve the city.”).

<sup>121</sup> Neubeck, *supra* note 13, at 240.

<sup>122</sup> Eleanor Roosevelt, Chairperson, Comm’n on Hum. Rts., Speech Before the U.N. on the 10th Anniversary of the Universal Declaration of Human Rights (Mar. 27, 1958).

explains, “[T]he city is embedded in a vertical and hierarchical system of legal relations . . . while at the same time being the space where the laws of these levels . . . converge to regulate particular issues and groups.”<sup>123</sup> The locality is where laws and policies impact people’s daily lives<sup>124</sup> and where rights are violated and protected.<sup>125</sup> Closest to the people, cities also serve as the point of contact with services.<sup>126</sup> Thus, local authorities play an important role translating rights into practice and implementing laws and policies,<sup>127</sup> such as by commonplace administrative decisions.<sup>128</sup> Moreover, these actions help define rights in the context of concrete issues.<sup>129</sup>

Accordingly, cities help to develop a human rights approach to governance that prioritizes participation and equality, advancing the human rights project. At the global level, U.N. agencies have defined a human rights-based approach to guide development efforts, drawn from the UDHR and human rights treaties.<sup>130</sup> This approach, which aims to

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<sup>123</sup> Michele Grigolo, *Towards a Sociology of the Human Rights City: Focusing on Practice*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES, *supra* note 10, at 276, 281; *see also* Leilani Farha (Special Rapporteur on Adequate Housing), Rep. on Adequate Housing, ¶ 72, U.N. Doc. A/HRC/28/62 (Dec. 22, 2014) (“[L]ocal governments are at a critical point of intersection between rights holders and complex systems of multi-level governance.”).

<sup>124</sup> Soohoo, *supra* note 10, at 265.

<sup>125</sup> Emily Graham, Paul Gready, Eric Hoddy & Rachel Pennington, *Human Rights Practice and the City: A Case Study of York (UK)*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES, *supra* note 10, at 179, 186; *see also* BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 5 (“The real effect of human rights is experienced locally.”).

<sup>126</sup> Soohoo, *supra* note 10, at 268 (noting that cities “bear the primary responsibility to deliver government services”). As the Human Rights Council’s report remarked, “[I]t is difficult to imagine a situation of human rights being realized where there are no local authorities to provide the necessary services. Local authorities are thus responsible for a wide range of human rights issues in their day-to-day work.” *HRC August 2015 Report*, *supra* note 9, ¶ 26.

<sup>127</sup> As the Human Rights Council’s report acknowledged, “Local authorities are actually those who are to translate national human rights strategies and policies into practical application.” *HRC August 2015 Report*, *supra* note 9, ¶ 21; *see also* BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 5 (“[L]ocal implementation gives meaning to human rights.”).

<sup>128</sup> Starl, *supra* note 68, at 215.

<sup>129</sup> Michel Grigolo describes a “micro-level of construction” and reconstruction of human rights where city employees “re-work and redefine human rights in the context of their daily activities,” engaging with human rights “discursively in the framing and solution of a concrete situation.” Grigolo, *supra* note 123, at 289–90; *see also* Soohoo, *supra* note 10, at 257 (“International human rights treaties are often abstract documents written in diplomatic, carefully negotiated and aspirational language. Situating human rights implementation at the local level where governmental policies are implemented provides a welcome concreteness.”).

<sup>130</sup> *The Approach to Human Rights*, FRANÇOIS-XAVIER BAGNOUD CTR. FOR HEALTH & HUM. RTS. [hereinafter *The Approach to Human Rights*], <https://www.hhrguide.org/153-2/>

strengthen the capacities of rights-holders to claim their rights and duty bearers to meet their obligations,<sup>131</sup> identifies participation and non-discrimination as cornerstone principles.<sup>132</sup> Cities are well-situated to apply a human rights-based approach to governance, including programs, budgets, and the delivery of services. As Cynthia Soohoo describes, cities are the “natural place” to integrate human rights into policymaking<sup>133</sup> and “infuse human rights into their day-to-day work of governance and service provision.”<sup>134</sup>

Thus, integrating human rights at a local level can facilitate participation and equality. Human rights cities bring a focus on participation, encompassing all inhabitants and democratizing rights. In the context of the United States, human rights cities further respond to federalism concerns in having rights imposed by the federal government. Moreover, a human rights framework advances equality through a proactive orientation, addressing disparate impacts and jurisdictional barriers to women’s rights.

### III. PARTICIPATION

Human rights cities bring an emphasis on participation, which the various human rights city concepts underscore. Close to communities, cities provide multiple opportunities for participation. The human rights framework further encourages mobilization. Additionally, human rights cities have an expansive definition of participation, encompassing all inhabitants and bypassing the citizenship construct at the national level. Localizing human rights, cities can also address federalism concerns in the U.S. context. However, for participation to be meaningful, it is necessary to invest in education and make space for different voices.

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[<https://perma.cc/3FHK-XHWZ>] (defining the key elements of the human rights-based approach).

<sup>131</sup> *Id.*; *Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies*, UN DEV. GRP. HUM. RTS. WORKING GRP. [hereinafter UNDG-HRWG], <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> [<https://perma.cc/C95E-JDNC>].

<sup>132</sup> *The Approach to Human Rights*, *supra* note 130; UNDG-HRWG, *supra* note 131; *see also* BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 2 (noting that the “human rights approach emphasizes transparency, accountability and participation in government decision-making”). The Mexico City Charter for the Right to the City identifies as guiding principles “non-discrimination, equality, participation, transparency and accountability.” Mexico City Charter, *supra* note 93, art. 1.6.

<sup>133</sup> Soohoo, *supra* note 10, at 268.

<sup>134</sup> *Id.* at 258.

## A. PARTICIPATION IN HUMAN RIGHTS CITIES

Participation is a critical component of the human rights-based approach, which cities can help develop. As the U.N. Development Group sets out, “Participation is both a means and a goal.”<sup>135</sup> Some have even characterized “active public participation in identifying and solving problems locally” as “a hallmark of human rights.”<sup>136</sup> Participation is also closely linked to empowerment of local citizens, and “[p]eople are recognized as key actors in their own development, rather than passive recipients of commodities and services.”<sup>137</sup> Participation is both a stand-alone right, recognized in the UDHR,<sup>138</sup> ICCPR,<sup>139</sup> and CEDAW,<sup>140</sup> as well as a cross-cutting concept applicable to all rights. For instance, in its General Comment on the right to the highest attainable standard of health, the U.N. Committee on Economic, Social and Cultural Rights (“CESCR”) clarified: “Promoting health must involve effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people’s participation is secured by States.”<sup>141</sup>

Participation figures prominently in the “human rights city,” “human rights in the city,” and “right to the city” concepts. The Gwangju Declaration sets out “civic participation” as an important building block in human rights cities, calling for “a bottom-up approach involving genuine and meaningful participation by all inhabitants.”<sup>142</sup> Scholars of PDHRE go so far as to define human rights cities as “a strategy of urban development through civic engagement.”<sup>143</sup> Similarly, the Global-Charter

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<sup>135</sup> UNDG-HRWG, *supra* note 131.

<sup>136</sup> GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 4.

<sup>137</sup> UNDG-HRWG, *supra* note 131.

<sup>138</sup> UDHR, *supra* note 42, art. 21 (“Everyone has the right and the opportunity to take part in the government of his country.”).

<sup>139</sup> ICCPR, *supra* note 37, art. 25 (“Every citizen shall have the right and the opportunity . . . to take part in the conduct of public affairs, directly or through freely chosen representatives.”).

<sup>140</sup> CEDAW, *supra* note 100, art. 7(b) (recognizing women’s right “[t]o participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.”).

<sup>141</sup> Comm. on Economic, Social, and Cultural Rights, General Comment No. 14, ¶ 54, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

<sup>142</sup> Gwangju Declaration, *supra* note 16, ¶¶ 6–8.

<sup>143</sup> MARKS ET AL., *supra* note 7, at 50; *see also* EU Framework, *supra* note 20, at 12 (“A human rights city promotes the meaningful participation of all. It does this by engaging with civil society, in particular grassroots organisations, as well as business, faith and religious

Agenda for Human Rights in the City has a section devoted to “participatory democracy,” providing for inhabitants’ participation in decision-making processes and the formulation and implementation of policy.<sup>144</sup> To be effective, the section specifically requires consultation and local adaptation.<sup>145</sup> Participation and consultative government are at the core of the right to the city concept. Under the World Charter for the Right to the City, “[a]ll persons have the right to participate through direct and representative forms in the elaboration, definition, implementation, and fiscal distribution and management of public policies and municipal budgets.”<sup>146</sup> The Mexico City Charter goes even further, aiming at “citizen participation in all spaces and at the highest possible levels”<sup>147</sup> and the city’s “democratic and inclusive management.”<sup>148</sup> The right to the city movement contains a radical aspiration of recreating the city through active engagement and definition of rights by city inhabitants.<sup>149</sup>

Local government is closer to communities and well-placed to provide opportunities for participation. In cities, participation can be exercised “on a daily and proximate basis,”<sup>150</sup> and policies can respond to “local needs and priorities.”<sup>151</sup> According to the Human Rights Council’s report, “[l]ocal government aims at bringing government to the grass roots and enabling citizens to participate effectively in the making of decisions affecting their daily lives.”<sup>152</sup> Cities that embrace a human rights framework generally create an explicit role for public participation in needs assessments and policy development. For instance, following Salt

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organisations and communities, through dedicated platforms and forums to promote and implement a human rights agenda defined together.”).

<sup>144</sup> Global Charter-Agenda, *supra* note 64, art. 2; *see also* European Human Rights Charter, *supra* note 64, art. 8, on the right to political participation.

<sup>145</sup> Global Charter-Agenda, *supra* note 64, at 13.

<sup>146</sup> World Charter for the Right to the City, *supra* note 88, art. 2, ¶ 1.2. The World Charter further has an article dedicated to political participation, indicating that “[a]ll citizens have the right to participate in local political life through the free and democratic election of their local representatives, as well as in all the decisions that affect local policies of urban planning, production, renovation, improvement, and management.” *Id.* art. 8, ¶ 1.

<sup>147</sup> Mexico City Charter, *supra* note 93, art. 2.

<sup>148</sup> *Id.* art. 3.2.3. The Preamble proclaims “the right of all persons and civil society organizations to participate—actively and at the highest possible level—in the determination of public policies.” *Id.* at 6.

<sup>149</sup> Jonathan Darling, *Defying the Demand to ‘Go Home’: From Human Rights Cities to the Urbanisation of Human Rights*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES, *supra* note 10, at 121, 127.

<sup>150</sup> Chueca, *supra* note 71, at 108.

<sup>151</sup> HRC August 2015 Report, *supra* note 9, ¶ 8.

<sup>152</sup> *Id.*

Lake City’s CEDAW Resolution, the Mayor’s Office facilitated community dialogues on women’s equality in various physical locations and online, resulting in a focus on educational and employment opportunities.<sup>153</sup> Following its CEDAW Ordinance, San Francisco convened a task force, comprising of local government representatives and community members, to help develop gender analysis guidelines for city programs, budgets, and services and to review the city department’s reports on implementation.<sup>154</sup> According to the San Francisco Department on the Status of Women, “[t]he heart of the ordinance is the participatory process that it puts in place.”<sup>155</sup> Likewise, Eugene seeks public input on service provision and encourages city departments to implement Public Participation Guidelines.<sup>156</sup> As a member of Eugene’s Human Rights Commission explained, “The assumption is that those closest to a given human rights problem know it best and that their participation is helping to address the human rights violations to which they have been subject is highly empowering for people.”<sup>157</sup> This explanation is in line with the principle of subsidiarity, which encourages decision-making and resolution of problems by those most affected,<sup>158</sup> as well as the concept of “nothing about us without us,” which requires the participation of affected groups in the development of policy.<sup>159</sup>

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<sup>153</sup> GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 16; BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 20.

<sup>154</sup> The Commission on the Status of Women now monitors progress in open meetings, recorded and documented on a public website. MENON, *supra* note 104, at 2–4.

<sup>155</sup> Stacy L. Lozner, Note, *Diffusion of Local Regulatory Innovations: The San Francisco CEDAW Ordinance and the New York City Human Rights Initiative*, 104 COLUM. L. REV. 768, 781 (2004).

<sup>156</sup> Neubeck, *supra* note 13, at 248.

<sup>157</sup> *Id.*

<sup>158</sup> Tara J. Melish, *From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies*, 34 YALE J. INT’L L. 389, 431 (2009).

<sup>159</sup> With roots in Central Europe, the concept of “nothing about us without us” has served as a rallying cry for disability activists. See, e.g., NORMAN DAVIES, HEART OF EUROPE: THE PAST IN POLAND’S PRESENT 261 (2d ed. 2001) (recounting the Polish slogan “[n]othing concerning us can be settled without us”). See generally BERTALAN SZEMERE, HUNGARY, FROM 1848 TO 1860 (1860) (historical recount of Hungary during the Revolution of 1848 by a Hungarian poet and nationalist); JAMES I. CHARLTON, NOTHING ABOUT US WITHOUT US: DISABILITY OPPRESSION AND EMPOWERMENT 17 (2000). The concept has also served as a rallying cry for marginalized groups affected by HIV. See OPEN SOC’Y INST., “NOTHING ABOUT US WITHOUT US”—GREATER, MEANINGFUL INVOLVEMENT OF PEOPLE WHO USE ILLEGAL DRUGS: A PUBLIC HEALTH, ETHICAL, AND HUMAN RIGHTS IMPERATIVE, at vii–viii (2008), <https://www.opensocietyfoundations.org/reports/nothing-about-us-without-us> [<https://perma.cc/DG2M-HPN4>].

Broad community participation is particularly useful when it comes to the practicalities of fulfilling the positive dimension of rights. For instance, social and economic rights require progressive realization “to the maximum of available resources.”<sup>160</sup> Local communities can assist governments in identifying needs, prioritizing resources, and measuring progress over time to ensure compliance.<sup>161</sup> City officials are also more directly accountable to communities and have incentives to provide services effectively to all residents. Inhabitants can directly see the benefits of these services, and cities compete for residents based on services provided.<sup>162</sup> Furthermore, services can attract visitors and spur economic development.<sup>163</sup> Cities have experience and incentives in resolving competing interests. As Cynthia Soohoo notes, “When it comes to actually figuring out the policies and trade-offs that are inherent in the long process of rights realisation, the city is where the action is.”<sup>164</sup>

Moreover, human rights do not just call for participation, but can also serve as a mobilizing force stimulating increased participation. Human rights are much more than the legal framework in which they are codified. They provide a language to articulate and mobilize around justice concerns.<sup>165</sup> Jonathan Darling explains, “The value of human rights . . . is in mobilizing a language and a vision bigger than the urban scale, a means to draw in and mobilize different interest groups behind pluralist projects of social justice.”<sup>166</sup> For instance, in Eugene, advocates used the human rights framework, which includes a right to housing, to mobilize and push the city to address homelessness.<sup>167</sup> Many CEDAW resolutions in U.S. cities, in fact, are mostly symbolic, mainly directed at mobilization and building a movement for national ratification of CEDAW and integrating

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<sup>160</sup> International Covenant on Economic, Social, and Cultural Rights, art. 2, ¶ 1, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

<sup>161</sup> Graham et al., *supra* note 125, at 185, 194; *see also* U.N. High Commissioner for Human Rights, *Annual Rep. of the U.N. High Commissioner for Human Rights*, ¶ 9, U.N. Doc. No. A/HRC/42/22 (July 2, 2019) [hereinafter *Annual Rep. of the U.N. High Commissioner*] (noting the role that local governments play “in ensuring the progressive realization of economic and social rights, such as the right to adequate housing”).

<sup>162</sup> *The Promise and Limits of Local Human Rights*, *supra* note 113, at 621, 625.

<sup>163</sup> *From Principles to Practice*, *supra* note 108, at 86.

<sup>164</sup> Soohoo, *supra* note 10, at 274.

<sup>165</sup> I describe the social mobilization potential of human rights in Jonathan Cohen & Tamar Ezer, *Human Rights in Patient Care: A Theoretical and Practical Framework*, HEALTH & HUM. RTS., Dec. 2013, at 7, 16.

<sup>166</sup> Darling, *supra* note 149, at 123.

<sup>167</sup> Neubeck, *supra* note 13, at 251–52.

human rights standards at the national level.<sup>168</sup> While a city's adoption of human rights can create a focus for activism, it is also itself a product of mobilization. As discussed above, the very development of the Mexico City Charter entailed an extensive participatory process, which included public events, consultations, radio programs, and even a children's painting contest.<sup>169</sup> San Francisco's CEDAW Ordinance built on years of advocacy by local women's groups and included a large public hearing.<sup>170</sup>

Additionally, the human rights cities movement has an expansive definition of rights holders and participants, moving beyond the citizen paradigm at the national level. Instead, the various human rights city instruments focus on "residents" and "inhabitants." For instance, the Global Charter-Agenda specifies that its provisions "apply to all city inhabitants, individually and collectively without discrimination . . . . A city inhabitant is any person that [sic] lives within its territory even if without fixed domicile."<sup>171</sup> Likewise, the European Charter for the Safeguarding of Human Rights in the City's provisions "apply to all persons who inhabit the signatory cities, irrespective of their nationality."<sup>172</sup> Under the World Charter, "all the persons who inhabit a city, whether permanently or transitionally, are considered its citizens."<sup>173</sup> The Mexico City Charter goes even further, recognizing the rights of visitors to the city.<sup>174</sup> Human rights cities thus remake the concept of

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<sup>168</sup> Catherine Powell, *Dialogic Federalism: Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. PA. L. REV. 245, 276, 279 (2001) ("The 'adoption' of human rights treaties and standards at the state and local levels largely represents a form of communication through which people and communities, who are effectively able to mobilize at the local level, signify the need for the federal government to play a more active role in human rights lawmaking. In fact, many of the ordinances and resolutions adopted by state and local governments explicitly call for the federal government to adopt particular human rights treaties and standards.").

<sup>169</sup> Mexico City Charter, *supra* note 93, at 3.

<sup>170</sup> MENON, *supra* note 104, at 1; GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 8.

<sup>171</sup> Global Charter-Agenda, *supra* note 64, at 2.

<sup>172</sup> European Human Rights Charter, *supra* note 64, art. 2, ¶ 1. The European Charter also expresses a "wish to see the right of municipal suffrage extended to the entire adult resident non-national population who has resided in the city for more than two years." *Id.* art. 8, ¶ 2.

<sup>173</sup> World Charter for the Right to the City, *supra* note 88, art. 1, ¶ 5; *see also id.* art. 19, ¶ 1 (calling for "collective political participation of all inhabitants.").

<sup>174</sup> Mexico City Charter, *supra* note 93, at 6.



citizenship so that it is organically rooted in people's relationship to a place and community, rather than tied to a legal construct.<sup>175</sup>

The "sanctuary city" movement across the United States, protecting undocumented immigrants and limiting local cooperation with federal immigration enforcement, is in line with this expansive definition of rights holders to include all inhabitants. Indeed, even in the face of pressure from the Trump administration and cuts in federal funding, mayors of various U.S. cities have held firm to their sanctuary policies.<sup>176</sup> For instance, San Francisco Mayor Edwin Lee said, "San Francisco is a sanctuary city and will not waiver in its commitment to protect the rights of all its residents" and announced expansion of a city fund to provide legal services to all immigrants, including the undocumented.<sup>177</sup> Chicago Mayor Rahm Emanuel likewise declared, "Chicago has in the past been a sanctuary city . . . It will always be a sanctuary city."<sup>178</sup>

In the U.S. context, localizing human rights is particularly critical, where federalism concerns curtail implementation of rights touching on matters typically under state jurisdiction, including social welfare, family relations, and criminal law, as discussed below. Cities have the potential to democratize human rights and spark creative implementation. Classic accounts recognize cities as "laboratories of democracy"<sup>179</sup> and "laboratories of change that foster innovation and collaboration."<sup>180</sup> As JoAnn Kamuf Ward notes, "[U.S.] cities have long been sites of experimentation in participatory democracy in an effort to respond to community needs."<sup>181</sup> Cities have pioneered laws and policies on diverse

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<sup>175</sup> In positing a right to the city, Lefebvre himself proposed that "the right to the city implies nothing less than a revolutionary concept of citizenship . . . one not tied to membership to membership to a polity but to the practice of shaping urban space." Darling, *supra* note 149, at 127.

<sup>176</sup> Tal Kopan, *What Are Sanctuary Cities, and Can They Be Defunded?*, CNN (Mar. 26, 2018, 3:40 PM), <https://www.cnn.com/2017/01/25/politics/sanctuary-cities-explained/index.html> [<https://perma.cc/WFK6-9W77>]; Stephen Feller, *LAPD Will Not Help with Trump Plan to Deport Immigrants, Chief Says*, UNITED PRESS INT'L (Nov. 14, 2016, 9:47 PM), [https://www.upi.com/Top\\_News/US/2016/11/14/LAPD-will-not-help-with-Trump-plan-to-deport-immigrants-chief-says/8541479169830/](https://www.upi.com/Top_News/US/2016/11/14/LAPD-will-not-help-with-Trump-plan-to-deport-immigrants-chief-says/8541479169830/) [<https://perma.cc/4BKL-3SN3>].

<sup>177</sup> Kopan, *supra* note 176.

<sup>178</sup> Feller, *supra* note 176.

<sup>179</sup> JoAnn K. Ward & Sarah Paoletti, *Human Rights Developments at the State and Local Level in the United States: A Bird's-Eye View*, 87 PA. BAR. ASSN. Q. 63, 65 (2016) (quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

<sup>180</sup> *From Principles to Practice*, *supra* note 108, at 87.

<sup>181</sup> *Id.*

issues, such as civil rights protection and addressing climate change.<sup>182</sup> They provide an opportunity to test programs before scaling up and expanding them.<sup>183</sup> Cities have certain characteristics that may spur innovation. Closer to communities, they have better opportunity to engage residents and initiate new partnerships.<sup>184</sup> Called upon to deliver practical results, cities tend to be more solution-oriented and less mired in partisan politics.<sup>185</sup> Cities also serve as crossroads of diverse people and ideas.<sup>186</sup>

Furthermore, cities have the potential to redefine human rights practice, where realization of rights goes beyond top-down protection by government to require bottom-up participation by inhabitants. Emily Graham and colleagues describe a move away from “singular, top down, state-focused strategies in favour of multi-dimensional, multi-actor, contextual and bottom-up, grassroots approaches.”<sup>187</sup> According to the U.S. Human Rights Network,

[t]he Human Rights cities model flips the script of how policy is formulated and implemented, and it engages residents in the work of defining community needs and problems in developing effective solutions to those problems. This approach expands the resources available to governments by mobilizing citizens into the work of policy development and implementation.<sup>188</sup>

This move also blurs the line between rights holders and duty bearers. Barbara Oomen remarks, “[C]ities with their ‘pragmatism instead of politics’ seem to enable the formation of stakeholder alliances—between

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<sup>182</sup> *Id.* at 89; Soohoo, *supra* note 10, at 275.

<sup>183</sup> *Thinking Globally, Acting Locally*, *supra* note 108, at 258; Olatunde C.A. Johnson, *The Local Turn: Innovation and Diffusion in Civil Rights Law*, 79 L. & CONTEMP. PROB. 115, 116 (2016).

<sup>184</sup> Soohoo, *supra* note 10, at 275; *From Principles to Practice*, *supra* note 108, at 87.

<sup>185</sup> See Johnson, *supra* note 183 at 132; Soohoo, *supra* note 10 at 275; *From Principles to Practice*, *supra* note 108, at 87.

<sup>186</sup> Soohoo, *supra* note 10 at 257.

<sup>187</sup> Graham et al., *supra* note 125, at 179; see also Starl, *supra* note 68, at 215 (describing a “bottom-up approach to democratic participation in rule-making as opposed to mere protection by governments”); Soohoo, *supra* note 10, at 257 (“Human rights cities invert the traditional analysis. Instead of focusing on the national government as the main instigator of change, human rights cities reflect a bottom up approach where local communities articulate a commitment to human rights and decide how to implement and give expression to their commitment.”).

<sup>188</sup> *The Human Rights Cities Movement*, *supra* note 6. The Network further explains that this “bottom-up approach expands the possibilities for creating new solutions by tapping the ‘political imagination’ of residents working together to define the kind of city they want and to engage constructively in the work of building and governing such a city.” *Id.*

authorities and civil society, between local and international actors—that transgress the classic divide between rights holders and duty bearers and move away from a legalistic approach to human rights.”<sup>189</sup> Thus, the human rights city movement is not just about reforming government and claiming rights, but also more ambitiously creating a culture of human rights and fundamentally reshaping society. The Gwangju Declaration, for instance, focuses on both the “socio-political process,” as well as the “local community.”<sup>190</sup>

Accountability in human rights cities, another pillar of the human rights-based approach,<sup>191</sup> therefore, expands beyond legal action to engage at multiple levels of responsibility. While the government may have obligations that are legally binding, responsibility may also lie in various economic and social entities and in individuals. Stacy Lozner describes a deliberative model of compliance, which relies on “participatory deliberation, mechanisms for transparency, and capacity building.”<sup>192</sup> Norms are internalized “rather than coerced by anticipation of enforcement.”<sup>193</sup> Accountability thus relies on social dialogue. Social accountability approaches, which entail community monitoring of resource allocation and service delivery against policy commitments to ensure community needs, may provide a mechanism for this dialogue.<sup>194</sup> The Global-Charter Agenda envisions a pivotal role for city inhabitants in accountability processes, including public consultation to evaluate

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<sup>189</sup> Oomen, *supra* note 10, at 3–4.

<sup>190</sup> Gwangju Declaration, *supra* note 16, ¶ 3.

<sup>191</sup> UNDG-HRWG, *supra* note 131 (recognizing that “[s]tates and other duty-bearers are answerable for the observance of human rights”). According to the Gwangju Declaration, “[e]ffective accountability mechanisms need to be developed to make city government accountable to its pledges and commitments. Monitoring mechanisms, including human rights indicators for human rights impact assessment, should be established.” Gwangju Declaration, *supra* note 16, ¶ 14. The Global-Charter Agenda calls for “specific indicators for the fulfillment of each of the rights,” actions plans, and bodies responsible for “implementation, follow-up and evaluation.” Global Charter-Agenda, *supra* note 64, at 14.

<sup>192</sup> Lozner, *supra* note 155, at 784.

<sup>193</sup> *Id.*

<sup>194</sup> Community monitoring tools include: (1) community scorecards and qualitative evaluations by communities of public services, projects, or institutions, (2) citizen report cards or user surveys providing quantitative feedback on the quality and accessibility of services, (3) social audits or community assessments of the impact of public projects or services, and (4) applied budget monitoring, where communities analyze and advocate around plans for raising and spending public resources. Jamila Headley, *How Social Accountability Protects Health Rights*, OPEN SOC’Y FOUND.: VOICES (May 16, 2014), <https://www.opensocietyfoundations.org/voices/how-social-accountability-protects-health-rights> [<https://perma.cc/76YM-HGZR>].

implementation,<sup>195</sup> while the World Charter calls for jointly established monitoring mechanisms.<sup>196</sup> The Mexico City Charter likewise emphasizes “the social participation of all persons in the design, monitoring, and evaluation of urban policy.”<sup>197</sup>

#### B. REQUIREMENTS FOR PARTICIPATION

However, meaningful participation requires education and a commitment to non-discrimination. The Gwangju Declaration devotes a section to “human rights education,” explaining that “[u]ntil all inhabitants know and own their human rights, there can never be a human rights city.”<sup>198</sup> The World Charter for the Right to the City calls for human rights training and education for all “public agents.”<sup>199</sup> Eugene provides human rights education to both city staff and residents.<sup>200</sup> According to one of Eugene’s human rights commissioners, human rights work would be ineffective without this training.<sup>201</sup> Similarly, under San Francisco’s CEDAW Ordinance, all city departments participate in regular human rights trainings.<sup>202</sup>

Given the centrality of participation and education to the human rights city concept, it is no coincidence that PDHRE was a driving force behind the human rights cities movement. PDHRE aims at social transformation through human rights education and engagement and conceives of human rights cities as a crucial building block.<sup>203</sup> As discussed above, PDHRE’s model entails extensive public consultation prior to designation of a human rights city.<sup>204</sup> One of the first tasks of a steering committee composed of various segments of the population and city officials is to roll out human rights education, followed by citizen human rights assessments.<sup>205</sup> Shulamith Koenig, the founding president of

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<sup>195</sup> Global Charter-Agenda, *supra* note 64, at 13.

<sup>196</sup> World Charter for the Right to the City, *supra* note 88, art. 18, ¶ 4.

<sup>197</sup> Mexico City Charter, *supra* note 93, art. 3.1.2.

<sup>198</sup> Gwangju Declaration, *supra* note 16, ¶ 9.

<sup>199</sup> World Charter for the Right to the City, *supra* note 88, art. 18, ¶ 2.

<sup>200</sup> Neubeck, *supra* note 13, at 242, 245.

<sup>201</sup> *Id.* The Gwangju Declaration specifically stresses the importance of human rights education for government officials. Gwangju Declaration, *supra* note 16, ¶ 12.

<sup>202</sup> *Thinking Globally, Acting Locally*, *supra* note 108, at 269.

<sup>203</sup> Oomen, *supra* note 10, at 14–15; Chueca, *supra* note 71, at 103.

<sup>204</sup> Soohoo, *supra* note 10, at 266.

<sup>205</sup> *Id.* at 271.

PDHRE, characterizes “the formation of local communities-of-learning” as the basis for human rights cities.<sup>206</sup>

However, in the United States, there is generally a serious gap in human rights education,<sup>207</sup> which will need to be addressed for cities to play a significant role as human rights actors. In the meantime, advocates have creatively used human rights reporting as an educational tool on human rights framing to address local issues. Analyses from these reports inform both formal reporting before U.N. bodies, as well as domestic advocacy.<sup>208</sup> An example is the pioneering work of the National Homelessness Law Center to address the criminalization of homelessness, which has used international human rights processes to trigger meetings with government officials and educate them on human rights standards.<sup>209</sup> Regularly integrating human rights in civics courses and trainings for government officials could potentially be transformative.

Moreover, effective participation requires a commitment to non-discrimination and creating space for minority voices and marginalized groups. Human rights city instruments recognize this link. The Gwangju Declaration emphasizes the importance of participation and “consultation among all stakeholders,” providing special consideration to “[s]ocially and economically disadvantaged groups, such as women, immigrants, and disabled persons.”<sup>210</sup> The Mexico City Charter articulates a right “to participate in decision making on public issues, including populations

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<sup>206</sup> Shulamith Koenig, *Foreward* to MARKS ET AL., HUMAN RIGHTS CITIES: CIVIC ENGAGEMENT FOR SOCIETAL DEVELOPMENT, *supra* note 7, at 10. Shulamith Koenig explains, “These are municipal spaces where citizens learn about human rights as relevant to their daily lives and concerns.” *Id.*

<sup>207</sup> Neubeck, *supra* note 13, at 245; *From Principles to Practice*, *supra* note 108, at 98; Risa E. Kaufman, *Human Rights in the United States: Reclaiming the History and Ensuring the Future*, 40 COLUM. HUM. RTS. L. REV. 149, 154 (2008) [hereinafter *Reclaiming the History*] (book review) (“[T]he United States attempts to avoid accountability by not publicizing both its reports to the U.N. treaty bodies and the recommendations from these bodies, as well as by failing to educate the public about its treaty obligations.”).

<sup>208</sup> Melish, *supra* note 158, at 430.

<sup>209</sup> Eric Tars, Tamar Ezer, Melanie Ng, David Stuzin & Conor Arevalo, *Challenging Domestic Injustice Through International Human Rights Advocacy: Addressing Homelessness in the United States*, 42 CARDOZO L. REV. 913, 936–63 (2021) (providing a detailed discussion of Law Center’s strategy for engagement with the international human rights system); HUMAN RIGHTS TO HUMAN REALITY: A 10 STEP GUIDE TO STRATEGIC HUMAN RIGHTS ADVOCACY, NAT’L L. CTR. ON HOMELESSNESS & POVERTY 15 (2014), [https://www.nlchp.org/documents/Human\\_Rights\\_to\\_Human\\_Reality](https://www.nlchp.org/documents/Human_Rights_to_Human_Reality) [https://perma.cc/TE8V-K5TJ].

<sup>210</sup> Gwangju Declaration, *supra* note 16, ¶ 13.

subject to discrimination.”<sup>211</sup> Cities are not uniform and encompass different interests and perspectives.<sup>212</sup> Communities are multi-dimensional with regard to geography, culture, politics, and power, requiring attention to diverse voices and “an awareness of the complexity of the tensions that exist . . . as well as . . . the connections—both self-identified and externally imposed.”<sup>213</sup> As rights are contested and negotiated, participation has significant implications. Cities, however, bring a particular “ability to fuse together conditions of proximate diversity and relational connections.”<sup>214</sup> Meaningful participation can provide an opportunity for diverse voices to shape a new reality and “re-imagine social boundaries.”<sup>215</sup>

### C. EQUALITY AND NON-DISCRIMINATION

Cities can play a critical role in addressing inequality and discrimination, especially when it comes to gender. Adopting a human rights approach proactively addresses discrimination, including disparate impacts and systemic concerns, and encourages the collection of disaggregated data. It further advances women’s rights where jurisdiction has often served as a barrier. Locally based, human rights cities can help resolve tensions between global human rights standards and cultural norms, essential for the realization of women’s rights.

Cities can help advance non-discrimination, a key pillar of the human rights-based approach, which affirms the equality and inherent dignity of all human beings and the need to focus programs proactively on “marginalized, disadvantaged, and excluded groups.”<sup>216</sup> The various human rights city instruments espouse this concept. The EU Framework for Reinforcing Rights Locally defines a human rights city as “an

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<sup>211</sup> Mexico City Charter, *supra* note 93, art. 3.1.1. According to the World Charter for the Right to the City, “Cities should open institutionalized forms and spaces for broad, direct, equitable and democratic participation by male and female citizens in the processes of planning, elaboration, approval, management and evaluation of public policies and budgets.” World Charter for the Right to City, *supra* note 88, art. 3, ¶ 1.

<sup>212</sup> Darling, *supra* note 149, at 126.

<sup>213</sup> Susan L. Brooks & Rachel E. Lopez, *Designing a Clinic Model for a Restorative Community Justice Partnership*, 48 WASH. U. J. L. & POL’Y 139, 151 (2015).

<sup>214</sup> Darling, *supra* note 149, at 123.

<sup>215</sup> *Id.* at 126; *see also* Chueca, *supra* note 71, at 108 (noting that establishing better dialogue to incorporate perspectives of marginalized groups “could lead to the redefinition of the existing social contract to the benefit of subaltern groups”).

<sup>216</sup> UNDG-HRWG, *supra* note 131.

inclusive city that ensures equal rights for all.”<sup>217</sup> The World Charter for the Right to the City sets out equality and non-discrimination as a strategic foundation of the right to the city.<sup>218</sup> The European Charter for the Safeguarding of Human Rights in the City dedicates an article to equality and non-discrimination<sup>219</sup> and urges the adoption of “active policies in support of the most vulnerable of the population.”<sup>220</sup>

Human rights cities in the United States have embraced human rights law’s proactive approach to non-discrimination, addressing disparate impact and systemic barriers. Unlike national standards, focused on responding to complaints and discriminatory intent, human rights call for proactively mitigating factors perpetuating inequality and addressing disparate impact, regardless of intent.<sup>221</sup> Human rights aim at “substantive equality,” or equality in outcomes, and not just “formal equality,” or the non-discriminatory application of rules common in U.S. law.<sup>222</sup> Human rights further focus on systemic solutions that prevent inequality, rather than remedying individual injustice.<sup>223</sup> Advocates for San Francisco’s CEDAW Ordinance were drawn to this proactive orientation.<sup>224</sup> The San Francisco Commission on the Status of Women explained that they were concerned with fairness in both process and result and wanted to “ensure conditions that will enable women to achieve full equality with men.”<sup>225</sup> The resulting ordinance requires an analysis of city resources, policies,

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<sup>217</sup> EU Framework, *supra* note 20, at 12 (further noting that a human rights city “ensures that everyone’s rights are equally respected and protected, particularly for those people who are most vulnerable to human rights violations and social exclusion, in particular Roma and other minorities, migrants, refugees and asylum seekers, persons with disabilities, children and youth, elderly people and homeless persons”).

<sup>218</sup> World Charter for the Right to the City, *supra* note 88, art. 2, ¶ 3.

<sup>219</sup> European Human Rights Charter, *supra* note 64, art. 2.

<sup>220</sup> *Id.* art. 4, ¶ 3.

<sup>221</sup> Hum. Rts. Comm., General Comment No. 18: Non-discrimination, ¶ 6, U.N. Doc. HRI/GEN/1/Rev.1 (July 29, 1989) [hereinafter General Comment No. 18]; *Reclaiming the History*, *supra* note 207, at 156 (noting that international instruments, unlike the U.S. Constitution, “define discrimination broadly, so as to include any act with discriminatory effects or impact, and require the government to provide a remedy, including measures to rectify past discrimination”). Scholars, such as Olatunde Johnson, point to constraints in the current U.S. framework, which include “[s]trains on the private attorney-general regime and the limited efficacy of ex post enforcement regimes in addressing structural exclusion.” Johnson, *supra* note 183, at 140–41.

<sup>222</sup> General Comment No. 18, *supra* note 221, ¶¶ 8, 10; GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 5.

<sup>223</sup> *Challenging a Climate of Hate*, *supra* note 2, at 162–63; *From Principles to Practice*, *supra* note 108, at 84.

<sup>224</sup> Ward & Paoletti, *supra* note 179, at 66.

<sup>225</sup> GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 5.

services, and actions to advance women’s and girls’ equality.<sup>226</sup> It looks beyond deliberate exclusion to address “structures of decision-making, patterns of interaction, and cultural norms . . . that are not immediately discernible at the level of the individual.”<sup>227</sup> Similarly, Eugene’s efforts to address discrimination aim at prevention and not just remedies and include unintentional or passive discrimination.<sup>228</sup>

Cities that have taken human rights responsibilities seriously have also dedicated efforts to the collection and reporting of disaggregated data, critical to tackling discriminatory impacts. This is in accordance with international human rights obligations,<sup>229</sup> which recognize that disaggregated data enables a better understanding of the causes and impacts of discrimination and more effective solutions that target underlying, systemic concerns.<sup>230</sup> After Miami-Dade County passed a CEDAW Ordinance in 2015, its Commission on the Status of Women has focused on data collection on employment, health and safety, and education.<sup>231</sup> Similarly, the Los Angeles CEDAW Executive Directive triggered release of a gender-study with data disaggregated by zip codes and City Council Districts.<sup>232</sup> Likewise, San Francisco invested in

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<sup>226</sup> MENON, *supra* note 104, at 3.

<sup>227</sup> Lozner, *supra* note 155, at 771 (quoting Susan Sturm, *Lawyers and the Practice of Workplace Equity*, 2002 WIS. L. REV. 277, 285–86 (2002)).

<sup>228</sup> *The Promise and Limits of Local Human Rights*, *supra* note 113, at 620.

<sup>229</sup> Comm. on the Elimination of Racial Discrimination, General Recommendation No. 4: Concerning Reporting by State Parties (Art. 1 of the Convention), U.N. Doc. HRI/GEN/1/Rev.6, at 197 (May 12, 2003) (calling for “relevant information on the demographic composition of the population” in state reports); Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 9: Statistical Data Concerning the Situation of Women, U.N. Doc. A/44/38 (1989) (calling upon states to collect statistical information and data disaggregated by gender). CEDAW General Recommendation No. 35 further urges disaggregated data that takes account of “intersecting forms of discrimination.” Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶ 34(a)–(c), U.N. Doc. CEDAW/C/GC/35 (July 14, 2017).

<sup>230</sup> *Challenging a Climate of Hate*, *supra* note 2, at 171–72.

<sup>231</sup> The Miami-Dade Commission for Women publishes annual reports on the status of women under the Miami-Dade CEDAW Ordinance. MIAMI-DADE CNTY. COMM’N FOR WOMEN, STATUS OF WOMEN ANNUAL REPORTS, <https://www.miamidade.gov/global/government/boards/commission-for-women.page> [<https://perma.cc/LU74-R2FP>]; *see also* World Charter for the Right to the City, *supra* note 88, art. 18, ¶ 4 (“Cities should establish, together with their inhabitants, evaluation and monitoring mechanisms through an effective system of . . . indicators, with gender differentiation.”) (emphasis omitted).

<sup>232</sup> GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 10–11. The Executive Directive itself focuses on data, “metrics [and indicators] related to the status of women and girls.” Los Angeles Executive Directive No. 11, *supra* note 110.



disaggregated data collection, including forming a working group to guide efforts and develop benchmarks for measuring progress.<sup>233</sup> According to San Francisco's Department on the Status of Women, "data collection has been integral to the city's ability to measure and quantify the status of women, and to the city's ability to develop policies to effect change."<sup>234</sup> Emily Murase from the San Francisco's Department on the Status of Women further remarked on the impact of data collection and gender analyses on the city workforce, services, and budget: "[o]nce you start counting it, things start to happen."<sup>235</sup>

The adoption of human rights standards at the city level is particularly significant for women's equality, where jurisdiction has often served as a barrier to progress.<sup>236</sup> In the United States, social welfare and family matters, which are of great importance to women's equality, are considered the domain of state and local authorities,<sup>237</sup> making local leadership essential. After ratifying the ICCPR, the United States specifically highlighted marriage, divorce, and the care of children as areas governed by state and local authorities.<sup>238</sup> Federal statutes generally give states primary authority over programs focused on women and children.<sup>239</sup> In *United States v. Morrison*, the U.S. Supreme Court even held that Congress overstepped its powers by authorizing federal courts to address civil claims by survivors of gender-based violence.<sup>240</sup> This holding has hampered the United States' ability to ratify treaties promoting women's equality. In 1952, Secretary of State Dulles explained that the United States should not be a party to CEDAW since the "equal political status" of women was not a "proper field for exercise of the treaty-making power."<sup>241</sup> The theme of international law intruding into gender and family relations also emerged in hearings on the Bricker Amendment, discussed below.<sup>242</sup> Opponents of human rights treaties

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<sup>233</sup> S.F., CAL., ADMIN. CODE, § 33A.4(b); MENON, *supra* note 104, at 9.

<sup>234</sup> GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 9.

<sup>235</sup> Shields, *supra* note 34.

<sup>236</sup> Judith Resnik, *Categorical Federalism: Jurisdiction, Gender, and the Globe*, 111 YALE L.J. 619, 625 (2001) [hereinafter *Categorical Federalism*].

<sup>237</sup> U.S., Initial Report to the Human Rights Committee, ¶ 3, CCPR/C/81/Add.4 (Aug. 24, 1994) [hereinafter *Initial Report to the Human Rights Committee*].

<sup>238</sup> *Law's Migration*, *supra* note 104, at 1591 ("These [federal statutes] reinforced an impression that states have unique responsibilities for family life . . .").

<sup>239</sup> *Id.*

<sup>240</sup> *United States v. Morrison*, 529 U.S. 598 (2000).

<sup>241</sup> *Law's Migration*, *supra* note 104, at 1611.

<sup>242</sup> *Categorical Federalism*, *supra* note 236, at 667.

expressed alarm at “surrendering American domestic matters to the norm setting of the international community.”<sup>243</sup>

Historically, jurisdiction has been used to block women’s rights by relying on a false public-private distinction. Family was considered a private domain free from state oversight. Judith Resnik describes “a painful history of using jurisdiction as a justification for patriarchal control”<sup>244</sup> “first by a claim that the family was itself a jurisdiction free from state superintendence and then by arguing that the family was a specially situated arena sheltered from government intrusion.”<sup>245</sup> At an extreme, under the law of coverture, women’s legal identity and will were once considered subsumed in that of their husbands.<sup>246</sup> Thus, the public sphere was defined to exclude families and the world of women. Falling outside the public sphere, women were often invisible to the law.

However, laws support a particular kind of family with public import. Families are embedded in society, requiring its support. Recognizing this social dimension, feminists perceived the private realm as “the heart of politics,” and the post-1968 women’s movement adopted the slogan: “the personal is political.”<sup>247</sup> President Jimmy Carter echoed this slogan in calling for CEDAW’s ratification: “[H]uman rights in general and women’s rights in particular are matters of legitimate concern to the international community and are not subjects with exclusively domestic ramifications.”<sup>248</sup> Thus, it is not surprising that pioneering work on human rights at the city level in the United States has focused on CEDAW with the Cities for CEDAW movement.

Building on this movement, U.S. cities have further challenged domestic violence through a human rights lens. By 2016, more than twenty cities had passed resolutions declaring freedom from domestic violence a human right.<sup>249</sup> The resolutions in Austin and Travis County,

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<sup>243</sup> *Law’s Migration*, *supra* note 104, at 1636; *see also* *By Some Other Means*, *supra* note 49, at 2025–26.

<sup>244</sup> *Categorical Federalism*, *supra* note 236, at 625.

<sup>245</sup> *Id.*

<sup>246</sup> Ezer, *supra* note 46, at 36.

<sup>247</sup> *Id.* at 36 (quoting Kathleen Mahoney, *Theoretical Perspectives on Women’s Human Rights and Strategies for their Implementation*, 21 *BROOKLYN J. INT’L L.* 799, 801 (1996)); *see also* Linda Napikoski, *The Personal Is Political*, *THOUGHTCO* (Jan. 3, 2020), [http://womenshistory.about.com/od/feminism/a/consciousness\\_raising.htm](http://womenshistory.about.com/od/feminism/a/consciousness_raising.htm) [<https://perma.cc/9KHR-SXLL>].

<sup>248</sup> *Law’s Migration*, *supra* note 104, at 1657. In fact, women’s suffrage in the United States was part of a global effort, where activists worked through networks across countries. *Id.* at 1576–77, 1584.

<sup>249</sup> *GENDER EQUITY THROUGH HUMAN RIGHTS*, *supra* note 47, at 13.

Texas further requested the local Family Violence Task Force to produce biannual reports, evaluating practices and procedures and issuing recommendations for improvement.<sup>250</sup> Tompkins County's resolution calls for "a study of the causes of local domestic violence incidents and of the gaps and barriers in local governments' service delivery to survivors of domestic violence, with the goals of preventing domestic violence, strengthening the county-wide response to domestic violence, and improving the provision of services to survivors."<sup>251</sup> When Miami-Dade County updated its anti-discrimination ordinance, it added victims of domestic violence to its list of protected classes, referencing its resolution on freedom from domestic violence.<sup>252</sup>

Many of these resolutions resulted from advocacy in reaction to the tragic *Town of Castle Rock v. Gonzales* case,<sup>253</sup> which typifies the narrow, negative view of rights in the United States and fails to recognize government responsibility to act with due diligence to prevent violations. In that case, in violation of a restraining order, Mr. Gonzales abducted his three daughters.<sup>254</sup> Although Ms. Gonzales (now Lenahan) repeatedly contacted the police, and the restraining order called for mandatory arrest upon violation, the police failed to investigate, and later that night, Mr. Gonzales was discovered with the bodies of his three daughters.<sup>255</sup> The Supreme Court then held that no rights were violated as there is no constitutional right to protection by the state or individual interest in enforcement of a restraining order.<sup>256</sup> This holding reflects the prevalent negative view of rights in the United States, where the Constitution is perceived as telling states what they may do, rather than what they must

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<sup>250</sup> *Id.*

<sup>251</sup> Tompkins County, N.Y., Resolution Declaring Freedom from Domestic Violence as a Human Rights (Mar. 4, 2015) [hereinafter *Tompkins Resolution*].

<sup>252</sup> GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 13; *Commission on Human Rights*, MIAMI-DADE CTY., <https://www.miamidade.gov/global/humanresources/fair-employment/commission-on-human-rights-board.page> [https://perma.cc/3UV9-9RZV] (citing MIAMI-DADE CTY., FLA., CTY. CODE ch. 11-A (2014)).

<sup>253</sup> *E.g.*, *Tompkins Resolution*, *supra* note 251 ("WHEREAS, in 2011, the Inter-American Commission on Human Rights found in *Jessica Lenahan (Gonzales) v. United States* that the United States' failure to protect women from gender-based violence constitutes discrimination and a human rights violation and urged the United States to enact law and policy reforms at all levels to protect survivors of domestic violence and their children . . .").

<sup>254</sup> *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 785 (2005).

<sup>255</sup> *Id.*

<sup>256</sup> *Id.* at 768.

do.<sup>257</sup> This approach, however, relies on an action/inaction distinction that is often as arbitrary and false as the one between public and private space, since the government is heavily involved in maintaining the baseline status quo.<sup>258</sup>

Human rights, by contrast, recognize government responsibility “not only to refrain from encouraging acts of violence against women but actively to intervene in preventing such acts from taking place.”<sup>259</sup> Radhika Coomaraswamy, the first Special Rapporteur on Violence against Women, went so far as to state that “[p]erhaps the greatest cause of violence against women is government inaction with regard to crimes of violence against women.”<sup>260</sup> Human rights instruments define a “due diligence” standard, requiring government “to exercise due diligence to prevent, investigate, punish and provide reparations for acts of violence.”<sup>261</sup>

After losing in the Supreme Court, Ms. Lenahan took her case to the Inter-American Commission on Human Rights. The Commission concluded that the United States failed to act with due diligence to protect Jessica and her daughters from domestic violence in violation of its obligations not to discriminate and to ensure equal protection before the law, as well as the daughters’ right to life.<sup>262</sup> The Commission called for both individual and systemic remedies.<sup>263</sup> It recommended investigation and reparations with regards to Ms. Lenahan’s case, as well as an investigation of “systemic failures” and updated legislation, policies and protocols.<sup>264</sup> The Committee further called for “the eradication of

<sup>257</sup> Ezer, *supra* note 46, at 6–7. An example of this is the *DeShaney* case decided by the Supreme Court in 1989, holding that no rights were violated when four-year-old child, Joshua, was beaten by his father to the point of brain damage. *DeShaney v. Winnebago Cty. Dep’t Soc. Servs.*, 489 U.S. 189, 191 (1989). In this case, the government returned Joshua to his father’s home, and a social worker stood by and “dutifully recorded” incidents of abuse in her file. *Id.* at 193. When told of Joshua’s last beating, the social worker said, “I just knew the phone would ring some day and Joshua would be dead.” *Id.* at 209.

<sup>258</sup> Ezer, *supra* note 46, at 34–35.

<sup>259</sup> Radhika Coomaraswamy (Special Rapporteur), Comm’n on Hum. Rts., Preliminary Rep. Submitted by the Special Rapporteur on Violence Against Women, ¶ 51, U.N. Doc. E/CN.4/1995/42 (Nov. 22, 1994).

<sup>260</sup> *Id.* ¶ 72.

<sup>261</sup> *E.g.*, Eur. Consult. Ass., *Convention on Preventing and Combating Violence Against Women and Domestic Violence*, Doc. No. 210, art. 5, ¶ 2 (2011) [hereinafter *Istanbul Convention*].

<sup>262</sup> *Lenahan v. United States*, Case 12.626, Inter-Am. Comm’n H.R., Report No. 90/11, ¶ 5 (2011).

<sup>263</sup> *Lenahan v. United States*, Case 12.626, Merits, Inter-Am. Comm’n H.R., Report No. 80/11 OEA/Ser.L/V/II, doc. 69 ¶¶ 201, 215 (July 21, 2011).

<sup>264</sup> *Id.*

discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs."<sup>265</sup> This call then sparked a movement for better policies and procedures to be taken up by cities, as well as at the national level with Department of Justice guidance.<sup>266</sup>

The use of jurisdiction to suppress women's equality is not unique to the United States. For instance, in many countries with a history of colonialism, customary law—operating alongside statutory law—governs family or private life and has been used to “carv[e] out a space where human rights protections are denied and discrimination can flourish.”<sup>267</sup> Human rights cities have the potential to resolve the inherent tension between local customs and global rights standards, which is especially critical to the realization of women's rights as they are often bound up in cultural norms. Anchored in local initiatives, city efforts to implement human rights can counter accusations that they undermine local traditions and values. It is no accident that Rosario, Argentina became the first human rights city in 1997 due to the efforts of a women's rights organization working with PDHRE in preparation for the U.N. World Conference on Women in Beijing.<sup>268</sup> In this way, adopting a human rights

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<sup>265</sup> *Id.*

<sup>266</sup> Press Release, Loretta E. Lynch, Attorney General, Department of Justice Guidance on Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence (Dec. 15, 2015), <https://www.justice.gov/opa/pr/justice-department-issues-guidance-identifying-and-preventing-gender-bias-law-enforcement> [https://perma.cc/H6HD-DNKS].

<sup>267</sup> Tamar Ezer, *Forging a Path for Women's Rights in Customary Law*, 27 HASTINGS WOMEN'S L.J. 65, 66–67 (2016). The constitutions of countries such as Botswana and Lesotho explicitly include “clawback clauses” exempting customary law from the prohibition against discrimination. *Id.* at 66. Additionally, when ratifying CEDAW, countries such as Lesotho entered reservations exempting themselves from eliminating discrimination in customary practices as they relate to inheritance and chieftainship. *Id.* at 66–67; see also Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries*, 41 HARV. INT'L L.J. 381, 391 (2000) (explaining how feminists have challenged the public/private distinction, “noting that violations against women occur mainly in the private sphere, and refusal to intervene perpetuates structures that deny women equal enjoyment of rights”); Johanna E. Bond, *Constitutional Exclusion and Gender in Commonwealth Africa*, 31 FORDHAM INT'L L.J. 289, 316–20 (2008) (describing the flawed public/private dichotomy and how it has harmed women).

<sup>268</sup> Esther Van Den Berg, *Making Human Rights the Talk of the Town: Civil Society and Human Rights Cities, a Case Study of the Netherlands*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES, *supra* note 10, at 44, 56. Rosario's action plan included a Court on the Violation of Girls' Human Rights, a Training Seminar on Girls' Human Rights, and a series of move debates on women's human rights. MARKS ET AL., *supra* note 7, at 52–53.

framework has important implications for equality and non-discrimination. It leads to a more proactive and systemic approach, facilitates efforts to collect disaggregated data, and dismantles jurisdictional barriers to women's equality.

#### IV. CITIES AS HUMAN RIGHTS ACTORS IN THE INTERNATIONAL SPHERE

While the international human rights regime has traditionally focused on national governments, it recognizes a role for cities, increasingly appreciating their importance. However, the international human rights regime is still unclear as to how best to engage with cities, marking an important area for further development. At minimum, international human rights bodies should regularly interrogate the relationship between the state and local governments, engage in dialogue with local governments, and call for local consultations to enrich human rights reporting by states and civil society. The addition of Office of the U.N. High Commissioner for Human Rights ("OHCHR") staff with local expertise would enable higher levels of engagement by treaty bodies and assistance to city initiatives that would strengthen implementation of human rights at the local level.

##### A. A TRADITIONAL FOCUS ON NATIONAL AUTHORITY

International law privileges national authority. As the U.N. Human Rights Council<sup>269</sup> notes, "[a]s a matter of international law, the State is one single entity, regardless of its unitary or federal nature and internal administrative division."<sup>270</sup> The national government represents the state in the international sphere and assumes responsibility for all treaty obligations.<sup>271</sup> Thus, the various international human rights bodies primarily address the national government,<sup>272</sup> and the national government is internationally held responsible for failures at the local level.<sup>273</sup> The underlying assumption is that national governments have the power to

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<sup>269</sup> The Human Rights Council, consisting of state representatives, is the main intergovernmental body responsible for human rights. *What We Do: Overview*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, <https://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx> [<https://perma.cc/KM8E-5H57>].

<sup>270</sup> *HRC August 2015 Report*, *supra* note 9, ¶ 17–18.

<sup>271</sup> *Id.* ¶ 17.

<sup>272</sup> Farha, *supra* note 123, ¶ 27; Starl, *supra* note 68, at 202.

<sup>273</sup> Powell, *supra* note 168, at 294; *By Some Other Means*, *supra* note 49, at 118–19.

ensure implementation of treaty obligations by subnational entities.<sup>274</sup> Indeed, under the Vienna Convention on the Law of Treaties, states “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”<sup>275</sup>

#### B. INCREASING RECOGNITION OF THE ROLE OF CITIES

At the same time, international law recognizes a role for local government, and international bodies are increasingly engaging with local authorities. This follows from growing decentralization of state authority and is in line with the principle of subsidiarity. Cities that adopt a human rights framework deliberately embrace an international dimension. However, international human rights bodies have not developed a systematic approach for engaging with local authorities and persist in looking to national governments to resolve all violations.<sup>276</sup> This gap is particularly problematic in federalist countries, like the United States, where much of the responsibility for human rights implementation falls on localities, and the federal government is limited in its ability to control local actions.

Human rights law recognizes that human rights obligations apply to all levels of government. For instance, the ICCPR calls for its provisions to “extend to all parts of the federal states without any limitations or exceptions.”<sup>277</sup> Similarly, the U.N. Special Rapporteur on adequate housing affirms that obligations “extend to all levels of government and to any exercise of government authority.”<sup>278</sup> Moreover, international law

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<sup>274</sup> Starl, *supra* note 68, at 202.

<sup>275</sup> Vienna Convention on the Law of Treaties art. 27, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention on the Law of Treaties]. The United States signed the Vienna Convention on April 24, 1970. *Vienna Convention on the Law of Treaties*, U.S. DEP’T OF STATE, <http://www.state.gov/s/l/treaty/faqs/70139.htm> [<https://perma.cc/WCT3-N27H>]. Nevertheless, it considers many of its provisions “to constitute customary international law on the law of treaties,” indicating its intention to abide by them. *Id.*

<sup>276</sup> Martha F. Davis, *Cities, Human Rights and Accountability: The United States Experience*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES, *supra* note 10, at 23, 40 [hereinafter *Cities, Human Rights and Accountability*]; Soohoo, *supra* note 10, at 260.

<sup>277</sup> ICCPR, *supra* note 37, art. 50; *see also* Hum. Rts. Comm., General Comment No. 31: Nature of the General Legal Obligation on States Parties to the Covenant, ¶ 4, U.N. Doc. No. CCPR/C/21/Rev.1/Add.13 (2004) (referencing Article 50 and noting that all “public or governmental authorities, at whatever level—national, regional or local—are in a position to engage the responsibility of the State Party”).

<sup>278</sup> Farha, *supra* note 123, ¶ 9.

provides for delegation of treaty implementation provisions to local authorities.<sup>279</sup>

International human rights bodies are increasingly engaging with localities. The U.N. Special Rapporteurs, independent human rights experts with particular thematic or country mandates,<sup>280</sup> are leading the way. They frequently reference local examples in their country reports,<sup>281</sup> and the Special Rapporteur on adequate housing, in particular, has focused attention on subnational entities and has dedicated one of her U.N. reports to this area.<sup>282</sup> However, even the Special Rapporteurs are “careful to reinforce at every stage that the federal government is subject to international human rights treaty obligations, not states or local communities.”<sup>283</sup> They address their communications to the national government, and in response, states rarely indicate what they have conveyed to local authorities and actions taken at the local level to address violations.<sup>284</sup>

The U.N. human rights treaty bodies are also paying increasing attention to local authorities. The Committee on the Elimination of Racial Discrimination (“CERD”), monitoring compliance with ICERD, for instance, has recognized that “the autonomy of municipalities has acted ‘as a major obstacle’ to achieving non-discrimination in access to social housing.”<sup>285</sup> CESCR, monitoring compliance with the International Covenant of Economic, Social and Cultural Rights (“ICESCR”),<sup>286</sup> has pointed to the need to include the right to adequate housing in subnational laws.<sup>287</sup> In a 2011 decision, the Human Rights Committee (“HRC”),

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<sup>279</sup> *By Some Other Means*, *supra* note 49, at 1988; *see also From Principles to Practice*, *supra* note 108, at 81 (“Shared authority for human rights is consistent with international law, which permits the federal government to delegate human rights implementation, while remaining ultimately responsible for treaty compliance.”).

<sup>280</sup> For information on the Special Rapporteurs, please see *FAQS: United Nations Special Rapporteurs*, ACLU, <https://www.aclu.org/other/faqs-united-nations-special-rapporteurs> [<https://perma.cc/7ZM6-9H29>]; *see also Special Procedures of the Human Rights Council*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx> [<https://perma.cc/N8MX-CEH7>].

<sup>281</sup> *Cities, Human Rights and Accountability*, *supra* note 276, at 33–34; Farha, *supra* note 123, ¶¶ 35–36.

<sup>282</sup> Farha, *supra* note 123.

<sup>283</sup> *Cities, Human Rights and Accountability*, *supra* note 276, at 35.

<sup>284</sup> Farha, *supra* note 123, ¶ 39.

<sup>285</sup> *Id.* ¶ 31.

<sup>286</sup> ICESCR, *supra* note 160.

<sup>287</sup> Farha, *supra* note 123, ¶ 30.



monitoring compliance with the ICCPR, found that the forced eviction of a Roma community initiated by the Sofia Metropolitan Municipality in Bulgaria violated the ICCPR's prohibition against "arbitrary or unlawful interference with . . . privacy, family, [and] home."<sup>288</sup> Bulgaria then used the Committee's decision to compel the municipality not to complete the eviction.<sup>289</sup> In a 2008 decision, the Committee on the Elimination of Discrimination against Women ("CEDAW Committee"), monitoring compliance with CEDAW, likewise grappled with municipal actions in the housing context. It found that a local housing authority in Canada violated spouses' equal rights to property in its treatment of an indigenous woman subjected to domestic violence and dispossessed of her home.<sup>290</sup>

Other U.N. human rights bodies are also engaging with local governments. In 2015, the Human Rights Council's Advisory Committee prepared a report on the role of local government in human rights protection, including best practices and challenges.<sup>291</sup> The High Commissioner for Human Rights then followed up on this in 2019 with a report on local government and human rights.<sup>292</sup> The Human Rights Council's Universal Periodic Reviews ("UPR"), or peer reviews of a country's human rights record by U.N. member states,<sup>293</sup> increasingly include local and regional perspectives.<sup>294</sup> However, the recommendations largely focus on human rights obligations at the national level.<sup>295</sup>

Local governments are also playing a greater role in global agenda setting. San Francisco, for instance, is a regular participant at sessions of

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<sup>288</sup> ICCPR, *supra* note 37, art. 17, ¶ 1.

<sup>289</sup> Farha, *supra* note 123, ¶ 32 (citing Hum. Rts. Comm., Comm'n No. 2073/2011, U.N. Doc. No. CCPR/C/106/D/2073/2011 (Nov. 27, 2012)) (discussing views on Liliana Assenova Nidenova et al. v. Bulgaria adopted by the Human Rights Committee).

<sup>290</sup> *Id.* ¶ 33 (citing Comm. on the Elimination of Discrimination Against Women, Comm'n No. 19/2008, U.N. Doc. No. CEDAW/C/51/D/19/2008 (Apr. 27, 2012)) (discussing views on Kell v. Canada adopted by the Committee on the Elimination of Discrimination Against Women).

<sup>291</sup> *HRC August 2015 Report*, *supra* note 9, ¶ 2.

<sup>292</sup> *Annual Rep. of the U.N. High Commissioner*, *supra* note 161.

<sup>293</sup> *Universal Periodic Review*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> [https://perma.cc/9KHZ-CU4B].

<sup>294</sup> Starl, *supra* note 68, at 201; *see also Annual Rep. of the U.N. High Commissioner*, *supra* note 161, ¶ 42 (noting that "[l]ocal governments increasingly contribute to and participate in the work of the universal periodic review").

<sup>295</sup> Farha, *supra* note 123, ¶ 34. *E.g.*, Hum. Rts. Council, Rep. of the Working Group on the Universal Periodic Review, U.N. Doc. A/HRC/46/15/Add.1 (Mar. 4, 2021).

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the U.N. Commission on the Status of Women.<sup>296</sup> Moreover, cities are particularly engaged on environmental issues.<sup>297</sup>

One factor behind this increasing attention to the local level is the growing decentralization of authority and transfer of public functions to local government. Decentralization has been on the rise since the 1990s,<sup>298</sup> and services previously provided by the state are increasingly devolved to urban centers.<sup>299</sup> The goal is to “enhance participatory democracy and transparency,”<sup>300</sup> making services more responsive to people’s needs.<sup>301</sup> However, this has also meant that states must increasingly rely on local governments to implement their human rights obligations.<sup>302</sup> Nonetheless, the human rights implications of decentralization have received scant consideration.<sup>303</sup>

Growing decentralization is in line with the principle of subsidiarity, also espoused by international law. Under this principle, central authority should be subsidiary, “performing only those tasks which cannot be performed at a more local level.”<sup>304</sup> This principle encourages the resolution of problems “where they occur, by those who understand them best, and by those who are most affected by them.”<sup>305</sup> Decision-making lies “closest to the people”<sup>306</sup> with redress “at the immediate site of abuse.”<sup>307</sup> The European Charter for the Safeguarding of Human Rights in the City adheres to this principle, calling for the operation of public services “on the administrative level closest to the people.”<sup>308</sup>

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<sup>296</sup> *Cities, Human Rights and Accountability*, *supra* note 276, at 33.

<sup>297</sup> *Id.*; see also Cathryn C. Ashbrook & Daniela Haarhuis, *Micro-Multilateralism: Cities Saving UN Ideals*, HARV. KENNEDY SCH. BELFER CTR. FOR SCI. & INT’L AFFS. (Sept. 19, 2019), <https://www.belfercenter.org/publication/micro-multilateralism-cities-saving-un-ideals> [<https://perma.cc/Y5H2-C9UX>] (discussing how cities have been tackling transnational issues).

<sup>298</sup> Farha, *supra* note 123, ¶ 16.

<sup>299</sup> Darling, *supra* note 149, at 124–25.

<sup>300</sup> Farha, *supra* note 123, ¶ 17.

<sup>301</sup> Soohoo, *supra* note 10, at 265.

<sup>302</sup> Farha, *supra* note 123, ¶ 5.

<sup>303</sup> *Id.* ¶ 20.

<sup>304</sup> *Subsidiary*, LEXICO.COM, <https://en.oxforddictionaries.com/definition/subsidiarity> [<https://perma.cc/8KNG-2CGF>].

<sup>305</sup> Melish, *supra* note 158, at 439 (quoting J.E. Linnan, *Subsidiarity, Collegiality, Catholic Diversity and Their Relevance to Apostolic Visitations*, 49 JURIST 399, 403 (1989)).

<sup>306</sup> Farha, *supra* note 123, ¶ 17; see also Melish, *supra* note 158, at 456–57 (pointing to “subsidiary’s premise” that decision-making and monitoring occur “as close as possible to the affected individual”).

<sup>307</sup> Melish, *supra* note 158, at 458.

<sup>308</sup> European Human Rights Charter, *supra* note 64, art. 7, ¶ 2.

The principle of subsidiarity is fundamental to international law. States play the primary role in enforcing human rights obligations, and international and regional bodies serve in a supportive capacity, intervening only when domestic resolution is ineffective. Accordingly, exhaustion of domestic remedies is a requirement prior to consideration of a complaint at the international or regional levels.<sup>309</sup> Additionally, the European Court of Human Rights developed the doctrine of “margin of appreciation,” granting states a degree of latitude and discretion in interpreting rights and addressing violations.<sup>310</sup> Furthermore, this doctrine provides room for a state’s unique culture, history, and legal system to inform implementation.<sup>311</sup> Through periodic reviews, treaty bodies serve a mostly supervisory and monitoring function with the aim of strengthening domestic processes.<sup>312</sup> This limited monitoring role enables local shaping and relevance of rights, as well as democratic participation. As Kaufman explains, “[B]y respecting and enabling the primacy of local institutions, the human rights system ensures that human rights values and approaches reflect the concerns and needs of local communities, allowing for a more ‘authentic,’ effective and relevant approach to rights protection.”<sup>313</sup> In this way, although the international human rights regime focuses on the national level, a strong role for local governments aligns with its principles.

For their part, cities that adopt human rights standards are eager for international engagement. The Global Charter-Agenda for Human Rights in the City explicitly pledges collaboration with international human rights mechanisms.<sup>314</sup> In its description of the human rights cities movement, the U.S. Human Rights Network points to its value in “offer[ing] a rich body of international human rights law that validates and reinforces local claims” and “connect[ing] local communities with a global human rights movement.”<sup>315</sup> The human rights framework is inherently international, providing cities with access to global networks. This includes formal

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<sup>309</sup> *Introduction: Key Terms*, FRANÇOIS-XAVIER BAGNOUD CTR. FOR HEALTH & HUM. RTS., <https://www.hhrguide.org/281-2/> [<https://perma.cc/7BRR-PLBX>] (defining “[e]xhaustion of domestic remedies”).

<sup>310</sup> Graham et al., *supra* note 125, at 184.

<sup>311</sup> *Id.*; see also *By Some Other Means*, *supra* note 49, at 2007.

<sup>312</sup> Melish, *supra* note 158, at 452.

<sup>313</sup> *From Principles to Practice*, *supra* note 108, at 85; see also Melish *supra* note 158, at 455 (discussing the domestication of human rights “in locally relevant, democratically sanctioned, and indigenized ways, as close as possible to the individual”).

<sup>314</sup> Global Charter-Agenda, *supra* note 64, at 14.

<sup>315</sup> *The Human Rights Cities Movement*, *supra* note 6.

actors in the human rights system, as well as informal relations. According to Michele Grigolo, “[w]hat makes the human rights city is a web of formal and informal networks that include international . . . governmental and non-governmental organisations.”<sup>316</sup> These international connections further provide a cosmopolitan identity<sup>317</sup> and may bring political, social, and economic benefits.<sup>318</sup> For instance, conceiving itself as an “international city,” the City of York in the United Kingdom embraced the global framing of human rights.<sup>319</sup> Commissioner Patricia L. Gatling, who chaired the New York City Commission on Human Rights, recognized that rights protection contributes to a global city, which draws people and economic opportunities: “[C]reating and maintaining an open city in terms of housing, lending, employment, and public accommodation is a critical part of attracting business and individuals to New York City and keeping them here.”<sup>320</sup>

### C. RECOMMENDATIONS FOR BETTER ENGAGEMENT

While international human rights bodies may be limited in their capacity to review local practices comprehensively,<sup>321</sup> as the Special Rapporteur on adequate housing notes, “there is room for considerably more engagement with the responsibilities of subnational governments” at the international level.<sup>322</sup> Human rights bodies already acknowledge the essential role of local authorities and just need to take the next step, systematically applying the implications to their mandate. They can interrogate the relationship between the state and local governments, engage in dialogue with local governments, and call for local consultation. Higher level engagement and the strengthening of local initiatives would be possible with additional support from OHCHR.

One area that would especially benefit from sustained attention by international human rights bodies is the relationship between the national

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<sup>316</sup> Grigolo, *supra* note 123, at 282.

<sup>317</sup> Lesley Wexler, *Take the Long Way Home: Sub-Federal Integration of Unratified and Non-Self-Executing Treaty Law*, 28 MICH. J. INT’L L. 1, 13 (2006) [hereinafter *Take the Long Way Home*].

<sup>318</sup> Darling, *supra* note 149, at 128; Grigolo, *supra* note 123, at 283.

<sup>319</sup> Graham et al., *supra* note 125, at 187.

<sup>320</sup> Lozner, *supra* note 155, at 793–94 (quoting Sam Dolnick, *Rights Revival? One City Agency That Didn’t Take a Budget Cut*, *Village Voice*, VILLAGE VOICE, May 8–14, 2002, at 24).

<sup>321</sup> Soohoo, *supra* note 10, at 259–60 (noting the lack of resources and “current strains on treaty bodies”).

<sup>322</sup> Farha, *supra* note 123, ¶ 27.

government and localities. Accountability requires clarity about which responsibilities lie with which level of government.<sup>323</sup> Moreover, the various levels of government should be reinforcing and complementing each other.<sup>324</sup> In the housing realm, CESCR has called for “coordination between ministries and regional and local authorities to reconcile related policies.”<sup>325</sup> In a General Comment, the Committee on the Rights of the Child (“CRC Committee”), responsible for monitoring compliance with the Convention on the Rights of the Child (“CRC”),<sup>326</sup> provides additional guidance, requiring states to ensure localities “have the necessary financial, human and other resources effectively to discharge responsibilities.”<sup>327</sup> The CRC Committee further highlighted the important monitoring role of the national government and expressed concern with parity among localities, calling for “safeguards” to ensure “devolution does not lead to discrimination in the enjoyment of rights by children in different regions.”<sup>328</sup> These concerns apply to monitoring the enforcement of rights more generally by the various human rights bodies.

International human rights bodies, perhaps most controversially, can also engage in dialogue with local governments. In the General Comment referenced above, the CRC Committee was quick to stress that ultimate responsibility for human rights obligations lies with the national government, which “must retain powers to require full compliance with the Convention by devolved administrations or local authorities.”<sup>329</sup> While national governments should by no means be excused from their treaty responsibilities, it is a wilful fallacy to pretend that they always have the power to ensure local compliance, even if this is what they ardently desire.<sup>330</sup> Human rights bodies can address recommendations to

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<sup>323</sup> *Id.* ¶ 21(c).

<sup>324</sup> *HRC August 2015 Report*, *supra* note 9, ¶ 21.

<sup>325</sup> Comm. on Econ., Soc. & Cultural Rts., General Comment No. 4: The Right to Adequate Housing, ¶ 12, U.N. Doc. E/1992/23 (Dec. 13, 1991).

<sup>326</sup> Convention on the Rights of the Child, *adopted* November 20, 1989, 1577 U.N.T.S. 3.

<sup>327</sup> Comm. on the Rts. of the Child, General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/5, ¶ 6 (Nov. 23, 2003) [hereinafter U.N. Comm. on the Rts. of the Child]. In its report, the Human Rights Council Advisory Committee likewise pointed to the need for local authorities to have “necessary powers and financial resources” to fulfil their human rights obligations. *HRC August 2015 Report*, *supra* note 9, ¶ 22.

<sup>328</sup> U.N. Comm. on the Rts. of the Child, *supra* note 327, ¶ 41.

<sup>329</sup> *Id.*

<sup>330</sup> For example, the Supreme Court clarified that the executive branch cannot compel compliance with treaty obligations by states or localities absent implementing legislation. *Medellin v. Texas*, 552 U.S. 491, 498–99 (2008).

both the national and local levels and follow up with national governments to ensure recommendations are conveyed to local authorities. In its report, the Human Rights Council Advisory Committee calls for consistent dissemination of UPR recommendations and concluding observations by treaty bodies to local governments.<sup>331</sup>

Additionally, international human rights bodies can emphasize the importance of local consultation to inform state and NGO reports. The Human Rights Council Advisory Committee specifically recommended that “United Nations mechanisms . . . encourage States to engage in a dialogue with local governments” and highlighted the importance of involving local government in the UPR process to “improve the quality of the follow-up to the accepted recommendations.”<sup>332</sup> The High Commissioner of Human Rights similarly called for local governments to be “increasingly involved in the work of regional and international human rights mechanisms” and “more engaged” in both the preparation of state reports and delegations attending reviews.<sup>333</sup> Meaningful engagement with local authorities need not entail a separate reporting process for treaty bodies with cities, which could be quite burdensome,<sup>334</sup> but rather attention to the local dimension in both government and NGO shadow reports.<sup>335</sup> Human rights bodies already digest and benefit from “a very large number of ‘shadow reports’ from NGOs on many countries and on many issues,”<sup>336</sup> which is critical to assessing state compliance. At a basic level, human rights bodies should incorporate a local lens in analyzing these reports, focusing on relations between national and local authorities and egregious violations at the local level.

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<sup>331</sup> *HRC August 2015 Report*, *supra* note 9, ¶ 77; *see also Annual Rep. of the U.N. High Commissioner*, *supra* note 161, ¶ 43 (highlighting that “recommendations received by a State should be disseminated by the central government to the local government, and other relevant actors”).

<sup>332</sup> *HRC August 2015 Report*, *supra* note 9, ¶ 77.

<sup>333</sup> *Annual Rep. of the U.N. High Commissioner*, *supra* note 161, ¶ 65.

<sup>334</sup> *Cities, Human Rights and Accountability*, *supra* note 276, at 32. Berkeley is exceptional in submitting its own reports to treaty bodies, viewing this as a temporary measure to deepen engagement at the national level and stimulate consultation with local governments. *Id.*

<sup>335</sup> For instance, the U.S. Human Rights Network compiles a shadow report for the Committee on the Elimination of Racial Discrimination, bringing together experiences from communities around the United States. *The Human Rights Cities Movement*, *supra* note 6, at 3 n.7.

<sup>336</sup> PAUL HUNT, *HUMAN RIGHTS, HEALTH AND HARM REDUCTION: STATES’ AMNESIA AND PARALLEL UNIVERSES 7* (2008) (describing a U.N. Special Rapporteur’s experience serving on the Committee on Economic, Social and Cultural Rights).

Higher-level analysis would be further possible with additional OHCHR support by dedicated staff with local government expertise.<sup>337</sup> Cities that embrace a human rights framework indicate a desire to be governed by human rights standards and engage internationally. Designation as a human rights city can serve as a basis for resources and accountability for human rights implementation. However, international human rights bodies are generally not prepared to engage with cities, missing this opportunity. OHCHR currently supports the various U.N. human rights bodies in standard-setting and monitoring, as well as governments in human rights implementation in eighty-five field offices.<sup>338</sup> The addition of dedicated staff with local government expertise and a mandate to aid city initiatives could be transformative.

In this way, international human rights bodies can play an important role in strengthening human rights enforcement by deepening engagement with localities. A good starting point is to investigate the relationship between states and localities, including the division of responsibility and authority, access to resources and support at the local level, the existence of regional disparities, and monitoring and coordination by the national government. Human rights bodies should also address specific recommendations to localities and follow up with national governments to ensure they are conveyed, encouraging local consultation and dialogue. Additional OHCHR support would enable higher level engagement by international human right bodies and assistance to strengthen local human rights initiatives.

## V. CITIES AS HUMAN RIGHTS ACTORS IN THE UNITED STATES

In the United States, cities have the potential to serve as important human rights actors. Federalism-based concerns with impinging on state jurisdiction contribute to current U.S. ambivalence towards human rights. Although human rights are heralded in foreign policy, they are barely implemented domestically. While operating within federal and state boundaries, cities have the potential to democratize human rights.

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<sup>337</sup> The U.N. High Commissioner for Human Rights has recognized “the need for closer liaison between United Nations entities and local government to ensure proper preparation of reports and follow-up to recommendations.” *Annual Rep. of the U.N. High Commissioner*, *supra* note 158, ¶ 48.

<sup>338</sup> OHCHR, for instance, serves as the Secretariat of the Human Rights Council and, for each country review, prepares a compilation of relevant materials from treaty bodies and Special Rapporteurs, as well as a summary of NGO submissions. *What We Do: An Overview*, *supra* note 269.

Realization of human rights by cities requires the national government to also play a role, recommending the enactment of implementing legislation at state and local level, setting minimum standards, creating a forum for the exchange of strategies and practices, providing technical and financial support, and engaging with international human rights bodies on both successes and challenges.

#### A. U.S. AMBIVALENCE TOWARDS HUMAN RIGHTS

Ambivalence characterizes the United States' relationship with human rights.<sup>339</sup> On the one hand, the United States has served as a champion of human rights, contributing to development of the international human rights regime, and integrating human rights concerns in its foreign policy. At the same time, domestic human rights implementation is anemic with the United States remaining reluctant to ratify human rights treaties, imposing limitations on the few treaties it has ratified, and taking minimal steps to enforce them. Federalism concerns with addressing matters within state jurisdiction is one factor behind this poor implementation. Human rights cities can alleviate these concerns.

U.S. engagement with human rights is rife with contradictions. While the United States claims that human rights principles are part of its national ideology<sup>340</sup> and has played a "prominent role" in developing international human rights instruments,<sup>341</sup> it has failed to ratify many of them. Eleanor Roosevelt chaired a multi-country working group that drafted the UDHR in 1948, laying the basis for the international human rights regime.<sup>342</sup> The United States has continued to be an important contributor to various human rights treaties, including ones it has not ratified, like the CRC, CEDAW,<sup>343</sup> and the Convention on the Rights of Persons with Disabilities<sup>344</sup> ("CRPD").<sup>345</sup> As mentioned above, the United

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<sup>339</sup> Risa Kaufman refers to the United States' "deep ambivalence toward upholding the norms that it helped to establish." *Reclaiming the History*, *supra* note 207, at 150–51.

<sup>340</sup> Melish, *supra* note 158, at 431–32.

<sup>341</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 2.

<sup>342</sup> Neubeck, *supra* note 13, at 237. *See generally* MARY A. GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2001) (describing Eleanor Roosevelt's role as chairperson of the Commission on Human Rights during the drafting of the Universal Declaration of Human Rights).

<sup>343</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 2–3.

<sup>344</sup> G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities, U.N. Doc. A/RES/61/106 (Jan. 24, 2007) [hereinafter CRPD].

<sup>345</sup> Melish, *supra* note 158, at 396, 398.



States has ratified ICCPR, ICERD, and CAT—three of the core international human rights treaties.<sup>346</sup> It has further ratified the Genocide Convention,<sup>347</sup> two optional protocols to the CRC, which address the rights of children in armed conflict and trafficking in children, and a series of International Labour Organization (“ILO”) treaties on labor rights.<sup>348</sup> At the regional level, the United States has ratified the Charter of the Organization of American States (“OAS Charter”).<sup>349</sup> Significant gaps in ratification include the ICESCR—the counterpart to the ICCPR considered part of the international bill of rights<sup>350</sup>—CRC, CEDAW, and CRPD.<sup>351</sup> The United States is the only country that has not ratified the CRC<sup>352</sup> and the only developed country that has not ratified CEDAW.<sup>353</sup> However, the United States has at least taken a step towards ratification of these treaties with the President signing them, but the treaties continue to await ratification by the Senate.<sup>354</sup> The United States is also particularly wary of the protocols accompanying many international treaties, which enable treaty bodies to serve a quasi-judicial function and review individual complaints upon exhaustion of domestic remedies.<sup>355</sup> Despite

<sup>346</sup> *Id.* at 396.

<sup>347</sup> G.A. Res. 260 (III), Convention on the Prevention and Punishment of the Crime of Genocide (Jan. 12, 1951).

<sup>348</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 3; Melish, *supra* note 158, at 396.

<sup>349</sup> Organization of American States Charter, *adopted* April 30, 1948, 119 U.N.T.S. 3 (entered into force Dec. 13, 1951) [hereinafter OAS Charter].

<sup>350</sup> UDHR, *supra* note 42.

<sup>351</sup> See *Ratification Status for United States of America*, UNITED NATIONS HUM. RTS. TREATY BODIES: UN TREATY DATABASE, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN) [https://perma.cc/GVX5-VMKH].

<sup>352</sup> *See id.*

<sup>353</sup> *See id.* The others who have not ratified CEDAW are the Holy See, Iran, Niue, Palau, Somalia, the State of Palestine, and Trinidad and Tobago. *Ratification Status for CEDAW: Convention on the Elimination of All Forms of Discrimination against Women*, UNITED NATIONS HUM. RTS. TREATY BODIES: UN TREATY DATABASE, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN) [https://perma.cc/3ZMP-EZN2].

<sup>354</sup> *See Ratification Status for United States of America*, *supra* note 351. A country’s signature signals an intent to ratify a treaty and does not require positive action to comply with its provisions. However, a country must refrain from acts that would defeat the treaty’s “object and purpose.” Vienna Convention on the Law of Treaties, *supra* note 275, art. 18(a); *see also* RESTATEMENT (FOURTH) OF THE FOREIGN REL. L. OF THE U.S. § 304 cmt. e (AM. L. INST. 2018) (requiring the government to “avoid actions which could render impossible the entry into force and implementation [of a treaty], or defeat its basic purpose and value”).

<sup>355</sup> Melish, *supra* note 158, at 396, 441. The United States, however, is a party to the OAS Charter, which allows for some contentious jurisdiction. *Id.* at 408.

these major gaps, the United States has nonetheless committed to comply with a broad spectrum of rights with bipartisan support under both Democratic and Republican administrations.<sup>356</sup>

However, even for the treaties that the United States has ratified, the United States has imposed limitations through the Senate by regularly attaching Reservations, Understandings, and Declarations (“RUDs”).<sup>357</sup> This generally includes a declaration that the human rights treaty is not self-executing,<sup>358</sup> aimed to “clarify that the Covenant will not create a private cause of action in U.S. Courts.”<sup>359</sup> In reporting to the Human Rights Committee monitoring compliance with the ICCPR, the U.S. government explained that “this declaration did not limit the international obligations of the United States under the Covenant. Rather, it means that, as a matter of domestic law, the Covenant does not, by itself, create private rights directly enforceable in U.S. courts.”<sup>360</sup> This leaves open, however, the possibility of using the ICCPR in conjunction with domestic provisions in litigation,<sup>361</sup> and a few courts have in fact referred to the ICCPR as an aid in interpretation.<sup>362</sup> Nonetheless, the use of international human rights law in litigation in the United States is sparse.<sup>363</sup>

Non-self-executing declarations are not unusual or unique to the United States. Various countries use them to promote democratic deliberation around the meaning of broad treaty provisions, prior to

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<sup>356</sup> *Id.* at 395–96.

<sup>357</sup> *Cities, Human Rights and Accountability*, *supra* note 276, at 29; Johanna Kalb, *Dynamic Federalism in Human Rights Treaty Implementation*, 84 TUL. L. REV. 1025, 1059 n.185 (2010).

<sup>358</sup> Powell, *supra* note 168, at 258–59; *see also* 138 CONG. REC. S8,068–71 (daily ed. Apr. 2, 1992) [hereinafter CONG. REC. S8,068–71] (hearing on the International Covenant on Civil and Political Rights).

<sup>359</sup> S. REP. No. 102-23, at 20 (1992).

<sup>360</sup> *Initial Report to the Human Rights Committee*, *supra* note 237, ¶ 8.

<sup>361</sup> The U.S. government further explained that “the fundamental rights and freedoms protected by the Covenant are already guaranteed as a matter of U.S. law, either by virtue of constitutional protections or enacted statutes, and can be effectively asserted and enforced by individuals in the judicial system on those bases,” seeming to indicate that constitutional protections and statutes should be interpreted as consistent with the ICCPR. *Initial Report to the Human Rights Committee*, *supra* note 237, ¶ 8.

<sup>362</sup> *E.g.*, *Roper v. Simmons*, 543 U.S. 551, 576 (2005); *Sterling v. Cupp*, 625 P.2d 123, 131 n.21 (Or. 1981). However, interestingly, U.S. courts reference the UDHR, although a non-binding declaration, more frequently than in any other country. Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT’L & COMP. L. 287, 304 (1995).

<sup>363</sup> Justices Scalia, Rhenquist, and Thomas have frowned on the use of any international law, warning they jeopardized American constitutional protections. *Law’s Migration*, *supra* note 104, at 1568, 1570 n.13.

subjecting duty bearers to court action and calling for judicial interpretation.<sup>364</sup> Thus, treaties are first given locally relevant content through implementing legislation.<sup>365</sup> However, aside from CAT and the Genocide Convention, the United States has failed to enact federal implementing legislation for human rights treaties it has ratified.<sup>366</sup> The United States ratified the ICCPR back in 1992,<sup>367</sup> and, at this point, falls short of its obligations by still not having enacted implementing legislation for this treaty decades later.

In 2008, another impact of a non-self-executing treaty surfaced when the Supreme Court clarified in *Medellin v. Texas* that absent implementing legislation, the executive branch cannot compel compliance with treaty obligations by states or localities.<sup>368</sup> In 1969, the United States ratified the Vienna Convention on Consular Relations,<sup>369</sup> recognizing the rights of non-nationals charged with crimes to assistance from their consulates. The Bush administration issued a memorandum directing state compliance with this convention.<sup>370</sup> However, in *Medellin*, the Supreme Court held that the state of Texas was not obliged to abide by this federal executive order, considering that Congress had not yet passed implementing legislation.<sup>371</sup> Interestingly, the Supreme Court decision confirms that states still have an international obligation, but it cannot be enforced by the federal government without implementing legislation.<sup>372</sup> In his concurrence, Justice Stevens explains, “One consequence of our form of government is that sometimes States must shoulder the primary responsibility for protecting the honor and integrity of the Nation.”<sup>373</sup> This seems to call for a parallel relationship for states and localities with international bodies, in addition to that of the U.S. government.

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<sup>364</sup> Melish, *supra* note 158, at 441.

<sup>365</sup> *Id.* at 442.

<sup>366</sup> *By Some Other Means*, *supra* note 49, at 1992.

<sup>367</sup> *See Ratification Status for United States of America*, *supra* note 351.

<sup>368</sup> *Medellin*, 552 U.S. at 505 n.2.

<sup>369</sup> Status of Vienna Convention on Consular Relations, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-6&chapter=3&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3&clang=_en) [https://perma.cc/6FPE-7P2X] (last updated Oct. 25, 2021, 3:15 PM).

<sup>370</sup> *Medellin*, 552 U.S. at 503.

<sup>371</sup> *Id.* at 526.

<sup>372</sup> *Id.* at 522–23 (“In sum, while the ICJ’s [International Court of Justice’s] judgment . . . creates an international law obligation on the part of the United States, it does not of its own force constitute binding federal law that pre-empts state restrictions on the filing of successive habeas petitions.”).

<sup>373</sup> *Id.* at 536 (Stevens, J., concurring).

In ratifying human rights treaties, the Senate has additionally attached a federalism “understanding,” clarifying that state and local governments are responsible for implementing treaty obligations in areas within their jurisdiction. For instance, the understanding to the ICCPR states:

[T]he United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the full fulfillment of the Covenant.<sup>374</sup>

Similar understandings attach to CERD, CAT, and the Genocide Convention.<sup>375</sup> According to the legislative history, the United States used an understanding rather than a reservation because “the intent is not to modify or limit U.S. undertakings under the Covenant but rather to put our future treaty partners on notice with regard to the implications of our federal system concerning implementation.”<sup>376</sup> In its initial report to the HRC, the United States likewise explained:

This provision is not a reservation and does not modify or limit the international obligations of the United States under the Covenant. Rather, it addresses the essentially domestic issue of how the Covenant will be implemented within the U.S. federal system. It serves to emphasize domestically that there was no intent to alter the constitutional balance of authority between the federal government on the one hand and the state and local governments on the other, or to use the provisions of the

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<sup>374</sup> CONG. REC. S8,068–71, *supra* note 358, at 8071.

<sup>375</sup> 136 CONG. REC. S36,192 (daily ed. Oct. 27, 1990) [hereinafter CONG. REC. S36,192] (hearing on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment); Connie de la Vega, *Human Rights and Trade: Inconsistent Application of Treaty Laws in the United States*, 9 UCLA J. INT’L L. & FOREIGN AFFS. 1, 12–13 (2004).

<sup>376</sup> Gerald L. Neuman, *The Global Dimension of RFRA*, 14 CONST. COMMENT. 33, 51–57 (1997) (quoting SEN. EXEC. REP. NO. 102-23 (1992)).

Covenant to federalize matters now within the competence of the states.<sup>377</sup>

The United States thus acknowledges that it is fully bound by its treaty obligations, but there are certain areas where states and municipalities must take the lead.

This federalism understanding results from an inherent tension in U.S. law. Under the Constitution, the federal government has exclusive authority to enter into treaties.<sup>378</sup> In fact, due to the failure of the Articles of Confederation, the Constitution specifically created national institutions to “articulate uniform positions”<sup>379</sup> and prevent “balkanization of foreign policy and international affairs.”<sup>380</sup> Moreover, under the Constitution’s Supremacy Clause, international treaties are the “supreme law of the land”<sup>381</sup> and binding on states, including for matters generally under state jurisdiction. In *Missouri v. Holland*, the Supreme Court held that treaty power authorizes legislation under the Constitution’s Necessary and Proper Clause in areas outside traditional congressional authority.<sup>382</sup> The Court explained, “No doubt the great body of private relations usually fall within the control of [a] [s]tate, but a treaty may override its power.”<sup>383</sup> Human rights treaties, which focus on the protection of diverse rights, often intersect with areas of law historically reserved to states,<sup>384</sup> such as social welfare, family relations, and criminal law.<sup>385</sup> In its initial report to the HRC, the United States highlighted the following matters governed by state and local authorities: “education, public health, business organization, work conditions, marriage and divorce, the care of children, and exercise of ordinary police power.”<sup>386</sup>

The prospect of human rights treaties in these areas raised trepidation around upsetting the balance of power between the states and federal government and eroding state sovereignty. This led to several political attempts to overturn *Holland*. The most significant attempt took place in

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<sup>377</sup> *Initial Report to the Human Rights Committee*, *supra* note 237, ¶ 4.

<sup>378</sup> U.S. CONST. art. I, § 10.

<sup>379</sup> Powell, *supra* note 168, at 284.

<sup>380</sup> *Id.* at 252.

<sup>381</sup> U.S. CONST. art. VI.

<sup>382</sup> Powell, *supra* note 168, at 265–66.

<sup>383</sup> *Missouri v. Holland*, 252 U.S. 416, 434 (1920).

<sup>384</sup> Kalb, *supra* note 357, at 1027.

<sup>385</sup> Martha F. Davis, *Upstairs, Downstairs, Subnational Incorporation of International Human Rights Law at the End of an Era*, 77 *FORDHAM L. REV.* 411, 418 (2008) [hereinafter *Upstairs, Downstairs*]; *Thinking Globally, Acting Locally*, *supra* note 108, at 278.

<sup>386</sup> *Initial Report to the Human Rights Committee*, *supra* note 237, ¶ 3.

the 1950s, when Senator Bricker of Ohio called for a constitutional amendment.<sup>387</sup> Under the proposed Bricker Amendment, “[a] treaty shall become effective as internal law . . . only through legislation by Congress which it could enact under its delegated powers in the absence of such a treaty.”<sup>388</sup> Thus, Senator Bricker sought to limit the potential impact of international treaties. He was particularly keen “to insure that international agreements would not lead to United Nations interference on moral, liberal, social and economic policies and legislation in the United States.”<sup>389</sup> Although the Bricker Amendment did not pass, as Louis Henkin describes, the “ghost” of Bricker lives on through the federalism understandings attached to treaties.<sup>390</sup>

As a result, domestic implementation of human rights treaties in the United States is lukewarm at best. These treaties are not well-known among policymakers or the public, and the federal government has invested little in raising awareness.<sup>391</sup> In addition to failing to adopt implementing legislation, the United States, in stark contrast with European counterparts, has neglected to designate a national human rights institution or to assess the human rights impacts of proposed initiatives.<sup>392</sup> As Tara Melish characterizes, the United States “has appeared to flinch and even recoil, when it comes to direct domestic application of human rights norms.”<sup>393</sup>

At the same time, human rights has historically been a cornerstone of U.S. foreign policy.<sup>394</sup> Human rights justifications figure prominently in decisions to support certain foreign leaders, limit military aid, or engage in

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<sup>387</sup> Kalb, *supra* note 357, at 1032–33.

<sup>388</sup> *The Promise and Limits of Local Human Rights*, *supra* note 113, at 606.

<sup>389</sup> *Law’s Migration*, *supra* note 104, at 1606–07 (quoting DUANE TANENBAUM, *THE BRICKER AMENDMENT CONTROVERSY: A TEST OF EISENHOWER’S POLITICAL LEADERSHIP* 31 (1988)).

<sup>390</sup> Louis Henkin, Comment, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT’L L. 341, 348–50 (1995); *see also* Kalb, *supra* note 357, at 1033–34; *Law’s Migration*, *supra* note 104, at 1606–08; Powell, *supra* note 168, at 265–66.

<sup>391</sup> *From Principles to Practice*, *supra* note 108, at 81.

<sup>392</sup> *The Promise and Limits of Local Human Rights*, *supra* note 113, at 605. Ten countries urged the United States to establish a national human rights institution during its Universal Periodic Review, and civil society shadow reports to international human rights bodies repeatedly articulate this need. *By Some Other Means*, *supra* note 49, at 1985.

<sup>393</sup> Melish, *supra* note 158, at 391.

<sup>394</sup> *E.g.*, Antony J. Blinken (Secretary of State), U.S. Dep’t of State, Remarks to the 46th Session of the Human Rights Council (Feb. 22, 2021), <https://www.state.gov/remarks-to-the-46th-session-of-the-human-rights-council> [<https://perma.cc/36NM-ARX5>] (“The United States is placing democracy and human rights at the center of our foreign policy, because they are essential for peace and stability.”).

military force.<sup>395</sup> Additionally, the United States links economic assistance to countries' human rights performance,<sup>396</sup> and the State Department compiles reports annually on human rights across the globe.<sup>397</sup> Not only did the United States play a leading role in the founding of the international human rights regime, but it has also provided political and financial support to the various international human rights bodies.<sup>398</sup> In this way, U.S. support for human rights "has generally been directed as a way to improve external, rather than internal, conditions,"<sup>399</sup> linked to a belief in American exceptionalism.<sup>400</sup> Tara Melish examines the paradox of a country "outwardly prodigious" and inwardly parsimonious<sup>401</sup> and Louis Henkin evocatively describes a cathedral of human rights, where the United States is not a pillar, but a flying buttress, supporting human rights from the outside and unwilling to subject itself to scrutiny.<sup>402</sup>

However, as Tara Melish points out, this is not the whole story. The United States has generally engaged well when it comes to domestic human rights assessments in the international and regional spheres, although this was not the case under the Trump Administration.<sup>403</sup> For its

<sup>395</sup> *The Promise and Limits of Local Human Rights*, *supra* note 113, at 605.

<sup>396</sup> *Id.* at 610–11.

<sup>397</sup> Melish, *supra* note 158, at 390.

<sup>398</sup> *Id.*

<sup>399</sup> *The Promise and Limits of Local Human Rights*, *supra* note 113, at 610; *Reclaiming the History*, *supra* note 207, at 153–54 (noting that "while upholding the banner of human rights on the international stage, the United States has repeatedly asserted its sovereignty regarding human rights within its own borders").

<sup>400</sup> *Reclaiming the History*, *supra* note 207, at 154 ("Key to understanding this ambivalence is the notion of American exceptionalism, or the belief that the United States is somehow exempt from the law that applies to other nations. The United States insists on other nations fulfilling their treaty obligations while often neglecting or denying its own, or claiming that it fulfills these obligations without the need for international scrutiny.").

<sup>401</sup> Melish, *supra* note 158, at 391.

<sup>402</sup> LOUIS HENKIN, *THE AGE OF RIGHTS* 76 (1990).

<sup>403</sup> Ed Pilkington, *US Halts Cooperation with UN on Potential Human Rights Violations*, *GUARDIAN* (Jan. 4, 2019, 1:00 AM), <https://www.theguardian.com/law/2019/jan/04/trump-administration-un-human-rights-violations> [<https://perma.cc/QM98-FD25>] ("The silent treatment being meted out to key players in the UN's system for advancing human rights marks a stark break with US practice going back decades. Though some areas of American public life have consistently been ruled out of bounds to UN investigators . . . Washington has in general welcomed monitors into the US as part of a wider commitment to upholding international norms."); Julian Borger, *US Quits UN Human Rights Council—A 'Cesspool of Political Bias'*, *GUARDIAN* (June 19, 2018, 6:39 PM), <https://www.theguardian.com/world/2018/jun/19/us-quits-un-human-rights-council-cesspool-political-bias> [<https://perma.cc/2MGB-CWKK>]. However, under the Biden Administration, the United States subsequently decided to rejoin the Human Rights Council. John Hudson, *US Rejoins UN Human Rights Council, Reversing Trump-Era Policy*, *WASH. POST* (Feb. 8, 2021), <https://www.washingtonpost.com/national->

periodic reports, the United States has historically prepared extensive and detailed submissions to the relevant international bodies, encouraging civil society involvement.<sup>404</sup> The United States has also attended dialogues with these bodies with high-level, interagency delegations, participating actively and making constructive interventions.<sup>405</sup> In responding to questions, the United States mostly exhibits openness with the exception of two areas: the intersection of human rights with humanitarian law and with the law of armed conflict outside the territorial boundaries of the United States.<sup>406</sup> Through its vigorous engagement, the United States has sought to set an example for other countries, highlighting the value of dialogue with international human rights bodies.<sup>407</sup> These dialogues can advance rights by “providing an international spotlight for gross abuses, giving voice to individuals and civil society groups seeking greater human rights protections and transparency at home, and providing legitimacy to domestic human rights and democracy movements.”<sup>408</sup> The United States has further historically extended invitations to Special Rapporteurs to investigate protection of particular rights in the United States<sup>409</sup> and has engaged in briefing and arguments at the Inter-American Human Rights Commission.<sup>410</sup> Prior to the Trump Administration, the State Department also started to broaden its human rights oversight from an exclusive focus on other countries to some domestic analysis.<sup>411</sup> This article adds to this

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security/us-rejoins-un-human-rights-council-reversing-trump-era-policy/2021/02/08/91694b3e-6a1a-11eb-9ed1-73d434b5147f\_story.html [https://perma.cc/TEA4-4D23].

<sup>404</sup> Melish, *supra* note 158, at 407, 419.

<sup>405</sup> *Id.* at 408, 419.

<sup>406</sup> *Id.* at 409.

<sup>407</sup> *Id.* at 419, 461.

<sup>408</sup> *Id.* at 419 (referencing WHITE HOUSE, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (2006), <https://georgewbush-whitehouse.archives.gov/nsc/nss/2006/>).

<sup>409</sup> *By Some Other Means*, *supra* note 49, at 1980; *see also* Melish, *supra* note 158, at 415–16 (remarking that “U.S. officials have at times noted that special rapporteurs, through the noncontentious dialogue they engender with a diversity of domestic governmental and nongovernmental actors, represent one of most promising ways of promoting change within the United States”). However, this was not the case under the Trump Administration. Pilkington, *supra* note 403.

<sup>410</sup> *By Some Other Means*, *supra* note 49, at 110. However, under the Trump Administration, when the Inter-American Commission on Human Rights held hearings on the human rights implications of Trump’s executive orders on immigration and asylum, in a “highly unusual” move, the administration refused to attend. Elise Foley, *Trump Administration Is a No-Show at Hearings on Human Rights*, HUFFPOST (Mar. 21, 2017, 3:56 PM), [https://www.huffingtonpost.com/entry/trump-administration-iachr\\_us\\_58d17201e4b0be71dcf8b27b](https://www.huffingtonpost.com/entry/trump-administration-iachr_us_58d17201e4b0be71dcf8b27b) [https://perma.cc/8XX3-FVFD] (last updated Mar. 22, 2017).

<sup>411</sup> Melish, *supra* note 158, at 400.



analysis, arguing that an important part of the human rights story in the United States consists of human rights initiatives at city level.

#### B. FEDERALISM SUGGESTS A HUMAN RIGHTS ROLE FOR CITIES

The federalism context in the United States points to an important role for cities as human rights actors. Indeed, the federal government has recognized the role of state and local governments in treaty implementation. City initiatives to advance human rights locally challenge a discourse that focuses on human rights as foreign or distant concerns to be protected abroad rather than at home.<sup>412</sup> However, cities also operate within certain boundaries and are subject to both national and state preemption.

Federalism in the United States suggests an active role for state and local governments in implementing human rights treaty obligations and leadership in certain areas, such as social welfare, family relations, and criminal law. The United States has, in fact, repeatedly emphasized the role of state and local governments in treaty implementation. Starting in 2009, the State Department has involved states and localities in its treaty reporting.<sup>413</sup> In 2010, for instance, the State Department's Legal Advisor, Harold Koh, sent a letter to all state governors and states and local human rights commissions, requesting their input on U.S. compliance with the ICPR, CERD, and CAT.<sup>414</sup> Similarly, in 2015, in addressing the National Association of Attorneys General, Mary McLeod, the State Department's Acting Legal Advisor, affirmed, "It is only throughout robust efforts at all levels of government—federal, state, territorial, and local—that we can live up to the obligations we have undertaken for ourselves."<sup>415</sup> Moreover, she stressed,

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<sup>412</sup> Jonathan Darling makes this point in the context of the U.K., but this is also very applicable to the U.S. Darling, *supra* note 149, at 122.

<sup>413</sup> *Cities, Human Rights and Accountability*, *supra* note 276, at 32; Mary McLeod, *The Role of State, Territorial, and Local Government in Promoting Respecting, and Defending Human Rights*, U.S. DEP'T OF STATE (Feb. 25, 2015), <https://2009-2017.state.gov/s/l/releases/remarks/239960.htm> [<https://perma.cc/DCP6-E9VJ>].

<sup>414</sup> *By Some Other Means*, *supra* note 49, at 113, 147.

<sup>415</sup> McLeod, *supra* note 413. Harold Koh likewise explained, "We believe the best human rights implementation combines overlapping enforcement by all branches of the federal government working together with state and local partners." Harold H. Koh, *Response of the United States to Recommendations of the United Nations Human Rights Council*, U.S. DEP'T OF STATE (Nov. 9, 2010), <https://2009-2017.state.gov/s/l/releases/remarks/150677.htm> [<https://perma.cc/74S3-8SV7>].

[O]ur efforts at the federal level are only one small component of our efforts as a nation. Because ours is a Federal system, it is largely through the work of officials like you—acting at the state, territorial, and local level—that the United States ensures compliance with its human rights treaty obligations.<sup>416</sup>

Local representatives, including former Mayor of Salt Lake City and former Attorney General of New Mexico,<sup>417</sup> have further joined the U.S. delegation in U.N. hearings before the treaty monitoring bodies.<sup>418</sup>

Cities, in particular, can play an important role in democratizing human rights. Catherine Powell points to a “democratic deficit” inherent in the development of international law in the United States.<sup>419</sup> This is due to the lack of transparency in treaty negotiations, as well as ratification of treaties by the Senate without an opportunity for input from the House, unlike domestic legislation.<sup>420</sup> Rectifying this requires translation of international law to the domestic context through “broad-based democratic deliberation,”<sup>421</sup> “democratizing the implementation of international law norms.”<sup>422</sup> Cities provide a good forum to do this. Indeed, cities are at the forefront of human rights implementation in the United States, and scholars have referred to them as the “vanguard”<sup>423</sup> and “first movers”<sup>424</sup> on human rights domestication.

While cities could potentially be significant human rights actors, they must operate within certain boundaries. They cannot usurp the role of the national government, and they face the challenge of national and state preemption. The Constitution’s Compact Clause limits the ability of sub-national authorities to enter into agreements, encroaching on national power to conduct foreign affairs.<sup>425</sup> The federal courts have “vigorously policed” this boundary under the federal preemption doctrine,<sup>426</sup> ensuring

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<sup>416</sup> McLeod, *supra* note 413.

<sup>417</sup> BRINGING HUMAN RIGHTS HOME, *supra* note 23, at 25, 25 n.192.

<sup>418</sup> *Id.*; *Cities, Human Rights and Accountability*, *supra* note 276, at 35.

<sup>419</sup> Powell, *supra* note 168, at 250–52.

<sup>420</sup> *Id.* at 251.

<sup>421</sup> *Id.*

<sup>422</sup> *Id.* at 265.

<sup>423</sup> *From Principles to Practice*, *supra* note 108, at 81.

<sup>424</sup> *The Promise and Limits of Local Human Rights*, *supra* note 113, at 603.

<sup>425</sup> *Id.* at 629.

<sup>426</sup> *Upstairs, Downstairs*, *supra* note 385, at 413.

the nation can speak “with ‘one voice’ in foreign affairs.”<sup>427</sup> In *Crosby v. National Foreign Trade Council*, the Supreme Court struck down a Massachusetts law banning goods from Burma due to forced labor concerns, finding that it interfered with more calibrated federal sanctions.<sup>428</sup> In *American Insurance Association v. Garamendi*, the Supreme Court further indicated that executive action was sufficient to preempt state legislation, even when not in direct conflict, given the possibility of future tension with federal policy.<sup>429</sup>

Cities are additionally subject to preemption by state law. Until the last century, cities operated under the severe constraints of the Dillon Rule, which only allowed localities to exercise authority expressly granted by the state.<sup>430</sup> However, this has since flipped with almost all states endorsing some form of home rule and allowing localities to exercise powers not expressly reserved to the states, including setting up local constitutions.<sup>431</sup> States, nonetheless, can always preempt city action through new laws and judicial interpretation. For instance, states have passed laws preempting restaurant smoking bans, domestic partnership benefits, and rent control, and some state courts have found city living wage ordinances impermissible intrusions on state power.<sup>432</sup> While human rights initiatives at the city level will not always succeed, cities provide an important, additional forum for advocacy and human rights implementation.

### C. RECOMMENDATIONS FOR BETTER ENGAGEMENT

While the federal government cannot direct states and localities to comply with treaties, it can play an important facilitating role. To fulfill its treaty obligations, the national government should recommend the enactment of implementing legislation at state and local levels, set minimum standards, create a forum for exchange of strategies and practices, provide technical and financial support, and engage with international human rights bodies on both successes and challenges.

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<sup>427</sup> Powell, *supra* note 168, at 256 (quoting *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 381 (2000)).

<sup>428</sup> *Crosby*, 530 U.S. at 366, 378–79.

<sup>429</sup> *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 401 (2003); *Upstairs, Downstairs*, *supra* note 385, at 428–29.

<sup>430</sup> *City of Clinton v. Cedar Rapids & M.R.R. Co.*, 24 Iowa 455, 478–80 (1868), *disapproved of* by *Berent v. City of Iowa City*, 738 N.W.2d 193 (Iowa 2007).

<sup>431</sup> *The Promise and Limits of Local Human Rights*, *supra* note 113, at 631.

<sup>432</sup> *Id.* at 632.

As an initial matter, when the United States ratifies a treaty with a federalism understanding, it should also reach out to states recommending the enactment of implementing legislation at local level. According to Johanna Kalb, the federalism understanding itself “presents a directive to state authorities to pass implementing legislation that enforces treaty rights and norms in those areas.”<sup>433</sup> Perhaps some of the local human rights initiatives can fill the role of implementing legislation. The federal government should support these efforts and publicize them as good examples, and international human rights bodies should follow up with the United States on this point.

In setting minimum national standards, the federal government would provide critical guidance to states and localities. Drawing on Justice Breyer’s dissent in *Sanchez-Llamas v. Oregon*,<sup>434</sup> Johanna Kalb argues for an approach in which the federal government defines a minimum “‘floor below’ which the states may not fall, but then leaves the specifics of implementation and remedy” up to them.<sup>435</sup> This would be in line with existing practice, in which “federal law provides a minimum ‘floor’ against which varying state policies are tested and ultimately approved or rejected.”<sup>436</sup> This would also respond to the request of U.S. mayors and local human rights agencies for federal guidance.<sup>437</sup> Currently, there are no national-level reports and guidelines on practices to respect, protect, and fulfill rights.<sup>438</sup>

By setting minimum standards, the national government would also act as an important check and balance against runaway localism. Risa Kaufman reflects on the “tension between valuing human rights localism and ensuring promotion and adherence to a universal set of human rights norms and standards,” which points to a “mediating role” for the federal government.<sup>439</sup> The Advisory Committee to the Human Rights Council likewise recognized that while “[t]he degree of self-government enjoyed by local authorities can be regarded as a key element of genuine democracy,” “local independence should have certain limits clearly prescribed by law, and mechanisms should be available for supervising the

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<sup>433</sup> Kalb, *supra* note 357, at 1064.

<sup>434</sup> *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 365–98 (2006) (Breyer, J., dissenting).

<sup>435</sup> Kalb, *supra* note 357, at 1052–53.

<sup>436</sup> *Id.* at 1056; *see also By Some Other Means*, *supra* note 49, at 1992 (calling upon the federal government to set “a minimum standard for international compliance, below which state and local governments may not fall”).

<sup>437</sup> Soohoo, *supra* note 10, at 261.

<sup>438</sup> Melish, *supra* note 158, at 459.

<sup>439</sup> *By Some Other Means*, *supra* note 49, at 2008.

legality of local authorities' activities."<sup>440</sup> The U.S. government should thus play a monitoring and supervisory role.

Another gap, related to the lack of national standards, is the lack of coordination. Without a national human rights institution, there is no entity reviewing and sharing strategies and programs for human rights implementation at the local level. Such an entity would bolster local efforts by identifying best practices, spotlighting violations, providing a clearinghouse for information and tools, and facilitating exchanges amongst localities.<sup>441</sup> U.S. advocates and localities have repeatedly expressed "the desire for independent, expert reviews that situate their progress" and take account of local context and challenges.<sup>442</sup> A national coordinating role is further in line with the Constitution's mandate to avoid balkanization. The Special Rapporteur on adequate housing also recognizes a role for national government in developing and monitoring national standards, "compar[ing] programmes and outcomes in different regions and localities."<sup>443</sup>

The federal government should also provide technical and financial assistance to spur human rights compliance. The High Commissioner for Human Rights has pointed to the need "to train local government officials and local actors on human rights."<sup>444</sup> In the United States, there is an especially big gap in human rights education and training.<sup>445</sup> Mayors have explicitly reached out for federal support in building "their capacity to bolster human rights compliance," but there has been no response.<sup>446</sup> Along with training and guidance, mayors and local human rights agencies have also requested financial resources.<sup>447</sup> As discussed above, the CRC Committee has directed states to make sure localities "have the necessary financial, human and other resources effectively to discharge responsibilities."<sup>448</sup> CESCR has likewise required national governments

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<sup>440</sup> *HRC August 2015 Report*, *supra* note 9, ¶¶ 12–13.

<sup>441</sup> Powell, *supra* note 168, at 280; Melish, *supra* note 158, at 458; *By Some Other Means*, *supra* note 49, at 2027–28.

<sup>442</sup> *Cities, Human Rights and Accountability*, *supra* note 276, at 40–41.

<sup>443</sup> Farha, *supra* note 123, ¶ 12.

<sup>444</sup> *Annual Rep. of the U.N. High Commissioner*, *supra* note 161, ¶ 59 (further indicating that "plans for establishing a human rights training and learning centre for local government officials are welcome").

<sup>445</sup> Melish, *supra* note 158, at 460.

<sup>446</sup> *From Principles to Practice*, *supra* note 108, at 99.

<sup>447</sup> *By Some Other Means*, *supra* note 49, at 2022; Soohoo, *supra* note 10, at 261.

<sup>448</sup> U.N. Comm. on the Rts. of the Child, *supra* note 327, ¶ 41. In its report, the Human Rights Council Advisory Committee likewise pointed to the need for local authorities to have

to make sure municipalities have sufficient resources to ensure access to water.<sup>449</sup> The Special Rapporteur on adequate housing further notes, “[n]ational level governments are often better placed to ensure a fair distribution of resources, so that areas with fewer resources and greater needs are not simply left to fend for themselves.”<sup>450</sup> Thus, the U.S. government can help assure the resources needed for the realization of human rights.

By providing resources, the national government can also incentivize human rights compliance. According to the Special Rapporteur on adequate housing, national governments may influence local policies through “incentives, conditions, priorities or required outcomes linked to the provision of funding for locally administered programmes.”<sup>451</sup> Olatunde Johnson argues for greater use of “spending carrots” to spur local innovation advancing civil rights in the United States.<sup>452</sup> As a potential model, she points to an initiative by the Department of Housing and Urban Development, Department of Transportation, and Environmental Protection Agency to provide funding to state and local efforts for “sustainable communities,” including affordable housing, improved transportation infrastructure, and environmental efficiency.<sup>453</sup> Similarly, the Department of Labor has initiated a grants program for public-private partnerships providing training opportunities in “high-growth occupations and industries” with a focus on historically excluded groups.<sup>454</sup>

Finally, the United States should meaningfully engage with international human rights bodies on both successes and challenges at the local level. Currently, U.S. inclusion of localities in treaty body reviews takes the form of cherry-picking, focusing on highlights rather than aiming at a genuine human rights assessment. Local and state representatives are specifically selected to showcase the “most favorable examples of human

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“necessary powers and financial resources” to fulfil their human rights obligations. *HRC August 2015 Report*, *supra* note 9, ¶ 22.

<sup>449</sup> Soohoo, *supra* note 10, at 261.

<sup>450</sup> Farha, *supra* note 123, ¶ 12 (“National level governments usually have greater capacity . . . to finance housing programmes, regulate mortgages and credit, fund housing subsidy and income support programmes, and oversee taxation and resource allocation.”).

<sup>451</sup> *Id.*

<sup>452</sup> Johnson, *supra* note 183, at 141.

<sup>453</sup> *Id.*

<sup>454</sup> *Id.* at 142; *see also* Tars et al., *supra* note 209, at 958–959 (describing the U.S. Department of Housing and Urban Development’s (“HUD”) provision of funding to incentivize communities to end the criminalization of homelessness).

rights progress.”<sup>455</sup> The State Department’s letter to U.S. Governors characterized participation as “vital opportunities to demonstrate to the world our country’s commitment to protecting human rights domestically.”<sup>456</sup> While the United States should continue to present local achievements at treaty reviews, it needs to also present difficulties for the reviews to be useful. Federal communications should thus encourage localities to engage in dialogue with civil society, sharing both successes and challenges. If done well, participation in treaty reporting has the potential to open communication between the federal and local governments on key issues.<sup>457</sup> Additionally, as discussed above, in addressing their recommendations only to the federal government, international human rights bodies lose an opportunity to provide guidance at the local level. Currently, “[a]ny measure of local human rights accountability arising from local participation in the treaty monitoring process is at best, a by-product.”<sup>458</sup>

It is time to address these gaps. The national government can create an enabling environment for human rights compliance at the local level by setting standards, facilitating information exchanges, providing guidance and resources, and engaging with localities on both successes and challenges.

## VI. THE ROLE OF CITY NETWORKS

While cities may be at the bottom of the vertical hierarchy of authority, they can also exert influence horizontally over their peers. The European Charter for the Safeguarding of Human Rights in the City devotes an article to “international municipal cooperation.”<sup>459</sup> Signatory cities commit to cooperate with local authorities from developing countries and recognize the importance of partnership beyond “urban and national frontiers.”<sup>460</sup> Likewise, the Global Charter-Agenda for Human Rights in the City espouses “transnational local cooperation,”<sup>461</sup> and signatories “are encouraged to develop contact with neighboring cities and territories with the aim of building caring communities and regional

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<sup>455</sup> *Cities, Human Rights and Accountability*, *supra* note 276, at 36.

<sup>456</sup> *Id.*

<sup>457</sup> *Id.* at 35.

<sup>458</sup> *Id.* at 36.

<sup>459</sup> European Human Rights Charter, *supra* note 64, art. 6.

<sup>460</sup> *Id.*

<sup>461</sup> Global Charter-Agenda, *supra* note 64, at 14.

capitals.”<sup>462</sup> “Horizontal diffusion”<sup>463</sup> of laws and legal strategies takes place through both formal associations, as well as informal networks. Strengthening peer networks can thus serve to advance human rights implementation. Peer networks are already prioritizing human rights and can take a more active role with support from government. In fact, they can help the national government fulfill its coordination role by working with cities to set up and evaluate programs, compiling good practices, helping address challenges, and convening discussions on different issues. Additionally, they can support initiatives by individual cities focused on particular rights or themes. Through peer exchanges and reviews, they can also increase accountability for local human rights implementation.

#### A. TRANSLOCAL ORGANIZATIONS

Judith Resnik points to the proliferation of translocal organizations of government actors, such as the U.S. Conference of Mayors (“USCM”) and National League of Cities, and their role in transmitting ideas.<sup>464</sup> These translocal organizations can serve as forums to share information, principles, laws, and strategies.<sup>465</sup> In 2013, USCM adopted a resolution committing to implement international human rights and recognizing mayors’ frontline role.<sup>466</sup> In 2014, USCM declared CEDAW “a valuable tool for local governance.”<sup>467</sup> USCM also launched the U.S. Coalition of Cities against Racism and Discrimination, in collaboration with the U.S. State Department and UNESCO.<sup>468</sup> Additionally, human rights cities in

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<sup>462</sup> *Id.* art. 1, § 2.

<sup>463</sup> The term “horizontal diffusion” is coined by Olatunde C.A. Johnson. Johnson, *supra* note 183, at 137.

<sup>464</sup> Judith Resnik, *Foreign as Domestic Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Translocal Internationalism*, 57 EMORY L.J. 31, 34 (2007) [hereinafter *Foreign as Domestic Affairs*]; Judith Resnik, *Federalism(s)’ Forms and Norms: Contesting Rights, De-Essentializing Jurisdictional Divides, and Temporizing Accommodations*, 55 NOMOS 363, 370 (2014) [hereinafter *Forms and Norms*]; see also Soohoo, *supra* note 10, at 263 (noting that cities “are increasingly networked through voluntary associations and formal government structures for local governments”).

<sup>465</sup> Soohoo, *supra* note 10, at 262–63; *From Principles to Practice*, *supra* note 108, at 84.

<sup>466</sup> *82nd Annual Meeting: Resolution in Support of Cities for CEDAW Initiative and Encouraging Cities to Implement the Principles of the UN Convention on the Elimination of All Forms of Discrimination Against Women*, U.S. CONF. OF MAYORS, <https://www.usmayors.org/the-conference/resolutions/?category=d20065&meeting=82nd%20Annual%20Meeting> [https://perma.cc/9DJ5-DZ6N].

<sup>467</sup> GENDER EQUITY THROUGH HUMAN RIGHTS, *supra* note 47, at 4.

<sup>468</sup> Soohoo, *supra* note 10, at 264.



the United States have joined to form the National Human Rights Cities Alliance, as discussed above.<sup>469</sup>

The role of translocal organizations is also apparent at the international level. In 2004, United Cities and Local Governments (“UCLG”) was established to serve as the “voice of local government before the international community,” succeeding the International Union of Local Authorities founded in 1913.<sup>470</sup> UCLG has served as the institutional home of the European Charter for the Safeguarding of Human Rights in the City and adopted the Global-Charter Agenda for Human Rights in the City in 2011.<sup>471</sup> The Advisory Committee to the Human Rights Council noted the role international city networks such as UCLG could play in “developing toolkits, foster[ing] research, provid[ing] opportunities for peer-to-peer learning and creat[ing] communities for action.”<sup>472</sup> The Council of Europe and European Union have also created governance structures focused on local authorities, including a Council of Europe monitoring committee on local and regional human rights implementation, which issues reports with comparative data every five years.<sup>473</sup> These various translocal organizations can be a valuable resource for implementing human rights locally.

## B. CITY PARTNERSHIPS

In addition to translocal organizations, individual cities may form partnerships, and a city may decide to lead on a particular issue. The United States has a Sister Cities Program, connecting U.S. cities, counties, and states with foreign counterparts in over 140 countries.<sup>474</sup> Initially developed during the Cold War by President Eisenhower as part of

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<sup>469</sup> U.S. cities have also come together through the UPR Cities Project to develop a submission to the U.N. Human Rights Council as part of the Universal Periodic Review process. See *UPR Cities Project*, NAT’L HUM. RTS. CITIES ALL., [http://wiki.humanrightscities.mayfirst.org/index.php?title=UPR\\_Cities\\_Project](http://wiki.humanrightscities.mayfirst.org/index.php?title=UPR_Cities_Project) [https://perma.cc/S6GV-3ENB].

<sup>470</sup> *Thinking Globally, Acting Locally*, *supra* note 108, at 276.

<sup>471</sup> Soohoo, *supra* note 10, at 263.

<sup>472</sup> *HRC August 2015 Report*, *supra* note 9, ¶ 73; see also *Annual Rep. of the U.N. High Commissioner*, *supra* note 161, ¶ 55 (noting that while “there is no common framework or methodology for becoming a human rights city[,] . . . [p]eer learning opportunities such as regional human rights cities networks could streamline good practices”).

<sup>473</sup> Soohoo, *supra* note 10, at 263.

<sup>474</sup> See ABOUT SISTER CITIES INTERNATIONAL [hereinafter SISTER CITIES], <https://www.sistercities.org/about-us> [https://perma.cc/AQ86-LR5M].

“people-to-people” diplomacy,<sup>475</sup> the program is now supported by Sister Cities International, which seeks “to promote peace through mutual respect, understanding, and cooperation—one individual, one community at a time.”<sup>476</sup> The network currently prioritizes exchange in arts and culture, youth and education, business and trade, and community development and technology.<sup>477</sup> This exchange could also potentially serve as a platform to promote human rights. Additionally, cities may take a leadership role on particular human rights. In the United States, most prominently, is San Francisco’s Women’s Commission, which has played an important role in the Cities for CEDAW Campaign.<sup>478</sup>

### C. INFORMAL NETWORKS

Informal networks among city dwellers can further facilitate human rights diffusion. Cities are interconnected through a web of trade and commerce, carrying not just goods, but also ideas and legal frameworks across borders.<sup>479</sup> Cities are often trend-setters and can instigate social change. Cities cover the majority of the world’s population, and policies adopted by large cities impact many people and have reverberating effects, influencing nearby localities.<sup>480</sup> Much of the power of cities stems from their inhabitants. City inhabitants belong to numerous networks and are known for their mobility and diversity.<sup>481</sup> Civil society groups play an essential advocacy role, generating and disseminating ideas across boundaries, linked by technology and conferences.<sup>482</sup> Moreover, professionals, such as lawyers and judges, can exert an impact on their peers.<sup>483</sup>

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<sup>475</sup> *Foreign as Domestic Affairs*, *supra* note 464, at 48.

<sup>476</sup> *SISTER CITIES*, *supra* note 474.

<sup>477</sup> *Id.*

<sup>478</sup> Soohoo, *supra* note 10, at 264.

<sup>479</sup> *Id.* at 265–66; *Foreign as Domestic Affairs*, *supra* note 464, at 34, 64 (“When articulating domestic policies, mayors, governors, and members of state and city legislatures often look beyond their own borders for guidance.”) (referencing “the import and export of law”).

<sup>480</sup> Johnson, *supra* note 183, at 117.

<sup>481</sup> Soohoo, *supra* note 10, at 264.

<sup>482</sup> Powell, *supra* note 168, at 290.

<sup>483</sup> *Id.*; Johnson, *supra* note 183, at 142–43.

#### D. RECOMMENDATIONS FOR BETTER ENGAGEMENT

City networks provide another vehicle for strengthening human rights implementation. Indeed, there is an increasing focus on human rights by translocal organizations as part of their mandate, which can grow with government support. The national government can partner with translocal organizations, such as the U.S. National Human Rights Network and National Human Rights Cities Alliance, to facilitate coordination and exchange among cities. Translocal organizations can take a more active role by helping cities to set up and evaluate programs, compiling good practices, assisting with challenges, and convening topical discussions. Additionally, translocal organizations can provide greater support for leadership initiatives taken by particular cities, such as San Francisco's role in the Cities for CEDAW Campaign.<sup>484</sup> With encouragement, more cities can spearhead and help proliferate initiatives that focus on different aspects of human rights. Peer exchanges can also increase accountability for human rights implementation at the local level, complementing international and national efforts.

#### VII. CONCLUSION

Over the last two decades, cities have emerged as human rights actors. Cities have a particular contribution to bringing a human rights approach to governance and creating the conditions for the fulfillment of rights. Cities bring a participatory and community-centered approach to the implementation of rights and an expansive definition of participants, rooted in communities rather than the legal concept of citizenship. Human rights initiatives at the city level further entail a robust approach to equality with a focus on systemic remedies, addressing disparate impacts and jurisdictional barriers to women's rights. The rise of human rights cities is particularly relevant in countries like the United States, where federalism has served as an obstacle to human rights practice domestically.

However, engagement with cities on human rights at both the international and national levels is still at its infancy. At minimum,

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<sup>484</sup> In implementing its CEDAW Ordinance and Executive Directive, Los Angeles consciously seeks to serve as a model for other cities and "create a system that can be successfully replicated by local governments that wish to eradicate the gap in opportunities based upon sex and gender." Los Angeles Executive Directive No. 11, *supra* note 110. Another example of city leadership is with regards to environmental protections in the C40 Cities Climate Leadership Group, launched in 2005 by a former mayor of London. Ashbrook & Haarhuis, *supra* note 297.

international human rights bodies should regularly interrogate the relationship between the state and local governments, dialogue with local governments, and call for local consultations to enrich human rights reporting by states and civil society. The addition of OHCHR staff with city expertise would enable deeper engagement and the strengthening of local human rights initiatives. The U.S. government has also fallen short of its responsibilities. It should call on cities and states to enact implementing legislation for treaties that have been ratified. It should further set minimum standards for implementation, provide resources, facilitate exchange, and engage with international human rights bodies on both successes and challenges. In light of current gaps at the international and federal levels, peer networks can play an especially useful role. They can support coordination and accountability of local initiatives, as well as leadership by individual cities on different rights or themes. As human rights continue to evolve with standards and practices informing and shaping each other, cities comprise an important frontier and are potentially powerful partners in the human rights project.