

CHALLENGING A CLIMATE OF HATE AND
FOSTERING INCLUSION: THE ROLE OF U.S.
STATE AND LOCAL HUMAN RIGHTS
COMMISSIONS

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INTRODUCTION

We are in an era clearly marked by an assault on human rights. The U.S. federal government, the traditional duty-bearer in the global human rights regime, is taking actions that contravene core international human rights protections established to prevent and address discrimination in all its forms—obligations the United States has accepted as a party to several core human rights treaties.¹

Recent federal initiatives not only flout international human rights principles,² but also foment distrust between and among vulnerable communities and the governments meant to serve them. Local officials in jurisdictions that limit cooperation with federal authorities to enforce federal immigration law, so called “sanctuary jurisdictions,”³ have been threatened with a loss of funding.⁴ The

1. For discussion of the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Civil and Political Rights, *see infra* Section III.A.

2. Throughout this paper, “international human rights standards,” “international human rights principles,” and “human rights framework” are used interchangeably to refer to international human rights treaties and agreements, as well as interpretations of human rights treaties by U.N. human rights experts.

3. *See* Tina Vasquez, *The Who, What, Where, and Weaknesses of Sanctuary Cities (Updated)*, REWIRE (Nov. 23, 2016), <https://rewire.news/article/2016/11/23/weaknesses-sanctuary-cities/>; Tessa Stuart, *How Sanctuary Cities Are Plotting to Resist Trump*, ROLLING STONE (Dec. 1, 2016), <http://www.rollingstone.com/politics/features/how-sanctuary-cities-are-plotting-to-resist-trump-w453239>.

Department of Justice has declared that investigations designed to uncover systemic and institutionalized racism in police departments are on the chopping block.⁵ Federal executive orders, such as the “Muslim and Refugee Travel Ban” foster xenophobia and distrust.⁶ Not surprisingly, the new political context is marked by an uptick in acts of bias and discrimination.⁷ While discrimination and bias are challenges the United States has long faced, the increasing attention on these incidents, and the veneer of legitimacy that current public policy and discourse offer to discriminatory attitudes and actions, brings a renewed urgency to addressing them.

The assault on rights, and on people, is destabilizing for local communities. And, increasingly, state and local officials are leading the charge to challenge federal policies that are discriminatory by design. State attorneys general spearheaded litigation against the Muslim and Refugee Travel Ban⁸ and mayors are front and center in the fight to ensure “sanctuary cities” do not lose federal funding.⁹ But

4. Exec. Order No. 13,768, 82 Fed. Reg. 8799 *Enhancing Public Safety in the Interior of the United States* (Jan. 25, 2017) [hereinafter Muslim and Refugee Travel Ban].

5. See Memorandum from Jeff Sessions, Att’y Gen., to Heads of Department Components and United States Attorneys (Mar. 31, 2017), <https://www.justice.gov/opa/press-release/file/954916/download>; Del Quentin Wilber & Kevin Rector, *Civil Rights Groups Alarmed at Justice Department's Review of Local Police Settlements*, L.A. TIMES (Apr. 4, 2017), <http://www.latimes.com/politics/la-na-justice-department-sessions-police-20170404-story.html>.

6. See Muslim and Refugee Travel Ban, *supra* note 4.

7. See, e.g., Katie Reilly, *Racist Incidents Are Up Since Donald Trump's Election. These Are Just a Few of Them*, TIME MAG. (Nov. 13, 2016), <http://time.com/4569129/racist-anti-semitic-incidents-donald-trump/> (noting that immediately following Election Day, the country experienced “increased incidents of racist or anti-Semitic vandalism and violence, many of which have drawn directly on the rhetoric and proposals of President-elect Donald Trump”); COREY SAYLOR ET AL., CIVIL RIGHTS REPORT 2017: THE EMPOWERMENT OF HATE (Council on Am.-Islamic Relations, 2017) (documenting a 57% increase in anti-Muslim incidents in 2016 as compared to 2015, and noting that such incidents were also on the rise between 2014 and 2016). See *infra* Part I for discussions of efforts to track incidents of hate, bias, and harassment in the wake of the 2016 elections.

8. Washington State’s Attorney General was the first to file suit challenging the Muslim and Refugee Travel Ban. Comp. for Declaratory and Injunctive Relief, *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (D. Or. Feb. 3, 2017) (No. 2:17-cv-00141), 2017 WL 443297.

9. See, e.g., Liz Robbins, *‘Sanctuary City’ Mayors Vow to Defy Trump’s Immigration Order*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/nyregion/outraged-mayors-vow-to-defy-trumps-immigration-order.html> (describing reactions from mayors in Boston, New York, San Francisco, and other

less attention has been paid to other local actors: state and local civil and human rights agencies (“human rights commissions”)¹⁰ and the ways they can, and are, responding to and resisting the climate of hate, bias, and intimidation at the city, county, and state level.

As local initiatives emerge daily, this Article offers a snapshot of some human rights commissions’ efforts to counter xenophobia and bigotry. The Article also connects local efforts to international human rights standards as a potential framework to deepen and expand this work. Human rights commissions were initially established in the 1940s to address racial tensions and to monitor compliance with domestic anti-discrimination laws.¹¹ This Article introduces these commissions and highlights some of the ways they are already working to counter bias, harassment, and discrimination in the face of increasingly divisive national policies and rhetoric. Building on these examples, the Article offers concrete steps that commissions can take to advance their work using international human rights principles.

The overarching thesis of this Article is that human rights commissions should be considered as potential allies in bringing international human rights home to the local level and that international human rights standards offer a valuable tool to enhance commissions’ work to identify, prevent, and respond to discrimination, bias, and harassment, particularly in the arenas of legal and policy advocacy, awareness-raising and outreach, and data collection.

International human rights standards have the power to transform governance—both how institutions operate and the principles that guide decision-making.¹² Indeed, the human rights

cities to Trump’s executive order saying he would end federal funding to municipalities that did not comply with federal immigration policy).

10. These agencies go by a number of designations, including civil rights agencies, human relations commissions, civil rights commissions, and human rights commissions. This Article will refer to them by their most common designation: “human rights commissions.” See *infra* Section II.A.

11. Kenneth L. Saunders & Hyo Eun (April) Bang, *A Historical Perspective on U.S. Human Rights Commissions* 1, 6–7 (June 2007), <http://www.constitutionalvalues.org/pdf/docs/us-context/Saunders%20&%20Bang,%20A%20Historical%20Perspective%20on%20U.S.%20Human%20Rights%20Commissions,%20Executive%20Sessions%20Paper.pdf> (EXECUTIVE SESSION PAPERS: HUMAN RIGHTS COMMISSIONS AND CRIMINAL JUSTICE NO. 3). The history of these institutions is discussed further in Section II.B.

12. See Peggy Levitt & Sally Merry, *Vernacularization on the Ground: Local Uses of Global Women’s Rights in Peru, China, India and the United States*,

framework emphasizes the importance of shifting norms and attitudes and calls for government action to proactively and effectively address bias and discrimination,¹³ with the goal of achieving equality in outcomes regardless of identity.¹⁴ A human rights based approach requires measures to identify and modify laws and policies with “the effect of creating or perpetuating racial discrimination” and calls on governments to use “all appropriate means” to eliminate racial discrimination.¹⁵ This approach emphasizes addressing the causes of discrimination and prioritizes prevention.

Local governments have a critical role to play in advancing human rights protections domestically. They often have the

4 GLOBAL NETWORKS 441, 457 (2009) (emphasizing that “[t]o have impact, human rights ideas must be adopted locally, must transform the consciousness of those who claim them and have some institutional teeth so that people who demand rights are at least recognized if not satisfied”).

13. See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination art. 4, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter CERD] (“States Parties condemn . . . all organizations which are based on . . . theories of superiority of one race or group of persons of one colour or ethnic origin . . . and undertake to adopt immediate and positive measures . . . to eradicate . . . such discrimination.”); Convention on the Elimination of All Forms of Discrimination Against Women art. 5(a), *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW] (“State Parties shall take all appropriate measures to modify the social and cultural patterns of . . . men and women, with a view to . . . eliminat[ing] prejudices and . . . practices . . . based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”).

14. See, e.g., Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of Racial Discrimination*, ¶ 6, U.N. Doc. CERD/C/GC/32 (2009) (“The International Convention on the Elimination of All Forms of Racial Discrimination . . . combines formal equality before the law with equal protection of the law, with substantive or *de facto* equality in the enjoyment and exercise of human rights.”); Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on Temporary Special Measures*, ¶ 8 (2004) (“[T]o achieve women’s *de facto* equality with men . . . the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results.”); see also Janet E. Lord & Rebecca Brown, *The Role of Reasonable Accommodation in Securing Substantive Equality for Persons with Disabilities: The UN Convention on the Rights of Persons with Disabilities*, in CRITICAL PERSPECTIVES ON HUMAN RIGHTS AND DISABILITY LAW 273, 273–81 (Marcia H. Rioux et al. eds., 2011) (discussing the substantive equality goals of the United Nations Convention on the Rights of Persons with Disabilities).

15. See CERD, *supra* note 13, art. 2.

community connections that are essential to effective human rights protection. Likewise, local governments are well placed to educate and raise awareness, and they can serve as a bridge between communities, other government actors, and non-governmental organizations. Significantly, human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, to which the United States is a party, apply to local authorities.¹⁶

Local human rights commissions serve an array of functions that align with human rights norms. They seek to prevent discrimination, enforce civil anti-discrimination law, make policy recommendations, and foster positive community relations. Their missions and mandates are compatible with international human rights standards, and that nexus is at the heart of existing partnerships between the International Association of Official Human Rights Agencies (IAOHRA) and U.S. human rights advocates.¹⁷ A number of commissions use international human rights standards in their work. In Oregon, for instance, city level human rights commissions have developed human rights assessments tools.¹⁸ Tennessee's State Human Rights Commission

16. See *infra* note 139 and accompanying text (discussing applicability of relevant treaty provisions).

17. IAOHRA is a non-profit membership association of over 150 state and local statutory civil and human rights and human relations agencies mandated by state, county, or city governments to enforce human and civil rights and/or to conduct research, training, and public education ("Human Rights Agencies"). In partnership with the Columbia Law School Human Rights Institute, IAOHRA has participated in reviews of the U.S. human rights record at the United Nations. See, e.g., COLUMBIA LAW SCH. HUMAN RIGHTS INST. & IAOHRA, CLOSING THE GAP: THE FEDERAL ROLE IN RESPECTING & ENSURING HUMAN RIGHTS AT THE STATE AND LOCAL LEVEL: RESPONSE TO THE FOURTH PERIODIC REPORT OF THE UNITED STATES TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE (Aug. 2013), <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/State%20and%20Local%20Shadow%20Report%20%28ecopy%29.pdf> ("Protecting human rights requires concerted and coordinated government action, in conjunction with community partnerships. State and local authorities are on the front lines of addressing key human rights issues . . .") [hereinafter *Closing the Gap*]. IAOHRA also lists Human Rights Watch and the Leadership Conference on Civil and Human Rights as partners. See IAOHRA: PARTNERS & RESOURCES, <http://www.iaohra.org/partners>.

18. The Eugene and Portland Human Rights Commissions have both incorporated human rights principles into tools to assess impacts of government policies and decisions. See EUGENE, OR., *Triple Bottom Line*, <https://www.eugene-or.gov/512/Triple-Bottom-Line> (last visited Sept. 20, 2017); Off. of Equity &

has recently used the Universal Declaration as a basis to gather information and data on emerging civil and human rights issues in a series of state-wide hearings.¹⁹ However, the potential of commissions to integrate international human rights standards into their work has been overlooked for both pragmatic and ideological reasons. As a result, these efforts exist on an ad hoc basis. The adverse effects of human and financial resource constraints and the lack of guidance on the relevance of intentional human rights standards within the United States impede more comprehensive efforts by commissions to adopt international human rights standards.²⁰

Yet, as the human rights framework becomes more accepted in the United States²¹ and cities and states increasingly serve as sites of human rights innovation,²² there are new opportunities for human

Human Rights, *Human Rights Impact Analysis: Secure Communities*, <http://www.portlandoregon.gov/oehr/article/449521> (last visited Sept. 9, 2017).

19. See TENN. HUMAN RIGHTS COMM'N, *THE STATUS OF HUMAN RIGHTS IN TENNESSEE* 1, 5 (Nov. 2014), https://www.tn.gov/assets/entities/humanrights/attachments/FINAL_The_Status_of_Human_Rights_in_Tennessee_11.21.14.pdf.

20. See Risa Kaufman, 'By Some Other Means': *Considering the Executive's Role in Fostering Subnational Human Rights Compliance*, 33 CARDOZO L. REV. 1973, 2004–05, 2024–26 (2012); *Closing the Gap*, *supra* note 17, at 17–23.

21. See Risa Kaufman & JoAnn Kamuf Ward, *The Local Turn in U.S. Human Rights: Introduction to the Special Symposium Issue*, 49 COLUM. HUM. RTS. L. REV. 1, 4–6; see also Chris Groves, *Human Rights as a Grassroots, Transformative Response to Trump's "America,"* OPEN DEMOCRACY (Jan. 11, 2017), <https://www.opendemocracy.net/openglobalrights/chris-grove/human-rights-as-grassroots-transformative-response-to-trump-s-america> (“[E]merging human rights movements in the US and their connections to similar movements in all regions of the world have perhaps never been more important.”).

22. See, e.g., GLOBAL URBAN JUSTICE: *THE RISE OF HUMAN RIGHTS CITIES* (Barbara Oomen et al. eds., 2016) (providing theoretical and practical insights into how the phenomenon of human rights at the subnational level contributes to global urban justice); Martha F. Davis, *Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights*, in BRINGING HUMAN RIGHTS HOME 127, 127–28 (Cynthia Soohoo et al. eds., 2008) (discussing the “dialogue” between different levels of government” when it comes to “locally and federally driven international policy perspectives”); Martha F. Davis, *Upstairs, Downstairs: Subnational Incorporation of International Human Rights Law at the End of an Era*, 77 FORDHAM L. REV. 411, 423 (2008) (discussing the “current evolving relationship between U.S. federal and state jurisdictions when it comes to international human rights law”); Gaylynn Burroughs, *More Than an Incidental Effect on Foreign Affairs: Implementation of Human Rights by State and Local Governments*, 30 N.Y.U. REV. L. & SOC. CHANGE 411, 414 (2006) (examining “the possibility that the federal foreign affairs power could preempt state and local governments from enacting either inward- or outward-looking human rights legislation”).

rights commissions to translate international human rights standards into local practice to build on their existing anti-discrimination efforts. This Article seeks to catalyze further exploration into the ways that commissions can localize human rights.

Part I situates the discussion within the context of increased incidents of discrimination, bias, and harassment. It discusses efforts to track these incidents and describes some of the initiatives commissions are undertaking to respond, as well as actions to resist federal action, particularly related to sanctuary jurisdictions. Part II describes the historical genesis of human rights commissions and introduces their current modes of work. It further highlights how commissions' origins, rooted in addressing racial tensions, and their emphasis on discrimination, make them appropriate sites for translating international human rights standards into practice locally, as well as some of the challenges in doing so. Part III distills human rights recommendations made to the United States in order to address discrimination, bias, and harassment, and suggests how commissions can integrate these recommendations into their legal and policy advocacy, awareness-raising and outreach, as well as data collection efforts, and work in partnership with local stakeholders.

I. THE DOMESTIC LEGAL CONTEXT

A. Surge in Hate, Bias, and Intimidation

In the wake of the 2016 presidential election, communities across the United States experienced a surge in hate crimes and acts of bias and discrimination, galvanizing progressive social justice advocates to respond. A national coalition of organizations working on a range of civil and human rights issues impacting Arab, Muslim, transgender, Latinx communities, communities of color, and others came together through the Communities Against Hate initiative to aggregate data and provide legal and social support to those experiencing threats and violence.²³ The election also triggered the development of a number of new platforms that aim to document identity-based threats and harassment, which are described briefly here.

23. COMMUNITIES AGAINST HATE, <https://communitiesagainsthate.org/about> (last visited Sept. 9, 2017).

The Southern Poverty Law Center (SPLC),²⁴ one of the first organizations to track hateful intimidation, bias, and harassment, collected information on 1,372 hate incidents between the election and February 2017, based primarily on news stories and individual reporting to SPLC.²⁵ ThinkProgress' Mapping Hate project also focuses on the three months following the election and provides a visual map of acts targeting particular individuals or communities.²⁶ The map tracks incidents targeting Black, Muslim, LGBTQ, Latinx, and Jewish individuals, as well as women and immigrants more broadly, and can be sorted by state.²⁷ ProPublica is currently working with journalists and other organizations across the country to create a national data set of hate crimes and bias, known as "Documenting Hate," based on independent data collection, self-reported stories, and social media reports.²⁸ The City University of New York embarked on a parallel and ongoing project, a Hate Tracker, that draws primarily from news sources to aggregate instances of hate and intolerance and makes them searchable by victim identity, location and relationship of alleged perpetrator, and the underlying news story.²⁹

The number of recent efforts to document and track bias, harassment, and intimidation reflect a renewed sense of urgency in understanding and responding to xenophobia and ethnic and racial discrimination. While these problems have deep history in the United States, those who harbor hate and prejudice appear emboldened to act on these attitudes at a new level.³⁰ Comprehensive data on hate

24. The Southern Poverty Law Center defines its mission as "fighting hate and bigotry and . . . seeking justice for the most vulnerable members of our society" through longstanding efforts that include tracking hate groups and extremists and initiatives focused on building tolerance. See *About Us*, S. POVERTY LAW CTR., <https://www.splcenter.org/about> (last visited Sept. 9, 2017).

25. *HateWatch*, S. POVERTY LAW CTR., <https://www.splcenter.org/hatewatch/2017/02/10/post-election-bias-incidents-1372-new-collaboration-propublica> (last visited Sept. 9, 2017).

26. *Mapping Hate*, THINKPROGRESS, <https://thinkprogress.org/mapping-hate-in-trumps-america-9b166b2c52c2> (last visited Sept. 9, 2017).

27. *Id.*

28. *Documenting Hate*, PROPUBLICA, <https://www.hateindex.com/> (last visited Sept. 20, 2017).

29. *Id.*

30. The last FBI hate crime report available at the time of writing was from 2015, making it difficult to measure recent trends against this benchmark. In November of 2016, law enforcement in New York noted that there was a 31% increase in hate crimes since 2015. Interview by AM 970 The Answer with James P. O'Neill, N.Y.C. Police Comm'r (Nov. 20, 2016). California also saw an 11.2% increase in hate crimes between 2015 and 2016. See CAL. DEP'T OF JUSTICE ET AL.,

and bias activities is limited, yet general trends indicate that these incidents are on the rise.³¹

ProPublica's project explicitly aims to fill the data void that exists as a result of a lack of "reliable national data on hate crimes" and the fact that "no government agency documents lower-level incidents of harassment and intimidation."³² While the federal government is authorized to collect data on hate crimes from state law enforcement,³³ which serves as the basis of FBI hate crime reporting, there is no requirement that states report this data.³⁴ The Federal Bureau of Justice Statistics publishes data on hate crimes as well, based on reporting by hate crime victims.³⁵ These data sets

HATE CRIME IN CALIFORNIA, 2015, <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/hatecrimes/hc15/hc15.pdf> (last visited Nov. 14, 2017). Another recent study shows an increase in hate crimes across an array of U.S. localities. BRIAN LEVIN & KEVIN GRISHAM, CAL. STATE UNIV. SAN BERNARDINO: CTR. FOR THE STUDY OF HATE & EXTREMISM, SPECIAL STATUS REPORT: HATE CRIME IN THE CITIES AND COUNTIES IN THE U.S. (2017); *see also* Reilly, *supra* note 7 (noting that immediately following Election Day the country experienced "increased incidents of racist or anti-Semitic vandalism and violence, many of which have drawn directly on the rhetoric and proposals of President-elect Donald Trump").

31. Reuters, *U.S. Hate Crimes Up 20 Percent in 2016, Fueled by Election Campaign: Report*, NBC NEWS (Mar. 14, 2017, 12:57 PM), <http://www.nbcnews.com/news/us-news/u-s-hate-crimes-20-percent-2016-fueled-election-campaign-n733306> ("The new numbers, collected from police departments, reverse a trend toward fewer hate crimes in many of the cities in recent years.").

32. PROPUBLICA, *Documenting Hate*, <https://projects.propublica.org/graphics/hatecrimes> (last visited Sept. 9, 2017).

33. The Hate Crime Statistics Act, 28 U.S.C. § 534 (1990) (as amended in 2009).

34. The FBI has established a Uniform Crime Reporting (UCR) program to facilitate data collection and reporting. *See Uniform Crime Reporting Statistics*, U.S. DEPT OF JUSTICE, FED. BUREAU OF INVESTIGATION, <https://www.ucrdatatool.gov/> (last revised Jan. 26, 2017). Not all states have created UCR programs. Currently Indiana, Mississippi, and New Mexico do not have UCR programs. *See Directory of State Uniform Crime Reporting Programs*, U.S. DEPT OF JUSTICE, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/state-ucr-program-contacts> (last visited Sept. 27, 2017); Nicole Krasavage & Scott Bronstein, *Are Victims Falling Through America's Hate Crime Data Gap?*, CNN (Mar. 23, 2013, 9:51 AM), <http://www.cnn.com/2013/03/15/justice/hate-crime-statistics/index.html>.

35. The Bureau of Justice Statistics bases its data on the National Crime Victimization Survey (NCVS),

[which] measures crimes perceived by victims to be motivated by an offender's bias against them for belonging . . . or being associated with a group . . . identified by these characteristics. For a crime to be classified as a hate crime in the NCVS, the victim must report at least one of three

typically yield vastly different results, with consistently lower numbers reported by the FBI.³⁶

Accurate data is vital to understanding trends related to bias, discrimination, and harassment—where it is occurring and who is being impacted. Further, data collection is an area in which state and local human rights commissions can positively contribute.³⁷ Data, however, does not necessarily address the root causes and consequences of the bias and discrimination that undergird expressions of intimidation and hate—information that is critical to developing meaningful solutions. It is often the communities disrupted by identity-based bias, harassment, and hate that can articulate the impacts on individuals, families, religious congregations, and communities.³⁸ These communities can also help identify potential responses and solutions.

Within the United States, efforts to respond to bias, discrimination, and harassment often focus on individual perpetrator accountability. An array of federal, state, and local criminal and civil laws are in place to prohibit and punish discriminatory actions,

types of evidence that the act was motivated by hate: (1) the offender used hate language, (2) the offender left behind hate symbols, or (3) police investigators confirmed that the incident was hate crime.

Hate Crime, U.S. DEPT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATS., <https://www.bjs.gov/index.cfm?ty=tp&tid=37> (last revised Aug. 30, 2017).

36. See, e.g., INT'L CTR. FOR ADVOCATES AGAINST DISCRIMINATION, PERPETUATING DISCRIMINATION: HOW THE U.S. GOVERNMENT'S COMPLIANCE WITH THE UNDERREPORTING OF HATE CRIMES LEADS TO A FAILURE TO PROTECT MINORITY GROUPS AND EFFECTIVELY COMBAT HATE CRIMES 1 (2014) (highlighting the significant variance in reports and a "34-fold gap" between the number of reports from the Bureau of Justice Statistics versus the FBI and describing significant limitations to the FBI data collection, which lead to "underreporting").

37. See, e.g., L.A. CTY. HUMAN RELATIONS COMM'N, 2015 HATE CRIME REPORT 3–4 (2016) (documenting hate crime statistics submitted by local police, educational institutions, and community-based organizations as a response to the underreporting of hate crimes to federal authorities).

38. *This Week in Hate*, N.Y. TIMES (last updated July 6, 2017), <https://www.nytimes.com/column/this-week-in-hate>. These impacts can be physical, emotional, and economic as well. See, e.g., McDevitt et al., *Consequences for Victims: A Comparison of Bias- and Non-Bias-Motivated Assaults*, 45.4 AM. BEHAV. SCIENTIST 697, 708–12 (2001) (finding hate crime victims experience higher levels of intrusive thoughts, nervousness, and depression, and reduced feelings of safety).

including hate and bias motivated conduct.³⁹ Litigation is one of the key tools these laws put in place to address discrimination.⁴⁰ Litigation can dissuade harmful conduct through criminal and civil sanctions, financial penalties, and injunctive relief.⁴¹ Yet, litigation has a number of limitations as a tool for accountability: it is

39. Criminal law figures prominently in efforts to address bias and hate where violence, force, and injury are involved. Federal hate crime laws provide for prosecution of an individual who “willfully injures, intimidates or interferes with” another person, or attempts to do so, by force because of a person’s race, color, religion, or national origin and because of the victim’s attempt to take part in a number of federally protected activities. Civil Rights Act of 1968, 18 U.S.C. § 245(b)(2) (1968). Pursuant to the Violent Crime Control and Law Enforcement Act, 42 U.S.C. ch. 136 (1994), hate crimes include violent crimes motivated by gender, sexual orientation, or disability, regardless of victim’s engagement in federally protected activities. See also the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249 (2009) (provides funding and technical assistance to state, local, and tribal jurisdictions to assist with investigation and prosecution of hate crimes). All but five states offer some level of hate crime protection as well, though protections vary. See *State Map on Laws and Policies: Hate Crimes*, HUMAN RIGHTS CAMPAIGN, <http://www.hrc.org/state-maps/hate-crimes#> (updated Apr. 25, 2017); see also Jack Levin, *The Invisible Hate Crime*, PAC. STANDARD (Mar. 1, 2011), <https://psmag.com/news/the-invisible-hate-crime-27984> (discussing that, at the time of the article’s publication, “[t]hirty-two states have hate crime statutes to protect people who have disabilities, but 18 states still [do] not”). Sixteen of these statutes include sexual orientation and gender identity, while fourteen include gender identity only. Most hate crime enforcement occurs at the state level.

Further, adding to the challenge of documentation and accountability, state laws do not uniformly require reporting on the number of hate crimes. HUMAN RIGHTS CAMPAIGN, A GUIDE TO STATE-LEVEL ADVOCACY FOLLOWING ENACTMENT OF THE MATTHEW SHEPARD AND JAMES BYRD, JR. HATE CRIMES PREVENTION ACT 10–11 (2014). Studies further indicate that hate crime prosecutions are rare and incidents are under-reported to authorities. One of the few studies of federal prosecution indicates that less than 11% of referred cases were prosecuted in 2015. See TRANSACTIONAL RECORDS CLEARINGHOUSE (TRAC) REPORT, CONVICTIONS IN FEDERAL HATE CRIMES CASES SINCE FY 2010 (2015). On the state level, where data is harder to access, a 2013 study shows that four percent of crimes reported at the state level led to an arrest. See *Special Report: Hate Crime Victimization, 2003-2011*, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATS. (Mar. 2013), <https://www.bjs.gov/content/pub/pdf/hcv0311.pdf> [hereinafter BJS Special Report]. Federal, state, and local civil anti-discrimination protections are described further in Section II.A *infra*.

40. See *infra* notes 41–44 and accompanying text.

41. See, e.g., U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., PRIVATE RIGHTS OF ACTION AND INDIVIDUAL RELIEF THROUGH AGENCY ACTION 1–4, in TITLE VI LEGAL MANUAL (2017), <https://www.justice.gov/crt/case-document/file/934826/download> (describing types of legal remedies available in discrimination cases, including injunctive relief and monetary damages).

individually focused and perpetrators are not always easily identifiable.⁴² Often victims are not willing to come forward.⁴³ Even where legislation is in place to prohibit discrimination—and litigation is pursued—the current approach is not calibrated to address widespread bias and discrimination in society.⁴⁴ As civil rights advocates have noted, “[b]ligotry, racism, homophobia, and anti-Semitism cannot be legislated out of existence.”⁴⁵ Meeting these challenges will require approaches that include communities and address the factors that perpetuate discrimination and bias.

42. See, e.g., Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CALIF. L. REV. 1, 40–41 (2006) (arguing that the antidiscrimination principle, which has the objective of “eliminating the unfairness particular individuals experience,” dominates courts); RICHARD T. FORD, *RACIAL CULTURE: A CRITIQUE* 194 (2005) (“[A]nti-discrimination law . . . retains an exclusively individualist orientation that is ill suited to the compelling policy imperative to dismantle social practices of segregation and hierarchy . . .”). But see OLATI JOHNSON, *BEYOND THE PRIVATE ATTORNEY GENERAL: EQUALITY DIRECTIVES IN AMERICAN LAW*, Columbia Public Law & Legal Theory Working Papers (2012) 2–20, 22–28 (emphasizing that U.S. domestic antidiscrimination law not only includes individually-focused mechanisms, but also has a more forward-looking emphasis on affirmatively fostering equality by “placing a set of positive duties on state actors to promote equality and inclusion”).

43. See J. Nicole Shelton & Rebecca E. Stewart, *Confronting Perpetrators of Prejudice: The Inhibitory Effects of Social Costs*, 28 PSYCHOL. WOMEN Q. 215, 220–21 (2004) (explaining how perceived personal costs can influence likelihood of victims confronting discrimination); see also CHERYL R. KAISER, *STIGMA AND GROUP INEQUALITY: SOCIAL PSYCHOLOGICAL PERSPECTIVES* 47–50 (Shana Levin & Colette van Laar eds., 2006) (describing research showing that claiming to be a target of discrimination can have negative interpersonal ramifications, limiting reporting by victims even when there is strong evidence of discrimination).

44. See, e.g., Audrey J. Lee, *Unconscious Bias in Employment Discrimination Litigation*, 40 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 481, 482–88 (2005) (stating that the nature of discrimination has changed from that of overt discrimination that existed prior to the 1964 Civil Rights Act, and is at odds with current discrimination doctrinal framework); see also Bagenstos, *supra* note 42, at 3–4 (arguing unconscious bias and current workplace structures generate inequalities that current antidiscrimination law is not well-equipped to solve).

45. Michael Lieberman, *Hate Crime Laws: Punishment to Fit the Crime*, DISSENT MAG. (Summer 2010), <https://www.dissentmagazine.org/article/hate-crime-laws-punishment-to-fit-the-crime>; see also Colbert King, *The Key Reason Why Racism Remains Alive and Well in America*, WASH. POST (June 26, 2015), https://www.washingtonpost.com/opinions/why-racism-still-flourishes/2015/06/26/d0e1f2e4-1b6e-11e5-ab92-c75ae6ab94b5_story.html?utm_term=.00b4983b8268 (highlighting that prevalent responses to discrimination, including litigation, focus on the symptoms of racism rather than root causes).

Communities across the United States are currently grappling with questions of how to address the increased reports of bias, intimidation, and harassment in their communities. What recourse is available when an individual is harassed on their way to work for wearing particular religious garb?⁴⁶ When parents are intimidated on the bus while taking children to school on the basis of their perceived race or national origin: to whom should they turn?⁴⁷ What if they are followed home and told to return to a real or perceived country of origin?⁴⁸ What should a group of religious leaders do when they are at a gathering in a public park that breaks up because fireworks are repeatedly thrown over the area where they are gathering?⁴⁹ Who can you turn to in the short-term, and what responses can prevent similar incidents in the future?

These are the situations and questions that human rights commissions in a number of jurisdictions are taking up—and responding to—through a range of initiatives. Human rights

46. See Emma Whitford, *Muslim Woman Says She Was Told To 'Take That Disgusting Piece Of Cloth Off' Her Head On Queens Bus*, GOTHAMIST (Nov. 11, 2016), http://gothamist.com/2016/11/11/mta_bus_muslim_hate_queens.php (recounting a middle-aged Caucasian couple accosting a Muslim woman and telling her to take off her hijab on the bus); Maria Sanchez Diez, *Hispanic Woman Defends 'Muslim Indian' Passengers on New York City Subway Being Harassed by Another Latina*, UNIVISION NEWS (Mar. 15, 2017), <http://www.univision.com/univision-news/united-states/hispanic-woman-defends-muslim-indian-passengers-on-new-york-city-subway-being-harassed-by-another-latina> (reporting on a man and woman who were verbally assaulted for appearing to be “Indian Muslim”).

47. See Christopher Mathias, *97 Ways of Saying the Same Hateful Thing: 'Get Out of America'*, (Mar. 10, 2017), http://www.huffingtonpost.com/entry/american-xenophobia_us_58bc3190e4b0b99894183211?3jmvkf428gyfd2t9& (collecting ninety-seven incidents of language conveying the message to “get out of America,” whether by yelling, spray-painting on buildings, or writing).

48. See Jen Chung, *It's 2016: Woman on Upper East Side Yells, 'Go Back To China' At (American) NY Times Editor*, GOTHAMIST (Oct. 9, 2016), http://gothamist.com/2016/10/09/its_2016_racism_in_manhattan.php (describing a scenario in New York City where a woman told a man to “go back to China,” and when he confronted her, she threatened to call the police and continued yelling after him); Anna North, *When Your Commute Includes Hearing 'You Don't Belong in This Country'*, N.Y. TIMES (Mar. 24, 2017), https://www.nytimes.com/2017/03/24/opinion/when-your-commute-includes-hearing-you-dont-belong-in-this-country.html?_r=1 (American-born woman commuting on the subway told “[Go] back to Lebanon” and “You don’t belong in this country”).

49. See, e.g., Marcus Solis, *Incendiary Devices, Possibly Firecrackers, Tossed At Homes Of New City Rabbis*, ABC (Aug. 11, 2016), <http://abc7ny.com/news/incendiary-devices-tossed-at-homes-of-new-city-rabbis/1465596/> (reporting an incident when young white men threw fireworks outside the houses of two rabbis, causing small fires near the houses).

commissions not only monitor compliance with local, state, and federal anti-discrimination law, but many also adjudicate complaints of violations of these laws. Many human rights commissions also undertake discrimination prevention efforts, including awareness-raising, trainings, and community outreach; some commissions are further mandated to make policy recommendations.⁵⁰

The following section describes the ways that a number of human rights commissions are taking steps to address and prevent scenarios similar to those described above. This is just a sampling, with a focus on activities undertaken since the 2016 presidential election to respond to increased reports of bias and discrimination and to resist recent federal policies that foster distrust and fear in local communities.

B. Recent Commission Initiatives to Tackle Bias, Discrimination, and Harassment, and Foster Inclusion

A number of commissions have been spurred into action by the increasingly hateful rhetoric occurring at the national level and the increased community tensions it has bred. This section gives a snapshot of some recent efforts undertaken in the wake of the election, focusing on two modes of activity: first, community outreach and documentation in response to incidents of bias, discrimination, and harassment; and second, policy initiatives that resist discriminatory federal policies. The activities mentioned here provide a basis for Parts II and III of this Article and an entry point to discuss how international human rights can enhance the work of human rights commissions.

1. Community Outreach and Data Collection

Human rights commissions in jurisdictions across the country—big and small—are taking action to engage with local communities, to provide education on their rights, and to identify and address the increased reports of bias, discrimination, and harassment.

New York City's Human Rights Commission has launched an "I am Muslim" campaign in partnership with the Mayor's Community

50. See *infra* Section II.A (discussing human rights commissions' core competencies).

Affairs Unit and the Office of Immigrant Affairs.⁵¹ The campaign has a significant public awareness component, with ads on subways, in community newspapers, on the radio, and on social media. But the aim is to engage in a range of activities to improve community relations, educate community members and government employees about their rights and responsibilities, bring together diverse perspectives to promote cultural competency and develop policy recommendations, and engage in comparative learning with other jurisdictions.⁵² Key groups involved in the campaign are representatives of faith communities, with a focus on Muslim communities, immigrants, and refugees. As part of the campaign, the Commission is convening focus groups and roundtables in communities to not only discuss what legal protections exist, but also to explore what more city agencies can do to effectively combat xenophobia and islamophobia and prevent discrimination.⁵³ This campaign complements the Commission's expanded bias and discrimination hotline, which saw exponential growth in the volume of calls in the wake of Election Day.⁵⁴ To reach the array of diverse constituents it serves, the Commission has also expanded its internal language capacity and publishes materials in over two dozen languages.⁵⁵

Similarly motivated by the increased instances of harassment and intimidation, Seattle's Office for Civil Rights launched a "Bias Hurts" campaign in early 2017.⁵⁶ This campaign includes a reporting

51. See *#IamMuslimNYC*, N.Y.C. HUMAN RIGHTS COMM'N, <https://www1.nyc.gov/site/cchr/media/i-am-muslim.page> (last visited Sept. 9, 2017).

52. *Id.*

53. To underscore the broad goals, Chair and Commissioner of the N.Y.C. Commission on Human Rights, Carmelyn P. Malalis, has highlighted that "[e]very New Yorker has the right to be themselves without being discriminated against, no matter where they come from, what language they speak, who they love, or their religious faith." See *New York City Launches Citywide Anti-Discrimination Campaign in Response to Rise in Bias Incidents and Harassment Against Vulnerable New Yorkers*, OFFICIAL WEBSITE OF N.Y.C. (May 23, 2017), <http://www1.nyc.gov/office-of-the-mayor/news/337-17/new-york-city-launches-citywide-anti-discrimination-campaign-response-rise-bias-incidents>.

54. See Ivan Pereira, *Reported Hate Crimes Prompt NYC To Launch 'Bias Response Team'*, AMNY (Dec. 20, 2016), <http://www.amny.com/news/reported-hate-crimes-prompt-nyc-to-launch-bias-response-team-1.12780371>.

55. See *#IamMuslimNYC*, *supra* note 51.

56. Press Release, Seattle Office for Civil Rights, *City's Bias Hurts Campaign Includes Anti-Bias Hotline, Community Meetings* (Mar. 1, 2017), <https://www.seattle.gov/civilrights/civil-rights/bias-hurts>.

hotline to track incidents of discrimination and harassment, coupled with community outreach meetings and a public media campaign.⁵⁷ The main message the campaign seeks to convey is that “all of us are welcome in Seattle.”⁵⁸ Several commissions have also specifically organized events that bring together communities to address religious difference.⁵⁹ As one example, in 2017, the Los Angeles County Human Relations Commission partnered with local groups around a “Ramadan in LA” initiative that aims to further positive relationships and cultural awareness across religious lines.⁶⁰ The website notes expressly that “[w]ith the rise of Islamophobia and the fear of a Muslim registry/ban, #RAMADANinLA is needed now more than ever to bring communities together.”⁶¹

The San Francisco City and County Human Rights Commission has also developed several initiatives to foster a feeling of safety and inclusion in direct response to the 2016 election outcomes.⁶² The “Help Against Hate” campaign is designed to reach vulnerable immigrant communities, particularly undocumented individuals, as well as Muslim and LGBTQ community members.⁶³

57. *Id.*

58. *Id.*

59. See, e.g., Holly Meyer, *What Do Islam And Restorative Justice Have in Common? This Ramadan Panel Explains*, TENNESSEAN (June 6, 2017), <http://www.tennessean.com/story/news/religion/2017/06/06/what-islam-and-restorative/372433001/> (describing how the Metro Human Relations Commission in Nashville hosts an annual event with the Nashville Faith and Culture Center, aiming to “breakdown barriers while celebrating the Islamic holy month of Ramadan”).

60. See L.A. CTY. HUMAN RELATIONS COMM’N, *#RamadanInLA 2017: A Date with Islam Sponsorship Proposal* (2017), http://www.lahumanrelations.org/pdf/RamadanInLA_Proposal2017.pdf.

61. See RAMADAN IN LA, <https://www.ramadaninla.com> (last visited Sept. 10, 2017).

62. See, e.g., Press Release, City & Cty. of S.F. Human Rights Comm’n, S.F. Human Rights Comm’n Statement on 2016 Presidential Election (Nov. 15, 2016), <http://sf-hrc.org/sites/default/files/HRC%20Post%20Presidential%20Election%20Statement%202016%20FINAL.pdf> (expressing the Commission’s concern with increased “discriminatory language and violence” during the 2016 presidential campaign and election, and vowing to fight against discrimination through its legal jurisdiction and collaboration with city government).

63. See Susan C. Schena, *‘Respect & Love’ Toolkit Released to Help SF Immigrants Feel Safe*, S.F. PATCH (March 6, 2017), <https://patch.com/california/san-francisco/respect-love-toolkit-released-help-sf-immigrants-feel-safe> (“‘Help against Hate’ aims to improve the public’s awareness of discrimination and hate violence, especially among historically underserved communities in San Francisco.”).

The campaign's community toolkit highlights the impact of San Francisco's Sanctuary Cities Ordinance and answers questions about what services are available for different communities and how citizenship status affects access to these services.⁶⁴ The toolkit also identifies partners and resources for further support.⁶⁵ The Commission has signaled its intent to "facilitate a series of presentations for other City departments and community based organization [sic] to introduce the Help Against Hate Campaign and how to best utilize the Toolkits to create more socially conscience [sic] and inclusive environments."⁶⁶

In December of 2016, the Orange County Human Relations Commission launched a public campaign to "cultivate a hate-free environment in Orange County, bring diverse communities together, and promote a safe, peaceful, respectful, and inclusive community for ALL"⁶⁷ The campaign #HateFreeOC includes raising public awareness, calling on individuals to pledge to create an inclusive environment, report bias, and address all forms of prejudice.⁶⁸ It also promotes reporting of hate crimes.⁶⁹ This complements the Commission's historic hate crime tracking.⁷⁰

These community outreach efforts aim to advance reporting and tracking of hate and bias incidents, so it is important to note that a number of commissions have historically tracked hate crimes data.⁷¹

64. *Respect and Love: Toolkit & Resource Guide*, S.F. HUMAN RIGHTS COMM'N (2017), http://sf-hrc.org/sites/default/files/Help%20Against%20Hate%20Campaign%20%26%20Respect-LoveToolkit_1.pdf.

65. *Id.*

66. *Respect & Love Toolkit*, S.F. HUMAN RIGHTS COMM'N (2017), <http://sf-hrc.org/respect-love-toolkit>.

67. #HateFreeOC, ORANGE CTY. HUMAN RELATIONS COMM'N, <http://www.ochumanrelations.org/hatefreeoc/> (last updated Aug. 25, 2017).

68. *Id.*

69. *Id.*; Press Release, Orange Cty. Human Relations Comm'n, Comm'n Launches "Hate Free OC" Campaign (Dec. 9, 2016), <http://www.ochumanrelations.org/press-releases/commission-launches-hate-free-oc-campaign/>.

70. ORANGE CTY. HUMAN RELATIONS COMM'N, 2015 HATE CRIME REPORT (2016), http://www.ochumanrelations.org/wp-content/uploads/2016/08/HateCrimeRpt_7-28-16.pdf.

71. The Los Angeles County Commission on Human Relations, for instance, has been publishing a comprehensive annual hate crimes report with detailed statistics on hate crimes in Los Angeles County since 1980. HUMAN RIGHTS WATCH, "WE ARE NOT THE ENEMY": HATE CRIMES AGAINST ARABS, MUSLIMS, AND THOSE PERCEIVED TO BE ARAB OR MUSLIM AFTER SEPTEMBER 11, at 38 (2002). The Orange County Human Relations Commission has collected hate crime data

The Los Angeles County Human Relations Commission has expressly grounded this work in the international human rights framework for several years.⁷² New bias tracking efforts have also been born out of the current context. One modest, yet potentially impactful example is the Columbus, Indiana, Human Rights Commission's launch of an online tracking portal.⁷³ This effort is not part of the formal complaints process that would lead to legal action, but serves "as a way to gather information about the tenor of Columbus' inclusiveness and acceptance. . . ."⁷⁴ The Commission's director has highlighted that the information will provide "a bridge to conversation about inclusion and diversity," and to "talking about the uncomfortable."⁷⁵ In Fargo, North Dakota, the city commission decided to create a hate speech task force in the face of local incidents of bias, working with both law enforcement and community members to develop appropriate responses.⁷⁶

This sampling of community outreach efforts reflects some of the ways that commissions can take very local action to bring community members together across cultural and religious lines, educate the community about their rights, build support for inclusive communities, and gather community input to inform policy responses. It is too early to assess the replicability and sustainability of these initiatives, or their long-term impact, but the initiatives offer insight into the role commissions can play. To date, the most public examples of commission activity appear to be in jurisdictions that are considered fairly progressive and where state and local politics run

since 1995. *Hate Crime Report Archives*, ORANGE CTY. HUMAN RELATIONS COMM'N, <http://www.ochumanrelations.org/hatecrime/hate-crime-reports/> (last visited Aug. 18, 2017).

72. See, e.g., L.A. CTY. COMM'N ON HUMAN RELATIONS, 2015 HATE CRIME REPORT (2016), <http://www.cacej.org/wp-content/uploads/2016/09/2015-HC-Report-hcr-150830-compressed.pdf> (discussing local governments' duty to uphold the United States' international human rights obligations).

73. Julie McClure, *Human Rights Commission Launches Online Hate-Crime Reporting Mechanism*, REPUBLIC (Apr. 14, 2017), http://www.therepublic.com/2017/04/14/human_rights_commission_launches_online_hatecrime_reporting_mechanism/.

74. *Id.*

75. *Id.*

76. Nicole Johnson, *Fargo Human Relations Commission To Create Hate Speech Task Force*, VALLEY NEWS LIVE (Dec. 15, 2016), <http://www.valleynewslive.com/content/news/-Fargo-Human-Relations-Commission-to-create-hate-speech-task-force-406918125.html> (reporting that the task force "was sparked by hateful graffiti written on the parking ramp of the Radisson Hotel in Downtown Fargo").

counter to that of the current administration. Yet efforts need not be limited to these jurisdictions and some of the examples highlighted here—as well as in the section that follows—are occurring in more unexpected places. There is also some indication that additional human rights commissions want to do more to respond to acts of intolerance. For one, the Fall 2017 IAOHRA conference features several sessions on addressing hate and bias.⁷⁷ However, initiatives to date have been fairly ad-hoc and it is unclear how long they will continue. Ultimately, developing more comprehensive and coordinated efforts will require longer-term planning, political will, and resources for commissions to continue this work.

2. Policy Initiatives

In addition to the above community outreach and data collection efforts spurred on by increased reports of bias and discrimination, human rights commissions are speaking out and taking positions to resist harmful federal policies. This section highlights one such example: commissions in a range of communities—from Austin, Texas to Traverse City, Michigan—are standing up to federal efforts to enforce immigration policy through local law enforcement and undermine sanctuary cities.⁷⁸

Elected officials in many U.S. cities have gained prominence as defenders of sanctuary city policies.⁷⁹ What is less known is that local human rights commissions often make policy recommendations to mayors and city councils and can drive efforts to designate jurisdictions as “sanctuaries,” “welcoming cities,” “safe cities,” and “inclusive communities.”⁸⁰ Commissions across the country have

77. See Draft Agenda for 2017 IAOHRA Conference, *Entering A New Era: United to Protect and Promote Human Rights for All*, http://docs.wixstatic.com/ugd/a7a927_e47982d1a85e48069c0ac32668c5f674.pdf (last visited Sept. 10, 2017).

78. See *supra* notes 3–4 and accompanying text for discussion of the federal efforts in this arena.

79. See Robbins, *supra* note 9; see also Elisa Foley, *New York Defiant As Trump Threatens Funds Over ‘Sanctuary’ Immigration Policies*, HUFFINGTON POST (Mar. 28, 2017), http://www.huffingtonpost.com/entry/new-york-trump-sanctuary-cities_us_58d9890ae4b0f805b322c76f (discussing a two-day summit on sanctuary cities hosted by a network of progressive local officials (Local Progress) and the Center for Popular Democracy).

80. See Beth Milligan, *Human Rights Commission to Consider Decision on Sanctuary City Proposal*, TRAVERSE TICKER (July 11, 2017), <http://www.traverseticker.com/story/human-rights-commission-to-consider-decision-on-sanctuary-city-proposal> (noting that the Human Rights Commission’s recommendations on a potential sanctuary city policy would be submitted to City

proposed ordinances,⁸¹ passed symbolic resolutions,⁸² and otherwise supported these designations.⁸³ Commissions can also speak in opposition to policies that are harmful to communities. In the context of sanctuary cities, for example, the City of Austin's Human Rights Commission issued a resolution calling on the City Council to take action to prevent implementation of law enforcement policies that harm immigrant communities.⁸⁴ Such efforts build on a history of commission engagement on matters related to local policing and federal immigration enforcement.⁸⁵ By way of example, in 2007, when Prince William County, Virginia, passed a resolution requiring local law enforcement and county service providers to ask about immigration status in the course of certain interactions, the county's Human Rights Commission held public hearings and issued a report

Commission for review); Jim Russell, *With Jabs at Trump, Northampton Human Rights Commission Adopts 'Sanctuary City' Resolution*, MASS LIVE (Dec. 8, 2016), http://www.masslive.com/news/index.ssf/2016/12/with_jabs_at_pres-elect_trump.html (describing "the city[] Human Rights Commission[s] [approval of] a resolution endorsing the community's status as a 'sanctuary city'").

81. See Corinne Boyer, *City of Eugene Human Rights Commission Drafts "Sanctuary City" Resolution*, EUGENE WKLY. (Dec. 8, 2016), <http://www.eugeneweekly.com/20161208/news-features/city-eugene-human-rights-commission-drafts-sanctuary-city-resolution> (describing the Eugene Human Rights Commission's passage of a resolution and ordinance to make the city a sanctuary city).

82. See Mike Masciadrelli & Logan Leavitt, *Human Rights Commission Wants to Declare Greenfield a "Safe City,"* WWLP.COM (Feb. 13, 2017), <http://wwlp.com/2017/02/13/the-greenfield-human-rights-commission-wants-to-declare-greenfield-a-sanctuary-city/> (describing the Greenfield Human Rights Commission's agreement on a "safe city" resolution to protect citizens from discrimination on the basis of citizenship).

83. See *Over 100 Turnout to Support 'Welcoming City' Resolution*, IOWA CITIZENS FOR CMTY. IMPROVEMENT, <http://iowaccis.org/immigrant-issues/welcoming-city-resolution/> (discussing the role of the Des Moines Human Rights Commission in supporting a community proposal for the City Council to pass a "Welcoming City" resolution).

84. See, e.g., *Joint Resolution of the Human Rights Commission and the Commission on Immigrant Affairs, City of Austin, Texas*, <http://www.austintexas.gov/edims/document.cfm?id=168659> (focusing on the harmful impacts of the Immigration and Customs Enforcement's Secure Communities Program).

85. See Angela Arboleda & Robin Toma, *Strengthening Relations Between Local Police and Immigrant Communities: The Role for Human Rights Commissions* (June 2008), http://publications.unidosus.org/bitstream/handle/123456789/58/police_and_immigration.pdf?sequence=1&isAllowed=y (EXECUTIVE SESSION PAPERS: HUMAN RIGHTS COMMISSIONS AND CRIMINAL JUSTICE No. 6) (discussing strategies human rights commissions can adopt to strengthen relationships between law enforcement and immigrant communities).

highlighting the discriminatory nature of the resolution, documenting the community unrest it caused, and recommending the policy be revisited.⁸⁶

While many of these efforts are symbolic, they nevertheless offer an opportunity for local governments to signal priorities and commitments to community members, local government, and federal authorities.⁸⁷ Their impact will depend on many factors, including the mandate of a human rights commission, its position within a given local jurisdiction, as well as whether a commission's policy positions form a part of a broader strategy. For example, in Eugene, Oregon, the Human Rights Commission worked with the city council to pass a non-binding sanctuary city resolution as a step towards drafting a binding ordinance on the issue.⁸⁸ Even where direct policy or legal action does not result from a human rights commission's actions, symbolic positions can spur community conversations. In Traverse City, the Commission's sanctuary vote drew community members to come to the Commission meeting in record numbers.⁸⁹ Commissions can enhance the impact of policy initiatives by engaging with stakeholders to identify pressing local issues, develop position statements, and coordinate these activities with longer-term strategies.

The examples discussed above demonstrate just two of the ways in which human rights commissions are responding to a surge in bias and discrimination and resisting federal policies that foster distrust and fear in local communities. The following section situates these initiatives within the broader work of human rights commissions and their historical roots. As Sections II.A and II.B describe, many human rights commissions emerged specifically to diffuse racial tensions and foster inclusion, lending them unique expertise and institutional mandates to take action in the current context. Section II.C introduces how commissions have already begun

86. *Id.* at 15–16.

87. *See, e.g.,* Miguel Sanchez-Rutledge, *Human Rights Commission Pushes to Make Eugene a Sanctuary City*, DAILY EMERALD (Dec. 2, 2016), <http://www.dailymerald.com/2016/12/02/human-rights-commission-pushes-make-eugene-sanctuary-city/> (quoting a Eugene Human Rights Commission member's statement that "[i]t is important to send a message to residents in Eugene to say it is a safe place for immigrants and that it recognizes the contributions of immigrants to our community").

88. *Id.*

89. Milligan, *supra* note 80; *see also* IOWA CITIZENS FOR CMTY. IMPROVEMENT, *supra* note 83 (discussing community turnout for the Des Moines, Iowa Human Rights Commission's vote on a welcoming city resolution).

to connect their own work to international human rights standards, locally and at the international level.

II. STATE AND LOCAL HUMAN RIGHTS COMMISSIONS: A FIRST LINE OF DEFENSE AT THE COMMUNITY LEVEL

A. Core Functions

There are more than 150 civil rights, human rights, and human relations agencies across the country that monitor and enforce civil and human rights laws at the state, city, and county level.⁹⁰ State-level commissions exist in all but three U.S. states: Alabama, Arkansas, and Mississippi.⁹¹ Therefore, in almost every state in the country there is an agency in place to address discrimination and promote equal opportunity,⁹² marking the collective reach of commissions and their connections to local community and local government networks.

While their mandates and specific functions vary, just as the laws under their purview differ, the work of human rights commissions has been defined in three broad categories: (1) enforcement of local, state, or federal anti-discrimination law⁹³

90. Risa E. Kaufman, *State and Local Commissions as Sites for Domestic Human Rights Implementation*, in HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM 89, 91 (Shareen Hertel & Kathryn Libal eds., 2011) (“There are more than 150 state and local commissions or agencies mandated by state, county, or city governments to enforce human and civil rights and/or to conduct research, training, and public education, and issue policy recommendations on human intergroups relations and civil and human rights.”). The International Association of Official Human Rights Agencies (IAOHRA) maintains a database of member agencies, which offers the most comprehensive list of commissions operating today. See *IAOHRA Members and Human Rights Agencies Database by State*, IAOHRA, <http://www.iaohra.org/members> (last visited Sept. 7, 2017).

91. Saunders & Bang, *supra* note 11, at 13.

92. *Id.* at 1.

93. A patchwork of federal, state and local civil anti-discrimination laws prohibits discrimination, harassment, and exclusion of protected groups in many facets of life, including some of the arenas where increased instances of hate and bias are taking place. State and local commissions enforce the law of their local jurisdiction, and in many cases, federal law as well, in conjunction with the Equal Employment Opportunities Commission (EEOC) and the Department of Housing and Urban Development (HUD).

Two of the key federal statutes in this area are the Civil Rights Act of 1964 and the Civil Rights Act of 1968. The Civil Rights Act of 1964 has broad reach,

through investigation, hearings, and resolution of cases; (2) education and training to promote compliance with anti-discrimination protections for government agencies and private entities; and (3) proactive prevention of bias and discrimination, which ranges from commissions hosting and participating in events to conducting

prohibiting discrimination and harassment on the basis of race, color, sex, and national origin in employment; public accommodations; and by entities that receive federal funding, including schools and transportation authorities. *See* Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (2012); Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a(b); Title VI of the Civil Rights Act, 42 U.S.C. § 2000d et seq. The Civil Rights Act of 1968, also known as the Fair Housing Act, prohibits discrimination in the sale and rental of housing on the basis of race, color, national origin, disability and family status, religion, or sex. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601–19, 3631 (2012). State and local human rights commissions resolve cases and conduct outreach and education related to these laws. *See* 42 U.S.C. § 2000e-8(b) (giving the EEOC authority to cooperate with local human rights commissions to “engage in . . . research and other projects . . . and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services”); 42 U.S.C. § 3610(f)(1) (providing for HUD referral of complaints to state and local entities that have jurisdiction under state or local law or are otherwise certified as Fair Housing Practice Agencies); Housing and Community Development Act, 42 U.S.C. § 3616(a) (1987), *amended by* Housing and Community Development Act, 24 C.F.R. § 125 (1992) (authorizing grants to state and local agencies to conduct education and outreach as part of the HUD Fair Housing Initiatives Program).

At the state and local level, fair housing and fair employment protections appear as stand-alone laws, as well as in more omnibus anti-discrimination statutes often referred to as “human rights laws” or “civil rights acts.” *See, e.g.,* New York City Human Rights Law, 8 N.Y.C. ADMIN. CODE §§ 101–705 (2017); Tennessee Human Rights Act, TENN. CODE ANN. §§ 4-2-101–8-50-104 and Human Rights Code of the City of Alexandria, Virginia, 12 ALEXANDRIA CODE §§ 12-4-1–12-4-30 (2017) (examples of statutes that fall under the “human rights laws” category); New York State Civil Rights Act, N.Y. CIV. RIGHTS §§ 1–91 (2016) Delaware Civil Rights Act, 19 DEL. CODE. ANN. §§ 710–719A (2017) (examples of statutes that fall under the “civil rights acts” category). Many of these laws mirror the protections offered by federal laws, while some states and many municipal laws go further and prohibit discrimination in housing, employment, and public accommodation for a wider array of protected categories. *See* Olatunde C.A. Johnson, *The Local Turn: Innovation and Diffusion in Civil Rights Law*, 79 L. & CONTEMP. PROBS., 115, 119–21 (Nov. 2016). At the same time, a number of states lack anti-discrimination protections found in federal law. *See* NAT’L CONFERENCE OF STATE LEGISLATURES, *State Laws on Employment Related Discrimination*, <http://www.ncsl.org/research/labor-and-employment/discrimination-employment.aspx>; NAT’L CONFERENCE OF STATE LEGISLATURES, *State Laws on Public Accommodation*, <http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx>. When we look to municipal-level laws, there is even more variation, with a wide array of protected classes.

research, writing reports, and issuing policy recommendations.⁹⁴ The overarching aim of these agencies is to “encourag[e] and facilitat[e] institutional change through policy and practice to eradicate discrimination and promote equal opportunity.”⁹⁵

A recent comprehensive study on equity in cities highlights that human rights commissions are a valuable predictor of how well cities are addressing discrimination:

[E]ven in jurisdictions where LGBTQ equality isn’t explicitly a part of the commission’s charter, these commissions investigate complaints, educate the city, and sometimes enforce non-discrimination laws. Human Rights Commissions serve as important bridges between constituents and their city. [. . .] These commissions may hold community discussions, screen movies, present panels, take public comment, advise the city on matters of diversity and inclusion, develop policies and strategies for making the city more inclusive, and undertake other similar types of endeavors. Where, in addition to the functions listed above, a Human Rights Commission has the authority to conciliate, issue a right to sue letter, or otherwise enforce non-discrimination protections . . . [they elevate a city’s equity standing].⁹⁶

This makes sense, as the step of establishing a human rights agency demonstrates a long-term government commitment to identifying and addressing the causes and impacts of inequality. The origins of human rights commissions, which go back to the first half of the twentieth century, affirm why they are important sites for tackling bias and intolerance today.

B. Genesis of Human Rights Commissions

The precursors of human rights commissions emerged largely in three historical waves, which track surges in racial tension and violence in the United States. The first is marked by the emergence of city- and state-level “interracial committees” or “race relations

94. See Saunders & Bang, *supra* note 11, at 1.

95. See Kaufman, *State and Local Commissions*, *supra* note 90, at 91.

96. See HUMAN RIGHTS CAMPAIGN FOUND. & EQUAL. FED’N INST., MUNICIPAL EQUALITY INDEX: A NATIONWIDE EVALUATION OF MUNICIPAL LAW 2016, 25 (2016), http://assets.hrc.org/files/assets/resources/MEI-2016-Final-Online.pdf?_ga=2.18986232.1537519373.1499786580-118557528.1499451400 (focused mainly on LGBTQ equality, but employing a broader lens).

committees” that formed in the United States in the aftermath of World War I, when in 1919 race riots plagued U.S. cities.⁹⁷ These committees, comprised of both non-governmental and governmental representatives, focused on fostering race relations through activities that included mediation, research, and community engagement.⁹⁸ The Chicago Commission on Race Relations is seen as one of the blueprints for current commissions.⁹⁹

A second wave of official government bodies—committees focused on “unity,” “friendly relations,” and “community relations”—emerged in the 1940s in Detroit, Cincinnati, New York, and Los Angeles, after race riots rippled across U.S. cities.¹⁰⁰ Connecticut and Illinois established the first state-level commissions.¹⁰¹ It was in this same time period that the first federal-level agencies focused on discrimination were established: the Fair Employment Practices Committee and the Truman Committee on Civil Rights (a precursor to the current U.S. Commission on Civil Rights).¹⁰²

The third wave of commissions emerged in response to the civil rights movement. As the federal government enacted key civil rights laws and established enforcement agencies,¹⁰³ states and localities also created formal bodies to enforce the law and promote greater tolerance and understanding among diverse community members.¹⁰⁴

97. See Saunders & Bang, *supra* note 11, at 6–7; SONIA CARDENAS, CHAINS OF JUSTICE: THE GLOBAL RISE OF STATE INSTITUTIONS FOR HUMAN RIGHTS 24–25 (2014) (focusing on committees in the South, noting that over 800 interracial committees were in existence by 1922, but many were primarily comprised of moderate white members and focused on fostering positive relations rather than addressing segregation and structural discrimination).

98. Saunders & Bang, *supra* note 11, at 4–7; CARDENAS, *supra* note 97, at 26.

99. Saunders & Bang, *supra* note 11, at 7 (discussing the model of a more permanent agency that emerged in Chicago); see also CARDENAS, *supra* note 97, at 24–25 (explaining that these committees “promoted local activism, interracial collaboration, and a willingness to cooperate with the government”).

100. Saunders & Bang, *supra* note 11, at 8–9.

101. CARDENAS, *supra* note 97, at 24.

102. *Id.* at 25; Saunders & Bang, *supra* note 11, at 8–9.

103. See HUMAN RIGHTS CAMPAIGN FOUND. & EQUAL. FED’N INST., *supra* note 96.

104. Saunders & Bang, *supra* note 11, at 9; CARDENAS, *supra* note 97, at 26.

Not all civil rights, human rights, and human relations commissions emerged in response to violence or specific tensions, or follow this timeline. The Portland Human Rights Commission was established in 2008, for example.¹⁰⁵ Some of these agencies also emerged in response to changes in federal law and some started as a civil rights division within a state attorney general's office.¹⁰⁶ In some jurisdictions, the formal designation has changed, as have commissions' functions. At the state level, a number of commissions began with a narrow focus on employment, and their jurisdiction has expanded over time.¹⁰⁷ By 1970, most states had a human rights commission in some form.¹⁰⁸ Taken together, these commissions play an important role in ensuring that bias, discrimination, intolerance, and their impacts on communities are on the radar of local government, and they signal that community members and government actors have resources to foster improved community relations and promote equality.¹⁰⁹ Commissions with an enforcement function also guarantee rights can be vindicated in practice.

As U.S. demographics have changed, so has the work and constituency of human rights commissions.¹¹⁰ The growth of Latinx, Asian, Muslim, and Arab communities in the United States has led to new challenges and initiatives,¹¹¹ some of which were discussed in Section I.B. Notably, at least one such agency has been created since the 2016 presidential election. The Claremont City Council in California voted to create a Committee on Human Relations in

105. See Kaufman, *State and Local Commissions*, *supra* note 90, at 92.

106. Saunders & Bang, *supra* note 11, at 3.

107. *Id.*

108. CARDENAS, *supra* note 97, at 26.

109. It is important to note that, as creations of government established to respond to conflict, commissions may often promote a moderate agenda. See *id.* at 27 ("warning of the dualities often inherent in state institutions").

110. Saunders & Bang, *supra* note 11, at 10.

111. One of the emerging challenges is changing community demographics, which have shifted the issues that commissions address and dynamics within the communities they serve. See Saunders & Bang, *supra* note 11, at 10 (discussing a corollary emphasis on undocumented immigrants and challenges in securing affordable housing). Demographic shifts have been widely documented. See, e.g., PEW RES. CTR., MODERN IMMIGRATION WAVE BRINGS 59 MILLION TO U.S., DRIVING POPULATION GROWTH AND CHANGE THROUGH 2065, (2015), http://assets.pewresearch.org/wp-content/uploads/sites/7/2015/09/2015-09-28_modern-immigration-wave_REPORT.pdf (providing "a 100-year look at the impact of immigration on the nation's demographics since passage of the 1965 Immigration and Nationality Act"). The impact of changing demographics is also a topic that has been addressed at past annual conferences of IAOhRA.

January 2017, when the community experienced attacks on a local mosque.¹¹² The Committee will be responsible for proactively “developing ongoing public dialogue to address hate crimes and intolerance” in partnership with police, city staff, and other such commissions in the region.¹¹³

This section has elucidated the very local—and clearly domestic—origins of human rights commissions. Their work is grounded in domestic anti-discrimination legal provisions and their jurisdictions are shaped by state and local law. However, commissions have also looked outward to international standards and practice to inform their work and existing scholarship underscores how commissions’ mandates and functions align with international human rights principles. The following section introduces the relationship between commissions and international human rights principles, laying a foundation for the discussion in Part III on the specific ways that commissions can use international human rights standards to strengthen their advocacy, awareness-raising, and data collection efforts.

C. Nexus Between U.S. Human Rights Commissions and International Human Rights Standards

While the designation “human rights commission” is the most common designation for U.S. state and local civil and human rights agencies today,¹¹⁴ their historic link to the international human rights framework is somewhat tenuous. As noted above, these institutions emerged to address community tensions, and their mandates emanate from domestic civil rights and anti-discrimination laws.¹¹⁵ However, in the past two decades, U.S. human rights commissions have begun to integrate international human rights standards into their work. A growing body of literature captures not only how these commissions foster domestic compliance with international human rights standards and serve as innovators in implementing these standards, but also the legal and practical challenges that surround

112. Lizet Marquez, *Prompted By Mosque Hate Letter, Claremont Forms Human Relations Committee*, INLAND VALLEY DAILY BULL. (Jan. 16, 2017, 9:06 PM), <http://www.dailybulletin.com/general-news/20170116/prompted-by-mosque-hate-letter-claremont-forms-human-relations-committee>.

113. *Id.*

114. See Saunders & Bang, *supra* note 11, at 4.

115. See *supra* notes 90–94 and accompanying text.

these efforts.¹¹⁶ These challenges range from the possibility of preemption of local law,¹¹⁷ to limited staff capacity and threats of being defunded.¹¹⁸ These challenges can be compounded by invoking

116. See, e.g., Kaufman, *State and Local Commissions*, *supra* note 90, at 89–109 (suggesting that, “given [the] mission, history, and expertise” of state and local human rights commissions, these commissions “can be effective sites for sub-national implementation of international human rights treaty obligations and norms”); Kenneth J. Neubeck, *In a State of Becoming a Human Rights City: The Case Of Eugene, Oregon*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 237–53 (Barbara Oomen et al. eds., 2016) (describing Eugene, Oregon’s progress implementing human rights); see also Kaufman, ‘By Some Other Means’, *supra* note 20, at 2005–06 (discussing the role of commissions, but more broadly focused on the role of the Federal Executive Branch in coordinating and supporting human rights monitoring and implementation at the local level in the United States); Lesley Wexler, *The Promise and Limits of Local Human Rights Internationalism*, 37 FORDHAM URB. L.J. 599, 620 (2010) (highlighting the challenges and opportunities of cities as sites for human rights implementation, and noting the specific role human rights commissions can play). The Columbia Law School Human Rights Institute has also documented the human rights work of commissions across the country since 2009 and worked directly with commissions as well. See, e.g., COLUMBIA LAW SCH. HUMAN RIGHTS INST., USING HUMAN RIGHTS ASSESSMENTS IN LOCAL GOVERNANCE: A TOOLKIT FOR STATE AND LOCAL HUMAN RIGHTS AND HUMAN RELATIONS COMMISSIONS (Aug. 2014), https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/iaohra_toolkit_9.11.14_reduced.pdf [hereinafter Human Rights Assessments] (distilling human rights assessment tools and the ways governments use them); COLUMBIA LAW SCH. HUMAN RIGHTS INST., BRINGING HUMAN RIGHTS HOME: HOW STATE AND LOCAL GOVERNMENTS CAN USE HUMAN RIGHTS TO ADVANCE LOCAL POLICY (Dec. 2012), at <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf> [hereinafter Bringing Human Rights Home] (recommending how state and local governments can advance local policy through a human rights framework); COLUMBIA LAW SCH. HUMAN RIGHTS INST. & IAOHRA, STATE AND LOCAL HUMAN RIGHTS AGENCIES: RECOMMENDATIONS FOR ADVANCING OPPORTUNITY AND EQUALITY THROUGH AN INTERNATIONAL HUMAN RIGHTS FRAMEWORK (2009), https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/45408_HRI-Text%20%5Bonline%5D%20%202nd%20printing%20%28updated%2010.1.09%29.pdf (describing how an international human rights framework can guide the work of human relations commissions and other state and local agencies and highlighting national level reforms that would enhance local, state, and federal efforts).

117. See NICOLE DUPUIS ET AL., NAT’L LEAGUE OF CITIES, CITY RIGHTS IN AN ERA OF PREEMPTION: A STATE BY STATE ANALYSIS (2017), <http://nlc.org/sites/default/files/2017-03/NLC-SML%20Preemption%20Report%202017-pages.pdf>; Johnson, *The Local Turn*, *supra* note 93, at 135–37; Martha Davis, *Upstairs, Downstairs*, *supra* note 22, at 412–13, 437 (2008).

118. See COLUMBIA LAW SCH. HUMAN RIGHTS INST. & IAOHRA, *supra* note 17, at 19–22, 31–32; Kaufman, *State and Local Commissions*, *supra* note 90, at 101–07.

international human rights principles, particularly because many state and local actors are unaware of international human rights treaties and their associated obligations to proactively identify and address the causes of discrimination.¹¹⁹

Despite these challenges, several commissions are incorporating human rights into their work.¹²⁰ Individual commission representatives and the umbrella association of human rights commissions, IAOHRA, have also participated in reviews of U.S. compliance with its international human rights commitments and obligations,¹²¹ submitted shadow reports to treaty bodies,¹²² and joined U.S. delegations to the United Nations.¹²³ In these ways, commissions

119. See COLUMBIA LAW SCH. HUMAN RIGHTS INST. & IAOHRA, *supra* note 17, at 20, 31. In 2008, Human Rights Watch documented the limited awareness of the CERD and its relevance among local officials. The organization conducted outreach to the attorneys general of every state to assess awareness of the treaty. The Attorney General of Kansas responded: "It does not appear that Kansas was a party to any agreement or resolution passed by this body or the federal government" and requested a 'cite to the pre-emptive federal law and/or Kansas Statute . . . creating a legal duty.'" Others responded simply that they were unaware of the treaty. HUMAN RIGHTS WATCH, *Submission to the Committee on the Elimination of all Forms of Racial Discrimination During its Consideration of the Fourth, Fifth, and Sixth Periodic Reports of the United States of America CERD 72nd Session 64* (Feb. 2008), <https://www.hrw.org/report/2008/02/06/submission-committee-elimination-racial-discrimination/during-its-consideration>.

120. See *supra* notes 18–19 and accompanying text (describing initiatives grounded in the Universal Declaration of Human Rights (UDHR)); Kaufman, *State and Local Commissions*, *supra* note 90, at 91–95 (noting examples that include the Washington State Human Rights Commission's incorporation of the UDHR in a report documenting challenges faced by farmworkers in securing housing, and the incorporation of the UDHR in the Eugene Human Rights Commission's bylaws, among other examples).

121. COLUMBIA LAW SCH. HUMAN RIGHTS INST. & IAOHRA, *STATE AND LOCAL HUMAN RIGHTS AGENCIES*, *supra* note 116, at 11.

122. See e.g., *Closing the Gap*, *supra* note 17, at 10–11 (suggesting that, "[t]o ensure that state and local governments can reach their full potential to implement the ICCPR, the United States must develop a more comprehensive and coordinated approach to human rights," and specifically, recommending that the United States "[e]stablish institutionalized, transparent and effective mechanisms to coordinate with . . . officials to ensure comprehensive monitoring and implementation of international human rights standards at the federal, state and local levels").

123. See e.g., Michael H. Posner, Ass. Sec'y, Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, Remarks to the IAOHRA National Conference (Aug. 7, 2012), <https://2009-2017.state.gov/j/drl/rls/rm/2012/196100.htm> (discussing the participation of the L.A. County Human Relations Commission's Executive Director Robin Toma in a U.N. review of the U.S. human rights record).

have engaged in efforts to give local meaning to international human rights standards and have influenced human rights dialogues at the global level.¹²⁴

Legal scholars¹²⁵ and political scientists¹²⁶ have also identified linkages between U.S. state and local human rights commissions and National Human Rights Institutions (NHRI), which are national-level bodies established in 121 countries around the world to promote and protect human rights.¹²⁷ Typically, NHRIs monitor compliance with human rights standards, advise governments on compliance with international human rights instruments, facilitate human rights awareness, and communicate with regional and international

124. See Koen De Feyter, *Sites of Rights Resistance*, in *THE LOCAL RELEVANCE OF HUMAN RIGHTS* 11, 36 (Koen De Feyter et al. eds., 2011) (noting that human rights can be infused into local policy “by exploring the opportunities that international human rights law already offers in giving locally relevant content to abstract treaty norms; and . . . by developing global human rights law and practice further in directions that will improve its local effectiveness”); see also George Ulrich, *Epilogue: Widening The Perspective On The Local Relevance Of Human Rights*, in *THE LOCAL RELEVANCE OF HUMAN RIGHTS* 337, 343 (Koen De Feyter et al. eds., 2011) (emphasizing that “[t]he agenda of integrating a human rights perspective into public administration, and, in general, into processes and structures that are not explicitly mandated to deal with human rights, bears strong similarities with what has in recent discourse come to be known as the mainstreaming of human rights,” and should be considered as an important area of study of the “localization of human rights”).

125. See Shubankar Dam, *Lessons from National Human Rights Institutions Around the World for State and Local Human Rights Commissions in the United States* (Aug. 2007), <http://www.constitutionalvalues.org/pdf/docs/Dam,%20Lessons%20from%20National%20Human%20Rights%20Commissions%20Around%20the%20World.pdf> (EXECUTIVE SESSION PAPERS, HUMAN RIGHTS COMMISSIONS AND CRIMINAL JUSTICE NO. 5) (examining how state and local human rights institutions can emulate the approach of national human rights institutions); Kaufman, *State and Local Commissions*, *supra* note 90, at 103–06 (focusing on how a U.S. NHRI could interface with U.S. state and local human rights commissions).

126. See Ryan M. Welch, *Local Problems, Local Solutions: Domestic Human Rights Institutions and Torture*, *POL. VIOLENCE AT A GLANCE* (Apr. 12, 2017), <http://politicalviolenceataglance.org/2017/04/12/local-problems-local-solutions-domestic-human-rights-institutions-and-torture/> (discussing how local commissions act as counterparts to NHRIs, focusing on prison conditions); see also CARDENAS, *supra* note 97, at 29–31 (drawing parallels between human rights commissions and NHRIs).

127. GLOB. ALL. OF NAT’L HUMAN RIGHTS INSTS., CHART OF THE STATUS OF NATIONAL INSTITUTIONS: ACCREDITATION STATUS AS OF 26 MAY 2017 (May 26, 2017), http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf.

institutions.¹²⁸ The United Nations has adopted a set of guiding principles for NHRIs, known as the Paris Principles, which focus upon NHRI competence, composition and independence, and methods of operation.¹²⁹

The existing scholarship identifies commonalities between core functions of NHRIs and state and local human rights commissions, as well as ways that subnational commissions in the United States could expand their work to more robustly foster awareness of international human rights principles, participate in international reviews of the United States' human rights record, and harmonize domestic law with international human rights standards.¹³⁰ U.S. human rights advocates and scholars have also made repeated calls for the United States to establish a federal level National Human Rights Institution and emphasized that any efforts to create a Paris Principles-compliant national institution should include coordination with state and local human rights

128. MORTEN KJAERUM, NATIONAL HUMAN RIGHTS INSTITUTIONS IMPLEMENTING HUMAN RIGHTS 6–7 (Klaus Slavensky ed., 2003), www.humanrights.dk/files/Importerede%20filer/hr/pdf/n_h_r_i_h_fte_eng.pdf. These institutions are often referred to as bridging the gap between international human rights standards and domestic practice. See Richard Carver, *A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law*, 10 HUM. RTS. L. REV. 1, 2 (2010) (discussing the role of national human rights institutions in implementing international human rights standards); Linda C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 HARV. HUM. RTS. J. 1, 1 (2000); OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS, NAT'L INST. FOR THE PROMOTION & PROT. OF HUMAN RIGHTS, FACT SHEET 19, (1993), www.ohchr.org/Documents/Publications/FactSheet19en.pdf.

129. Principles Relating to the Status of National Institutions (The Paris Principles), G.A. Res. 48/134 ¶ 2, U.N. Doc. A/RES/48/134 (Dec. 20, 1993), www2.ohchr.org/english/law/parisprinciples.htm [hereinafter Paris Principles]; Int'l Coordinating Comm. of Nat'l Insts. for the Promotion & Prot. of Human Rights, ICC Statute (Apr. 15, 2008), <http://nhri.ohchr.org/EN/WhoWeAre/News/Lists/News/Attachments/44/I.TheParisPrinciplesencapsulateminimumstandardsforNHRIs,buttheydonotaddresscredibility,publiclegitimacy,orhowtoevaluateanNHRI'sdomesticimpact.SeeC.RajKumar,NationalHumanRightsInstitutions:GoodGovernancePerspectivesonInstitutionalizationofHumanRights>, 19 AM. U. INT'L L. REV. 259, 271–75 (2003) (discussing the limitations of the Paris Principles).

130. See Dam, *supra* note 125, at 10–13 (juxtaposing the Paris Principles with DOJ guidelines, and suggesting how states and local human rights institutions can emulate the approach taken by NHRIs).

commissions.¹³¹ Echoing these calls, U.N. experts have repeatedly recommended that the United States create a human rights monitoring mechanism at the national level.¹³²

This Article proceeds to bring a level of specificity to the discussion, focusing more precisely on how the current moment offers an opportunity for state and local commissions to translate international human rights standards to the local level to address the increased reports of bias, harassment, and discrimination affecting communities across the United States given their current institutional mandates.

Part III situates U.S. human rights commissions' current efforts to respond to bias, discrimination, and harassment, and to resist harmful federal policies within the context of international human rights standards, including U.N. recommendations to the United States on how to strengthen its human rights record. It concludes with specific recommendations that state and local commissions can adopt to further advance these human rights principles at the state and local level. The recommendations focus solely on local level action and reflect the current context in which state and local commissions face ongoing capacity constraints while the United States continues to lack a national level human rights institution or federal resources and support for human rights monitoring and implementation.

131. See, e.g., COLUMBIA LAW SCH. HUMAN RIGHTS INST. & LEADERSHIP CONFERENCE EDUC. FUND, *THE ROAD TO RIGHTS: ESTABLISHING A DOMESTIC HUMAN RIGHTS INSTITUTION IN THE UNITED STATES* 13–16 (2012), <http://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/The%20Road%20to%20Rights%20Final.pdf> (providing a detailed roadmap for the United States to establish a National Human Rights Institution); Kaufman, *State and Local Commissions*, *supra* note 90, at 104–07.

132. Comm. on the Elimination of All Forms of Racial Discrimination, Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America, ¶¶ 6, 32, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 26, 2014); Comm. on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, ¶¶ 12, 13, 36, U.N. Doc. CERD/C/USA/CO/6 (Mar. 8, 2008); Human Rights Comm., Concluding Observations of the Human Rights Committee: United States of America, ¶ 4(b), (d), U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014); Human Rights Comm., Concluding Observations of the Human Rights Committee: United States of America, ¶¶ 22–25, 28, 39, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006); Comm. on the Rights of the Child, List of Issues Concerning Additional and Updated Information Related to the Second Periodic Report of the United States of America, ¶ 4, U.N. Doc. CRC/C/OPSC/USA/Q/2 (July 25, 2012).

III. THE ROLE OF U.S. STATE AND LOCAL HUMAN RIGHTS COMMISSIONS IN TRANSLATING U.N. HUMAN RIGHTS PRINCIPLES INTO PRACTICE

A. U.N. Recommendations to the United States to Address Discrimination, Harassment, and Bias

Human rights law emphasizes the importance of changing attitudes, policies, and structures that reflect and perpetuate bias and discrimination.¹³³ Discrimination is defined broadly to include distinctions and exclusions with “the purpose or effect” of limiting the human rights of protected groups.¹³⁴ A rights-based approach focuses not only on addressing the systemic causes of discrimination but, more importantly, on preventing it from occurring in the first place.¹³⁵ International human rights law counsels towards an intersectional approach to discrimination, which recognizes that individuals experience multiple forms of discrimination based on their sex, race,

133. See CERD, *supra* note 13, art. 2(c) (“Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists”); CEDAW, *supra* note 13, art. 2 (stating that states should “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”); *id.* art. 5 (calling on states to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles”), Human Rights Comm., General Comment No. 18: Non-discrimination, ¶ 10, U.N. Doc. HRI/GEN/1/Rev.6 (2003), <http://www.refworld.org/docid/453883fa8.html> (“[T]he principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.”).

134. CERD, *supra* note 13, art. 1.

135. See *id.* art. 2, ¶ 1 (“States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races”); Comm. on the Elimination of Racial Discrimination, General Comment No. 32, The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination, ¶¶ 7–8, 12, U.N. Doc. No. CERD/C/GC/32 (Sept. 24, 2009) (defining direct and indirect discrimination, as well as state obligations to undertake special measures to eradicate all forms of discrimination).

national origin, ability, religion, and other identities, and highlights the importance of targeted and culturally appropriate solutions.¹³⁶

The United States is a party to two core human rights treaties that focus squarely on ensuring equality and eradicating discrimination: the International Convention on the Elimination of All Forms of Racial Discrimination (the CERD)¹³⁷ and the International Covenant on Civil and Political Rights (the ICCPR).¹³⁸ As a party to these treaties, the United States has agreed to undertake a range of substantive obligations, which apply to the federal government as well as state and local authorities.¹³⁹

136. See Special Rapporteur on violence against women, its causes and consequences, Addendum, Mission to the United States of America, ¶¶ 1, 50, 61, U.N. Doc. A/HRC/17/26/Add.5 (June 6, 2011) (highlighting that some groups of women face “multiple, intersecting forms of discrimination” due to factors like gender, race, and immigration status, so that violence has a “particularly pernicious effect” on them); Comm. on Economic, Social, and Cultural Rights, General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3), ¶ 5, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005) (“Many women experience distinct forms of discrimination due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.”); Comm. on Economic, Social, and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (art. 12), ¶ 27, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) (emphasizing that health services for indigenous peoples must be culturally appropriate).

137. See CERD, *supra* note 13.

138. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

139. See Human Rights Comm., General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004), <http://www.unhchr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f>; CERD, *supra* note 13, art. 2. When ratifying the ICCPR, the United States attached an understanding that indicates that the federal government will implement the ICCPR “to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments.” The understanding stated that, “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 fulfillment of the Covenant.” See 138 CONG. REC. S4781-01 (daily ed. Apr. 2, 1992); see also 140 CONG. REC. 14,326 (1994) (similar understanding for the CERD).

The United States has also committed to undergo periodic reviews of compliance with their provisions.¹⁴⁰ In each review, a U.N. committee of independent experts assesses the United States' human rights record and publishes a series of observations and recommendations for how to improve human rights protections.¹⁴¹ The United States also participates in comprehensive periodic reviews of its human rights record at the U.N. Human Rights Council, known as the Universal Periodic Review (UPR), which culminates in a set of recommendations from U.N. member states.¹⁴² U.N. independent experts with particular thematic mandates, including on people of African descent, religious intolerance, women, and xenophobia, have also addressed the human rights situation in the United States in recent years based on visits to the United States.¹⁴³ These experts, known as "Special Procedures," are appointed by the U.N. Human Rights Council to monitor human

140. For more information on treaty compliance reviews, see Risa Kaufman & JoAnn Kamuf Ward, *Using Human Rights Mechanisms of the United Nations to Advance Economic Justice*, 45 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 259, 267 (2011). Detail on ICCPR provisions and how human rights commissions foster compliance with the Covenant is found in *Closing the Gap*, *supra* note 17. I have written elsewhere about fundamental provisions of the CERD and their applicability at the city level. See JoAnn Kamuf Ward, *From Principles to Practice: The Role of US Mayors in Advancing Human Rights*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 81–99 (Barbara M. Oomen et al. eds., 2016).

141. Kaufman & Kamuf Ward, *supra* note 140, at 262.

142. Under the Universal Periodic Review Mechanism of the U.N. Human Rights Council, each of the 192 U.N. member states comes up for review every four years. HUMAN RIGHTS INST. FOR THE INT'L ASS'N OF OFFICIAL HUMAN RIGHTS AGENCIES, COLUMBIA LAW SCH., IMPLEMENTING RECOMMENDATIONS FROM THE UNIVERSAL PERIODIC REVIEW: A TOOLKIT FOR STATE AND LOCAL HUMAN RIGHTS AND HUMAN RELATIONS COMMISSIONS 1 (2011) [hereinafter Toolkit for Commissions], https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/UPR%20Toolkit_0.pdf (providing a general primer on the protections offered by treaties ratified by the United States, and U.S. engagement the UPR).

143. For more detail on U.N. Special Procedures, which include Special Rapporteurs and Working Groups, see *Special Procedures of the Human Rights Council*, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM'R, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> (last visited Oct. 1, 2017); see also COLUMBIA LAW SCH. HUMAN RIGHTS INST., ENGAGING U.N. SPECIAL PROCEDURES TO ADVANCE HUMAN RIGHTS AT HOME: A GUIDE FOR U.S. ADVOCATES (2015), https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/special_rapporteurs_report_final.pdf (collecting case study examples of using U.N. special procedures to advance human rights in the United States).

rights around the world through an array of tools including country visits and issue-specific reports.¹⁴⁴

The following section distills the recommendations the United States has received regarding ways to improve responses to persistent forms of bias, harassment, and discrimination. The focus is on the recommendations that human rights commissions can implement to strengthen human rights protections at the state and local levels and foster compliance with U.S. human rights obligations and commitments, building upon the initiatives discussed in Section I.B.¹⁴⁵ Notably, these recommendations were made prior to the 2016 presidential election. Indeed, many of the challenges that the United States is facing are not new, but they have taken on a new urgency, as bias and discrimination is on the rise and hate and xenophobia are increasingly legitimized in public discourse and policy.

B. General Concerns and Recommendations

International human rights experts have repeatedly expressed concern regarding the persistence of discriminatory attitudes and outcomes in American society despite laws that prohibit discrimination.¹⁴⁶ U.N. reviews have highlighted that the impacts of

144. See MARC LIMON & TED PICCONE, BROOKINGS INST., HUMAN RIGHTS SPECIAL PROCEDURES: DETERMINANTS OF INFLUENCE 3 (2014), <https://www.brookings.edu/wp-content/uploads/2016/06/un-human-rights-experts-evaluation-piccone.pdf> (discussing the history of U.N. Special Procedures, evaluating their effectiveness, and providing recommendations to strengthen their impact).

145. Treaty Bodies and Independent Experts have made an array of recommendations that relate to discrimination in housing and employment relevant to human rights commissions, most of which are distilled in the Toolkit for Commissions, *supra* note 142, and a companion publication, HUMAN RIGHTS INST. FOR THE INT'L ASS'N OF OFFICIAL HUMAN RIGHTS AGENCIES, COLUMBIA LAW SCH., HUMAN RIGHTS RECOMMENDATIONS TO THE UNITED STATES: A DESK REFERENCE FOR STATE AND LOCAL HUMAN RIGHTS AGENCIES (2016), http://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/desk_reference.pdf.

146. See U.N. Human Rights Comm., Comments on United States of America, ¶ 5, U.N. Doc. CCPR/C/79/Add.50 (Apr. 7, 1995), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F79%2FADD.50&Lang=en [hereinafter HRC Concluding Observations 1995] (“The Committee notes that, despite the existence of laws outlawing discrimination, there persist within society discriminatory attitudes and prejudices based on race or gender. Furthermore, the effects of past discriminations in society have not yet been fully eradicated.”); Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventh to Ninth Periodic Reports of

discrimination and inequality manifest in numerous ways, particularly in relation to vulnerable groups on the basis of race, ethnicity, religion, socioeconomic status, sex, and gender identity.¹⁴⁷ Discrimination and bias against Muslim communities;¹⁴⁸ lesbian, bisexual, transgender, and intersex persons;¹⁴⁹ and targeting of groups and individuals including African-Americans, Latinx, and Jewish communities are consistently raised.¹⁵⁰ The lack of uniform

the United States Of America, ¶¶ 16–20, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014), <https://www.state.gov/documents/organization/235644.pdf> [hereinafter CERD Concluding Observations 2014] (highlighting that “members of racial and ethnic minorities, particularly African Americans, continue to be disproportionately arrested, incarcerated and subjected to harsher sentences, including life imprisonment without parole and the death penalty [and are] . . . overrepresent[ed] . . . in the criminal justice system . . .”).

147. See, e.g., Human Rights Council, Report of the Working Group of Experts on People of African Descent on its Mission to the United States of America, ¶ 56, U.N. Doc. A/HRC/33/61/Add.2 (Aug. 18, 2016) (noting that throughout its U.S. visit, the Working Group identified “different forms of discrimination faced by people of African descent and heard experiences of racial discrimination based on ethnicity, religion, socioeconomic status, sex and gender identity”); CERD Concluding Observations 2014, *supra* note 146, ¶¶ 8, 18 (discussing ongoing practices of racial and ethnic profiling by law enforcement, as well as workplace policies with a disparate impact on racial and ethnic minorities, particularly in low wage sectors); U.N. Human Rights Comm., Concluding Observations on the Fourth Periodic Report of the United States of America, ¶¶ 7, 10, 16, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014), <http://www.refworld.org/docid/5374afcd4.html> [hereinafter HRC Concluding Observations 2014] (discussing a range of issues, including gun violence, immigration, and domestic violence, and noting the latter “continues to be prevalent in the State party, and that ethnic minorities, immigrants, American Indian and Alaska Native women are at particular risk”).

148. Report of the Special Rapporteur on Religious Intolerance, ¶¶ 36–37, U.N. Doc. E/CN.4/1999/58/Add.1 (Dec. 9, 1998) (describing “islamophobia and racial and religious intolerance in American society,” and the relationship to media, “which purvey[s] a stereotyped and distorted message of hatred, treating Muslims as equivalent to extremists and terrorists”); HRC Concluding Observations 2014, *supra* note 147, ¶ 7 (discussing FBI and NYPD surveillance of Muslim communities).

149. Human Rights Council, Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice on its Mission to the United States, ¶ 79, U.N. Doc. A/HRC/32/44/Add.2 (June 7, 2016) [hereinafter Working Group on Discrimination Against Women] (highlighting “heightened exposure to hate crimes and physical violence” for lesbian, transgender and intersex Americans).

150. CERD Concluding Observations 2014, *supra* note 146; HRC Concluding Observations 2014, *supra* note 147; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to the United States, U.N. Doc. E/CN.4/1995/78/Add.1

sources of information about race-based violence and related incidents has also been noted at the international level.¹⁵¹

Based on these recurring concerns, international bodies have made broad recommendations to the United States to improve responses to “persisting discriminatory attitudes and prejudices against persons belonging to minority groups and women”¹⁵² The United States is also consistently called upon to strengthen measures to counter discrimination, to prevent and prosecute hate crimes,¹⁵³ and to work with impacted communities in order to ensure “protection to those most vulnerable to hate crimes and discrimination, and to better understand their circumstances”¹⁵⁴

(Jan. 16, 1995) [hereinafter SR on Racism 1995] (highlighting disparities in relation to health, education, housing, employment, political participation, hate crimes, and anti-semitism).

151. See SR on Racism 1995, *supra* note 150, ¶ 71 (noting that “knowledge of the extent of racist violence in the United States continues to suffer from the lack of a uniform and accurate source of information”); CERD Concluding Observations 2014, *supra* note 146, ¶ 9 (expressing that the “Committee is also concerned at the underreporting of instances of hate crimes by the victims to the police, as well as by law enforcement officials to the FBI, given the voluntary nature to comply with the request of the FBI for hate crime statistics”).

152. HRC Concluding Observations 1995, *supra* note 146, ¶ 30 (noting the need to bring state level laws in compliance with the non-discrimination protections of the ICCPR); see also Working Group on Discrimination Against Women, *supra* note 149, ¶¶ 43, 78, 88 (noting social and political difficulties faced by women due to stereotyping and discrimination in the United States); CERD Concluding Observations 2014, *supra* note 146, ¶ 25 (recommending the adoption of a national plan to combat racial discrimination in the United States).

153. Report of the Working Group on the Universal Periodic Review—United States of America, ¶¶ 176.131–33, U.N. Doc. A/HRC/30/12 (July 20, 2015) [hereinafter Report on U.S. UPR 2015] (calling for measures to “counter,” “prevent,” and “prosecute” hate crimes); CERD Concluding Observations 2014, *supra* note 146, ¶ 9 (noting concern and calling for improved data collection and training, along with measures to address hate speech).

154. Report on U.S. UPR 2015, *supra* note 153, ¶ 176.134; Report of the Working Group on the Universal Periodic Review—United States of America, ¶ 92.62, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011) [hereinafter Report on U.S. UPR 2011] (recommending that the United States “[r]eview, reform and adequate its federal and state laws, in consultation with civil society, to comply with the protection of the right to nondiscrimination established by the Convention on the Elimination of all Forms of Racial Discrimination”). In general, U.N. experts have recommended that all governments develop and evaluate laws and policies in consultation with affected communities, for instance establishing working groups that bring together community leaders and law enforcement officials to prevent discrimination in many arenas of life. See, e.g., World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration and Programme of Action, ¶ 74, U.N. Doc. A/CONF.189/12 (Jan. 1, 2002) (noting that

Human rights experts have repeatedly emphasized the need to strengthen and expand existing mechanisms to monitor human rights at the federal, state, and local levels.¹⁵⁵ Recommendations also encompass more specific calls for the United States to undertake law and policy reform, improve awareness-raising, and enhance data collection, which relate closely to the work of human rights commissions in addressing bias and discrimination. These recommendations are distilled below.

1. Law and Policy Reform

In the arena of law and policy reform, U.N. experts have called on the United States to amend federal and local legislation to foster greater consistency with international standards on discrimination, in order to benefit vulnerable and disadvantaged groups that continue to experience discrimination.¹⁵⁶

such collaboration will “improve coordination, community involvement, training, education and data collection” and help prevent “racism, racial discrimination, xenophobia and related intolerance” and the violence that results from these attitudes).

155. See, e.g., HRC Concluding Observations 2014, *supra* note 147, ¶ 4(d) (“Strengthen and expand existing mechanisms mandated to monitor the implementation of human rights at federal, state, local and tribal levels, provide them with adequate human and financial resources or consider establishing an independent national human rights institution”); see also Comm. on the Elimination of Racial Discrimination, *Consideration of Reports Submitted By States Parties Under Article 9 Of The Convention*, ¶ 12, U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008) [hereinafter CERD Concluding Observations 2008] (“The Committee recommends that the State party consider the establishment of an independent national human rights institution in accordance with the Paris Principles.”).

156. See CERD Concluding Observations 2014, *supra* note 146, ¶ 5 (calling for prohibition of racial discrimination, including indirect discrimination at all levels of government); *id.* ¶ 13 (focusing specifically on housing); *id.* ¶ 20 (recommending that the United States “[a]mend[] laws and policies leading to racially disparate impacts in the criminal justice system at the federal, state and local levels and implement[] effective national strategies or plans of action aimed at eliminating structural discrimination”); CERD Concluding Observations 2008, *supra* note 155, ¶ 10 (recommending “that the State party review the definition of racial discrimination used in the federal and state legislation . . . to ensure . . . that it prohibits racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect”); *id.* ¶ 22 (calling on the United States to assume “measures to eliminate the disproportionate impact that persistent systemic inadequacies in [the criminal justice system] have on defendants belonging to racial, ethnic and national minorities . . . by increasing . . . efforts to improve the quality of legal

Recommendations to eliminate laws and policies that directly and indirectly condone racial and ethnic profiling by law enforcement,¹⁵⁷ adopt measures to address housing segregation,¹⁵⁸ and reform law and policy to address the educational achievement gap are just three examples.¹⁵⁹ Additional recommendations highlight the need for policies that eliminate profiling and harassment of racial, ethnic, and religious minorities.¹⁶⁰ The committee of U.N. experts that monitors compliance with the CERD has further recommended that the federal government develop a national action plan to combat discrimination.¹⁶¹

2. Outreach and Awareness-Raising

To enhance awareness of human rights protections, and to address discrimination and bias, international experts have called on

representation provided to indigent defendants and ensuring that . . . legal aid systems are adequately funded and supervised”).

157. CERD Concluding Observations 2014, *supra* note 146, ¶ 8 (referencing the Ending Racial Profiling Act and the eradication of Immigration and Nationality Act section 287(g) agreements as two examples).

158. *Id.* ¶ 13 (urging the state to “intensify . . . efforts to eliminate discrimination in access to housing and . . . segregation based on race, colour ethnicity or national origin” by increased implementation of discrimination laws, “prompt, independent and thorough investigation[s],” and “effective remedies, including appropriate compensation, guarantees of non-repetition and changes in relevant laws and practices”).

159. *Id.* ¶ 14 (recommending that the United States “intensify its efforts to ensure equal access to education by . . . [d]eveloping . . . a comprehensive plan to address racial segregation in schools and neighbourhoods, with concrete goals, timelines and impact assessment mechanisms; . . . [i]ncreasing federal funding . . . [to] promote racially integrated learning environments . . . [and] work[ing] closely with state and local education authorities”).

160. *See, e.g.*, CERD Concluding Observations 2014, *supra* note 146, ¶¶ 8, 8(b) (recommending, among other measures, that the United States increase efforts to more efficiently fight “and end the practice of racial profiling by federal, state and local law enforcement officials, including by . . . [s]wiftly revising policies insofar as they permit racial profiling, illegal surveillance, monitoring and intelligence gathering, including the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies”); Report on U.S. UPR 2011, *supra* note 154, ¶ 92.190 (calling on the United States to “[t]ake effective measures to counter insults against Islam and Holy Quran, as well as Islamophobia and violence against Moslems, and adopt necessary legislation”).

161. *See, e.g.*, CERD Concluding Observations 2014, *supra* note 146, ¶ 25 (recommending that the United States “adopt a national action plan to combat structural racial discrimination, and to ensure that school curricula, textbooks and teaching materials are informed by and address human rights themes and seek to promote understanding among racial and ethnic minority groups”).

the United States to carry out systematic anti-discrimination and awareness-raising trainings at the federal, state, and local levels to ensure that members of the general public are aware of their rights and how to protect them.¹⁶² Experts have also focused on the need for government officials, including law enforcement officials, to receive training on hate crimes investigation and cultural awareness.¹⁶³ Recommendations also emphasize that educational materials should promote understanding among racial and ethnic minority groups.¹⁶⁴

These recommendations are echoed in U.N. human rights experts' guidance to all countries to proactively counter xenophobia,¹⁶⁵ which includes calls for local governments to foster awareness of positive contributions of refugees and immigrants to their

162. *Id.* ¶ 6 (calling for national human rights institutions with a broad mandate, including “anti-discrimination training and awareness-raising activities at the federal, state and local levels”); *id.* ¶ 32 (“The Committee recommends that the State party increase its efforts to raise public awareness and knowledge of the Convention . . . and widely publicize the concluding observations of the Committee in the official and other commonly used languages, as appropriate.”); CERD Concluding Observations 2008, *supra* note 155, ¶ 36 (“The Committee recommends . . . public awareness and education programmes on the Convention and . . . efforts to . . . [raise awareness of the ICERD and its protections among] government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public . . .”).

163. CERD Concluding Observations 2014, *supra* note 146, ¶ 9(c) (“Ensure that all law enforcement officials and all new recruits are provided with initial and ongoing in-service training on the investigation and reporting of complaints of hate crimes.”); HRC Concluding Observations 2014, *supra* note 147, ¶ 7(b) (emphasizing that the United States should “[c]ontinu[e] to train state and local law enforcement personnel on cultural awareness and the inadmissibility of racial profiling.”).

164. *See, e.g.*, CERD Concluding Observations 2014, *supra* note 146, ¶ 25 (highlighting the need for a national action plan on racial discrimination that would “promote understanding among racial and ethnic minority groups”).

165. Human rights law does not explicitly define xenophobia. *See* Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, ¶ 2, U.N. Doc. A/HRC/32/50 (May 13, 2016) [hereinafter SR on Racism 2016]. It has been interpreted to include “attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.” INT’L LABOUR ORG. (ILO) ET AL., INTERNATIONAL MIGRATION, RACISM, DISCRIMINATION AND XENOPHOBIA 2 (2001).

communities¹⁶⁶ and encourage cross-cultural interactions in order to bolster community resilience.¹⁶⁷

3. Data Collection

International bodies have recommended that the United States enhance data collection on hate crimes, including through uniform and comprehensive national data collection measures.¹⁶⁸ Such data should be disaggregated by race, ethnicity, age, and religion, at a minimum, and should be regularly publicized.¹⁶⁹ This builds on the CERD Committee's prior recognition that disaggregating data allows governments to more specifically understand the causes and impacts of discrimination and generate more effective solutions.¹⁷⁰ This reflects recommendations from other treaty bodies as well.¹⁷¹

The treaty body recommendations discussed above offer guidance to the United States on ways to strengthen domestic efforts to prevent and address persistent forms of discrimination and bias. The following, and final, section of this Article suggests ways that

166. SR on Racism 2016, *supra* note 165, ¶ 73 (discussing how efforts to highlight “positive contribution of refugees or other immigrants” may promote inclusion and noting efforts in Canada in relation to immigrant integration).

167. *Id.* ¶¶ 73–74 (emphasizing how intergroup interactions foster resiliency and highlighting that “[a]ll actors—including local officials, leaders, private actors, and service providers—who have the power to bring about immediate positive change need to be sensitized to the value of social solidarity”).

168. See SR on Racism 1995, *supra* note 150.

169. CERD Concluding Observations 2014, *supra* note 146, at ¶ 9(b) (suggesting that the United States “[i]mprove its data collection system for statistics on complaints of hate crimes, including by officially requiring all law enforcement agencies to record and transmit all such instances to the FBI, disaggregated by factors such as race, ethnicity, age and religion, and regularly publicize such information”).

170. Comm. on the Elimination of Racial Discrimination, General Recommendation No. 25, ¶ 6, U.N. Doc. A/55/18, annex V (Mar. 20, 2000), <http://minoritycentre.org/library/cerd-general-recommendation-no-25-gender-related-dimensions-racial-discrimination> (“Data which have been categorized by race or ethnic origin, and . . . are then disaggregated by gender within those racial or ethnic groups, will allow the States parties and the Committee to . . . take steps to remedy forms of racial discrimination against women that may otherwise go unnoticed and unaddressed.”).

171. UNIV. OF ESSEX HUMAN RIGHTS CLINIC, DISAGGREGATED DATA AND HUMAN RIGHTS: LAW, POLICY AND PRACTICE 13–17 (2013), <https://www1.essex.ac.uk/hrc/careers/clinic/documents/disaggregated-data-and-human-rights-law-policy-and-practice.pdf>.

U.S. human rights commissions can translate these recommendations into practice given their unique mandates and status within state and local governments.

C. Localizing Human Rights Standards and Recommendations to Address Bias, Discrimination, and Harassment

Grounding efforts to address bias and discrimination in an international human rights framework provides a new lens for commissions and their constituents to view and respond to persistent forms of discrimination. A human rights-based approach can take the focus away from individual acts of discrimination and shift it to the underlying factors that perpetuate xenophobia, discrimination, and bias.¹⁷² It also counsels towards an approach where local communities serve as a resource for enhancing human rights protection.¹⁷³ Adopting international human rights standards also provides a common minimum floor that commissions across the country can adopt,¹⁷⁴ explicitly connecting their efforts to a set of global agreed-upon standards.

As government institutions with the aim of promoting equality and eliminating discrimination, U.S. state and local human rights commissions are uniquely situated to bring international human rights principles home to their communities. What follows are suggested pathways for commissions to incorporate U.N. recommendations into their work to address discrimination, bias, and harassment, paving a path towards more comprehensive international human rights promotion and protection at the local level. The following section outlines how human rights commissions can shape local law and policy to reflect human rights standards aimed at countering persistent forms of discrimination and

172. CERD General Comment No. 32, *supra* note 135.

173. Gaby Oré Aguilar, *Discussion Paper: The Local Relevance of Human Rights: A Methodological Approach* 25 (May 2008), <https://www.ua.ac.be/objs/00172205.pdf> (detailing a comprehensive methodology to assess the utility of human rights in local efforts to address inequality, and offering an in-depth exploration of the process of localizing human rights).

174. George Ulrich, *Epilogue: Widening the Perspective On The Local Relevance Of Human Rights*, in *THE LOCAL RELEVANCE OF HUMAN RIGHTS* 336, 342 (Koen De Feyter et al. eds., 2011) (“[H]uman rights . . . rarely dictate a particular course of action or . . . specific solution to a . . . problem. Rather, by proscribing certain acts and establishing a set of limits beyond which it is not permissible to venture in the quest to . . . [achieve] legitimate . . . objectives, human rights . . . demarcate a range of acceptable policy options.”).

inequality, strengthen outreach and awareness-raising to address bias and discrimination, and develop more robust data collection efforts to more effectively respond to all forms of discrimination. It should be noted that, in 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.”¹⁷⁵ This process will impact how these principles ultimately translate into domestic practice and may vary across jurisdictions.¹⁷⁶

1. Advocate for Local Laws and Policies Compatible with International Human Rights Standards

Building on recommendations from the U.N. Committee on the Elimination of All Forms of Racial Discrimination to the United States,¹⁷⁷ commissions can develop local action plans aimed at fostering equality and eradicating discrimination. Some cities, like Eugene, Oregon, have already developed strategic plans that reflect principles from the CERD, highlighting the need to “take positive measures to promote equity for all and eliminate discrimination.”¹⁷⁸ A local human rights action plan could build on this example and provide a roadmap for local government action to advance the right to be free from discrimination, with benchmarks and timelines for action, as well as performance indicators and ongoing mechanisms to monitor progress.¹⁷⁹ Commissions should develop local plans in

175. Oré Aguilar, *supra* note 173, at 7.

176. This process of “vernacularization” has been the subject of increasing attention over the past two decades. *See, e.g.*, THE LOCAL RELEVANCE OF HUMAN RIGHTS, *supra* note 174 (examining what factors determine whether local level human rights initiatives are successful, and whether the UDHR adequately responds to current concerns or should be revised to increase its contemporary relevance). The literature on the localization of human rights highlights the tensions that arise in efforts to apply universal human rights principles locally. *See* Levitt & Merry, *supra* note 12, at 457–58 (describing how the process of adoption of universal norms inherently challenges their universality as rights are given a localized meaning, and highlighting the phenomenon that it is often the human rights principles that are most consistent with existing local norms that are most resonant, which may limit their transformative impact).

177. CERD Concluding Observations 2014, *supra* note 146.

178. CITY OF EUGENE, CITY OF EUGENE DIVERSITY AND EQUITY STRATEGIC PLAN: 2009–2014 10 (Raquel Wells ed., 2009), <https://www.eugene-or.gov/DocumentView.aspx?DID=515>.

179. These recommendations reflect guidance that the Office of the U.N. High Commissioner for Human Rights has developed for national level action plans. *See* U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS,

cooperation with community members to promote participation and foster inclusion.¹⁸⁰ An action plan also offers an opportunity to explicitly address how different communities experience discrimination by incorporating an intersectional approach to analyze the current context and shape recommendations.¹⁸¹ U.S. civil and human rights advocates have already called for the United States to adopt a National Plan of Action for Racial Justice “to address persistent contemporary forms of racial discrimination and race disparities,” emphasizing that “our current civil rights laws are simply not enough to advance racial equity and human rights for all.”¹⁸² The advocacy for a national plan emphasizes the need for action at all levels of government.¹⁸³ It is unlikely that the United States will adopt such a plan in the near future, but human rights commissions could look to the models developed by other national governments to inform their efforts to develop local plans.¹⁸⁴

A number of commissions already make recommendations to mayors and legislators regarding local laws, as we have seen in relation to sanctuary jurisdictions in Section II.B. To further foster alignment with U.N. recommendations, commissions can build on these efforts and use international human rights standards as a basis

DEVELOPING NATIONAL ACTION PLANS AGAINST RACIAL DISCRIMINATION 94–98, U.N. Doc. HR/PUB/13/3, U.N. Sales No. E.13.XIV.3 (2014), <http://www.ohchr.org/Documents/Publications/HR-PUB-13-03.pdf>.

180. *Id.* at 26.

181. *See id.* at 81 (noting that Argentina has adopted a National Plan recognizing the impact of multiple forms of discrimination and establishing policies to prevent discrimination that are specific to a range of particular target groups).

182. *See* U.S. HUMAN RIGHTS NETWORK, ONCE AND FOR ALL CAMPAIGN: NATIONAL PLAN OF ACTION FOR RACIAL JUSTICE, <https://www.ushrnetwork.org/nationalplanofaction-racialjustice> (last visited Sept. 27, 2017) (noting that 126 national and local organizations endorsed the call for such a national action plan as of March 21, 2013).

183. *Id.*

184. Canada’s Action Plan Against Racism offers one model, which lays out a six-point action plan identifying six key activities to “combat racism and discrimination”: “1) Assist victims and groups vulnerable to racism and related forms of discrimination 2) Develop forward-looking approaches to promote diversity and combat racism 3) Strengthen the role of civil society 4) Strengthen regional and international cooperation 5) Educate children and youth on diversity and anti-racism 6) Counter hate and bias.” DEP’T OF CANADIAN HERITAGE, A CANADA FOR ALL: CANADA’S ACTION PLAN AGAINST RACISM 13–44 (2005). The Plan gives a snapshot of inequality in Canada and identifies goals for progress, as well as steps to develop indicators to assess progress in addressing racism and discrimination. *See id.*

to evaluate how well local laws prevent and respond to discrimination and harassment; identify gaps in protections; and advocate for policies that address intentional discrimination, as well as disparities that may exist in the many areas of life addressed by the CERD, including housing, health, and education.¹⁸⁵ Commissions could further integrate recommendations from the CERD Committee relating to these topics,¹⁸⁶ along with racial and ethnic profiling, in their own recommendations. In these efforts, key areas that merit consideration include how well current laws and policies address community members' experiences with bias and discrimination; how well they foster inclusion of diverse community members; whether measures are in place to shift discriminatory attitudes and adequately deter bias, discrimination, and harassment; whether additional laws and policies are needed to adequately protect particular communities; and what strategies can be put in place to deter harmful behavior and foster accountability when discrimination and bias occurs.

A number of local governments in the United States have adopted equity and human rights assessments to analyze the possible positive and negative outcomes of proposed policies, budgets, and programs on communities and to inform recommendations for moving forward, which provide a starting point for how to assess local law and policy.¹⁸⁷ National governments in Australia¹⁸⁸ and the United Kingdom¹⁸⁹ also offer examples of governments conducting reviews of compliance with international human rights obligations.

When undertaking any of these suggested activities, commissions should work to ensure that community

185. See CERD, *supra* note 13, art. 5.

186. See *supra* notes 157–59 and accompanying text.

187. See Human Rights Assessments, *supra* note 116 (describing foundational human rights and key considerations when conducting human rights assessments, and including assessments from five U.S. jurisdictions).

188. AUSTRALIAN PARLIAMENTARY JOINT COMM. ON HUMAN RIGHTS, GUIDE TO HUMAN RIGHTS (2015), <http://www.aph.gov.au/~media/Committees/Joint/PJCHR/Guide%20to%20Human%20Rights.pdf> (noting that the Joint Committee is tasked “to examine bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue” and describing Australia’s obligations under ratified treaties).

189. HOUSE OF LORDS HOUSE OF COMMONS JOINT COMM. ON HUMAN RIGHTS, THE UK’S COMPLIANCE WITH THE UN CONVENTION ON THE RIGHTS OF THE CHILD, EIGHTH REPORT OF SESSION (2015), <https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/144.pdf>.

members—especially those most impacted by discrimination—have opportunities to participate in planning, implementing, and evaluating policies. This work should follow human rights principles of inclusion and participation and focus on prevention, including changing underlying norms and attitudes.¹⁹⁰

2. Prioritize Prevention Through Awareness Raising and Community Building

Human rights experts have noted the importance of addressing “persisting discriminatory attitudes and prejudices.”¹⁹¹ Commission initiatives that seek to promote tolerance, diversity, and respect for all cultures—as Orange County’s Commission has done with #HateFreeOC,¹⁹² as well as the Ramadan in LA campaign, co-sponsored by the Los Angeles County Human Relations Commission¹⁹³—illustrate starting points for challenging biased attitudes.

It is also vital that communities understand the mechanisms and protections that exist to protect against discrimination and harassment. Accordingly, commissions should ensure that information on what constitutes prohibited harassment, bias, and intimidation under local, state, and federal law, and the mechanisms for reporting discrimination, are easily accessible to all community members. Clarifying and widely disseminating this information in an array of languages would align with recommendations from a number of U.N. experts to the United States.¹⁹⁴

190. INT’L COUNCIL ON HUMAN RIGHTS POLICY, LOCAL GOVERNMENT AND HUMAN RIGHTS: DOING GOOD SERVICE, 11, 15–16 (2005), http://www.ichrp.org/files/reports/11/124_report.pdf (describing a trend towards greater inclusion of public participation and human rights in governance, where “good governance” means institutions and actors regulating public bodies in order to “stimulate citizens’ participation in government”). A human rights-based approach to participation is explored further in JACOB KIRKEMANN BOESEN & TOMAS MARTIN, APPLYING A RIGHTS-BASED APPROACH: AN ASPIRATIONAL GUIDE FOR CIVIL SOCIETY 10–13, 42–43 (Danish Inst. for Human Rights 2007), https://www.crin.org/en/docs/dihr_rba.pdf (explaining the United Nations’ approach of integrating fundamental human rights principles such as empowerment, participation, equality, non-discrimination, and accountability into development work).

191. *Supra* note 152 and accompanying text.

192. *Supra* notes 67–70 and accompanying text.

193. *See supra* notes 60–61 and accompanying text.

194. *See supra* notes 162–67 and accompanying text.

The New York City Human Rights Commission, for instance, has developed fact sheets explaining that under the City's law, [e]veryone in NYC is prohibited from committing acts of discriminatory harassment, just as everyone is protected against harassment. A neighbor who harasses you, a person who attacks you on the street, or a passenger on the bus are all prohibited from this kind of discriminatory act. In addition, while an attacker could have multiple reasons for harassing you, discriminatory harassment is prohibited even if it is only partly motivated by the victim's protected category.¹⁹⁵

These documents also clarify that targets of discriminatory harassment can pursue a claim for damages or injunctive relief, and that the Commission can also take community-oriented action on the basis of reports of discriminatory harassment, even when reporting is anonymous.¹⁹⁶

Human rights experts have also repeatedly emphasized the importance of ensuring that government officials—including law enforcement—and communities vulnerable to discrimination and harassment receive human rights training that includes cultural competency.¹⁹⁷ Some commissions have undertaken training and education already,¹⁹⁸ but ensuring that such conversations focus explicitly on incidents of bias and harassment and involve diverse community stakeholders can help foster greater cross-cultural

195. See N.Y.C. Human Rights Comm'n, *5 Things You Should Know about Discriminatory Harassment*, https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/DiscriminationHarassment_5ThingsToKnow.pdf. The fact sheets aim to bring clarity to the N.Y.C. Admin. Code § 8-603(a) (providing for civil action and remedies in the case that a person does "by force or threat of force, knowingly injure, intimidate or interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her" in a case where "such injury, intimidation, oppression or threat is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, marital status, partnership status, disability or alienage or citizenship status") (emphasis added). This information is currently available in English and Spanish. N.Y.C. Human Rights Comm'n, *Discriminatory Harassment*, <https://www1.nyc.gov/site/cchr/law/discriminatory-harassment.page>.

196. *5 Things You Should Know about Discriminatory Harassment*, *supra* note 195.

197. CERD Concluding Observations 2014, *supra* note 146; HRC Concluding Observations 2014, *supra* note 147.

198. See, e.g., Saunders & Bang, *supra* note 11, at 1–2 (discussing how "state and local commissions are engaged in three broad activities: enforcement, prevention, and training").

learning and build trust.¹⁹⁹ Efforts of the New York City Human Rights Commission to bring together local government and community members as part of the “I am Muslim” campaign offer one example.²⁰⁰ Public hearings, dialogues, consultations, and community roundtables all offer additional opportunities to facilitate discussions about which policies and practices can foster tolerance, as well as how to respond to manifestations of conscious and unconscious bias and discrimination.²⁰¹

Public campaigns should have maximum reach and should be designed with the input of community members of diverse backgrounds, ages, and genders. In Seattle, the Office of Civil Rights has undertaken a media campaign targeting public transportation, radio outlets, and social media to get the word out about behaviors that constitute illegal harassment.²⁰² Public materials emphasize that actions that interfere with individual’s civil rights based on their “race, religion, gender and/or gender identity, sexual orientation, disability, [or] national origin,” including “threats, slurs or epithets, intimidation or coercion, violence or use of force, damaging or defacing property and cyberbullying” may constitute illegal harassment, which should be reported to the Office.²⁰³

199. See, e.g., Dorothy Roberts & Sujatha Jesudason, *Movement Intersectionality: The Case of Race, Gender, Disability, and Genetic Technologies*, 10 DU BOIS REV. 313, 314–24 (2013) (discussing Generations Ahead, a social-justice organization focusing on reproductive justice that brought together diverse groups such as women of color, indigenous women, and disability rights advocates, leading to successful collaborations and greater cross-movement understanding).

200. See *supra* notes 51–55 and accompanying text.

201. The Los Angeles County Human Relations Commission has been tasked by the County Board of Supervisors to develop and implement trainings on implicit bias and cultural competency. See *Countywide Implementation of Implicit Bias and Cultural Competency Training*, L.A. Cty. Bd. of Supervisors Motion by Supervisor Mark-Ridley Thomas (Apr. 11, 2017), <http://file.lacounty.gov/SDSInter/bos/supdocs/113083.pdf>.

202. See *Bias Hurts: Report Discriminatory Harassment*, SEATTLE OFFICE FOR CIVIL RIGHTS (Mar. 1, 2017), <https://www.seattle.gov/civilrights/civil-rights/bias-hurts>.

203. *What You Should Know about Discriminatory Harassment Under Seattle Laws*, SEATTLE OFFICE FOR CIVIL RIGHTS, <http://www.seattle.gov/documents/departments/civilrights/anti-bias%20flyer.pdf> (emphasis omitted). Behavior that constitutes harassment must be serious and frequent. See *Civil Rights*, SEATTLE OFFICE FOR CIVIL RIGHTS, <https://www.seattle.gov/civilrights/civil-rights>.

3. Collect, Disaggregate, and Publicize Data

Commissions can collect and publish data on incidents of bias, harassment, and intimidation in their jurisdictions. Commissions in Seattle, Washington, Columbus, Indiana, and Los Angeles County, California offer a few examples of commissions already undertaking data collection efforts.²⁰⁴

To align with human rights principles, data should be disaggregated by the identities of the target of discrimination or harassment, type of harassment, and possible relationships between victim and perpetrator. Collecting data on the multiple identities of a target of discrimination could foster a better understanding of the diverse experiences of different community members, as well as foster responses grounded in an intersectional approach.²⁰⁵ Such responses account for differential experiences of community members, and also seek to change both the attitudes that underscore discrimination and bias and the structural and institutional factors that perpetuate discrimination and inequality.²⁰⁶ More uniform data collection would

204. See discussion *supra* Section I.B.1.

205. Data should be collected and maintained only with explicit consent from victims, in compliance with international standards on the ethical use of statistics. Fundamental Principles of Official Statistics, U.N. Doc. A/RES/68/261 (Jan. 29, 2014).

206. See C. Nicole Mason, *Leading at the Intersections: An Introduction to the Intersectional Approach Model for Policy & Social Change*, WOMEN OF COLOR POLY NETWORK 8 (2011), <http://www.intergroupresources.com/rc/Intersectionality%20primer%20-%20Women%20of%20Color%20Policy%20Network.pdf> (characterizing forms of intersectionality as political, institutional, representational and economic); Olena Hankivsky et al., *An Intersectionality-Based Policy Analysis Framework: Critical Reflections On A Methodology For Advancing Equity*, in INT'L J. EQUITY HEALTH 13, 119 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4271465> (discussing an intersectional framework for health policy as applied to several case studies); CAROLE ZUFFEREY, HOMELESSNESS AND SOCIAL WORK: AN INTERSECTIONAL APPROACH 68–73 (2017) (stating that an intersectional policy analysis highlights intersecting structural oppressions marginalizing particular groups, and allows for policies that are inclusive of intersecting diversities); see also Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140–45, 162 (1989) (arguing that under a “single-axis” framework of discrimination, black women who are “multiply-burdened” continue to be marginalized in public policy discussions and antidiscrimination law). Additionally, the Ontario Human Rights Commission, a provincial Canadian commission, demonstrates how a commission can analyze and contribute to the adoption of an intersectional approach. ONTARIO HUMAN RIGHTS COMM’N, *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in*

also align with recommendations from human rights experts to the United States.²⁰⁷

By adopting international human rights principles into their legal and policy advocacy, awareness-raising and outreach, and data collection efforts—including in the three concrete ways described above—human rights commissions can build on a strong history of strengthening civil and human rights protections to challenge the current climate of fear and hate. These efforts can also contribute to broader awareness of international human rights principles, and their relationship to local policy within the United States.

CONCLUSION

State and local human rights commissions are positioned to play a vital role in strengthening human rights protections at the local level through sustained efforts to identify and tackle the causes of discrimination, harassment, and bias, and to foster equality and inclusion, and work in partnership with local communities.

There is no one-size-fits-all approach to human rights implementation that will work across all jurisdictions. The menu of strategies presented here offers a starting point for commissions to consider and adapt to their own contexts. These suggestions for advancing human rights compliance include an array of activities that commissions can undertake to bolster compliance with human rights standards, recognizing that commissions already face legal, practical, and political constraints in their work. Overcoming these challenges to more comprehensively “bring human rights home” will require activating a wide range of domestic stakeholders beyond human rights commissions. Yet, as we enter a new moment in human right activism in the United States, commissions should lead the charge and continue to set examples in communities across the country by standing up for the values they were created to uphold.

Human Rights Claims (2001), <http://www.ohrc.on.ca/en/intersectional-approach-discrimination-addressing-multiple-grounds-human-rights-claims> (discussing the trend in Canadian jurisprudence toward an intersectional approach, and examples of cases that recognize how multiple grounds of discrimination relate to each other).

207. CERD Concluding Observations 2014, *supra* note 146.