

ADVANCING HUMAN RIGHTS IN THE UNITED STATES:

THE CASE FOR A NATIONAL HUMAN RIGHTS INSTITUTION

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EXECUTIVE SUMMARY

Almost half a century ago, renowned human rights activists initiated the campaign for the creation of a National Human Rights Institution (NHRI) in the United States (US), with the objective of monitoring, protecting, and promoting human rights. Since then, advocates, scholars, and human rights professionals have persistently endeavored to increase awareness of the importance of having an NHRI on the national agenda to promote human rights. In 2020, the United Nations Human Rights Council released a report that explicitly pointed out the United States as one of the small group of contemporary democracies worldwide that lacks a NHRI – a vital mechanism to uphold and advance human rights.¹ The report emphasizes the urgent need for the US to establish an NHRI and underscored its significance in promoting and safeguarding human rights.

In recent years, there has been renewed vigor towards establishing an NHRI in the US, as the existing human rights apparatus in the country is highly fragmented and inadequate to integrate the US's human rights obligations into domestic law and policy, and to monitor and report accurately on the status of human rights in the country. The consequences of not having an effective NHRI have been substantial, including limited accountability, uneven protection across different jurisdictions, and diminished international credibility. Ultimately, this undermines the US's international standing and reputation.

This report responds to the growing demand for the establishment of an NHRI in the US by taking a comprehensive approach to exploring the potential role, function, and

¹ United Nations, “Compilation on the United States of America: Report of the Office of the UNited Nations High Commissioner for Human Rights.”

impact of such an institution.² The report starts with a meta-analysis of the existing literature on NHRIs, followed by case studies that offer valuable insights into how the US could model its NHRI. Additionally, this report engages top human rights and government officials, including experts from Congress and the White House, as well as members of academia and civil society, to provide expert input on advancing progress towards establishing an NHRI and ideas for its structure in the US. Finally, the report concludes by presenting a set of recommendations for the Southern Poverty Law Center to consider in making **the case for the creation of an NHRI.**

² American Civil Liberties Union, “Members of Congress Join Rights Groups in Urging White House to Study Creating National Human Rights Institution.”

INTRODUCTION

In 2010, Columbia Law School and the Leadership Conference released a report that remains the leading analysis of National Human Rights Institutions (NHRIs) globally, highlighting crucial components for an NHRI in the US.³ Recently, the University of California, Irvine College of Law released a report that complements this study by identifying key elements of successful NHRIs, including their authority, funding scheme, scope, and human rights mandate.⁴

Despite this, there has been limited participation from top US government officials, such as Members of Congress, civil society, and academia, in creating a US NHRI. This Policy Analysis Exercise (PAE), prepared for the Southern Poverty Law Center (SPLC), intends to bridge this knowledge gap by involving key stakeholders and initiating discussions on the most significant challenges regarding monitoring and reporting on domestic human rights compliance in the US. Furthermore, this PAE aims to explore the potential role of an NHRI in advancing progress on broader human rights commitments. The following research questions will guide this report:

1. What are the most salient barriers to monitoring and reporting domestic human rights compliance in the US?
2. How does an NHRI contribute to advancing human rights and compliance with international treaty obligations?

³ Columbia Law School, “The Road to Rights: Establishing A Domestic Human Rights Institution in the United States.”

⁴ UC Irvine School of Law, “Establishing a National Human Rights Institution in the United States: A Special Report of the International Justice Clinic.”

3. How should the primary roles, responsibilities, and authority of an NHRI in the US be defined, and what would its potential structure look like?
4. What actions can the human rights community and decision-makers, including the Biden Administration, take to significantly accelerate the pace of advancing progress on international treaty obligations of the US?

The primary objective of this report is to draw attention to the most pressing challenges that exist in monitoring and reporting on the US' compliance with its international human rights obligations. To address this issue, the report proposes the establishment of an NHRI, which is widely recognized as the most appropriate and well-equipped organization to advance the status of human rights in the 21st century. Our research provides insights into the current landscape of NHRIs worldwide, evaluates the performance of specific NHRIs in advancing human rights, and gathers input from top human rights and government officials to present a comprehensive outlook for the creation of an NHRI in the US.

METHODOLOGY

This study adopts a three-pronged approach to present the case for establishing an NHRI in the US. The approach is outlined below:

- 1. Literature Review:** In order to gain insight into the human rights landscape and assess the degree of U.S. compliance, a meta-analysis of existing literature was conducted. Over a dozen reports, working papers, and academic articles were reviewed to establish a foundational understanding of compliance with international treaty obligations and the mechanisms currently in place to monitor and report to the public.
- 2. Case Studies:** We conducted an analysis of NHRI models across various countries, taking into account their structures, contextual factors, and levels of effectiveness. It was crucial for us to explore international models to gain valuable insights into effective strategies and potential challenges for the United States. Our study focused on NHRI models in Sweden, Australia, and Mexico – three countries with different levels of compliance with the Paris Principles, distinct constitutional structures, and diverse human rights outcomes.
- 3. Expert Interviews:** The third part of this report utilizes qualitative research techniques to conduct 16 semi-structured interviews with distinguished human rights professionals who provide important perspectives on the difficulties of adequately monitoring and reporting on human rights, as well as the potential functions of an NHRI in addressing these challenges. The interviewees were chosen from various backgrounds, including senior officials in the U.S. government, such as Congress and the White House, civil society, and academia. A

comprehensive list of the organizations associated with each interviewee can be found in Appendix 2.

To conduct expert interviews, a list of 34 individuals was compiled in partnership with the Southern Poverty Law Center, and 16 individuals expressed interest in participating. Interviews were scheduled via email and conducted mostly through the Zoom platform, with each interview lasting about an hour. Appendix 1 provides a list of questions used in the interviews with each stakeholder.

The research was approved by the Harvard University Institutional Review Board, and all interviews followed ethical protocols for human subjects, including obtaining verbal consent from participants. Most interviews were recorded using the Otter App, and all recordings were immediately de-identified and destroyed upon transcription. The transcriptions were manually verified after being taken from the Otter App.

To analyze the data from the 16 interviews, a rigorous qualitative data analysis process was conducted, which involved tagging, coding, and categorizing the data within and across interviews. Initial themes, findings, and recommendations were presented to the Southern Poverty Law Center, and ultimately, themes were synthesized and recommendations were developed.

LITERATURE REVIEW

The first part of this report presents an analysis of the human rights framework in the US, tracing the country's progress in ratifying and implementing international human rights conventions. This section also explores the history of NHRIs and their role in monitoring and promoting human rights. It examines the legal mandates, funding mechanisms, impact, and structure of NHRIs in different countries. By providing this contextual information, this section offers a foundation for understanding the legal, political, and social environment that will shape the establishment of an NHRI in the US.

Human Rights Framework in the United States

The history of human rights in the US as a part of international law and diplomacy is intertwined with the establishment of the United Nations and its subsequent efforts to promote human rights. The US was one of the founding members of the United Nations when it was established in 1945.⁵ Initially, the UN was established with the primary goal of restoring global peace and building international relationships following World War II. However, the UN soon developed a human rights program that aimed to establish basic protections for citizens that would be recognized across different countries.

The UN began this practice with the adoption of the Universal Declaration of Human Rights in 1948, followed by subsequent declarations on various aspects of human rights, which member countries then ratified through legislative action in their respective nations.⁶ These declarations now serve as the standard for assessing the strength of human rights protections in a member state on an international level.

⁵ United Nations, "History of the United Nations."

⁶ United Nations, "Brief History of UN Human Rights | OHCHR."

The process of ratification is crucial for ensuring adherence to United Nations human rights conventions. While UN member nations may sign treaties, internal ratification provides the pathway for the UN's human rights oversight boards to assess and evaluate compliance. In the US, treaty ratification requires the Senate to take up a resolution for ratification, in which, by a two-thirds majority vote, they advise and consent to the president to proceed with international ratification.⁷ However, ratification has been a major hurdle for the US, which often hesitates to sign onto international declarations that it believes infringe on its sovereignty. The country has also positioned itself as a leader on issues of liberty and domestic protection, believing that many of the protections espoused in international declarations are already covered in its founding documents, making these treaties unnecessary. This attitude has led to a delay in signing onto international declarations until the 1980s. The US ratified the foundational International Covenant on Civil and Political Rights in 1992, after two decades of advocacy. The country signed its last human rights declarations in 2002 when it ratified two optional protocols in the Convention on the Rights of the Child. Preeminent human rights attorney and former director of Human Rights Watch, Ken Roth, wrote that the American attitude towards human rights law is “fear and arrogance—fear that international standards might constrain the unfettered latitude of the global superpower and arrogance in the conviction that the United States, with its long and proud history of domestic rights protections, has nothing to learn on this subject from the rest of the world.”⁸

Due to the US' reluctance to sign onto international declarations, it wasn't until the 1980s that the country began to do so.⁹ The International Covenant on Civil and Political Rights, a foundational document, was not ratified until 1992 after a twenty-year advocacy

⁷ U.S. Senate, “Advice & Consent.”

⁸ Kenneth Roth, “The Charade of US Ratification Of.”

⁹ Marie Wilken, “U.S. Aversion to International Human Rights Treaties - Global Justice Center.”

effort.¹⁰ While the US did sign two optional protocols in the Convention on the Rights of the Child in 2002, the country has yet to ratify several treaties designed to protect vulnerable populations or regulate international conflict.¹¹ Notably absent from the list of ratified treaties include:

- ❖ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- ❖ Convention on the Rights of the Child (CRC)
- ❖ Convention for the Protection of all Persons from Enforced Disappearance
- ❖ Mine Ban Treaty
- ❖ Convention on Cluster Munitions
- ❖ Convention on the Rights of Persons with Disabilities (CRPD)
- ❖ Optional Protocol to the Convention against Torture¹²

The US frequently does not ratify treaties despite their broad international popularity. For example, the US is only one of only two countries to not fully ratify the Convention on the Rights of the Child, one of the most popular and rapidly ratified international treaties of all time.¹³ Despite signing hundreds of treaties, the US has one of the worst ratification records in the world,¹⁴ making it challenging to hold the country accountable.¹⁵

Furthermore, apart from the US' poor track record in ratifying treaties, it also faces challenges in adhering to the treaties it has ratified. There are ongoing concerns about the efficacy of monitoring mechanisms that track and report the US' compliance with

¹⁰ President Jimmy Carter, "U.S. Finally Ratifies Human Rights Covenant."

¹¹ Human Rights Watch, "United States Ratification of International Human Rights Treaties."

¹² Human Rights Watch.

¹³ Human Rights Watch.

¹⁴ United Nations, "OHCHR Dashboard."

¹⁵ Anya Wahal, "January 7, 2022."

various ratified treaties. Examples of these treaties include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹⁶ the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of Persons with Disabilities (CRPD).

[How Effective is the US in Complying with UN Treaties & Conventions?](#)

Despite positioning itself as a leader in human rights internationally and even releasing an evaluation of human rights in other nations,¹⁷ the US continually faces scrutiny for falling short of its own human rights goals. Reports from trusted organizations such as Human Rights Watch¹⁸ and Amnesty International,¹⁹ cite the US's failures to safeguard marginalized communities such as minorities, women, and the LGBTQ community. This is evidenced by incidents of police brutality, mistreatment of migrants, and reversal of reproductive rights, all of which are regarded as violations of human rights. **The final report of the UN Committee on the Elimination of Racial Discrimination, released in August of 2022, "criticized the systemic and longstanding failure of the U.S. to take compliance with the treaty seriously and to develop mechanisms to integrate its goals into domestic policy."**²⁰

Starting from these criticisms, we investigated the institutional and cultural obstacles hindering the US from enhancing its human rights record. This was to ensure that the National Human Rights Institution (NHRI) would have the ability to address and overcome these barriers. The main barriers identified were:

¹⁶ ACLU, "Treaty Ratification | American Civil Liberties Union."

¹⁷ United States Department of State, "2021 Country Reports on Human Rights Practices."

¹⁸ Human Rights Watch, "United States."

¹⁹ Amnesty International, "United States of America Archives."

²⁰ Lisa Borden, "UN Report."

1. The US constitutional structure and state sovereignty result in inconsistent compliance with human rights.
2. The absence of a commonly accepted definition of human rights hinders the establishment of clear policy objectives.
3. Limited coordination among local, state, and federal entities impedes effective collaboration to address human rights issues.

Although not an insurmountable barrier, the separation of powers and decentralized governance in the US presents a challenge to compliance. The US's constitutional structure, as described in the 10th Amendment, reserves any powers not explicitly granted to the federal government for the states.²¹ As a consequence, issues covered by widely-accepted international treaties - such as children's rights in the Convention on the Rights of the Child or voting rights in the International Convention on the Elimination of Racial Discrimination - often fall under the jurisdiction of individual states, leaving the determination of statutes and laws to their discretion.

For example, child marriage as defined by the United Nations is the marriage of any person under the age of 18 years old,²² and having marriage laws reflective of that is one stipulation of the Convention on the Rights of the Child.²³ However, in the US, The sovereignty of states in the US means that each state has the authority to establish the age of marriage, which has resulted in child marriage being legal in 43 states, as defined by the United Nations.²⁴ The situation creates a unique challenge, as the decentralized constitutional structure in the US can make it challenging to establish a consistent

²¹ National Constitution Center, "The 10th Amendment of the U.S. Constitution."

²² "Child and Forced Marriage, Including in Humanitarian Settings."

²³ "Convention on the Rights of the Child."

²⁴ "Child Marriage in the United States."

national standard. This can result in fragmented compliance efforts, unlike in countries with a centralized constitutional structure.efforts.

Moreover, the sovereignty of states in the US presents challenges in monitoring compliance, particularly due to the lack of a formal reporting mechanism for human rights issues. Unlike envoys from the US who report on progress to various treaty oversight bodies, there is no similar entity for states to report their progress on human rights matters under their jurisdiction. To address this, an NHRI could serve as a reporting body, gathering and interpreting information about the status of human rights across states and providing a useful tool to assess progress.

The lack of a bipartisan understanding of human rights further complicates compliance efforts in the US. Former President Donald Trump and some members of the Republican Party have sought to redefine human rights as the protection of free speech and religious freedom, framing it as a battle against alleged censorship, which deviates from the conventional international understanding of human rights.²⁵ Additionally, both parties struggle to hold the US to the same standard as other countries regarding its human rights record. The US often positions itself as exceptional within the international context, making it challenging to evaluate deficits in its human rights record through comparative analysis. As a result, it is difficult to fully assess compliance with global human rights standards.

The relationship between human rights and domestic civil liberties in the United States is not clearly defined, making compliance with international human rights standards a complicated matter. Many stakeholders who are not directly involved in the human rights field are uncertain or skeptical about the role of human rights, instead

²⁵ Romero, “We Can Uphold Free Speech and Hold President Trump Accountable | ACLU.”

prioritizing domestic civil rights. To address this, human rights advocates have formed partnerships with domestic civil rights proponents, arguing that fulfilling international human rights obligations can have positive implications for domestic civil rights. Recently, a coalition of stakeholders sent a letter to Ambassador Susan Rice, Director of the Domestic Policy Council at the White House, advocating for the establishment of a National Human Rights Institution (NHRI) as a means of advancing both domestic and international human rights goals.^{26,27} However, more dialogue is needed to effectively integrate human rights policy into domestic policy agendas. An NHRI would be a valuable tool to provide definitive definitions of human rights in domestic and international contexts, promote the inclusion of human rights in domestic policy, and facilitate necessary comparative analysis.

The final hurdle to compliance lies in the absence of coordination among federal, state, and local government bodies on human rights and a forum for these entities to engage with civil society. Though approximately 26 states in the U.S. have established official human rights commissions, and numerous cities have established local human rights commissions, there is no formal coordination among them, nor any links with the federal government.²⁸ The International Association of Official Human Rights Agencies is the only official organization that convenes local human rights groups, but it is a private, non-profit organization without any legal responsibility to any government, nor any mission to assist any government with human rights compliance.²⁹ This lack of coordination results in varying outcomes across states, leading to fragmented

²⁶ American Civil Liberties Union, “Coalition Letter to Susan Rice on Establishment of Domestic Human Rights Institution.”

²⁷ American Civil Liberties Union, “Broad Coalition of Civil Society Organizations Calls on the Biden Administration to Launch Effort to Explore Establishing a National Human Rights Body.”

²⁸ “All States.”

²⁹ laohra, “Who We Are.”

compliance. **An NHRI would provide a platform for a convening body, bringing together human rights agencies at all levels of government to develop a common strategy and foster meaningful collaboration, resulting in consistent human rights standards across the US.**

What is an NHRI?

National Human Rights Institutions (NHRIs) are globally recognized as the most suitable entities to advocate for, safeguard, and oversee human rights within their respective countries. NHRIs are tasked with acting independently to assess the human rights situation in their country and providing recommendations for advancing towards a world where human rights are fully enjoyed by everyone.”³⁰ The United Nations defines an NHRI as “a body established by the government under the constitution, law, or decree, with specific functions for the promotion and protection of human rights.”³¹ Since their inception in 1946, NHRIs have undergone evaluations by the United Nations to determine their feasibility and effectiveness, leading to significant advancements in solidifying their role. In 1978, the UN Commission on Human Rights released guidelines on the functions and structure of NHRIs, which were later endorsed by the General Assembly, calling on all states to establish NHRIs.

How are NHRIs Measured/Assessed?

In 1993, the Paris Principles, also known as the 'Principles Relating to the Status of National Human Rights Institutions,' were established as the international benchmark for ensuring the legitimacy and credibility of an NHRI.³² The Paris Principles provide a broad

³⁰ Global Alliance of National Human Rights Institutions, “History.”

³¹ United Nations, *National Human Rights Institutions*.

³² Global Alliance of National Human Rights Institutions, “History.”

mandate for NHRIs to promote and protect all human rights and take on a wide range of functions such as advising, monitoring, reporting, addressing human rights complaints, and educating the public about human rights. Additionally, the Paris Principles emphasize the need for NHRIs to be independent from the government, inclusive of all societal forces engaged in human rights promotion and protection, sufficiently resourced to perform their functions, and engaged in cooperative and international work to drive effectiveness and knowledge sharing.³³ The Global Alliance of National Human Rights Institutions (GANHRI) promotes and strengthens NHRIs to align with the Paris Principles.

Based upon evaluations conducted by GANHRI, NHRIs who are compliant with Paris Principles receive accreditation. Fully compliant NHRIs are accredited with 'A status' while partially compliant NHRIs receive 'B status.' Regardless of status level, all NHRIs can participate in GANHRI meetings, however only 'A status' institutions can hold governance positions and have the right to vote and hold full participation rights at the UN Human Rights Council. As of 2022, among the 120 GANRHI member institutions, 88 have 'A status' and 32 have 'B status.'³⁴

Although accreditation is often used as an indicator of an NHRI's effectiveness, research indicates that some NHRIs may still be effective even if they are not fully aligned with the Paris Principles. There are cases where NHRIs have been granted "A status" despite some concerns regarding their compliance with the Paris Principles. For example, in 2015, the Sub-committee on Accreditation (SCA) stated that the Independent Commission for Human Rights of Palestine "continues to be an effective national human rights institution" despite it not being established through primary legislation by the

³³ Global Alliance of National Human Rights Institutions, "Paris Principles."

³⁴ Global Alliance of National Human Rights Institutions, "Accreditation."

Palestinian Authority.³⁵ The SCA re-accredited the Commission with 'A status'. Similarly, the Australian Human Rights Commission was granted 'A status' despite concerns about limited funding and its member selection process (See Case Study Section). These examples suggest that the SCA may be willing to accredit an NHRI with 'A status' if it perceives the NHRI's work as effective, even if there are some areas of non-compliance with the Paris Principles.

What is the Status of an NHRI in the United States?

Despite constant reaffirmation of support by the United Nations General Assembly for all states to establish NHRIs, the US government has not stated a commitment to do so.³⁶ There are few instances where the US government has publicly commented on the potential of establishing an NHRI. In August 2015, the US Mission to International Organizations in Geneva stated in an appendix of their report to the committee that “although there are many efforts at all levels to improve and strengthen existing domestic institutions that monitor human rights, there are no current plans to establish a single national human rights institution.”³⁷ **However, in August 2022, a White House official who was part of the US delegation to the UN CERD review suggested that the Biden-Harris Administration is open to considering studying the prospects of an NHRI in the US.**³⁸ Reports released by civil society organizations in the US, including the American Civil Liberties Union (ACLU), Human Rights Watch (HRW), and the Leadership Conference have all reaffirmed the call for the US to establish an NHRI.

³⁵ United Nations, “Palestine Review.”

³⁶ U.S. Commission on Civil Rights, “U.S. Commission on Civil Rights Meeting.”

³⁷ Geneva, “Addendum of the United States of America to the Report of the Working Group on Its Universal Periodic Review.”

³⁸ Lisa Borden, “UN Report.”

The remainder of this report assesses how NHRIs have strengthened human rights in a country, with special attention to the conditions that allowed for NHRIs to be successful. The case studies and stakeholder interviews together provide a glimpse of what an NHRI could look like in the US, including its scope, responsibilities, legal authority, and position in the larger human rights apparatus.

CASE STUDIES

The second part of this report highlights three case studies of NHRIs from different countries: Australia, Mexico, and Sweden. These case studies were carefully chosen to represent the diverse range of NHRIs that differ in their legal authorities, funding structure, and responsibilities for promoting and protecting human rights in their respective nations. Each case study provides an overview of the NHRI's history, accomplishments, limitations, and an evaluation of their strategies for achieving their objectives. By examining these case studies, we can gain useful insights into designing an NHRI that suits the needs of the US.

Case: Australia Human Rights Commission

Australia's human rights institution is one of the oldest in the Asia Pacific region. In 1981, just a year after Australia ratified the International Covenant on Civil and Political Rights (ICCPR), the country established its first commission on human rights. This commission expired in 1986, which paved the way for the creation of Australia's current Human Rights Institution, the Australia Human Rights Commission (AHRC). The AHRC was established on December 10, 1986, on International Human Rights Day. Over the years, the AHRC's roles, responsibilities, and authorities have changed in response to more ratifications of international conventions and changes in domestic laws. The AHRC is a fully independent statutory authority with a mandate to protect and promote human rights in Australia.³⁹ The AHRC's mandate includes the following: investigating individual complaints, issuing submissions to parliamentary inquiries, providing legal advice on human rights obligations, producing guidelines for employers, running international

³⁹ Dr Shannon Torrens, "Australian Human Rights Commission."

education and training programs, conducting research and releasing reports, and issuing independent reports to the UN on the status of human rights compliance in Australia.⁴⁰

The AHRC consists of eight members, including the President and representatives for seven different areas of international conventions and commitments, such as race, sex, disability, children, aboriginal, children, and human rights.⁴¹ The Commission is authorized to intervene in court proceedings and make written or oral submissions. In this regard, the AHRC plays two crucial roles: 1) As Australia's legal system relies on precedent, the Commission's interventions contribute to the evolving nature of the law and set the foundation for future legal precedents and 2) The AHRC also enhances its educational mandate by educating members of the legal profession, judiciary, and the broader public about human rights standards and their implications in domestic proceedings.⁴²

The AHRC receives and handles approximately 2,000 individual complaints each year.⁴³ The Commission uses a conciliatory approach where it brings together all parties involved and seeks to find a mutually agreeable solution. If a resolution is reached, the process ends here. However, if the process is unsuccessful, inappropriate, or outside the AHRC's jurisdiction, the case is referred to another agency. All complaints and processes are kept confidential, and non-disclosure provisions protect them.

Since its establishment, the AHRC has conducted various inquiries and investigations on human rights issues, such as discrimination, the treatment of refugees and asylum seekers, and the rights of Indigenous Australians. The Commission is also

⁴⁰ Australian Human Rights Commission, "About | Australian Human Rights Commission."

⁴¹ Rosalind Croucher, "'The Role of the Australian Human Rights Commission as the National Human Rights Body in Promoting and Protecting Rights' | Australian Human Rights Commission."

⁴² The Hon. John von Doussa, "National Human Rights Institutions | Australian Human Rights Commission."

⁴³ Rosalind Croucher, "'The Role of the Australian Human Rights Commission as the National Human Rights Body in Promoting and Protecting Rights' | Australian Human Rights Commission."

known for providing robust educational programs, which educate the public, government agencies, and private sector on human rights issues. The AHRC has also been successful in engaging with government officials, civil society organizations, and the private sector to promote human rights and create awareness about human rights issues.⁴⁴ This has helped the NHRI build strong partnerships and collaborate effectively with other stakeholders. The AHRC played a vital role in advocating for the establishment of a National Human Rights Framework in Australia in 2010, utilizing their partnerships with civil society to promote the conversation and commitment to human rights in the country.⁴⁵

However, in recent years, the AHRC has faced criticism regarding its independence and financial and capacity constraints. In 2022, the AHRC announced that it would be cutting one-third of its jobs, despite a record number of complaints submitted by individuals.⁴⁶ **According to The Guardian, the AHRC released a statement stating that their current funding "does not provide us with the resources required to perform our statutory functions."**⁴⁷

In addition, concerns have been raised about the independence of the AHRC with regards to its commissioners' selection process. The selection of commissioners for the Australian Human Rights Commission (AHRC) is governed by the Australian Human Rights Commission Act 1986, which mandates a merit-based selection process that considers a candidate's skills, experience, and knowledge of human rights. However, in recent years, the selection and appointment of commissioners has been influenced by political considerations and a candidate's views on certain issues.

⁴⁴ Professor Rosalind Croucher, "Annual Report 2017 - 2018."

⁴⁵ Robert McClelland, "Australia's Human Right Framework."

⁴⁶ Professor Rosalind Croucher, "Annual Report 2020-2021."

⁴⁷ Karp, "Australian Human Rights Commission to Slash Staff after Budget Cuts and Surge in Workload."

In light of these concerns, there has been a movement to establish a separate, independent human rights institution in Australia. This new institution would have a stronger mandate and greater resources than the AHRC. Although opinions on the need for such an institution vary, it is evident that a robust and independent body is necessary to promote and safeguard human rights in Australia.

Case: Mexico National Human Rights Commission

In 1990, Mexico's National Human Rights Commission (Comision Nacional de Derechos Humanos, CNDH) was established by then President Carlos Salinas de Gotari through a presidential decree. The CNDH was tasked with monitoring the human rights practices of government institutions and promoting the respect for fundamental rights within Mexico.⁴⁸

The Mexican government established the CNDH in 1990 in response to persistent advocacy by civil society groups who had documented human rights abuses committed by the state. One notable instance of such abuses occurred during Mexico's Dirty War, a protracted period of civil violence between the 1960s and 1980s. The conflict stemmed from tensions between student and guerrilla groups and the ruling Institutional Revolutionary Party (*Partido Revolucionario Institucional*). During the conflict, around 1,200 people disappeared without a trace, and the Mexican military carried out a genocidal plan against opposition members, instructed by government officials to kidnap, torture, and murder hundreds of individuals.⁴⁹ Human rights activists who attempted to

⁴⁸ Human Rights Watch, "Mexico's National Human Rights Commission: A Critical Assessment: II - Background."

⁴⁹ Ginger Thompson, "Report on Mexican 'Dirty War' Details Abuse by Military - The New York Times."

document these atrocities were also violently targeted, including Norma Corona, whose assassination in 1990 was seen as a brazen attempt to silence activists.⁵⁰

It is within this context that the CNDH was founded. The CNDH was originally part of the Interior Ministry but became a fully “decentralized agency” through constitutional reform in 1992, and was granted independence from the executive branch. That same year, constitutional reform allowed the CNDH to become a fully decentralized agency and gain independence from the executive branch. The CNDH was also granted the authority to design its own internal rules and manage its resources through the passing of a law that same year. The CNDH's budget is authorized by the president, and with approval from the senate, the president appoints the CNDH president and council.⁵¹ These measures ensured that the CNDH was fully compliant with the Paris Principles.

The CNDH's formal mandate is to “protect, observe, promote, study, and disseminate the human rights protected by the Mexican legal system.”⁵² The agency is prohibited from investigating issues of electoral or labor violations or actions of members of the judiciary; it does have the authority to investigate all other human rights issues. The agency primarily investigates and documents human rights abuses. For the most serious human rights violations, the CNDH will document a human rights violation and publicly state the steps that the government or other relevant institutions should take to address these violations. For less serious violations, the CNDH will engage in reconciliation with the government entity responsible for the violation and the agency will sign a written

⁵⁰ Miller, “Mexico Arrests 4 in Killing of Human Rights Activist.”

⁵¹ Human Rights Watch, “Mexico's National Human Rights Commission: A Critical Assessment: II - Background.”

⁵² “The National Human Rights Commission: Mexico.”

agreement outlining steps that they will take to redress the violation.⁵³ The latter process is how the CNDH resolves 90% of the cases it investigates.⁵⁴

The CNDH is one of the most well-funded and staffed human rights institutions within the Americas and has done significant work to promote human rights in Mexico, however, human rights violations still continue in concerning numbers, with disappearances, instances of torture, and violence by police officers and military personnel continuing.⁵⁵ A 2008 assessment of the CNDH by Human Rights Watch stated that “when it comes to actually securing remedies and promoting reforms to improve Mexico's dismal human rights record, the CNDH's performance has been disappointing.”⁵⁶ According to Human Rights Watch, CNDH has failed to take full advantage of its expansive mandate to actually press state institutions to remedy abuses, to promote legislative reforms to prevent such abuses, to challenge abusive laws and policies, to publish information it has collected on human rights violations or to adequately engage with actors promoting human rights in Mexico.⁵⁷

CNDH's failure to fully protect human rights in Mexico incentivized the agency, in February 2023, to propose a constitutional reform that would transform it into the “National Ombudsman Office for the Rights of the People,” which would elevate its status within the government and afford the body more autonomy.⁵⁸

The CNDH is an example of a national human rights institution that complies with the Paris Principles but struggles to fully protect human rights within a country. **This**

⁵³ “The National Human Rights Commission: Mexico.”

⁵⁴ Human Rights Watch, “Mexico’s National Human Rights Commission: A Critical Assessment: II - Background.”

⁵⁵ Maureen Meyer and Gina Hinojosa, “Mexico’s Human Rights Landscape During López Obrador’s First Year.”

⁵⁶ Wilkinson, “Mexico’s National Human Rights Commission.”

⁵⁷ Wilkinson.

⁵⁸ Mexico News Daily, “Human Rights Body Wants Structural Reform to ‘Reaffirm Autonomy.’”

indicates that satisfaction of the Paris Principles is not necessarily the best or the only standard that should be used to evaluate the efficacy of a human rights institution.

When considering pathways to establish an NHRI in the United States, compliance with the Paris Principles cannot be the only metric of success or utility, and actors should imagine what an American NHRI could look like irrespective of compliance with the Paris Principles. In fact, American actors should imagine broader and more sophisticated accountability structures beyond the Paris Principles.

Case: Swedish Institute for Human Rights

While the Swedish Institute for Human Rights officially launched on January 1, 2022, this is not where their NHRI history begins.⁵⁹ Sweden was an active participant in the Paris Workshop that produced the Paris Principles and had its first accredited NHRI in 1999. This early-NHRI was an Ombudsman for Racial Discrimination and after new accreditation rules were passed in 2008, this ombudsman institution failed to apply for accreditation. In 2009, a group of four specialized ombudsmen united under one institution, the Equality Ombudsman, for purposes of restoring accreditation of a Swedish NHRI. However, when they applied for accreditation in 2011, they were only “granted only B status because it was not completely independent nor had it a broad mandate for the protection and promotion of human rights.”⁶⁰

During Sweden’s opening statement for their Universal Periodic Review at the UN Human Rights Council in June 2015, Ambassador Jan Knutsson acknowledged several recommendations from states pushing for Sweden to establish an NHRI. Knutsson emphasized the government’s commitment to delivering a strategy to parliament on how

⁵⁹ The Swedish Institute for Human Rights, “Institutet för mänskliga rättigheter: Other Languages.”

⁶⁰ Luke Glusac, “Universal Periodic Review and Policy Change: The Case of National Human Rights Institutions.”

to set up an NHRI body that was in accordance with the Paris Principles.⁶¹ In 2018, Sweden commissioned a comprehensive study which ultimately led to a proposal to establish an NHRI in the country.⁶²

Prior to the launch of the Swedish Institute for Human Rights, many members of civil society organizations came together for a roundtable, organized by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, to explore potential models and options for a Swedish NHRI. During this table, the working group identified several reasons why it was vital to bring an NHRI to Sweden including the country's general focus on foreign policy with less focus on domestic policies and institutions, a need for human rights education in Sweden, many cultural, economic, and social rights not being understood as human rights, the lack of clarity where individuals can report human rights violations, and lastly, a lack of data and transparency with the general public regarding human rights.⁶³

The Swedish Institute for Human Rights is an attempt to solve many of these issues. The organization has a mandate to “promote and protect human rights in Sweden,” and it specifically mentions that this includes the “the promotion, protection, and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities.”⁶⁴ The Institute has four key areas of tasks and responsibilities which include: (1) monitoring, investigating, and reporting on how human rights are inspected and implemented, (2) propose recommendations to the government on measures that will ensure human rights, (3) coordinate and engage with international organizations, and (4) promote education, research, and expertise that will ultimately raise awareness of human

⁶¹ Regeringskansliet, “Swedish Opening Statement - UN Human Rights Council 26 June 2015.”

⁶² The Swedish Institute for Human Rights, “Institutet för mänskliga rättigheter: Other Languages.”

⁶³ Raoul Wallenberg Institute of Human Rights and Humanitarian Law, “Roundtable Report: A Swedish National Human Rights Institution: Exploring Models and Options.”

⁶⁴ The Swedish Institute for Human Rights, “Institutet för mänskliga rättigheter: Other Languages.”

rights to the general public.⁶⁵ The Institute is managed by a Governing Board of 8 members who are experts within the field of human rights and professional experiences across civil society, higher education, and of judiciary and legislative backgrounds. The members of the Governing Board are appointed by the Government of Sweden for five-year terms. The Governing Board will appoint a minimum of ten individuals to provide subject knowledge expertise and advise the Institute's work.⁶⁶

Case Study Findings

Each of the case studies offers valuable insights into important factors to consider when developing an NHRI and assessing its effectiveness. These case studies demonstrate that the criteria for maximizing the impact of NHRIs are multifaceted and ever-changing, often requiring customized approaches that account for the political, legal, and social circumstances of each nation. In summary, these case studies provide the following key insights:

1. Compliance with the Paris Principles is not a guarantee of NHRI effectiveness.

Although Australia's and Mexico's NHRIs have been awarded an "A" status rating by GANHRI, both have faced significant challenges in fulfilling their duties for distinct reasons. Australia has struggled with funding gaps, staff capacity limitations, and political interference in the commission selection process. In contrast, Mexico's NHRI has faced challenges due to its lack of independence from political pressures, a tense socio-political environment, and corruption. On the other hand, the Swedish NHRI, classified as a "B" status NHRI, has been highly successful in the country, enjoying strong political support, adequate funding, legal

⁶⁵ The Swedish Institute for Human Rights.

⁶⁶ The Swedish Institute for Human Rights.

authority, and independence to hold the government of Sweden accountable for various human rights violations.

2. Forging strong relationships between NHRIs and civil society is crucial to

sustaining progress. Australia's NHRI has strong relationships with civil society organizations, often working hand in hand to accomplish human rights goals and holding the government accountable. Similarly, the Swedish NHRI has also built formidable relationships with civil society, bolstering national awareness of human rights issues and influencing policy decisions. In contrast, Mexico's NHRI has faced strained relationships with civil society due to concerns about its lack of independence from the government. This has significantly hampered its ability to establish legitimacy and make progress on human rights goals.

3. Cultivating political will is crucial for NHRIs to effectively carry out their mission.

As highlighted by the case studies, a key objective of NHRIs is to have their recommendations for advancing human rights taken seriously by the government. The Swedish NHRI serves as an example of an NHRI with strong political support, which enables it to garner significant levels of support, commitment, and legitimacy within the Swedish government. This support has led to the NHRI's recommendations being respected and considered within the broader government, even when they criticize government actions, as they are known to be evidence-based, thorough, and disciplined. In contrast, Mexico's NHRI, despite being situated within the government, has encountered obstacles in working with the government, resulting in the government's non-cooperation with some of its recommendations.

4. The most essential quality for the success of an NHRI is its independence. The case studies demonstrate that independence is not only established by the NHRI's ability to hold the government accountable but also by its funding structure, which enables it to criticize the government without risking its financial security. Mexico's NHRI serves as evidence that even if the institution is independent from the executive branch, its budget and mandate still require authorization from the president, which can significantly limit its ability to carry out its mandate without political influence. Although it is one of the most well-funded NHRIs, this reality weakens its effectiveness in achieving its goals. Resultantly, it is clear throughout these case studies that *without* independence, there are significant and far-reaching consequences, including the erosion of human rights and strained relationships with both the government and civil society.

The insights gleaned from the case studies can provide valuable guidance on how to develop an NHRI in the US that overcomes the challenges experienced by other nations and achieves its goal of promoting and protecting human rights. In the following section of this report, we present our findings from interviews with top human rights officials who offer their perspectives on what steps the US should take when contemplating the establishment of an NHRI.

EXPERT INTERVIEWS

This section of our report presents findings from expert interviews conducted with top human rights officials, academic leaders, and government officials, including the White House and Congress. The aim of these interviews was to gather insights on the most pressing challenges the US faces in monitoring compliance with international human rights obligations and how an NHRI can help address these challenges. To achieve this goal, we asked each interviewee a set of questions prepared in collaboration with SPLC, covering important considerations for establishing an NHRI and the essential qualities it should possess. The complete list of questions used in the interviews can be found in Appendix 1. Based on these interviews, we identified 8 key findings:

1. Establishing an NHRI is the ideal body to centralize reporting and monitoring on international human rights obligations.
2. A US NHRI should have three key components: Independence, Clear Legal Mandate, and Sustainable Financial Infrastructure.
3. The primary function of an NHRI in the US should be to report on broad human rights trends and patterns and encourage further actions on human rights issues.
4. A US NHRI Should Not Handle Individual Citizen Complaints.
5. Creating a new body for an NHRI is preferable over modifying an existing institution.
6. A US NHRI should act as a mediator between civil society and the government, with the aim of amplifying a shared human rights agenda.
7. Establishing a federal commission to study the creation of an NHRI is among the highest priority for top human rights officials.

8. Stakeholders identify key actions for the Biden Administration to advance human rights in the US alongside launching a federal commission.

1 ||| Establishing an NHRI is the ideal body to centralize reporting and monitoring on international human rights obligations.

In interviews with stakeholders, it was unanimously described that the US has a highly fragmented human rights infrastructure, which severely limits its ability to monitor its adherence to international human rights obligations accurately and efficiently. Stakeholders from government, academia, and civil society pointed to the Universal Periodic Review as an example of when coordination and communication across different areas of the government can be challenging. Civil society interviewees noted that they often have to provide additional information on the human rights situation in the country not covered by the official US government report. Government interviewees discussed that preparing for the UPR review is a burdensome and bureaucratic process that requires engaging stakeholders outside of the government to collect relevant information. This process is challenging and involves identifying, contacting, coordinating, and relaying information between multiple stakeholders to submit the most accurate review that reflects the nation's human rights situation.

In light of these challenges, **participants suggested that establishing an NHRI would help address many of these issues. an NHRI could centralize reporting and monitoring on international human rights obligations, reducing the administrative burden on government staff and facilitating more efficient communication with external stakeholders.** This would enable the US to submit a more accurate and

comprehensive review of the human rights situation in the country while streamlining the process for reporting on its human rights obligations.

2 ||| A US NHRI should have three key components: Independence, Clear Legal Mandate, and Sustainable Financial Infrastructure.

Participants were asked to identify the top three requirements a US NHRI should possess, considering the various legal authorities, roles, and responsibilities of NHRIs around the world. The following principles emerged as the most crucial:

- 1. Independence:** The NHRI should remain independent from changing political administrations, civil society, and the broader government apparatus in which it is positioned.
- 2. Clear Human Rights Mandate:** The NHRI should have explicit legal authority to act as the central body responsible for monitoring and reporting on the human rights status in the country.
- 3. Sustainable Financial Infrastructure:** The NHRI should have access to sustainable and adequate funding to perform its duties without worrying about funding being impacted by political dynamics or changing private donations.

Although stakeholders recognized the importance of the Paris Principles, they believed that launching an NHRI in the US is more crucial than strict compliance with all provisions. While the three essential principles mentioned earlier are part of the Paris Principles, other provisions like investigatorial powers received less attention from interviewees (see Finding 4). Additionally, stakeholders noted that the Paris Principles are the minimum design compliance standard for NHRIs globally and not a measure of success or effectiveness. Therefore, a more comprehensive approach is necessary to

integrate Paris Principles' aspects into the NHRI design process while ensuring compatibility with the existing US institutional arrangement.

3 ||| The primary function of an NHRI in the US should be to report on broad human rights trends and patterns and encourage further actions on human rights issues.

Across stakeholder interviews, there is general consensus that an NHRI in the US should have a legally-conferred mandate that involves monitoring and reporting on broad human rights trends in the country, rather than dealing with individual cases. Many stakeholders suggested that the "pattern or practice" investigations conducted by the Department of Justice could be a suitable model for an NHRI to follow. The investigations carried out by the DOJ are centered around addressing systemic issues rather than individual cases. This involves conducting a comprehensive review of the underlying policies, practices, and procedures that contribute to potential violations of federal law.⁶⁷ In the context of human rights, such investigations can help build a broader picture of human rights violations across jurisdictions, highlighting larger trends and patterns that can serve as a catalyst for taking action. Stakeholders also noted that this approach would be more resourceful and efficient than dealing with isolated cases. Lastly, the investigations would enhance the credibility and legitimacy of the NHRI, leading to better collaboration with civil society organizations.

Stakeholders suggested that in addition to identifying and monitoring broad human rights trends in the US, the conclusions drawn from NHRI reports should be used to promote human rights legislation and commitments. They emphasized that

⁶⁷ The United States Department of Justice, "How P&P Investigations Work | Department of Justice."

these reports should both encourage greater compliance with existing international human rights obligations under the law and support ratification of unratified treaties. To accomplish this, participants highlighted the importance of NHRIs acting as a liaison between civil society stakeholders, international groups, and Congress to identify the US's capacity to ratify key human rights-related treaties and report on its progress.

4 ||| A US NHRI Should Not Handle Individual Citizen Complaints.

Based on Finding 3, stakeholders agreed that an NHRI should prioritize documenting broad trends and patterns in the US rather than handling individual complaints of human rights violations. Participants expressed concerns about the challenges of implementing an approach that handles individual complaints due to varying legal jurisdictions and logistical issues associated with the NHRI serving as a complaint-handling body. Instead, the NHRI can assist in notifying relevant authorities when necessary and internally monitor individual complaints as part of larger reporting processes. **Participants emphasized that the primary objective of an NHRI should be to serve as an overarching federal body documenting patterns, rather than cases, of human rights violations.** They noted that the US legal system already provides multiple forums for citizens to address claims of human rights violations, making investigatory powers less critical.

5 ||| Creating a new body for an NHRI is preferable over modifying an existing institution.

According to stakeholders, repurposing another US commission or body into an NHRI would compromise its independence from the government. While stakeholders did

not provide specific recommendations for appointing members, they agreed that an NHRI should be composed of experts in domestic and international human rights across sectors and political affiliations.

Furthermore, stakeholders highlighted the Tom Lantos Human Rights Commission as an example of a commission that should not be repurposed or modeled after. The Tom Lantos Human Rights Commission is a bipartisan caucus in the House of Representatives that advocates for human rights as part of U.S. foreign policy.⁶⁸ Critics argue that the commission lacks independence and authority and is not totally non-partisan, as it is renewed biennially through congressional authorization. Therefore, stakeholders recommended that an NHRI should not build upon the mandate of the Lantos commission but should instead be established through a new federal directive.

6 ||| A US NHRI should act as a mediator between civil society and the government, with the aim of amplifying a shared human rights agenda.

We heard from interviewees that human rights work is happening across local entities and civil society, therefore, **this NHRI should be primarily focused on coordinating, amplifying, and finding synergy amongst those stakeholders as opposed to creating its own independent human rights agenda.** The primary goal is to work with civil society, leveraging their expertise and advocacy as assets, to enhance promotional efforts within the government apparatus.

NHRIs can play a unique role in liaising between civil society stakeholders, international groups, and Congress in both identifying the US's ability to ratify key human rights-related treaties and reporting upon its progress.

⁶⁸ "Tom Lantos Human Rights Commission."

While stakeholders had varying ideas of how a US NHRI could function, many were aligned that it must have the functions of monitoring, data collection, reporting, and issuing recommendations. Some stakeholders also believed that this body could conduct investigations as necessary. Stakeholders saw a US NHRI as an institution that could address many gaps that currently exist in regard to human rights education, assessing human rights, and reporting to international bodies. Many stakeholders identified that there is a critical opportunity for this body to raise awareness and provide educational tools on what human rights are and shape how American society thinks about human rights.

7 ||| Establishing a federal commission to study the creation of an NHRI is among the highest priority for top human rights officials.

In order to establish an effective NHRI in the United States, stakeholders unanimously urge for the creation of a federal commission to study the utility of such an institution. In doing so, stakeholders provided insights on how the commission should be structured and who should serve on such a body.

Membership

Stakeholders recommend a cross-sector and bipartisan commission that reflects the demographics of the country across dimensions of race, class, gender, and industry. They emphasize that human rights compliance and the security of protected classes impact diverse populations in identity-specific ways, necessitating stakeholder involvement with reflective identities for a responsive body.

In addition, the commission should comprise subject matter experts who span all levels and sectors of government, civil society, and private sector partners. Members

should have expertise on issues directly and indirectly related to human rights, bolstering the credibility of the commission and its authority.

Stakeholders emphasize that committee members should be people with the capacity to propel this work forward beyond the report, leveraging their resources to work in concert with each other and carry forth the commission's recommendations once further authorization is received. The capacity to be actionable in the immediate future is a prominent stipulation set forth by stakeholders who have seen commission reports underutilized in subsequent policy action.

Structure

Stakeholders pointed to the Presidential Commission on the Supreme Court of the United States, established through Executive Order 14023, as a model for a potential NHRI commission. This commission, composed of bipartisan experts on the court and court reform, judges, legal scholars, and practitioners in other relevant fields, is tasked with assessing the merits of contemporary court reform proposals and exploring their legality.⁶⁹ Its final report, which stakeholders praised for its strong mandate, will lead to a response from the Executive Branch.⁷⁰

Stakeholders envision a similar strong mandate for a commission studying NHRIs. Such a commission should produce a comprehensive report assessing the current state of human rights in the US, the mechanisms in place for monitoring and reporting compliance, and the proposed role of an NHRI in the US. Additionally, stakeholders urge the report to discuss and quantify, where possible, the diplomatic costs and benefits of

⁶⁹ President Joseph Biden Jr., “Executive Order on the Establishment of the Presidential Commission on the Supreme Court of the United States.”

⁷⁰ Presidential Commission on SCOTUS, “Presidential Commission on the Supreme Court of the United States.”

implementing an NHRI, highlighting the US's relative uniqueness on a global scale for not having a body to monitor compliance with international law obligations.

Operating Procedures

To accomplish these goals, interviewees proposed that the commission should undertake site visits to human rights organizations and local commissions operating throughout the US and organize listening sessions with affected communities and citizens across the nation. Additionally, the commission should collaborate with international human rights experts and practitioners to facilitate comparative analysis. The final report should comprehensively explore all feasible options for establishing an NHRI in the US, without restricting itself to the fulfillment of the Paris Principles.

An additional, implicit objective that the commission should undertake is to expand the awareness of human rights issues among the citizens of the US. The commission's information gathering process and community listening sessions should aim to achieve two goals: to gather information on people's attitudes towards human rights in the US, and to educate communities on the significance of a human rights institution and the importance of sustainable commitment and compliance with human rights principles. This approach enables the commission to raise awareness of human rights in the US while also demystifying the topic, transforming it from something perceived as "foreign" or "exotic" to something that is widely understood and valued.

To augment public education efforts, certain stakeholders are proposing novel formats for the final output and interactive methods for public dissemination. They recommend incorporating audio-visual elements and social media engagement to broaden public engagement in discussions regarding the potential establishment of an

NHRI, with the objective of enhancing public understanding of human rights and integrating human rights into the political ideology of the American populace.

8 ||| Stakeholders identify key actions for the Biden Administration to advance human rights in the US alongside launching a federal commission.

During interviews, a number of recommendations were made to the Biden Administration regarding the establishment of a National Human Rights Institution (NHRI) in the US. The following list summarizes the main suggestions provided by the participants:

- ❖ Sign Executive Order For a Federal Commission to Study Establishing an NHRI
- ❖ Create a Formalized Interagency Council on Human Rights
- ❖ Create a Human Rights Advisory Council Convened by the Attorney General
- ❖ Designate Full Time Equivalents to Human Rights Coordination with Local, State, and Federal Agencies
- ❖ Create a Special Envoy for Human Rights/ Top Human Rights Official Reporting to the President
- ❖ Include Support for an NHRI in Statements of Administration Policy

Participants overwhelmingly suggested that the initial stage in launching a National Human Rights Institution (NHRI) would be for President Biden to sign an executive order initiating a federal-level commission to examine the establishment of an NHRI. However, the participants also expressed a desire for the President to take additional measures beyond commissioning a study, such as creating a Special Envoy for Human Rights who would report directly to the President. According to the participants, given the

fragmented and dispersed nature of human rights initiatives in the US, this official would serve three crucial functions:

1. Streamline and coordinate between local, state, and federal human rights agencies, commissions, and committees
2. Employ a whole-of-government approach to integrating human rights commitments
3. Provide executive-level leadership on human rights for domestic and international audiences

The interviewees noted that having a senior-level official as the point-person for human rights would facilitate monitoring and improving US compliance with ratified international human rights declarations. Additionally, they suggested that establishing an interagency council or human rights advisory council, convened by the Attorney General, would create a suitable forum for senior human rights officials, including the Special Envoy, to participate in. This would ensure proper coordination and communication on pressing human rights matters. It is important to note that the aim of the aforementioned initiatives is not to substitute the creation of an NHRI, but rather to complement the work of an NHRI, and embed human rights policy into various spheres of government and improve cross-functional collaboration.

RECOMMENDATIONS

Based on our findings, the following recommendations are suggested actions that SPLC can take to accelerate progress towards establishing an NHRI in the US. These proposals are informed by stakeholder feedback and take into account SPLC's position as a civil society organization with extensive national and international partnerships, which can serve as a thought leader in promoting policy outcomes.

We recognize that stakeholders unanimously agreed that a commission to study an NHRI is an essential first step towards establishing such an institution. However, we also acknowledge that advocacy efforts are crucial to building political momentum and garnering support for this initiative. SPLC should concentrate on mobilizing state-level political actors who can strengthen their case for an NHRI by indicating to the executive branch that the American people desire such a body. In this endeavor, SPLC must enhance the public narrative on human rights and work alongside coalition partners to encourage the Biden administration to launch an exploratory commission at a minimum, to examine options for implementing an NHRI in the US.

- 1. Improving Public Understanding of NHRIs** - Stakeholders suggest that many Americans are unaware of NHRIs and their ability to promote and protect domestic rights. There is little comprehension of how international treaties influence human and civil rights within the US. Highlighting the connection between international human rights and their domestic implications for protecting historically marginalized groups is crucial, especially in a political context that is less supportive of international obligations. SPLC should use its platform and resources to lead public discussions about NHRIs through civic engagement initiatives like

social media, academic events, and report releases. SPLC already engages in similar work in other areas of domestic policy.

- 2. Building a More Diverse Coalition of NHRI Advocates** - Although SPLC has many institutional partners, as evidenced by the coalition letter sent to Ambassador Susan Rice, capturing the momentum of that communication is critical. SPLC should develop coordinated communication channels between partners to enhance impact, broaden and diversify their network of partners to include a broad coalition of academics, lawyers, government officials, civil society, and private sector partners.
- 3. Utilizing the Insights & Infrastructure of Local Commissions** - Stakeholders suggest that local commissions have been at the forefront of human rights work, with little opportunity for federal recognition, coordination, and investment. SPLC should utilize local commissions as a source of advocacy and subject matter expertise, particularly in states represented by Members of Congress typically uninterested in international human rights obligations. Leveraging local commissions will enable SPLC to navigate a complicated political environment more effectively, foster more bipartisan agreement on human rights issues, and begin to create a shared definition of human rights that is currently absent.

LIMITATIONS AND AREAS FOR FUTURE RESEARCH

Although our study employed a comprehensive approach to the topic of NHRIs in the US, it has some limitations and opportunities for future research. One of the main limitations is the poor response rate from members of federal agencies, including the Department of State, Department of Justice, and the Department of Homeland Security. Their input regarding NHRIs' potential structure and role in relation to their work would have added more value to our conversations with other government members. Additionally, we did not have the opportunity to speak with more conservative members of the human rights field who might have different perspectives on how an NHRI could benefit the US human rights agenda. Future iterations of similar projects could benefit from including these perspectives to gain a more comprehensive understanding of the path forward on NHRIs in the US.

Given our limitations, there are several areas for future research on NHRIs in the US. The following list represents the most promising areas of research needed to advance the current discourse on NHRIs:

- 1. Funding and Resources:** Research on how NHRIs can be adequately funded and resourced in the US is necessary. This would include identifying potential sources of funding and examining the impact of different funding models on the effectiveness of NHRIs.
- 2. Outreach and Awareness:** Research on how to increase human rights awareness and outreach in the US would be valuable in understanding how to build support for the establishment of an NHRI.

- 3. Relationship with State, Local, and County Authorities:** Research on how a federal-level NHRI can develop operational partnerships and fulfill its human rights responsibilities without encountering constitutional hurdles.
- 4. Perspectives of Conservative Voices:** Research on exploring the perspectives of more conservative voices who may express concern about expanding the scope of government, and how they perceive the task of advancing the US compliance with human rights obligations. Understanding their viewpoints could provide valuable insights into potential challenges and strategies for implementing an NHRI in the US.

CONCLUSION

This study aimed to explore the structure, functions, and potential roles of an NHRI in the US, as well as identify actions necessary to advance human rights in the country. Using a tri-pronged research methodology that included examining literature, conducting interviews with top human rights officials, and studying case studies, we gained insights into the significant challenges of monitoring domestic compliance with international human rights obligations and establishing an NHRI in the US.

Our analysis suggests that NHRIs are the most effective means of enhancing compliance, promotion, and protection of human rights in the 21st century. However, launching an NHRI that can achieve these goals requires intensive research, coordination, and commitment.

In conclusion, we are optimistic about the work human rights officials have already undertaken in cities across the country and the potential for an NHRI to coordinate, amplify, and support this work. Protecting human rights benefits not only the most marginalized and vulnerable but also strengthens our nation's security, prosperity, and position as a global leader.

APPENDICES

Appendix 1. Interview Questionnaire

Interview Questionnaire

Background & Purpose: The United States is one of the few countries in the world without an NHRI or a similar national human rights commission. The Office of the High Commissioner for Human Rights has reported that there are 117 NHRIs worldwide, but little research has been conducted on how an NHRI could operate in the United States and help promote the country's adherence to international treaty obligations.

Thus far, there has been insufficient collaboration among key human rights officials in government, civil society, and academia to define the objectives and scope of a U.S. NHRI. This study seeks to bridge this gap in knowledge by examining how an NHRI could function in the United States and contribute to fulfilling the country's human rights commitments under international law.

Audio Recording Consent: As part of our research process, it is helpful to record this conversation for the purpose of transcription and analysis. The recording will be de-identified, stored securely, and destroyed at the conclusion of the analysis process. Do I have your verbal consent to record this conversation?

Questions for All:

1. What are specific actions the Biden Administration can take in the short and long term to form an NHRI?
2. What are three must-haves for an NHRI in the US?
3. There are current proposals to launch a commission to study the prospect of an NHRI in the US. What should be included?

Additional Questions:

1. What are the barriers to the US monitoring & improving compliance with UN treaties & conventions?
2. What interventions have been effective & ineffective in monitoring and improving compliance?
4. How can an NHRI help advance the United States progress on international treaty obligations?
5. What could an NHRI look like in the United States? What would its structure entail?
 - a. Should it be part of a specific US federal agency (bureau, department)?
 - b. Should it be a cross-agency committee? Should it be an office within the White House?

- c. Should an American NHRI be established by modifying existing institutions?
6. How should the scope of an American NHRI be determined?
7. What should be the primary roles, responsibilities, and authority of an NHRI in the US?
8. How will an American NHRI be funded?
9. Should an American NHRI handle individual complaints or take an advisory approach?
10. Should NHRI decisions be binding? Will an NHRI have enforcement powers?
11. How will members of the NHRI be selected?
12. Should an American NHRI address systemic issues at state and local levels?
13. How will a US-based NHRI interact with the UN Universal Periodic Review, Special Rapporteur visits, UN Human Rights Council sessions among others?

Appendix 2. List of Expert Interview Affiliated Organizations.

Advocates for Human Rights
American Civil Liberties Union
American Jewish Committee
Brookings Institute
Harvard Kennedy School
Harvard Law School
Human Rights Watch
Los Angeles County Commission on Human Relations
Northeastern University
Tom Lantos Commission
University College London
University of California, Irvine
White House

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