



**Universal Periodic Review Consultation with Civil Society
White House Conference Center
August 1, 2014**

**Written Submission of the ACLU on Domestic Human Rights
Implementation**

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As the Obama administration considers its legacy on human rights, we urge it to strengthen the infrastructure for human rights at home. The administration should fulfill and build on the vision of human rights implementation first articulated in President Clinton's 1998 Executive Order on Implementation of Human Rights Treaties. That executive order created an interagency working group with a mandate to ensure compliance with U.S. human rights obligations and coordinate implementation of human rights treaty obligations. Unfortunately, before this initiative was firmly rooted, President George W. Bush issued a directive effectively disbanding it.¹

Mindful of this recent history, we urge the administration to use the next several months to take concrete steps to improve domestic human rights implementation. We welcome the steps the administration has already taken, including the creation of the interagency Equality Working Group and working groups to carry out the recommendations the United States agreed to in its first Universal Periodic Review. While we look forward to working with these mechanisms, more is needed. The UPR working groups have been described to us as lacking a sufficient mandate and support. Moreover, while we look forward to continuing our work with the Equality Working Group, we recognize that it was never intended to provide a comprehensive mechanism for domestic human rights implementation.

There is still time for the administration to build a strong human rights infrastructure and set significant precedents on human rights. We recommend the following:

- ✧ **White House leadership in interagency mechanisms:** Particularly because opportunities for ratification of new human rights treaties may be limited, among the administration's best prospects for achieving a human rights legacy is executive action and, in particular, White House

¹ The 1998 Executive Order required, inter alia, the appointment of "a single contact responsible for coordinating implementation efforts within each agency's jurisdiction" and the establishment of an interagency working group. Exec. Order No. 13,107, § 1, 63 Fed. Reg. 68,991 (Dec. 10, 1998).

leadership in domestic human rights implementation. Without such leadership, progress on domestic human rights may be hampered. We have consistently sought to engage the State Department and individual agencies regarding domestic human rights implementation—including follow up on the UPR recommendations, Concluding Observations of the UN Human Rights Committee, and other recommendations of UN bodies and experts.² While several important steps have been taken to recognize human rights issues in domestic policy, they have occurred on an ad hoc basis depending on agency staff and leadership. Without White House involvement, agencies lack clear and consistent direction on human rights implementation or an understanding of the need for continuing efforts to review and identify areas where U.S. law and policy are out of step with international human rights commitments. Moreover, within the Executive Branch there is insufficient oversight and accountability on achievement of domestic human rights goals. White House leadership is vital to signaling personnel across agencies that a sustained and consistent focus on human rights implementation—rather than intermittent and limited engagement—is required as a matter of this administration’s policy priorities and U.S. legal obligations. The White House should reconstitute and update the Interagency Working Group on Human Rights first established under Executive Order 13107, as we have repeatedly urged, and base it in the Domestic Policy Council, which would be well-situated to convene an interagency body given its domestic focus. Any such mechanism should include a mandate to maintain transparency with the public about its efforts and to consistently engage with civil society, as further explained below.

- ✧ **Consistent engagement with civil society:** Any mechanism for domestic human rights implementation—whether it be a civil society consultation or a standing interagency working group—benefits from full engagement with civil society. This requires regular and periodic meetings with civil society, rather than intermittent engagement, which tends to frustrate communication. Likewise, it is vital for the government to be transparent about which agencies and personnel are responsible for particular U.S. human rights commitments, and what steps they are taking. Moreover, while we have welcomed the treaty-based and UPR civil society consultation processes, they require a meaningful dialogue. Within the United States, most consultations have consisted mostly of presentations by civil society members, with only brief statements by government officials. These statements by government officials, though well-intended, rarely shed light on the government’s work to implement human rights. While we value civil society consultations as opportunities to share our perspectives, we urge government representatives to also use them to update civil society on progress toward implementation of human rights treaties.
- ✧ **Support for a US Commission on Civil and Human Rights:** We urge the administration to support the creation of a national human rights commission, consistent with US support for recommendations 65, 74 and 87 made during the first Universal Periodic Review Process. Such a commission is vital to effective monitoring and enforcement of human rights. As we have previously urged, the U.S. government should support reauthorizing legislation that would restructure and strengthen the existing Commission, converting it into an effective

² See ACLU, *Unfinished Business: Turning the Obama Administration’s Human Rights Promises into Policy* (March 21, 2012) available at <https://www.aclu.org/human-rights/unfinished-business-turning-obama-administrations-human-rights-promises-policy>.

U.S. Commission on Civil and Human Rights. The Commission should be empowered and its mandate expanded to, among other things: issue reports and recommendations to the executive branch and Congress; contribute to the reports the U.S. submits to international bodies; issue subpoenas, conduct fact-finding and investigations, including through hearings into human rights violations; and help coordinate and support the human rights monitoring efforts of state and local officials, which are essential partners in fulfilling human rights. It is also critical that the Commission receive adequate funding to carry out these duties effectively and create a robust regional office structure.

- ✧ **Engagement with UN Special Rapporteurs:** The U.S. government has repeatedly committed to cooperate with and support the work of U.N. independent human right experts, including through pledges the U.S. made in 2009 prior to its first election to the Human Rights Council and again in 2012 prior to its reelection.³ Consistent with these commitments, we urge the government to issue without delay an invitation to UN Special Rapporteur on Torture Juan Méndez to undertake fact-finding on, among other issues, the use of solitary confinement. A coalition of 50 human rights groups including the ACLU has urged the U.S. government to issue the invitation in accordance with the Terms of Reference for Fact-Finding by U.N. Special Rapporteurs.⁴ Moreover, we have urged the government to respond to requests for information from UN independent human rights experts regarding other U.S. human rights issues, as we outlined in an April 2013 letter.⁵ Both of these steps would promote greater transparency and accountability regarding the human rights record of the United States. Conversely, a failure to take these steps would be inconsistent with US commitments set a bad example for other nations and undermine American leadership on human rights. It would also harm the work of the independent human rights experts, who are dependent on governments' cooperation to effectively fulfill their mandates.⁶

³ In 2009, as part of the "U.S. Human Rights Commitments and Pledges" made to the U.N. General Assembly prior to its first election to the Human Rights Council, this Administration stated that "(t)he United States is committed to cooperating with the UN's human rights mechanisms ... by responding to inquiries, engaging in dialogues, and hosting visits. U.S. Dep't of State, U.S. Human Rights Commitments and Pledges (Apr. 16, 2009) *available at* <http://www.state.gov/j/drl/rls/fs/2009/121764.htm>. Indeed, in 2012, prior to its re-election to the Human Rights Council, the Administration pledged to "continue to strongly support the work of the Special Rapporteurs and independent experts and the dialogue that their reports engender," and specifically to "support[] the work of the U.N. Special Rapporteur on Torture." U.S. Dep't of State, U.S. Human Rights Commitments and Pledges (Oct. 26, 2012) *available at* <http://www.state.gov/p/io/rls/othr/199807.htm>.

⁴ Letter from ACLU et al. to Uzra Zeya, Acting Assistant Secretary of State, Human Rights, and Labor (June 19, 2013) *available at* https://www.aclu.org/files/assets/coalition_letter_to_department_of_state_re_juan_mendez_visit.pdf.

⁵ Letter from ACLU et al. to Esther D. Brimmer, Assistant Secretary of State, International Organization Affairs (April 23, 2013) (see attachment to this statement).

⁶ The Human Rights Council "(e)ncourages Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, to furnish all information requested, to consider the implementation of the recommendations contained in the reports of the Special Rapporteur" and "to give serious consideration to inviting the Special Rapporteur to visit their countries so as to enable him or her to fulfill the mandate effectively." Human Rights Council Res. 17/12, ¶ 7, U.N. Doc. A/HRC/RES/17/12 (July 6, 2011). *See also* Brookings Institution, Human Rights Special Procedures: Determinants of Influence (March 2014) *available at* <http://www.brookings.edu/research/reports/2014/03/19-un-human-rights-experts-evaluation-piccone>.

- ✧ **Support compliance with the judgment of the International Court of Justice in *Avena and Other Mexican Nationals*:** A related issue included in the agenda for this consultation is the *Avena* judgment. In the first Universal Periodic Review process, the United States pledged to make its “best efforts” to ensure compliance with the *Avena* judgment and emphasized its longstanding policy of supporting the International Court of Justice. We commend the administration for condemning state executions that violated U.S. international obligations under Vienna Convention on Consular Relations. We urge the White House to work with Congress to pass the Consular Notification Compliance Act, which would provide an additional mechanism for the United States to meet its international obligations under the Vienna Convention on Consular Relations and the *Avena* judgment.⁷

Thank you for your attention to these matters. For more information regarding the ACLU’s human rights work, please visit <https://www.aclu.org/human-rights>. Please do not hesitate to call Legislative Counsel Naureen Shah at 202-675-2327 or contact her at nshah@aclu.org if you have any questions.

⁷ See Julian Pecquet, *State: Mexican’s Execution Puts Americans At Risk*, The Hill, January 23, 2014 available at <http://thehill.com/policy/international/196236-state-mexicans-execution-puts-americans-at-risk>; Jamil Dakwar, *Texas Shouldn’t – But Just Did – Execute a Mexican National*, ACLU Blog of Rights (January 23, 2014) available at <https://www.aclu.org/blog/human-rights-capital-punishment/texas-shouldnt-just-did-execute-mexican-national>.