

**Submission Regarding the Expansion of the
Recognition, Institutionalization, and Accountability Framework
for Economic and Social Rights, Focused on Developments in the United States**

Submitted by the Human Rights in the U.S. Project of the Columbia Law School Human Rights Institute¹ and the Center for Constitutional Rights (CCR).²

EXECUTIVE SUMMARY

In response to the U.N. Special Rapporteur on extreme poverty and human rights' request for input regarding the Recognition, Institutionalization and Accountability Framework for Economic and Social Rights ("Framework or RIA Framework"),³ this submission responds to the following questions:

- What has made a difference in your country in promoting the implementation of a specific economic and social right? What conditions or circumstances have made it difficult to recognize, institutionalize, and hold the government to account in relation to economic and social rights?
- What domestic institutions have succeeded in implementing, monitoring and advocating for economic and social rights? What contributed to their success? How did they come to work on this topic?
- Have you been involved in efforts to recognize a specific economic or social right, to set up an institution to promote it or to ensure accountability? If so, please describe the experience and results.

This submission aims to (1) highlight how the lack of legal recognition and institutionalization of economic and social rights, as well as the dearth of any national level accountability mechanisms perpetuate inequality and marginalize individuals living in poverty; (2) use recent federal efforts to penalize, and ultimately deny permanent immigration status to individuals that seek basic social protections as one example of the harms that result from the failure to recognize and

¹ The Human Rights Institute advances international human rights through education, advocacy, fact-finding, research, scholarship, and critical reflection. We work in partnership with advocates, communities, and organizations pushing for social change to develop and strengthen the human rights legal framework and mechanisms, promote justice and accountability for human rights violations, and build and amplify collective power in the United States and throughout the world. See <https://www.law.columbia.edu/human-rights-institute>.

² The Center for Constitutional Rights works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, we have taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach. See <http://ccrjustice.org>.

³ Alston, Philip, *Report of the Special Rapporteur on Extreme Poverty and human rights, A/HRC/32/31, April 28, 2016, available at* <https://srpovertyorg.files.wordpress.com/2018/08/social-and-economic-as-human-rights-report-2016.pdf> (hereinafter "RIA Framework").

protect economic and social rights; (3) spotlight some promising initiatives emerging at the state and local level, and as a result of grassroots organizing to demonstrate that alternative rights-based approaches are possible; and (4) provide initial suggestions for concrete actions that the Special Rapporteur can promote to improve recognition and protection of economic and social rights, even in the absence of constitutional and legal recognition of these fundamental rights.

In 2018, the Trump Administration, through the United States Department of Homeland Security (DHS), announced a proposed rule, which if adopted, would penalize immigrants and their families for participation in public benefit programs, with devastating impacts. This proposed rule on “Inadmissibility on Public Charge Grounds” penalizes participation in public benefits programs and forces immigrant families to choose between their ability to adjust their immigration status and participation in valuable health, nutrition, and other supports.⁴

This punitive rule was proposed with the absence of a fulsome analysis of the human rights impacts or the impact on fundamental rights - but based on purported financial savings. There is very limited data on the potential impacts (though its preliminary chilling effect has been documented), and there has been little opportunity for impacted individuals to participate in promulgation of the rule. While there was an open public comment period, and more than 260,000 submissions were made, there have been recent indications that the Administration will forge ahead with issuing the proposed rule despite substantial opposition. The proposed rule contravenes globally accepted human rights norms, which aim to ensure an adequate standard of living and prohibit discrimination in enjoyment of the full panoply of human rights, including the specific economic and social rights obligations of the United States.

This rule provides a prime example of U.S. failure to recognize and uphold economic and social rights, and highlights how gaps in the existing domestic framework allow rollbacks in the limited social protections that do exist, with a disproportionate impact on individuals and families living in poverty. The key limitations to the current approach include: failure to ensure a minimum standard of social protection; explicit penalization of individuals on the basis of income and identity; lack of available data on the impacts of the proposed rule, and lack of meaningful opportunities for impacted individuals to participate in the rule-making process. The following recommendations section lays out concrete actions, which if adopted at a national level, would strengthen protection of economic and social rights, and mitigate the type of harms likely to occur if the proposed rule is adopted.

RECOMMENDATIONS

To address the current challenges facing the United States and countries around the world, we encourage the Special Rapporteur on extreme poverty and human rights to promote actions that ensure greater promotion and protection of economic and social rights in the line with the existing RIA Framework, including calling on governments to:

- Eliminate laws and policies which criminalize or penalize poverty or identity. Ensure laws do not intentionally, or through their impact, further curtail enjoyment of economic and social rights protections;

⁴ See Center for Constitutional Rights and Columbia Law School Human Rights Institute Human Rights in the U.S. Project, *Comment in Opposition to Proposed Rulemaking: Inadmissibility on Public Charge Grounds*, December 10, 2018, available at <http://ccrjustice.org/public-charge>.

- Promote laws and policies which advance and further recognize economic and social rights and take concrete steps towards progressive realization of these rights. This includes:
 - creating a national human rights institution or other transparent, and coordinated federal level human rights mechanism to monitor and implement human rights at the federal, state, and local levels, and ensure that the recognition and promotion of economic and social rights is a part of its mandate;
 - supporting and encouraging state and local human rights implementation, including through education, training, and funding.
- Collect and publicize disaggregated data on who receives public benefits and the potential short and long term impacts of any policies that rollback or penalize recipients, and take steps to mitigate potential negative economic and social impacts;
- Prioritize meeting the needs of individuals and communities that have been historically marginalized and continue to be most impacted when developing policy and budget allocations in relation to basic social protections;
- Ensure ongoing opportunities for individuals impacted by changes in social protection policies to participate meaningfully in decision-making, particularly where protections are being curtailed, or where conditions are being placed on benefits.

These recommendations can foster a more intentional and intersectional approach to decision-making, which recognizes and responds to the reality that individuals experience multiple forms of discrimination based on their identity, and that individuals living in poverty bear the brunt of these harms.

Additionally, we urge the Special Rapporteur to continue to emphasize the role of subnational actors in promoting and protecting economic and social rights. This is particularly important in federalist countries, such as the United States, and consistent with human rights treaties, including the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁵

The remainder of this submission focuses on current gaps in the United States’ approach to economic and social rights at a national level and illustrates how these gaps impede basic economic and social rights in practice. It concludes with some positive examples of how human rights are permeating governance at the local level, as well as efforts to foster corporate

⁵ See Human Rights Comm., Gen. 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 (2004), available at <http://hrlibrary.umn.edu/gencomm/hrcom31.html>; Article 2 of International Convention on the Elimination of All Forms of Racial Discrimination G.A. Res. 2106 (XX), U.N. Doc. A/6014 (Dec. 21, 1965), entered into force January 4, 1969, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>; see also Comm. on Economic, Social and Cultural Rights, Concluding Observations: Sweden, U.N. Doc E/C.12/SWE/CO/6, ¶ 4 (July 14, 2016); Comm. on Economic, Social and Cultural Rights, Concluding Observations: Canada, U.N. Doc E/C.12/1/Add.31 ¶¶ 26; 30 (Dec. 10 1998). Notably, when ratifying the ICCPR, the U.S. attached an understanding that states that the ICCPR “shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant. See Reservations, Understandings and Declarations to the International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992); see also 140 CONG. REC. 14326 (1994) (similar understanding for the Race Convention).

accountability. These examples demonstrate how some aspects of the RIA Framework are being operationalized, despite significant legal, political, and cultural barriers.

I. U.S. FAILURE TO RECOGNIZE, INSTITUTIONALIZE, AND ENSURE ACCOUNTABILITY FOR ECONOMIC AND SOCIAL RIGHTS

We first draw attention to the overarching national context for the promotion and protection of economic and social rights in the United States. As discussed in the following pages, the U.S. fails to uphold all three pillars of the Framework. The failure to adequately legally recognize economic and social rights is coupled with a lack of institutionalization or any discernible measures for government accountability in relation to human rights. As recognized by your Mandate, when States fail to adopt these complementary pillars, the “prospects for eliminating extreme poverty” are greatly diminished.⁶ Moreover, the United States also fails with regards to another essential component of the Framework: the indivisibility of human rights.⁷ We discuss the extent of these failures below.

A. LACK OF LEGAL RECOGNITION

The U.S. has a long and consistent record of rejecting the legal basis for economic and social rights, which goes beyond a failure to ratify the foundational treaty that protects these rights, the ICESCR. On the global stage, this manifests in ambivalence towards efforts to define governmental obligations to promote and protect these rights, despite the reality that they are deeply entwined with efforts to address discrimination, which the U.S. more wholeheartedly embraces. During the Obama Administration, formal positions on economic and social matters consistently evidenced the predominant philosophy that “allowing individuals to flourish is the best way for our nation to flourish.”⁸ In 2017, the Trump Administration echoed this general position of opposition to defining state obligations regarding economic and social rights when stating that “[w]hile we recognize the importance of social protection floors, we note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. Therefore, we think that this resolution [on economic, social, and cultural rights] should not try to define the content of those rights.”⁹

Domestically, the failure to recognize economic and social rights as standalone rights, with corollary obligations to implement them, impacts millions of people daily - particularly those who do not make a liveable wage, those who lack access to housing and shelter, and those who do not qualify for the limited social benefits that do exist. Often, these are individuals of color. As the recent report, *A New Social Contract*, highlights, the impact is not unintentional. Historically, programs that were designed to supplement and ensure the economic stability of the middle class (often accruing to white middle class individuals) were often designed as “universal social insurance programs” while programs with benefits typically accruing to poorer families of

⁶ 2016 RIA Framework at 8.

⁷ 2016 RIA Framework at 7-8.

⁸ See Michael H. Posner, Assistant Sec’y, Bureau of Democracy, Human Rights, and Labor, *Address to the American Society of International Law: The Four Freedoms Turn 70* (Mar. 24, 2011), available at <https://2009-2017.state.gov/j/drl/rls/rm/2011/159195.htm>.

⁹ U.S. Explanation of Position on the Realization of Economic, Social and Cultural Rights, U.N. Human Rights Council 34th Sess. (March 23, 2017), <https://geneva.usmission.gov/2017/03/23/u-s-explanation-of-position-on-the-realization-of-economic-social-and-cultural-rights/>.

color, such as housing or food support, were designed as “public assistance,” with an array of qualifying conditions.¹⁰ These distinctions, which are grounded in a particular economic ideology, alongside discriminatory motivations, continue to impact many communities today.

While, as this mandate has noted, some U.S. state constitutions protect rights that include education and shelter. However, the protections fall far below globally-accepted human rights standards, which require that most economic and social rights be available in a manner that is affordable, accessible, culturally appropriate, and on an equal basis regardless of identity.

U.S. failure to uphold basic economic and social rights, along with policies which ultimately perpetuate poverty and inequality, have been the subject of interventions and scrutiny by U.N. treaty bodies and special procedures in recent years.¹¹ In 2017, this mandate issued a call to the U.S. government to address poverty and inequality through a number of measures, including the extension of social benefits, such as health care and housing for vulnerable communities.¹² During the last Universal Periodic Review (UPR) Process, the U.S. was also called upon to improve non-citizens’ access to social safety programs, particularly undocumented women and children, so that their basic rights are ensured.¹³ As a result of the lack of institutionalized follow-up or monitoring of human rights recommendations from global and regional human rights mechanisms, as described in the following section, these recommendations have had limited domestic impact. Notable counter-examples, including in the arena of housing and juvenile justice, are the result of persistent and ongoing human rights advocacy.

¹⁰ See NESRI, *A New Social Contract: Collective Solutions Built By and For Communities* 10 (2018), https://www.nesri.org/sites/default/files/ANSC%20Report%20Web%20Final_0.pdf.

¹¹ See, e.g., CERD *Concluding Observations to the United States of America*, ¶ 15 (2014), available at <https://www.state.gov/documents/organization/235644.pdf>.

¹² Alston, Philip, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on his mission to the United States of America*, A/HRC/38/33/Add.1, ¶¶ 15-16 (May 2018), available at <https://digitallibrary.un.org/record/1629536> (“There is no magic recipe for eliminating extreme poverty, and each level of government must make its own good faith decisions. But at the end of the day, particularly in a rich country like the USA, the persistence of extreme poverty is a political choice made by those in power. With political will, it could readily be eliminated. . . . What is known, from long experience and in light of the government’s human rights obligations, is that there are indispensable ingredients for a set of policies designed to eliminate poverty. They include: democratic decision-making, full employment policies, social protection for the vulnerable, a fair and effective justice system, gender and racial equality and respect for human dignity, responsible fiscal policies, and environmental justice.”)

¹³ U.S. State Department, *UPR Recommendations for Working Group 3: Economic, Social, and Cultural Rights; Indigenous Issues; and the Environment* (Dec. 21, 2016), <https://www.state.gov/j/drl/upr/2015/272821.htm> (Cataloguing recommendations made to the United States during a review of its human rights record by U.N. member- states. At least one recommendation called on the United States to “Facilitat[e] access for undocumented immigrants and their children to healthcare under that Act. Consider the establishment of legislation providing for access to basic services for undocumented migrants, particularly health services, in conformity with the Affordable Care Act. Consider reviewing the eligibility requirements to the public welfare system, so that the basic human rights of immigrants, including the undocumented, are guaranteed, in particular access to health for women and children.”).

B. LACK OF INSTITUTIONALIZATION

In addition to dismal legal protections for economic and social rights, the United States lacks a comprehensive or coordinated approach to human rights promotion and protection at the federal, state, and local levels. In contrast to countries around the world:

- There is no institutionalized federal infrastructure to support human rights education, monitoring or implementation, or provide guidance on human rights and translate international standards into domestic practice.
- The United States lacks a national human rights institution (NHRI). Similarly, there are no focal points to gather information on human rights compliance or disseminate and follow-up with state and local actors regarding recommendations from U.N. treaty bodies, the UPR, or U.N. special procedures.

As a result of the lack of a national human rights infrastructure, the public and many federal, state, and local officials are unaware of the treaties the U.S. has ratified and their obligations with respect to treaty implementation or how to recognize and protect economic and social rights. Advocacy for a national human rights institution, and an institutionalized federal focal point on domestic human rights,¹⁴ have been met with resistance, though U.N. human rights bodies have repeatedly called for the U.S. to establish national human rights monitoring and implementation mechanisms.¹⁵

Establishing an NHRI or similar federal level institution is an important foundation for “Institutionalization,” the second pillar of the Framework.¹⁶ To be effective, such an institution must have clear avenues for formal engagement with impacted communities in policy design, implementation, and monitoring.¹⁷

¹⁴ See, e.g., *Closing the Gap: The Federal Role in Respecting and 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 (2013)*, available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_15121_E.pdf.

¹⁵ In 2014, the Human Rights Committee called on the U.S. to “strengthen and expand existing mechanisms mandated to monitor the implementation of human rights...[and] provide them with adequate human and financial resources or consider establishing an independent national human rights institution.” *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), available at <http://justsecurity.org/wp-content/uploads/2014/03/UN-ICCPR- Concluding-Observations-USA.pdf>. The CERD Committee has recommended that the U.S. “create a permanent and effective coordinating mechanism, such as a national human rights institution . . . to ensure the effective implementation of the Convention throughout the State party and territories under its effective control; monitor compliance of domestic laws and policies with the provisions of the Convention; and systematically carry out anti-discrimination training and awareness-raising activities at the federal, state and local levels” and “to widely publicize the concluding observations of the Committee.” *CERD Concluding Observations to the United States of America* (2014), ¶¶ 6; 32 (2014), available at <https://www.state.gov/documents/organization/235644.pdf>. The Committee on the Rights of the Child similarly voiced concern over the lack of a national human rights institution. 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). U.N. Special Procedures, including the Working Group on People of African Descent, and the Working Group on Business and Human Rights, have echoed these recommendations as well. See Human Rights Council, Report of the Working Group of Experts on People of African Descent, ¶ 88, U.N. Doc A/HRC/15/18 (Aug. 6, 2010); Human Rights Council, Report of the Working Group of Experts on People of African Descent, ¶ 89, A/HRC/33/61/Add.2 (Aug. 18 2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/183/30/PDF/G1618330.pdf?OpenElement>. U.N. Working Group on Business and Human Rights, Statement at the End of Visit to the United States (May 1, 2013), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?Ne>.

¹⁶ RIA Framework at 13, 19.

¹⁷ *Id.* at 14.

C. PROPOSED PUBLIC CHARGE RULE: AN ILLUSTRATION OF ONGOING THREATS TO RECOGNITION OF ECONOMIC AND SOCIAL RIGHTS

On October 10, 2018, the Trump Administration, through DHS, submitted a proposed rule titled “Inadmissibility on Public Charge Grounds,” for public comment.¹⁸ The Proposed Public Charge Rule (Proposed Rule), which is currently under consideration, is a prime example of how the Trump Administration is seeking to limit access to the United States by people deemed “unworthy” – on the basis of their ethnic origin and economic status. This undermines economic and social rights obligations and serves as a frontal attack on communities of color. Currently, the United States can refuse access to, deny an adjustment of status request, or deport an individual if they are found to be a “public charge.” The Proposed Rule seeks to vastly expand the list of benefits that can be used in an individual’s “public charge” determination; specifically, seeking to include: housing subsidies, food and nutrition benefits, and health care aid (Medicare).¹⁹ Further, the Proposed Rule changes the definition of a “public charge” from someone who is *primarily dependent* on cash-assistance²⁰ benefits to someone who *receives one or more* of an expanded list of benefits.

The Proposed Rule explains that several factors will be weighted to determine if someone is a “public charge.” The factors illustrate how this regulation is simply another way for the U.S. to close its doors to people who are low-income and of color. Among the factors that weigh negatively against an individual are: disability, lack of private health insurance, low-income, age (being over 65), inability to speak English, and poor credit history. The only heavily weighed positive factor is an individual income that is 250% above the United States Federal Poverty Line (FPL), which amounts to roughly \$65,000 a year.

This rule expresses the view that people are only valued in the United States if they have a high income. The Proposed Rule does not contemplate what a change in immigration status could signify for an immigrant’s ability to earn a living wage. Instead, the Proposed Rule discriminates against immigrants solely on the basis of prior financial hardships and places them in greater financial peril by expanding the range of benefits that can be used to deny certain immigrant determinations based upon individual’s efforts to seek government support (however temporary).²¹

¹⁸ Pursuant to the Administrative Procedures Act administrative agencies, under the authority of the President, must go through a rulemaking process in which the public is allotted time to comment on certain proposed rule changes before they are finalized. Once the public has been allotted time to comment on the proposed rule change, the administrative agency must consider every “substantive” comment submitted before releasing the final version of the rule change. *Administrative Procedure Act* 5 U.S.C.A. § 551.

¹⁹ *Proposed Rule-Inadmissibility on Public Charge Grounds*, 83 FR 51114 (Proposed October 10, 2018).

²⁰ The Field Guidance, which is the rule that currently governs how and when an individual is to be deemed a public charge, specifies that only three benefits will be used in the “public charge” determination: Supplemental Security Income (SSI) under Title XVI of Social Security Act; Temporary Assistance for Needy Families (TANF) cash assistance (part A of Title IV of the Social Security Act—the successor to the AFDC program); State and local cash assistance programs that provide benefits for income maintenance (often called “General Assistance” programs). Further if someone received long term institutional care, which is funded by Medicare, that could be used in their “public charge” determination. *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 FR 28689 (May 26, 1999) (“the Field Guidance”) available at <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf>.

²¹ A comprehensive analysis of the discriminatory impact and social consequences of the Proposed Rule was submitted by the Human Rights in the U.S. Project of the Columbia Law School Human Rights Institute and the Center for Constitutional Rights to DHS during the allotted public comment period, available at <https://ccrjustice.org/public-charge>.

The Proposed Rule, if it were to take effect, would have detrimental consequences on citizens in the U.S., both immigrant and non-immigrant. The Proposed Rule, although not in effect, has already resulted in immigrant households withdrawing from life-saving benefits.²² If the Proposed Rule were to take effect, the poverty rate in the United States would increase dramatically. In New York City alone, the poverty rate for adults could increase by 3.8%, and for children by 9.1%.²³

The massive disenrollment in social benefits is both known and contemplated within the text of the Proposed Rule; and yet, the Trump Administration is seriously considering adopting it. Equally disturbing, the proposed rule anticipates, and speaks positively about the financial savings that will result from massive forgoing of enrollment in, and disenrollment from, benefits programs.²⁴ Declined participation in government programs, which provide a basic social safety net, is presented as an *intended* effect. The Proposed Rule ignores the fact that access to resources is already severely limited for people who are not U.S. citizens. Immigrants have limited access to many of the food and nutrition benefits that are available and can rarely receive housing benefits. This regulation seeks to further limit access to essential benefits and even worse, forces non-U.S. citizen families to decide between possible deportation and safe housing.

The Proposed Public Charge Rule is one among many rules that the United States is currently contemplating that will severely limit a non-U.S. citizen's ability to access live-saving benefits. Specifically, the United States recently released a proposal to restrict every person's access to food and nutrition subsidies.²⁵ This rule further restricts the amount of time a person is able to receive food and nutrition benefits and will disproportionately affect communities of color and immigrant populations. The U.S. should be designing policies to aid those who are struggling to make ends meet across the country, as opposed to crafting policies that are detrimental to their survival.

²² Helena Bottemiller Evich, *Immigrants, Fearing Trump Crackdown, Drop out of Nutrition Programs*, Politico (September 3, 2018), available at <https://www.politico.com/story/2018/09/03/immigrants-nutrition-food-trump-crackdown-806292>.

²³ New York City Mayor's Office of Immigrant Affairs, Mayor's Office for Economic Opportunity and the Department of Social Services, *Expanding Public Charge Inadmissibility: The Impact on Immigrants, Households and the City of New York: Research Brief – December 2018*, at 2, (December 2018) available at https://www1.nyc.gov/assets/immigrants/downloads/pdf/research_brief_2018_12_01.pdf.

²⁴ *Proposed Rule-Inadmissibility on Public Charge Grounds*, at "Costs and Benefits," ("Moreover, the proposed rule would also result in a reduction in transfer payments from the federal government to individuals **who may choose to disenroll from or forego enrollment in a public benefits program. Individuals may make such a choice due to concern about the consequences to that person receiving public benefits and being found to be likely to become a public charge** for purposes outlined under section 212(a)(4) of the Act, **even if such individuals are otherwise eligible to receive benefits.** For the proposed rule, DHS estimates that **the total reduction in transfer payments from the federal and state governments would be approximately \$2.27 billion annually due to disenrollment or foregone enrollment in public benefits programs by aliens who may be receiving public benefits. DHS estimates that the 10-year discounted transfer payments of this proposed rule would be approximately \$19.3 billion at a 3 percent discount rate and about \$15.9 billion at a 7 percent discount rate.** Because state participation in these programs may vary depending on the type of benefit provided, DHS was only able to estimate the impact of state transfers.") available at <https://www.regulations.gov/document?D=USCIS-2010-0012-0001> (emphasis added).

²⁵ *Proposed Rule- Supplement Nutrition Assistance Program: Requirement for Able-Bodied Adults without Dependents*, 7 CFR Part 273 (Proposed February 1, 2019). Available at <https://www.regulations.gov/document?D=FNS-2018-0004-5999>

D. STIGMATIZATION & PENALIZATION OF IDENTITY AND STATUS AS A BARRIER TO ECONOMIC AND SOCIAL RIGHTS PROTECTIONS

Central to fulfilling basic human rights are programs which promote and protect an adequate standard of living for all, including the rights to medical care and health, education, and housing. Governments must therefore eliminate laws and policies that hinder access to basic needs, which include those that target and ultimately criminalize people on the basis of their protected identity or status.

The Proposed Rule represents a failure to progressively realize human rights: the rule targets, penalizes, and further stigmatizes immigrants for their use of public benefits. The Rule disproportionately impacts and *harms* individuals on the basis of their race or ethnicity;²⁶ sex or gender;²⁷ age; socioeconomic, and immigration statuses, in direct contravention of core human rights principles.

E. IMPORTANCE OF MEANINGFUL PARTICIPATION BY IMPACTED COMMUNITIES IN ENSURING BASIC NEEDS ARE MET

Meaningful participation in policymaking, which includes access to information and the ability to impact decision-making, is another key human rights principle.²⁸ Avenues for participation should be clearly defined in a manner that fosters accountability to individuals impacted by policy changes. Ensuring impacted communities have the opportunity to design and influence the policies which touch their lives is one step towards mitigating harmful policies from being developed and enacted.

Participation can also be bolstered through decision-making processes that include ongoing consultation, provision of multiple opportunities for input (including orally, in-person, and in multiple languages) where feasible; as well as the use of participatory impact assessments, among a range of other strategies. The following concluding section provides brief snapshots of

²⁶ While people of color account for approximately 36% of the total U.S. population, of the 25.9 million people who would be potentially chilled by the proposed rule, approximately 90% are people from communities of color (23.2 million).

²⁷ The rule targets women, in particular, those who are pregnant or breastfeeding. See Wendy E. Parmet and Elizabeth Ryan, *New Dangers For Immigrants And The Health Care System*, Health Affairs Blog, April 20, 2018.

<https://www.healthaffairs.org/doi/10.1377/hblog20180419.892713/full>. The Rule even anticipates declining health incomes for this population. See *Proposed Rule-Inadmissibility on Public Charge Grounds* 83 FR 51114 at 370 (Proposed October 10, 2018).

²⁸ See Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), Human Right to Safe Drinking Water and Sanitation: Note by the Secretary-General, ¶¶ 87-88, U.N. Doc. A/69/213 (July 31, 2014) (“International human rights law recognizes that individuals and groups have the right to participate in decision-making processes that affect their rights.... All segments of the population, including the most marginalized, must be empowered to participate.... States must create an enabling environment for participation, for example by enhancing the knowledge and awareness of stakeholders”); Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty and Human Rights), Rep. of the Special Rapporteur on Extreme Poverty and human rights, Magdalena Sepúlveda Carmona, ¶¶ 14-19, U.N. Doc. A/HRC/23/36 (Mar. 11, 2013); Comm. on the Elimination of Racial Discrimination, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Guatemala, ¶ 10, U.N. Doc. CERD/C/GTM/CO/12-13 (May 19, 2010); Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Paraguay, ¶¶ 27-28, U.N. Doc. CERD/C/PRY/CO/4-6 (Oct. 4, 2016); U.N. Human Rights Council, First session of the Forum on Human Rights, Democracy and the Rule of Law - Report of the Co-Chairs, pp 5-8, U.N. Doc. A/HRC/34/46, (Jan. 31, 2017), available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/46; UNFPA, Human Rights Principles, available at <https://www.unfpa.org/resources/human-rights-principles> (“Participation and Inclusion: All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.”) (last visited Mar. 27, 2019).

how community leadership and input can be integrated into initiatives to enhance economic and social rights protections.

II. EXCEPTIONS TO THE NORM: EMERGING INITIATIVES AT THE STATE AND LOCAL LEVEL AND RESULTING FROM GRASSROOTS ORGANIZING

A. STATE AND LOCAL SUPPORT FOR ECONOMIC SOCIAL RIGHTS

Despite the lack of federal monitoring, implementation, or guidance, a number of U.S. state and local governments have expressed interest in promoting and protecting human rights.²⁹ An encouraging array of states and localities have explicitly incorporated international human rights standards into local law, policy, and practice.³⁰ The U.S. Conference of Mayors has passed resolutions committing to promote and protect human rights locally,³¹ and state and local human rights agencies have continually expressed support for human rights.³² Nine municipalities have adopted laws based on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),³³ which call for local government to conduct a gender analysis of budgets, employment, and services.³⁴ In Eugene, Oregon, the city government now uses a Triple Bottom Line Analysis to promote more deliberate decision-making and foster greater equity. The aim of the tool is to identify how a proposed policy or decision will impact social equity, the environment, and economic prosperity for all Eugene residents, which includes looking at the civil, political, social, economic, and cultural rights implications, as well as community participation.³⁵ At the state-level, Vermont paved the way with human rights budgeting and recognition of healthcare as a human right.³⁶

While ad hoc, emerging state and local efforts explicitly promote and protect economic and social rights as human rights, demonstrating the potential for positive change. This is most evident in the arena of housing. One positive example comes from Madison, Wisconsin, where the City Council adopted a “housing as a human right” resolution in 2011, committing to improve access to affordable housing, and grounding the call for action in human rights treaties the U.S. has

²⁹ See JoAnn Kamuf Ward, *Challenging a Climate of Hate and Fostering Inclusion: The Role of U.S. State and Local Human Rights Commissions*, 49 Columbia Human Rights Law Review (2017), available at <http://hrlr.law.columbia.edu/files/2018/01/JoAnnKamufWardChallenging.pdf>; 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).

³⁰ See, e.g., *Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy* (2012), available at <https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf>.

³¹ U.S. Conference of Mayors, Res. Promoting and Encouraging International Human Rights, (June 2013), available at http://www.usmayors.org/resolutions/81st_conference/esj15.asp; IAOHRA, Res. To Promote and Encourage Broader Understanding of International Human Rights (August 2013) (on file with Columbia Law Sch. Human Rights Inst.).

³² See e.g., 2017 IAOHRA Resolution, Gender Equity – A Basic Human Right, available at <http://citiesforcedaw.org/wp-content/uploads/2018/03/IAOHRA-REsolution.pdf>.

³³ See Cities for CEDAW: Status of Local Activities, available at <http://citiesforcedaw.org/wp-content/uploads/2018/03/Landscape-Cities-for-CEDAW-Branded-for-Website-March-2018.pdf>.

³⁴ Columbia Law School Human Rights Institute, Gender Equity Through Human Rights: Local Efforts to Advance the Status of Women and Girls in the United States (2017), available at https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/gender_equity_through_human_rights.pdf.

³⁵ City of Eugene, Oregon, Triple Bottom Line, available at <https://www.eugene-or.gov/512/Triple-Bottom-Line> (last visited Mar. 9, 2019).

³⁶ *New Social Contract*, supra n. 10 at 24-25; 62-63.

ratified. The resolution calls for the city to adopt a concrete plan to improve the availability of adequate housing, reduce the number of homeless children in local schools, and prevent the criminalization of homelessness. It also calls for dedicated staff to ensure action; and public funds to support affordable housing.³⁷ And action has followed. Madison put a strategy in place, and committed twenty million dollars over five years to an Affordable Housing Fund in order to build more affordable rental units and support home ownership. This example demonstrates that human rights can pave the way to change where there is concerted advocacy and responsive government.

Yet, in the current context, state and local action to protect fundamental rights are also under attack. The Trump Administration has expressly targeted local and state governments that stand up against federal rollbacks in protections, or seek to fill the void and take proactive action to establish stronger protections for local residents, including efforts to establish sanctuary jurisdictions.³⁸ Such actions contravene the federal government's obligations to affirmatively recognize and guarantee economic and social rights protections. Equally crucial, however, is the role of the federal government in ensuring an enabling environment for states and localities to monitor and implement human rights. The national government must not target local or state governments that stand against discrimination and protect basic rights. Federal actions that deter and punish subnational efforts to enhance human rights protections are another facet of the United States' ongoing abrogation of its international duties and commitments. Instead, the federal government should be taking action to support, incentivize, and encourage state and local human rights implementation efforts.³⁹

B. GRASSROOTS AND COMMUNITY-LED INITIATIVES

Civil society groups have established monitoring and accountability mechanisms in the absence of legal recognition of social and economic rights or accountability mechanisms.⁴⁰ For example, in the absence of sufficient economic and social rights protections for agricultural workers, there are emerging Worker Driven Social Responsibility initiatives, including the Fair Food Program, developed by the Coalition of Immokalee Workers, and the Milk with Dignity Program, established by Migrant Justice. These programs establish enforceable codes of conduct to promote workers' human rights related to wages, housing, and working conditions, among other issues. They establish market consequences for non-compliance and are monitored by independent third parties. These examples serve as inspiring models for how civil society actors can mobilize in the face of government inaction.⁴¹

³⁷ City of Madison, Resolution, File No. 23825, Sept. 6, 2011, *available at* <http://legistar.cityofmadison.com/attachments/a584992f-510c-46d1-b709-c81372062ac0.pdf>.

³⁸ *See, e.g.*, Exec. Order 13768, Enhancing Public Safety in the Interior of the United States (Jan. 25, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safetyinterior->united; Tal Kopan, *Jeff Sessions takes immigration fight to California, announces lawsuit*, CNN (Mar. 7, 2018), *available at* <https://www.cnn.com/2018/03/07/politics/jeff-sessions-california-sanctuary-cities-lawsuit/index.html>.

³⁹ *See, e.g.*, Risa E. Kaufman, "By Some Other Means": *Considering the Executive's Role in Fostering Subnational Human Rights Compliance*, 33 *Cardozo L. Rev.* 1971, 2009 (2012).

⁴⁰ *See, e.g.*, *A New Social Contract*, *supra* n 10, at 43-45.

⁴¹ RIA Framework at 5.

III. CONCLUSION

The Human Rights Institute's Human Rights in the US Project and Center for Constitutional Rights thank the Special Rapporteur for this opportunity to share information on key trends and challenges in ensuring economic and social rights are recognized and realized in practice. The Rapporteur is well-placed to provide recommendations to national, as well as subnational actors, to promote and protect economic and social rights. We look forward to supporting these efforts and are available to provide further information as needed as the Special Rapporteur continues to develop thematic reports, take public positions, and use its platform to address extreme poverty.⁴²

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