

Localizing Rights Compliance:
The Case for Cities as “Shadow Reporters” at International Human Rights Treaty Bodies

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ABSTRACT

“Shadow reports” by nongovernmental organizations (NGOs) and national human rights institutions (NHRIs) are commonplace within the international human rights treaty monitoring process. They became so for a simple reason: shadow reports improve the reporting process by providing useful information. This article contends that shadow reports from cities would do the same. Using the example of reports sent by the City of Berkeley, California, this article advocates for institutionalizing city shadow reporting because such reports can provide frontline information and help socialize cities into human rights compliance, even (and perhaps especially) when at odds with their national government.

I. INTRODUCTION

In 2007, the City Council of Berkeley, California authorized the submission of a report detailing the city’s compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to ICERD’s international monitoring body.¹ The report outlined citizen complaints of racial discrimination by the city and highlighted existing city programs to combat discrimination in public service provision. Similar reports on Berkeley’s compliance with the Convention against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR) followed in 2014.² Berkeley’s reports were part of a two-decades-long campaign to incorporate international human rights standards into Berkeley’s municipal law and practice, and they were strategic responses to the national government omitting Berkeley’s information in its country reports. They were also unprecedented. Never before had a city *directly* submitted a report to the international expert monitoring body on treaty compliance *independent* of the

country's report.

Following on Berkeley's actions, this article argues that the international human rights treaty monitoring committees should establish a mechanism for cities³ to directly transmit supplemental information to the committees in the state reporting process. In short, cities should be formally permitted to "shadow report."⁴

In Section II, the article outlines the historical genesis of shadow reporting and its progressive expansion from intergovernmental organizations to NGOs to national human rights institutions (NHRIs). Such expansion, and the subsequent formalization of the practice, has been predicated on utility: human rights treaty monitoring bodies need information that can supplement and verify state reports, and NGOs and NHRIs have been able to provide such information. Section III posits that cities, particularly those in federated countries, can provide similar utility. Cities have unique, front-line information on pressing human rights issues including police violence, housing, education, and health care. Such information would allow the treaty monitoring bodies to make more pointed national and local recommendations. Participation in the treaty monitoring process could also transform cities into human rights stakeholders invested in implementing human rights treaties locally. Section IV traces these benefits through the case of the City of Berkeley, and Section V turns to four potential critiques: (1) whether cities could simply submit reports through NGOs or other actors; (2) whether the treaty monitoring bodies might be overwhelmed by broader engagement with the process; (3) whether cities, like states parties generally, might be overly positive in reporting on their human rights compliance; and (4) whether allowance of city shadow reporting is unlawful in accordance with international law.

II. THE HISTORY OF SHADOW REPORTING AT INTERNATIONAL HUMAN RIGHTS TREATY BODIES

The UN human rights legal regime comprises nine core treaties and their optional protocols, each with a corresponding committee of experts charged with monitoring implementation of the treaty provisions by states parties.⁵ Treaty monitoring largely consists of obligatory self-reporting, whereby states periodically report on the status of rights adherence in their countries and subsequently dialogue with the monitoring committee on areas of concern and future recommendations. All nine of the aforementioned treaty monitoring committees allow for the participation of non-state actors in this process as “shadow reporters,” whereby NGOs, NHRIs, and UN or other intergovernmental organizations voluntarily transmit information to the monitoring committees concurrent to the submission of the state self-report.⁶ Shadow reports are publicly recorded in the UN Treaty Body Database,⁷ often discussed in plenary committee hearings, and sometimes initiate an invitation to orally brief the expert committee.

Shadow reporting has not always been as accepted, institutionalized, and transparent as it is now. The historical development of shadow reporting is a story of novel actors with helpful, alternative information informally engaging with the treaty monitoring bodies. As the practice became more prominent and as treaty monitoring bodies recognized the continued utility of having supplemental sources of information, the treaty monitoring bodies responded—usually in the form of formal statements or general comments—by accepting shadow reports from progressively expanded classes of actors. The driving factor behind the institutionalization of shadow reporting has been utility—specifically, that information provided by alternative actors can supplement and verify state-provided information.⁸ State reports are often brief, incomplete, unrealistically positive, and provide information on laws rather than practice.⁹ As treaty

monitoring bodies lack independent fact-finding authority, they rely on outside information to function.¹⁰

The human rights treaties mandate that states submit periodic reports but do not specify what information monitoring experts can utilize in making state recommendations. In the early years of the human rights treaties, this ambiguity brought about questions, and often contention, about whether monitoring committees could rely on alternative information to state reports. In 1972, members of the Committee on the Elimination of Racial Discrimination (CERD) were so divided over whether they could use information from the International Labor Organization and UNESCO that they requested a legal opinion from the UN Office of Legal Affairs.¹¹ The same year, a CERD member proposed an amendment to the rules of procedure that allowed CERD members to “raise any matter relevant” to the state reports or “related implementation of the Convention.”¹² After sharp opposition from other members, who felt that this constituted legal overreach, the Committee agreed on a compromise solution in which “the committee would continue the practice it had followed to date allowing members to use any information they might have as experts.”¹³ A few years later in the mid-1970s, the Human Rights Committee (HRC) adopted a more clandestine approach to acquiring independent information. NGOs, blocked from formally submitting information to the HRC, sent information in sealed envelopes to each member in their personal capacity. The NGO information was never publicly mentioned by committee members but could factor, without attribution, into their recommendations.¹⁴ Only in the 1980s did committee-sanctioned NGO reporting independently arise in the CEDAW Committee.¹⁵ The Committee invited the newly established International Women’s Rights Action Watch (IWRAW)—an NGO with the core mission to promote women’s rights through CEDAW—to share information on the status of women in the states under review.¹⁶

The driving factor behind the treaty monitoring committees seeking out, and continuously accepting, outside information is utility. Proponents of the aforementioned 1972 CERD amendment argued that the Committee could not function effectively if it was to disregard information from “reliable and official sources.”¹⁷ During the mid-1970s, when NGOs were surreptitiously transmitting information to the Human Rights Committee, even members that had publicly espoused a “hands off” policy towards NGOs utilized NGO information for specific countries under review.¹⁸ In 1990, a few years after the CEDAW Committee initiated NGO shadow reporting, Committee Chair Elizabeth Evatt publicly espoused at a dinner with NGOs: “give us information and we will use it.”¹⁹

In a 1989 UN report on enhancing the effectiveness of international human rights bodies, independent expert Philip Alston urged treaty monitoring bodies to overcome any reticence about shadow reporting because such an inhibited approach would “result in an unnecessarily self-denying policy, which deprives the treaty body of information that is indispensable to its efforts to obtain a balanced and comprehensive picture of the situation prevailing in the territory of any given State party.”²⁰ The treaty monitoring committees heeded Alston’s call. By the 1990s, some form of shadow reporting, particularly by NGOs, had proliferated across all of the human rights treaty bodies.²¹ Even though the practice was still informal and did not have established procedures, both treaty monitoring bodies *and* states acknowledged the practice and determined it to be instrumental to the functionality of the monitoring bodies.²²

By the mid-2000s, any qualms of the treaty monitoring committees about shadow reporting had given way to inquiries about expanding its scope. At the 32nd CEDAW session, the Committee sought to establish interaction with an emergent actor with unique access to information on state human rights implementation: national human rights institutions (NHRIs).²³

The Committee invited representatives of NHRIs to present information, and subsequently coordinated with the other human rights bodies to establish procedures for future NHRI engagement.²⁴ Again, the underlying purpose of seeking out interaction with NHRIs was utility, as NHRIs both help states implement human rights obligations and can provide reliable, independent information on state compliance supplemental to state reporting.²⁵

The most recent evolution of shadowing reporting—nearly forty years after the 1972 CERD Committee first questioned the use of external information in state monitoring—has been the institutionalization of the practice. In 2010, the CEDAW Committee put forth a statement on its relationship with NGOs which articulated shadow reporting procedures and “stressed the central function of non-governmental organizations in providing reliable information necessary for the conduct of the activities of the treaty bodies.”²⁶ In the subsequent years, the other human rights treaty monitoring bodies have put forth similar statements or articulated shadow reporting procedures in general recommendations.²⁷

Transparency concerns underlie this trend towards institutionalization. Such concerns are not new: Alston’s 1989 General Assembly report argued that it was in the interest of treaty monitoring bodies that “the information provided by such organizations [NGOs] not be confined to a twilight zone in which its formal status is unclear but its potential impact is, for all practical purpose, unimpaired.”²⁸ And in a 1993 report, Alston pointed out further problems with an ad hoc model: states need to be aware of all information regarding their compliance, and informality privileges access for large NGOs from developed countries.²⁹ It is unclear what exactly prompted institutionalization to occur when it did; however, it seems likely, given past practice, that institutionalization occurred to further enhance the utility of outside information to the committees. The roles of NGOs and NHRIs had evolved from simply transmitting a report on

state practice to including oral presentations, follow-up reports, and providing inputs on state reports, general recommendations, and the optional protocols. The practice had also become so widely utilized and so important to the functionality of the monitoring committees that institutionalization was likely needed to clarify and publicize the myriad roles of shadow reporters in order to bring in more NGOs and legitimate their presence.³⁰

III. WHY CITIES?

The progression of shadow reporting has been motivated by the ever-present need of the treaty monitoring bodies for reliable information to supplement and verify state reports. This need prompted the expansion of the practice from international organizations to NGOs and then to NHRIs as each actor emerged as a human rights stakeholder with critical and unique information. Cities, especially those in federated countries, also constitute actors with distinct, beneficial, and desired information: detailed and reliable governmental accountings of *local* human rights policies and practice. City information is distinct from, yet complementary to, that provided by national governments, NHRIs, and NGOs. Cities can bring up local issues absent from national reports, similar to the shadow reporting strategies of NGOs. However, cities differ from NGOs in that, as governments, they have access to reliable official data, much like an NHRI. Yet the data are not national averages and broad policy descriptions as would typically be provided by NHRIs; instead, they provide local details and context, which are often lost or smoothed over by national-level data.

A. Cities on the Frontline of Human Rights

Cities sit at the frontline of many human rights issues. Cities—particularly those in federated systems where substantial authority is devolved to sub-national entities—make and implement policy on a host of issues that implicate human rights. In the United States, for example, positive rights are not articulated in the US Constitution but in state constitutions.³¹ State constitutions further devolve substantial authority on social issues to cities. For example, US cities have the power to establish, or abolish, a police force;³² public education is implemented at the local level, with school districts largely mapping onto city boundaries;³³ and cities can regulate housing and labor, such as mandating anti-discrimination provisions, minimum wage, or paid parental or sick leave.³⁴

States parties and the international human rights community have long recognized that local governments are important human rights stakeholders. Under customary international law, the state is responsible for any violations of international law by any territorial units within the state.³⁵ General Comment No. 16 of the Committee on Economic, Social and Cultural Rights affirms that “[v]iolations of the rights contained in the Covenant can occur through the direct action of, failure to act or omission by States parties, or through their institutions or agencies at the national and *local* levels.”³⁶ The Committee on Enforced Disappearances has noted that it explicitly “welcomes” information concerning “local situations,” since “the obligations under the Convention are to be implemented by State authorities at all levels, be they a federal organ or an organ of a constituent unit.”³⁷ Both the CEDAW Committee and the Committee on the Rights of Persons with Disabilities commonly recommend that national governments disseminate recommendations to local governments to help facilitate treaty implementation.³⁸ Indeed, in 2019, the High Commissioner for Human Rights issued a report surveying the role of local governments in implementing human rights and concluding that municipalities have an

“important complementary role” to central governments fulfilling their rights obligations under international law.³⁹

Although member states can include information gathered from cities in their country reports, such information is often not provided. For example, the HRC, in its first review of the United States’ compliance with the ICCPR in 1995, expressed its “regret[]” that the United States report “contained few references to the implementation of [the ICCPR’s] rights at the state level.”⁴⁰ It noted that American-style federalism coupled with “the absence of formal mechanisms between the federal and state levels to ensure appropriate implementation of the rights guaranteed by the Covenant by legislative or other measures, may lead to a somewhat unsatisfactory application of the Covenant throughout the country.”⁴¹ Its concluding observations are littered with references to the importance of pushing implementation of the ICCPR to state and local governance in discrete policy areas.⁴² Similarly, the CERD’s first set of concluding observations on the United States emphasized that the federal government should “undertake the necessary measures to ensure the consistent application of the provisions of the Convention at all levels of government.”⁴³ The report also notes in multiple places the importance of reviewing racial discrimination at the state and local level.⁴⁴ In each reporting cycle, the HRC similarly requested additional information from the United States on state and local implementation.⁴⁵ Furthermore, due to a lack of local information, the Committee on the Rights of Child (CRC), in 2012, called for the establishment of a permanent mechanism to coordinate monitoring at the state and local levels.⁴⁶

References to sub-national human rights implementation are not unique to United States but are peppered throughout concluding observations from other federated countries. The concluding observations of the Committee on Economic, Social, and Cultural Rights, in its 2008

review of India, mirror the warning about federalism blocking implementation as expressed by the HRC a decade earlier in regard to the United States: “The Committee recommends that the State party ensure that the complexities arising from the federal structure of the Government and the delineation of responsibilities between federal and state levels do not result in the lack of effective implementation of the Covenant in the State party.”⁴⁷ Australia’s reviews similarly showcase uneven application of human rights standards across governmental levels and authorities. The HRC, in Australia’s 2017 review, expressed concern about Queensland’s distinct disenfranchisement of prisoners.⁴⁸ The CRC recommended that Australia’s national government authorize and provide resources for the Assistant Minister for Children and Families to coordinate implementation across, federal state, territory, and local levels.⁴⁹

Widespread shadow reporting by cities would likely improve the effectiveness of human rights treaty monitoring, as occurred when NGOs and NHRIs were allowed to shadow report. Although no studies evaluate the particular impact of shadow reporting on the effectiveness of human rights treaties, scholarship on the conditions under which treaty monitoring can affect state practice suggests that shadow reporting is influential. Most directly, better monitoring—and in particular detailed information from reports or individual complaints—leads to more specific recommendations, which have a higher probability of being acted upon.⁵⁰ NGOs have been instrumental in providing such information. For example, parallel to India’s initial report to CEDAW, NGOs submitted a shadow report that brought to the Committee’s attention multiple areas of law that discriminated against women. The Committee incorporated these into its concluding observations, and in the subsequent years, India changed the pertinent laws regarding divorce, property rights, and agricultural holdings.⁵¹ City information could further enhance monitoring by providing additional detail and context on local policies and practices, which the

treaty monitoring bodies have requested of federated countries. This information would, in turn, allow expert monitors to better assess local situations and patterns across localities, and recommend either national-level or direct city-specific measures. For example, based on local information it received about police violence committed by Chicago's Police Department from 1972–1991, the Committee Against Torture recommended that Chicago provide for reparations.⁵² Official, local information could also be particularly useful in monitoring ongoing situations where the country does not report or files a late report—one of the greatest challenges to the treaty monitoring body system.⁵³

B. Cities as Emergent Human Rights Stakeholders

In addition to sharing information that allows for more pointed recommendations by the treaty monitoring bodies, city participation in the monitoring processes can contribute to domestic adoption and implementation of concluding recommendations. For NGOs, shadow reporting reinforces understandings of and commitment to human rights, which in turn further encourage monitoring, education, advocacy, and re-reporting. This iterative process creates a vibrant domestic constituency necessary for robust implementation of non-binding observations.⁵⁴ A similar process of socialization would likely occur for cities, where voluntary reporting could lead to a positive feedback cycle of rights commitment, understanding, and policy change.⁵⁵ Cities also have the added benefit of the authority to take immediate policy action on a wide range of human rights issues.

Finally, city reporting anticipates the emerging global prominence of cities—potentially in ways that eclipse or oppose their national governments. According to the United Nations,

approximately 68 percent of the world's population will live in urban areas by 2050.⁵⁶ By 2025, six hundred cities will be responsible for more than 60 percent of all global economic growth.⁵⁷ In short order, megacities will have an outsized role on human rights. City reports by New York City or New Delhi would encompass populations greater than many countries. Buoyed by expanding economic and demographic might, these megacities will likely be emboldened to adopt policies independent of those of their national governments. Cities have already committed to international climate change agreements against the will of their national government,⁵⁸ and they have institutionalized mechanisms for opposing the perceived xenophobia of their national government's immigration policy.⁵⁹ In both cases, cities created policy contrary to their national government's preferences in areas that are usually thought of as international. This rising prominence of cities has not escaped the notice of the international human rights community: In 2015, the Human Rights Council Advisory Committee published a report outlining the roles and best practices of local government in the promotion and protection of human rights,⁶⁰ and the High Commissioner for Human Rights issued a similar report in 2019.⁶¹

IV. THE STORY OF BERKELEY, CALIFORNIA

The treaty reports submitted by Berkeley showcase the potential of broader city shadow reporting. In total, Berkeley submitted (or attempted to submit) five reports to the treaty monitoring bodies: once each in 1993, 2005, and 2007, and then twice in 2014.⁶² In some ways, these reports were rather inconsequential. Berkeley did not invest heavily in them—indeed, they were prepared without cost to the city⁶³—and they assessed a relatively small city of around 120,000 people. But the information contained in and history behind Berkeley's reports illustrate

the pragmatic potential of city reporting, which could be orders of magnitude more consequential with cities such as New York or Los Angeles.

A. Berkeley as a Frontline Source of Information

City reporting can provide disaggregated data at a useful level of analysis. For example, while nation-wide statistics on schooling or police violence may be relevant for assessing the state of human rights in the United States, policy solutions will almost certainly be implemented by school districts or local police departments. From the perspective of enabling treaty monitoring committees to issue precise, pragmatic recommendations, Berkeley's assessment of initiatives to deal with racial opportunity gaps in Berkeley Unified School District⁶⁴ or data on complaints about misconduct by Berkeley Police Department officers⁶⁵ may be more useful than analogous national statistics.

Beyond disaggregation, city data can be more holistic. Consider Berkeley's 2014 ICCPR submission, which discussed a city report on asthma hospitalization rates from 1990–2006.⁶⁶ The report showed that Berkeley's asthma hospitalization rates were higher than California's generally and that while the city's overall rate was decreasing, asthma hospitalizations were actually increasing among African Americans, young children, and residents of certain zip codes.⁶⁷ The 2008 report and the treaty body submission both also note grassroots organizing around the issue.⁶⁸ This kind of detail provides insight into a local manifestation of much larger structural issues—of the intersections of poverty, race, urban planning, and public health—and serves as a much more actionable basis for the committees' concluding observations.

Finally, because Berkeley has political autonomy due to federalism, its reports, much like

those of NGOs, can shine a light on the perceived failures of the state or national government.⁶⁹ Berkeley's 2014 submissions pursuant to the ICCPR and CAT are a case in point. They called attention to cuts to California social programs for those with disabilities;⁷⁰ noted a California Supreme Court decision that rendered police complaints confidential;⁷¹ juxtaposed Berkeley's response to the HRC's 2006 concluding observations with federal policies on immigration enforcement;⁷² noted limits in the FBI's data on hate crimes against Arab-Americans and Middle Eastern people;⁷³ voiced Berkeley's opposition to California's ban on gay marriage, which Berkeley argued violated the ICCPR;⁷⁴ evinced concerns about the legality of juvenile immigration detention under Article 16 of CAT;⁷⁵ and remarked on California's large population of juveniles sentenced to life in prison without parole.⁷⁶ None of this information is unique to Berkeley—an NGO report could potentially explain all of these issues. But the city's report is by nature inclined toward drawing lines between its policies and those of other levels of government, which helps the treaty monitoring committees understand how the United States federalism framework informs human rights policies and conditions.

B. Berkeley as a Human Rights Stakeholder

Berkeley's history with reporting to the treaty monitoring bodies also demonstrates how submissions can help socialize a city into a human rights stakeholder. Indeed, this was a crucial goal for the Berkeley-based NGO that spearheaded the reporting initiative—the Meiklejohn Civil Liberties Institute (MCLI).⁷⁷

Shortly after the United States ratified the ICCPR in 1992, the MCLI initiated an education and implementation campaign.⁷⁸ The MCLI collaborated with a local university to

launch the US Civil Rights Accountability Project to spread awareness about reporting related to the ICCPR.⁷⁹ The MCLI also began reaching out to local governments and NGOs to attempt to bring them into the 1993 reporting cycle,⁸⁰ resulting in Berkeley's Resolution No. 56,919, which encouraged relevant city commissions to collaborate with NGOs to assess the city's compliance with the ICCPR "for inclusion in the United States report and for study by Berkeley residents."⁸¹ The Resolution also advocated for "widespread publication" of the treaty itself,⁸² reflecting how the MCLI's initial activism around the ICCPR linked reporting with socializing the city's residents and staff to the treaty's requirements. Ann Fagan Ginger, the MCLI's long-time executive director, explained the Institute's strategy in a 1996 law review article: "By referring frequently to the 1993 Report and to constitutional and ICCPR standards in the media, international human rights will become as familiar to the general public as First Amendment rights are today."⁸³

Similarly, when Berkeley authorized reports pursuant to ICERD in 2007, it noted that Berkeley's 1993 ICCPR experience "had the affirmative effect of informing city officials and civil servants about that treaty."⁸⁴ By "asking all its city agencies to read the [I]CERD and make reports about its efforts to enforce" ICERD's standards, reporting was understood as a means for educating the city's staffers about human rights standards.⁸⁵ Later in 2007, the city further institutionalized the human rights framework by establishing a subcommittee of the Peace and Justice Commission dedicated helping keep track of reporting requirements under the three treaties.⁸⁶ In 2009, the Berkeley City Council authorized city reports to be directly submitted to the monitoring committees for CAT and the ICCPR; those reports were sent in 2014.⁸⁷

The socialization effect of reporting is also evidenced in Berkeley's increasing willingness to engage in unliteral action. When Berkeley authored its 1993 report on ICCPR

compliance, it sent the report to federal officials to no avail; Berkeley thus gave the information to the MCLI to provide to the HRC in 1995.⁸⁸ After this experience, it seems Berkeley was no longer willing to depend on the federal government to convey its information. Instead, it sent reports directly to the international human rights committees. For example, the MCLI wrote a report of human rights issues in 2005, and it enlisted Berkeley to publicize the report. When the City Council authorized sending the report in Resolution No. 62,841-N.S., it ordered that the report be sent to the State Department, the UN High Commissioner for Human Rights, as well as the HRC directly.⁸⁹ And, as noted earlier, its 2007 and 2014 reports were all addressed directly to the committees in addition to federal officials.

All that being said, Berkeley's reporting has recently stalled. Berkeley has not sent reports since 2014, when the United States also stopped reporting. Nevertheless, numerous NGOs have continued to file shadow reports. While it is not clear why Berkeley stopped, one potential reason is the ephemeral nature of its reports. The Department of State did not acknowledge Berkeley's 1993 report, so Berkeley had to forward the information through the MCLI;⁹⁰ Berkeley's reports are only briefly mentioned in the United States submissions;⁹¹ and no report directly sent to the treaty monitoring bodies other than the 2014 CAT report registers in the UN Treaty Body Database. Formalizing city shadow reporting could provide recognition for the contribution of cities such as Berkeley and lead to specific recommendations on how those cities can further advance human rights locally. In turn, periodically assessing progress under human rights standards could go far to socialize cities into human rights stakeholders.

V. FOUR OBJECTIONS

This section considers four potential arguments against institutionalizing city shadow reporting. First, one might ask whether city reporting is necessary—whether cities could report through NGOs. Berkeley’s experience demonstrates that cities can. Although cloaking city information in NGO reports effectively relays information to the treaty monitoring bodies, it opens up questions about the veracity of city data and undermines transparency critical to the “constructive dialogue”⁹² between treaty bodies and states, which prompted the institutionalization of shadow reporting by NGOs and NHRIs.

Second, city shadow reporting could flood the treaty bodies with too much information.⁹³ Though city reporting poses logistical problems, workable solutions do exist. As has been suggested for NGO shadow reports,⁹⁴ cities could coordinate to write comprehensive reports that pool their gathered information. Organizations such as the United States Conference of Mayors, which has already passed a resolution committing to “explor[ing] opportunities to incorporate international human rights into local policy and practice,”⁹⁵ could take the lead in soliciting information and drafting such reports.⁹⁶ Monitoring bodies could also view city reports as background information to consult when relevant issues are raised by, for example, trusted NGOs; like the “fire-alarm” model of congressional oversight,⁹⁷ NGOs could signal that a certain city’s practices are egregious and thus lead the monitoring committee to scrutinize that city’s report.⁹⁸ Finally, it is worth noting that despite the tremendous growth of NGO shadow reports over time, the treaty monitoring bodies have taken no steps to lessen or filter NGO reporting. If shadow reporting became overwhelming, the treaty bodies could limit the practice.

Third, because cities are self-reporting, they could produce broad, overly positive reports for the same reasons that states parties tend to. However, even if a city’s information is biased, it would still be useful because it can uncover disparities in policies across cities or between levels

of government. Moreover, the aforementioned socialization of cities occurs regardless of the biases in the final report, as the process of reporting itself drives further human rights engagement. Additionally, cities driven to shadow reporting are likely doing so to distinguish themselves from perceived failures of higher forms of government.⁹⁹ Indeed, if the national government were cooperative, cities would have no need to shadow report; they could simply submit information to the national government for inclusion in its report. Thus, when city shadow reporting matters, the cities will want to make their information useful, whether by emphasizing the information's legitimacy or by challenging the national government's information. For example, when the Berkeley City Council authorized its reports in 2009, it suggested that the Peace and Justice Commission hold public hearings, a move that the MCLI explained was to "ensure that the report is not a mere whitewash of City and Board activities[]" and to "convince city residents, and the media, of the importance of this reporting process."¹⁰⁰ Cities invested in promoting human rights are capable of devising methods for legitimizing their reports.

Fourth, it might be unlawful for a sub-national entity to report directly to an international treaty monitoring body.¹⁰¹ International law is predicated on legal sovereignty, where states are represented as single entities in the international arena.¹⁰² Sub-national entities are therefore subsumed within the broader state.¹⁰³ According to Article 2(a) of the Vienna Convention on the Law of Treaties, a treaty "means an international agreement concluded *between States* in written form and governed by international law."¹⁰⁴ The state as a unitary entity is also reflected in Article 27 of the Vienna Convention, which prohibits states from using internal law as justification for failing to implement treaties,¹⁰⁵ and in the International Law Commission's 2001 Articles of the Responsibility of States for Internationally Wrongful Acts adopted by the UN

General Assembly, which affirms state responsibility for all acts committed by sub-state entities, even if those entities have contravened state instructions.¹⁰⁶

Although internationally wrongful acts by sub-state entities are attributed to the state regardless of its internal structure, it does not automatically follow that non-wrongful international action by sub-state entities must be attributed to the state. This is particularly true if the sub-state engagement is voluntary and supplemental to the international obligations of the state. City shadow reports in no way alter state reporting obligations under the treaties. The treaty monitoring bodies have repeatedly emphasized that shadow reporting by NGOs “should in no way compromise the legal obligation of the State party to be solely accountable for the implementation”;¹⁰⁷ similarly, city reporting would not alter the obligations of states parties. Reporting cities would not be viewed as state representatives but as another entity altogether—an involved yet independent actor, akin to an NHRI or NGO.

Such an approach is not unprecedented. Yishai Blank observed over a decade ago that “localities are already being recast as independent semi-private entities, no longer mere state agents subsumed by their national governments.”¹⁰⁸ Furthermore, a status for cities as a distinct and independent actor aligns with two global trends: the increasingly assertive posture of cities in the international arena¹⁰⁹ and new forms of recognition of cities by international organizations.

From the bottom up, cities are engaging in analogous actions on other transnational issues. Consider climate change: Cities, networked as C40, participate in meetings of the Conference of the Parties of the UNFCCC and produce declarations which are “compiled following canonical international law and UN consuetudinary practices”—all completely independent of state action.¹¹⁰ Beginning with New York City in 2018, cities now regularly and voluntarily report on local implementation of the Sustainable Development Goals (SDGs) at the

UN High-Level Political Forums.¹¹¹ Similar to shadow reporting, none of these city initiatives substitute for state action or obligation. Instead, they constitute supplemental modes of participation that acknowledge the increasingly salient role of cities in implementing international norms. From the top down, international organizations such as UN-Habitat, the World Bank, and the European Union are promoting subsidiarity—the devolution of decision-making powers to the smallest, or most local, jurisdiction that can perform them.¹¹² The draft World Charter of Local Self-Government and the similar European Charter of Local Self-Government also represent developing international norms around the independence of local authorities.¹¹³

Together, these convergent bottom-up and top-down processes suggest that, at a minimum, cities and international organizations have carved out spaces of direct interaction and coordination within the existing state-based international system. Jacob Cogan deems this a “shadow system” operating within a framework not set up for such relationships.¹¹⁴ Alternatively, the trends may highlight something more transformative: an emergent “international legal authority”¹¹⁵ for cities predicated on both domestic and international law or an “international legal person of the future.”¹¹⁶

VI. CONCLUSION

International human rights law is a liminal institution. It regulates the internal affairs of states through law that formally governs affairs between states. Human rights law aspires to universality even as its protections become reality only when its standards are interpreted and applied locally.

Savvy activists and committed experts have strategically pursued the cause of promoting human rights within the confines of this contradictory system. This article's retelling of how NGOs, NHRIs, and a city have made space for themselves in the treaty-monitoring process highlights but one example of how politically astute actors can leverage emergent opportunities to advance human rights. Institutionalizing city shadow reporting would take this logic one step further, allowing them to provide information openly and directly to the international human rights committees to supplement and challenge their national governments.

Cities are uniquely situated to further the cause of human rights. The world's population increasingly lives in cities. Moreover, at least in countries with systems of federalism, many human rights issues—from housing law to family regulations, education provision to criminal justice—are handled by municipal governance. Cities are the future—both generally and in the human rights context specifically. Their data, which treaty-monitoring bodies have repeatedly requested but not always received, could allow expert monitors to provide tailored concluding observations that would localize international human rights standards to the peculiarities of each municipality. The practice of gathering local data and analyzing it according to human rights standards, moreover, would help in socializing cities to become active human rights stakeholders.

Fundamentally, this proposal is about incorporating new actors that would help the human rights system adjust to changing political realities. That flexibility has characterized the entire history of shadow reporting. Further expansion of the practice to cities will engender space for human rights experts, advocates, and emergent stakeholders to further the cause of international human rights law.

Endnotes

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¹ See generally City of Berkeley, California, Resolution No. 63,596–N.S. ¶ 2 (27 Feb. 2007) (on file with authors).

² City of Berkeley, California, Resolution 66,813–N.S. (7 Oct. 2014) (authorizing CAT submission); City of Berkeley, California, Resolution 66,814–N.S. (7 Oct. 2014) (authorizing ICCPR submission) (both on file with authors).

³ This article focuses on cities both because it uses Berkeley as a case study and because of the emergent global prominence of cities. See *infra* Part II. Nevertheless, the analysis largely applies to other sub-national governmental entities, such as states, provinces, and territories.

⁴ According to Marsha Freeman, “The term ‘shadow report’ reflects the idea that they [NGOs] ‘shadow’ the State Party reports, providing information to fill in gaps and correcting inaccurate statements as well as indicating priorities that may differ from those of the governments.” Marsha A. Freeman, *The Committee on the Elimination of Discrimination against Women and the Role of Civil Society in Implementing International Women’s Human Rights Norms*, 16 NEW ENG. J. INT’L & COMP. L. 25, 27 (2010).

⁵ *The Core International Human Rights Instruments and Their Monitoring Bodies*, U.N. OFF. OF THE HIGH COMMISSIONER FOR HUM. RTS., <https://www.ohchr.org/en/professionalinterest/pages/coreinstruments.aspx>.

⁶ See UN Committee on the Elimination of Racial Discrimination (CERD), *Report of the UN Committee on the Elimination of Racial Discrimination*, 60th Sess. and 61st Sess., ¶ 2(b), U.N. Doc. A/57/18, (2002); Hum. Rts. Comm., *The Relationship of the Human Rights Committee with Non-governmental Organizations*, ¶¶ 4–7, U.N. Doc. CCPR/C/104/3 (4 June 2012) [hereinafter HRC NGOs Statement]; *Information Note for Civil Society and National Human Rights Institutions*, COMM. ON ECON., SOC. & CULTURAL RTS., <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/NGOs.aspx>; *Rep. of Comm. on the Elimination of Discrimination Against Women*, U.N. GAOR, 45th Sess., Annex V ¶¶ 5–7, U.N. Doc. A/65/38, at 139 (2010) [hereinafter CEDAW Committee NGOs Statement]; *Information for Civil Society Organisations and National Human Rights Institutions (NHRIs)*, COMM. AGAINST TORTURE, <https://www.ohchr.org/EN/HRBodies/CAT/Pages/NGOsNHRIs.aspx>; Comm. on the Rights of the Child Rep., 22d Sess., Annex VIII ¶ 1, U.N. Doc. CRC/C/90, at 111 (1999);

Comm. on Migrant Workers, *Statement by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on its Relationship with Civil Society Organizations, Adopted at its Twenty-first Session* ¶ 7, U.N. Doc. CMW/C/21/2 (Sept. 23, 2014); *Statement by the Committee on Cooperation with National Human Rights Institutions, Comm. on Migrant Workers* (no date), https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/1_Global/INT_CMW_STA_8065_E.pdf [hereinafter CMW CSOs Statement]. Comm. on Enforced Disappearances, *The relationship of the Committee on Enforced Disappearances with Civil Society Actors*, ¶¶ 4–7, U.N. Doc. CED/C/3 (Dec. 30, 2013). Convention on the Rights of Persons with Disabilities art. 33(3), *opened for signature* Mar. 30, 2007, 2515 U.N.T.S. 3; *accord* Rep. of Comm. on the Rights of Persons with Disabilities, 11th Sess., Annex. II ¶ 5, U.N. Doc. CRPD/C/11/2, at 9 (May 14, 2014).

⁷ U.N. Treaty Body Database, U.N. OFF. OF THE HIGH COMMISSIONER FOR HUM. RTS., https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en.

⁸ Such a utility-based argument, whereby NGOs are afforded participatory roles or access at international organizations to increase their capacity, is not unique. *See generally* HEIDI NICHOLS HADDAD, *THE HIDDEN HANDS OF JUSTICE: NGOs, COURTS, AND INTERNATIONAL JUSTICE* (2018); JONAS TALLBERG ET AL., *THE OPENING UP OF INTERNATIONAL ORGANIZATIONS* (2013). Access to the treaty monitoring bodies was also useful for the NGOs: NGOs simultaneously utilized treaty monitoring bodies as a strategic intergovernmental forum for advocacy and to publicize human rights abuses.

⁹ *See* Ineke Boerefijn, *Article 18, in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* 489, 505 (Marsha Freeman, Christine Chinkin & Beate Rudolf eds., 2012).

¹⁰ *See* Felice Gaer, *Implementing International Human Rights Norms: UN Human Rights Treaty Bodies and NGOs*, 2 J. HUM. RTS. 339, 340 (2003).

¹¹ Memorandum from Secretariat of the United Nations to the Assistant Secretary-General for Inter-Agency Affairs, on Convention on the Elimination of Racial Discrimination, *Question whether under the Convention the Committee on the Elimination of Racial Discrimination may solicit or use information from sources other than States Parties to the Convention—Conditions under which a cooperation could be established between the Committee and ILO and UNESCO bodies dealing with discrimination*, ¶¶ 2–8 (29 Mar. 1972), *reprinted in* 1972 U.N. Jurid. Y.B. 163, U.N. Doc. ST/LEG/SER.C/10.

¹² Gaer, *supra* note 10, at 342–43 (quoting CERD members).

¹³ *Id.*

¹⁴ *Id.* at 343.

¹⁵ Freeman asserts that in the 1980s the CEDAW Committee could not have been aware of NGO activity at the other treaty monitoring bodies because the Committee met in Vienna and New York and was serviced by the Branch of Advanc²³ement of Women also located in Vienna. The

other treaty monitoring bodies met and were serviced by the Centre for Human Rights located in Geneva. *See* Freeman, *supra* note 4, at 29.

¹⁶ Boerefijn, *supra* note 9, at 506.

¹⁷ Gaer, *supra* note 10, at 342 (quoting CERD members).

¹⁸ *See id.* at 344.

¹⁹ Freeman, *supra* note 4, at 32 (quoting Evatt).

²⁰ U.N. Secretary General, *Effective Implementation of International Instruments on Human Rights, Including Reporting Obligations Under International Instruments on Human Rights*, U.N. GAOR 44th Sess., Agenda Item 109, ¶ 114, U.N. Doc. A/44/668 (1989) [hereinafter Alston 1989 Report].

²¹ Gaer, *supra* note 10, at 345 (“Beginning in 1990 and continuing until 1999, the concluding statements of a series of coordination meetings of Chairpersons of the six core UN human rights treaty bodies repeatedly emphasized the important, ‘valuable,’ ‘vital’ and even ‘central’ role played today by NGOs as reliable sources of independent information for the treaty bodies.”).

²² U.N. Gen. Assemb., Human Rights Questions: Implementation of Human Rights Instruments, U.N. Doc. A/51/482, ¶ 35 (1996) (“The chairpersons affirm once again that non-governmental organizations play a vital role in supplying the treaty monitoring bodies with documentation and other information on human rights developments that is extremely useful for their monitoring activities.”)

Individual treaty monitoring committees have also recognized the contribution of NGO shadow reporting. *See, e.g.*, ANNA-KARIN LINDBLÖM, NON-GOVERNMENTAL ORGANISATIONS IN INTERNATIONAL LAW 403 (2005). (According to a former member of the CERD Committee, “it would be difficult for it [the Committee] to carry out its work effectively without the information submitted by NGOs, as the information contained in state party reports tends to be one-sided and focused on legislation and statistics, rather than on actual realities.”); *id.* at 403 n.179 (“Some NGOs specialise in collecting and structuring information from other NGOs and submitting it to the country Rapporteur of the Committee prior to each session. As the Committee’s Secretariat has limited capacity, this service is much appreciated by the Committee. One NGO, the Anti Racism Information Service (ARIS) has an important role in this respect and is sometimes referred to in the Committee as ‘our nineteenth member.’”); *Report of the Committee on the Elimination of Discrimination against Women*, U.N. GOAR, 47th Sess., ¶ 14, Doc. A/47/38, (1993) (“The working group had been greatly assisted by the preparations and work of the Secretariat and by the contributions of non-governmental organizations.”); *see also supra* note 6.

²³ Boerefijn, *supra* note 9, at 505 (*citing* U.N. GAOR, 65th Sess., Supp. No. 38 ¶¶ 414, 426, U.N. Doc. A/60/38, (2005)).

²⁴ *Id.*

²⁵ U.N. GAOR, 65th Sess., Supp. No. 38, Annex 4, ¶6, U.N. Doc. A/65/38, (2010):

Taking note of the fact that consideration of the reports of States parties by the Committee is based on a constructive dialogue with States parties, the Committee considers it necessary that this dialogue be based on information received not only by State parties, United Nations entities and national human rights institutions, but also from non-governmental organizations in order to ensure a constructive dialogue.

Similar functionalist dynamics drive NHRI engagement at other human right treaty monitoring bodies. For example, with regard to the ICCPR, see *Paper on the Relationship Between the Human Rights Committee with National Human Rights Institutions*, U.N. GAOR, Hum. Rts. Comm., 106th Sess., ¶¶ 1, 7, U.N. Doc. CCPR/C/106/3 (2012). (The Committee considers “close cooperation between the Committee and national human rights institutions is important for the promotion and implementation of” the ICCPR and its Optional Protocols. Because of “their mandates under the Paris Principles,” NHRIs have a “different . . . yet complementary” role to play in the Committee as compared to other actors.) Regarding the CRC, see *General comment no. 2 (2002), The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, U.N. GAOR, Comm. on the Rts. of the Child, 32d Sess., ¶¶ 20, 25, U.N. Doc. CRC/GC/2002/2 (2002). (NHRIs “should contribute independently to the reporting process under the convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children’s rights.” The Committee tasked NHRIs to “monitor independently the State’s compliance . . . and to do all it can to ensure full respect for children’s rights.”).

²⁶ CEDAW Committee NGOs Statement, *supra* note 6, at 138 ¶ 3.

²⁷ See *supra* note 6.

²⁸ Alston 1989 Report, *supra* note 20, ¶ 122.

²⁹ See Philip Alston, *Status of Preparation of Publications, Studies and Documents for the World Conference: Interim Report on Updated Study by Mr. Philip Alston*, U.N. Doc. A/CONF.157/PC/Add.11/Rev.1, ¶ 224 (22 Apr. 1993).

³⁰ This idea rests on the stated purposes of the CEDAW Committee and the HRC statements. Both describe their purpose as “to clarify and strengthen the Committee’s relationship with NGOs and to enhance the contribution of NGOs in the implementation of the Covenant.” HRC NGOs Statement, *supra* note 6, at ¶ 2; *accord* CEDAW Committee NGOs Statement, *supra* note 6, at 138 ¶ 2 (adopting analogous language).

³¹ See generally EMILY ZAKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES* (2013).

³² See, e.g., Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 19, 73, 99 n.430 (1990).

³³ See U.S. DEP’T OF EDUC., *THE LOCAL ROLE *1* (Feb. 2008), <https://www2.ed.gov/about/offices/list/ous/international/usnei/us/local.doc>.

³⁴ For specific ordinances, see, for example, Paid Parental Leave Ordinance, S.F. Police Code, Article 33H. See generally Thomas J. Sugrue, *All Politics Is Local: The Persistence of Localism in Twentieth-Century America*, in THE DEMOCRATIC EXPERIMENT: NEW DIRECTIONS IN AMERICAN POLITICAL HISTORY 301, 303–04 (Meg Jacobs, William J. Novak & Julian E. Zelizer eds., 2003).

³⁵ *State Responsibility: Titles and Texts of Draft Articles on Responsibility of States for Internationally Wrongful Acts / adopted by the Drafting Committee on 2nd reading*, U.N. International Law Commission Drafting Committee, 53d Sess., Supplement No. 10, § IV.E.1., U.N. Doc. A/CN.4/L.602 (2001).

³⁶ General Comment No. 16, *The equal right of men and women to the enjoyment of all economic, social and cultural rights*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 34th Sess., ¶ 42, U.N. Doc. E/C.12/2005/4 (2005) (emphasis added).

³⁷ *The Relationship of the Committee on Enforced Disappearances with National Human Rights Institutions*, U.N. GAOR, Comm. on Enforced Disappearances, 7th Sess., ¶ 6, U.N. Doc. CED/C/6 (2014).

³⁸ See, e.g., *Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Guatemala*, U.N. GAOR, Comm. on Elim. of Discrim. Against Women, 68th Sess., ¶ 52, U.N. Doc. CEDAW/C/GTM/CO/8-9 (2017); *Observations on the Eighth Periodic Report of Kenya*, U.N. GAOR, Comm. on Elim. of Discrim. Against Women, 68th Sess., ¶ 55, U.N. Doc. CEDAW/C/KEN/CO/8 (2017); *Concluding Observations on the Seventh Periodic Report of Norway*, U.N. GAOR, Comm. on Elim. of Discrim. Against Women, 68th Sess., ¶ 52, U.N. Doc. CEDAW/C/NOR/CO/9 (2017); *Observations on the Seventh Periodic Report of Burkina Faso*, U.N. GAOR, Comm. on Elim. of Discrim. Against Women, 68th Sess., ¶ 56, U.N. Doc. CEDAW/C/BFA/CO/7 (2017); *Concluding Observations on the Fifth Periodic Report of Singapore*, U.N. GAOR, Comm. on Elim. of Discrim. Against Women, 68th Sess., ¶ 49, U.N. Doc. CEDAW/C/SGP/CO/5 (2017); *Concluding Observations on the Initial Report of Luxembourg*, U.N. GAOR, Comm. on the Rts. of Persons with Disabilities, 18th Sess., ¶ 61, U.N. Doc. CRPD/C/LUX/CO/1 (2017); *Concluding Observations on the Initial Report of Panama*, U.N. GAOR, Comm. on the Rts. of Persons with Disabilities, 18th Sess., ¶ 67, U.N. Doc. CRPD/C/PAN/CO/1 (2017).

³⁹ *Local government and human rights: report of the United Nations High Commissioner for Human Rights*, U.N. ESCOR, Comm'n on Hum. Rts., 42d Sess., ¶ 61, U.N. Doc. A/HRC/42/22 (2019) [hereinafter UNHCHR 2019 Report].

⁴⁰ *Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights: Comments of the Human Rights Committee: United States of America*, U.N. GAOR, Hum. Rts. Comm., 53d Sess., ¶ 2, U.N. Doc. CCPR/C/79/Add.50 (1995) [hereinafter HRC 1995 Concluding Observations for the United States].

⁴¹ *Id.* ¶ 6.

⁴² See *id.* ¶ 9 (“The Committee welcomes the efforts of the Federal Government to take measures

at the legislative, judicial and administrative levels to ensure that the States of the Union provide human rights and fundamental freedoms.”); *id.* ¶ 15 (noting concern that “members of the judiciary at the federal, state and local levels have not been made fully aware of” the ICCPR); *id.* ¶¶ 16, 31 (noting concern with state death penalty); *id.* ¶¶ 17, 32 (noting concerns with police brutality); *id.* ¶¶ 20, 34 (noting concerns about treatment of prisoners in state and federal prisons); *id.* ¶ 22 (noting concern about state laws that ban sexual relations among people of the same sex); *id.* ¶¶ 23, 36 (noting concern about state judges that are elected).

⁴³ *Report of the Committee for the Elimination of Racial Discrimination*, U.N. GAOR, 56th Sess., ¶ 390, U.N. Doc. A/56/18 (2001); *see also id.* ¶ 393 (“The Committee recommends that the State party take all appropriate measures to review existing legislation and federal, State and local policies to ensure effective protection against any form of racial discrimination and any unjustifiably disparate impact.”).

⁴⁴ *See, e.g., id.* ¶ 395 (noting disparate incarceration at all levels of government); *id.* ¶ 401 (asking for data “regarding racial discrimination in federal and State prisons and jails” in the next submission); *id.* ¶ 396 (noting death penalty and racial disproportionality “particularly in states like Alabama, Florida, Georgia, Louisiana, Mississippi and Texas”).

⁴⁵ *See* HRC 1995 Concluding Observations for the United States, *supra* note 40, ¶ 29 (“The Committee recommends that appropriate inter-federal and state institutional mechanisms be established for the review of existing and proposed legislation and other measures, with a view to achieving full implementation of the Covenant, including its reporting obligations.”); ; *List of Issues Prior to Submission of the Fifth Periodic Report of the United States of America*, U.N. GAOR, Hum. Rts. Comm., 123rd Sess., ¶ 3, U.N. Doc. CCPR/C/USA/QPR/5 (2019). (asking for information “on the extent to and manner in which the Covenant has been incorporated into domestic law at the federal, state and local levels”); *List of Issues Prior to Submission of the Fourth Periodic Report of the United States of America*, U.N. GAOR, Hum. Rts. Comm., 107th Sess., ¶ 1, U.N. Doc. CCPR/C/USA/Q/4 (2013) (requesting information on “measures [that] have been taken to ensure that the Covenant is fully implemented by State and local authorities”).

⁴⁶ *List of Issues Concerning Additional and Updated Information Related to the Consideration of the Second Periodic Report of the United States of America*, U.N. GAOR, United States of America, ¶ 16, U.N. Doc. CRC/C/OPAC/USA/2 (2012).

⁴⁷ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: India*, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts., 40th Sess., ¶ 48, U.N. Doc. E/C.12/IND/CO/5 (2008).

⁴⁸ *Concluding Observations on the Sixth Periodic Report of Australia*, U.N. GAOR, Hum. Rts. Comm., 121st Sess., ¶ 47, U.N. Doc. CCPR/C/AUS/CO/6 (2017).

⁴⁹ *Committee on the Rights of the Child, Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, U.N. GOAR, Comm. on Rts. of the Child, ¶ 9, U.N. Doc. CRC/C/AUS/CO/5-6, (2019).

⁵⁰ Jasper Krommendijk, *The Domestic Effectiveness of International Human Rights Monitoring in Established Democracies. The Case of the UN Human Rights Treaty Bodies*, 10 REV. INT'L ORGANS 489, 499–500 (2015); Wade M. Cole, *Human Rights as Myth and Ceremony? Reevaluating the Effectiveness of Human Rights Treaties, 1981-2007*, 117 AM. J. SOC. 1163, 1171 (2012).

⁵¹ Shanti Dairiam, *From Global to Local: The Involvement of NGOs*, in THE CIRCLE OF EMPOWERMENT: TWENTY-FIVE YEARS OF THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 313, 321 (Hanna Beate Schöpp-Schilling & Cees Flinterman eds., 2007).

⁵² See *Committee Against Torture, Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America*, U.N. GOAR Comm. against Torture, ¶ 26(d), U.N. Doc. CAT/C/USA/CO/3-5, (2014).

⁵³ See *United Nations Reform: Measures and Proposals: Note by the Secretary General*, U.N. GOAR, 66th Sess., Agenda Item 124, U.N. Doc. A/66/860 (2012).

⁵⁴ See generally Cosette D. Creamer & Beth A. Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, 81 L. & CONTEMP. PROBS. 31 (2018); Gráinne de Búrca, *Human Rights Experimentalism*, 111 AM. J. INT'L L. 277 (2017); Krommendijk, *supra* note 50.

⁵⁵ Cf. Janne E. Nijman, *Renaissance of the City as Global Actor: The Role of Foreign Policy and International Law Practices in the Construction of Cities as Global Actors*, in THE TRANSFORMATION OF FOREIGN POLICY: DRAWING AND MANAGING BOUNDARIES 209, 227–37 (Andreas Fahrmeir, Gunther Hellmann & Miloš Vec eds., 2016) (noting how city mimicry of and participation in international human rights law institutions reflect a socialization process, where the city internalizes global norms).

⁵⁶ *2018 Revision of World Urbanization Prospects*, U.N. DEP'T ECON. & SOC. AFFAIRS (16 May 2018), <https://www.un.org/development/desa/publications/2018-revision-of-world-urbanization-prospects.html>.

⁵⁷ RICHARD DOBBS ET AL., MCKINSEY GLOB. INST., URBAN WORLD: CITIES AND THE RISE OF THE CONSUMING CLASS 4 (2012), https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Operations/Our%20Insights/Urban%20world%20Cities%20and%20the%20rise%20of%20the%20consuming%20class/MGI_Urban_world_Rise_of_the_consuming_class_Full_report.pdf.

⁵⁸ See generally C40 CITIES CLIMATE LEADERSHIP GROUP, CITIES LEADING THE WAY: SEVEN CLIMATE ACTION PLANS TO DELIVER ON THE PARIS AGREEMENT (n.d.), https://assets.locomotive.works/sites/5ab410c8a2f42204838f797e/content_entry5ab410fb74c4833febe6c81a/5b97d05514ad66062f99bd66/files/C40_Report_Cities_leading_the_way.pdf?1536675925.

⁵⁹ E.g., #Londonisopen, GREATER LONDON AUTHORITY, <https://www.london.gov.uk/what-we-do/arts-and-culture/london-open>. See generally Peter Scholten, *Between National Models and Multi-Level Decoupling: The Pursuit of Multi-Level Governance in Dutch and UK Policies*

Towards Migrant Incorporation, 17 J. INT’L MIGRATION & INTEGRATION 973 (2015).

⁶⁰ *Role of Local Government in the Promotion and Protection of Human Rights: Final Report of the Human Rights Council Advisory Committee*, U.N. GAOR, Hum. Rts. Council, Advisory Comm., 30th Sess., Agenda Item 3 and 5, U.N. Doc. A/HRC/30/49 (2015).

⁶¹ See UNHCHR 2019 Report, *supra* note 39.

⁶² The 1993 report was commissioned for inclusion in the US ICCPR report, and the Berkeley City Council authorized sending the report to Department of State rather than directly to the U.N. treaty monitoring body. See *infra* notes 80–83 and accompanying text; Berkeley Resolution No. 56,919–N.S. (20 Apr. 1993); Minutes Berkeley City Council Regular Meeting 8 (26 Oct. 1993) (both on file with authors). A subsequent resolution from the Berkeley City Council suggests that that report was later directly provided to the HRC by the MCLI in a 1995 meeting. Berkeley Resolution No. 62,841–N.S., *1 (15 Mar. 2005); see also *infra* note 88. The City Council next adopted a resolution in 2005 to send the MCLI’s report on human rights violations since September 11 to, among others, the Human Rights Committee. *Id.* In 2007, it adopted a resolution to send a report pursuant to ICERD. City of Berkeley, California, Resolution No. 63,596–N.S., *1 (27 Feb. 2007) (on file with authors). Finally, in 2014, the city adopted two resolutions to submit reports based on CAT and ICCPR. City of Berkeley, California, Resolution 66,813–N.S. (7 Oct. 2014); City of Berkeley, California, Resolution 66,814–N.S. (Oct. 7, 2014).

⁶³ See, e.g., Carolyn Jones, *Berkeley May Sign Onto U.N. Treaties*, S.F. CHRON. (9 Feb. 2009), at C1 (noting reports are written by “[u]npaid law students” working for the MCLI and “volunteers on the city’s Peace and Justice Commission,” along with city staff “if more work is needed”).

⁶⁴ BERKELEY, CALIFORNIA CITY COUNCIL REP. TO THE U.N. HUM. RTS. COMM. 12–13 (7 Oct. 2014) (on file with authors) [hereinafter BERKELEY 2014 ICCPR REPORT].

⁶⁵ BERKELEY, CALIFORNIA CITY COUNCIL REP. TO THE U.N. COMM. AGAINST TORTURE 6 (7 Oct. 2014) (on file with authors) [hereinafter BERKELEY 2014 CAT REPORT].

⁶⁶ BERKELEY 2014 ICCPR REPORT, *supra* note 64, at 5.

⁶⁷ See NEIL MAIZLISH, CITY OF BERKELEY PUB. HEALTH DIVISION, ASTHMA HOSPITALIZATION RATES, BERKELEY, 1990–2006, at 1–2 (2008), https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/cob_asthma_hosp1990-2006rpt_5-21-08.pdf.

⁶⁸ BERKELEY 2014 ICCPR REPORT, *supra* note 64, at 5; MAIZLISH, *supra* note 67, at 8.

⁶⁹ In particular, when local majorities are of the opposite party as the party controlling the national government or if the locality is otherwise ideologically opposed to the national government, it may engage in a more confrontational politics. See generally Jessica Bulman-Pozen, *Partisan Federalism*, 127 HARV. L. REV. 1077, 1118–22 (2013).

⁷⁰ BERKELEY 2014 ICCPR REPORT, *supra* note 64, at 3.

⁷¹ *Id.* at 7.

⁷² *See id.* at 6–7, 9.

⁷³ *Id.* at 10.

⁷⁴ *Id.* at 11.

⁷⁵ BERKELEY 2014 CAT REPORT, *supra* note 65, at 4.

⁷⁶ *Id.*

⁷⁷ The Law of the Land: U.S. Implementation of Human Rights Treaties: Hearing before the Subcomm. on Human Rights and the Law, S. Hrg. 111–576, at 198 (2010) [hereinafter Senate Hearing on Treaty Implementation] (written statement of Meiklejohn Civil Liberties Institute).

⁷⁸ Ann Fagan Ginger, *The Energizing Effect of Enforcing a Human Rights Treaty*, 42 DEPAUL L. REV. 1341, 1389 (1993).

⁷⁹ *Id.*

⁸⁰ *Id.* at 1390.

⁸¹ Minutes Berkeley City Council Regular Meeting 10 (20 Apr. 1993) (on file with authors). The version of the Resolution uploaded on Berkeley’s website is incomplete, so we resort to other contemporary documentation to discuss the contents of the Resolution.

⁸² MEIKLEJOHN C.L. INST., CHALLENGING U.S. HUMAN RIGHTS VIOLATIONS SINCE 9/11, at 392 (Ann Fagan Ginger ed., 2005) [hereinafter MCLI, CHALLENGING].

⁸³ Ginger, *supra* note 78, at 1391.

The MCLI eventually expanded its strategy beyond Berkeley. In June 2010, the MCLI developed a piece of legislation that requested that the California Attorney General publicize the text of the three treaties and prepare templates for local and state governments to provide data to the Department of State. *See generally* Assemb. Concurrent Res. 129, 2009–10 Legis., Reg. Sess. (Cal. 2010) [hereinafter California Treaties Resolution]. The MCLI is acknowledged as the sponsor of the bill when it was first heard in committee. *See* International Treaties: Reports (ACR 129): Hearing before the Assemb. Comm. on the Judiciary 4 (15 June 2010). And the “sponsor” of a bill is the entity that “developed a piece of legislation and advocates its passage.” *Glossary of Legislative Terms*, CAL. ST. LEGIS., <http://www.legislature.ca.gov/quicklinks/glossary.html>.

Note that the resolution cited Berkeley’s reporting as a success to justify the broader state policy. *See* California Treaties Resolution, *supra* (Berkeley “in 2006 and 2007[] submitted its local reports to the CERD and CAT under city council resolutions[.]”). The authors were unable to find such a report, although it might be in reference to the MCLI’s 2005 report about human rights violations.

⁸⁴ City of Berkeley, California, Resolution No. 63,596–N.S., at *1 (27 Feb. 2007) (on file with authors).

⁸⁵ *Id.*; see also California Treaties Resolution, *supra* note 83 (“City officials in Berkeley found that these submissions heightened awareness among city officials and staff of the significance of their enforcing human rights[.]”)

⁸⁶ City of Berkeley, California, Peace and Justice Commission Regular Meeting Minutes 2 (May 7, 2007) (on file with authors).

⁸⁷ See Memorandum from Berkeley Peace & Justice Comm’n to the City Council, re: United Nations Treaty Reports (Sept. 29, 2009) (on file with authors); Minutes Berkeley City Council Meeting 6–7 (29 Sept. 2009) (on file with authors) (authorizing Peace and Justice Commission recommendation); see also *supra* note 2 (authorizing submission of reports)

⁸⁸ *Using the Law: Local & State*, MEIKLEJOHN CIVIL LIBERTIES INST., http://www.mcli.org/law/localstate/using_the_law.html; see also Ann Fagan Ginger, Anne Paxton Wagley & Rob Markfield, *Nonprofits Have a New Role in Ensuring Human Rights in the United States*, 30 U.S.F. L. REV. 427, 431–32 (1996) (discussing NGO participation in the HRC’s review of the initial report of the United States).

⁸⁹ City of Berkeley, California, Resolution No. 62,841–N.S. *1 (15 Mar. 2005).

⁹⁰ *Using the Law: Local & State*, *supra* note 88 (noting the reports “were not acknowledged or used”).

⁹¹ Identical language on the city reports appears in the common core documents submitted as part of the US reports to CAT (Session 53), ICCPR (Session 110), and ICERD (Session 85). See, e.g., Common Core Document Forming Part of the Reports of States Parties: United States of America ¶ 37, U.N. Doc. HRI/CORE/USA/2011 (12 Sept. 2012).

⁹² See, e.g., *supra* notes 6, 25.

⁹³ See, e.g., Martha Davis, *Cities, Human Rights and Accountability: The United States Experience*, in GLOBAL URBAN JUSTICE: THE RISE OF HUMAN RIGHTS CITIES 23, 32 (Barbara Oomen, Martha F. Davis & Michele Grigolo eds., 2016).

⁹⁴ See INT’L MOV’T AGAINST ALL FORMS OF DISCRIMINATION & RACISM, ICERD AND CERD: A GUIDE FOR CIVIL SOCIETY ACTORS 28 (2011), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_INF_7827_E.pdf (noting value of civil society organizations collaborating to write comprehensive reports).

⁹⁵ *Promoting and Encouraging International Human Rights*, U.S. CONF. OF MAYORS, <https://www.usmayors.org/the-conference/resolutions/?category=c10038&meeting=81st%20Annual%20Meeting>.

⁹⁶ For a helpful discussion of these institutions, see generally Judith Resnik, *Foreign as Domestic*

Affairs: Rethinking Horizontal Federalism and Foreign Affairs Preemption in Light of Translocal Internationalism, 57 EMORY L.J. 31, 43–50 (2007).

⁹⁷ Mathew D. McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms*, 28 AM. J. POL. SCI. 165, 166 (1984).

⁹⁸ For example, an NGO shadow report submitted in the United States 2014 HRC review cited the treatment of unhoused persons in Boise, Idaho, and St. Petersburg, Florida, as cruel, inhuman, and degrading treatment. See NAT'L L. CTR. ON HOMELESSNESS & POVERTY, CRUEL, INHUMAN, AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS ¶¶ 13–15 (2013), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_15093_E.pdf. The HRC's 2014 concluding observations noted that the criminalization of unhoused people “raises concerns of discrimination and cruel, inhuman or degrading treatment” and encouraged the United States to “[a]bolish the laws and policies criminalizing homelessness at state and local levels[,]” and offered general suggestions on decreasing homelessness in accordance with human rights. See Concluding Observations on the Fourth Periodic Report of the United States of America, U.N. Doc. CCPR/C/USA/CO/4, ¶ 19 (23 Apr. 2014). It certainly seems plausible that if the HRC had more information on Boise or St. Petersburg, it could have issued a more precise recommendation than its blanket, nation-wide suggestion.

⁹⁹ Cf. Bulman-Pozen, *supra* note 69, at 1090 (“Party politics means that state opposition need not be based on something essentially ‘state’ rather than ‘national.’ Instead of representing distinctively state interests against the distinctively national interests of the federal government, states may participate in substantive controversies that are national in scope.”).

¹⁰⁰ Senate Hearing on Treaty Implementation, *supra* note 77, at 199 (written statement of Meiklejohn Civil Liberties Institute). The Peace and Justice Commission did hold such a forum. See City of Berkeley, California, Peace and Justice Commission Regular Meeting Minutes *1 (1 Mar. 2010) (on file with authors).

¹⁰¹ This article’s analysis is limited to international law. A separate question, to be addressed in subsequent work, is whether there are domestic law objections to sub-national shadow reporting. Compare, e.g., *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 413–14 (2003), with Resnik, *supra* note 96, at 84–87; Jack L. Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 VA. L. REV. 1617 (1997).

¹⁰² See, e.g., ANTONIO CASSESE, INTERNATIONAL LAW 46–59 (2d ed., 2005); Samantha Besson, *Sovereignty*, MAX PLANCK ENCYCLOPEDIAS OF INT’L LAW (last updated Apr. 2011), <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1472?rskey=NTC2g7&result=1&prd=MPIL>.

¹⁰³ See, e.g., Peter J. Spiro, *Foreign Relations Federalism*, 70 U. COLO. L. REV. 1223, 1260 (1999) (“Under the foundational doctrine of state responsibility, nations alone have enjoyed legal personality under international law”).

¹⁰⁴ Vienna Convention on the Law of Treaties art. 2(a), entered into force 27 Jan. 1980, 1155 U.N.T.S. 331 (emphasis added).

¹⁰⁵ *Id.* art. 27 (“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”).

¹⁰⁶ *See* Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/RES/56/83, arts. 4, 7 (28 Jan. 2002).

¹⁰⁷ CMW CSOs Statement, *supra* note 6, ¶ 4.

¹⁰⁸ Yishai Blank, *Localism in the New Global Order*, 47 HARV. INT’L L.J. 263, 264 (2006) [hereinafter Blank, *Localism*]. *See also* Yishai Blank, *The City and the World*, 44 COLUM. J. TRANSN’L L. 868 (2006) (positing a notion of local governments as service-providing and democracy-fostering private corporations); Gerald E. Frug & David J. Barron, *International Local Government Law*, 38 URB. LAWYER 1 (2006) (documenting hybrid “international local government law” resulting from increasing international and local legal interactions).

¹⁰⁹ Barbara Oomen & Moritz Baumgärtel, *Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law*, 29 EUR. J. INT’L L. 607, 608-9 (2018).

¹¹⁰ Michele Acuto, *The New Climate Leaders?*, 39 REV. INT’L STUD. 835, 842 (2013). *See also* Janne Nijman, *The Future of the City and the International Law of the Future*, in THE LAW OF THE FUTURE AND THE FUTURE OF LAW 213 (Sam Muller et al. eds., 2011) [hereinafter Nijman, *The Future*].

¹¹¹ *See* NYC MAYOR’S OFF. FOR INT’L AFFAIRS, VOLUNTARY LOCAL REVIEW: NEW YORK CITY’S IMPLEMENTATION OF THE 2030 AGENT FOR SUSTAINABLE DEVELOPMENT (July 2018), https://www1.nyc.gov/assets/international/downloads/pdf/NYC_VLR_2018_FINAL.pdf.

¹¹² Blank, *Localism*, *supra* note 108, at 264. *See generally* Markus Jachtenfuchs & Nico Krisch, *Subsidiarity in Global Governance*, 79 L. & CONTEMP. PROBS. 1 (2016).

¹¹³ Towards a World Charter of Local Self Government (1998), <http://www.gdrc.org/u-gov/charter.html>; Council of Europe, European Charter of Local Self-Government (1985), <https://rm.coe.int/168007a088>.

¹¹⁴ Jacob Katz Cogan, *International Organizations and Cities*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND CITIES (Helmut Philipp Aust et al. eds., forthcoming) (manuscript at *1) (<https://ssrn.com/abstract=3704894>).

¹¹⁵ *See* Helmut Philipp Aust, *Cities as International Legal Authorities – Remarks on Recent Developments and Possible Future Trends of Research*, 4 J. COMP. URB. L. & POL’Y 82, 84–86 (2020) (noting the “complementary” role of bottom-up and top-down processes in enabling the formation of an “international legal authority” for cities); Helmut Philipp Aust, *The Shifting Role of Cities in the Global Climate Change Regime: From Paris to Pittsburgh and Back?*, 28 REV. OF EUR., COMP. & INT’L ENVTL. L. 57, 63 (2019) (same in context of the global climate change regime).

¹¹⁶ Nijman, *The Future*, *supra* note 110, at 227.