

March 2010

The U.S. Human Rights Fund

PERFECTING OUR UNION

**Human Rights Success Stories
from Across the United States**



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Foreword

The Ford Foundation has long supported human rights work in countries abroad. It was only a decade or so ago, however, that it also began to support U.S. social justice grantees that were interested in using universal human rights standards and methods in their work at home. These standards are widely known and used by advocates and governments around the world, but had been largely unexplored in the American context. In 2003, Ford profiled the work of some of these domestic rights pioneers in a volume called *Close to Home: Case Studies of Human Rights Work in the United States*.

As noted in that publication, their work has not been easy. Hampered by lack of funding and dogged by criticism that international human rights had little to offer a country as advanced as the United States, some of the organizations featured in that 2003 report were not able to sustain themselves and have gone out of business entirely. But a substantial number of U.S. activists have succeeded—strategically, if not financially—in this work. They offer a model for how human rights values, standards and strategies can strengthen organizing and improve outcomes for disadvantaged people. This volume recounts some of these victories.

Much has changed since the publication of *Close to Home*. The domestic human rights movement is stronger and broader than before, for one: a national network of human rights advocates, the US Human Rights Network, has since been established. It currently has some 275 organizational members, including numerous grassroots activist organizations from poor communities. Such organizations are using human rights of dignity and participation to challenge public schools that are more likely to arrest than graduate their children, and to overcome criminal justice and housing policies that treat them as disposable. Immigrant and African-American community leaders are also beginning to employ the broad frame of human rights to find common ground among mutually wary constituents.

In addition to grassroots groups, the domestic human rights “field” now includes some of the most respected legal and policy advocacy organizations in the United States, many of which—such as the American Civil Liberties Union (ACLU), the Center for Reproductive Rights and the Leadership Conference for Civil Rights—are now actively using international human rights to advance rights at home. Lawyers and policy advocates are increasingly employing international tribunals and citing laws of other countries to call attention to policies in the United States—such as the use of capital punishment, the sentencing of youth as adults, or the shackling of prisons inmates to hospital beds while giving birth—which are out of step with human rights standards as well as global norms. Local government officials are beginning to embed human rights standards and principles of accountability, transparency and participation into municipal services and policy.

The momentum behind this work coincides with a newly favorable political climate in the United States for multilateral cooperation and human rights accountability, a welcome turn from a period that saw US prestige suffer from ongoing criticism regarding its own human rights compliance. Recent developments include the United States rejoining the UN Human Rights Council, and signing the new UN Convention on the Rights of Persons with Disabilities; each decision suggesting a renewed focus on issues of human rights.

“I have the audacity to believe that peoples everywhere can have three meals a day for their bodies, education and culture for their minds, and dignity, equality and freedom for their spirits.”

Dr. Martin Luther King, Jr.

For the United States to truly assume the mantle of human rights leadership, however, it will have to practice more thoroughly at home what it preaches abroad. Firmer, swifter action is needed on national security reform; on access to affordable housing; on enshrining and upholding family rights for gay, lesbian and transgendered people; and on ending the overuse of immigrant detention and incarceration generally. President Obama could do no better than to seek inspiration from the words of another Nobel Laureate, Dr. Martin Luther King, who in accepting his Peace Prize 45 years ago, said, “I have the audacity to believe that peoples everywhere can have three meals a day for their bodies, education and culture for their minds, and dignity, equality and freedom for their spirits.”

Another welcome development is the emergence of new donors that are interested in human rights as a vision and strategy for change in the United States. In 2005, Dorothy Q. Thomas, a leading domestic human rights activist and philanthropic advisor to the Shaler Adams Fund, and Larry Cox, my predecessor in the Human Rights Unit at the Ford Foundation and now head of Amnesty International USA, helped to found a donor collaborative called the U.S. Human Rights Fund. The dream was a fund that would support the crucial but unglamorous work of building a base of domestic activists, well-versed in human rights standards and strategies and able to apply them in a range of social justice fields—

whether racial justice, women’s rights, criminal justice, education reform, health or workers’ rights advocacy.

Five years later, the U.S. Human Rights Fund has leveraged more than \$16 million to a wide variety of training, networking, advocacy and communications projects. The collaborative includes a number of smaller and medium-sized donors, such as the Libra and the Overbrook Foundations, as well as large ones including the Atlantic Philanthropies and the Open Society Institute. The Fund has to date provided over 120 grants (averaging \$52,000 annually) to 73 projects. It has supported technical assistance for grassroots advocates new to human rights; polling and message development on human rights for domestic audiences; human rights analyses of health care reform proposals; policy and legal advocacy to end life-without-parole sentences for juveniles; and international gatherings that enable activists to share strategies across states and global borders.

In 2008, the U.S. Human Rights Fund commissioned a transition memo by the American Constitution Society that has now evolved into a national campaign for a new interagency human rights task force and a civil and human rights commission, which would operate at the highest levels of government.

Unfortunately, the need for support for domestic human rights work continues to dwarf available

resources. When fundraising, many U.S. Human Rights Fund grantees still face puzzled responses from donors who think of human rights work as occurring—and needing to occur—exclusively overseas. For donors new to human rights, the Fund provides a useful venue to learn about human rights in a domestic context. It organizes site visits to emerging and established actors in the U.S. human rights field, and hosts regular donor briefings on specific issues and methodologies. Together, we are learning about a range of applications of human rights standards and prin-

ciples to scholarly, legal, policy, organizing and communications work—across a variety of domestic issues.

This publication illustrates why we are funding this work, and what it means on the ground for activists, for donors, for government officials—and most of all, for people suffering violations of their fundamental human rights.

Monette Zard
Human Rights Program Officer
The Ford Foundation

Introduction

“The United States was founded on the idea that all people are endowed with inalienable rights, and that principle has allowed us to work to perfect our union at home while standing as a beacon of hope to the world. Today, that principle is embodied in agreements Americans helped forge—the Universal Declaration of Human Rights, the Geneva Conventions and treaties against torture and genocide—and it unites us with people from every country and culture.

When the United States stands up for human rights, by example at home and by effort abroad, we align ourselves with men and women around the world who struggle for the right to speak their minds, to choose their leaders, and to be treated with dignity and respect.”

Barack Obama

President-elect Barack Obama issued this statement on December 10, 2008, six weeks before he took office, to commemorate the 60th anniversary of the Universal Declaration of Human Rights. Like Obama’s improbable election itself, these words speak to the past, as well as the potential, of a United States struggling to fully realize equality and human rights for all of its people. The statement suggests that human rights principles are powerful because they speak to Americans’ values as free people and shine a light on places where greater effort is needed to “perfect our union at home.”

This publication is intended for those who may have heard about a growing domestic movement for human rights, but nevertheless ask: What is the value of human rights in the United States? And what do you mean by human rights, anyway? These case studies arose from a call from social justice funders for concrete examples of

how human rights values, standards and strategies have successfully been used in the United States to advance policy and practice, and from human rights activists themselves for lessons being learned by others in the field.

For decades, the United States has shielded itself from accountability to international standards on issues from global warming to discrimination on the basis of race. As a result, many activists and funders who wholeheartedly share a human rights *vision* of greater equality and opportunity for all remain uncertain about how a human rights *approach* would make a difference in practice. These case studies begin to provide an answer.

None of the case studies argue that use of human rights was the sole strategy behind successful and effective change. As with any social improvement, a confluence of motivations, events, and thoughtful advocates produced

Human rights standards seek to distill and codify the essence of what it means to be fully human.

change. Nevertheless, in each of these examples, human rights played a significant role in influencing the outcome, inspiring the actors, or pressuring the decision-makers.

What are human rights?

In the United States, the term “human rights” is often used interchangeably to reference several distinct things: a *felt belief* in the inherent dignity and equality of all people; a *set of ethical values and standards*, codified in international law; a *system of international courts and mechanisms* set up to enforce and monitor agreements underpinning that law; and a *set of specific advocacy principles, strategies and methods*. Collectively, these values, legal standards, principles and strategies make up what advocates call a “human rights framework.” To “take a human rights approach” to domestic social justice means to incorporate some or all of these elements into one’s advocacy and organizing in order, in some fundamental way, to transform the work.

At their core, human rights as commonly understood worldwide embody a *belief* that all people have a birthright to dignity and respect. Human rights are universal, meaning they are guaranteed to everyone regardless of how they look, where they were born, or their status in the community; they are yours simply because you are human. Human rights are also inalienable, meaning that they can neither be given nor taken away by government. As several of the case studies in this volume illustrate, for many people living at society’s margins, the recognition of their right to dignity and respect has been the single most powerful revelation of human rights.

But human rights are more than a belief. They are also *universal ethical standards* that protect the

inherent right to dignity and equality, and have been approved by member states of the United Nations and subsequently written into law through a system of international treaties. These standards seek to distill and codify the essence of what it means to be fully human. In doing so, they provide a universal benchmark against which to measure the progress of all nations in meeting basic human rights obligations toward their people.

The founding document of the modern human rights movement is the Universal Declaration of Human Rights (UDHR), written in 1948 by a team of international diplomats led by Eleanor Roosevelt. In the wake of a devastating world war and the worst genocide in human history, the UDHR boldly declared in its very first Article that “all human beings are born free and equal in dignity and rights.”

The UDHR recites rights familiar to any American schoolchild—the right to be free of discrimination, and to free speech, religion, and due process, for example. But the Universal Declaration also specifies less familiar rights, including a right to an adequate standard of living, and to food, housing, health, and social support for those unable to meet their basic needs. In this respect the UDHR contrasts sharply with current realities in the United States, where 45 million people lack consistent and affordable access to health care, and where homelessness and poverty are widespread.

The Declaration has been followed over the decades by eight major international treaties, all of which speak in more specific terms to a full range of civil, political, economic and social and cultural rights. The eight are listed below, along with the year in which each was adopted by the UN General Assembly:

The Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people....

Selected articles

The UDHR articulates some of the following rights which nations are to secure and promote for all people, without distinction:

- ▶ the right to be free from torture or cruel, inhuman or degrading treatment or punishment (Article 5).
 - ▶ the right to recognition everywhere as a person before the law (Article 6).
 - ▶ the right to a fair and public hearing by an independent and impartial tribunal of any criminal charges (Article 10).
 - ▶ the right to equal pay for equal work (Article 22(2)).
 - ▶ the right to just and favorable pay that ensures for oneself and one's family an existence worthy of human dignity (Article 22(3)).
 - ▶ the right to form and to join trade unions (Article 22(4)).
 - ▶ the right to food, clothing, housing and medical care (Article 25(1)).
 - ▶ the right to a free and compulsory elementary education, and the right to equally accessible higher education (Article 26(1)).
-
- ▶ the International Convention on Genocide (ICG)(1948);
 - ▶ the Convention on the Elimination of All Forms of Racial Discrimination (CERD)(1965);
 - ▶ the International Covenant on Economic, Social and Cultural Rights (ICESCR)(1966);
 - ▶ the International Covenant on Civil and Political Rights (ICCPR)(1966);
 - ▶ the Convention on the Elimination of Discrimination against Women (CEDAW)(1979);
 - ▶ the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)(1984);
 - ▶ the Convention on the Rights of the Child (CRC)(1989);
 - ▶ the Convention on the Rights of Migrant Workers and their Families (CRMWF)(1990); and
 - ▶ the Convention on the Rights of Persons with Disabilities (CRPD)(2006).

Each treaty has a monitoring body or “committee” within the United Nations that is charged with periodically reviewing the compliance of countries which have signed and ratified them. Over the decades, regional human rights instruments—including the African Charter of Human and Peoples’ Rights, the American Convention on Human Rights, and the European Convention on Human Rights—have been established to provide additional, region-specific guidance on human rights. *A system of international courts and regional human rights monitoring bodies*—with offices in cities including Geneva, Switzerland; Brussels, Belgium; Banjul, the Gambia; Strasbourg, France; and Washington, D.C.—has been created to help monitor and enforce these standards.

As specified in the Constitution, the United States cannot formally join international treaties without congressional ratification. Although various



Presidents since Jimmy Carter have signaled their support for a number of treaties by signing them, to date Congress has ratified—and thus the country has formally joined—only four: the International Convention on Genocide (ICG) in 1987; the civil and political rights treaty (ICCPR) in 1992; the racial discrimination treaty (CERD) in 1994; and the torture convention (CAT) in 1994. Although the United States has not ratified the Convention on the Rights of the Child (CRC), in 2002 it joined two optional protocols to the CRC forbidding the recruitment of child soldiers and child trafficking and pornography.

How do human rights inform social justice advocacy?

In addition to international standards and treaty law, the human rights “framework” also refers to *a particular set of advocacy strategies* employed to further social justice. A core principle of human rights practice is the idea that those most directly affected should be at the center of the

struggle to realize their rights. Increasingly, human rights work in the United States features *participatory organizing*, in which those most affected lead the organizing for change and the articulation of solutions, and *participatory documentation and monitoring*, in which survivors of human rights violations help to document what happened to them and to monitor the implementation of reforms. These strategies also inform efforts to exert pressure for change at the local or national level.

Where local or national advocacy fails to deliver, the global system of human rights offers advocates the option of seeking help at the regional level, through bodies such as the Inter-American Commission on Human Rights, or the international level, via periodic reviews of treaty compliance at the United Nations. Advocates may also bring allegations of abuse to the attention of trained *United Nations human rights officials*, called “special rapporteurs,” who are sent to countries to investigate and report on specific types of rights violations.

As several of the case studies illustrate, these international options and measures are often quite effective in pressuring national or local government officials to respond. However, it is important to keep in mind that human rights advocacy does not always involve these international mechanisms; nor does it depend on the U.S. government having ratified human rights treaties. More commonly, domestic advocates use standards found in human rights treaties—whether ratified or not—as a basis on which to assess where government is falling short, and to develop national and state policies that would fill gaps in U.S. policy and practice.

Whatever the standard or strategy, the use of human rights implies a commitment to several *cross-cutting principles*, which U.S. advocates are applying with greater frequency to their own conduct as well as to the government’s. Such principles include the following:

- ▶ **Accountability.** The human rights standards require government to be *transparent* about information and decisions that affect people’s lives. People must know what those decisions are and understand how they were made.

The standards also require that governments establish mechanisms for *oversight and monitoring* of public institutions. Regional and international monitoring bodies are examples of accountability mechanisms unique to the human rights system, as are national human rights commissions.

- ▶ **Non-discrimination.** Human rights must be guaranteed without discrimination of any kind. This includes both intentional discrimination as well as policies that have may have an unintended discriminatory effect.
- ▶ **Indivisibility and interdependence.** The human rights framework treats civil and political rights as equal and indivisible with economic, social and cultural rights. It does so because rights are frequently interdependent. To take the example of domestic vio-

lence, for example, the civil right to security of the person—e.g., to leave an abusive relationship—is meaningless if an abused partner has no access to housing or financial means of support (economic rights). A woman’s ability to exercise her right to work often depends on access to education and the availability of child care (social rights).

- ▶ **Participation.** Several human rights treaties, such as the ICCPR and ICESCR, speak specifically to the right of people to participate in decisions that affect them. For participation to be meaningful, it must be underpinned by power sufficient to shape the dialogue and influence the outcome.

Why the U.S. government resists international human rights

Even though the United States played a leading role in the birth of the human rights system, many American administrations have resisted applying universal standards to their own conduct. This resistance emerged and has persisted for several reasons, three of which are discussed below in greater detail: U.S. exceptionalism, racism, and fear of socialism.

U.S. exceptionalism

For most of the 20th century, the United States’ status as a world superpower, with democratic traditions and a Constitution that enshrined individual liberties, allowed U.S. officials to assert that the country was a paragon of human rights virtue—an exceptional case, so to speak. As University of Chicago legal scholar Eric Posner puts it tartly, “The view going back 200 years is that we’ve figured it out and people should follow our lead.”¹

The United States is not alone in avoiding international scrutiny of its human rights record; many other countries do the same. Still, most objective observers would agree that few nations have exceeded the United States in stressing the importance of human rights standards abroad

while displaying relative indifference to their application at home. During the Cold War, influential voices attacked domestic supporters of international human rights agreements as un-American and naïve. Today, some politicians and commentators continue to insist that international treaty obligations—although they require the advice and consent of the U.S. Senate—undermine democratic prerogatives and subject the United States to “rule by” the United Nations.

As a result, the United States is the only Western democracy, and one of only eight countries in the world, that has not ratified the Convention on the Elimination of Discrimination against Women. It is the only functioning state that has not joined the Convention on the Rights of the Child. (That is not to say that all countries that sign approve such treaties are compliant. Some honor such treaties only in the breach.)

Those treaties the United States *has* ratified are subject to strict limitations on their enforcement via statements called “reservations, understandings and declarations” (RUDs), attached by Congress. These RUDs declare the treaties applicable only where consistent with U.S. law—thereby essentially defeating the point of ratification in the first place.

Over time, the assumptions underlying American exceptionalism have become harder to rationalize. This is especially true in the face of international and domestic backlash against U.S. anti-terrorism practices in recent years, and as other developed nations (including Australia, Canada and members of the European Union) move further ahead of the United States in terms of rights protection. Yet the legacy of exceptionalism looms large, in that the average American citizen, journalist and politician is unaware that the Universal Declaration of Human Rights exists, or that the United States has signed specific human rights treaties which are potentially more expansive than the Constitution’s Bill of Rights.² The process of achieving greater human

rights compliance in the United States will be slow and patchy as long as this remains the case.

Racism

Black American and Jewish leaders were active participants in the birth of the Universal Declaration of Human Rights in the 1940s, although these efforts would initially have little impact at home. The National Association for the Advancement of Colored People (NAACP) and other civil rights organizations, for example, met with fierce opposition when they tried to employ universal human rights principles and the new forum of the United Nations to challenge lynching and racial segregation. This resistance came primarily from lawmakers in the South, who accurately saw in human rights standards a threat to Jim Crow policies and the longstanding political marginalization of African-Americans. But resistance also came from liberal elites like Eleanor Roosevelt, who discouraged the NAACP from filing a petition at the United Nations out of fear that an emergent China and Soviet Union would wield the petition against American interests. Under the combined weight of racism and Cold War politics, the mid-century movement for U.S. accountability to universal human rights standards withered and died.

Sixty years later, racism continues to influence contemporary debates of issues with clear human rights aspects. It persists in the denial of assistance to poor renters in New Orleans, still struggling to return to their homes. Its influence can also be felt in the political reality that “universal” health care reform will exclude undocumented immigrants if it is to pass.

Fear of “creeping socialism”

From the onset of the Cold War, U.S. officials equated equitable economic rights with communism. This history and mindset partially account for the artificial separation of civil, political, social, economic and cultural rights into two

“This innate understanding that it is not the law but our status as human beings that demands that we be treated with equality and respect has been the driving force in every successful struggle in our country’s history.”

Larry Cox

separate treaties: one for civil and political rights (the ICCPR)—favored by Western nations—and another for economic rights (ICESCR), which were stressed by Eastern bloc nations. It is no accident that no major human rights treaties would be approved by the U.S. Senate until after the end of the Cold War, in the 1990s.

Yet American opinions and policies do not speak in one voice on the question of economic and social rights. For example, recent polling commissioned by The Opportunity Agenda, a communications think tank, indicates that substantial majorities of Americans today think that quality public education (82 percent); health care (72 percent); and a clean environment (68 percent) should all be considered human rights. It is worth noting, though, that the same poll also highlights the seemingly schizophrenic nature of American attitudes and perceptions regarding economic rights. Findings indicate that Americans across all races worry that framing health, food and housing in terms of rights will undermine an ethic of personal responsibility.³ Popular suspicion of big government and higher taxes, combined with a deep-seated reluctance to help the “undeserving poor,” further complicate discussions of social and economic rights. Finally, the recent pitched debate over health care reform underscores the reality that many Americans view entitlements as a zero-sum game, in which more rights for you mean fewer rights for me.

Why the United States needs universal human rights

The United States is an acknowledged leader in protecting core human rights, like those to free

speech, freedom of thought, and property rights. Yet there are numerous areas where the country fails to live up to universal human rights standards. Such areas include the following:

- ▶ in prison and detention policy, where there are no national, comprehensive standards for treatment of prisoners or regular, independent monitoring of conditions;
- ▶ in education, where large numbers of children of color in public schools are arrested or pushed out of school for minor misbehavior;
- ▶ in juvenile justice, where offenders under the age of 18 are routinely tried as adults and housed in adult prisons;
- ▶ in health care, where 45 million have no health insurance; and
- ▶ in employment, where agricultural and household employees have no right to a minimum wage, to overtime pay or to form a union.

The advocates profiled in this volume have decided to incorporate human rights into their work for different reasons. They interpret and apply the framework in different ways. As a whole, though, the case studies highlight several common benefits of human rights for social justice work in the United States: i) a fundamental emphasis on the dignity and equality of all people; ii) uniform, broad standards that clearly outline rights and require government to ensure their realization; iii) a framework for linking domestic social justice issues to a global system and context; iv) a way to unite multiple concerns and forge alliances among different constituencies; and v) increased levels of participation and leadership of those directly affected by violations.



Ajamu Baraka, executive director of the USHRN, addresses rally participants.

The claim to dignity and equality

The idea of human rights is compelling precisely because it is grounded in the most powerful claim to legitimacy: human dignity and freedom. “This innate understanding that it is not the law but our status as human beings that demands that we be treated with equality and respect has been the driving force in every successful struggle in our country’s history,” says Larry Cox, executive director of Amnesty International USA. He points, by way of example, to a famous photograph of striking sanitation workers in Memphis during the civil rights movement. The workers, all of whom were black, did not hold up signs citing the National Labor Relations Act; instead, the signs simply declared, “I am a man.”⁴

Forty years later, such assertions of dignity and equality flowing from our common status as human beings—regardless of color, wealth or citizenship—are enjoying renewed attention. They resonate powerfully with a new generation of black and immigrant youth, trapped in decrepit schools that resemble jails; with working class

people displaced from neighborhoods they can no longer afford; and with low-wage workers who are exploited because they lack adequate protections.

Long-time civil rights advocates such as Jaribu Hill of the Mississippi Workers’ Center for Human Rights have discovered that human rights can bring persuasive descriptive power to injustices—including, in Hill’s case, those she saw occurring in the shipyards and poultry processing plants of the Deep South. “When I came to Mississippi, we began using the term ‘human rights’ because it was the only thing that could describe people having to wear Pampers on the job because there were no bathroom breaks. That is an assault on personal dignity. You couldn’t talk about that kind of abuse in terms of civil rights.”

As the case studies on survivors of human rights violations in Part II illustrate, human rights can also broaden lawyers’ thinking about the nature of justice for their clients. “Lawyers think too narrowly about remedies,” observes Ann Beeson,

“When I came to Mississippi, we began using the term ‘human rights’ because it was the only thing that could describe people having to wear Pampers on the job because there were no bathroom breaks. That is an assault on personal dignity. You couldn’t talk about that kind of abuse in terms of civil rights.”

Jaribu Hill

a former litigator with the ACLU who now heads the Open Society Institute’s U.S. Programs. “Human rights remind us that sometimes what victims also want is the opportunity to be heard, to have their suffering acknowledged, and an apology.”

Broad standards

International human rights treaties often articulate stronger protections than U.S. domestic law in several respects, including the following:

- 1. Affirmative obligations.** Human rights standards provide a set of both negative rights (such as the duty of non-discrimination) that governments are required to respect, as well as positive rights that government is obligated to promote and fulfill. The duty to fulfill rights means that government must take proactive, measured steps to realize the equality of all people, and to eradicate hunger, poverty and disease. This concept stands in contrast to most domestic civil rights laws, which generally articulate only a right *against* discrimination.

For example, both the American with Disabilities Act (ADA) and the Convention on the Rights of Persons with Disabilities (CRPD) prohibit discrimination against disabled people. The CRPD goes further, however, by requiring government to fulfill the equality of disabled people by helping them to find employment and live independently. The CRPD also obligates governments to promote positive images of disabled people in the media.
- 2. Recognition of disparate impact.** Human rights norms tend to focus on equality of outcomes, whereas U.S. law often puts the burden on victims to prove that they suffered intentional discrimination. The emphasis on impact rather than intent offers strategic benefits to advocates working on issues such as racial justice, lesbian/gay/transgender rights and women’s rights, in an era in which discrimination is not always overt.

For example, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Convention on Civil and Political Rights (ICCPR) both require governments to address and eliminate racially disparate impacts of government policies, regardless of whether they result from intentional discrimination.
- 3. Access to social, economic and cultural rights.** Several human rights treaties obligate governments to progressively work toward the realization of economic, social and cultural rights, which are largely unavailable in U.S. Constitution or domestic statutes.

Governments are not expected to fulfill all these rights immediately or at the same time, but must make progress in doing so until they are completely guaranteed.

The Children’s Rights Convention (CRC), for example, guarantees children the right to adequate food, shelter and education to ensure their full development. While many state and local governments in the United States have established programs intended to alleviate child poverty, there is no right to minimum standard of living for children under federal law.

More generally, the Covenant on Economic, Social and Cultural Rights (ICESCR) requires countries to take proactive steps toward providing health care, education, nutritious food, adequate housing and fair wages for all residents. U.S. civil rights laws, by contrast, only prohibit discrimination in the spheres of housing, education and employment—and then only where intentional and based on specific, recognized forms of discrimination, such as race or gender.

Even though the United States has never ratified the ICESCR, that treaty’s articulation of a right to the highest attainable standard of health and decent housing nevertheless provides a useful yardstick for anti-poverty advocates to assess how and where U.S. policy in these areas must be improved. Diverse social justice organizations such as the Center for Reproductive Rights, the Environmental Advocates for Human Rights, the National Economic & Social Rights Initiative and the National Law Center on Housing and Homelessness are increasingly convinced that treating health and housing as privileges rather than rights is inadequate. They are therefore grounding their work in these areas in international human rights standards as well as domestic law.

A global system and context for advocacy

Advocates are gravitating to universal human rights standards in part because the world is shrinking. For social justice advocates, it is difficult if not impossible to advocate effectively on “domestic” social justice issues—such as the exploitation of immigrant workers, or the debilitating surge in mortgage foreclosures, or the trafficking of women into forced prostitution—without addressing the global economic forces that influence and underpin these problems.

It is no accident that some of the most effective uses of international human rights standards and mechanisms have occurred among immigrant domestic, day and farm laborers—such as those profiled in the chapter on the Coalition of Immokalee Workers, who work in industries that are exempt from U.S. labor protections. Technology is strengthening this global advocacy, allowing guest workers from India to text-message their government representatives back home about abuses occurring in Louisiana shipyards.

International human rights can also provide a useful yardstick for measuring American progress—or inaction—on a range of important issues and policies. For example, the United States is the only Western, industrialized nation without universal access to health care; youth continue to be sentenced to life in prison without parole, a draconian sentence which no other country in the world imposes.⁵ The death penalty continues to be applied in many states, years after the European Union made its abolition an absolute condition of membership.

A common frame for uniting concerns and constituencies

After three decades in which U.S. social justice organizations splintered into ever narrower areas of specialization, advocates are recognizing that a more integrated approach to advocacy is needed to protect the rights of people subject to multiple forms of disadvantage, as well as to effectively

influence national policy. For example, the Coalition of Immokalee Workers and the Border Network for Human Rights, profiled in Part I, consciously adopted a human rights framework because it better captured the range of concerns of their immigrant members, which included but extended beyond legalization.

However, some activists worry that human rights, with all its talk of universality, dilute a focus on the specific nature of problems like racism and sexism. Many of these activists remember a time, not so long ago, when major international human rights organizations based in the United States were content to focus on oppression overseas, essentially ignoring racial and gender injustice in their own backyard. Among some advocates, the suspicion lingers that the broad screen of human rights provides a dodge for those who prefer not to talk about race or gender.

Yet racial justice in particular lies at the center of much contemporary human rights work in the United States. This is evident in the case study on the coalition of 400 domestic organizations, profiled in Part III, which rallied in 2008 to demand that the United States comply with its commitments under the international race treaty. Today, most major civil rights organizations have in some way or other incorporated human rights into their lexicon and tactics. This includes the Lawyers' Committee for Civil Rights Under Law, which is incorporating international human rights law into its racial justice litigation, and the Leadership Conference for Civil Rights, which is seeking to transform an ineffective U.S. Civil Rights Commission into a Civil *and* Human Rights Commission.

These activists don't see human rights as a substitute for racial justice, or immigrant rights, or any other identity-based struggle. Nor do they believe it can succeed as a parallel movement for social justice. Instead, for an increasing number of domestic rights activists, human rights offer an

affirmative *enhancement* of their vision of equality. These advocates realize that thinking of race, gender, economics and culture in separate terms is simply no longer an effective response to the problems of people trapped in violent relationships or urban ghettos or impoverished Indian reservations. The human rights framework allows them to simultaneously address race and poverty, or poverty and gender, or culture and sexuality, etc.

For others, like the United Congress of Community and Religious Organizations or the United Workers Association, two organizations profiled in this volume, human rights provide a means of building multi-racial alliances across African-Americans, Latinos, Muslims, Asians and white constituencies. In the non-unionized car factories of the South, skilled black workers are making \$6-\$7 dollars an hour less than white workers. But even white workers are making less money than those in plants in the North. "We have to describe suffering in human rights terms, because it's attached to a model of plantation work that is no longer only race-specific," says long time advocate Jaribu Hill.

Multi-dimensional, participatory strategies

Human rights can be used in any advocacy venue. Therefore, the human rights movement includes lawyers drawn to its generally broader legal standards, which provide more entry points for policy change; organizers drawn to its principles of dignity and empowerment; and researchers focused on the documentation of violations. Advocates often combine these strategies in multi-disciplinary campaigns.

At this moment in the United States, perhaps the greatest value of human rights is being realized at the grassroots level, where it is inspiring people who live at the margins of U.S. society to demand and secure better treatment from their government(s) and employers. The participatory nature of human rights is displacing old "advocate-

client” models with one in which poor people and survivors of abuse are leading the struggle for change, and working in partnership rather than in deference to professional advocates.

Conclusion

The rising power and influence of human rights in the United States can be seen not just in the success stories chronicled in this report, but also in the growing numbers of domestic advocates who are employing the values, standards and strategies of human rights. Just six years ago, there was no national network of domestic human rights organizations; no organized funding mechanism for domestic human rights work; no significant use of international human rights mechanisms by U.S. advocates; and little sustained pressure on the government to comply with human rights treaties.

Today, the US Human Rights Network—founded in 2004 with 50 organizational members—includes over 275 organizations and 1,400 individuals. In 2004, the American Civil Liberties Union created its own seven-person human rights program, which actively uses human rights standards alongside the Bill of Rights in its work. The Bringing Human Rights Home Lawyers’ Network at Columbia University has doubled in size since its launch in 2001, and now includes over 300 members. A pooled philanthropic fund

for domestic human rights—the U.S. Human Rights Fund—has managed to raise several million dollars per year since 2005 to expand use of these methods.

Pressure for U.S. accountability to treaties it has signed is also intensifying. When a delegation of U.S. government officials arrived in Geneva to defend its compliance with the international race treaty (CERD) in 2008, it was greeted by over 125 domestic advocates, all armed with their own reports on racism and xenophobia in the United States. A national Campaign for a New Domestic Rights Agenda, which currently comprises dozens of U.S. social justice organizations and advocates, is working to create new monitoring and implementation structures within the federal government to assist agencies in meeting their human rights treaty obligations. The significance of this new domestic human rights activism is real: it means that for the first time, the United States is being held accountable at home to the human rights principles it so frequently promotes abroad.

Obviously, much more remains to be done to ensure government accountability for the dignity and equality of all people in the United States. With sustained leadership and better funding from those in and outside of government, this future is within our reach. These case studies begin to point the way.

PART 1:

Changing Policy and Improving Lives



CHAPTER 1:

The Campaign for Fair Food: The Coalition of Immokalee Workers and the Alliance for Fair Food

Appealing to basic principles of human dignity and universal human rights, a coalition of impoverished farm laborers and their allies win agreements for higher wages and better working conditions from some of the largest food corporations in America.

The starting place

Tomato picking is grueling work. In the United States, it nearly always involves migrant workers, who stoop from dawn to dusk in industrial fields. Most are paid at a piece rate—about 45 cents for each 32-pound bucket of tomatoes—that has barely changed in 30 years. With good weather, full vines and a fast arm, a worker can pick perhaps 150 buckets in 12 hours and still earn only \$50, well below the federal minimum wage. According to federal labor statistics, most farm workers make less than \$10,000 per year.⁶ On tomato farms, workers often pay exorbitant rents to sleep four or six men to a crowded, dilapidated trailer, ensuring that they remain in debt to their employers.

Sometimes there is no pay at all. Bosses have regularly refused to pay workers, and in several documented instances have held them captive in storage trucks or trailers locked from the outside.

This may sound like a Depression-era scene from *The Grapes of Wrath*, but in fact describes a reality of modern-day agriculture in America. In the past 12 years, the U.S. Department of Justice has brought seven prosecutions against agricultural

producers in Florida for enslaving workers, under a combination of 19th and 21st century anti-slavery laws.⁷ Over 1,000 people held in forced servitude have been freed as a result, leading one federal prosecutor to call Florida “ground zero of modern slavery.”⁸

Yet most of these abysmal conditions—the sub-poverty wages, the long hours without overtime, the substandard housing—are perfectly legal. New Deal labor reforms legislated in the 1930s explicitly excluded farm and domestic workers. Neither the overtime provisions of the Fair Labor Standards Act, for example, nor the National Labor Relations Act, which give American workers the right to form a union, prohibit these inhumane conditions for agricultural workers.

The success

U.S. law may still allow exploitation of farm workers, but a band of mostly undocumented migrant workers in Immokalee, Florida have successfully asserted their human rights to a living wage and fair treatment in the fields.

Now 4,000 members strong, the Coalition of Immokalee Workers (CIW) has negotiated an

impressive string of labor agreements with several Goliaths of the food industry—including Taco Bell, McDonald’s, Burger King, Subway, and Whole Foods. The labor agreements hold corporations responsible for ensuring the tomatoes they buy are not harvested through exploitative practices. The agreements:

- ▶ require corporate buyers **to increase, by one penny, the amount paid per pound of tomatoes**, which is to be passed on to the workers in the field. The penny-per-pound increase raises the wages of tomato pickers by over 60 percent, to 72 cents per bucket from 40 to 50 cents;
- ▶ **establish a human rights code of conduct** that forbids corporate buyers from purchasing produce from growers that are found to have used slavery, intimidation, violence and sexual harassment; and
- ▶ **establish an industry-wide mechanism for monitoring** pay and conditions in the fields, in which farm workers have a central role in monitoring.

CIW has achieved these remarkable victories through a “Campaign for Fair Food” that combines market pressure, human rights-informed messaging, legal strategies and organizing with students, churches and the federal government.

The strategy

Immokalee is a 3 stop-light town. It lies at the end of a two-lane highway in southwestern Florida, a stone’s throw but a world away from the 6,000-square foot vacation homes of nearby Naples. During the growing season, Immokalee’s population swells with thousands of Mexican, Central American and Haitian immigrants, drawn to the prospect of work in the surrounding vegetable farms.

Formed in 1993, CIW is a grassroots organization that works to empower its members to fight

for their rights to fair wages, respect from employers, and an end to exploitation. “We were clear from the beginning that this was a struggle for human rights, civil rights and economic rights,” said long-time CIW leader Lucas Benitez. “If you are working seven days per week and cannot maintain your family in a dignified way, that’s a violation of human rights.”

Human rights education. The human rights frame came naturally to CIW members, most of whom migrated from nations where international human rights, peasant movements and liberation theology are familiar concepts. During the season, 100 or more workers gather on Wednesday nights at CIW’s center to learn about their rights as workers. Every season, they pass out small blue pamphlets containing the Universal Declaration of Human Rights. Meetings emphasize that whatever U.S. law may say, there are universal legal frameworks that support workers’ dignity and rights.

Industry analysis. The centerpiece of Wednesday sessions, however, is a power analysis of the agricultural industry. “We follow the abuses that take place in the fields all the way up the chain, analyze who is benefiting from them in the end, and challenge those who have power to demand better conditions,” said Gerardo Reyes, a CIW member since 2000. Early on, CIW realized that targeting the growers themselves would not bring about higher wages. It was clear that a better target was the large restaurant chains and corporate supermarkets that bought in bulk. These corporations were able to exert their market muscle to secure lower prices for tomatoes—which thereby forced growers to depress wages. CIW decided it needed to demand accountability from the top of the food industry for abuses occurring at the bottom of its supply chain.

Fast food boycotts. In 2001, CIW launched a boycott against Taco Bell, a major buyer of tomatoes whose parent corporation, YUM! Brands, is the world’s largest restaurant holding company.

From CIW's perspective, the key to its success has been putting workers at the center of the advocacy, emphasizing human dignity, and partnering with allies who can bring different kinds of pressure on decision makers.

This decision was strategic: Taco Bell has an expanding number of restaurants on college campuses, and CIW sought to enlist students as partners in the campaign. Busloads of CIW workers traveled around the country on "Truth Tours," holding informational sessions with college students, people of faith and community groups, and picketing restaurants along the way.

International pressure. It was during this time that CIW began to internationalize its human rights strategies. In 2003, the organization received an award from the Robert F. Kennedy (RFK) Center for Human Rights. The award came with a cash prize of \$30,000 and a full-time RFK Center staffer to work alongside CIW to help meet its goals. The Center and the Coalition decided that the RFK Center could help CIW strategize international points of pressure, as well as leverage the Center's network of political and business elites. The RFK Center brought members of the Kennedy family to tour Immokalee. It wrote letters to corporate heavyweights who sat on the boards of major fast food companies.

The RFK Center also encouraged CIW to leverage pressure from large international investors in fast food companies. The Coalition's first target was Norway, a small country with a multibillion-dollar petroleum fund that had recently adopted a socially responsible investment strategy. The Norwegian Petroleum Fund had already divested from Walmart yet remained a major investor in McDonald's. The RFK Center brokered meetings between CIW and the Norwegian fund's officials, urging them to lean on fast food companies to change their practices. The Center also helped

CIW expand a strategy it had originated against YUM! Brands, the parent corporation of Taco Bell: showing up at shareholder meetings to protest abuses in restaurant corporations' supply chains, and lobbying for shareholder resolutions that demanded that the corporations comply with international labor standards.

Shortly thereafter, CIW began to utilize international human rights mechanisms as a means of getting major human rights organizations on board with its campaign. This strategy developed soon after the newly launched National Economic and Social Rights Initiative (NESRI), based in New York, began providing technical assistance on human rights to CIW. Strategizing together, CIW, NESRI and lawyers from George Washington University's Human Rights clinic decided to file a petition before the Inter-American Commission on Human Rights (IACHR).

The IACHR is a regional human rights body, chartered under the authority of the Organization of American States. It considers complaints of human rights abuses occurring in North, South and Central America. The IACHR has no enforcement mechanism, but its rulings are often persuasive nonetheless. Though CIW and its allies recognized that the Commission could not force the U.S. government to act, they believed that a public airing of the issues could have a significant positive impact. They saw a hearing before the Commission as a way of engaging the human rights community by building the visibility of the campaign in an international venue.



At the hearing, CIW members testified about abuses in the tomato fields of Florida. NESRI and lawyers at the George Washington clinic provided a legal analysis of farm labor abuses under international human rights standards. CIW also submitted reports on human rights violations in the U.S. agriculture industry to the United Nations Committee on Forced Labor, and met with International Labour Organization (ILO)⁹ representatives in Switzerland.

The turning points

Meanwhile, student groups were turning up the heat in the campaign to “Boot the Bell” from college campuses. Ultimately, students from 300 universities signed on to the Taco Bell boycott. Twenty-three universities succeeded in removing or blocking the opening of Taco Bell restaurants on their campuses.

CIW was simultaneously encouraging allies in the faith community—including the local Roman Catholic Diocese, the United Church of Christ, the Presbyterian Church (U.S.A.), the United Methodist Church, and ultimately the National Council of Churches, which represents over 50 million Christians—to join the workers in marches and direct actions. Churches also sent postcards and issued public statements demanding that Taco Bell work with CIW to end the exploitation of tomato pickers. CIW focused especially on organizing congregations in Louisville, Kentucky, where both YUM! Brands and the Presbyterian Church were headquartered.

In March 2005, on the eve of a peaceful protest in Louisville at which over 10,000 people were expected, YUM! Brands conceded to CIW’s demands. The company agreed to work with CIW to pay an extra penny per pound and to

“If we focus on the fact that we are immigrants, then it becomes a problem of just immigrants. If we say it’s a problem of housing or slavery, then it becomes only about that. Rather than isolate the problem as a separate issue, we are using human rights to share a wider vision of what we are pursuing, and why.”

Gerardo Reyes

terminate any grower in its tomato supply chain who tolerated abuse of farm workers. YUM! Brands later voluntarily expanded the agreement to cover all five of its chains, including KFC and Pizza Hut.

On the heels of its victory against Taco Bell, CIW immediately launched a new campaign against McDonald’s and then Burger King. McDonald’s entered into a settlement with CIW on similar terms in 2007 and added the important provision of establishing an industry-wide monitoring body. After a particularly intense and contentious campaign, Burger King settled in 2008. Agreements with Subway and Whole Foods followed in late 2008.

In 2009, CIW forged a groundbreaking agreement with Compass Group North America, the world’s leading food supplier to hospitals and universities. The pact exceeds the gains of earlier agreements by paying workers for every hour worked rather than by pounds picked; providing workers an immediate raise with the ultimate goal of a guaranteed minimum fair wage; allowing education of workers on their rights at work-sites; and permitting third party auditing of workplace conditions. Compass Group has also agreed that it will purchase tomatoes from only those growers and suppliers willing to meet the standards set out in the Code of Conduct and pass the raise on to their workers.

The human rights impact

What accounts for the remarkable success of this coalition of mostly non-English speakers, operating with a budget of less than \$900,000 per year?

From CIW’s perspective, the key to its success has been putting workers at the center of the advocacy, emphasizing human dignity, and partnering with allies who can bring different kinds of pressure on decision makers in a position of power. A robust understanding of human rights standards and tactics has been at the center of all these strategies.

International pressure to build visibility. The international advocacy efforts in Norway resulted in lots of good press, with Norway ultimately agreeing to make treatment of workers in fast food supply chains a top priority for human rights engagement. McDonald’s settled with CIW shortly before Norwegian officials began to formally consider divestment.

Meanwhile, the petition to the Inter-American Commission on Human Rights succeeded in bringing the mainline human rights organizations on board. NESRI reached out to Human Rights Watch, Amnesty International and other large human rights organizations, all of which signed a letter supporting CIW’s petition.

CIW used such endorsements strategically, to legitimize the campaign among students, academ-



ics, and high profile allies in Congress and the international community. Amanda Shanor, the RFK Center program officer who worked with CIW for several years, observed, “Going to the IACHR doesn’t cause the corporation to negotiate. But it is part of a strategy of building alliances and legitimacy.”

These endorsements would prove especially valuable in subsequent campaigns. During the Burger King boycott, for example, Amnesty International posted its endorsement letter on its website, a step that produced over 50,000 letters of protest to the company.

Human rights to build alliances. The fact that some workers were being held against their will and forced to work without pay clearly allowed the Department of Justice and other partners to grasp the situation as a fundamental violation of human rights that required response. But in each of these cases, CIW also used human rights principles to strengthen alliances and equalize power relationships. With the Department of Justice lawyers, for example, CIW has emphasized that workers want to be partners in prosecuting cases of slavery, not just victims who testify.

The Presbyterian Church (U.S.A.), home to 2.5 million members, became involved when CIW invited local congregations near Immokalee to support its work stoppage and a 240-mile protest march across Florida. Church members brought

food and water and made donations to needy farm workers.

Farm workers were thankful for the donations, but they challenged church members to be involved in a more useful way. According to the Rev. Noelle Damico, the church’s liaison to CIW, “They said, ‘We are grateful for your help, but why should men and women work seven days per week and not be able to provide for their families?’ We realized that our charity was just subsidizing the growers.” CIW told church members that it wanted their partnership, not their pity, and invited them to bring their leverage to the table.

For the church, the human rights message of dignity and basic rights—although not language native to its theology—resonated from the beginning. But church people, like most Americans, were accustomed to thinking about low wages as an issue of market forces, not of human rights. “CIW started off talking about slavery, which was a lightning rod that woke people up to the fact that this wasn’t just about bad working conditions,” said Damico. “But CIW would then talk about sub-poverty wages and degraded conditions as independent violations of human dignity that make slavery possible. It was a doorway to church people understanding the economic and social abuses as human rights violations, too.”

Students did not initially come to the CIW campaign because of human rights; most were attracted by the underlying theme of corporate accountability. But slowly, the students came to see human rights as the connective tissue that binds the work and partners together. “CIW’s messaging became our messaging,” said Meghan Cohorst, coordinator of the Student Farmworker Alliance. “I think over the past ten years, this campaign has educated a new generation of students about basic human rights, and led countless young people to organize for social justice.”

In some instances, however, the emphasis on human rights perplexed or confused potential allies. Had CIW used a labor rights frame for its work, for example, financial and tactical support from unions probably would have followed sooner. Unions such as the AFL-CIO and the Service Employees International Union (SEIU) have overcome their initial wariness of CIW, and now march in solidarity with its members. But this took time.

Similarly, immigrant rights groups and funders often ask why CIW does not adopt an immigrant rights frame. CIW’s Gerardo Reyes responds this way: “If we focus on the fact that we are immigrants, then it becomes a problem of just immigrants. If we say it’s a problem of housing or slavery, then it becomes only about that. But all of these things are the result of the lack of recognition of workers’ basic human rights. Rather than isolate the problem as a separate issue, we are using human rights to share a wider vision of what we are pursuing, and why.”

CIW backs comprehensive immigration reform and organized a 3,000-person march in Immokalee in 2006 in support. Yet it has refused to support bills that includes guest worker provisions. Tying workers to one employer encourages abusive treatment, say CIW members.

Obstacles and accomplishments

Although the food corporations began paying an extra penny per pound for tomatoes, the Florida Tomato Growers’ Exchange (FTGE), the cooperative that represents the majority of producers in the state, has threatened a \$100,000 fine against any member who passes along the extra wages to its workers.

More than \$1 million in wage surcharges currently sits, undistributed, in an escrow account. Resistance is eroding, however. In 2009, two growers who supply tomatoes to Whole Foods began to pay the penny per pound surcharge to workers in the fall picking season. A few months later, the third largest tomato producer in Florida resigned from the FTGE and agreed to participate in the agreements.

CIW’s corporate partners, as party to the agreements, are also beginning to hold growers accountable for mistreatment in the field. When abuses occur, CIW takes them straight to the corporations.

CIW is unique in using human rights-based arguments not just to stop abuses, but to create structural change in the agricultural industry by realigning power relationships among workers, their growers, and buyers. It is now refining a novel approach to industry monitoring that requires the participation of workers in enforcing a human rights-based code of conduct in the fields of participating growers. “Human rights started as a leadership development tool for CIW,” said NESRI’s Cathy Albisa. “It then moved into use of specific international human rights mechanisms, like the Inter-American Commission (IACHR), and then to using a common language of human rights with its partners. Now it’s become the very substance of what they are asking for.”

For example, the Code of Conduct for tomato suppliers draws on both U.S. law and standards issued by the ILO to extend beyond U.S. law to:

- ▶ provide for the progressive implementation of the right to freedom of association (conventions 87 and 98); and
- ▶ require wages above the mandated minimum wage.

The road ahead

Meanwhile, CIW is continuing its push for human rights agreements with more companies, out of a conviction that contracts with all of the major buyers of tomatoes will eventually force the Florida Tomato Growers Exchange to drop its opposition. The Coalition's current targets are the Chipotle restaurant chain and the Kroger, Ahold and Publix supermarket chains. CIW has also launched a "Sustainable Food" initiative to educate consumers that food should be not just grown organically, but also harvested in ways that respect human rights.

For CIW, a human rights frame was not a studied choice, but an obvious one. Nor do human rights mean a single strategy for CIW. "When we talk about human rights, we aren't necessarily talking about the UN Human Rights Commission," said CIW member Lucas Benitez. Instead, human rights bring a collective set of participatory strategies and principle of dignity that infuses all of the Coalition's work, whether it draws on U.S. law or international agreements. "Each Wednesday night meeting has a different theme," said Gerardo Reyes, "but it is always focused on human rights, and why it is important for people to be involved."

Lessons learned

- ▶ **Leadership development is an essential component of a fully participatory model of human rights.** CIW often uses popular education methods, like theater skits and drawings, to illustrate the power relationships and campaign strategy for members who are illiterate or who speak little Spanish or English. It translates complex economic analyses of corporate governance into simple language, in seven or eight Spanish or Mayan Indian dialects. CIW frequently uses video to instruct members and reach external audiences.
- ▶ **International advocacy strategies can bring visibility and pressure for local change.** "We use international human rights to give us more leverage when we want to share our message with people from all walks of life," said Gerardo Reyes. "Instead of just a small organization in a forgotten corner, we are an organization that has met with United Nations representatives and shared our stories in human rights tribunals."
- ▶ **Human rights can help to forge consensus.** Several of CIW's partners observed that its style is less adversarial than that of other U.S. grassroots organizations. "With CIW, it is less about us vs. the enemy, and more about the vindication of fundamental dignity," said Amanda Shanor, the former RFK Center program officer. This changed the tenor of CIW speeches and presentations and made them more persuasive. "It became less about picking sides than about supporting something that everyone can agree on."

CHAPTER 2:

School Discipline Reform: Community Asset Development Re-defining Education (CADRE) and the Dignity in Schools Campaign

Armed with human rights principles, a coalition of Latino and African-American parents challenged high rates of suspension to change how the Los Angeles Unified School District addresses student discipline. Their work helped to inspire a national Dignity in Schools Campaign which emphasizes the human right to mutual respect, the participation of students and parents, and the teaching of positive behavior skills as an alternative to zero-tolerance punishment.

The starting place

Zero-tolerance discipline swept into American classrooms in the 1990s, in the wake of several highly publicized school shootings and a war on drugs that stressed swift and harsh punishment for kids found with contraband in schools. By 1994, Congress had passed the Gun-Free Schools Act, which required all school districts receiving federal funds to expel any child who brought a weapon to school.

Along with hastening an increase in security officers and metal detectors in schools, a zero-tolerance culture of arrest and expulsion soon began to pervade many schools' responses to even minor misbehavior, like cafeteria food fights or talking back to teachers. Suspension and expulsion rates began to skyrocket across the country.

By 2005, suspensions in the Los Angeles Unified School District, the largest in California, had surged to eye-popping levels: 116,310 out of a total of 700,000 students in the 2004-2005 school year, with one local district suspending 34

percent of its student body over the course of that academic year.¹⁰ Los Angeles public schools were suspending thousands of children each year for vague and unspecific violations such as “defiance.” Suspension and expulsion put many of these youth on what advocates in the United States call the “school to prison pipeline,” given that suspended children are among the most likely to become high school dropout. These dropouts in turn are three and a half times more likely to be incarcerated.¹¹

Some school administrators recognized that the system was in crisis. Already struggling to comply with a consent decree requiring it to reduce suspensions of kids with disabilities, in 2006 the Los Angeles Unified School District (LAUSD) asked staff to investigate research-based alternatives to suspension.

The success

Within a year, the Los Angeles school board passed a new School-wide Positive Behavior

“A culture of dignity and human rights in education is fundamentally different from schools that say, ‘You get out because you don’t belong.’ Suspension doesn’t teach kids how to appropriately discuss things with an adult or negotiate with one another.”

Nancy Franklin

Support policy (PBS). At the insistence of parents, the new policy draws on human rights standards articulated in the Convention on the Rights of the Child by emphasizing that discipline must respect students’ dignity; must be administered without racial discrimination; must include parents and peers to participate in conflict resolution; and must hold schools responsible for teaching and modeling positive behavior and mutual respect.

The new policy declares that:

Every student, pre-school through adult, has the right to be educated in a safe, respectful and welcoming environment. Every educator has the right to teach in an atmosphere free from disruption and obstacles that impede learning. This will be achieved through the adoption and implementation of a consistent school-wide positive behavior support discipline plan for every school in LAUSD. All school level plans will include: teaching school rules and social emotional skills; reinforcing appropriate student behavior; using effective classroom management and positive behavior support strategies by providing early intervention for misconduct and appropriate use of consequences.¹²

The strategy

Sustained pressure from parents was critical to overcoming the resistance of teachers and principals to reforming zero-tolerance discipline.

Much of that pressure came from an unlikely place: South Los Angeles, the poorest area of the city, with neighborhoods plagued by high rates of school dropout and low rates of parent participation.

The epicenter of parent mobilization was a small grassroots organization called Community Asset Redefining Education (CADRE). Launched in 2001, CADRE was the brainchild of two women—Maisie Chin, a community organizer with six years of experience in school-community initiatives, and Rosalinda Hill, a parent with five children in the Los Angeles public schools.

Chin and Hill were angry. In their view, public school teachers and administrators treated parents as problems, rather than partners; for example, low-income parents were informed, rather than consulted, about their children’s educational plans, and were discouraged or excluded from classrooms.

“Parents have power, but are treated as inconsequential in their children’s schooling. Negative and racist attitudes toward poor parents in South LA were violating their right to hold schools accountable,” said Chin.

CADRE’s mission is two-fold: to support parents to have a voice in school policy, and to ensure that that all children receive a quality education, regardless of where they live. The group decided to focus first on discriminatory practices in school discipline and “push-out”—i.e., encouraging low-



performing students to drop out of school altogether. “We felt that this was a place where parents and schools could build shared power and shared leverage, because behavior in school is a mutual responsibility,” explained Chin.

The parent organizing was difficult in the beginning. Latino parents clustered on one side of the room, with African American parents on the other. Then Chin read a report from the Center for Economic and Social Rights on school accountability and human rights. “It put into a human rights frame the work we had been doing on standards of parental engagement,” said Chin. CADRE invited Liz Sullivan, the report’s author—who had by then moved to the National Economic and Social Rights Initiative (NESRI) in New York—to do focus groups and trainings on human rights with its members.

The NESRI training on human rights, together with sessions on Latinos’ and African-Americans’ shared histories of social struggle, helped bring the parents into closer alliance. Liz Sullivan recalls: “Human rights provided a unifying message—to see this not just as an issue for Latinos,

or African-Americans, but for all parents. It’s not about the failing of one parent or one kid, but the failure of an entire school system to educate children.”

“In the trainings, the light bulb moment was realizing that our kids didn’t have a guaranteed right to education,” said Roslyn Broadnax, a parent leader. Broadnax is referring to the fact that federal laws do not guarantee a child’s right to education—leaving school districts free to expel children without providing for an alternative plan for instruction. However, the international Convention on the Rights of the Child (CRC), which the United States has signed but never ratified, states that all children have a basic human right to a quality education. It also contains specific guidance as to the rights and responsibilities of parents, students and schools with regard to discipline.

What parents had come to see as the *status quo* in South LA was now reframed as a violation of human rights.

CADRE used these human rights standards to advocate for a new discipline policy. Members

The Convention on the Rights of the Child

The CRC and supplemental guidance from the UN Committee on the Rights of the Child speak to four guiding principles:

Full development of the child. Education must be aimed at the development of each child’s abilities to his or her fullest potential. School districts are to teach essential life skills, including how to resolve conflicts, develop good social relationships and responsibility.

Protection of human dignity. School discipline must be administered in a manner consistent with the child’s human dignity. This refers to creating an environment of mutual respect, and a

recognition of the importance of preventing disciplinary practices that cause physical harm or humiliation (Article 28 of the CRC).

Freedom from discrimination. Governments must guarantee the right to education without discrimination by race, ethnicity, sex, language, religion, disability or other status (Article 2 of the CRC).

The right to participate. The participation of parents, children and peers should be promoted in school disciplinary proceedings (UN Committee on the Rights of the Child, General Comment 2).

carried out a participatory human rights documentation project, going door-to-door in South Los Angeles neighborhoods and gathering stories from families about the impact of suspensions on their children’s right to education, dignity and participation in the school system. It produced a report on school push-outs and held a “South LA People’s Hearing” to share the findings. Modeled after a human rights tribunal, parents and students gave testimonies before a panel which included a member of the LAUSD Board of Education. The report and people’s hearing generated media attention, put pressure on the school board, and attracted new parent members to CADRE.

The turning points

Some administrators saw in human rights an opportunity to change school culture in a more constructive direction. Nancy Franklin, coordinator of behavior support in the LAUSD’s Division of Special Education, was one of them. “A culture of dignity and human rights in education is fundamentally different from schools that say, ‘You get out because you don’t belong,’” she

said. “Suspension doesn’t teach kids how to appropriately discuss things with an adult or negotiate with one another. We weren’t teaching those basic skills.”

CADRE members started showing up at Board of Education meetings, at which they called for a reduction in suspensions and an end to student push-out. Parents, newly trained in public speaking by CADRE, shared stories about their kids being suspended and taking weeks or months to get back into school.

CADRE also insisted that the LAUSD address racial discrimination, a core facet of human rights protection. While reviewing the subsequent analysis, “We saw differences in treatment for the same offense,” Franklin recounted. “At presentations, teachers and administrators went from saying ‘Maybe elsewhere,’ to being astounded at what the data showed was going on at their own schools.”

But other stakeholders in the system were skeptical about changing the zero tolerance policy. The teachers’ union feared its members would lose the right to discipline troublemakers. Some

principals worried that retreating from zero tolerance would endanger students and teachers. Many administrators wanted a disciplinary policy that looked like that of other large school districts.

CADRE and its allies insisted that discipline was as much about teachers' response as it was about students' behavior. The day before the vote on the new policy, the *Los Angeles Times* ran a story about CADRE and its campaign. The story helped reframe the public debate from whether the policy was harsh enough to the need for a protocol that promotes mutual respect in schools.¹³ Despite a call from the teachers' union to postpone a vote and toughen the disciplinary guidelines further, the Positive Behavior Support (PBS) policy passed two weeks later, in March of 2007, with minor changes.

The human rights impact

Human rights standards in policy development. Using the CRC as a guide, CADRE parents successfully advocated for standards that require:

- ▶ **Participation of all stakeholders.** The new policy states that “the successful implementation of this policy is everyone’s responsibility. Every student, parent/caregiver, teacher, administrator, school support personnel. . . and community member engaged in educational activities has a role to play.” The policy mandates training on PBS for parents, and encourages them to hold schools accountable for maintaining a welcoming climate conducive to learning.
- ▶ **Positive expectations and alternatives.** The policy mandates “positively stated rules that are taught, enforced, advocated and modeled at every campus,” as well as the consistent application of alternatives to suspension.

- ▶ **Regular monitoring and transparent reporting.** The policy requires ongoing data collection on suspensions and expulsions, disaggregated by race and publically disseminated.

The policy does not explicitly reference human rights or the CRC, however. CADRE agreed to hold off on pushing for human rights language to be included in the policy, in order to avoid alienating elected officials. “Bottom line, the school board supported PBS because it was good and reasonable policy,” said Maisie Chin. “We dropped the fight over human rights language when the focus was passage, knowing that we would absolutely go back to it when monitoring the policy’s implementation.”

Human rights-based leadership development. Periodic human rights trainings have been essential in helping parents exercise their right to participate, by teaching them how to engage constructively with school officials. Emma Aleman, a Spanish-speaking parent with a child in special education, said of school personnel, “In the past, I would listen to them and bow my head like they have all the answers. Now I know that I can question them too. I know what to ask for and what to expect. I can talk to a superintendent or a principal.”

LAUSD administrator Nancy Franklin is convinced that this level of parental participation is critical to ensuring accountability from school district officials. She said, “CADRE’s work to empower parents is hugely useful in implementing the policy equitably. If you are an affluent parent, you’re likely to attend a suspension conference with your attorney. Those parents ask, ‘What is your plan for my son while he is home? How will he make up missed work?’

“The key is helping families who do not have those resources to articulate what they want for their children in a way that is assertive and demands accountability, without being aggressive,” Franklin added.



Obstacles and accomplishments

The PBS policy is currently being implemented in LA schools, so there is as yet no data on its impact. Some advocates caution that PBS policies alone may be insufficient to reduce discriminatory discipline. Judith Browne-Dianis of the Advancement Project, one of the first groups to challenge zero-tolerance policies, urges advocates to also reform the disciplinary code for minor infractions and to closely monitor whatever policy is in place for patterns of racial discrimination.

Since the passage of the policy, CADRE has focused on referrals to principals' offices, an early indicator for suspension and expulsion. CADRE is insisting that the district collect and make this data public by school, race of the student, and type of incident.

CADRE has also emphasized the importance of monitoring excessive discipline through participatory action research. "In true human rights fashion, the monitoring and research will be led

by our parents," said Maisie Chin. The findings will be presented in a shadow report to educators, parents, and the media at a briefing planned for June 2010.

Finally, CADRE also demanded compliance with human rights principles of transparency—insisting, for example, that the school district develop a parent manual on PBS that is translated into different languages.

The road ahead

The reforms in Los Angeles helped to spur the growth of a national Dignity in Schools Campaign (DSC), launched in 2006. DSC is a coalition of community organizers, teachers and legal advocates, including the ACLU, the Advancement Project, the Southern Poverty Law Center and the NAACP Legal Defense & Educational Fund.

DSC promotes human rights principles, Positive Behavior Supports (PBS) policies such as that implemented in Los Angeles, and restorative jus-

tice measures such as peer discipline committees and jury programs (now being piloted in Denver and Chicago) as an alternative to zero-tolerance suspension. One priority is pushing for a federal Positive Behavior for Safe and Effective Schools Act, which would provide funding incentives for schools that adopt PBS approaches. The draft legislation incorporates principles drawn from the Convention on the Rights of the Child and is intended to balance the need for discipline with the right of children to full development and dignity.

The Dignity in Schools Campaign is also helping to reframe members' work in human rights terms. Just a few years ago, advocates tended to talk exclusively about ending "zero-tolerance discipline" or the "school-to-prison pipeline." This language seemed neither to describe the problem adequately (because many children do not end up in jail but are still poorly served by the harsh discipline) nor to imply a solution.

"The message was reinforcing a criminal justice frame, even though the problem was really a failure of education," said Liz Sullivan of NESRI. "Human rights provide a proactive frame to communicate the kind of alternative policy that we want and children need—one based on human dignity, participation, and mutual respect between students and teachers."

Lessons learned

▶ **A human rights approach offers a positive vision for all stakeholders.** It is important to emphasize the beneficial effects of a human rights policy for educational outcomes, and for the entire school community.

The Dignity in Schools Campaign, for example, has successfully recruited educators to the coalition by emphasizing the importance of mutual respect between teachers and students.

- ▶ **Human rights standards can help to forge common principles for action and leadership.** Among groups with seemingly different interests, using a common set of principles is useful in forging agreement on broader-scale change. This is even more important when the goal is to involve traditionally excluded stakeholders, such as low-income parents.
- ▶ **Participatory documentation helps to get the attention of administrators.** Testimony from CADRE-trained parents compelled attention. They spoke about children who were suspended for weeks or months, without notice, counseling, or a future educational plan. "Board members who were checking their Blackberries during meetings sat up and listened," recalled LAUSD administrator Nancy Franklin.
- ▶ **Transparent monitoring of data is critical to implementation and central to a human rights approach.** Analyzing and monitoring data about who is being referred to principals' offices for discipline, suspension, and expulsion—and why such referrals are made—are crucial steps in implementing PBS effectively. Such efforts also allow school districts to demonstrate to parents that they are accountable, and are making changes based on data.

CHAPTER 3:

The Human Right to a Living Wage: The United Workers Association's Camden Yards Campaign

A community organizing association uses human rights values to build a multi-racial membership of low-income workers. Its first big success was winning a living wage for janitors at Baltimore's Camden Yards baseball stadium.

The starting place

The United Workers Association traces its formation to 2002, when temporary day laborers began to use an abandoned firehouse in Baltimore, Maryland as a makeshift shelter. Although several of the men and women living there had found full-time work cleaning up after baseball games at Baltimore's famed Oriole Park at Camden Yards, they still could not afford basic housing, health care or even regular meals. Frustrated with working long days and still struggling to survive, the residents of the old firehouse began to convene weekly meetings to discuss the root causes of poverty and how they could exert their collective power to overcome their individual miseries.

One of the primary problems was that state and local wage laws did not protect temporary workers like those at Camden Yards. Maryland had just passed a law that mandated state contractors pay employees in the Baltimore-Washington corridor \$11.30 an hour. However, the law did not apply to either part-time or temporary workers. Camden Yards workers also could not benefit from Baltimore's living wage law, which guaranteed \$9.62 an hour. The stadium was

owned by a state entity, the Maryland Stadium Authority (MSA), which was exempt from the law.

MSA awarded its cleaning contracts to an out-of-state facilities management company. The facilities manager in turn used local temporary employment agencies to bring in stadium workers, who would pick up trash, clean the locker rooms, and sanitize the bathrooms after games. With such an indirect chain of responsibility, the workers were vulnerable to exploitation by temporary agencies that were competing to keep their bids low.

The list of exploitive behaviors was long. Prospective workers had to line up for up to two hours each day, in hope of getting work. Agencies often took a cut of workers' wages to pay for basic supplies and transport to the stadium, and denied responsibility for medical treatment when workers were injured on site. Black workers were threatened with replacement by Latinos if they complained about pay or working conditions. One temp agency fired all of its African-American workers and then hired an exclusively

immigrant workforce. Spanish-speaking workers were restricted to work that occurred after the games were over, and paid even less. Women endured sexual harassment on the job. All workers were bringing home an average of \$4 to \$7 an hour—about the cost of a hot dog at the stadium.

The success

Using the *Poor People's Economic Human Rights Organizing Model*, a leadership development strategy developed by the University of the Poor and the Coalition of Immokalee Workers (see Chapter 1), the newly formed United Workers Association waged a three-year campaign to secure higher wages and better working conditions for Camden Yards workers. Its efforts resulted in two concrete victories:

- ▶ In 2007, MSA voted to re-bid its cleaning contracts to those agencies that would pay at least Maryland's living wage. The mandate **increased hourly pay to \$11.30** for all janitorial workers at Camden Yards.
- ▶ During the following year (2008), the United Workers Association led a **successful union drive** at Camden Yards that put in place formal grievance procedures and other protections against harassment and exploitation.

The strategy

Organizing temporary workers at Camden Yards presented several challenges. There was high turnover, and given the role of multiple temp agencies in hiring, workers felt little affiliation with any single employer. Moreover, because Latino, black and white workers were encouraged to compete with one another, there was no unified constituency ready to be mobilized.

Appealing to principles of universal human rights, the United Workers Association began the hard work of developing a member base that crossed diverse ethnic and racial constituencies.

It cultivated key alliances with faith and student groups, and carefully considered which pressure points would be most effective. Association organizers decided to concentrate on lobbying state legislators and a newly elected Democratic governor to bring temporary workers under the protections of the state living wage law.

United Workers Association members visited state delegates and senators in Annapolis, the state capital, targeting those who sat on the House and Senate budget subcommittees which oversaw MSA finances. The increased presence of the United Workers Association in Annapolis provided new opportunities to negotiate directly with MSA staff and to restate workers' demands for improved workplace conditions and equitable pay.

The United Workers Association also placed significant emphasis on building public awareness and support. For example, it organized a five-day, statewide tour that included workshops and rallies. Thirty members and allies staged simultaneous protests at Camden Yards and at another MSA-owned site in a nearby city. Workers then returned to Baltimore for a mass march and a kickoff concert titled "Summer of Unity." With street theater, musical performances, and gospel singing, 400 workers and allies brought visible attention to human rights violations occurring at Camden Yards.

By the close of the statewide tour, the Association had a committed membership of 1,000 workers and several student, labor and faith groups firmly supporting their cause. On August 15, 2007, the United Workers Association announced that 15 of its members and allies would begin a hunger strike on Labor Day, unless MSA entered into negotiations with stadium workers. The fresh round of media publicity opened the door to meetings with dozens of legislative leaders, including those who had led to push for the state's living wage law and had direct influence over state contracts at Camden Yards. The media



coverage also culminated in the Association's first face-to-face meeting with the governor, during which its members communicated the scope of human rights violations at Camden Yards.

These meetings substantially altered the dynamic with MSA. Instead of negotiating with MSA staff, the United Workers Association now had a direct line to the chairperson of MSA's board of directors, and received his assurance that he would support a living wage for Camden Yards workers.

The turning points

A key turning point occurred two weeks later, at a gubernatorial press conference commemorating the state's newly passed living wage law. In his remarks on the wage law and its protections for workers, Gov. Martin O'Malley explicitly called on MSA to follow both the spirit and the letter of the living wage law.

With the governor on board, UWA's campaign quickly came to a conclusion. On September 8,

2007—three years after UWA began its campaign—MSA voted 5-2 to re-bid the cleaning contract to agencies willing to pay no less than the state's living wage of \$11.30 an hour.

The human rights impact

So how did human rights help carry the United Workers Association from an abandoned fire-house to winning the first living wage contract for temporary workers in Maryland? The campaign drew less heavily on international law standards than some others profiled in this volume. Even so, the values of human rights and an unwavering commitment to universal dignity infused all of its core strategies: membership recruitment, community building, and leadership development.

Human rights-based membership development. Todd Cherkis, a leadership organizer with the United Workers Association, describes human rights as a central principle in developing members. The organization is committed to achieving dignity and respect for all members, and it delib-

“When you start organizing people around human rights, they start having the same vision for change. He’s a human being and I’m a human being, and together we will fight for respect and dignity.”

Luis Laren

erately uses human rights language in outreach and recruitment. Staff and UWA members visited Camden Yards and asked workers about the conditions there. Were they being paid enough to feed their families? Could they afford even basic health care and clothing? Did they feel safe and respected on the job?

Home visits are an important means of follow up that help to build trust and personal relationships, said staff and members. During a home visit, United Workers Association members make it clear that they are interested in more than whether employers are following the wage law; they also want to know if workers’ human rights are being protected.

The Association’s inclination to describe the poverty wages and degraded working conditions as human rights violations—essentially offering an alternative vision of economic human rights for all people—also helps to build trust, community and solidarity with prospective members. “The human rights framework is really about values, and our demands are an expression of those values,” said Todd Cherkis. “It is what gets people in the room to overcome division and gets us to a place of having that first conversation.”

Human rights values in building cross-racial community. The United Workers Association membership is largely composed of Latino immigrants and African-Americans, who initially came to the organization with pre-conceived ideas of each others’ circumstances. Cherkis attributes the Association’s success in uniting diverse and sometimes oppositional communities to an underlying commitment to the values of human rights. Rather than simply brush past these differences or view them as barriers, Association members

undergo a deliberate process of exploring and understanding them.

Retreats and community events are regularly scheduled, and become a space in which members can meet each others’ families, eat Latin American and soul food, and share their distinct life experiences. The Association has even sent some of its native-born U.S. members to Central America, where they tour Latino members’ hometowns and learn about the local conditions that prompted residents to seek work in the United States. The United Workers Association is also committed to becoming a bilingual organization, so that all members feel equally enfranchised. Spanish-speaking members are strongly encouraged to learn English, and English-speaking members, Spanish.

As Luis Laren, a leadership organizer from Guatemala, explained, “Latino workers used to feel that African-Americans have more opportunities, but then we learned about police abuse issues and the barriers that ex-offenders face. We talk about immigration issues, and African-Americans come to understand our limits and our hardships better. When you start organizing people around human rights, they start having the same vision for change. He’s a human being and I’m a human being, and together we will fight for respect and dignity.”

Veronica Dorsey, an African American leadership organizer and long-time resident of Baltimore, agreed. “We can’t demand respect if we don’t respect each other. The Association builds that bond of self-esteem and awareness of what we represent—dignity and respect. If that doesn’t start at home how can we expect it back?”

Human rights in leadership development. The United Workers Association takes seriously the participatory aspect of human rights organizing. It employs the *Poor People's Economic Human Rights Organizing Model*, a leadership development strategy refined by the University of the Poor, the former training school of the Poor People's Economic Human Rights Campaign. These leadership trainings have enabled workers to view their experiences—of being marginalized, severely underpaid, and exploited—as a reflection of where political and economic power is centered, and not simply as personal misfortune or lack of effort.

Members describe their participation in the United Workers Association as a two-way exchange: their participation brings people power and commitment to the organization, while the Association provides them with political education and new skills, through three mutually reinforcing leadership development programs. One of these programs, the Leadership Forum, is open to all interested members; it is responsible for community building and educational programming. A second track, the Cooperative Development Project, trains members to develop and sustain cooperative enterprises. It seeks to build a green cleaning service that allows members to utilize their skills and reduce their dependency on temporary agencies for income.

The third program, the New Organizers' Project, is the Association's most advanced leadership development program. Open to approximately six members each year, it is a paid training program that provides a basic orientation to human rights organizing, as well in-depth instruction in political and economic theories of poverty. During the second year, participants receive instruction on skills needed to carry out campaigns, such as media messaging, public speaking, membership outreach, and strategy development. Over the third year of the program, participants are expected to produce a dissertation that

is subsequently reviewed by a committee drawn from the local community.

Obstacles and accomplishments

When the workers returned to Camden Yards in the spring of 2008, they were in fact paid an hourly wage of \$11.30. However, poor treatment of the workers continued. The United Workers Association therefore led one more push to support workers at Camden Yards.

During the course of the baseball season, members carried out a successful union drive, with over 80 percent of the workers voting to form a local American Federation of State, County and Municipal Employees (AFSCME) branch among stadium workers. This was the first union contract to be signed among Camden Yards workers. Since then, over 300 of the United Worker Association members have signed up for union cards. Workers have job contracts and wages in writing, and are able to access a formal grievance procedure that protects them against harassment and exploitation.

The road ahead

The Camden Yards victory was gratifying, but marked only the beginning of the United Workers Association's work.

After surveying workers in Baltimore's different industrial sectors, the Association identified restaurants at the Inner Harbor—a popular tourist destination on the city's waterfront—as a major source of human rights violations. Workers at several Inner Harbor restaurants reported poverty-level wages, withheld tips, unpaid hours, lack of health care and sexual harassment.

In October 2008, the United Workers Association announced a new campaign to support those workers. While the campaign at Camden Yards focused on increasing wages, the Association's work at the Inner Harbor explicitly seeks to

secure a broader set of human rights, including access to health care, education *and* a living wage for all workers. In a ceremony marking the continuation of their efforts and the development of new leaders in the struggle, Association members and staff marched from the famous ballpark—which now recognized the workers’ human right to decent pay and safe working conditions—and passed a flag to restaurant workers that declared Baltimore’s Inner Harbor a “human rights zone.”

The organization’s successful use of human rights has prompted other social justice groups to reconsider their strategic frame. The Maryland Legal Aid Bureau, a key ally and partner profiled in Part IV, has adopted human rights as a new strategy to improve its representation of the state’s poorest residents. The United Workers Association is also supporting other organizations that focus on the leadership of the poor, including an alliance of taxicab drivers in Philadelphia.

When the work begins to feel overwhelming, Veronica Dorsey reminds herself, “We are tired of band-aid solutions. This is about ending poverty, and I need to be part of the United Workers Association because of that.”

Lessons learned

▶ **Emphasizing human rights values of dignity and equality is an effective way to reach a disjointed group of workers.** In labor organizing, human rights can help to transcend the lack of strong ties to a single employer or job site.

▶ **Human rights education of poor people was crucial to the overall success of the campaign.** The core of the United Workers Association’s efforts is on building leadership skills from within its own membership base. This approach builds sustainable leadership in an otherwise transient community. It is not a simple strategy, however; it requires a commitment to reserving time for all participants to reflect and methodically strategize together.

▶ **Human rights require monitoring and governing structures, upfront.** The workers at Camden Yards experienced a setback after they won the living wage campaign because there was no grievance procedure in place to process complaints or enforce their workplace rights. With this in mind, the Association is creating worker-led human rights councils among workers in the Inner Harbor. When a worker complains to the council, workers from other restaurants have agreed to protest the conduct, thereby protecting individual workers from retaliation and cultivating solidarity within the membership.

▶ **Human rights movement building requires time and multiple-year funding.** The United Workers Association credits part of its success to funders who provided long-term funding and the capacity to carefully plan and execute a strategic campaign. Educating funders about the value of human rights in empowering marginalized communities has been a crucial part of its work.

CHAPTER 4:

Racial Profiling at the Border: The Border Network for Human Rights and the American Civil Liberties Union

A grassroots organization of human rights promoters joined forces with the nation's largest civil liberties organization to bring international attention to law-enforcement abuses in one of the largest cities on the Texas-Mexico border, and to end racial profiling by a local sheriff.

The starting place

El Paso, Texas is ground zero in the battle over U.S. immigration policy. A city of 750,000 people, El Paso lies just across the Rio Grande from Ciudad Juarez, Mexico and is one of the most heavily used crossing points on the 2,000-mile long international border. From most vantage points in the city, it is possible to see a brown steel wall rising in the distance. This is the highly controversial border fence ordered by President George W. Bush during the 2007 debate over immigration reform.

This stretch of the U.S.-Mexico border increasingly looks and feels like a war zone. The ranks of the U.S. Border Patrol, a law-enforcement division within the Department of Homeland Security, nearly doubled from 9,000 officers in 2000 to more than 17,000 officers in 2009. Today, there are 2,700 Border Patrol officers stationed in the El Paso region alone.

The militarization of the border has had serious implications for the quality of life of poor Latinos in El Paso. Ten years ago, federal Border Patrol agents frequently stormed into the yards or

homes of Latino families in poor neighborhoods, without warning or warrants, demanding to see papers.

Life became even more complicated for these residents when local law-enforcement authorities joined in the pursuit of illegal immigrants. In 2005, El Paso's long-time sheriff began participating in a state- and federally financed initiative called Operation Linebacker. The initiative was supposed to target violent criminals and drug traffickers at the border. It had far wider impacts, however, as sheriff's deputies began stopping people in poor neighborhoods of east El Paso for minor traffic violations, asking for Social Security cards. Officers set up roadblocks to question drivers and passengers, and raided private homes and businesses in search of illegal immigrants. Anyone who could not produce identification was turned over to the Border Patrol.

As far as residents of east El Paso were concerned, the anti-crime offensive amounted to ethnic profiling of brown-skinned people. An investigation by *The El Paso Times* confirmed this impression. It revealed that in the first six months of 2006, sheriff's deputies had turned

4,756 undocumented people over to the Border Patrol for civil immigration violations, but that only a fraction of these arrests involved drug or other criminal charges. For every drug arrest, sheriff's officers had detained seven undocumented immigrants.¹⁴

The success

Using human rights participatory documentation as a principal strategy, the Border Network for Human Rights (BNHR) and its allies have reduced complaints of Border Patrol harassment by over 70 percent.

The Border Network and allies from the American Civil Liberties Union (ACLU) also successfully leveraged international shadow reporting on civil and political rights to pressure the local sheriff to discontinue the abusive policing operation.

The strategy

BNHR occupies the ground floor of a squat stucco building in east El Paso. Founded in 1998, the Network was organized to confront abuse and harassment of Mexican immigrants in border communities. Its larger purpose, however, is to facilitate the education, organizing and participation of marginalized residents to promote their human right to dignity and equality.

Today BNHR's membership is about 600 families of mixed legal status—that is, citizens, legal residents and undocumented people. According to Director Fernando Garcia, "We are fighting the notion that undocumented immigrants have *no* rights, and working in a context of militarized law enforcement."

BNHR's work flows from three sources: i) the human needs and real-life experiences of immigrant communities living in border states; ii) the Universal Declaration of Human Rights; and iii) the U.S. Constitution—particularly the right to

free speech, the right against unwarranted searches and seizures, and the right to due process and equal treatment.

BNHR views human rights as essential to its central mission of mobilizing community members. "Human rights offer us a powerful role for participation by communities through action and direct consultation," said Garcia. "Traditionally, organizations are built with a board of directors that defines the priorities from the top. The challenge is to create a truly representative network that has the voices of communities at the table."

Garcia speaks from experience. BNHR emerged in the 1990s from a more traditional advocacy group called the Border Rights Coalition. The coalition was convened by lawyers and professional activists, and employed a staff member who did Know Your Rights trainings and wrote reports documenting abuses.

When Garcia took over the leadership in 1998, he changed the name to the Border Network for Human Rights and steered the organization in a different direction. BNHR adopted a charter organized around 14 essential principles, drawn from the Universal Declaration of Human Rights, which speak to the right to education, health care and the right to integrate, among others.

BNHR also adopted a more participatory approach. It began providing intensive leadership training to develop human rights *promotores*—human rights promoters—who would be responsible for forming local human rights committee in their own neighborhoods.

BNHR now has around 60 human rights promoters and 26 human committees scattered across western Texas and southern New Mexico. The human rights committees—many of them based in extended families—meet each week to discuss problems and how to respond to them. Documentation of human rights abuses is no longer delegated to professional experts. Instead, it is a community-wide event; people knock on



doors and set up reception tables during an intensive one-week period when testimonies are taken.

All 4,000 members vote each winter to elect a steering committee, which helps to set the policy agenda for the organization. Elected leaders develop recommendations, which are then taken back to local human rights committees and to a group of volunteer lawyers, who refine them.

The turning points

The shift to participatory methods in the late 1990s slowly began to curtail abuses by Border Patrol officers. As the number of active human rights committees began to grow, relations between the federal Border Patrol and local residents began to improve. When residents began hanging banners that declared their membership in BNHR, patrol officers who once stormed into homes late at night would drive by but not come in. Complaints about the Border Patrol dropped by over 70 percent during a five year period.

The shift to participatory documentation methods also raised BNHR's credibility and influence with the Border Patrol. "In the 1990s, we were perceived as loony tune activists giving the Border Patrol a bad name," said Fernando Garcia. "Now people cannot say that, because it is community members doing the talking and the documentation." Community leadership also improved the quality of the Border Network's reporting, Garcia added. "People have more trust to talk to a fellow community member than someone from a distant office."

But just as harassment from the Border Patrol was diminishing, racial profiling by local law enforcement—the sheriff's office—began to escalate in 2005. Leo Samaniego was an elected sheriff of long standing. He enjoyed strong support from El Paso's mayor at a time of rising anti-immigrant sentiment.

Through its regional network of organized committees, BNHR was quickly able to mobilize 6,000 signatures on a petition demanding that

The International Covenant on Civil and Political Rights

The ICCPR was adopted by the UN General Assembly in 1966 and ratified by the United States in 1992. The treaty requires signatory countries to respect and ensure:

- ▶ the right to life and freedom from arbitrary execution, torture and slavery (Articles 6-8);
- ▶ equality before the law, without regard to race, color, sex, language, religion, political or other opinion, national or social origin property, birth or other status (Articles 26, 27);
- ▶ freedom of speech and association (Article 12);
- ▶ freedom from arbitrary arrest and detention (Article 9); and
- ▶ the right to political participation and the vote (Article 25).

Samaniego be removed from office. Members rallied to document cases of harassment and questionable stops. One 73-year-old woman described being questioned about why she was walking in her own neighborhood. Another respondent described a climate of fear so pervasive that a neighbor was unwilling to call the police when her daughter was raped. Newspaper surveys following coverage of BNHR reports showed that 60 percent of El Paso residents opposed the stop-and-question policy.

Facing mounting criticism, in early 2006 Samaniego announced that he would temporarily suspend roadside identification checkpoints. But he insisted he was just following the law, and that other elements of Operation Linebacker would continue.

Use of United Nations mechanisms. Soon after, in the spring of 2006, ACLU staff from the Texas affiliate and national headquarters in New York came to El Paso to host a workshop for advocates on racial profiling and human rights. The training was part of an ACLU-wide effort to introduce human rights concepts and tools to its local affiliates and allies. Staff was gearing up to submit a shadow report to the United Nations Human Rights Committee on the United States' compliance with the International Covenant on Civil and Political Rights (ICCPR), a treaty ratified by Congress in 1992. The ACLU was determined to include as much information as possible

about the rise in police profiling of immigrants after 9/11.

The ACLU urged BNHR to submit its own, more detailed record of what was happening in border regions. Within days, the network had put together a 23-page report. In Geneva, Switzerland, the ACLU lobbied members of the United Nations Human Rights Committee to address the militarization of the U.S. border and its impact on the human rights of local residents. The issue caught the attention of the commissioner from Argentina, who asked for more detail before the next day's hearing. BNHR hurriedly e-mailed responses from El Paso, in Spanish and English. During the hearing, commissioners sharply questioned U.S. government officials about the situation in El Paso and other border communities.

Back home in El Paso, the headline in the local Spanish language newspaper declared, "ACLU and local activists take sheriff to the UN for racial profiling." The drumbeat of local coverage put pressure on the mayor and legislators in Austin, the state capital, to rethink support for the policing initiative, which was later de-funded.

The human rights impact

BNHR's success in stopping abusive policing illustrates the power of both human rights organizing and creative advocacy around international human rights treaties. Because the United States

“We are invested in immigration reform, but our people aren’t only facing a lack of papers—we are also facing other human rights struggles, in regards to housing, health care, and education. We need to connect to those struggles to make larger change.”

Fernando Garcia

is obligated to report to the United Nations every four years on its compliance with treaties it has signed, this creates an opportunity for U.S. advocates to bring international scrutiny to human rights abuses occurring in places with large numbers of politically marginalized residents, like El Paso.

The international advocacy before the UN Human Rights Committee was a catalyst, but it is clear that the win would not have been possible without sustained organizing on the ground, before and afterward. Fernando Garcia said, “The press around the shadow report was very useful: people locally and internationally started paying more attention. But if we didn’t have the community organized, and hadn’t built key alliances around the human rights framework, the shadow report wouldn’t have worked.” Chandra Bhatnagar, a staff attorney with the ACLU, agreed. “The local folks drove the bus; we were allies helping to get information to new parties.”

In its early years, BNHR also had to navigate tensions with local immigrant rights groups over its decision to reconstitute itself as a human rights organization. Colleagues in the region were skeptical. “At first, our allies in the immigrant rights community didn’t believe it would work, because we were not framing our work in terms of immigrant rights,” Garcia recalled. “But we felt it wasn’t just about immigrant rights—it’s about how people in society are treated. We are invested in immigration reform, but our people aren’t only

facing a lack of papers—we are also facing other human rights struggles, in regards to housing, health care, and education,” Garcia added. “We need to connect to those struggles to make larger change.”

The accomplishments

Other immigrant communities in Arizona and New Mexico have begun to replicate BNHR’s successful organizing methods. For example, its model has been adopted by sister organizations like the Border Action Network, which has 12 human rights committees in southern Arizona. Together the organizations established a tri-state Border Community Alliance, through which they share strategies and work cooperatively.

This alliance has transformed itself from a purely local grassroots network into a national policy presence. In order to facilitate its policy work, the Alliance organized a US/Mexico Border Enforcement and Immigration Task Force in 2006. The task force includes elected mayors and county commissioners, faith leaders, grassroots community groups, academics and law-enforcement officials from the border region. Notably, its membership includes both the new sheriff and the police chief of El Paso.

The task force has developed over 70 recommended guidelines for border enforcement that would improve enforcement while reducing civil and human rights violations. A key demand is



that border agents receive thorough training in human and constitutional rights, and that a formal process be instituted for reviewing complaints in *partnership* with local communities. Training is a grave concern as the Border Patrol rushes to meet a federal goal of expanding to 21,000 officers by 2010.

BNHR believes that its success in attracting the leadership of politicians and law enforcement is fundamentally related to its use of a broad human rights message. This focus framed the issue not just in terms of immigrant rights, but in terms of community safety more generally.

Sheriff Richard Wiles, who replaced Leo Samaniego in 2008, recently testified in favor of the task force's recommended reforms before Congress. "The safety and security of everyone in the county is clearly the main responsibility of the sheriff. This responsibility can and must be discharged without engaging in racial profiling which, by its very nature, is illegally invasive of personal liberties," said Sheriff Wiles.

The road ahead

Going forward, a key priority for border communities is to exert greater influence over federal policy as the debate over immigration reform heats up again in Congress. This time, they have the organizing capacity and the policy connections to be a player at the table from the start.

Meanwhile, the human rights model developed by the Border Network for Human Rights is being adapted by other immigrant communities around the nation who are facing racial profiling and harsh enforcement tactics. Across the country more and more local police have taken up immigration enforcement—traditionally considered a non-criminal federal issue. The program—known as 287g for the section of the 1996 immigration law that authorizes it—has now deputized 66 policing agencies across 23 states to arrest people for immigration violations. While the program is promoted as a means of deporting serious criminals, some policing agencies have abused their authority to profile and remove immigrants. Until recently, the largest 287g program in the country was operated by Sheriff Joe

Arpaio of Arizona’s Maricopa County, which includes Phoenix. Arpaio’s commando-style raids of immigrant neighborhoods have drawn a federal investigation and scores of lawsuits.

In 2008, BNHR brought over a dozen grassroots immigrant rights groups from non-border regions to El Paso for a three-day training in human rights organizing methods. It is also translating its human rights training manual into English, to facilitate its use by others. BNHR continues to struggle, however, to find consistent funding for its own, important work at the border. Its annual budget is only \$600,000, and most of its resources go toward building the capacity of its human rights committees—which, once operative, help to sustain themselves through dues and local fundraising.

“Some people tell me I shouldn’t talk human rights to foundations,” Garcia said. “But I always do. It is precisely when no one wants to hear about human rights that it is most relevant.”

Lessons learned

- ▶ **Human rights can help bring non-traditional allies to the table.** BNHR talked about racial profiling—and the fear it sowed

in the community—as an issue of public safety and human rights. This message helped it forge relationships with elected officials and law enforcement agencies, and changed the focus of debate from “illegal immigration” to community security.

- ▶ **International scrutiny can help drive local change by highlighting the seriousness of the problem.** “The fact that you have an international body investigating a local problem makes news,” said Chandra Bhatnagar of the ACLU. But follow-up immediately after a UN reporting or other international mechanisms is critical. “The international framework doesn’t come to us—we need to go to it,” said BNHR’s Garcia.
- ▶ **International advocacy is more powerful when done in combination with community organizing and participation.** International mechanisms are marginally effective without a strong community engagement in place to advance recommendations and push local reform. “Building community capacity becomes a key element to advance the human rights struggle in the United States,” Garcia said.

CHAPTER 5:

The Prison Rape Elimination Act: Just Detention International, Human Rights Watch, and Amnesty International USA

Human rights activists and survivors helped to pass national legislation holding government officials accountable for ending rape in prison, and are leading the charge to see it meaningfully implemented.

The starting place

I was raped by at least 27 different inmates over a nine-month period. When I went to prison, I was 28 years old. I weighed 123 pounds, and I was scared to death.... Within two weeks, I was raped at knifepoint.... The physical pain was devastating, but the emotional pain was even worse.

Because I was raped, I got labeled as a “faggot.” It opened the door for a lot of other predators. Even the administrators thought it was okay for a “faggot” to be raped. They said, “Oh, you must like it.”

**Bryson Martel, Just Detention
Survivor Council member**

Bryson Martel is one of thousands of men and women who suffer the pain and indignity of rape every year in American prisons and jails. Although incidents of sexual violence in prison are notoriously underreported, the U.S. government estimates that at least 85,000 inmates - and perhaps twice that number - are sexually abused in American prisons and jails each year."¹⁵ Young, gay and mentally ill inmates are especially

at risk of attack. Women in custody are routinely subjected to sexual coercion, abusive touching and voyeurism by male prison staff.

Until a few years ago, many prison wardens tolerated rape in their institutions. Outside of a handful of guards who have been prosecuted for rape, corrections officials were rarely held accountable for tolerating, encouraging or themselves participating in sexual abuse of prisoners in their custody.

The barriers to change were formidable. Shame discouraged inmates from talking publicly about having been raped; fear of retaliation prevented them from reporting it. People assumed that rape was an inevitable part of prison.

The success

In 2003, the U.S. Congress passed—by unanimous vote—the Prison Rape Elimination Act (PREA). It was the first civil law in the United States to address sexual violence in prisons and jails, and is the only piece of legislation in recent memory aimed at improving—rather than toughening—the treatment of people in prison. The PREA requires that all detention systems

in the country take a zero-tolerance approach to rape and other forms of sexual abuse of those in custody.

Human rights activists persistently raised the issue, conceived the legislation, and helped push for it to be passed in Congress. New draft standards, recently issued by the National Prison Rape Elimination Commission, emphasize human rights principles of independent auditing, public reporting, and government accountability to end a long-ignored form of abuse.

The strategy

The story of the Prison Rape Elimination Act (PREA) begins with the determination of victims to have their abuse acknowledged and addressed. In 1980, a group of prison rape survivors came together to form an organization dedicated to ending sexual violence in prisons and promoting mental health and support services for survivors. For its first 20 years, Stop Prisoner Rape (SPR) was run by former-prisoner volunteers courageous enough to speak publicly about their experiences of being sexually violated. No matter what crime someone might have committed, SPR members argued, rape is not part of the penalty. Later renamed Just Detention International (JDI), it works to transform public attitudes and government practice on sexual violence in the United States, South Africa and the Philippines.

Beginning in 1995, Human Rights Watch (HRW) and Amnesty International issued a series of reports, *All Too Familiar, Not Part of the Penalty*, and *No Escape*, on sexual violence in American prisons. These reports marked the first time that prison rape was talked about as a violation of human rights, and put the issue on the radar screen for reform. HRW helped to introduce legislation in Congress, “The Custodial Sexual Abuse Act of 1998,” to address routine sexual abuse committed by prison staff. The legislation never came to a vote, but it was an important precursor to the PREA in that it called for a



Bryson Martel, Just Detention International Survivor Council member and rape survivor.

national database of offenders and withdrawal of federal funding for facilities that failed to prohibit staff-on-inmate abuse.

JDI was at the same time expanding its mission from direct services and support to include international human rights advocacy. It brought on an executive director and board members with expertise in international human rights. Current JDI director Lovisa Stannow said, “Our basic philosophy is that when the government removes someone’s freedom, it takes on an absolute responsibility to protect that person, including from sexual abuse. Whether perpetrated by prison officials or by other inmates, prisoner rape is a breach of international human rights, and an act of torture.”

Courts have interpreted both the U.S. Constitution and international law to consider rape in prison a crime. In 1994, the U.S. Supreme Court said that sexual abuse “is not part of the penalty that criminal offenders pay for their offenses against society.” To be held accountable



under U.S. law, however, prison officials must have failed to take reasonable steps to prevent a known threat of assault, or one that should have been apparent. Under international standards such as the Convention against Torture, by contrast, inmates are not required to prove knowledge or deliberate indifference on the part of prison officials. Instead, the standards require the government to protect inmates in their custody from harm, period. This distinction is important because in the reality of prison environments, fear of retaliation discourages many inmates from reporting attacks.

The turning points

In 2000, Tom Cahill was the president of JDI's Board of Directors. A veteran of the Air Force, Cahill was gang-raped 30 years earlier while jailed for participating in an anti-Vietnam War protest. Cahill sent a letter to his congressional representatives about the problem of prisoner rape and the need for federal action to combat it. The letter described in graphic terms the suffering

of prisoners, who are often left beaten, bloodied and defenseless against attacks.

Cahill also recruited Michael Horowitz, a former Reagan administration official then at the Hudson Institute, a conservative think tank. Horowitz recruited fellow conservatives to the cause, including Prison Fellowship Ministries (PFM), a Christian advocacy group founded by two former politicians, Chuck Colson and Patrick Nolan, both of whom had served time in federal prison.

"Folks here were initially reluctant," Nolan said. "They felt it would make our donors and volunteers uncomfortable." But PFM founder Colson convinced staff that prisoner rape was a violation that must be ended. He made it a regular topic of discussion on his daily talk show on Christian radio. PFM brought in other conservative faith-based groups, such as Focus on the Family and the Traditional Values Coalition.

This left-meets-rights coalition of conservative religious groups and human rights organizations

“When the government removes someone’s freedom, it takes on an absolute responsibility to protect that person, including from sexual abuse. Whether perpetrated by prison officials or by other inmates, prisoner rape is a breach of international human rights, and an act of torture.”

Lovisa Stannow

began to work together to build a bipartisan coalition in Congress. The message: prisoner rape is a basic violation of human dignity. The Senate bill was ultimately introduced by a liberal standard-bearer, the late Edward Kennedy of Massachusetts, and conservative stalwart Jeff Sessions of Alabama.

Opposition to the legislation was quiet, but intense. It came mainly from prison officials and state attorneys general who worried that new regulations would be costly and burdensome to implement. As a result, \$60 million was authorized in the legislation to help prison systems to comply.

One clear challenge was to convince people that rape is not just an unpleasant fact of life in prison, but a preventable breach of security. Prisoner rape is frequently the subject of jokes from late night comedians, and sniggering comments from talk show hosts. But, as JDI Executive Director Lovisa Stannow observed, “Contrary to pop cultural portrayals, prisoner rape is not an inherent or inevitable part of prison life. It’s essentially a management problem. In well-managed prisons, you have low levels of abuse.”

The voices of survivors would prove critical in humanizing the issue and overcoming complacency. In June 2003, JDI organized a congressional briefing called “Stories of Survival: Recognizing Rape Behind Bars.” According to Stannow, “These survivor accounts had a tremendous impact. They became a turning point in the discussion about PREA, removing any

doubts about whether the United States needed such a law.”

Little more than a year after its introduction, the PREA passed both houses of Congress unanimously in July 2003. President George W. Bush signed it into law on September 4, 2003. The law makes prison officials responsible for preventing and responding to the rape of inmates in their custody, whether committed by corrections officials or by other inmates. Specifically, the PREA calls for binding national standards aimed at preventing sexual abuse; statistical tracking of the problem; and monetary grants to states to combat this form of abuse.

The PREA also borrows a human rights strategy of “naming and shaming”: it requires that the three best- and two worst-performing prisons (as ranked by the Bureau of Justice Statistics) report annually to a national review panel. The worst-performing systems are called to account for their lack of progress in combating sexual violence. High-performing prison systems are given an opportunity to explain best practices.

Supporters had little time to bask in their victory; there was additional work to be done. The PREA did not itself prescribe specific reforms, but instead called for a commission to devise national standards for correctional facilities that would address sexual violence.

The subsequently formed National Prison Rape Elimination Commission (NPREC) included nine members from across the political spectrum, including Jamie Fellner of HRW, Patrick Nolan of

Prison Fellowship Ministries, and Brenda V. Smith of American University, a human rights expert and leading figure in efforts to eliminate sexual abuse of women in custody. JDI helped to identify and prepare prison rape survivors to testify at public hearings the NPREC held across the country. It also worked closely with a committee of NPREC members and corrections officials to help develop the standards.

The accomplishments

The Commission's deliberations took far longer than any of its members imagined. Six years later, in 2009, the commission issued an exceptionally strong set of draft standards addressing sexual violence in prison. The standards mandate that every prison and jail, whether public or private, have written standards mandating zero tolerance for all forms of sexual abuse. The draft standards mirror many of the provisions in the Standard Uniform Rules for Treatment of Prisoners, a set of international best practices for humane incarceration, by requiring:

- ▶ staff training and inmate education on the right to be protected from abuse;
- ▶ prompt investigation of complaints of sexual abuse and medical attention to victims;
- ▶ an annual plan by all prisons to combat sexual violence, including stepped-up security measures and special protections for vulnerable inmates;
- ▶ rigorous internal monitoring, and independent audits of institutions' compliance with PREA standards to be published every three years; and
- ▶ reforms to the Prison Litigation Reform Act, a federal law passed in the 1990s which severely limits prisoners' ability to file grievances in court.

If implemented, the standards will constitute a sea change in correctional practice, where lack of transparency is the norm. The U.S. Attorney General will have one year to publish a final rule making the standards binding on all federal detention facilities; if approved, state facilities that do not comply will risk losing federal funding.

The commission's report accompanying the draft standards explicitly names prison rape as a serious human rights violation. It also places responsibility on the government to eliminate a practice too long considered inevitable:

Individuals confined in correctional facilities or under supervision in the community must be protected from sexual predators. They do not relinquish their fundamental human rights when they are incarcerated or otherwise constrained. They still have the right to be treated in a manner consistent with basic human dignity, the right to personal safety, and the right to justice if they become victims of crime.¹⁶

Judge Reggie B. Walton, chairman of the NPREC, also acknowledged the central role of survivors in influencing the committee's deliberations. Survivors' harrowing stories of abuse, he wrote, fundamentally challenged commissioners' "own assumptions and perspectives to fully understand the far-ranging nature of the problems and the potential for solutions."

The standards are already changing practice and lives on the inside, even before they become law. Oregon's prison system was one of the first to deploy a Sexual Assault Response Team to provide protection and medical and psychological assistance after an assault occurs. Many states have since followed Oregon's example and now have teams that respond to identified assaults. Michigan has made compliance with the NPREC standards part of the settlement of a longstanding lawsuit on the sexual abuse of women in custody,



brought by human rights attorney Deborah LaBelle.

The human rights impact

What accounts for the remarkable consensus in Congress on prisoner rape, a topic most people would rather avoid, during an era of extreme partisanship in Washington?

The bipartisan consensus emerged from a variety of factors: the horrific, often violent nature of the abuse, newly framed as preventable; the absence of strong economic arguments against reform; and the involvement of socially conservative religious groups. The fact that forced homosexual sex was at issue clearly motivated some of the religious organizations. Human Rights Watch had issued a report, *All Too Familiar*, in 1996 on sexual assault of women by male prison staff. It helped to advance state level reforms, but never galvanized the kind of political interest at the federal level that the issue of male rape did. Only when male-on-male rape was on the political agenda were advocates able to broaden the dis-

cussion to include sexual abuse of women prisoners, according to several human rights advocates involved in the campaign. Race likely played a role, as well, advocates said: some studies showed that white men were at higher risk of being raped than others, and these victims may have elicited an extra measure of sympathy.

Human rights also helped in several respects. “Some of the key champions of this issue are politically conservative individuals,” Lovisa Stannow said. “I attribute their involvement to a basic human rights concept; the key players came together around the idea that prisoner rape is a breach of the right to dignity. We at JDI framed prisoner rape as torture, while others used slightly different language.”

“The whole thrust was human rights,” Nolan agreed. “Those of us in the religious community talked about prisoners being children of God, made in His image, and that it is our obligation to defend them. The secular groups talked about human rights. It helped.”

Does the unanimous passage of the PREA mean that everyone in Congress believes that prisoners have human rights? Not necessarily, advocates noted. “For many people who signed on to the legislation, the concept of dignity helped embody the values and concerns they had about this issue,” said Jamie Fellner of HRW. “For others, however, the notion of dignity was divorced from human rights.”

The road ahead

Going forward, JDI and colleagues at American University’s Project on Addressing Prison Rape, led by Commissioner Brenda V. Smith, are making the training of prison guards a first priority. This is based on the recognition that it is up to front-line officers to create a genuine culture of zero tolerance for rape. “When we first proposed human rights trainings for prison guards in 2005,” Lovisa Stannow said, “people were rolling their eyes. They said we won’t get access, and people won’t care.”

The response? Surprisingly positive, according to JDI staff and corrections officials with whom the organization is partnering.

“JDI has been an excellent partner,” said Max Williams, director of the Oregon Department of Corrections. “They have said, ‘Let’s help you think about this from a victim’s mindset.’ We’ve also helped them understand the challenges from an operations standpoint. Now, at the senior level of [prison] administration, recognizing respect for the human rights of inmates is a foregone conclusion.”

That is not to say that implementing zero tolerance of sexual abuse will be easy. “When we talk about a fundamental human right to live without

fear of sexual assault, staff can grasp this academically, but it can be hard to impose on the ground,” Williams said.

Meanwhile, JDI and other advocates are encouraged that reports of rape in states like California, where reforms are being implemented, have increased. This may not mean that more rapes are occurring, but it suggests that inmates feel safe enough to speak up. This, say human rights advocates, is a first and important step on the road to ending prison rape altogether.

Lessons learned

- ▶ **Human dignity can establish a common ground between conservatives and progressives.** As noted by Lovisa Stannow, “The basic values that are expressed in human rights are values on which there is already broad agreement: that all people have a right to dignity, and to be treated as full-fledged human beings.”
- ▶ **With public officials, talk about human rights as something positive and desirable, not only in terms of violations.** “It doesn’t work to be antagonistic with prison officials,” Stannow observed. Instead, advocates can usefully frame human rights as a positive set of values that everyone can rally around.
- ▶ **Participation of those most affected catalyzed and improved the reforms.** The PREA campaign relied on a bedrock principle of human rights: that those who have suffered violations should speak for themselves and help devise solutions to address the problem.

PART 2:

Vindicating Survivors



Domestic violence advocate Jessica Gonzales and her attorneys Steven Watt and Caroline Bettinger-Lopez

CHAPTER 1:

The Burge Torture Cases: The People's Law Office and the Midwest Coalition for Human Rights

A civil rights law firm and community activists teamed with international human rights advocates to end official impunity around a 20-year practice of torture at a Chicago police station.

The starting place

In May of 1973, Burge came to my house. At the police station, they slapped me in the face and put me in a chair. They had a brown paper bag, with a black box in it with wires. They put wires on my handcuffs, and on my ankles, and electrocuted me. They put an [unloaded] shotgun in my mouth and pulled the trigger. Then they put a plastic bag over my head. One time, I was able to bite through it to breathe. But with the other bags I couldn't. I passed out three, maybe four times.

Anthony Holmes

They were all poor, black and accused of murder or gangbanging. Some were as young as 13 years old. All were arrested and brought to police headquarters for questioning by Detective Jon Burge and a team of white officers under his command.

Burge's team knew how to close cases. While senior law-enforcement officials looked the other way, police detectives routinely tortured suspects until they confessed. Arrestees were interrogated while tied to hot radiators; they were subjected to mock executions and Russian roulette; they were

suffocated with plastic bags and anally raped with cattle prods. For the hard cases, Burge's officers would bring out what they called the "nigger box"—a black box with electrical conducting wires, which they used to shock the ears and genitals of prisoners.

This scene conjures apartheid-era South Africa, but in fact describes interrogations in Area 2 and 3 police headquarters on the south side of Chicago between the years of 1972 and 1991. The brutality was not an occasional overindulgence by a rogue officer, but routine practice: more than 100 cases of torture over a 20-year period, all under the supervision of Jon Burge, have been confirmed by public officials. Twelve of the 100 torture victims were sentenced to death after giving confessions under coercion.

The success

For more than 25 years, a dedicated group of lawyers battled a wall of silence and cover-ups by local officials to expose these crimes and hold police officers accountable. They were eventually joined in their efforts by community and human rights activists as the Campaign to Prosecute Police Torture. After bringing the case to the

attention of the United Nations and regional human rights bodies, the campaign eventually succeeded in:

- ▶ **pressuring federal prosecutors to arrest and prosecute Burge** in 2008, 36 years after his reign of torture began;
- ▶ getting the Chicago City Council to create a **new city agency charged with investigating allegations of police abuse**, in 2007; and
- ▶ helping to pass a **new Illinois state law creating an independent commission** that will investigate every case of the 22 Burge torture victims still in prison, in 2009.

As of this writing, Burge still awaits trial. But his arrest and indictment alone constitute a major victory for his victims and their supporters, many of whom have waited 35 years to see him brought to account for these crimes.

The strategy

No one wanted to believe Andrew Wilson when he first came forward in 1982 with a story of having been tortured by a team of white detectives in Area 2 headquarters. Wilson was accused of killing two white police officers while on the run from a burglary; his arrest ended one of the most intensive manhunts in the history of the city of Chicago. When Wilson was brought in to the stationhouse, he was handcuffed to a hot radiator. Officers applied electric shocks to his penis and pressed lit cigarettes over his body.

After Wilson finally confessed to the killings, officers sent him, bruised and burned, to the Cook County jail. A doctor who treated his injuries at the jail sent a letter to Richard Daley, then head of the State Attorney's office, asking for an investigation into possible police abuse. The prosecutor's office not only declined to investigate, but used Wilson's confession to prosecute him for capital murder. Wilson was sentenced to death.

In 1987, Wilson's conviction was overturned by the Illinois Supreme Court, on grounds that his confession had been coerced. He was convicted of the killings again in a new trial—without the tainted confession—and sentenced to life in prison. But with the Supreme Court's findings of torture in hand, Wilson insisted on doing something none of the other suspects from Area 2 headquarters had been willing or able to do: sue Jon Burge for having violated his civil rights.

He contacted the People's Law Office, a group of maverick lawyers famed for having defended Black Panthers and protesters at the 1968 Democratic National Convention. Wilson asked for their help in suing Jon Burge for brutality. By this time, Burge was a well-known and revered figure in police circles; he had been promoted to commander of a special violent crimes unit. The People's Law Office took the case anyway.

As word of Andrew Wilson's lawsuit began to circulate, the People's Law Office received an anonymous letter from a police source that both confirmed Wilson's account and identified others who had been similarly tortured. More victims began to come forward, including:

- ▶ Anthony Holmes: confessed to 35 crimes while strapped to the black box;
- ▶ Darrell Cannon: electrically shocked on his genitalia with a cattle prod and threatened with a shotgun; and
- ▶ Leroy Orange: raped with cattle prod, suffocated with a plastic bag, and electrically shocked with the black box.

Civil suits on behalf of these and other defendants began to be filed. Documents unearthed in the course of the litigation revealed that former Mayor Jane Byrne (who served from 1979 to 1983), current Mayor (and former chief prosecutor) Richard Daley, as well as the city's current prosecutor, a man who had once represented Jon Burge, had known about the allegations of abuse



Torture victim Andrew Wilson after interrogation by Police Detective Jon Burge.

in the Area 2 station house but had done nothing to stop it.

After years of hard-fought litigation, the Chicago Police Department finally fired Burge in 1993. Wilson eventually won his civil lawsuit against Burge in 1996, with the city ordered to pay nearly \$1 million in damages.

But dozens of other cases from the Burge era remained unresolved, as state courts denied claims or ruled that the accusations of abuse were too old to prosecute. Lawyers representing 10 of these defendants began working with victims' family members, criminal justice advocates, and South Side community organizations to strategize. They formed the Campaign to Prosecute Police Torture, and demanded that authorities appoint a special prosecutor to reinvestigate every allegation of police torture by Burge and his

officers. The campaign, which included the Justice Coalition of Greater Chicago, Citizens Alert, and the Illinois Coalition to Abolish the Death Penalty, got thousands of people to sign petitions calling for the prosecution of Burge and his officers. They packed the court hearings of Burge victims.

Advocates were elated when, in 2002, the state of Illinois agreed to appoint a special prosecutor to investigate the Burge cases. Around the same time, the new science of DNA testing was revealing Illinois' death row to be an epicenter of wrongful convictions—with the sentences of at least thirteen inmates overturned on grounds of innocence. Burge's stationhouse figured prominently in a separate report that found that the state's capital punishment system was fraught with error. In response, Gov. George Ryan com-

mutated the sentences of every death row prisoner in the state in 2003, and issued complete pardons to four Burge torture victims—Madison Hobley, Stanley Howard, Leroy Orange and Aaron Patterson—on the basis that they were forced to falsely confess.

But the special investigation of Burge's actions would drag on for four years, with no resolution. Local activists eventually became convinced that, with so many high level city officials implicated in the case, the special prosecutor might never agree to bring charges.

The turning points

An important change in tactics occurred in 2005, when Stan Willis, a civil rights attorney who represented several Burge defendants, suggested taking the fight to the international stage and presenting it as a case of torture.

What motivated the suggestion to use international human rights?

“A broken ankle,” recalled Willis with a laugh. On a snowy day in January 2005, Willis had slipped and fallen on his stairs. Unable to walk, he worked on his cases from home, while listening to the radio and cable news. Each week brought new revelations that U.S. military and other government personnel had tortured detainees at Abu Ghraib prison in Iraq and at Guantánamo Bay in Cuba, and had sent dozens more to CIA black sites where torture was a near certainty.

“I said, wait a minute, we have torture right here,” Willis added. “I said to my team, ‘We need to raise this on the international level so that the world knows that the United States is not an innocent party in this discussion.’” The news that the U.S. government was trying to redefine torture and evade responsibility for human rights violations under international law struck Willis as both galling, and familiar. “It reminded me of African American leaders who had tried to raise

lynching and the Negro question in international forums. But the Dixiecrats didn't want Jim Crow to be known.” This history strengthened Willis' resolve to publicize the case internationally.

Willis contacted colleagues in Chicago with expertise in international human rights. Susan Gzesh, a law professor at the University of Chicago, and Bernardine Dohrn, from the Northwestern University School of Law, agreed to help. Both are members of the Midwest Coalition for Human Rights, a network of organizations and individuals that works collaboratively to protect human rights in the region, nationally and internationally. They decided to seek a hearing before the Inter-American Commission for Human Rights (IACHR), a regional body that hears human rights disputes under the auspices of the Organization of American States.

Gzesh and Dohrn cautioned that because the commission had only advisory powers, it could not force the United States to take action. But, they added, an IACHR petition might help put additional pressure on the special prosecutor.

The hearing before the IACHR was held in Washington, D.C. in the summer of 2005. David Bates, who spent years in prison for a crime he said he falsely confessed to under torture, testified, as did international law experts from the Midwest Coalition for Human Rights.

The IACHR hearing drew local press coverage and kept the Burge cases in the news. Because the petition was filed in an international venue, it named the United States as the party ultimately responsible. As a result, the IACHR case forced federal officials to pay attention to an old, complicated and damning set of allegations. Lawyers from the U.S. Justice Department, called to defend the case, said nothing during the hearing but took notes.

In the spring of 2006, advocates from the Midwest Coalition for Human Rights also wrote about the Burge cases in a shadow report to the

United Nations Committee against Torture, which comprises 10 torture experts from around the world. The shadow report, called *In the Shadows of the War of Terror*, was co-authored by two human rights attorneys, Andrea Ritchie and Tonya McClary. It included detailed information about the years of torture in Chicago's Area 2 police headquarters, the common use of TASER stun guns by police, and the refusal of public officials to bring law-enforcement officials to justice in the Burge cases.

The shadow report was submitted to the UN committee as it was conducting a periodic review of the United States' compliance with the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), a treaty signed and ratified by the federal government in 1994. On May 19, 2006, the Committee against Torture issued its findings. It highlighted the Burge cases in the same paragraph in which it condemned the use of torture by the United States in the Iraq War. It wrote:

The Committee noted the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in Areas 2 and 3 of the Chicago Police Department. The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law-enforcement personnel and bring perpetrators to justice, in order to fulfill its obligations under article 12 of the Convention.

The report's findings were covered by international newswires and the Chicago media, which ran headlines like "Chicago Police Torture Inquiry Needs to Go Further," and "UN Has Harsh Words on Alleged Police Brutality."¹⁷

Two months later, in July 2006, the special prosecutor finally issued his report on the Burge cases. However, as Willis and his colleagues had predicted, it was a whitewash. It concluded

that while there was strong evidence of systematic police torture in 135 cases, the statute of limitations on the police abuse—three years in state court, and five years in federal court—had lapsed, and none of the officers could be prosecuted.

The special prosecutor's investigation took four years and cost the city nearly \$7 million. A significant share of that sum stemmed from paying for Jon Burge's legal defense in the civil lawsuits. The city had also continued to pay a full pension to Burge, who had been fired but was then living comfortably in Florida.

The accomplishments

The People's Law Office and anti-torture coalition did not abandon their efforts; instead, they pressed the case for justice before the Cook County Board of Commissioners. In a hearing held in July 2007, victims testified about the abuse they suffered at the hands of detectives in Areas 2 and 3. Human rights experts spoke about the significance of the UN Committee against Torture's findings.

In response, the Cook County Board issued a resolution that i) called on the local U.S. Attorney's office bring federal charges, in light of Illinois' failure to do so; ii) asked the Illinois Attorney General to grant new hearings in the 26 cases of tortured African-American men who were convicted and remained in prison; and iii) called on the U.S. Congress and the Illinois legislature to pass a law criminalizing torture, with no statute of limitations.

Subsequently, attorneys and activists held a hearing at the Chicago City Council which led Alderman Ed Smith to write a letter to the U.S. Attorney's Office, demanding that Burge and other officers involved be indicted in federal court. The City Council also passed an ordinance creating an Independent Police Review Authority,

“For those of us who had worked many years on this case, to hear Burge named as a torturer at the UN was profound. It said that the international world cares, even though our local officials did not. That motivated us to keep fighting on.”

Joey Mogul

which would have authority to investigate allegations of police misconduct in the future.

On January 9, 2008, ending what one alderman called “a horrible chapter in the city’s history,” the Chicago City Council approved settlements totaling \$19.8 million for four torture victims exonerated on Illinois’ death row. “This city still owes [an apology to] these people, who spent years in prison and some on death row, who were tortured in ways that put Abu Ghraib and Guantánamo Bay to shame,” Alderman Howard Brookins, Jr. said in announcing the settlement.¹⁸

On October 21, 2008, federal authorities finally arrested Jon Burge in his Florida home. The indictment did not charge Burge with torture; it did, however, charge him with lying under oath when he falsely denied having participated in torture, during the course of a 2003 civil lawsuit brought by exonerated death row inmate Madison Hobley.

The human rights impact

The long road to indictment resulted from a confluence of forces: persistent lawyers; determined survivors and dedicated family members; a national mood of revulsion over U.S. complicity in torture; and various missteps by Burge’s lawyers. Human rights also contributed to a positive outcome in several important respects, according to advocates.

Political momentum. Although not directly enforceable by Congress or a court of law in the United States, the ruling by the UN Committee against Torture helped to legitimize the demand for prosecution and keep advocates motivated.

The committee’s recommendations came at a crucial time, when the chances of prosecution seemed especially bleak. Joey Mogul, an attorney with the People’s Law Center who testified before the UN Committee on Torture, recalled, “For those of us who had worked many years on this case, to hear Burge named as a torturer at the UN was profound. It said that the international world cares, even though our local officials did not. That motivated us to keep fighting on.”

State and federal courts had already found that torture occurred and that confessions had been coerced; they had even reversed convictions based on that evidence. But the United Nations was the first official body to demand that law-enforcement officers be brought to justice for their crimes.

“This was huge,” said attorney Joey Mogul, “in light of the fact that our public officials in Chicago had swept these allegations under the rug for decades. To have an international body act on our allegations was vindicating and valorizing.”

Survivor vindication. The UN committee’s ruling and Burge’s prosecution also brought a welcome measure of vindication for victims after years of being dismissed and disbelieved. The accused were poor, black and accused of serious crimes.

“At the county jail, no one believed me,” recalled Anthony Holmes, among the very first victims to be tortured, shortly after Jon Burge was assigned to Area 2. “They said, ‘Nigger shut up or we’ll beat your ass.’ My lawyers also told me to shut up about it.”



Black box used by Detective John Burge to apply electric shock during interrogation.

Unfortunately, Burge and other rogue officers will likely never be prosecuted for the true extent of harm they caused: the years lost in prison by those coerced into falsely confessing; the victims' lingering psychological trauma; and the grief of their family members of those wrongfully accused. Nevertheless, the human rights framework—as well as the survivors in this case—clearly view the official acknowledgement of wrongdoing as an important measure of justice.

Naming the abuse as torture. “Brutality means they slapped you around some,” said Burge torture survivor Anthony Holmes. “That’s not electrocuting you in a chair, with wires strapped to your genitals. It’s not suffocating you and putting a shotgun in your mouth and pulling the trigger. That’s a different ballgame. That’s torture.”

Explicitly naming the abuse as torture was important not just to victims, but also in terms of framing the case as one worthy of federal prosecution. Alderman Ed Smith, the city councilman who wrote the letter to the U.S. Attorney’s Office demanding action, thinks the UN ruling had negligible influence on the decision to indict. But the fact that the conduct was named torture was immensely helpful, he said. “Anytime we hear the word torture, it causes concern. We don’t want officials who are supposed to serve and protect to

be accused of that. A red flag goes up, and people in the city council take action.”

Attorney Joey Mogul agreed that the torture allegation brought additional political attention. “Terms like ‘police brutality’ and ‘civil rights violations’ have lost their power,” she said, adding “Torture has specific meaning, and this is what it is.”

Expansive concept of remedies. The human rights framework helped the lawyers in the case think bigger and bolder about remedies that would address the totality of the harm, given legal roadblocks that prevented many of the Burge victims from bringing their own lawsuits in court. The concept of reparations doesn’t really exist in our system of justice,” Mogul said. “Instead one can only ask for [monetary] damages if you have grounds for a civil suit. Human rights helped the attorneys to expand their thinking to larger political remedies that could help the entire class of affected victims.”

In the course of raising these cases in international forums, the Campaign to Prosecute Police Torture refined a list of five demands:

- ▶ the arrest and indictment of Burge and all of the officers who participated in torture;
- ▶ new court hearings for the 22 men still in prison who were tortured and abused during their interrogations at Areas 2 and 3;
- ▶ financial reparations and mental health counseling for all the torture victims and survivors;
- ▶ a federal law that would criminalize acts of torture and cruel, inhuman or degrading treatment by law-enforcement officials (with no statute of limitations); and
- ▶ financial damages against the state prosecutor’s office, for knowingly accepting coerced confessions.

It recently celebrated another partial victory, when the Illinois legislature in 2009 passed a bill that will create a civilian Torture Inquiry and Relief Commission. That commission is charged with reviewing the cases of the 22 Burge torture victims still in prison.

Requirement of federal response. Because the United States is party to the international human rights treaties such as the Convention against Torture and the race convention, inquiries by UN-sponsored bodies or officials require a federal response. The IACHR petition, Committee against Torture hearings, and special rapporteur's visit all obliged federal authorities in the State Department and the U.S. Attorney's Office to respond to an embarrassing case of local misconduct.

The road ahead

As this publication goes to press, Jon Burge awaits trial on charges of perjury and obstruction of justice. The anti-torture campaign's work is not done, however. It continues to push for indictments of other officers known to have participated in the torture of suspects, and for reparations for all of the victims.

Lessons learned

- ▶ **Human rights are about accountability as much as outcomes.** Even though many

of the instances of torture were too old to prosecute, it was tremendously important to victims that the case be prosecuted in civil court, criminal court and then in international venues.

- ▶ **International advocacy is more valuable when coupled with organizing on the ground at home.** The lead attorneys in the Burge cases say that in retrospect, the strategy was too lawyer-focused, for too long. Ideally, there should have been more grassroots organizing before going to the torture hearings in Geneva (where the UN bodies were located). As Joey Mogul noted, "If you don't have an organizing campaign on the ground, you can't expect findings on an international treaty to change the day for you."
- ▶ **A human rights framework broadens thinking about remedy from individual to collective terms.** In the Burge cases, human rights helped civil rights lawyers shift from a mindset of thinking only in terms of individual clients to demanding reparations for an entire class of victims, many of whom were denied recourse in court. The bill creating a review commission of unresolved cases is one example, as is the campaign's demand for mental health counseling for all torture survivors, whether or not their convictions have been overturned.

CHAPTER 2:

Ending Domestic Violence: Jessica Gonzales, the American Civil Liberties Union and the Human Rights Institute at Columbia Law School

After losing three children to domestic violence, a grief-stricken mother uses a human rights tribunal to hold Colorado officials accountable for failing to enforce an order of protection against her abusive husband.

The starting place

On a June evening in 1999, the three daughters of Jessica Gonzales²¹—Rebecca, 10; Katheryn, 8; and Leslie, 7—disappeared near their home in Castle Rock, Colorado, a small town south of Denver. The girls were abducted by their father, Simon Gonzalez, in violation of a court restraining order that forbade him to come within 100 yards of Jessica or their children, outside of scheduled visits.

Over the course of 10 hours, Jessica Gonzales contacted the Castle Rock Police Department repeatedly, pleading for help in returning her girls. But the police told her there was nothing they could do, even after Jessica located her husband by cell phone at a nearby amusement park. Nine calls later, police still refused to intervene, despite a state law in Colorado that mandates arrest for violations of restraining orders.

At approximately 3 a.m. the following morning, Simon Gonzales drove to the Castle Rock police station and opened fire; he was killed by officers in the shoot-out that ensued. Officers then discovered the dead bodies of the three girls inside his truck. To this day, Jessica Gonzales does not

know if her girls died at the hands of her husband, or in the exchange of gunfire with police.

Women's rights advocates across the country viewed the developments as a tragic reminder that domestic violence restraining orders often go unenforced, to the detriment of women and children. With the help of an attorney in Colorado, Jessica Gonzales filed a lawsuit in 2000 against the Castle Rock Police Department. She asserted that the police had breached their duty to protect her and her daughters by failing to enforce a government-issued order of protection.

In November 2004, after conflicting opinions in the lower federal courts, the U.S. Supreme Court agreed to hear *Castle Rock v. Gonzales*. Aware that a finding in favor of Gonzales could significantly alter the legal landscape governing domestic violence and due process claims, civil and women's rights organizations across the country mobilized to support her appeal. Over 150 organizations, professional associations and individuals signed on to *amicus curiae*, or "friend-of-the-court" briefs.

On June 27, 2005—six years after the girls' death—the Supreme Court delivered a 7-2 decision that seemed to defy all sense of justice.

The court held that Gonzales had no individual right under the Constitution to enforcement of her order of protection, and therefore could not sue. With the authority of the Supreme Court clearly conveyed, and without any additional avenues in state court, Gonzales' quest for justice for herself and her daughters seemed to come to an end.

To Gonzales, the refusal of the court to hear her claim that her family was wronged was like being victimized all over again. "I felt like everything I knew to be true was a lie...it's like getting socked in your stomach and getting the wind knocked out of you," she said.

Her supporters were also discouraged. For advocates, the decision painfully demonstrated the difficulty of holding police accountable to enforce orders of protection, given legal doctrines that make them immune from lawsuits. "It was a really deflating moment," explained Caroline Bettinger-Lopez, a former ACLU attorney who continues to represent Gonzales through Columbia University's Human Rights Clinic.

The success

Over the next four years, Bettinger-Lopez, her colleagues at the ACLU and Gonzales pursued an alternative route to justice. They brought a case against the U.S. government to the Inter-American Commission for Human Rights (IACHR). A final decision was still pending at the time this publication went to press, but the case had already resulted in two beneficial outcomes:

- ▶ **Jessica Gonzales has been empowered** by publicly sharing her story and seeking accountability for the human rights violations she suffered. She became a visible spokesperson for her own case and for a broader movement to reform domestic violence policies in the United States and abroad.

- ▶ **Advocates against domestic violence have been inspired to use human rights to seek greater government accountability.** Policy advocates as well as legal services lawyers who represent abused women are now using human rights strategies and standards to broaden their thinking about remedies and policy solutions.

The strategy

The IACHR is a regional human rights body "entrusted with promoting and protecting human rights" in the Americas. It has seven rotating members, based in Washington, D.C., who consider claims of human rights violations by member countries and issue decisions on state responsibility.

The decision to take Gonzales' case to the commission was not an obvious one. The IACHR has no direct authority to compel the U.S. government to act; neither can it require the payment of financial damages. At most, as Gonzales and her supporters knew, the commission could release a series of strongly worded recommendations to government officials. It would then be up to the advocates to persuade federal and local policy-makers to implement them.

Advocates decided to move forward with the IACHR regardless. The *Gonzales* decision was the third Supreme Court ruling that limited remedies for individuals experiencing private acts of violence. Gonzales' lawyers recognized that domestic law was trending against them, and agreed that looking externally to international law offered some hope of reversing course.

Filing a case in a human rights tribunal also offered Gonzales the chance to publicly describe her ordeal and her frustration at the lack of government accountability for clear wrongdoing. "Jessica Gonzales had never been afforded that small, but very significant opportunity to tell her story before an official body," said Steven Watt,



the ACLU attorney who first suggested that Gonzales take her case to the commission. “It was the prospect of getting that opportunity to speak that compelled her to do it.”

There was also the hope that Gonzales would finally get an official finding that she and her daughters had been wronged, and that the police were partly to blame. Bettinger-Lopez said, “We wanted to have a space for Jessica to air her grievances, in her own voice, through a process she could guide . . . and to give her family the comfort of some public scrutiny and hopefully condemnation from an impartial body.”

Filing a petition. Under the rules of the IACHR, Gonzales’ lawyers had six months after exhausting all possible domestic relief to file their petition. ACLU lawyers began studying the procedures of the commission to identify the way to build the most persuasive case. They sought out guidance and advice from organizations that had deep experience litigating cases there, such as the Center for Justice and International Law.

The ACLU attorneys noted two key differences between this forum and domestic litigation in

U.S. courts. First, the international nature of the case shifted the liability from the Castle Rock Police Department to the U.S. government. Under international law, a nation-state is the unit of government responsible for assuring the human rights of its constituents. The case at hand therefore was no longer *Castle Rock v. Gonzales*, but *Jessica Gonzales v. United States*.

Second, the IACHR was interested in Gonzales’ personal history. The petition was written in Gonzales’ own voice. It described her troubled marriage to Simon Gonzales, the onset of his erratic and unpredictable behavior, as well as her panic and grief the night her ex-husband abducted the children.

Making a case for admissibility. After the ACLU filed its petition in December 2005, the U.S. State Department responded with its own brief. It both refuted the argument that the United States has an affirmative duty to protect individuals from private acts of violence, and defended its record on violence against women. In particular it cited the 1994 passage and subsequent implementation of federal legislation, the

“This was the first time I had ever been heard in a court ...it lifted a burden of having to carry the facts and the details of what I knew to be true. To have an audience with the State Department was probably the best part of it. Not just being able to say it and recount it, but that they had to listen.”

Jessica Gonzales

Violence against Women Act (VAWA), to address the problem.

In March 2007, Gonzales was granted an “admissibility” hearing in front of the IACHR—essentially, a hearing on whether an arguable legal claim existed. Lawyers argued the legal points at the session, but the main feature of the hearing was Jessica Gonzales’ testimony.

Speaking to a packed room, Gonzales related her experiences with domestic violence and how the Castle Rock Police Department had repeatedly refused to enforce the order of protection despite her pleas and growing concern that her daughters were in danger. She described feeling re-victimized as she tried to learn the facts behind her daughters’ deaths and to seek justice from local authorities and the U.S. justice system.

The turning point

In October 2007, the commission issued a decision allowing Gonzales’ case to move forward. By allowing the case to proceed, the IACHR implicitly rejected the U.S. government’s claim that nation-states are not obligated to protect victims of private violence. Previously skeptical advocates recognized then that an international human rights strategy could help them to reframe an individual case of domestic violence into a systemic issue that demanded government action.

Ninety organizations and individuals submitted briefs in support of the Gonzales’ position. These briefs refuted the U.S. government’s claim that VAWA provided ample protections for domestically abused women and children. In the briefs, legal service providers described a revolving door of domestic violence cases they saw every day in family court. Other briefs discussed additional measures that federal and local government could take to protect abused women, such as language and job training; housing security; and economic support for those who have no resources to leave an abusive partner.

In October 2008 the IACHR held a follow-up hearing, at which Gonzales had a second opportunity to testify. The government’s delegation included representatives from the State Department, an official from the town of Castle Rock, and staff from the Justice Department’s Office on Violence against Women. Also present were Gonzales’ mother, son, and representatives from supporting national and international organizations.

Gonzales spoke about the unanswered questions she had about the girls’ death and the panic she felt when the police did not take seriously any of her nine phone calls. She related her grief over the fact that the girls are gone and that she may never know why. Finally, Gonzales spoke of her desire for reforms that will help women who experience abuse in the future.

In addition to bringing a petition before the IACHR, advocates called attention to problems of domestic violence enforcement before the United Nations.

The human rights impact

As of this writing, Gonzales' still awaits a decision from the IACHR. Yet, the litigation has already had several beneficial impacts for Gonzales and other advocates against domestic violence, several of which are discussed below.

Survivor empowerment. The lawyers' hope—that international litigation would provide their client with a sense of catharsis and empowerment—was realized through the IACHR advocacy.

Gonzales said, “This was the first time I had ever been heard in a court . . . it lifted a burden of having to carry the facts and the details of what I knew to be true. To have an audience with the State Department was probably the best part of it. Not just being able to say it and recount it, but that they had to listen.”

The international advocacy also put Gonzales at the forefront of efforts to reform domestic violence laws and policies. In 2005, Gonzales testified at the UN Human Rights Committee during its review of the United States' compliance with the International Covenant on Civil and Political Rights. Gonzales also met with the UN Special Rapporteur on Violence against Women, who later made an official inquiry to the U.S. government about the case.

Gonzales continues to receive speaking invitations from domestic violence organizations. She has also met with law-enforcement associations, local police departments, and state and national policymakers to discuss her story and the need for reforms.

In 2005, U.S. Reps. Jerrold Nadler and Lois Capps co-sponsored the “Jessica Gonzales Victims Assistance Program,” an amendment to

VAWA that places special victim assistants in local law-enforcement agencies.

New strategies. In the eyes of many domestic violence advocates, the Supreme Court ruling in *Castle Rock v. Gonzales* marked the end of the line for Gonzales. The international advocacy, however, revitalized an otherwise lifeless campaign.

In addition to bringing a petition before the IACHR, advocates called attention to problems of domestic violence enforcement before the United Nations. In 2007 the UN Committee on Racial Discrimination reviewed the United States' compliance with the Convention on the Elimination of Racial Discrimination (CERD). In conjunction with a national effort to submit a joint shadow report (profiled in Part III's chapter on the US Human Rights Network), domestic violence organizations came together as a caucus and submitted reports and recommendations to the committee. The reporting process enabled them to spotlight how abused immigrant women encounter unique barriers when accessing legal and social services. They also described how minority women disproportionately suffer when police fail to enforce restraining orders.

Legal services lawyers who participated in these international advocacy mechanisms say that human rights helped them overcome the frustration of individual client representation, which can sometimes feel like an endless parade of similar stories by different women with little opportunity for larger change. Human rights standards enabled these lawyers to focus on the systemic problems that frustrated better outcomes for their clients: ineffective family court systems, poorly trained and disinterested police, and inadequate social services.



Susana Fried, a women's rights advocate & Caroline Bettinger-Lopez, counsel to Jessica Gonzales discuss the case.

The road ahead

As of this writing, Jessica Gonzales and her lawyers at the ACLU and Columbia's Human Rights Institute await a final ruling from the IACHR.

In the meantime, Bettinger-Lopez is assisting several domestic violence organizations to incorporate human rights standards in CEDAW and other treaties, which are more protective of victims' rights, into local, state, and federal legislation. She also recently met with New York State policymakers about how human rights can be used to shape legislation.

Amy Barasch, the executive director of the New York State Office for the Prevention of Domestic Violence, said that her work with Bettinger-Lopez has helped her think more creatively about the government's response to domestic abuse. "Human rights issues are implicitly filtering into the work our office does," Barasch said, especially in regards to compliance with orders of protection, employment and housing discrimination.

Jessica Gonzales is also finding ways to move forward. She and her mother hope to open a healing center in Colorado that would help abused women meet basic needs and give them a safe place to recover. They view this as a meaningful way of transforming the tragedy into positive action, in service of others. As Gonzales said, "I knew I had the potential [to effect change,] and I feel like I am where I should be. Now I know what I am capable of and see that something that went so wrong, also gave me something so right."

Lessons learned

- ▶ **Remedies for human rights violations can take several different forms.** The ACLU staff members' decision to take the case to the IACHR was prompted by a broader view of what many survivors of human rights abuses want, beyond money damages: closure and a chance to have their abuse acknowledged.
- ▶ **Funding can determine the ability of an organization to carry out international**

litigation. The decision to take the case to the IACHR was made easier by the fact that the ACLU, a relatively well-funded organization, was behind the effort. The ACLU and the Columbia Human Rights Institute were able to commit to the long-term nature of the

case, even though a positive result would not bring attorneys' fees or compensation for their client. Smaller organizations and legal aid lawyers may not have the same capacity to explore every possible form of relief without dedicated funding.

PART 3:

Building Alliances Through Human Rights



CHAPTER 1:

Winning Together: The United Congress of Community and Religious Organizations

Muslim, African-American, and Latino organizations in Chicago use human rights values to forge a multi-ethnic alliance to advance a stronger, more unified agenda for policy change, rooted in human rights.

The starting place

For poor residents of color, Chicago at the turn of the 21st century has been a time of dislocating change. Two decades of tough sentencing laws for low-level drug offenses had emptied black neighborhoods of husbands, brothers and fathers, only to return them years later with no skills, no job and—in an era of instant background checks—little prospect of landing one. By 2005, some 55 percent of all adult black men in Chicago had a felony conviction.

The neighborhoods these former prisoners came home to were also changing rapidly. Beginning in the early 2000s, the Chicago Housing Authority began to demolish scores of high-rise public housing complexes, making way for mixed-income redevelopment but leaving many long-time African-American residents without affordable housing.

Immigration was also changing the face of the city. With more than 1.4 million foreign-born residents, Chicago has the fifth largest immigrant population in the nation. Latino immigrants have crowded into enclaves like Little Village, a neighborhood with the city's youngest population but the least amount of green space. Muslim

immigrants, many of whom felt especially isolated following the attacks of September 11, 2001, are clustered in the southwest part of the city.

Inner-city families across the city were also reeling from a city-wide initiative to close 100 failing public schools. In some neighborhoods, children had shuttled between five schools in as many years.

The combined forces of gentrification, immigration, and school closings were dispersing Chicago's poor population of color into new neighborhoods, across unwritten boundaries of race and gang allegiance. In a hyper-segregated, turf-bound city, people felt isolated, insecure and encroached upon.

The success

In the midst of this climate of distrust, black, Latino and Muslim community leaders in Chicago came together in 2005 to forge a multi-racial, interfaith advocacy coalition. The United Congress of Community and Religious Organizations (UCCRO) is an alliance of 10 grassroots organizations representing every low-income constituency of color in the city. It emerged as a collective response to disinvest-

ment in communities of color, and is based on the notion that groups must connect their issues and struggles to build a long-term cooperative agenda.

The glue that has bound these groups together, across divides of religion, race and distrust, is a human rights vision of common struggle and common rights. Providing a universal set of rights and principles helped UCCRO to:

- ▶ **break down identity politics and redefine group self-interest**, thereby motivating African-Americans to support immigration and language-access reform, and immigrants to advocate for criminal justice reform; and
- ▶ forge a multi-racial coalition and state-wide policy agenda on offender re-entry, and **win state legislation that diverts low-level offenders to drug treatment** and clears the criminal records of those who succeed.

The strategy

Patricia Watkins is a plain-spoken Pentecostal minister. Since 1995, she has directed the TARGET Area Development Corporation, a community non-profit on Chicago's South Side. Watkins is blunt in assessing the impact of her life's work. "For decades, we pursued isolated victories. We sometimes won, but we won alone. Usually our victories have been myopic and short-lived."

TARGET had a track record of success in winning resources and policy reforms for its community. But Watkins recognized that African-Americans, her main constituents, comprised only 12 percent of the city's population—never enough to exert significant influence in the city council or the state legislature. For each useful reform that TARGET helped pass each session, its leaders were unable to defeat the multiple legislative initiatives that were harmful to the community.

Watkins decided her organization needed a strategy to consolidate power among groups in Chicago that cared about justice and economic opportunity for people of color.

Watkins first approached the Coalition of African, Arab, Asian, European and Latino Immigrants of Illinois (CAAAELII) with her vision. She found a receptive audience in the coalition's executive director, Dale Assis, and in Rami Nashashibi, director of the Inner City Muslim Action Network (IMAN).

Nashashibi is a scholar and activist whose broad, mischievous smile belies an organizer's seriousness of purpose. He had a keen sense of both the challenges and the potential of cross-racial organizing: his own constituency included Muslims of Arab descent, as well those from African-American and Latino backgrounds. Nashashibi observed, "Muslims are seen either as victims or villains. Post 9/11, there was a hunger within Muslim-American communities to engage with others who respect them, and see them as change agents."

The three activists realized that their central challenge was to build a long-term alliance of values and principles, as opposed to a coalition aligned around a single issue or piece of legislation. They began by reaching out to selected community leaders they thought would be supportive. These leaders were then charged with getting institutional buy-in from their boards and members.

This process of alignment was neither easy nor quick. As a first step, the groups took time to learn each others' cultures. They prepared presentations on their own community's stories, which were followed by visits to homes in each others' neighborhoods. During the Muslim holy month of Ramadan in 2006, UCCRO organized a screening and discussion of a film about a Muslim slave at a large Pentecostal church. The event drew 400 Christians and 700 Muslims, many of whom had never been inside a church before.

Human rights also brought an emphasis on dignity and values. “The United Congress’ motto is ‘mobilizing people, policy and ideals.’ The ideals part was missing.”

Reverend Patricia Watkins

The turning points

Initially, the work was framed exclusively around racial justice. “But my vision of justice was always about everybody, not just us,” Rev. Watkins said, “so we were using language like brotherhood and solidarity.”

In 2007, Watkins started receiving emails from the Opportunity Agenda, a communications think tank that had recently undertaken research on how to talk to Americans persuasively about human rights. “I felt like this was the language I had been looking for,” Watkins recalled. “Disparities are the foundation of our work, but human rights added a broader, more proactive framework of what we want.” Human rights also brought an emphasis on dignity and values that Watkins felt was lacking from their platform “The United Congress’ motto is ‘mobilizing people, policy and ideals.’ The ideals part was missing,” she said.

Using the Universal Declaration of Human Rights as a starting point, UCCRO members wrote their own version that would address the specific challenges of urban communities of color in the 21st century. Still in draft form, UCCRO’s Grassroots Declaration of Human Rights refers to conditions of poverty, gentrification and displacement that connect poor people in Chicago to counterparts in other large cities like London, Rio de Janeiro or Paris, for example. UCCRO intends to use the document to frame its legislative work. “We could easily do just census organizing,” Nashashibi said. “The declaration helps keep us grounded in the human rights framework of a larger vision.”

Leaders, staff and members of the 10 groups then refined a list of four core areas of common interest: public safety, education, immigration, and affordable housing. UCCRO has since spear-

headed several human rights projects designed to further cross-cultural understanding and a unified human rights platform. The projects are described below.

The human rights impact

Human rights trainings on criminal justice and immigrant rights. One of UCCRO’s principal initiatives has been to build a multi-racial base of support for immigration and criminal justice reform. This was risky because immigration reform was viewed skeptically by many black residents, while criminal justice reform provoked fear among many immigrants. African-Americans saw immigrants, some of whom were illegal and willing to work for less pay, as unfairly competing and driving down wages for blue-collar jobs. Many immigrants saw blacks as a criminal element, deserving of whatever punishment was coming to them. Meanwhile, opponents of immigration reform skillfully exploited tensions between the groups.

To overcome this mistrust, UCCRO staged a “Human Rights Debate” game show featuring four mixed race, intergenerational teams. Each team had 15 minutes to develop arguments, pro and con, to the following questions: “You came here illegally, so you should have limited rights” and “You committed a crime, so you should have limited rights.”

UCCRO also held six focus groups on human rights, immigration and criminal justice in an African-American, Latino and mixed immigrant neighborhood, to see how different groups viewed the others’ experiences. “Human rights have allowed us to have value-based conversations across communities,” said UCCRO coordinator Josina Morita. “In focus groups, instead of saying, ‘What does immigration mean for us?’ we



Youth at UCCRO's Intergenerational Grassroots Human Rights Program.

start with, ‘What do we like about our block? What don’t we like? What rights are being violated? What rights should all people have?’ It ends up being the same conversation across communities, with different content,” she noted.

The focus groups revealed that African-Americans and immigrants both experience formidable barriers to employment. Undocumented immigrants described the fear of being asked to provide a Social Security number on job applications. Black men discussed having to check the box for “prior conviction,” knowing that it was a certain route to rejection.

Participants also found they shared similar experiences of family separation: kids with fathers in prison; a parent who had been deported; and mothers afraid or unprepared to engage in any community activities. Multi-racial leadership trainings followed the focus groups. Participants devised 10 human rights principles that speak to

the need for both immigration and criminal justice reform, and presented them before several state legislators in a 200-person town hall meeting in August of 2009.

Youth leadership development. In the summer of 2009, UCCRO launched a two-week training session for youth from each of its membership organizations. Teenagers aged 13 to 20 devised a pledge to uphold human rights for themselves and others, and picked four issues of top concern to them: violence and racial profiling; education; jobs; and the environment. They then divided into mixed race teams and fanned out across five neighborhoods to conduct surveys with 300 residents. The teams spent the rest of the summer analyzing their findings and refining policy recommendations for UCCRO to consider.

The young people ultimately recommended that UCCRO take up issues of school displacement and underfunding. These were two common

We're grounding our policy work in human rights principles that don't change, connected to an analysis of racial disparities that we want to change, which allows us to more effectively advocate for specific policies that do change year-to-year.

Josina Morita

problems which, existed across their neighborhoods, whether blighted or undergoing gentrification.

Obstacles

Not everyone on UCCRO's executive council was initially receptive to human rights. A few African-American leaders had participated in the World Conference on Racism in Durban, South Africa in 2001, but had subsequently struggled to relate those discussions to an average constituent, who comes to them wanting action on apartment repairs. These leaders wanted to know, how could human rights address everyday problems in their neighborhoods?

Watkins arranged for a presentation by Carol Anderson, a professor of history at Emory University and author of *Eyes off the Prize: the United Nations and the African-American Struggle for Human Rights*, a 2003 account of early civil rights leaders' efforts to forge a human rights movement in the United States after World War II. The "prize" they sought, Anderson explained, was achieving the full spectrum of economic and social, as well as civil and political, rights—including access to decent housing, employment, and health care.

Anderson's presentation ended the debate within the executive council. UCCRO members decided that human rights could help advance conversations already ongoing within UCCRO, and heal divisions among Chicago's communities of color.

Funders, however, remained skeptical. Several long-time donors to groups within UCCRO thought that alliance-building around human

rights was a distraction. They wondered why UCCRO wasn't focusing immediately on pressing issues of education, police brutality or comprehensive immigration reform. How would a human rights framework open political doors?

UCCRO leaders gave two answers. Their first response was that the time-consuming work of relationship building *had* to precede an action agenda. Only when people saw the commonality in issues confronting one another could they build a political coalition that would resist wedge politics, and prove sustainable over time.

"There were coalitions doing good work, but it was always focused on one or two bills," Josina Morita said. "The coalition would disappear when it was accomplished. We needed a framework to build a long-term agenda. We're grounding our policy work in human rights principles that don't change, connected to an analysis of racial disparities that we want to change, which allows us to more effectively advocate for specific policies that do change year-to-year."

Second, members said that while they could not guarantee the reception that human rights would receive in halls of power, they were confident that the framework could produce a united political front that would exert more influence in the state legislature than they had mustered working alone.

Accomplishments

With a strong base of community support behind it, UCCRO succeeded in its initial policy reform initiatives at the state capitol in Springfield, Illinois.



In 2009, UCCRO advocated for legislation that would allow low-level drug offenders to go directly to treatment instead of prison; those who complete treatment successfully will now be released with no criminal record. UCCRO leaders met with Gov. Pat Quinn to urge support for the bill, which was passed and signed into law in 2009. Members are now pushing a new bill that would expand alternatives to incarceration and provide more services for offenders.

Funders are beginning to take note. Hilda Vega, a program officer at Chicago's Libra Foundation, said, "The United Congress seems to have done an amazing job of bringing together a very diverse set of groups that have not been aligned." At a recent presentation at the Chicago Donor Forum, one early skeptic said that it was the most powerful conversation she had heard in 20 years in philanthropy.

The road ahead

UCCRO is now working on its own Grassroots Human Rights and Racial Equity policy guide and report card, modeled on one done by colleagues at the Applied Research Center, a racial justice think tank. The report is intended to exert pressure on legislators and to solidify UCCRO's own agenda by identifying bills its members most want to push. On lobby days, the organization plans to dispatch mixed teams of black, Hispanic, Asian and Muslim constituents to speak to legislators about issues such as language access, which are typically seen as the exclusive concern of immigrants.

UCCRO leaders believe that, with the move to human rights, they are holding policymakers more accountable than before. "Providing a unified goal and clear standards for what we want has allowed us to have an entirely different conversation with policymakers," Watkins said.

“Providing a unified goal and clear standards for what we want has allowed us to have an entirely different conversation with policymakers,”

Reverend Patricia Watkins

During a meeting with Gov. Quinn, UCCRO members changed their usual strategy of going in with three specific asks. Instead, they stressed that releasing tens of thousands of ex-offenders to poor neighborhoods with no resources or rehabilitative services is a violation of their—and local residents’—rights to human security.

“We said, ‘This is the standard against which we are holding you accountable,’” Watkins continued. “We demanded action on the legislation, but also a state-wide interagency plan for reintegration of prisoners.” Morita added, laughing, “The governor’s eyes got big.”

Then the governor’s chief of staff said he would put UCCRO on his calendar to discuss next steps.

Lessons learned

- ▶ **Redefine what constitutes a “win” and a “measurable outcome.”** Building relationships and power across communities, and deepening the analytical abilities of leaders to connect issues are essential conditions for policy success in a pluralistic nation. This is particularly true for groups that lack political or financial influence in the halls of power.
- ▶ **Supporting human rights alliance-building requires funders to step outside narrow grantmaking criteria.** According to UCCRO leaders, many funders who are enthusiastic about the organization’s work have struggled over where to fit it within issue-defined lines of funding.
- ▶ **Human rights alliance-building takes time and extra funding.** UCCRO’s alliance-building has been successful because the organization has taken the time to learn

a common language of human rights, and to understand each others’ perspective. “What would take one community group one month to accomplish, because they understand the context, will take us three months as a group,” Morita said. It also requires additional staff time and resources from member organizations to meet with one another—in the case of UCCRO—to travel 45 minutes across town to meet with partner organizations. Two groups in UCCRO dropped out of the coalition because they lacked the capacity to participate meaningfully.

- ▶ **Start alliance-building with community leaders, and then go deep.** It was essential for UCCRO to first get the buy-in of recognized community leaders who could bring their constituents along. After that, the hard work of convening people to talk about shared experiences began.
- ▶ **Convene joint board meetings to secure buy-in beyond executive directors.** “In IMAN, we put UCCRO into our strategic plan, so that my organizers don’t have to defend why their time is invested in the Congress,” Rami Nashashibi said.
- ▶ **Develop the agenda and fundraise together.** According to UCCRO leaders, this coalition worked in part because Rev. Watkins approached them with an invitation to develop priorities together, as opposed to asking them to endorse a previously set agenda. Watkins also walked her talk with funders: she advocated for partner organizations with donors, insisting that TARGET could not do its work unless they were supported to work with her.

CHAPTER 2:

The U.S. Record on Race: The US Human Rights Network

A coalition of 400 social justice activists with diverse constituencies, issues and methods joined forces to demand that the United States meet its obligations under the Convention on the Elimination of All Forms of Racial Discrimination.

The starting place

The last decades of the 20th century were a perilous time for rights advocacy in the United States. After a period of rights expansion in the 1950s and 1960s, by 2000 most kinds of rights work had been under sustained attack for 20 years by conservatives who argued that any disparities in the condition of women, racial minorities and the poor were a matter of personal failing, not government inaction. Activists' time was consumed defending old victories as courts began to narrow the interpretation of civil rights laws and Bill of Rights protections. Exacerbating these conditions were economic policies geared to support the wealthy and upper classes, and as well as the flight of manufacturing jobs overseas, which were slowly destabilizing the financial security of many working class Americans.

Against a shrinking horizon of domestic remedies, a growing number of U.S. activists began to explore universal human rights standards as a means of advancing a more expansive vision of social justice. Many of these advocates were women who had attended the 1995 UN World Conference for Women in Beijing; they returned to the United States radicalized about the potential for applying a human rights approach to gender disparities at home. Others were civil rights advocates who recognized that poverty, as much as discrimination, was holding their communities

back. To these domestic advocates, universal human rights provided a platform for advancing the view that economic, social, civil, cultural and political rights are interdependent—and thus equally important components of social justice.

This was often lonely work. In the United States, human rights were seen as having been achieved already domestically, or as being violated elsewhere. Most social justice groups and funders were working on single issues. In the wake of the September 11, 2001 attacks and the aggressive unilateralism of the second Bush administration, many donors and colleagues questioned the strategic value of using an international human rights frame.

To complicate matters, many of the activists who were interested in human rights were themselves poorly educated about how best to deploy it in their domestic work. People needed more information as well as a mechanism for linking human rights activists to one another.

The success

With seed funding from the Ford Foundation and Shaler Adams Fund, a diverse group of 50 activists helped establish a network that could connect and resource domestic human rights work.



Five years on, the US Human Rights Network (USHRN) is one of the broadest social justice alliances in the nation. Its membership has more than quintupled to 275 organizations and some 1,400 individuals. Members include advocates working on poverty, racial justice, disability rights, housing, and national security and women's rights. Many grassroots organizations are members, as are large human rights groups such as Amnesty International as well as national civil rights and civil liberties groups that are beginning to reorient their programming around human rights, including the ACLU, the Asian American Justice Center, the Brennan Center for Justice, and the Center for Reproductive Rights.

In 2008, USHRN undertook an unprecedented initiative to challenge the U.S. government to more forcefully combat racial discrimination. Working with a coalition of 400 social justice organizations, it coordinated a 600-page report on gaps in U.S. compliance with the Convention on the Elimination of All Forms of Racial Discrimination (CERD), an international treaty

ratified by the U.S. Senate in 1994. It organized a delegation of 125 activists who traveled to Geneva, Switzerland to call the United States to account before the United Nations Committee on Racial Discrimination.

The project was a watershed moment for a still-young domestic human rights movement. Most notably, it marked the first time that the U.S. government was seriously challenged on an international stage by large numbers of its own citizens.

The strategy

The mission of the US Human Rights Network is to strengthen the domestic movement for human rights by facilitating the exchange of strategies and resources, organizing and publicizing training opportunities, and highlighting practical models of application. USHRN also promotes collaborative advocacy among domestic activists across issues and methods; links them to global peers overseas; and works to raise the visibility of human rights as tool for social change.

The Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Ratified by the U.S. Senate in 1994, CERD defines discrimination broadly as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and the fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The treaty:

- ▶ requires all signatory nations to amend or repeal laws and regulations that create or per-

petuate racial discrimination, including against non-citizens;

- ▶ allows for, and in some cases requires, governments to use positive measures such as affirmative action to remedy racial inequities; and
- ▶ requires governments to address unequal and discriminatory effects of existing policies, not just those that have a racially discriminatory intent.

At its launch in 2004, USHR hired Ajamu Baraka, a seasoned human rights organizer with Amnesty International USA, to direct its efforts. “There was a consensus that the Network’s charge was to build a people-centered human rights movement,” he recalled. “But there was little clarity as to how that was to happen.” Baraka felt strongly that USHRN should seek to more closely link all sectors of the emerging human rights movement yet also prioritize training and assistance at the grassroots, where passion about human rights was greatest but resources and funding weakest.

The turning point

USHRN’s first nationwide test of mobilization would come four years after its founding, in 2008. The United States was scheduled to report to the United Nations on its compliance with the race convention, known as CERD.

USHRN decided to organize and issue a shadow report on gaps in the U.S. record with regard to eliminating racial discrimination. It was clear from the beginning that this effort would be a major challenge given the long list of potential grievances, including: the abandonment of thousands of poor African-Americans in New Orleans, before and after Hurricane Katrina devastated the city; the mass profiling and detention of immigrants; deep racial and ethnic disparities in health care; substandard education in inner cities and on Native American reservations; and a sky-high incarceration rate that disproportionately affected racial minorities.

USHRN initially anticipated that about 100 groups might want to work on a joint shadow report on CERD. That estimate proved to be far too conservative—more than 400 organizations ultimately answered the call to participate.

The tremendous interest was partly attributable to good outreach by USHRN. Its staff and consultants made presentations at major social jus-

tice conferences, encouraging activists to help present a full and accurate picture of racial justice problems in the United States. Network personnel argued that a comprehensive, evidence-based report could help create international pressure on the U.S. government as well draw greater attention to their local issues of concern. The large number of signatories also reflects a rising interest in international human rights advocacy generally. Fifteen years ago, no more than 10 American NGOs were involved in the first official CERD compliance review for the United States.

The process of drafting the 2008 shadow report was delegated to 30 different issue committees. Among the issues addressed were immigration, criminal courts, police brutality, women of color, employment, and voting and housing. A subcommittee of USHRN members devised criteria for deciding which issues in the report would then be highlighted in the hearings in Geneva.

Preparation for the hearings was intense. The USHRN training caucus—led by the Human Rights Project of the Urban Justice Center, Global Rights, and the National Law Center on Homelessness and Poverty—traveled around the country to orient advocates on the UN system and how to conduct effective lobbying in it. With additional project funding, USHRN was able to sponsor the travel of several dozen activists to Geneva.

The U.S. government sent an unusually large and high-level delegation of 21 representatives, including the Assistant Attorney General for Civil Rights and the former head of the Equal Employment Opportunity Commission, to defend its record on race. In Geneva they faced 125 U.S. activists who were prepared to challenge the official U.S. government report.

The influence of the NGO shadow report and advocacy was evident in the questions directed by the committee members to the official U.S. dele-

gation. Several were lifted directly from the USHRN shadow report. For example, commissioners asked delegation members about the federal, state and local governments' inadequate response to Katrina, racial profiling and Indian land right claims.

The human rights impact

Perhaps the greatest accomplishment, though, was the fact that such a numerous and diverse group of U.S. civil society groups participated and actively engaged the committee. Gay McDougall, a former CERD committee member, said that for years the virtual absence of American advocates at international human rights reviews meant that government officials were free to say whatever they liked with regard to U.S. compliance with human rights standards.

“From the outside, the U.S. practice is very opaque,” McDougall observed. “The presence of U.S. NGOs in 2008 was extremely helpful in making clear to the members of the CERD committee what the issues actually are in the United States. The shadow advocacy helps them to understand the nuances, and what would move us forward.”

USHRN also succeeded in bringing to the table constituents who are rarely represented at international human rights hearings: small grassroots organizations and people who have directly suffered human rights violations.

Obstacles and accomplishments

Not everyone in the coalition left happy. The Concluding Observations were comprehensive, but they did not address every issue raised by advocates. Others complained that the forum was dominated by lawyers and excessive gate-keeping. Lisa Crooms, a professor at Howard University Law School who served as coordinator



for CERD project, conceded that the United Nations is an elite forum, and that its systems, language and entry points frustrated some grassroots advocates who found them difficult to penetrate. But part of the point of the exercise was to teach activists how to be effective in a new advocacy venue, Crooms said. “In this arena, UN committee members speak a certain way. If you want to be heard, that’s the way you need to talk.”

Key organizers also said that while one goal was to increase the diversity of participants, the project was also explicitly designed to streamline what would otherwise have been a din of competing voices. “It would not have been either practical or useful for the committee members to receive 100 different reports from 100 different

advocacy groups,” observed Ramona Ortega, a founding member of the US Human Rights Network. Out of necessity, the coalition’s steering committee established a process for prioritizing issues and spokespeople who were most likely to compel the attention of committee members.

“The CERD effort attests to the founding principles of the network: that you try to bring together a diverse and disparate group of people, working on a wide range of issues, to demonstrate how human rights provides a common language for everyone to both articulate their position and engage in other advocacy. This was an experiment that showed that it is both possible, and very difficult,” said Lisa Crooms.



Perhaps the greatest challenge has been effective follow-up to the UN committee's Concluding Observations. Too little attention and funding were devoted to devising a specific strategy as to how advocates could use the recommendations once they returned home. "You need to situate shadow reporting into a larger campaign, with a concrete plan for re-engaging people," Ortega said, "or otherwise you lose momentum." She suggested that working groups be convened to tackle implementation of a few specific recommendations in the Concluding Observations.

Organizers also faced a significant structural impediment to follow-up. Although the State Department is responsible for drafting and submitting periodic reports on human rights to the United Nations, there is no federal agency with clear responsibility for implementing recommendations from UN committees. Once home, advocates secured a congressional hearing on the CERD recommendations, before the House Judiciary Committee. However, there was no clear focal point or persons for advocates to target, and the Bush administration showed no interest in acting on the recommendations.

The road ahead

USHRN activists recognize that the lack of domestic structures for enforcing UN committees' recommendations are a major impediment to human rights accountability. They therefore have formed a national campaign to create new enforcement mechanisms *within* the U.S. government. The effort, called the Campaign for a New Domestic Human Rights Agenda, calls first for an interagency working group (IAWG) on human rights within the executive branch. The IAWG would comprise senior personnel in the National Security Council, the Office of Legal Counsel, the Justice Department, the Department of Homeland Security, and other domestic agencies.

The campaign also seeks to establish a civil and human rights commission that would monitor human rights complaints within the United States and develop recommendations for action by federal, state or local officials. Achieving a domestic human rights commission will require new legislation and a strong showing of grassroots support to get it passed. USHRN will play a key role in mobilizing the support of its base of members.

Meanwhile, USHRN is pushing the Obama administration to make CERD implementation a priority. To that end, the coalition and its allies are advocating for, among other things, the passing of the End Racial Profiling Act; eliminating sentencing disparities for crack and powder cocaine offenses; and ending the use of immigration laws to target Muslim and Arab immigrants for deportation.

“The existence of the Network has brought greater awareness of international standards to advocates, and has raised the profile of domestic scrutiny on important issues. This contributes to a climate in which there is awareness of the United States as a violator, and a feeling that we shouldn’t be.”

Lisa Crooms

Another important priority for USHRN centers on a 2010 deadline for the United States to report to the United Nations on its progress on all four of the human rights treaties it has ratified. This new process, called Universal Periodic Review (UPR), will impose strict page limitations for submissions from NGOs and provide only limited opportunities for testimony. Advocates recognize they may therefore need to shift strategic focus areas. As Crooms observed, “The most important site of interaction won’t be Geneva, but hopefully will reside in a domestic interagency group and a human rights commission.”

In general, the visibility that USHRN brings is helping to make human rights a legitimate frame for activists and funders alike. Heidi Dorow is a program officer at Wellspring Advisors, a firm that advises individual donors on international and domestic human rights investments. “The existence of the Network—whether you are a participating member or not—has brought greater awareness of international standards to advocates, and has raised the profile of domestic scrutiny on important issues,” she said. “This contributes to a climate in which there is awareness of the United States as a violator, and a feeling that we shouldn’t be.”

Lessons learned

▶ **Assess whether your work will be bolstered by international advocacy.** Before investing time in an international human rights tribunal or treaty review, advocates should ask themselves i) whether international norms bring a higher set of standards

than they could access domestically; and ii) whether they have the capacity to follow-up on any recommendations, once issued. As human rights trainer Cathy Albisa advises, “It is important to identify the value added, focus on capturing it, and build it in to a clear and strategic work plan.”

▶ **Engage government officials about treaty reviews in advance of international advocacy.** Although the Bush administration was generally dismissive of United Nations processes and unresponsive to advocates’ overtures, coalition leaders say that in the future, efforts should be made to engage U.S. officials before advocacy begins overseas.

▶ **Use UN treaty reviews and recommendations to leverage meetings with officials at home.** UN reporting mechanisms—whether periodic reviews or visits from UN observers—can be used to secure meetings with local and national officials. When a UN advisory group on forced evictions recently visited New Orleans, local advocates exploited the visit to broker a meeting with the federal government’s Undersecretary of Housing and Urban Development.

▶ **Focus on local, not national, media coverage.** Advocates have learned that the most effective media strategy on international advocacy is *local* coverage that highlights international scrutiny of problems in a specific community, and shames local officials into responding.

- ▶ **Subsidize grantees to participate in international conferences and advocacy.** Many activists say they discovered the power of human rights and developed a global analysis of their work by attending international conferences like the Durban Race Conference in 2001 or the Beijing Women's Confer-

ence in 1995. Funders can help their grantees make these links by providing travel scholarships to participate in treaty reviews, site visits overseas, or other international human rights gatherings. It is important to give priority to those advocates who have a clear plan for follow-up once home.

PART 4:

Accountability to Human Rights



Governments' Obligations with Respect to Rights

The Duty to Respect Rights

The duty to respect is the most basic requirement of governments regarding rights. This means that governments must not do anything to interfere with or curtail a person's enjoyment of his or her rights.

The Duty Not to Discriminate

The duty of non-discrimination means that governments must promote the equality of all per-

sons and refrain from discrimination on the basis of a list of categories, such as race, gender, property or other status.

Duty to Protect Rights

The duty to protect means that governments must protect individuals and groups against human rights abuses by third parties (i.e., not part of government) – for example, by acting to protect workers from exploitation or discrimination by private employers, or those

being threatened with violence.

The Duty to Fulfill

The duty to fulfill rights requires governments to take positive action to realize a person's enjoyment of his or her human rights. With respect to economic and social rights, for example, governments must work incrementally to meet all individuals' right to health, food, shelter and education.

The case studies in Parts I through III highlight how human rights have accelerated policy and legal reform on several single-issue campaigns. These are important developments for specific individuals and communities whose needs are now being addressed. But progress has been slower at higher levels of government, where far-ranging policy decisions are made. Human rights standards were conceived for the express purpose of defining the minimum obligations of governments to respect, protect and fulfill human rights across the board.

The extent to which—and when—advocates will succeed in achieving the larger goal of government accountability remains to be seen. Part of the problem with ensuring human rights accountability stems from lack of knowledge. For example, results from focus groups with local policymakers in Illinois and California, conducted by the Opportunity Agenda, indicate that most policymakers are only slightly more aware than the general public that the United States has specific legal obligations with regard to human rights.

This rather disturbing finding is countered by indications that a growing number of government representatives—including justices on the U.S. Supreme Court—are realizing that the United States benefits when it complies with global human rights norms, if for no other reason than that it boosts the country's credibility abroad. At the local level, city governments across the country are beginning to use human rights standards for a different reason: to improve the equity of their policies and accessibility of their services.

CHAPTER 1:

Human Rights Accountability in Federal Government

After taking office in 2009, a new administration signals that it will take human rights enforcement more seriously. In response, a growing number of constituents and advocacy organizations push for ratification of treaties and improved mechanisms for government accountability to them.

U.S. advocates are increasingly using various regional human rights tribunals and mechanisms around the world to publicize rights violations in the United States and help build support for domestic policy change. These efforts have had a noticeable impact among important domestic stakeholders. Ten years ago, for example, complaints by Americans to the Inter-American Commission for Human Rights (IACHR) were so rare that the U.S. government never bothered to respond to them. The State Department now takes this forum more seriously, mostly because the number of petitions filed against the United States has nearly tripled over the last ten years, to 75 in 2008. Today, the department always files written answers and sends senior personnel to defend the cases. As noted in the Chicago torture cases profiled in Part II of this publication, litigation in this forum helped put the cases on the radar screen of the U.S. Justice Department, which eventually intervened to prosecute the abuses.

The State Department's growing responsiveness illustrates a basic principle of human rights advocacy: accountability starts with a demand. As such, "enforceability"—often seen as the Achilles heel of domestic human rights—is an incremental process. What this means in practice is that the power of human rights treaties and standards to effectively influence law and policy

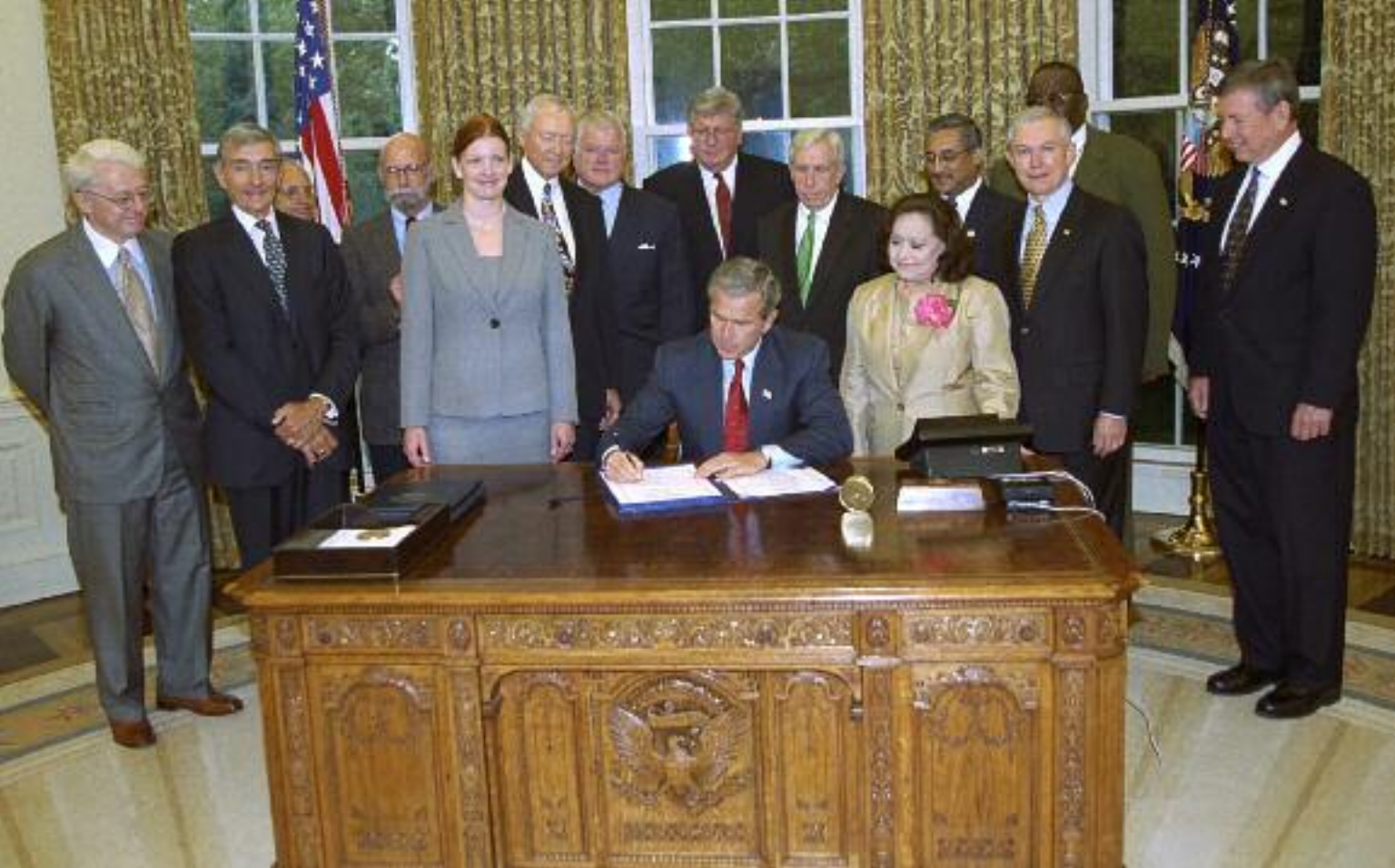
is dependent on the degree to which these ideas are in circulation.

"Sometimes introducing human rights law is like putting a big sign that says 'Kick Me' on your back," said one human rights lawyer. "You have to choose your spots. But this is also how progressive law is made. You introduce new ideas as often as appropriate until they become commonplace."

Thus, say many advocates, improved human rights enforcement in the United States depends on continually introducing seemingly "unenforceable" human rights concepts into courts and legislatures until they become ingrained in American legal practice. Ultimately, advocates hope, they will become non-negotiable principles of the U.S. justice system.

Treaty ratification

One of most obvious ways for governments to uphold human rights is to ratify international human rights treaties. The Obama administration has proved much friendlier to such agreements than its immediate predecessor. At the time this report was finalized, in December 2009, the new administration had been in office less than one year. Already, though, it had signed or supported ratification of several international treaties that the Bush administration had ignored or rejected.



President Bush signs the Prison Rape Elimination Act on September 4, 2003

In July 2009, for example, the President aligned the United States with 140 other nations by signing the Convention on the Rights of Persons with Disabilities (CRPD). Adopted by the UN General Assembly in 2006, the CRPD aims “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

The Obama State Department has put CRPD and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on its list of priorities for Senate ratification. A newly invigorated coalition of more than 200 advocates is similarly pushing for Senate ratification of the Convention on the Rights of the Child (CRC).

These treaties face stiff hurdles in the Senate, however, where they require a two-thirds majority vote for approval. Moreover, as with other human rights treaties that have already been rat-

ified, the Senate is certain to attach “reservations, understandings and declarations” (RUDs). Legislators claim such amendments are necessary to ensure that U.S. sovereignty is protected, but often their main impact is to limit the scope and impact of human rights treaties in the United States.

Observers are justified in wondering about the point of ratifying such treaties, if the U.S. Senate is so focused on seeking to limit their enforceability. Advocates cite several reasons for supporting ratification, even with RUDs attached:

- ▶ **Foreign policy and perception.** Ratification aligns the United States with other rights-respecting allies, and strengthens the nation’s credibility in promoting human rights around the world. In the case of CEDAW, ratification would take the United States out of the embarrassing company of countries like Iran and Sudan, both of which have refused to sign the treaty. Although

“Sometimes introducing human rights law is like putting a big sign that says ‘Kick Me’ on your back. But this is also how progressive law is made. You introduce new ideas as often as appropriate until they become commonplace.”

a human rights lawyer

some countries, of course, have ratified treaties which they then openly flout (Saudi Arabia, for example, on women’s rights), the United States undermines its unique ability to serve as a pace-setter on rights by failing to ratify major human rights treaties.

- ▶ **Accountability.** Ratification means that the United States must report every four years to the United Nations on its compliance. As several of the case studies in this report illustrate, these accountability hearings provide an opportunity for U.S. advocates to “name and shame,” and can create helpful pressure on government officials to address violations.
- ▶ **Impact on international practice.** What the United States says and does on matters of human rights still has enormous influence overseas. When the world’s most powerful and influential country fails to ratify human rights treaties, it gives ammunition to rogue governments to defend the oppression of women or the use of child labor, for example.

New federal mechanisms for enforcement

U.S. advocates are clear-eyed about the fact that ratification of international treaties alone is not nearly enough to ensure domestic human rights accountability. They know that stronger *domestic* mechanisms for human rights enforcement are needed as well.

The need for better infrastructure for enforcement is evident, for example, in how the U.S. government handles UN treaty reviews. Under the current structure, the State Department is responsible for representing the United States at treaty compliance hearings before the United Nations. The department, however, has historically never considered *domestic implementation* of recommendations flowing from these compliance reviews to be part of its responsibility. Meanwhile, agencies including the Departments of Justice and Housing and Urban Development, which *do* have authority over domestic policy, have not taken up UN human rights recommendations in part because they consider international treaties to be the responsibility of the State Department. This dysfunction arises partly from an outdated understanding of human rights as “foreign” and civil rights as “domestic.”

Implementation of human rights obligations at the national level is also completely dependent on the political inclinations of whatever administration happens to be in power. That is why most countries—although not the United States—have independent, non-partisan human rights commissions to monitor violations and recommend improvements to public bodies regardless of who is running the government.

Most human rights advocates and scholars strongly support the creation of an inter-agency task force and an independent human rights commission in the United States. Both steps are recommended, for example, in a white paper developed in the fall of 2008 by the American Constitution Society, with support from the U.S.

Human Rights Fund. Authored by Professor Catherine Powell of Fordham University School of Law, *Human Rights at Home: a Blueprint for the New Administration* considered ideas from a 50-member committee of human rights experts and former officials about what might be done to strengthen domestic human rights enforcement at the federal level. Three key recommendations emerged out of these discussions:

- ▶ **The Obama Administration should create an Interagency Working Group on Human Rights** in the executive branch, under the auspices of the National Security Council, that would: i) work on UN treaty reviews; ii) implement recommendations from treaty bodies; and iii) coordinate human rights policy implementation across all relevant government agencies, including the State Department, the National Security Agency, the Domestic Policy Council, and the Departments of Justice, Labor, Health and Human Services, and Homeland Security.
- ▶ **Congress should charter an independent national human rights commission.** This would mean closing down the highly politicized and discredited U.S. Commission on Civil Rights and replacing it with a Commission on Civil *and* Human Rights that has a broader mandate and different appointment process.
- ▶ **The new commission should coordinate and provide supplemental funding to state and local human rights agencies,** which should work in partnership with the federal government to remedy human rights problems.

A coalition of national and grassroots organizations have come together as the Campaign for a New Domestic Human Rights Agenda to push these recommendations with senior officials in the Obama administration and to educate affect-

ed constituencies about the reforms. Coalition members include the ACLU, the Center for American Progress, the Center for Constitutional Rights, the Human Rights Institute at Columbia Law School, the International Association of Official Human Rights Agencies, the Leadership Conference on Civil Rights, the Rights Working Group, and the US Human Rights Network.

“Shifting the advocacy focus from Geneva [home of most UN human rights bodies] to the United States should increase the access of members of civil society [to the government] on human rights matters,” said Lisa Crooms, a professor at Howard Law School who is helping to coordinate the campaign. “With increased access comes a more robust human rights discourse, which contributes to the likelihood that human rights obligations will be satisfied rather than ignored or violated.”

The inter-agency working group, advocates said, would provide a venue for coordinating the federal response to human rights violations occurring within the United States that historically have slipped between the foreign and domestic arms of the government.

A new and more powerful civil and human rights commission, meanwhile, could take public testimony and investigate not only highly publicized human rights disasters—like the displacement of thousands of people following Hurricane Katrina—but also issues and problems that receive far less attention but are equally severe violations of human rights. Such issues include deaths and abuses in immigrant detention centers; crimes against gay and transgendered people; sexual violence against Native American women; and dangerous working conditions for migrant laborers. The commission could also, for example:

- ▶ **audit government programs**—for example, the distribution of federal stimulus monies or mortgage foreclosure assistance—

to ensure they adhere to human rights norms; and

- ▶ **urge faster action by federal agencies,** such as the Department of Housing and Urban Development (HUD) or the Federal Emergency Management Agency (FEMA) with respect to post-Katrina recovery, where the government has been slow to respond to human rights problems.

Several key Obama administration officials appear receptive to these ideas. In addition, a number of advisors to Catherine Powell's blueprint paper have assumed senior posts in the administration, including former Yale Law School dean Harold Hongju Koh, now a legal advisor to the State Department; and Julie Fernandes, deputy assistant attorney general for the Civil Rights Division of the Department of Justice. Powell herself now works in the Secretary of State's Policy Planning Office.

CHAPTER 2:

Local Government Implementation of Human Rights Standards

In response to pressure from—and in partnership with—community activists, city officials around the country are beginning to explore how human rights standards and principles can make municipal policy, planning and services more equitable.

Local advocates and their allies in many municipal governments are not waiting for the federal government to lead the way on human rights. Some have forged ahead in passing resolutions affirming or adopting international human rights treaties. Still others are applying human rights standards to the delivery of services and the development of new policies. Some notable examples include the following:

- ▶ On September 30, 2009, the **Berkeley, California** City Council passed an ordinance requiring the city to report on its compliance with ratified international human rights treaties. The ordinance directs the city to provide its reports to the U.S. State Department for inclusion in its official, periodic reports to UN treaty bodies.
- ▶ In 2008, the city of **Milwaukee, Wisconsin** reconstituted its dormant Equal Rights Commission with a broader mandate to promote social and economic, as well as civil and political, rights.
- ▶ In December 2008, the Health Board of Lewis and Clark County in **Helena, Montana** adopted a resolution that recognizes the human right to health and health care. The resolution created a task force to recommend how best to implement universal health care in the county, using human rights principles.
- ▶ In 2008, the governor of **Connecticut** signed into law a bill establishing a comprehensive Commission on Health Equity, which declares that “equal enjoyment of the highest attainable standard of health is a human rights and a priority of the State...”
- ▶ In 2006, a coalition of 117 racial justice and women’s rights groups in New York City, led by the Human Rights Project of the Urban Justice Center, was narrowly defeated in its effort to pass a Human Rights Government Operations Accountability Law (“HR GOAL”) in the City Council. The proposed law would have implemented the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) by requiring municipal agencies to monitor the race and gender impact of city policies, and would have created a participatory task force with community members to recommend responsive policies. Although the bill did not pass, the advocacy effort motivated the **Manhattan Borough President’s Office** to undertake a gender analysis, and the **NYC Department of Health** to consider a human rights pilot project.

All of these important developments would not have been possible without targeted, persistent advocacy by committed organizations and indi-

viduals. Those advocates, in turn, owe a great debt to pioneers of the local implementation movement: an organization of women’s rights activists called WILD for Human Rights. That group’s work in San Francisco, and the work of those in other cities who were inspired by that effort, are discussed below.

San Francisco Women’s Rights Ordinance

In the late 1990s, the San Francisco City Council passed an historic ordinance committing the city government to implement the principles embodied in CEDAW, the women’s convention. That step sparked a movement in other cities across the country to use human rights standards in municipal governance.

In 1998, the city of San Francisco approved Ordinance 128-98, becoming the first in the nation to commit to implementing the Convention on the Elimination of Discrimination against Women (CEDAW). As of December 2009 that treaty had been ratified by 185 of the United Nations’ 192 member nations, with one major exception: the United States.

The campaign to secure a local CEDAW ordinance was the brainchild of Krishanti Dharmaraj and fellow activists at the Women’s Institute for Leadership Development (WILD) for Human Rights, based in San Francisco. Dharmaraj was one of several U.S. activists who attended the UN Conference on Women in Beijing in 1995, where the rallying cry was “women’s rights are human rights!” That conference inspired her to consider what might be achieved if the United States had an affirmative responsibility to promote gender equity. Dharmaraj decided to focus first at the municipal level and seek to implement the CEDAW in her home town of San Francisco. WILD secured the support of the local Commission on the Status of Women, as well as

influential politicians including U.S. Sens. Barbara Boxer and Diane Feinstein.

The ordinance declares that the City of San Francisco will “promote equal access to and equity in health care, employment, economic development and educational opportunities for women and girls and will also address the continuing and critical problems of violence against women and girls.” The law requires city departments to perform a comprehensive analysis of city policies and practices to identify policies that disfavor women, and to take concrete steps to remedy them. Furthermore, it requires the city to “integrat[e] equity and human rights principles into all of its operations”—including policies, programming, employment, budget and services.

The seven agencies that conducted a gender review made a number of specific changes as a result. The following are among most notable:

- ▶ At the **Department of Public Works**, the review made senior managers realize that some of the department’s policies impacted men and women differently even though they appeared gender-neutral. For example, the review highlighted the extensive fear of assault that many women experience walking along dimly lit streets and through dark parking lots at night. The department subsequently instructed its engineering staff to install more lights, at closer intervals, on city streets and in new construction projects.
- ▶ The city’s **Arts Commission** realized that women artists with child care responsibilities were at a disadvantage competing for street space on which to sell their artwork. The city’s daily lottery for allocating vendor licenses required artists to line up in person, beginning at 8:30 a.m., to obtain a prime spot. The Arts Commission changed the rule to allow a proxy to submit a name at the appointed hour. The change benefited not only women with small children, but also



Representatives from Youth Empowerment Project in New Orleans describe their efforts to reform harsh punishment of youth.

men with parenting responsibilities and observant Jews who could not attend the lottery in person on Saturdays.

- ▶ The gender analysis strengthened support within the **Department of the Environment** to offer flexible schedules for staff. The department also began providing a free ride home for any employee with a domestic emergency who had taken mass transit to work that day.
- ▶ The gender initiative caused municipal officials to realize that issues of **work-life** balance needed greater attention, across city agencies. In response, several departments approved or developed telecommuting and more flexible schedules. Other departments used the gender analysis to scrutinize their hiring, promotion and grant practices.
- ▶ Ten years on, implementation of CEDAW principles in San Francisco has slowed, largely due to a lack of dedicated staff with human rights expertise to guide new proj-

ects. Pressure from community organizations which campaigned for the ordinance also waned as groups moved on or—in the case of WILD—struggled to survive.

- ▶ As the case studies below indicate, however, the San Francisco initiative nevertheless inspired a wave of organizing in other states across the country for local government accountability for human rights.

Lessons learned

- ▶ **Address litigation fears up front.** A major point of resistance in many municipal governments has been the fear that a law declaring new rights or mandating the disclosure of data could fuel lawsuits claiming violations. Both the San Francisco ordinance and the proposed NYC GOAL legislation included provisions barring individuals from using the law as a basis for lawsuits.
- ▶ **Find opportunity in economic adversity.** A recession might seem to doom efforts to broaden government responsibility for rights

“Diversity for folks here was about pointing out the difference. The human rights frame seems to be more unifying. It asks, ‘what can we collectively do to make this a better, more responsive place?’”

Raquel Wells

protection. But an economic downturn can also provide an opportunity to demonstrate the relevance of a proactive approach to rights. In San Francisco, city officials used CEDAW and CERD as a tool to examine the impact of a 5 percent across-the-board budget cut, and reconsidered those that would harm especially vulnerable groups.

- ▶ **Provide technical assistance.** Implementation in San Francisco began to founder when the city government lost staff and partners with human rights expertise to guide agencies. Gay McDougall, the UN Independent Expert on Minority Rights, advises funders to support pilot projects that pair local government officials with human rights experts with government experience. Those outside experts can assist with implementation and disseminate lessons learned to policymakers in other cities and states.

Eugene, Oregon

Eugene, Oregon created a “Human Rights City Project” to educate municipal employees and the general public about human rights, and how they could strengthen the work of city departments.

Eugene is a mid-sized city of 165,000 people in western Oregon. Although home to the University of Oregon and relatively progressive in comparison with the rest of the state, Eugene bears little resemblance to large, cosmopolitan centers like San Francisco or New York City. Yet in the past three years, Eugene’s Human Rights Commission has led an effort to integrate international human rights standards and principles in all city departments. The goal, say city officials, is to help city agencies:

- ▶ become more proactive in identifying and seeking solutions to human rights problems and issues;
- ▶ adopt a more collaborative and transparent problem-solving approach with community members;
- ▶ address human rights violations even when these violations are unintentional or inadvertent; and
- ▶ provide education to all residents about their human rights and how they can seek redress for rights violations.

The initiative began in 2007 when Ken Neubeck, a retired sociology professor from Connecticut who had recently relocated to Eugene, read about the human rights ordinance in San Francisco. Neubeck liked the idea and wanted to introduce it in Eugene. He decided to start by educating the public and government agencies about human rights, rather than push a city council resolution or a specific issue initiative. His first step therefore was to invite WILD to lead a workshop, which the city’s Human Rights Commission agreed to sponsor, on local implementation of human rights. “I don’t know what a resolution means, if there isn’t knowledge within government about what to do with it,” Neubeck said.

A series of internal discussions and workshops with city agencies followed. As a result of these efforts, the Human Rights Commission decided to make implementation of international human rights part of its work plan. Shortly thereafter, the Eugene City Council approved a city-wide Diversity and Equity Strategic Plan, which incorporates human rights as a core element. That plan formally took effect in July 2009.

Neubeck, who is now a member of the Human Rights Commission, and colleagues in local gov-

ernment acknowledge that the next challenge—translating human rights principles into concrete changes in policy and practice—will be much harder. “Human rights concepts are so big, that it can be hard for people to envision how to implement and actually do it,” said Raquel Wells, Equity and Human Rights Manager for Eugene. “I have to help interpret it for someone who is putting lines on a street, or picking up trash in a park.”

In meetings with managers and staff in every department, Wells and her staff have employed several strategies:

- ▶ **Clarifying terms.** This includes, for example, explaining the difference between human rights and more familiar concepts like “diversity.”
- ▶ **Relating human rights to existing frameworks.** As a first step, Equity and Human Rights staff have found it essential to understand the best practices and organizational culture of whichever department they are working with, and help relate human rights to that culture. Wells observed that, “Working with staff across different agencies is like a mini-UN. We need to figure out how to tell the [human rights] story in a way that fire, police, recreation and information services can hear it.”
- ▶ **Pointing to positive actions already taken.** The team is highlighting measures that some departments have already taken that are consistent with human rights. For example, the Eugene Public Library recently eliminated its requirement that that card holders have a fixed address, in order to allow homeless people access to the Internet and other library services.
- ▶ **Emphasizing accessibility and participation.** Public engagement processes are being overhauled, across departments. Rather than

wait until someone asks for a form in Spanish, agencies are working proactively to ensure that adequate information and resources are already accessible. Several Eugene city departments have begun to integrate community members on planning committees, and as voting members of advisory boards.

Although the effort in Eugene is largely driven by internal conversations among city staff, administrators and commissioners, Neubeck and Wells stressed that local implementation of human rights must also involve partnerships with community members. Community groups have now held two celebrations of Universal Human Rights Day (December 10), in 2008 and 2009. They are currently planning a human rights summit for 2010 that will include members of the city’s volunteer-based Sustainability and Police Commissions, to discuss how these entities could apply human rights principles to their work.

Many Eugene officials believe that the human rights approach is already paying dividends in terms of a community conversation about social equity. As Wells describes it, “Diversity for folks here was about pointing out the difference. In a community that is predominantly European American, diversity becomes a narrow and divided framework. The human rights frame seems to be more unifying. It asks, ‘what can we collectively do to make this a better, more responsive place?’”

The city of Eugene has created a website, www.humanrightscity.com, to share its research and information on community events relevant to human rights.

Lessons learned

- ▶ **Be specific about how government officials can translate the human rights into policy, without telling them what to do.** “Many activists have passion, but don’t take

Human rights: What do local officials think?

In 2008, communications think tank The Opportunity Agenda and the research firm of Belden, Russonello & Stewart queried government officials in Illinois and California about human rights, and how use of this language played in political spheres. Some of the findings are summarized below.

- ▶ Policymakers in both states unanimously agreed that human rights apply equally in the United States as elsewhere.
- ▶ However, there was a partisan divide between progressives, who interpreted human rights broadly, and conservatives—who disagreed, for example, that fair pay and freedom from poverty are human rights. Such ideals, they said, were more dependent on personal responsibility than government obligation.
- ▶ Most policymakers agreed that health care should be a human right, but hesitated

to use such a description for fear that they could not deliver on it, and would therefore be considered human rights violators.

Based on this and other research, The Opportunity Agenda recommends using the following language when talking about human rights to policymakers and the general public:

Human rights treaties

It is better for everyone to live in a society that pays attention to human rights, rather than one that ignores them. Human rights treaties provide tools to help ensure that the basic rights of all people are upheld.

Health care

Health care is a public good and is as essential as food and water. No one should have to go without this basic human right.

Racial profiling

Racial profiling violates the human right to fair treatment and freedom from discrimination, as well as American values of fairness and justice.

Juvenile justice

The opportunity for rehabilitation is a human right that should be upheld for young people who commit crimes.

Immigration

We need workable solutions to immigration that uphold our nation's values and allow people who contribute and participate to live in the country legally with their human rights protected.

A full copy of the report is available online at http://opportunityagenda.org/human_rights_united_states.

the time to translate the human rights framework,” said Raquel Wells, Eugene’s Equity and Human Rights Manager. Advocates can, for example, show how they have operationalized human rights in their own organizations.

- ▶ **Take a cooperative, rather than oppositional, approach.** Wells cautions advocates to avoid “us versus the government” rhetoric in favor of an approach that presents human rights as something that can help government personnel do their jobs better.
- ▶ **Fund yearly gatherings for local officials and activists who are working on local implementation.** Government officials

interviewed for this report are eager to learn from peers in other localities who are thinking about a human rights approach. Funders can help accelerate local implementation of human rights by funding annual strategy sessions to promote the exchange of new ideas being developed at the municipal level.

Seattle, Washington

Human rights officials in Seattle are using human rights principles to take a fresh look at housing and racial equity across the city, and public health policy throughout the larger county.



Sam Jackson of May Day New Orleans shows visiting advocates public housing that is in danger of being closed.

Seattle's human rights commission is integrating human rights principles into all of its work on public safety, housing, education and disability rights. "We are trying to use international standards, with the goal of getting the city council to pass an ordinance adopting human right standards locally," said Roslyn Solomon, an attorney who chairs the commission. The initiative is not treaty-specific; instead, commissioners are using briefing materials provided by the National and Economic Social Rights Initiative (NESRI) to consider human rights principles from a variety of international treaties, whether ratified or not.

This human rights work was launched when Solomon met Jean Carmalt, a former human rights analyst with the Center for Economic and Social Rights in New York City, who had recently relocated to Seattle. Carmalt and Solomon co-lead a training session for members of Seattle's Human Rights Commission in the spring of 2008.

International human rights appealed to commissioners in this progressive city of more than half a million people, which in other respects had already "gone global." In 2001, Seattle became one of the first U.S. cities to initiate programs and policies that comply with the Kyoto Treaty on climate change, despite the federal government's refusal to join it. It has since established a composting program, green guidelines for new construction, and significantly reduced consumption of fossil fuels.

While the work is still in early stages, Seattle can point to two places where human rights are making a difference:

Public health service delivery. The King County Board of Health, which includes jurisdiction over the city of Seattle, has worked with its members to adopt several principles for public health reform, many of which are drawn

“Human rights acknowledges and embraces the reality that the community is essential to an individual’s ability to thrive. The standards help us figure out what that means, concretely.”

Roslyn Solomon

from Comment 14 of the UN Committee on Economic, Social and Cultural Rights:

- ▶ **Universality.** Health services are available to all regardless of factors such as the ability to pay, pre-existing medical conditions, race, age, ethnicity, or immigration status.
- ▶ **Accessibility.** Services are conveniently located, are widely advertised and translated, and payment mechanisms are straightforward.
- ▶ **Appropriateness.** Care meets highest medical standards, and is delivered in language that is understandable and appropriate to cultural norms.
- ▶ **Equity.** Facilities have adequate resources to provide preventive, diagnostic and treatment services. The public health system collects and reports data on the health status of the population, with a specific focus on health equity.
- ▶ **Participation.** Target populations participate in the program design, implementation and evaluation.

Roslyn Solomon, who also consults for the King County Board of Health, used the principles to evaluate a new mental health program for low-income mothers suffering depression. The principles highlighted the need for greater community input and partnership in the operation of the program. They also underscored the importance of developing a better strategy for disseminating information about the program—for instance, in community centers, schools, grocery stores, food banks and shelters.

Health reform advocacy. Elected members of the county health board are now using the principles to lobby federal lawmakers for better local health care delivery. Local officials are also using the principles in external communications to the media, and in presentations to constituents and other stakeholders.

Not everyone in local government has been won over. Officials from rural areas outside of the city of Seattle often bristle at the mention of the United Nations. When working with more conservative policymakers, Solomon focuses on the substance of the standards, rather than on the fact that they derive from international treaties.

The value-added thus far? “Human rights acknowledges and embraces the reality that the community is essential to an individual’s ability to thrive,” Solomon said. “The standards help us figure out what that means, concretely.”

Lessons learned

- ▶ **Start or support human rights initiatives in smaller cities.** The ideal initial venues for human rights implementation initiatives, said several advocates and government officials, are smaller cities where citizens have readier access to municipal leaders. “Seattle is a smallish city,” Roslyn Solomon observed. “A few individuals who work hard can have an influence.”
- ▶ **Fund or start a pilot project in one or two municipal departments, before going for a city-wide ordinance.** This has the advantage of demonstrating to city officials the concrete value of a human rights approach, as well as the realistic costs of implementa-

tion. Civil rights and public health departments are all excellent places to start, because they tend to support the idea of equitable outcomes for all members of society.

- ▶ **With more conservative government officials, focus on the standards and principles, not necessarily the source.** “With conservatives who would balk at the label and stop listening, we avoid the United Nations and go directly to the substance of the right to health care,” Solomon said.

Chicago

In 2009, the Chicago city government passed a resolution in favor of aligning city policies and practices with the international Convention on the Rights of the Child.

In February 2009, Chicago became the 10th city in the United States to declare its support for the Convention on the Rights of the Child (CRC) when its Board of Supervisors passed a resolution pledging to “work to advance policies and practices that are in harmony with the principles of the [CRC] in all city agencies and organizations.”

The CRC resolution began as a project of students at Northwestern University’s International Human Rights Clinic and its Children and Family Justice Center.

Inspired by efforts in New York and San Francisco to implement human rights at the local level, Sandra Babcock, director of the human rights clinic, envisioned that the CRC could provide a single, comprehensive framework which could help the city government assess and address the protection of children across city agencies. A senior official at the Department of Family and Support Services became enthusiastic and put the authority of his agency behind the proposed resolution. The resolution passed with no debate.

Unlike the San Francisco CEDAW ordinance, the CRC resolution in Chicago is non-binding. The resolution nevertheless opens the door to discussions with city agencies about how the principles could enhance their work. Since the resolution’s passage, both the city’s Department of Family and Support Services and its health department have signaled their interest in aligning their policies and goals with the children’s rights convention. The Northwestern University clinics have offered to supply technical assistance.

“We want to sit down with agency officials and select two or three goals, whether it’s infant mortality, or access to the highest standard of health care for children,” said Bernardine Dohrn, a Northwestern law professor who works with its Children and Family Justice Center.

Lessons learned

- ▶ **Focus on securing the support of leaders of influential agencies.** In both Chicago and San Francisco, the support of one or two agency leaders made all the difference in persuading political leaders that implementation of universal human rights standards is a reasonable approach.
- ▶ **Do not dismiss the utility of a non-binding resolution.** Leaders of the effort to pass a CERD and CEDAW human rights law in New York City rejected the offer of a non-binding resolution, which would have lacked enforcement teeth. But in retrospect, they said that a non-binding resolution like the one passed in Chicago would have had the benefit of opening the door to pilot projects, and might have provided additional momentum to the coalition to continue to press for an enforceable ordinance.

CHAPTER 3:

Human Rights in U.S. Courts

Although U.S. courts are a long way from considering international standards as binding law, justices on the U.S. Supreme Court, other federal courts and some state courts are beginning to call for a global conversation about human rights.

Raising human rights arguments in U.S. litigation requires a strong chin. The Constitution's Supremacy Clause says that treaties entered into by the United States are the "law of the land." However, even ratified human rights treaties are not enforceable in U.S. courts in the absence of specific enabling legislation from Congress.

Does that mean international law is useless for purposes of advancing U.S. law and enforcing rights at home?

Far from it, say U.S. court watchers. Judges—with some justices of the U.S. Supreme Court in the lead—are beginning to call for a more global approach to deciding controversial cases of human rights. Increasing numbers of state and federal judges are requesting training on international law and human rights. Some are writing about the relevance of international and foreign law when interpreting close questions of constitutional rights.

Controversy at the U.S. Supreme Court

Perhaps unsurprisingly, such efforts have resounded most loudly—and with greatest controversy—at the U.S. Supreme Court. In public speeches and court opinions, justices from the liberal, moderate and center-right flanks of the court have called for the need to measure individual freedoms against evolving notions of human

rights. In several recent cases on terrorism, gay rights, affirmative action, and the death penalty, for example, the court has cited either international treaties or comparisons to foreign court practice. For example:

- ▶ In *Hamdan v. Rumsfeld* (2006), a narrow majority of the court ruled that all non-citizen prisoners, including "enemy combatants," are protected by the Geneva Conventions (a set of international treaties and protocols that, among other things, seek to define standards for the humanitarian treatment of victims of war). This ruling essentially rendered illegal the Bush administration's program of indefinite detention and torture, and called on the administration to treat all detainees in a manner consistent with international human rights standards.

This decision followed a similar ruling in a different case, involving a citizen detainee, *Hamdi v. Rumsfeld* (2005), in which the court invoked the Geneva Conventions to hold that U.S. citizen-enemy combatants must be afforded the right to challenge their detention.

- ▶ In *Roper v. Simmons* (2005), the court held that executing youth under age 18 violates the U.S. Constitution. Writing for a majority of the court, Justice Anthony Kennedy cited



the “overwhelming weight of international opinion against the juvenile death penalty,” as expressed in the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the Criminal Justice Act of the United Kingdom.

- ▶ In 2003, Justice Ruth Bader Ginsburg cited international and foreign law in two cases which narrowly upheld affirmative action programs in law school admissions. In *Grutter v. Bollinger* and *Gratz v. Bollinger*, Ginsburg cited CERD and CEDAW to argue that the United States should distinguish between harmful and inclusive uses of race, and that affirmative action programs should be temporary in nature.
- ▶ In another 2003 case, *Lawrence v. Texas*, Justice Kennedy wrote a majority opinion striking down a Texas law criminalizing homosexual sex. In support, Kennedy cited a 1981 decision from the European Court of Human Rights affirming the right of adults to engage in consensual same-sex intimacy.

- ▶ In a 2002 death penalty case, *Atkins v. Virginia*, the court ruled that executing mentally retarded offenders violates the Constitution’s ban on cruel punishment. Justice John Paul Stevens’ majority opinion noted that “within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved.”

In most of these cases, discussion of international and foreign law amounted to little more than a paragraph or a footnote. Nevertheless, these citations have both encouraged lawyers to raise international law and unleashed a torrent of criticism from conservative commentators. Most notably, Justice Antonin Scalia’s scathing dissents in these cases helped to inspire a 2006 draft resolution and bill in Congress—ultimately never put to a vote—that would have forbidden judges from citing foreign court decisions in interpreting the Constitution.

If international and foreign law is so controversial, why are some justices bothering to invoke it at all?

Using human rights litigation for policy change: The Vienna Convention on Consular Rights

Sometimes human rights litigation can fail to win the day for the client, but still bring about positive policy reforms. Persistent criminal defense attorneys in the United States have used the Vienna Convention on Consular Rights—a treaty that gives foreign citizens the right to seek the assistance of their home governments when they are in trouble abroad—to change how the United States treats foreigners in its criminal justice system.

Sandra Babcock, then a young capital defense lawyer in Texas, realized that two of her death row clients—one each a citizen of Canada and Mexico—had never been informed of their rights under the Vienna Convention. She raised the violation on appeal and argued for a new trial on that basis. Other attorneys representing the 50 or so foreign nationals on U.S. death rows eventually picked up the Vienna Convention claim as well, leading to a five-year moratorium on these executions while various courts considered the argument.

Ultimately, in its 2008 ruling in *Medellin v. Texas*, the U.S. Supreme Court held in that the Vienna Convention on Consular Rights cannot be enforced as domestic “law.” However, as a mat-

ter of policy, the Vienna Convention litigation directly impacted human lives and led several important changes in U.S. practice:

- ▶ President George W. Bush, acting on advice of the State Department that the United States should comply with the Vienna Convention in order to ensure that the consular rights of Americans abroad would be reciprocated, in 2004 requested that state courts grant new hearings to all foreign nationals on death row.
- ▶ The death sentences of three Mexican nationals were permanently overturned after they raised legal challenges based on the Convention.
- ▶ Federal judges now routinely advise all foreign nationals appearing before them of their rights under the Vienna Convention.
- ▶ The State Department, the state of Texas, and the American Bar Association all developed training manuals instructing law-enforcement officials about the Vienna Convention and how to comply, thereby creating greater awareness of how international law intersects with American practice.

U.S. judicial reputation

One important motivation is a concern that U.S. influence in the world will diminish if U.S. government officials and policymakers continue to treat democracy and human rights ideals as a one-way street: encouraging their export while refusing to acknowledge enlightened practices from abroad in their own deliberations. When courts recognize and study other judicial systems, former Justice Sandra Day O’Connor has said, “our ability to act as a rule of law model for other nations will be enhanced.”²⁰ Justice Ginsburg echoed O’Connor’s comment in a 2006 speech, arguing, “The U.S. judicial system will be

the poorer ...if we do not both share our experience with, and learn from, legal systems with values and a commitment to democracy similar to our own.”

In fact, empirical evidence suggests that U.S. courts’ legal influence abroad—long a source of pride among most American legal experts—is already waning. An analysis by *The New York Times* in 2008 found that citations by the Canadian Supreme Court to U.S. court decisions fell by about half between 2002 and 2008; in Australia, U.S. citations declined by two-thirds.²¹ This trend is especially significant in cases involving human rights, as the European Court of

Transforming poverty law through human rights: The Maryland Legal Aid Bureau

Inspired by his work with the United Workers Association of Baltimore, J. Peter Sabonis, director of the Maryland Legal Aid Bureau (MLAB), began to see human rights issues in the needs its clients were presenting at the bureau's 10 offices across the state.

Staff lawyers had already begun rephrasing a key introductory question. They no longer asked, "What *legal services* do you need?" but "What are your *needs*?" The answers revealed a major gap between what MLAB thought it should be doing for clients and what clients wanted.

When clients were invited to discuss their broader needs, they identified a different list of concerns: not only representation in eviction matters, but also *affordable housing*; not just help getting wages paid, but also *living wage jobs*; not only access to Medicaid benefits, but also *affordable health care*.

"We were almost like technicians, while our clients wanted economic rights," Sabonis said. "Then we discovered there was this law out

there that was totally consistent with their perspective, which lawyers could use. The human rights framework gives us a legally cognizable way to bring the big picture into legal disputes that are usually seen more narrowly."

MLAB has begun to hold trainings for staff lawyers about international law and how to connect lawyering to social movements. "It will be a multi-year process of strategizing the right to housing, health care and income security," Sabonis said. "We want lawyers to think not just in terms of cases but in terms of broader advocacy."

The response from staff has been mostly positive, he said, although lawyers—much like judges and politicians—tend to want to focus on whether human rights treaties offer controlling law.

"But on the whole, our lawyers welcome the language and the conversation about human rights," Sabonis said. "It begins to fulfill the desires that brought them to legal aid work in the first place."

Human Rights is now considered a more authoritative source. As the chief justice of the High Court of Australia put it bluntly in a 2001 interview, "America is in danger of become something of a legal backwater."²²

The attacks of September 11, 2001 have also clearly influenced the thinking of some justices about the relevance of international human rights norms. As O'Connor said in her 2003 speech, "No institution of government can afford any longer to ignore the rest of the world.... Because of the scope of the problems we face, understanding international law is no longer just a legal specialty; it is becoming a duty."²³

Globalization

Another obvious answer lies in globalization, which is exerting its gravitational pull on the courts as much as on other areas of modern life. Justices Stephen Breyer has noted in public comments that both business and human rights issues are increasingly international, and that transnational agreements are relevant to adjudicating both.²⁵

Perhaps most important, however, is the emergence of a common legal culture around the world. For most of its existence, the United States represented a unique experiment in the world. It was the only democracy with both a written

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Dorothy Thomas

Constitution enshrining basic human rights and an independent judiciary with the power to review and strike down laws inconsistent with it. But in the past 30 years, other nations, including Canada, South Africa, Australia and India, have all installed constitutional review by courts. Ten years ago, the United Kingdom adopted the Human Rights Act, enshrining the European Convention on Human Rights in UK law. This growing commonality of legal culture, even given some differences, makes it more relevant to compare how other nations have resolved similar problems. Internet search engines of foreign court decisions now make it practical to do so.

For all of these reasons, a growing number of federal and state court judges are requesting training on international law, according to the American Society of International Law and the Aspen Institute, both of which began to provide such education in the late 1990s.

Human rights lawyering

The positive citations to international and foreign law in *Hamdan*, *Roper* and other Supreme Court cases did not arise in a vacuum. In each of these cases, lawyers raised arguments about international treaties and comparative foreign practice in either the main, or supplemental “friend-of-the-court” briefs to the justices. Many of these briefs were prepared by human rights advocates. The success of some of their efforts highlights the important role advocates will continue to play in influencing changes in law and policy.

The Bringing Human Rights Home Lawyers Network, part of Columbia Law School’s Human Rights Institute (HRI), has been a crucial

laboratory for U.S. attorneys to brainstorm new strategies and to develop international law briefs in important cases. The network, which started in 1998 with fewer than two dozen lawyers, today counts more than 300 individual attorneys and public interest law organizations as members.

The network’s efforts are not confined to federal courts. Realizing that several state constitutions reference the right to health, housing or food, HRI and colleagues at Northeastern Law School in Boston and the National Economic and Social Rights Initiative (NESRI) recently wrote a manual for lawyers on how to use international law standards to litigate welfare rights cases in state courts. Its recent trainings on economic justice and human rights have attracted more than 150 practicing lawyers.

Conclusion

Invoking human rights in U.S. courts and policy arenas may no longer feel like tilting at windmills. However, it is still an unfamiliar framework for conceptualizing legal and policy advocacy in the United States. This means that U.S. advocates still encounter quizzical looks from policy-makers and even fellow advocates, and feel the need to defend the use of standards considered by some as “foreign.”

For those seeking to advance human rights change through the courts, litigating international legal claims remains a steep but steady climb. More and more lawyers are raising comparative foreign law and human rights treaty standards; currently, though, they do so largely as an aid to constitutional interpretation, rather than as enforceable law.

Too often, said Dorothy Q. Thomas, a leading human rights activist and philanthropic advisor, the question of human rights enforcement gets reduced to treaty ratification or court mandates, when it is really about the struggle of people to realize their fundamental human rights. “Human rights are also a vision and a method—we’re all born equal in dignity and rights,” she said. “This notion does not purely reside in the law, but in one’s sense of self, and can be realized through direct action as well as through the legal system.”

Communications experts advise that whatever the advocacy venue, Americans are more concerned about the values underlying human rights—dignity, opportunity, fairness, and

respect—than about human rights treaties themselves. These animating values remain the starting place for a public conversation about achieving human rights at home. The vision is universal, while the struggle, as always, is local.

Where, after all, do universal human rights begin? In small places, close to home so close and so small that they cannot be seen on any map of the world . . . Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

—Eleanor Roosevelt

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Resources

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www.aclu.org/human-rights

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