

2000

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Peter Weiss

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Recommended Citation

Weiss, Peter. "Economic and Social Rights Come of Age: United States Held To Account in IACHR." Human Rights Brief 7, no. 2 (2000): 3-5.

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Economic and Social Rights Come of Age: United States Held To Account in IACHR

by Peter Weiss*

On October 1, 1999, the Poor People's Economic Human Rights Campaign and a number of other individuals and organizations filed a petition with the Inter-American Commission on Human Rights (IACHR), charging the United States with violating a variety of fundamental economic and social rights, including rights to an adequate standard of living, health, work, education, food, housing, and social security, and the rights to protection for family relations and to be free of discrimination. The driving forces behind this pathbreaking venture are the members of the Kensington Welfare Rights Union (KWURU), the Philadelphia based interracial organization of welfare recipients and other poor people, and its dynamic leader, Cheri Honkala, a single mother who has lived under the poverty line most of her life. The petition is the result of a series of strategizing sessions held over a two-year period at the Center for Constitutional Rights. The drafting of the petition is primarily the work of a group of students from the City University of New York Law School, under the creative direction of Professors Cathy Albisa and Rhonda Copelon, who supervise the school's International Women's Human Rights Clinic.

Jurisdiction

The IACHR has jurisdiction to hear the complaint of the Poor People's Economic Human Rights Campaign because of U.S. ratification of the Organization of American States (OAS) Charter (Charter) in 1951, U.S. adherence to the American Declaration of the Rights and Duties of Man (Declaration), and its signature in 1977, albeit not ratification, of the American Convention on Human Rights (Convention). Although the petition contains references to the Convention and to international sources of human rights, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), it should be noted that the OAS Charter itself, which has the force of a treaty for the United States, recites all of the above mentioned economic and social rights. Furthermore, the Inter-American Court of Human Rights, in Advisory Opinion OC-1089, stated that "[f]or the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter . . . with the result that . . . the American Declaration is for these states a source of international obligation related to the Charter of the Organization."

The exhaustion of domestic remedies, which is required for the IACHR to exercise its jurisdiction, is rendered nugatory by the fact that, under the 1970 U.S. Supreme Court decision, *Dandridge v. Williams*, and a long and discouraging line of other cases, economic and social rights do not rise to the level of affirmative constitutional obligations in the United States. As Supreme Court Justice Stewart stated in *Dandridge*, "The Constitution may impose certain procedural safeguards upon systems of welfare administration. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients."

In the 1992 case *Daugherty v. Wallace*, the Urban Morgan Institute for Human Rights at the University of Cincinnati College of Law (Institute) made a valiant but unsuccessful attempt to introduce international human rights law into the area of welfare law. In an *amicus* brief filed in support of a challenge to an Ohio

law limiting "last resort" general assistance to \$100 per person per month for six months per year, the Institute cited both international and regional economic rights instruments as "an appropriate normative source" for the Ohio courts to consider in interpreting the rights to happiness and safety enshrined in the Ohio Constitution. Both the Court of Common Pleas and the Court of Appeals for Montgomery County, Ohio discounted these arguments, although the latter was moved to say "while we seriously doubt the wisdom or compassion of the welfare cuts, our doubt . . . does not permit us . . . to demand that the legislature enact a more considered . . . general assistance program."

Changes Produced by PRWORA

The factual foundation of the Poor People's Economic Human Rights Campaign petition to the IACHR begins with a detailed analysis of the consequences of "welfare reform." Specifically, it addresses the enactment of the grotesquely mislabeled Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Based on an examination of the relevant laws and

regulations, state and federal, the petition alleges, *inter alia*, that PRWORA has resulted in many harmful changes to the lives of poor people, particularly pertaining to access to public assistance. For example, an arbitrary lifetime limit of five years on the receipt of cash assistance by needy persons is now in place, without any guarantee of work or alternative means of support. As a result of the

wholesale devolution of welfare policy, whereby the federal government has abdicated responsibility to the state governments, some states have been able to set this limit to as little as 24 months.

PRWORA also limits vocational training or post-secondary education to one year, regardless of what may be required to prepare individuals, including functional illiterates and foreign language speakers. Moreover, the act allows only 30 percent of the total number of persons being moved from "welfare to work" to receive any such training.

Furthermore, PRWORA compels parents with children over the age of six to work, including single mothers to whom affordable childcare is not available. As a result, they may be charged with neglect and face a choice of losing their benefits or losing their children. Many states sanction needy persons, often permanently, for non-work requirements, such as failing to immunize their children. Thirty-seven states sanction entire families for the non-compliance of a single member with the work requirements of the government programs; it is now possible for a state to reduce the entitlement of an entire family to food stamps for the failure of a single member to comply with work requirements, which may be as trivial as failing to show up for a single appointment. Many states compel welfare recipients to perform menial and degrading work in satisfaction of work requirement. Some states restrict "workfare," whereby persons must perform unpaid labor as a condition of receiving cash assistance, to the public or non-profit sector. Other states require persons to perform workfare in the private sector, without the benefits of social security payments or unemployment compensation.

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Under Temporary Assistance to Needy Families (TANF), the federal legislation that replaced Aid to Families with Dependent Children (AFDC), Medicaid, a jointly funded federal-state health insurance program for certain low income individuals, is no longer

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automatically coupled with cash assistance. This has resulted in a significant increase in persons not covered by medical insurance. Moreover, many immigrants, including those who lawfully entered the United States after August 22, 1996, are now ineligible for TANF, Medicaid, and Child Health Insurance Programs (CHIP).

Furthermore, cash grants under TANF are grossly inadequate. For example, TANF provides \$303 per month for a family of three in Florida and \$170 in Mississippi, which is about one-seventh of the poverty line for 1999. Nationwide, the average TANF grant last year was \$408 for a mother with two children. A recent and particularly ludicrous provision in the law denies TANF and food stamps to persons convicted of drug felonies, although it maintains eligibility for persons convicted of violent crimes. Also, TANF permits, but does not require, victims of domestic violence to be exempt from work requirements. As of the filing of the petition, 22 states had not certified that they were providing such an exemption.

The Current Condition of Poverty in the United States

The Poor People's Economic Human Rights Campaign petition includes an examination of the current state of the social welfare of the poor in the United States, based on the vast and growing literature of what some critics are now calling "welfare deform." This literature offers a multitude of frightening statistics illustrative of the conditions of poverty in the United States. For example, currently, 35 million people in the United States are under the official poverty line, which was \$16,700 in 1999 for a family of four. Over the past 20 years, the poverty rate among working families has increased by nearly 50 percent. PRWORA is pushing increasing numbers of people into homelessness. The ratio between the income of the top and bottom 20 percent of the population is 13 to 1 in the United States, compared with 4 to 1 in Japan, 7 to 1 in Canada, and 6 to 1 in Germany. Chief executive officers in the United States are paid 209 times the average wage of their workers. Also, since the enactment of PRWORA, there has been a steep drop in college enrollment among welfare recipients. For example, the number of welfare recipients enrolled at the City University of New York dropped from 27,000 in 1994 to 14,000 in 1998.

The reduction or elimination of benefits is having a disproportionate impact on children, women, immigrants, and minorities. A child in the United States is 60 percent more likely than a British child, and three times more likely than a French or German child, to live in poverty. The poverty rate for children under six years in single mother households is 54.8 percent. Today, 36 percent of poor children live with families receiving public assistance, compared with 53 percent in 1991. Recipients of TANF benefits, particularly single mothers, face multiple barriers to

employment, including health problems, depression, and a lack of housing, childcare, job skills, and transportation.

The drastic decline in families receiving cash assistance is due to many factors other than movement from welfare to work. Federal statistics show that in one three-month period in 1997, 38 percent of recipients left the welfare program for a variety of infractions such as missing appointments or allegedly refusing to look for work. In a state-funded study in Utah of families sanctioned for failing to meet welfare program work requirements, 23 percent said this was due to lack of transportation, 43 percent to health conditions, 18 percent to lack of childcare, and 20 percent to mental health issues. More often than not, "welfare to work" means "welfare to working poverty." A national study by the Children's Defense Fund and the National Coalition for the Homeless, titled *Welfare to What?: Early Findings on Family Hardship and Well Being*, showed that, by March 1998, only 8 percent of the previous year's recipients had jobs paying weekly wages above the family poverty line. Job insecurity among former welfare recipients is extremely high. A study of Wisconsin's welfare to work program showed that 75 percent of those who found jobs lost them within nine months.

There has been a dramatic decline in medical insurance coverage for the poor as a result of the de-coupling of Medicaid from TANF, the failure of many states to inform former welfare recipients of their continuing Medicaid eligibility, and the transition of former welfare recipients to low paying jobs that place them above Medicaid eligibility, but do not provide private insurance. In New York State, Medicaid enrollment declined by 26 percent from 1995 to 1998, and 136,000 children lost Medicaid coverage in New York City. According to the Food Research and Action Center, 11.2 million people living in the United States experience moderate to severe hunger and an additional 23.5 million suffer from food insecurity, having limited or uncertain availability of nutritionally adequate and sufficient foods.

Restoring Economic, Social, and Cultural Rights

The last section of the Poor People's Economic Human Rights Campaign petition relates the above facts to the rights spelled out in the OAS Charter, including the rights to an adequate standard of living (Article 45), health (Articles 35 and 45), protection for familial relations (Article 45), work under reasonable conditions

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(Articles 35 and 45), education (Article 49), and food (Article 34). The petition also refers to the more specific provisions in the Declaration which, as stated above, have been held by the IACHR as defining the rights enunciated in the Charter and therefore binding on all states members of the OAS.

Conventional wisdom in the United States maintains that civil and political rights are real, while economic and social rights are aspirations or, to denigrate them even further, merely aspirations, which is tantamount to saying "not worth bothering about," in a legal sense. But those people who hold this view would do well to look at Chapter V of the IACHR's Annual Report for 1993, entitled "The Realization of Economic, Social, and Cultural Rights in the Region." The IACHR prepared the chapter in

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response to the OAS General Assembly's Resolution 1213, which urged the IACHR to continue its work in support of these rights, and states that "the ideal of a free human being, *unfettered by fear or poverty*, can only be realized if conditions are established which permit individuals to enjoy their economic, social and cultural rights, as well as their civil and political rights" (emphasis supplied by the IACHR in quoting this passage from the resolution).

The principle of indivisibility of civil and political rights and economic, social, and cultural rights is, of course, not new. Indeed, the above quoted passage is taken literally—with the more specific word "poverty" substituted for the more elegant "want,"—from the preambles to the two great international covenants, the ICESCR and the International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1966. It is, however, a principle more honored by words than by actions, with a few notable exceptions, such as the Indian Supreme Court's jurisprudence, which opened the Court's doors to direct petitions from citizens and has held economic and social rights to be judicially cognizable and enforceable.

The petition of the Poor People's Economic Human Rights Campaign thus constitutes a frontal challenge to the hierarchical view of human rights and a bold attempt to restore economic, social, and cultural rights to their equal place in the pantheon of human rights. It comes at a particularly propitious time for such an attempt, given the current economic situation of the United States. Hardly a day passes without some triumphalist statement by a member of the U.S. administration, from the President on down, reminding us that we are in the midst of the greatest period of prosperity in the history of the nation and that, from a long period of budget deficits we have moved to a period of budget surpluses measured in trillions of dollars. At the same time, reports abound of the worsening condition for the bottom fourth to fifth of our population.

From a legal perspective, this paradox must be placed in the context of the principle of progressivity. Derived from the reference to the implementation of all human rights "by progressive measures" in the Preamble to Universal Declaration of Human Rights, this principle has come to mean that the achievement of those human rights depending on available resources, such as economic, social, and cultural rights, should be implemented as resources become available. Furthermore, Article 26 of the Convention, quoted in the 1993 IACHR Annual Report, states, "State Parties undertake to adopt measures . . . especially those of an economic and technical nature, with a view to achieving progressively, by legislation and other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of Organization of American States."

In the current U.S. economic context, this statement can only lead to one question: "If not now, when?" No doubt the U.S.

government, when it gets around to responding to the petition, will argue that PRWORA is a progressive measure, but the facts recited in the petition show the falsity in such a claim. In reality, the invisible hand on which the government relies to bring about freedom from want has become a helping hand for the rich, a warning hand for the middle class, and a throttling hand for the poor. When the OAS states that "[o]vercoming poverty is still the major challenge for the hemisphere," this applies to the richest country in the hemisphere, as well as the poorest.

The petition to the IACHR is only a small part of the campaign to make economic rights real in this century. Since its organization in 1991, KWRU has engaged in a series of imaginative actions, locally, nationally, and this past year, internationally as

well, to demand justice for the poor. Two full-length documentaries, "Poverty Outlaws" and "Outriders," have been made about KWRU's work and shown on the Public Broadcasting Service (PBS), a nonprofit public television network in the United States. Somewhere along the way, Cheri Honkala and her amazing team discovered the Universal Declaration of Human Rights and began to challenge lawyers to do something about Article 25's right to a standard of living adequate for health and well-being, "including food, clothing, housing and medical care and necessary social services." From this interaction came a "March for our Lives" from Philadelphia to New York in June 1997, culminating in a People's Tribunal across from the United Nations at which poor people from throughout the country testified about their lives. This was followed a year later by a month long "Freedom Bus" tour of the United States. Under the banner "Free-

dom from Unemployment, Hunger and Homelessness," the KWRU team collected additional evidence on the impact of PRWORA and held educational sessions teaching the poor about their economic rights. October 1, 1999, the day on which the petition was filed with the IACHR, marked the beginning of a "March of the Americas" from Washington, D.C. to the United Nations.

Conclusion

The Poor People's Economic Human Rights Campaign now includes 35 organizations in this country and some from abroad. A "Poor People's World Summit" is planned for November 2000, as a follow up to the Hague Appeal for Peace in May 1999, which was attended by 10,000 people from around the world and undertook, *inter alia*, to promote the abolition of poverty, which it identified as one of the root causes of war.

International human rights lawyers, who tend to spend as much time talking to each other as to the people for whom human rights instruments were written, could not ask for better clients than KWRU and the Poor People's Economic Human Rights Campaign. And governments, which by and large still view economic and social rights as second class, had better listen. ☐

**Peter Weiss is a vice president and cooperating attorney of the Center for Constitutional Rights in New York City.*



The March of the Americas, from Washington, D.C. to the UN Headquarters, as it crossed into New York City.

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