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Efforts and Opportunities to Use International Law to Alleviate Poverty in the United States

by Beth Lyon*

The United States' famously prosperous middle class overshadows the developing world that lies within its borders. In 1992, the United Nations Development Programme (UNDP) reported that an African American living in Harlem had a life expectancy of 46 years, lower than the average life span in Bangladesh, Cambodia, or the Sudan. The 1993 UNDP Human Development Report revealed that white U.S. residents enjoyed the highest quality of life in the world, while U.S. African Americans were 31st on the list, on par with Trinidad and Tobago; U.S. Hispanics were 35th. In contrast to most other industrialized countries, the United States has no federal constitutional and scant state constitutional protections for substantive economic and social rights, such as the right to housing or adequate nutrition. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dismantled the national welfare entitlement, significantly decreased federal spending for welfare, and devolved control over much of the federal spending to the states for state-level management of the social safety net. This shift accompanied widespread privatization of the welfare delivery system. PRWORA pushed thousands of people off the welfare rolls and sent them deeper into poverty. Today, even when the white majority is factored in, giving the United States the third highest *per capita* income in the world, this country has the highest poverty rate in the industrialized world and falls behind most other industrialized nations in literacy and life expectancy.

After decades of political isolation, concerns about social justice and poverty alleviation have reached the mainstream international human rights and development agendas. The shift in emphasis carries with it increased international resources for addressing human deprivation. International institutions have much to offer advocates for the poor in the United States.

Beset by U.S. welfare reform, which many critics characterize as "a war on the poor," and silenced by the cutoff of funds to legal aid organizations, poor people in the United States have begun looking to international institutions for support. Peter Weiss's article in this issue of the *Human Rights Brief* describes an unprecedented complaint about economic and social rights violations in the United States filed by a coalition of domestic and international advocates with the Inter-American Commission on Human Rights. Over the last 20 years, a handful of international economic rights non-governmental organizations (NGOs) have begun U.S.-focused programs, while increasing numbers of domestic anti-poverty groups are reaching out for international standards and resources to protect their constituencies.

This article provides an overview of the international economic and social rights law sources available to U.S. anti-poverty advocates, strategies for seeking the intervention of international institutions, and domestic strategies for directly confronting U.S. adjudicators and policymakers with their obligations under international economic, social, and cultural rights law.

International Economic, Social, and Cultural Rights Sources for U.S. Advocates

As the United States allows its poor people to sink deeper into hunger and deprivation, the international human rights community is devoting increased resources to promoting and

protecting economic, social, and cultural rights, resulting in a rich body of substantive standards and protections. The unique matrix of protections binding on the United States arises from this country's selective and somewhat schizophrenic ratification of international human rights treaties. The 1948 Universal Declaration of Human Rights (UDHR), shaped and supported by U.S. officials, enumerates a near full range of economic, social, and cultural rights, in addition to civil and political rights. The UDHR's framers intended for one formal human rights treaty to follow, codifying the UDHR, but Cold War politics intervened and the United States insisted on partitioning economic, social, and cultural rights, which it considered communist, from civil and political rights, which it considered Western.

The result was two international treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR binds its signatories to "take steps, individually and through international assistance and co-operation . . . to the maximum of its available resources, with a view to achieving progressively the full realization of [economic, social and cultural] rights by all appropriate means, including particularly the adoption of legislative measures." The concept of progressive

achievement does not figure in the ICCPR, and throughout the Cold War, the United States routinely took the position that economic, social, and cultural rights were not justiciable and should not be considered rights. There were a few exceptions to this stance that included President Carter's 1977 pre-ratification signature of the ICESCR and the U.S. participation in the Conference on Security and Co-operation in Europe Final

Act, which included economic and social rights language. As recently as the 1995 World Food Conference, when the United States angered the international community with its insistence that there is no right to food, the government stuck by this increasingly contrarian view. In 1999, however, U.S. officials made a few low-profile statements at the United Nations recognizing the indivisibility and interdependence of all human rights.

The United States has ratified only two of the major UN treaties that protect economic, social, and cultural rights, as well as the civil and political rights, of specific vulnerable groups: the Protocol Relating to the Status of Refugees and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). On a parallel track, the United States partially cooperated in the development of the Inter-American regional human rights system, by supporting the American Declaration on the Rights and Duties of Man (American Declaration). Finally, the North American Free Trade Agreement (NAFTA) treaty concluded between the United States, Mexico, and Canada carried with it two side agreements designed to protect labor and environmental rights in the signatory countries.

From the point of view of U.S. anti-poverty advocates, the primary legal sources for international economic, social, and cultural rights are the UDHR, the ICESCR, the ICCPR, the CERD, and the American Declaration, each of which binds the United States to a greater or lesser extent. The side agreements to the NAFTA also are important international sources committing the United States to uphold its own labor and environmental

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protection laws. Another potential but untested source of international economic and social rights standards is customary law.

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International Strategies for U.S. Anti-Poverty Advocates

Bringing domestic policy into conformity with international law involves both exposing factual situations to the international institutions and importing standards directly into domestic advocacy. Many human rights mechanisms and institutions may be or have proven useful to the U.S. fight against domestic poverty. These include both treaty bodies charged with overseeing implementation of the human rights treaties described above and other, more or less formal or permanent, entities.

UN Human Rights Committee. The UN Human Rights Committee is charged with monitoring adherence to the ICCPR. The United States ratified the ICCPR in 1992, but declared it “non-self-executing,” or unenforceable in a court of law in the absence of implementing legislation. Implementing legislation has not been forthcoming. Apart from recognizing the importance of economic, social, and cultural rights as a general matter, the ICCPR explicitly protects many rights with a direct bearing on economic justice, including the right to life, protection of the family and child, freedom from forced labor, and non-discrimination. The ICCPR also protects cultural rights, such as the right to use a minority language or religion.

The United States has not ratified the ICCPR’s companion treaty giving the Human Rights Committee jurisdiction over individual complaints of ICCPR violations. The Committee does, however, hold public hearings on each state party’s compliance with the Covenant. In the United States’ first hearing before the Committee in March 1995, U.S. NGOs strongly influenced the questions Committee members posed to the U.S. representatives. In its concluding observations to the United States’ initial compliance report, the Committee expressed concern at “the high incidence of poverty, sickness and alcoholism among Native Americans . . . [and the fact that] disproportionate numbers of Native Americans, African Americans, Hispanics and single parent families headed by women live below the poverty line and that one in four children under six live in poverty.” The Committee also “note[d] with concern . . . that poverty and lack of access to education adversely affect persons belonging to these groups in their ability to enjoy rights under the Covenant on the basis of equality.”

Committee on the Elimination of Racial Discrimination. The Committee on the Elimination of Racial Discrimination monitors compliance with the CERD. The United States ratified the CERD in 1994, but again declared the treaty “non-self-executing.” The treaty contains many provisions supportive of economic and social rights. In particular, Article 5 requires that states parties “eliminate” racial discrimination, and “guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.” It notes everyone’s right to enjoy economic, social, and cultural rights, particularly: “[t]he rights

to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; . . . to form and join trade unions; . . . [t]he right to housing; . . . [t]he right to public health, medical care, social security and social services; . . . [t]he right to education and training; . . . [and] [t]he right to equal participation in cultural activities.”

The CERD Article 2(2) also imposes upon states parties the affirmative duty to take “special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.” In contrast to U.S. equal protection jurisprudence, this language suggests that a disparate impact analysis, demonstrating relative disadvantage of a protected class, with or without a showing of discriminatory governmental motive, is sufficient to trigger the duty to take affirmative action. This interpretation is supported by the treaty’s definition of “racial discrimination” as any distinction that has the “purpose or effect” of impairing essential human rights.

The CERD requires states parties to submit annual reports on compliance with the treaty for consideration and comment. The first report of the United States is expected this year. In addition, under Article 11 of the CERD, the Committee on the Elimination of Racial Discrimination is empowered to consider statements from other states party to the CERD alleging that the United States

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“is not giving effect to the provisions of this Convention.” As with the UN Human Rights Committee and the ICCPR, the United States has not recognized the CERD Committee’s competence to hear individual complaints against it, so for the present time, U.S. NGOs must focus on influencing the Committee through the reporting process or the Article 11 state-to-state process. A joint NGO “shadow” report on U.S. compliance with CERD, released by the World Organization Against Torture in anticipation of the first U.S. report, argues that through recent developments ending affirmative action in higher education programs the United States has violated its Article 2 obligation to ensure the adequate development of racial minorities.

UN Committee on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights was created by a 1985 UN Economic and Social Council resolution to monitor compliance with the ICESCR. Although the United States’ failure to ratify the ICESCR means that the Committee is not yet seized with monitoring economic, social, and cultural rights in the United States, the Committee has directed some informal efforts at U.S. ratification. The Committee’s activist stance on economic, social, and cultural rights, and a thoughtful body of comments and reports make its interpretations authoritative. They are an important resource for any anti-poverty advocate.

Inter-American Commission on Human Rights. The Inter-American Commission on Human Rights is the human rights adjudicator of first instance in the Organization of American States (OAS). Because the United States supported the American

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Declaration but has not ratified the American Convention on Human Rights, only the Inter-American Commission, as opposed to the Inter-American Court on Human Rights, is empowered to hear cases against the United States, and it may only apply the Declaration. The United States also has not ratified the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, which entered into force in 1999. However, the Commission has issued many innovative rulings on civil and political rights matters in favor of individual U.S. petitioners.

The Inter-American Commission on Human Rights is beginning to spend more time on economic, social, and cultural rights, and recently held a hearing on the right to education in the hemisphere. In addition, the Poor People's Economic Human Rights Campaign complaint to the Commission, described in Peter Weiss's article, signals an important challenge to the 1996 welfare reform, and is expected to provide a forum for airing conditions of poverty throughout the country.

Commission for Labor Cooperation and the Commission for Environmental Cooperation. The NAFTA treaty took effect in 1994. For the first time in the history of free trade zones, the states negotiated inter-governmental mechanisms for adjudicating labor and environmental rights complaints in conjunction with a trade-liberalizing treaty. The new NAFTA procedures provide an important new tool for U.S. advocates.

The two NAFTA side agreements, the North American Agreement on Labor Cooperation and the North American Agreement on Environmental Cooperation respectively created the Commission for Labor Cooperation and the Commission for Environmental Cooperation. The commissions hear complaints from non-governmental entities alleging that member countries are failing to enforce their own labor and environmental standards. The gap between standards and enforcement leaves fertile ground for action, but like most new international rights bodies, the commissions are limited by insufficient funding and enforcement powers. Extraordinary violations can result in a recommendation of trade sanctions, although the most likely result of a successful complaint is a "consultation" by the relevant agencies of the three governments on the problem the petitioner identified.

As of January 2000, the Commission for Labor Cooperation and the Commission for Environmental Cooperation had each received six complaints against the United States. Most of these cases are still in process, and one complaint about layoffs at a California firm has resulted in the commissioning of a report.

Extra-Conventional Mechanisms for Bringing International Economic, Social, and Cultural Rights to the United States. The United Nations and OAS human rights regimes abound with non-adjudicatory human rights activities. Special Rapporteurs and working groups focused on different aspects of poverty and vulnerable groups conduct missions and release reports that can be helpful to domestic litigation and policy work. The proceedings and final conclusions of UN conferences, such as the 1994 International Conference on Population and Development in Cairo, which focused on women's reproductive health, and the 1996 UN Conference on Human Settlements (Habitat II), can be important for exposing poverty in the United States.

In October 1994, Maurice Glélé-Ahanhanzo, the UN Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, conducted a mission to the United States. In his 1995 report, the Special Rapporteur carefully documented statistics reflecting the drastically poorer health, education, housing, and employment conditions racial minorities experience in the United States. The report was infused with economic and social rights concepts, even ascribing the United States' contemporaneous ratifications of the ICCPR and the CERD to an "emphasis . . . on the unity of the rights of the human person, namely, the interdependence and indivisibility of civil and political rights and economic, social and cultural rights."

In a 1999 meeting at the Washington College of Law, a group of Washington, D.C.-based U.S. economic rights advocates met to discuss the role of international law in their work. In that discussion, most of the advocates reported using extra-conventional international mechanisms in some way. These activities included serving on an expert group in consultation with UN Rapporteurs, participating in the 1992 U.S. Commission on Security and Cooperation in Europe hearings on migrant workers, Department of State consultations with NGOs in preparation for the 1994 Summit of the Americas, Habitat II, and Habitat II preparatory meetings.

International Labour Organisation. Probably the oldest inter-governmental human rights organization, the International Labour Organisation (ILO) has promulgated a series of labor protection conventions. Complaint and report review procedures are available; however, the United States ratified just a handful of the most technical conventions, including only one of what the ILO defines as its seven "fundamental" conventions (the Abolition of Forced Labour Convention) and one of the four "priority" conventions (Tripartite Consultation).

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Domestic Strategies

The ultimate purpose of advocates accessing international mechanisms is for international suasion to convince domestic decision-makers to comply with international standards. It is also important to confront domestic decision-makers with international standards directly. Civil rights advocates are well in advance of the social justice community in using international norms to influence domestic policy and litigation. Some of the many opportunities for domestic enforcement activities include accessing the new executive branch Interagency Working Group on Human Rights Treaties, educating the public, presenting international standards in domestic litigation, and campaigning for treaty ratification.

Executive Branch Interagency Working Group: Executive Order 13107. On December 10, 1998, the 50th anniversary of the UDHR, President Clinton released Executive Order 13107. This executive order committed the U.S. government to implement human rights obligations domestically and created an Interagency Working Group on Human Rights Treaties "for the purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters." The oversight committee represents an important new channel for raising poverty issues with the executive branch, using the lens

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of the United States' international treaty obligations, such as non-discrimination under the CERD and ICCPR.

Public Education. The U.S. legal framework is strongly rights-oriented, but almost exclusively in the field of civil and political rights. Most explanations of this country's anti-economic rights culture point to our aging eighteenth century constitution. The two significant expansions of resource allocation for anti-poverty measures followed dramatic national events creating a collective shift in political will: the Great Depression and the assassination of John F. Kennedy. Several groups, including the National Center for Human Rights Education in Atlanta, are attempting to inculcate an economic rights culture by conducting grassroots outreach rooted in international rights. Food First, based in Oakland, California, and the Washington, D.C.-based Institute for Policy Studies are running a series of "Economic Rights Bus Tours" to impoverished areas. As described by Peter Weiss, the Kensington Welfare Rights Union of Philadelphia also organizes marches and bus tours, and several of their marches ended at the steps of inter-governmental institutions.

Invoking International Standards in Domestic Litigation. Although PRWORA extinguished the general welfare entitlement, many aspects of welfare policy find review in litigation, most commonly decisions to terminate benefits. Policy challenges to the PRWORA also have been successful, most notably in the 1999 U.S. Supreme Court case *Saenz v. Roe*, in which the Court struck down PWRORA-sanctioned differentiation between long-term and short-term residents for the purposes of welfare benefits. It appears, however, that economic justice advocates have not made systematic attempts to bring international economic, social, and cultural rights to the attention of the U.S. judicial branch. Interestingly enough, nine reported U.S. court cases cite to the ICESCR in passing. However, the United States' failure to ratify the ICESCR or to pass implementing legislation importing the CERD into domestic statutory law means that a U.S. court is unlikely to rely heavily on international standards unless it does so as part of a customary law analysis.

International customary law is a recognized source of U.S. federal law. Customary law is a rule that is widely documented and followed, through the general assent of states, and has been at least tacitly accepted by the United States in its custom and practice. Therefore, customary law should be binding on the United States even in the absence of a treaty or domestic obligation on point. In the famous case of *Filartiga v. Pena-Irala*, decided in 1980, the federal Second Circuit recognized and applied an international customary norm prohibiting torture. The United States' persistent public refusals to recognize economic, social, and cultural rights have heretofore all but blocked a customary law analysis. The U.S. government's recent statements at the United Nations recognizing the validity of economic, social, and cultural rights may signal an opportunity to argue for a customary norm of the most egregious economic rights violations, like states' refusals to provide for malnourished and homeless children.

In addition to making international law arguments directly in complaints, U.S. courts can be educated about new international human rights standards through *amicus curiae* (friend of the court) briefs, judicial training, and bar activities. These

promotional methods have been used successfully by proponents of international standards in the U.S. refugee protection regime. For example, in *INS v. Cardoza-Fonseca*, decided in 1987, the U.S. Supreme Court found for the asylum-seeker and noted that, because Congress had written the asylum laws with an intent to conform U.S. law to an international refugee treaty, the Supreme Court was "guided" by the UN High Commissioner for Refugees' handbook on determining refugee status. The Supreme Court further noted that the handbook "has been widely considered useful in giving content to the obligations that the Protocol establishes." The positive outcome and encouraging language were the results of long efforts by domestic and international refugee lawyers. Poverty lawyers in the United States should be given support in finding ways to make relevant international standards similarly "useful" to U.S. adjudicators.

Accession Campaigns. Activists should also work for U.S. accession to treaties that can then be invoked directly on behalf of poor people in U.S. litigation. Because of longstanding opposition in the U.S. Senate and early failures of leadership by the U.S. bar,

United States' ratification of human rights treaties lags behind most other countries in the world. Many unratified human rights treaties have a direct bearing on economic justice, namely the ICESCR (signed in 1977), the first Optional Protocol to the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Dis-

crimination against Women (signed in 1980), the Convention on the Rights of the Child (signed in 1995), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, and most of the substantive ILO conventions, including the recently signed Worst Forms of Child Labour Convention. Moreover, the United States should be encouraged to make a declaration under Article 14 of the CERD, which will enable U.S. residents to make individual petitions to the Committee on the Elimination of Racial Discrimination.

With the exception of an Amnesty International-led campaign focused on the Convention on the Elimination of All Forms of Discrimination Against Women, few active ratification efforts are currently underway. Municipal "ratifications," or endorsements, of the ICESCR and other international standards have taken place around the country, which may help lay the foundations of public opinion for the day when Senate action seems possible.

Conclusion

The United States' pre-economic-rights legal culture and lower *per capita* spending on poverty alleviation has resulted in what Food First calls "the new American crisis . . . of barely-hidden, widespread desperation and structural poverty." As U.S. poverty deepens, international economic and social rights standards have begun to filter into the United States. Domestic and international advocacy groups have begun to interact with one another, and with the growing international institutions devoted to economic and social rights and human-focused development. Many opportunities exist to strengthen these ties and to use international human rights standards to bear for poor people in the United States.

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