

Close to Home

**CASE STUDIES OF HUMAN RIGHTS WORK
IN THE UNITED STATES**

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The Ford Foundation
320 East 43rd Street
New York, NY 10017
www.fordfound.org

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Reprinted June 2004

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A PUBLICATION OF THE FORD FOUNDATION

Where, after all, do universal human rights begin?
In small places, close to home.

Eleanor Roosevelt

I think it is necessary to realize that we have moved
from the era of civil rights to the era of human rights.

The Reverend Martin Luther King, Jr.

ACKNOWLEDGMENTS

This study would not have been possible without the inspiration and input of the activists and organizations that participated in it. These include: Cathy Albisa, Wyndi Anderson, Gillian Andrews, Willie Baptist, Ajamu Baraka, Ellen Barry, members of the Border Network for Human Rights, Larry Bressler, Widney Brown, Dr. Robert Bullard, Linda Burnham, Youmna Chlala, Leslie Calman, Arturo Carrillo, Chris Caruso, Viola Casares, Patti Chang, Jung Hee Choi, Radhika Coomaraswamy, Robert T. Coulter, Roz Cuomo, Carrie Cuthbert, Suha Dabbauseh, Mary & Carrie Dann, Shelia Dauer, Krishanti Dharmaraj, LaToya Davis, Monica Ghosh Driggers, Roland Emerson, Dawn Faucher, Julie Fishel, Fernando Garcia, members of the Georgia Citizens' Coalition on Hunger, Rick Halperin, Monique Harden, Steve Hawkins, Pam Hester, Jaribu Hill, Cheri Honkala, Lisa Howley, Andy Huff, Maria Jimenez, Bill Kuhel, Deborah LaBelle, Ann Lehman, Ethel Long-Scott, Miriam Ching Louie, Alma Maquitico, Gay McDougall, Cynthia Mesh, Miguel Miranda, Martina Morales, 2002 New Freedom Bus Tour Riders and local hosts, Tina Nieves, Organization for Black Struggle, Ramona Ortega, Teresa Park, Carolyn Pittman, Catherine Powell, Project South, Janice Raines, Speedy Rice, Margie Richards, Sandra Robertson, Rebecca Rolfe, Maria De La Rosa, Loretta Ross, Dale Rundell, Malika Saada Saar, Deborah Schaaf, Chris Sewall, Kim Slote, Andrea Smith, Brenda Smith, Damu Smith, Cindy Soohoo, Elizabeth Sullivan, Peg Tiberio, Akiba Timoya, Steve Tullberg, Galen and Terriny Tyler, Dionne Vann, Penny Venetis, Natalie Walker, Heather West, Sarah White, Sherry Wilson, Dr. Beverly Wright, and Tameka Wynn.

The introduction was written by Larry Cox, Senior Program Officer in the Human Rights Unit, and

Dorothy Q. Thomas, a senior consultant to the unit who also authored the case studies on the Border Network for Human Rights and on custodial sexual abuse of women in U.S. prisons. Heidi Dorow, a human rights consultant, wrote the studies of the Bringing Human Rights Home Lawyers' Network, the U.S. Project of the Center for Economic and Social Rights, the Indian Law Resource Center, the Mississippi Workers' Center for Human Rights, the National Coalition to Abolish the Death Penalty, and the Women's Rights Network. Phoebe Eng, a foundation consultant and director of The Social Change Communications Project, authored the case studies on environmental justice, the Kensington Welfare Rights Union, and the National Center for Human Rights Education. Robin Levi, the human rights director at Justice Now, authored the studies on WILD for Human Rights and the Women of Color Resource Center and assisted in the research for the study on women in prison.

Close to Home was edited by Larry Cox and Dorothy Q. Thomas, with invaluable and indefatigable assistance from James Bornemeier. Additional editorial oversight was provided by Elizabeth Coleman, Taryn Higashi, Thea Lurie and Alex Wilde of the Ford Foundation. It was copy edited by Anita Bushell. Photo and design support was provided by Dayna Bealy and Laura Walworth of the Ford Foundation. As always, nothing would ever be possible without the patience and attention to detail of Mary DeCaro and Mary Lopez of the Ford Foundation. Special thanks are due to Natalia Kanem, Deputy to the Vice President, Peace and Social Justice Program, whose vision and support made this project possible.

The study was designed by Susan Huyser.

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INTRODUCTION

Human rights are international ethical standards, approved by the member states of the United Nations, codified into law and imposing specific obligations on all governments including the United States. Written by an international team led by Eleanor Roosevelt shortly after World War II, these rights address the most immediate and basic needs of all human beings and demand the transformation of every society. No less than with other countries, examining the United States through the lens of human rights illuminates persistent inequities in U.S. society and offers an alternative view of how it can and should be changed. The movement for human rights in the United States promotes this alternative vision. It seeks a revolution of values in the United States that places the affirmation of human dignity and equality at the center of domestic and foreign policy and counters unilateral tendencies with multilateral commitments, shared with other countries, to promote social and economic justice on a global scale.

It is primarily out of recognition of the power of human rights to challenge and change domestic policies and practices that the United States government, while championing human rights abroad, for many years and through all administrations, has resisted the application of human rights at home. It is out of the same recognition of this transformative power of human rights that a growing number of U.S. organizations and activists are using human rights to inform and even to infuse their work for social justice. The present volume is a snapshot of this emerging U.S. human rights movement.

It is a movement that has been growing for some

time but whose impact is only just now beginning to be felt. The American Civil Liberties Union, one of the oldest and largest U.S. rights organizations, held a major conference in October 2003 on the use of international law in U.S. courts. In June 2003, the Supreme Court of the United States cited the human rights treaty on racial discrimination in upholding affirmative action and, citing a 1981 decision of the European Court of Human Rights, a few days later overturned a Texas sodomy statute. That same month the first ever-national network on human rights in the United States, conceived at a July 2002 conference at Howard University Law School, was launched by more than 50 organizations that use a wide range of methods and cover many issues.

What is happening here? Why are an increasing number of U.S. activists, like those discussed in this volume, seeing their work through a prism of human rights? Why is the country's highest court increasingly open to consideration of human rights law? What has led the Ford Foundation, the JEHT Foundation, the Atlantic Philanthropies, the Otto Bremer Foundation, the Shaler Adams Foundation, The California Women's Foundation and a number of other national, family and community foundations to develop a human rights dimension to their U.S. grant making?

Why human rights in the United States?

A changing domestic environment: Obviously no single factor can explain these changes. But activists and others consulted for this study identify one underlying constant: progressive developments in social-justice thinking and advocacy in this country. Across the

American Indian, civil, women's, worker, gay, immigrant and prisoner rights communities in the United States, a powerful new politics of social justice is emerging—one that favors multi- over single-issue work; that understands discrimination in terms of compound rather than singular identities; that conceives of rights holistically rather than in terms of outmoded hierarchies; and, finally, that situates those most affected at the center of advocacy.

This approach is visible, for example, in the growing number of multi-issue, cross-constituency networks in the United States, including the National Campaign to Restore Civil Rights, the sentencing reform movement and living wage campaigns. These efforts have in common a focus on educating and organizing the most affected communities across identities, connecting them with allies in the policy, legal and donor communities and balancing the need for short-term gains with a commitment to long-term movement building. Such multi-dimensional work has made for increasingly layered advocacy strategies that simultaneously involve education, organizing, policy, legal and scholarly work at both the local and national level. Sophisticated communications efforts, close attention to electoral politics and collaborative donor support consistently play a part.

The movement for human rights in the United States is not the cause of these transformations in U.S. social justice work. It is emerging out of them. "There is simply no better way to broaden the influence and effectiveness of *all* our struggles for social justice than through human rights," said Loretta Ross, a pioneering civil rights, women's rights and now U.S. human rights activist who directs the National Center for Human Rights Education, profiled in part two of this volume. Her compatriots in this study, and a growing number of activists not discussed here, agree. The human rights vision, its legal framework, methods and strategies not only readily accommodate these new forms of U.S. social justice activism, but also offer powerful means for their consolidation and expression.

Engagement with the larger world: The emergence of a U.S. human rights movement also reflects dramatic developments outside the United States. Indeed,

the horrific attacks of September 11, 2001 shattered probably forever the neat separation of foreign from domestic concerns. For the first time since the cold war, the United States is engaged in a vast public conversation about its role in the world and the implications of that role both abroad and at home. As indicated by a 2002 Chicago Council on Foreign Relations report, Americans are concerned now more than ever about the attitudes of the world towards the United States. This hard-earned global consciousness has spawned a growing domestic interest in multilateralism, and in the international legal and political system, no more so than in the constituencies that concern themselves with the defense of fundamental rights. "Our struggle never has been a purely local struggle," said worker and human rights activist Jaribu Hill, who co-founded The Mississippi Worker's Center for Human Rights discussed in part three. "It's just that we can no longer afford to disregard the global link. What ever happens 'over there' has implications here."

As U.S. activists try to make that global link through the use of human rights in their domestic work, however, they confront the continuing effect of what has been termed U.S. "exceptionalism" and how this attitude became intertwined with the politics of the cold war. At the close of World War II, the United States, at the urging of key civic, religious and civil rights groups, played a leadership role in the creation of the Universal Declaration of Human Rights in 1948. Yet from the beginning, powerful conservatives in both parties were aware that these new human rights standards could be used by other countries to highlight the shame of racial apartheid at home. The U.S. worked diligently to deny U.N. enforcement powers to human rights bodies and pointedly refused to ratify human rights treaties.

As professor Carol Anderson details in her new book, *Eyes Off the Prize: African-Americans and the Struggle for Human Rights 1948-1954*, organizations at home, like the NAACP and the National Negro Congress, and domestic leaders like W.E.B. Dubois and William Patterson, who sought to use the new international mechanisms to halt lynching and segrega-

tion, were fiercely attacked by U.S. officials and influential media voices as un-American if not communist. Similar attacks were later made on Malcolm X and The Reverend Dr. Martin Luther King, Jr. when they too made connections between racial oppression in the United States and international human rights. The poisonous effect of these attempts to equate internationalism with subversion or treason lingers to this day.

This brand of cold war politics sought not only to discourage U.S. activists from invoking human rights in their domestic work, but also to distort the very meaning of human rights for Americans by eliminating its economic and social dimensions. Influenced by, among others, the emphasis of Franklin and Eleanor Roosevelt on economic rights, as discussed by Cass Sunstein in his forthcoming book *The Second Bill of Rights: The Last Great Speech of Franklin Delano Roosevelt and America's Unfinished Pursuit of Freedom*, the Universal Declaration of Human Rights treats civil and political rights as equal to the rights to food, housing, education, and social security. Aware that in addition to its racial practices, the United States was also vulnerable to criticism of its economic and social inequality, a series of administrations have claimed that overcoming these problems involves aspirations not rights. To the detriment of myriad fights for social justice in the United States this strategy has proved surprisingly effective. “We have swallowed the U.S. position that economic, social and cultural rights don’t exist,” Gay McDougall, the executive director of the International Human Rights Law Group whose work is discussed in part four, told us. “And U.S. advocates have, in their inaction in this area, implicitly acquiesced to the government position.”

The development of a U.S. human rights movement is driven in part by the desire to reclaim the full legacy and meaning of international human rights. It is also driven, perhaps more than anything else, by the potential of human rights to restore to U.S. social justice work a sense of the underlying commonality of simply being human that is often lost to all of its divisions by identity, geography, issue area and belief. As Cheri Honkala, an economic human rights activist

who heads the Kensington Welfare Rights Union discussed in part two, put it, “we base our vision in the essence of being human.”

These three factors—the dynamic changes occurring in U.S. social justice activism, the increased awareness of the importance of U.S. multilateralism and the relevance of the international legal and political system to domestic as well as foreign rights policy and an instinctive desire to reassert the common, human dimension of all social justice work—have contributed to the beginning of a potentially transformative human rights movement in the United States. What remains at issue is how this movement can strengthen U.S. social justice work that is itself increasingly global in character, indivisible in approach, diverse in constituency and righteous in process as well as effect.

Why these case studies?

Readers of this volume may wonder exactly where this U.S. human rights movement can be found. Much to our surprise it seems to be cropping up in different areas all across the United States simultaneously, a fact that made the selection of the 13 cases studies in this volume extremely challenging. To arrive at a manageable sample, we decided to focus only on completed advocacy projects, carried out explicitly in human rights terms, which would lend themselves to an assessment of the pros and cons of this approach. Even these fairly restrictive criteria, however, left us with too many candidates. We further decided to focus only on those groups who are or have been funded by the Ford Foundation and to do so with attention to diversity of issues, method of work and geographic location.

The studies that were ultimately chosen focus on the death penalty, race and gender discrimination, and economic, environmental, immigrant, indigenous, prisoner and worker rights in California, Georgia, Louisiana, Massachusetts, Michigan, Mississippi, Montana, Pennsylvania, Ohio, Texas, Washington, D.C. and West Virginia. They are grouped by method of work: part one discusses domestic and international litigation; part two focuses on education, organizing and fact-finding; part three looks at multi-issue, cross-con-

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stituency and transnational advocacy; and part four examines two thematic cases (environmental justice and sexual abuse of women in prison) that involve all of the above.

The purpose of this project is not to capture the U.S. human rights movement as a whole but to provide a picture of some leading organizations at an initial stage of its—and sometimes their—development. It was prompted by our realization that this work is largely invisible in the United States and virtually unknown to the rest of the world. The approach is exploratory: We aim to portray a wide range of U.S. human rights work and to discuss its effect along a continuum from the legal accountability of the government of the United States to the empowerment of local communities. Ultimately, our hope is to provoke informed debate about human rights work in the United States and to generate much-needed moral, political, institutional and financial support for this work at a crucial turning point in U.S. history with respect to the protection and promotion of fundamental rights.

What is the value of using human rights?

The shift to employing human rights in social justice work in the United States means different things to different groups. For some, its use is largely instrumental, helpful in limited contexts for a specific purpose. For others, its value is more fundamental, engendering a profound rethinking of their work from which, as one activist put it, "there is no turning back." Most practitioners fall somewhere in between these two positions. As a whole, their work suggests several

common benefits to the use of human rights in U.S. social justice work in terms of a) vision, b) legal framework, c) method and d) strategy.

A. Broad vision: By all accounts, the single greatest value of employing human rights in U.S. social justice work is its vision of rights as intrinsic to the status of being human. Indeed, human rights are the expression of what is required to be fully human. These rights are not dependent on recognition by an external authority. They are not a reward for certain behaviors or for enjoying a certain status such as citizen or property owner or white person. They belong to all human beings equally. This is similar to the assertion of a more limited set of "certain inalienable rights" that informed the U.S. Declaration of Independence and Bill of Rights. This principle has been a battleground throughout U.S. history. At times, particularly when there is a perception of an internal or external threat to national security, the scope and meaning of inalienable rights come under assault. Increasingly, and dangerously, rights are seen as a gift granted by the state (and able to be revoked by the state) and even, in some instances, as something the state itself can assert. This prepares the way for their erosion or loss.

Human rights assert the inalienability of rights in a much broader sense than has ever been expressed constitutionally. The preamble to the Universal Declaration of Human Rights says that "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." The simple use of the term human rights instead of

women's or worker's or prisoner's or immigrant's rights, for example, elicits an understanding of rights as inherently the same for all people rather than as defined by this or that particular status.

To some, this may all seem like little more than semantics. But, as Human Rights Watch's Widney Brown put it for virtually all the activists in this study, reframing one's work in human rights terms "takes you back to the primacy of equality and dignity no matter what the circumstance. Once you reassert that basic principle, peoples' perceptions of the problem change and new avenues for advocacy open up."

B. Expansive legal framework: One of these "new avenues" is clearly the legal arena. For many U.S. activists, who work in a constitutional framework and depend on domestic statute, the idea of an alternative, inalienable, universal source of legal rights is something of a revelation. It is one that, given the longstanding determination of the United States government to shield itself from any meaningful international human rights obligations, is usually met with an understandable skepticism. "I was looking for immediate relief for my clients," said Brenda Smith, a prisoner rights activist and law professor at American University whose work is featured in part four. "I wasn't sure what kind of impact human rights would have."

Yet, as the case studies of domestic and international litigation in part one suggest, U.S. legal experts are increasingly converting their initial skepticism about human rights into a growing appreciation of its use, as environmental justice attorney Monique Harden put it, "to break out of the chokehold of domestic law." The context for this conversion is remarkably similar across issue areas: the growing conservatism of the federal and state bench, diminishing meaningful remedies for grievous abuse and, especially after September 11th, the attack on established civil rights and liberties, including due process, access to counsel, equal protection and freedom of information, all of which limit or block the use of purely domestic remedies to rights violations. "I was as skeptical as the next person about the relevance of human rights to domestic legal advocacy," Anthony Romero, the executive director of the American Civil Liberties Union, told a

group of human rights funders in July 2003. "But in the last five years or so I've undergone a conversion, particularly post 9/11. Human rights give us another place to go."

Interpretive authority: That "other place" involves interpretive and binding uses of human rights law, which often offers stronger protections than U.S. law, in both U.S. and international courts. The National Coalition to Abolish the Death Penalty, for example, uses a combination of grassroots organizing and legal advocacy to frame the death penalty in the United States as a violation of human rights. By doing so it aims to introduce a global analysis of evolving standards of decency with respect to the death penalty into the consciousness of the U.S. judiciary. As a result of its efforts, and those of countless other anti-death penalty activists, attorneys and scholars, the Supreme Court ruled in 2002 that the execution of people who are mentally retarded violates the Eighth Amendment. Justice Stevens's majority opinion noted that "within the world community the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved." Steve Hawkins, the national coalition's former executive director, told us that the coalition now aims to "drive home the point" that the United States is "out of step with the world" even further, with a particular focus on the execution of juvenile offenders, which the United States alone now admittedly practices.

Binding law: In other cases, human rights law with its greater protections is used in a more binding and less interpretive manner. In the case involving custodial sexual misconduct discussed in part four, for example, Michigan attorney Deborah LaBelle and others used U.N. standards governing the treatment of prisoners to obtain a settlement that prohibited cross-gender guarding in intimate custodial settings. This settlement later ran afoul of domestic equal employment law, but nonetheless resulted in much greater attention to the obvious risk of allowing male officers to work in contact positions in U.S. women's prisons. "This is how progressive law is made," LaBelle said. "You introduce new ideas as often as is appropriate until they become commonplace."

At times, when all avenues of domestic relief have been exhausted, such binding human rights decisions are pursued in regional or international bodies. The Center for Economic and Social Rights, for example, is involved in an ongoing collaborative effort to argue before the Inter-American Commission on Human Rights that U.S. welfare legislation violates economic human rights. Even if any decision by the commission goes unenforced, the center believes that a successful outcome in this case will dramatically highlight the inadequacy of U.S. legal protections of the rights of poor people, adding to the mounting domestic pressure to improve those protections. This work is of particular importance because most Americans are not only unaware of the deficiencies of the United States in ensuring economic rights but even that such rights exist. “We are trying to get people to think of economic inequality differently, in terms of rights,” said Cathy Albisa, the director of the center’s U.S. program. “I want people to see that you cannot reduce rights. You either have to hold the line or increase them.”

It is perhaps not surprising that the legal effects of human rights are expressed very gradually in domestic jurisprudence and sometimes, despite a resounding legal victory as in the case of indigenous rights discussed in part one, not without a lot of surrounding advocacy by the affected community. In that case, the Indian Law Resource Center lodged a successful complaint before the Inter-American Commission on Human Rights, charging the United States with the misappropriation of the Western Shoshone Dann family’s ancestral lands. The commission found in January 2003 that the United States had “failed to ensure the Dann’s right to property under conditions of equality.” The United States responded that it “rejects the commission’s report in its entirety and does not intend to comply with the commission’s recommendations.” The resource center is now spearheading a campaign to protest the U.S. government’s disregard for the rule of law. As center attorney Deborah Schaaf sees it, “We evolve. Laws evolve. Domestic law is not impenetrable. Things will change.”

Given the difficulties of litigating human rights in the United States, the legal practitioners featured in

this volume see the need to develop a multifaceted strategy for this work involving both short-term litigation in specific issue areas and long-term change in legal culture. One of the main vehicles for this work is the Bringing Human Rights Home Lawyers’ Network at Columbia University Law School. The program’s director, Cindy Soohoo, seeks to build the human rights capacity of U.S. attorneys and to expose up-and-coming legal practitioners to this approach. In aiming to launch a new era of human rights lawyering in the United States, the program mirrors the views of Supreme Court Justice Stephen Breyer, who said in an interview with the *New York Times* on July 6, 2003, “whether our Constitution...fits into the governing documents of other nations, I think will be a challenge for the next generations.”

C. Participatory methods of education, organizing and fact-finding: While the legal community takes a fairly gradual stance toward incorporating human rights values, community-based educators, organizers and fact-finders take a more immediate approach. Virtually all of the organizations featured in part two, which addresses education, organizing and fact-finding, found in human rights an affirmation of human dignity and equality that resonated powerfully with the often impoverished, abused and virtually decimated communities in which many of them work. “As welfare reform kicked in, we were concerned that poor people would turn against each other over the crumbs that trickle down,” Ethel Long Scott of the Women’s Economic Agenda Project says. “...The Universal Declaration [of Human Rights] allowed for a common vision of opportunity and well-being for all people.”

For many of the most affected U.S. communities, this common vision of opportunity and well-being for all can be revolutionary, but only if they know it exists. “To have a human rights movement,” Loretta Ross, founder of the National Center for Human Rights Education, told us, “people first have to know what their human rights are.” With this in mind, the center aims to reach out to different communities across the United States and work with them to know and defend their human rights. Since 1996, it has trained an impressive list of U.S. social justice advocates and com-

munity leaders in the principles and practices of human rights, using a variety of different methods. For Ross, whatever the specific achievements of this work, the overarching aim of human rights education is to build the political will of those most affected to determine their future for themselves.

The sense of empowerment that comes with the use of human rights is a crucial tool for community-based organizers, as is evident in the work of the Kensington Welfare Rights Union and the Poor People's Economic Human Rights Campaign. Started in the early 1990s in the Philadelphia neighborhood of Kensington, which has the highest concentration of poverty in Pennsylvania, the union uses a combination of human rights education and organizing to mobilize poor people on their own behalf. What began as a local effort is now rapidly spreading among poor communities across the nation and even internationally. In the past five years, the participation of local anti-poverty activists in the poor people's campaign has grown from a handful of initial organizations to a membership of over 60 groups. More than one observer attributes the campaign's success in recruiting to "the vision and hope that the new approach of human rights has given them."

This is not to suggest that one can take the participatory principles and practice of human rights on faith. Just because a group calls its work "human rights work" does not mean it will inevitably or even desirably adopt a participatory approach. In fact, many human rights organizations have carried out crucial human rights work in the United States without utilizing such participatory methods. In the area of human rights fact-finding, for example, human rights organizations like Amnesty International and Human Rights Watch, whose work is discussed in part four, have published invaluable reports on domestic abuse with very little active or sustained participation of the communities most affected. Nonetheless, as community-based human rights work in the United States has increased, fact-finding methods themselves have begun to change. This is reflected in Amnesty International's willingness, as discussed by Sheila Dauer, the group's U.S. gender expert, to allow its membership to

work on the countries in which they live (including the United States). It is also reflected in the leadership of affected individuals and communities themselves in documenting the abuses they suffer.

The work of The Women's Rights Network discussed in part two exemplifies this latter trend. The network involved survivors of domestic violence in documenting and analyzing their own experiences in human rights terms, an approach that led to their active participation in the subsequent advocacy effort and their formation of local support groups to highlight the role of domestic violence in child custody disputes. "We saw participation as a human right in and of itself," said Carrie Cuthbert, the network's co-founder.

As the previous paragraph suggests, human rights have the potential to alter the usual dynamics of social change work in this country, in which the "affected" and their advocates can become somewhat estranged. As poor people, workers, immigrants, women, gays, prisoners and others become aware of their human rights and organize to defend them, they gradually become the agents rather than the objects of social change. This begins to alter the power balance between those who experience human rights abuse and those who act on their behalf, moving them from a client/professional relationship toward a more equal partnership. To some observers this may seem like a subtle shift. But its value in terms of sustaining long-term, community-based advocacy for social change may be far-reaching.

This is perhaps best exemplified by the work of The Border Network for Human Rights, which organizes local human rights committees in immigrant communities across the U.S. Mexico border, a heavily militarized area. The network has had an effect in the short term on the enforcement practices of the Border Patrol, regional legalization efforts and the national dialogue about immigration policy. But its most significant achievement may be its use of participatory human rights education, organizing and fact-finding methods to build the capacity of immigrant communities to know and defend their rights, even in the face of considerable government hostility. "Everything de-

“Everything depends on our commitment to internal democracy, to leadership by the community. It’s the only way to ensure lasting social change.”

depends on our commitment to internal democracy, to leadership by the community,” said Fernando Garcia, network executive director. “It’s the only way to ensure lasting social change.”

D. Multidimensional advocacy strategies: As human rights help to transform U.S. social justice methods, they also support the emergence of new, multidimensional advocacy strategies. Part three discusses the use of such strategies by three groups whose advocacy transcends the familiar boundaries of identity, issue and country. This creative work touches on some of the most entrenched divisions in U.S. social justice advocacy and in American society itself. Its short-term effects, although difficult to measure at this early date, are encouraging. How exactly to build on those effects, especially given the intense organizational pressures sparked by the global economic downturn is, as one activist put it, “an on-going conversation,” and an exhilarating one.

In pursuit of cross-identity advocacy work, for example, the Women’s Institute for Leadership Development for Human Rights used human rights to take a more integrated approach to the elimination of gender and race discrimination in the city of San Francisco. The institute found, that absent a human rights framework, the city’s anti-discrimination policy was too compartmentalized and reactive to effectively protect women and girls, particularly those of color, from bias and abuse. The institute’s co-founder, Krishanti Dharmaraj, worked with both government officials and grassroots activists to adopt a local ordinance that reframed the city’s anti-discrimination work in more

integrated and proactive terms using as a legal basis the human rights conventions on the elimination of sex and race discrimination. For Dharmaraj, the campaign’s process was as important as its outcome. She felt that the use of human rights enabled anti-discrimination activists, who were otherwise segregated by identity and issue area, to come together under a common framework, focus their efforts and secure policy more responsive to the double burden of gender and race discrimination in the lives of women and girls.

The search for a similar link, in this case between civil and economic rights, led Jaribu Hill to found the Mississippi Workers Center for Human Rights. Hill, a veteran of both the civil and workers’ rights movements, saw in human rights a way to link the disparate and at times even antagonistic strands of civil rights and economic justice. Through the center’s own litigation and training programs, and its co-sponsorship of the Southern Human Rights Organizers’ Conferences and Network, Hill works with a wide range of regional social justice activists to strengthen and coordinate their civil and economic rights work. In her view, to think of civil and economic rights as separate is simply no longer responsive to the experience of poor people of color in the South, in the country or in the world as a whole. By putting them together, Hill says, “human rights lead to more systematic change.”

For that change to be truly systematic, it will have to be global, an insight fundamental to the work of The Women of Color Resource Center, along with that of virtually all the activists featured in this volume. The Oakland, Calif.-based center was co-founded by

Linda Burnham and Miriam Ching Louie, who first met at the 1985 U.N. World Conference on Women in Nairobi, Kenya. The two activists set out to use subsequent world conferences on women and race to introduce local women of color to their international counterparts and to use human rights to bring that global consciousness home. “Human rights provides that baseline context where you and everyone else in the world has the same starting place,” said Burnham. “There isn’t anything else in the world with which you can say that.”

One could argue that the participatory methods and multidimensional strategies of social change discussed above is by no means unique to human rights. This is true. For most of the activists discussed in this study, the value of human rights is not to create progressive trends in U.S. rights advocacy but to provide those trends with an underlying philosophy of rights, a resonant legal framework and even a methodological discipline that is not otherwise available domestically. “There was simply no body of U.S. laws that either described or provided adequate remedy for the multiple, synergistic and cumulative impacts of environmental degradation in a person’s whole life experience,” said Monique Harden, whose work is discussed in part four. “Human rights allowed us to get where we wanted to go faster.”

Faster, however, does not always mean easier. For the educators, organizers, fact-finders, policy advocates and even litigators discussed above, the adoption of a participatory, multi-dimensional human rights approach to their work proved extremely challenging. For this reason, they and many others like them came together at Howard University Law School in July 2002 and agreed to found the first-ever national network on human rights in the United States. The network’s primary purpose is reflected in its first publication, *Something Inside So Strong: A Resource Guide on Human Rights in the United States*, which provides concrete models and case studies of successful U.S. human rights work. It has given itself a comprehensive mission: to increase the visibility of U.S. human rights work and build the capacity of domestic social justice advocates to know their human rights, organize on

their behalf, document violations, engage policy makers, litigate cases and produce scholarship, all the while using a participatory and multi-dimensional approach with a clear global connection.

Do human rights provide a model for social change work in the United States?

Readers of this volume will no doubt decide for themselves if human rights offer an effective model for social change in the United States. But when all the dimensions of a human rights approach—vision, framework, method and strategy—come together in one focused effort, they produce an immensely powerful effect. In the environmental justice and women-in-prison cases discussed in part four, for example, practitioners, although initially quite skeptical, began by exploring the conceptual relevance of human rights to their work, educating not only themselves but also affected constituents about their human rights. They also collaborated more closely with their domestic colleagues working at different levels, conferred with counterparts overseas, connected to international human rights organizations and the United Nations, and used both domestic and international legal mechanisms. Their cumulative efforts had the respective effects of a) securing compensation and relocation for an environmentally devastated community, and b) transforming both the federal and state level response to sexual misconduct in prisons in this country. Krishanti Dharmaraj put it most succinctly, “I don’t know how to do social change in this complex world but to do human rights.”

One of the unexpected benefits of employing human rights as a model for social change is increased attention paid by the domestic and international print and broadcast media. The human rights work on environmental justice and custodial sexual violence, for example, attracted unprecedented media attention to those issues at the local, state, national and even international level. What one activist called the “drumbeat” of media attention not only shed light on an otherwise underreported issue, but also put pressure on responsible policy makers to resolve it. This volume is replete with such examples.

What are the challenges to U.S. human rights work?

Not a single activist, organization, network, observer or donor involved with this project sees the further development of a movement for human rights in the United States as a magic bullet. The challenge facing human rights work in the United States differs for different organizations, but existing and emergent U.S. human rights groups face several key obstacles in common: a) tenacious U.S. government resistance to applying human rights law domestically, b) real difficulties for lawyers and social justice activists in domestic application, and, finally, c) the allure of what Langston Hughes once called “the false patriotic wreath.”

A. U.S. exceptionalism and the persistence of structural racism: One could argue that the trenchant resistance of the United States government to any form of meaningful human rights obligation reflects, in large part, the persistence of structural racism in this country. There is abundant evidence of this connection. In a revealing exchange with Justice Ruth Bader Ginsberg in the Supreme Court on April 1, 2003, for example, the Solicitor General of the United States objected explicitly to the relevance of the affirmative action practices of other countries to those in our own. In a similar vein, the U.S. delegation’s departure from the 2001 U.N. World Conference Against Racism, while portrayed as solely a protest of anti-Semitism, also appeared to clearly reflect the U.S. government’s persistent uneasiness with international scrutiny of U.S. policy—foreign or domestic—with respect to race discrimination.

Any meaningful application of human rights to the United States will certainly confront the persistent problem of racial discrimination, still one of the clearest examples of what Yale law professor Harold Koh calls the U.S. government’s “negative exceptionalism”—the double standard whereby the United States promotes a principle abroad that it fails to apply successfully at home. If the past experiences of W.E.B. DuBois or The Reverend Dr. Martin Luther King, Jr. are any indication, however, the use of human rights to confront racism in the United States might bring new

perspectives and principles to bear on this country’s central and most enduring struggle. Such a perspective can be seen in Justices Ginsburg and Breyers’ concurring opinion to the U.S. Supreme Court’s June 23, 2003 decision upholding Michigan Law School’s use of affirmative action, which favorably cited the International Convention on the Elimination of all Forms of Racial Discrimination. Unlike domestic law, the international human rights standards oblige governments in determining possible racist practices to look at not only intent but also effect.

As U.S. activists attempt to reclaim human rights to combat race discrimination, they find themselves encountering U.S. exceptionalism more generally. Over the last half of the previous century, this policy has also formed the basis for a far more extensive defense of national sovereignty affecting issues including arms control, the environment, international justice, rights for women, children, immigrants, prisoners as well as economic, social and cultural human rights. To be sure, there are some notable exceptions, including for example the ratification of the Torture Convention and the passage of legislation to implement it domestically, but these stand out against a long record of opposition to domestic application of international law and agreements.

The social justice activists featured in this volume do not underestimate this exceptionalism, but they are also determined to confront it. Developments post-September 11, 2001 have reminded them dramatically that no one in the United States or any other country can take for granted their government’s adherence to fundamental principles of human rights. Every nation and all people need ultimate recourse to an alternative ethical and legal authority in those instances, however rare they may be, when their own government falls short of the rule of law. Sovereignty should not be a guarantee of impunity, particularly, one could argue, for the most powerful country in the world.

B. Legal, institutional and popular resistance: Even as U.S. social activists begin to challenge U.S. exceptionalism with a mounting degree of urgency, they confront the immense legal, institutional and cultural difficulties of applying human rights in the

United States. The legal challenges are formidable and run the gamut from conflicts between international and domestic law, to interpretive disputes, to the absence of implementing legislation for ratified treaties, to judicial unfamiliarity, to the legitimate concerns of litigators about taking on any of these difficulties, particularly when they themselves are unlikely to have any meaningful human rights expertise. These challenges are not readily overcome in the absence of a multifaceted legal education, training and strategizing effort.

The challenges facing the legal community have their counterparts in U.S. social justice groups more generally. These obstacles cross issue areas, methods and strategies and essentially boil down to an understandable caution about the universal, indivisible, participatory and multi-dimensional character of a human rights approach. Most of the groups featured in this volume find in themselves or in their potential allies a deep resistance to framing their work in human rather than single-identity/issue terms. They also resist taking on economic, social and cultural rights, as well as placing those most affected at the center of their work or engaging multidimensional advocacy strategies. These are legitimate concerns. They also reflect what is perhaps the most damaging legacy of U.S. exceptionalism: the inward-oriented nature of much U.S. social justice work. As Ellen Barry, an attorney and prisoner-rights activist whose work is discussed in part four told us, “our biggest obstacle... is our own insularity.”

To undo this tendency is not easy. It requires an intensive effort, involving a combination of human rights education, training, organizing and, most important, the concrete experience of trying new approaches. Any educator, organizer, fact-finder, policy advocate or litigator who uses human rights must also be prepared to handle the likely backlash from those who believe that the United States is far ahead of other countries. By its nature, human rights work challenges the notion of U.S. superiority that has arguably become part of the national identity. Some advocates have been surprised by the vehement reactions they receive, even from loyal allies, when they have sug-

gested that the United States fails to measure up to a given human rights standard. For this reason alone it would be unwise to advocate the use of human rights in every instance.

C. False patriotism: The threat of backlash reflects another major obstacle to the effort to “bring human rights home” to the United States: the general public’s knowledge about human rights. While no current data exists, it is probably safe to assume that the 1998 Human Rights U.S.A. poll, which found that 92 percent of Americans had never heard of the Universal Declaration of Human Rights, still has profound significance. It means, in essence, that U.S. human rights activists are trying to reshape U.S. society according to a philosophy and framework of rights that most people either have not heard of or have been taught to think of as foreign. As but one indication of the depth of this problem, virtually all of U.S. human rights activists in this set of case studies said that as they adopted a human rights approach to their work, they found themselves increasingly questioned about their patriotism.

This suggests that among the deepest challenges facing the emergent U.S. human rights movement—be it the exceptionalism of the U. S. government, the concerns of social justice advocates, or the attitudes of the general public—is how to communicate its message. This task is complicated and will have to be tackled with considerable patience and expertise.

Ultimately, the need to disrupt the increasingly worrisome connection between unilateralism and patriotism in the United States is one of the major reasons why activists argue that U.S. human rights work is so crucial. They see efforts to make concrete links between local and global rights activists, and between domestic and international systems of justice, as one way to help change the increasingly popular perception in this country that cooperative engagement with the world is somehow un-American. In this sense, human rights activists in the United States are trying, along with their counterparts in many other disciplines, to reclaim the traditions in this country that contributed so much to the creation of the United Nations and the Universal Declaration of Human

Any educator, organizer, fact-finder, policy advocate or litigator who uses human rights must also be prepared to handle the likely backlash from those who believe that the United States is far ahead of other countries.

Rights and, as Langston Hughes once so memorably said, “let America be America again.”

What are the U.S. human rights movement’s immediate needs?

Finally, what is needed to build a powerful human rights movement in the United States? As described above, the challenges of overcoming the political and legal obstacles to using human rights in the United States are formidable. There is no one-size-fits-all approach or easy path to follow. Even more than with most advocacy work, taking full advantage of the opportunities presented by the use of human rights in this country requires time to learn, to experiment and to plan. Unfortunately, most U.S. social justice advocates have few such opportunities: Academic training in U.S. human rights work remains limited, domestic and international rights organizations based in the United States have yet to fully take on this project, and neither of these sectors has sufficient opportunity to strategize, be it to coordinate their own efforts or to communicate their message to others. A substantial investment in the creation of a legal, institutional and popular culture of human rights in the United States is clearly necessary.

But for such an investment in human rights in the United States to bear fruit, it will need to be accompanied by a specific effort to support the work of pioneering U.S. human rights groups, like those featured in this volume, which are leading the charge to bring human rights home to this country. With creativity and determination these groups have already accom-

plished a great deal. But in most cases they are fragile and severely under-funded. One of them, the Women’s Rights Network, passed out of existence largely due to lack of funds in the course of these case studies. To take the work of existing U.S. human rights groups any further requires a meaningful and immediate infusion of political, moral, institutional and financial support. Without such a targeted effort to build the capacity and visibility of these U.S. human rights groups, the opportunity to transform U.S. society more generally may be squandered.

What is the role of the funding community?

Given the enormous challenges facing the emerging U.S. human rights movement, and the many things needed to bring about its full realization, such an undertaking requires active leadership. Building a U.S. movement for human rights is less about conforming to existing domestic reality than it is about reshaping that reality in light of a progressive alternative. For such a fundamentally transformative effort to succeed, it will require an equally ingenious funding strategy.

Some elements of that strategy are already in place. In 2003, the Atlantic Philanthropies and the JEHT foundation launched U.S. human rights initiatives, joining a pioneering group of regional, family and community donors that includes the Shaler Adams Foundation, the Otto Bremer Foundation and the California Women’s Foundation, which recently awarded \$250,000 in grants to address race, gender and human rights in the United States. The work reflected in this volume represents a commitment of nearly \$7 million by the Ford

Foundation. The Foundation fully expects to continue that support in the years to come.

As these and other foundations begin to respond to requests for support to add a human rights dimension to a range of social-justice initiatives in the United States, they are likely to confront many of the same challenges faced by their existing or potential grantees. These include a) their own institutionalized exceptionalism, b) the need for training on human rights ideas, law, methods and strategies and c) the lack of dedicated resources for this effort.

A. Institutionalized exceptionalism: Until very recently, foundations either supported human rights work exclusively out of their international programs or had U.S. programs that did not fund human rights. This includes the Ford Foundation, which until seven years ago maintained separate programs for human and civil rights. In 1996, Susan Berresford, the foundation's president, merged these units, which greatly facilitated the development of a more integrated approach to rights work. Today all of the issue-specific program areas within the foundation's Human Rights Unit have both international and domestic components, with the human rights framework operating wherever appropriate as bridge between the two.

Among donors more generally similar linkages are beginning to be made between international and domestic or human and civil rights funding, but such an integrated approach is still largely the exception to the rule. A survey of donors published by the Ford Foundation in 2002 (*A Revolution of the Mind: Funding Human Rights in the United States*) found that many funders thought of human rights as "international" and thereby exclusive of the United States or as involving "egregious" abuse that "does not happen here."

B. Absence of in-house expertise: The conceptual problem of dividing civil from human and local from global rights support has not only structural but also practical effects. Most foundations that fund exclusively in the United States lack expertise in human rights. Those that fund internationally, including those based in Europe, often have little exposure to the internal workings of the United States. Overcoming this split will require a collaborative effort from

both groups. The need for such an effort was reaffirmed by the International Human Rights Funders' Group at its July 2003 semi-annual meeting in New York City, at which it created a subcommittee on human rights in the United States.

C. Lack of dedicated resources: Given the substantial conceptual, structural and practical obstacles to funding U.S. human rights work, it is perhaps not surprising that this field is severely underfunded. Until 2003, the Ford Foundation was to our knowledge one of the few national foundations to earmark resources for U.S. human rights work, particularly as conducted by domestic rights groups. It is our hope that with Ford's ongoing commitment, the involvement of Atlantic Philanthropies, the JEHT Foundation and others and the growing interest of donors more generally, the resource gap that afflicts the U.S. human rights movement can be closed and its transformative work can expand.

Conclusion

The struggle to build a movement for human rights in the United States is not for the faint of heart. It seeks a transformation in U.S. society akin to the changes wrought by the civil, women's, gay and labor rights movements of the previous century. It faces substantial obstacles, not least of which is the increasing unilateralism of the U. S. government and its long history of exceptionalism with respect to the domestic application of human rights. Reversing these trends will require a concerted effort. U.S. social justice activists, the donor community and the American public must work together to restore this nation's commitment to the fundamental principle that the equal and inalienable rights of all human beings are the basis for freedom, justice and peace in the world. Let it be said by future generations that in the 21st century, the United States finally gave its full attention to the words that The Reverend Dr. Martin Luther King, Jr. uttered nearly 40 years ago: "I think it is necessary to realize that we have moved from the era of civil rights to the era of human rights."

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