Legislative and policy reform

As such, the Constitutional Court’s judgment cautions courts to give due regard to the impact that the execution of immovable property would have on judgment debtors who are indigent and who may, in addition, risk losing their livelihood (para 53).

Following the Gundwana decision, the High Court Rules were amended with effect from 24 December 2010. Debtors seeking to set aside past default judgments and execution orders issued against them by the registrar must first apply for the original default judgment to be set aside before applying for the execution orders to be set aside.

Debtors are also required to give sufficient reason for the delay in bringing the rescission application and why the judgment against them should be set aside. That requirement will undoubtedly limit the number of cases that can be legitimately challenged in courts.

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Although Franklin and Eleanor Roosevelt championed economic, social and cultural rights (ESCR) in the 1940s, the United States has been ambivalent towards ESCR for the past few decades. The United States Constitution does not recognise such rights, and although President Jimmy Carter signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1977, the United States Senate has not yet ratified the treaty and is unlikely to do so in the near future. Notably, a similar situation exists in South Africa, which has yet to ratify the ICESCR, despite having signed it more than 16 years ago. Unlike the United States Constitution, however, the South African Constitution provides for justiciable socio-economic rights.

Although the United States has lagged behind other countries on ESCR, activists in the country have begun using human rights frameworks and principles to advance economic and social policy agendas at the state and local level.

The Vermont Workers’ Center, for example, has made human rights principles the basis of their campaign for universal health care in the state of Vermont. The use of a human rights framework has enabled the Center to mobilise thousands of Vermonters, many of whom were not previously involved in political campaigns, to build a strong grassroots movement for health care reform. The successful passage of health care reform legislation in May 2011 would not have been possible without the sustained grassroots pressure placed on Vermont politicians and policy-makers by the Vermont Workers’ Center. As South Africa moves towards a national health insurance programme, Vermont can serve as an example of a grassroots movement that achieved universal health care reform.

If the grassroots lead, the government will follow

Lessons from the Vermont campaign for universal health care

Mariah McGill

The Vermont Workers’ Center, for example, has made human rights principles the basis of their campaign for universal health care in the state of Vermont. The use of a human rights framework has enabled the Center to mobilise thousands of Vermonters, many of whom were not previously involved in political campaigns, to build a strong grassroots movement for health care reform. The success-
insurance plans, with publicly subsidised programmes for vulnerable populations. Vermonters who cannot afford private insurance, but are not eligible for the publicly subsidised health programmes, are often forced to go without adequate health care. The reliance on private insurers has made the system inefficient and extremely costly. Health care costs continue to spiral, while thousands remain uninsured. Faced with mounting evidence that the health care system was leading to chronic illness, poverty and, in some cases, death, the Vermont Workers’ Center decided to take action.

The Center launched the ‘Healthcare is a Human Right’ campaign in 2008. Its previous health care reform efforts had failed to secure universal health care for all Vermonters. Politically powerful interest groups in the health insurance and pharmaceutical industries influenced health care policies in ways that were favourable to their industries but harmful to working people. Even politicians who supported the idea of universal health care reform did not believe it was ‘politically possible’ to achieve it within the state due to the power of special interest groups.

The Center attributed the failure of previous reform efforts to the lack of a strong, vocal grassroots movement for universal health care. Center organisers realised that the first step towards achieving universal health care was to build such a strong grassroots movement in sufficient numbers to hold politicians and policy-makers accountable for their inaction on health care reform. The Center decided to focus first on building the movement before reaching out to Vermont legislators.

In launching the new campaign in 2008, organisers decided to focus on the idea of health care as a human right. Previous reform efforts had tended to focus on specific solutions to the limitations of the health care policy rather than on how access to health care impacted on peoples’ lives. Center organisers believed that these campaigns had failed in part because health care policy discussions did not reflect the everyday experiences of working Vermonters. Therefore the Center decided to use a human rights framework as the centre of the campaign.

The Center adopted a set of human rights principles derived from the ICESCR: universality, equity, transparency, accountability and participation. Specifically, the Center argued that health care should be universally available to all Vermonters regardless of their ability to pay; that the health care system should be financed equitably; that Vermonters should have a role in the design and operation of the system; that the system should be transparent, efficient and accountable to the people it served; and that government bore the responsibility for ensuring that the system complied with these principles (Vermont Workers’ Center, 2011).

Although the notion of human rights was unfamiliar to many Vermonters, the campaign found that framing health care as a human rights issue actually made it easier to connect with working people. People who might not have grasped complicated health care policy choices could understand that the current health care system was hurting their families and communities. Vermonters intuitively grasped that the current system was unjust and were very receptive to the idea that health care should be a human right and that government bore the responsibility to ensure that right. Using the human rights framework enabled the Center to make health care reform more understandable and reach a broader group of Vermonters.

The campaign used a variety of strategies to mobilise Vermonters, including letter-writing campaigns, marching in parades and door-to-door canvassing. One of the most effective organising tools used was public meetings known as ‘human rights hearings’ that were held all over the state. Local community leaders were invited to attend these hearings and listen to testimony from local residents regarding their experiences in the health care system. The hearings also served as a forum to educate Vermonters on the human right to health care.

Prior to the hearings, many Vermonters suffered the inadequacies of the health care system in silence. According to campaign organisers, a large number believed that their experiences were the result of bad luck, or were somehow their own fault, rather than the result of a systemic problem in the health care system. The hearings gave Vermonters an opportunity to share their stories publicly, with their friends and neighbours, and created solidarity among them as they became aware of the depth and breadth of the crisis. The hearings also empowered participants to demand fundamental reforms to the health care system.

At every event hosted by the campaign, Vermonters were asked to complete a short survey describing their experiences in the health care system. By the end of 2008, the campaign had collected over 1 500 responses, which revealed the depth of the health care crisis in Vermont. Many Vermonters reported going without necessary medical care because they could not afford it, or becoming bankrupt and homeless due to astronomical medical bills.

The campaign used the survey results to compile a report entitled ‘Voices from the Vermont Healthcare Crisis’, which was released on 10 December 2008, in honour of the 60th anniversary of the adoption of the Universal Declaration of Human Rights. The report revealed the unnecessary personal tragedies caused by Vermont’s inadequate health care system, and emphasised that building the system on a human rights framework would prevent these tragedies. The report served to further mobilise Vermonters to demand universal health care as a human right.

By the end of 2008, the campaign had established a strong, vocal and motivated grassroots movement in support of universal health care. In 2009, the campaign changed focus and began reaching out to Vermont legislators to demand legislative reform. Campaign organisers recognised that inaction on health care reform was due to an imbalance of political power. Vermont legislators were subject to powerful pressure from lobbyists and special interest groups who opposed substantive health care reform, but were not receiving a comparable level of pressure from ordinary citizens. The campaign’s strategy was to exert strong, grassroots political pressure over and over
There are a number of obstacles that Vermont will have to overcome before a universal health care system can be fully implemented. Again to demonstrate to legislators that ordinary citizens demanded change.

The campaign organised a series of ‘people’s forums’ around the state, where legislators were invited to learn about the health care crisis and the human right to health care, and to hear directly from their constituents about their experiences in the health care system. Almost half of all Vermont legislators attended the forums. Previously, many legislators had argued that health care reform was unnecessary because the current system was working well. However, they could not continue to argue that the status quo was acceptable when confronted with testimony from voters. Many legislators began expressing support for the notion of health care as a human right and publicly pledged to work on health care reform.

During the 2010 and 2011 legislative sessions, the campaign organised a ‘people’s team’ to ensure that campaign volunteers attended every health care committee meeting at the State House. These volunteers wore matching red T-shirts and served as a visible reminder to elected officials of the support for universal health care within the state. The campaign also mobilised hundreds of Vermonters to provide testimony regarding their health care experiences at public hearings held at the State House.

The campaign also organised letter-writing campaigns, in which hundreds of volunteers delivered thousands of postcards signed by individual Vermonters expressing support for health care reform. Beginning in 2009, the campaign has held annual rallies on 1 May in support of universal health care. The rallies, held on the steps of the Vermont State House, have attracted more participants each year.

Impact of the campaign: Health care reform

The strong grassroots pressure exerted by the Healthcare is a Human Right campaign resulted in legislative victories in 2010 and 2011. The first step on the road to universal health care was the passage of Act 128 in 2010. Act 128 provided funding to hire an independent expert to design three health care system models, each based on the human rights principles advanced by the campaign.

In January 2011, the independent expert hired by the state presented his findings to the Vermont Legislature and recommended that Vermont adopt a ‘public-private’ single-payer system with a standard benefits package. The recommendations were promptly incorporated into health care reform legislation that was passed by the legislature and enacted into law in May 2011. Act 48 gradually transitions Vermont to a universal, single-payer health care system over the next six years.

In three short years, the Vermont Workers’ Center has changed the political environment in the state and ensured the passage of health care legislation that incorporates human rights principles and paves the way for universal health care.

Although Act 48 does not explicitly recognise health care as a human right, a section entitled ‘Principles for Health Care Reform’ adopts a reform framework which incorporates all the human rights principles advanced by the campaign. The legislation mandates the state to ‘ensure universal access to and coverage for high-quality, medically necessary services for all Vermonters’ and asserts that systemic barriers must not prevent people from accessing care.

The Act also states that the health care system must be transparent, efficient and accountable to the people it serves, and that the state must ensure public participation in the design, implementation, and accountability mechanisms of the health care system.

Finally, the legislation stipulates that the financing of the health care system must be sufficient, fair, predictable, transparent and shared equitably.

While important gains have been made, Vermont’s health care reform is an ongoing process. Although Act 48 is promising, there are a number of obstacles that the state will have to overcome over the next few years before a universal health care system can be fully implemented. The opposition to health care reform has been relatively muted thus far, but as Vermont moves closer to a system where health care is treated as a basic human right rather than a source of profit, the opposition will become stronger and more vocal. To counteract the opposition’s influence, the campaign continues to build the grassroots movement it believes will be necessary to achieve universal health care in the years ahead.

Conclusion

The Healthcare is a Human Right campaign has transformed the way Vermonters view human rights, particularly ESCR. Human rights advocates have often observed that people in the United States tend to view human rights, especially ESCR, as irrelevant to their lives and experiences. Now Vermonters know how human rights principles can improve their lives. Center organisers report that Vermonters are more receptive to human rights in other policy areas due to their exposure to such rights in the health care context. Most importantly, the human rights framework has united Vermonters from a variety of socio-economic backgrounds and made them aware of their political power.

While the final outcome of Vermont’s quest for universal health care is as yet unknown, the human rights framework advanced by the Vermont Workers’ Center has already had a profound impact on the state. It has helped alter the perspectives of politicians, elected officials and policy-makers regarding the role of human rights within the state. Human rights have become part of policy discussions in ways that they never were previously. Mainstream
Vermont newspapers have begun writing editorials in support of health care as a human right, and many politicians have made public statements in support of a human right to health care. When one considers that neither the Vermont nor the federal Constitution recognises a right to health care, these are staggering developments.

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References


Preliminary finding of the African Committee of Experts on the Rights and Welfare of the Child in the Nubian case

*Nubian Minors v Kenya Communication 002/2009*

In a landmark preliminary finding issued in March 2011, subsequent to considering its first communication, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) found the Kenyan government to be in violation of the rights of Nubian children and its obligations in terms of the African Charter on the Rights and Welfare of the Child of 1990 (African Children’s Charter). The ACERWC is the supervisory body of the African Children’s Charter. This preliminary finding was based on the fact that Nubian children were not granted Kenyan nationality at birth, and were unlawfully discriminated against in terms of access to citizenship. Other rights that the denial of the right to nationality could impact on include the rights to property and equal access to services such as education and health care.

For more information:


30th Anniversary of the African Charter on Human and Peoples’ Rights

This year marks 30 years since the adoption of the African Charter on Human and Peoples’ Rights (African Charter). The African Charter was adopted in Nairobi, Kenya, on 27 June 1981 at the Eighteenth Assembly of Heads of State and Government of the Organisation of African Unity. In commemoration of this anniversary, a number of events have been organised around various themes.

The African Charter came into force in 1985. Four years later, the African Charter’s treaty-monitoring mechanism, the African Commission on Human and Peoples’ Rights (African Commission), was formally established and inaugurated. The African Commission currently sits in Banjul, The Gambia, and is charged with the duty of promoting and protecting human and peoples’ rights in Africa.

The stated objective for the creation of the African Charter was to prepare an instrument based upon an African legal philosophy and responsive to African needs. The African Charter is celebrated as a progressive document that is distinct from other international human rights treaties in that, among other provisions, it recognises the indivisibility of civil and political rights from economic, social and cultural rights.