Clearinghouse Review

In this issue

Three articles on human rights as a framework for advocacy

In the September–October 2011 Special Issue

All articles on the human rights prism in poverty law

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Over the past decade many organizations at the local, state, national, and international levels have adopted human rights frameworks to address issues of concern to people living in poverty. These organizations include the Maryland Legal Aid Bureau and the Vermont Workers’ Center as well as Oxfam-America and the United Nations Development Program. For these organizations, economic and social issues—such as access to quality health care, affordable housing, equal education, and decent work—are human rights issues just as the right to vote, the right to a fair trial, and the right to free speech are human rights issues. With this increase in the use of human rights frameworks by advocates, organizers, and poor people in recent years, poverty lawyers need to become knowledgeable about international human rights law. Moreover, poverty lawyers should consider adding human rights frameworks to their growing toolbox of advocacy strategies.¹

Legal aid lawyers traditionally turned to litigation as the key strategy to tackle problems associated with poverty.² Later they began working with community-based groups, launching media campaigns, and advocating in legislative and administrative forums.³ Drawing on his experience with the Legal Assistance Foundation of Chicago, John Bouman describes this growing “toolbox” for legal aid advocacy that led his office to become regular players at the statehouse. In this proactive approach to poverty law, Bouman explains, “[W]e began to formulate the policy and systemic solutions that would prevent us from filing suit.”⁴ Bouman recognizes that litigation may, on occasion, still be the only option. He maintains, however, that a more productive route is for officials to adopt a policy because they are convinced that it is a good policy and then “stake their careers on it.”⁵

¹For more on expanding advocacy strategies and tools, see John Bouman, “Expanding Horizons”: Thoughts on Agenda Setting and a Full Advocacy Toolbox for Legal Services, 43 CLEARINGHOUSE REVIEW 534 (March–April 2010); John Bouman, Growing the Toolbox: Diverse Strategies for Public Interest Lawyers in Campaigns to Expand Access to Health Care for Low-Income People, 43 id. 173 (July–Aug. 2009).

²Bouman, “Expanding Horizons,” supra note 1, at 536.
³Ibid.
⁴Ibid.
⁵Ibid.
Human rights practitioners also traditionally relied on a limited toolbox, including litigation, naming and shaming, and letter-writing campaigns. These traditional strategies remain important, but recently human rights practitioners—particularly those committed to advancing economic and social rights—have added new strategies to the toolbox to take a more proactive approach to human rights implementation, monitoring, and accountability. While still litigating and shaming in response to human rights violations, human rights practitioners now participate in policy-making arenas with the aim of promoting human rights and preventing violations. Paul Hunt, formerly U.N. special rapporteur on the right to health, refers to these two approaches as the “judicial approach” and the “policy approach.” Like Bouman, Hunt acknowledges that “the two approaches are intimately related and mutually reinforcing.”

Today human rights practitioners, like legal aid lawyers, recognize the importance of litigation as a complement to other advocacy and organizing strategies and tools. In this article I introduce some new human rights–based strategies and tools that might prove useful to legal aid lawyers. I begin by outlining the sources of international economic and social rights and then explore some specific human rights–based strategies and tools that governments, civil society organizations, and poor people are using at both the international and domestic levels to monitor human rights and hold governments accountable for their obligations to improve education, health care, housing, and work conditions. In the final section I highlight the added value of using a human rights framework for poverty law work. Two articles accompanying this article show concrete examples of how two organizations in the United States—the Maryland Legal Aid Bureau and the Vermont Workers’ Center—use human rights frameworks to deal with systemic problems for people at risk of, or already living in, poverty.

I. Sources of International Human Rights Law

The Charter of the United Nations, originally adopted in 1945, commits the current 192 members to promote “higher standards of living, full employment, and the conditions of economic and social progress and development.” Furthermore, members pledge to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” The Charter does not specify any human rights, except the rights to equality and nondiscrimination. Rather, in 1948 the U.N. General

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5Paul Hunt, Using All the Tools at Our Disposal: Poverty Reduction and the Right to the Highest Attainable Standard of Health, Development Outreach 18 (June 2006), http://bit.ly/sQCPd. For more information on special rapporteurs, see infra note 29 and accompanying text.

4Hunt, supra note 7, at 18.


11U.N. Charter art. 55(a) (1945).

12Id. art. 55(c).

13See, e.g., id. art. 1(3), 55(c).
Assembly adopted the Universal Declaration of Human Rights, which sets out the human rights recognized by the U.N. members.14

The Universal Declaration of Human Rights is the most widely known pronouncement of human rights in the world. It commits the 192 members of the United Nations to promote respect for the rights enshrined in the document and to secure their universal and effective recognition and observance.15 Article 1 of the Declaration recognizes that “[a]ll human beings are born free and equal in dignity and rights.”16 Subsequent articles recognize a full array of economic, social, political, civil, and cultural rights. The Declaration, a political commitment of U.N. members, is useful in applying political pressure on a member to conform to human rights norms, but the Declaration is not legally enforceable.17

Since 1948, the rights in the Declaration have been recognized in a number of international human rights treaties that impose legal obligations on the governments that ratify them. The two primary human rights treaties are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted by the U.N. General Assembly in 1966.18 Today 166 countries are party to the International Covenant on Civil and Political Rights, and 160 countries are party to the International Covenant on Economic, Social and Cultural Rights.19 The two Covenants, along with the Universal Declaration of Human Rights, form the so-called International Bill of Human Rights.20

The International Covenant on Civil and Political Rights recognizes human rights such as the prohibitions against torture and slavery; the rights to life, privacy, and equality before the courts; and the freedoms of association, expression, and religion.21 The United States has ratified the International Covenant on Civil and Political Rights, and most of these rights are also enshrined in the U.S. Constitution. The International Covenant on Economic, Social and Cultural Rights recognizes human rights such as the rights to decent work, health, education, housing, social security, and an adequate standard of living.22 The United States has not ratified the International Covenant on Economic, Social and Cultural Rights, and few of these rights are recognized in the U.S. Constitution. Many of these rights are, however, recognized in state constitutions.23 For example, every state constitution includes a right to education.24 Additional international human rights treaties address human rights concerns of specific groups, such as...
as women, children, migrant workers, and people with disabilities, or specific human rights issues, such as racial discrimination or torture.

People living in poverty experience violations of all their human rights. They are often denied civil and political rights, such as the rights to personal security, privacy, and equal access to justice. Economic and social rights, however, have special importance to poor people and those at risk of falling into poverty because they are the people who most often experience violations of these rights. Consequently human rights practitioners working to alleviate poverty often focus on economic and social rights. The Office of the U.N. High Commissioner for Human Rights, for example, has issued Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, which presents the rights to decent work, food, housing, health, and education among the rights most relevant to reducing poverty.

II. International Monitoring and Accountability

The United Nations has two systems for monitoring U.N. member compliance with international human rights obligations and holding them accountable. The obligations in the U.N. Charter and the Universal Declaration of Human Rights as well as subsequent declarations and resolutions and customary international law are monitored by the “Charter-based bodies,” those bodies created under the U.N. Charter. These include the Human Rights Council and Special Procedures; among the latter are special rapporteurs and independent experts.

The Human Rights Council oversees the Universal Periodic Review under which all U.N. members must report to the Council every four years on the actions that they have taken to fulfill their human rights obligations. The United States filed its first report for Universal Periodic Review on August 20, 2010, and appeared before the Human Rights Council for review on November 5, 2010. Notably the U.S. report refers to Pres. Franklin D. Roosevelt’s 1941 “Four Freedoms” speech—including “freedom from want”—and covers the full range of rights in the International Bill of Human Rights, including social benefits provided by law in the areas of health, education, and housing.

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28See Albisa & Schultz, supra note 24, at 234.
30See, e.g., U.N. Charter art. 68 (authorizing the Economic and Social Council to set up commission to promote human rights).
31See Albisa & Schultz, supra note 24, at 234.
33See Special procedures’ is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world” (see Office of the United Nations High Commissioner for Human Rights, Special Procedures of the Human Rights Council (n.d.), http://bit.ly/gl99gj). The “special procedures” include special rapporteurs, independent experts, special representatives, and working groups; although they have different titles, all of the people appointed to these positions are considered experts (see United Nations Office of the High Commissioner for Human Rights, Fact Sheet No.27, Seventeen Frequently Asked Questions About United Nations Special Rapporteurs 1 (April 2001), http://bit.ly/6eAglf).
The Universal Periodic Review gives state and local human rights commissions and civil society organizations an opportunity to submit, to the U.N. Human Rights Council, reports documenting the human rights situation in the United States from their perspectives. For the 2010 Universal Periodic Review, 103 stakeholders submitted reports to the council.\(^{33}\) A joint report on economic and social rights in the United States was submitted by the National Economic and Social Rights Initiative, CADRE (Community Asset Development Redefining Education in Los Angeles), Coalition of Immokalee Workers, Montana Human Rights Network, Picture the Homeless (New York), Poverty Initiative, United Workers (Baltimore), and the Vermont Workers’ Center.\(^{34}\) These reports educate council members on the human rights situation in the United States and supply a basis for questioning during the oral presentation to the council.

The special rapporteurs and independent experts appointed by the Human Rights Council investigate particular human rights themes or human rights concerns in specific countries. At this time there are eight country-specific mandates and thirty-one thematic mandates, including several that address economic and social rights, such as the special rapporteurs on the rights to education, health, food, and housing as well as the independent expert on extreme poverty. The special rapporteurs and independent experts issue annual reports on the status of the enjoyment of the relevant rights globally, consider individual complaints, advise governments, conduct country studies, and raise awareness about human rights.

A number of special rapporteurs have undertaken missions to the United States. In 2002 the U.N. special rapporteur on the right to education visited Washington, D.C., Mississippi, Kansas, and New York. In her U.N. report on the right to education in the United States, she concluded, “There is a desperate need for human rights education, as this term tends to be used only with reference to other countries.”\(^{35}\) She also found that in the United States “there is little knowledge of the human right to education, human rights in education or enhancing human rights through education.”\(^{36}\)

In 2005 the independent expert on extreme poverty undertook a mission to the United States. In his report he observed that, despite the economic wealth of the United States, “the poverty rate remains high compared to other rich nations and there is no evidence that the incidence of poverty, and especially extreme poverty, is on the decrease.”\(^{37}\) He noted further that the government had not remedied the risk of extreme poverty to vulnerable groups, such as African Americans, Hispanics, immigrants, and women single-headed households.\(^{38}\) Of particular note, he concluded, “If the United States adopted a comprehensive national strategy and programs based on human rights principles it would be possible to reduce poverty and eradicate extreme poverty.”\(^{39}\)

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\(^{36}\) Id.


\(^{38}\) Id.

\(^{39}\) Id.
Most recently, in 2009, the special rapporteur on the right to adequate housing undertook a mission to the United States. In her report she expressed “deep concern about the millions of people living in the United States today who face serious challenges in accessing affordable and adequate housing, issues long faced by the poorest people and today affecting a greater proportion of society.” In view of the affordable-housing crisis, the special rapporteur recommended that the U.S. government (1) increase dialogue with civil society organizations, (2) put an immediate moratorium on the demolition of public housing until one-for-one housing is secured and the right to return guaranteed to all residents, (3) assign more resources to Section 8 housing vouchers, (4) introduce further measures to prevent foreclosures, and (5) develop constructive alternatives to criminalization of homelessness.

Visits by the special rapporteurs and independent experts are helpful in raising awareness of human rights among poor people and government officials and in supplying a forum to initiate dialogue between them. Each visit also results in a U.N. report on which civil society organizations can base further advocacy. The National Law Center on Homelessness and Poverty, for example, was closely involved in the 2009 visit by the U.N. special rapporteur on the right to adequate housing and held a National Forum on the Human Right to Housing in Washington, D.C., on the final two days of her mission. The law center also gives advice on using the special rapporteur’s U.N. report for advocacy on housing rights.

In addition to the Charter-based bodies, a committee of human rights experts established for each human rights treaty monitors government compliance with the legal obligations imposed by the particular treaty. These are the treaty-based bodies. They use two primary mechanisms for monitoring implementation. First, parties are required to report regularly to the committees on the legislative, judicial, administrative, and other measures that they have taken to implement the treaties as well as on the progress actually made in the enjoyment of human rights within their jurisdictions.

Second, people may lodge complaints alleging violations of human rights before the appropriate committee, which decides the matter in writing.

Among the core international human rights treaties that the United States has ratified are the International Covenant on Civil and Political Rights, the International Convention on the Elimination of Racial Discrimination, and the Convention Against Torture. The International Covenant on Civil and Political Rights includes the right to form and join trade unions, one component of the right to decent work. The International Covenant on Civil and Political Rights includes the right to form and join trade unions, one component of the right to decent work.

The International Convention on the Elimination of Racial Discrimination prohibits racial discrimination in the enjoyment of economic, social, and cultural rights.

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41Id. ¶¶ 79–108.


43See, e.g., International Covenant on Civil and Political Rights, supra note 18, art. 28 (establishing Human Rights Committee to monitor progress on enjoyment of civil and political rights).

44See, e.g., id., art. 40.


47International Covenant on Civil and Political Rights, supra note 18, art. 22(1).
social, and cultural rights.\textsuperscript{48} Although the United States signed the International Covenant on Economic, Social and Cultural Rights in 1977, it has not ratified this treaty or other core human rights treaties that protect the rights of women, children, migrant workers, and people with disabilities. Consequently the United States does not report to, and individuals here cannot file complaints with, the treaty-based bodies that deal with most economic and social rights.

Nonetheless many of the norms established in the treaties that protect economic and social rights and by the treaty bodies that monitor implementation of these rights are also recognized by Charter-based bodies and thereby apply to all U.N. members, including the United States. For example, in establishing the mandate of the special rapporteur on the right to housing, the Human Rights Council urges all U.N. members “[t]o take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, with a view to achieving progressively the full realization of the right to adequate housing.”\textsuperscript{49} This language is taken directly from Article 2 of the International Covenant on Economic, Social and Cultural Rights. Similarly advocates may draw on the reports and general comments of the treaty-based bodies to help define and give content to the human rights protected by the U.N. Charter and enumerated in the Universal Declaration of Human Rights.\textsuperscript{50}

Advocates should note in particular three points of this overview of international human rights instruments and the U.N. monitoring mechanisms. First, international human rights are relevant to dealing with poverty. In particular, people living in poverty are frequently denied the rights to decent work, education, health, housing, food, and social security. Second, U.N. monitoring mechanisms—such as special rapporteur visits and Universal Periodic Review—are excellent opportunities for poverty lawyers to educate people about economic and social rights and to engage governments at all levels in reporting on their progress in protecting, promoting, and fulfilling these rights.

Third, international economic and social rights are relevant in the United States despite the failure of the United States to ratify the International Covenant on Economic, Social and Cultural Rights. Multiple U.N. mechanisms monitor compliance with international human rights norms, and many are not dependent on treaty ratification, only on U.N. membership. The United States has some obligations for economic and social rights as a signatory to the International Covenant on Economic, Social and Cultural Rights.\textsuperscript{51} But it also has obligations for human rights, including economic and social rights, deriving from the U.N. Charter, obligations that are subject to review by U.N. Charter-based bodies.

\section*{III. Domestic Monitoring and Accountability}

According to international human rights law, victims of human rights violations must have access to effective remedies through competent judicial or administrative authorities established by the legal system of the national government.\textsuperscript{52} Consequently, at the domestic level, human rights practitioners often have dealt with human rights violations by litigating cases in domestic courts and administrative forums. Human rights practitioners

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\item International Covenant on Civil and Political Rights, supra note 18, art. 2(3).
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also rely on other traditional methods of accountability, such as “naming and shaming” in the media and organizing letter campaigns.53 To support these efforts, they rely on reports of U.N. human rights bodies as well as their own reports to pressure—publicly—governments into compliance with their human rights obligations. These traditional methods for dealing with human rights violations are critical to realizing human rights.

In recent years, however, human rights practitioners have recognized that these methods are not adequate to monitor fully compliance with human rights obligations, especially economic and social rights. Although not inherently different from civil and political rights, economic and social rights are subject to unique standards of implementation in international law. For example, the International Covenant on Economic, Social and Cultural Rights imposes on governments an obligation to take steps “to the maximum of available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means.”54 These requirements reflect the legal obligations imposed by the U.N. Charter on members to promote higher standards of living, full employment, conditions of economic and social progress, and universal respect for human rights.55 The U.N. Human Rights Council, the special rapporteurs and independent experts, and the Committee on Economic, Social and Cultural Rights have applied these standards to U.N. member countries.56

The unique obligations for economic and social rights present challenging and creative opportunities for developing new human rights strategies and tools.57 How does a government know whether it is progressively achieving economic and social rights unless it monitors the enjoyment of these rights over time? How does a government evaluate whether it is using the maximum available resources to realize rights unless it analyzes its budget for compliance with this human rights standard? And how does a government conclude that it is using all appropriate means unless it undertakes to examine the various means that are available to it?

To attend to these concerns, U.N. human rights bodies—including the Commission on Human Rights, the special rapporteur on the right to health, and the Committee on Economic, Social and Cultural Rights—have urged governments to use human rights frameworks, strategies, and tools to (1) decide priorities among policy options in a manner that respects human rights, (2) assess the effectiveness of the measures that they adopt to implement rights, and (3) ensure that policy-making processes are transparent and participatory and provide mechanisms for accountability.58 Over the past decade human rights practitioners have developed a variety of such frameworks, strategies, and tools to help governments monitor implementation of their human rights obligations and to help nongovernmental organizations hold governments accountable for doing so. This “policy approach” brings human rights

53MacNaughton & Hunt, supra note 6, at 303.
54International Covenant on Economic, Social and Cultural Rights, supra note 18, art. 2(1).
55See U.N. Charter art. 55.
Concerns into forward-looking policy-making processes and stands in contrast to the traditional “violations approach” to human rights accountability, which looks backward at past violations. New proactive human rights strategies and tools include human rights-based indicators and benchmarks, budget analysis, and impact assessment.

A. Human Rights-Based Indicators and Benchmarks

For two decades, human rights practitioners have recognized the need for a system of indicators to monitor the progressive realization of economic and social rights over time. For example, an indicator on life expectancy could demonstrate over time whether a government is progressively realizing the right to health, and an indicator on the percentage of people who graduate from high school could demonstrate over time whether the government is progressively realizing the right to education. By using such indicators, the Human Rights Council, for example, can determine during Universal Periodic Review whether the government is meeting its obligation to realize economic and social rights progressively over time.

Many common economic and social indicators may be used to monitor the realization of human rights. Governments and human rights practitioners selecting the indicators must ensure that the indicators that they select are linked to specific human rights norms. Until recently, however, the content of most rights was not clear, and this made developing a system of indicators to measure progress in the enjoyment of these rights impossible. In the last decade, detail on the content of these rights has developed significantly through the work of the Committee on Economic, Social and Cultural Rights and the special rapporteurs and independent experts. As a result, there is an increasing amount of academic literature on human rights and indicators, civil society practice using indicators at the grassroots level, and, most recently, work by the Office of the High Commissioner for Human Rights on indicators for economic, social, and cultural rights.

In the human rights context, indicators are often used with benchmarks or measurable targets. By adopting a set of indicators and making a public commitment to some measurable benchmarks, the government enhances transparency and provides a basis for civil society, and for national and international monitoring bodies, to hold the government accountable. This type of statistical information also can be used in litigation when the policy-making bodies are unresponsive to the “policy approach” to realizing human rights. This judicial approach is familiar in the United States where the so-called Brandeis brief uses such economic and social data to support constitutional claims. In sum, human rights-based indicators and benchmarks can be used to improve policy-making and monitoring, to enhance transparency and accountability, and, as a last resort, as evidence for litigation.

MacNaughton & Hunt, supra note 6, at 303.

Id.


Id. at 304.


Implementation of Economic, Social and Cultural Rights, supra note 45, ¶ 42.

Id.

The Brandeis brief refers to the brief that Louis Brandeis filed before the U.S. Supreme Court in Muller v. Oregon, 208 U.S. 412 (1908). Brandeis used empirical evidence, rather than purely legal argument, successfully to support his position. A so-called Brandeis brief was also successful in Brown v. Board of Education, 347 U.S. 483 (1954).
B. Human Rights-Based Budget Analysis

Human rights–based budget analysis is another strategy used by civil society organizations all over the world to uncover and support human rights claims. Achieving economic and social rights, like all human rights, requires budget allocations and corresponding expenditures. Budget analysis generates technical data, derived from the government’s budget, to show whether the government is meeting its human rights obligations to allocate and expend resources to realize economic and social rights. Lawyers in the United States acquainted with the school financing cases that have been litigated across the country are already familiar with constitutionally based budget analysis. In the school-funding cases, claimants argued for adequate or equal education under state constitutions by comparing the amount spent on education per child across school districts. In human rights–based budget analysis, the data are linked to human rights obligations rather than constitutional obligations.

Budget analysis reveals human rights problems and affords means to tackle them. First, as a preliminary matter, information on the budget is necessary to carry out a budget analysis. Based on the human rights to information and participation, civil society groups have pressured governments to release budget information and improve transparency. Second, budget analysis is used to determine whether the government is using “the maximum of available resources” to realize economic and social rights by comparing the allocations made to enhance the enjoyment of these rights versus other allocations. For example, allocations to health and education may be compared to allocations to defense or compared to allocations made to health and education sectors in other countries. Third, allocations within a sector may reveal whether the government budget supports the wealthy or the poor and whether it discriminates against certain geographical regions or groups of people. Fourth, budget analysis exposes human rights abuses hidden in complex government financial reports—abuses such as health allocations that were never expended. In short, human rights–based budget analysis is used in myriad ways from informing tax policy to uncovering corruption.

Because budgeting is one of the key tools that the government has to advance economic and social rights, human rights–based budget analysis falls within the obligation to use “all appropriate means” to realize these rights. Governments thus should use budget analysis to frame and set macroeconomic policy, to determine priorities among allocations, and to monitor expenditures, all in a manner that will be most respectful of human rights. Civil society organizations around the world have found budget analysis to be a powerful tool to discover evidence to support human rights claims to gender equality, children’s rights, and equitable health care systems. Poverty lawyers may also find this tool useful to advance economic and social rights.


68Implementation of Economic, Social and Cultural Rights, supra note 45, ¶ 46.

69Id.


73International Covenant on Economic, Social and Cultural Rights, supra note 18, art. 2(1).

74Implementation of Economic, Social and Cultural Rights, supra note 45, ¶¶ 49–50.

75See Blyberg, supra note 67, at 123.

76International Covenant on Economic, Social and Cultural Rights, supra note 18, art. 2(1).

77See Blyberg, supra note 67, at 123–39.
C. **Human Rights Impact Assessment**

Human rights impact assessment is a process to investigate and predict the potential consequences of a proposed policy, program, or project on the enjoyment of human rights.\(^7\) The purpose of the assessment is to inform decision makers and people likely to be affected so that they can improve the proposal by reducing potential negative effects and increasing positive ones.\(^7\) Although human rights impact assessment is a recent idea, other forms of impact assessment—such as environmental and social impact assessment—are well established and have been carried out routinely for many years in the United States and around the world.\(^8\) Proposed policies, programs, and projects should also be assessed for their impact on human rights.\(^9\) U.N. Charter–based bodies and treaty-based bodies have urged governments to carry out human rights impact assessments, and civil society organizations are already using this tool to hold governments accountable.\(^10\)

Most descriptions of human rights impact assessments involve both general human rights principles for carrying out the assessment and a step-by-step assessment methodology. Human rights principles include (1) using an explicit human rights framework, (2) promoting equality and nondiscrimination, (3) ensuring meaningful participation by all stakeholders, (4) supplying information and protecting the right to express ideas freely, (5) establishing mechanisms to hold the government accountable, and (6) recognizing the interdependence of all human rights.\(^11\)

These principles—equality, participation, information, accountability, interdependence, and the use of an explicit human rights framework—are common to many human rights–based methods.\(^12\)

A step-by-step methodology for assessing a proposed policy would generally include the following steps:

1. Perform a preliminary check to determine the need for a full assessment by comparing the proposed policy to the government’s legal obligations on human rights.

2. Prepare an assessment plan and distribute information on the proposal, the assessment plan, and the human rights at issue to all stakeholders.

3. Collect information and data on potential human rights impact from all stakeholders.

4. Perform a human rights analysis by comparing the information collected in Step 3 with the government’s human rights legal obligations determined in Step 1.

5. Prepare and distribute a draft report with the results of the analysis and engage all stakeholders in evaluating the proposed policy as well as possible modifications, alternatives, and mitigating measures.

6. Adopt the best policy and distribute a final report that has a human rights–based rationale for the policy adopted and an explanation of the mechanisms for implementation and evaluation.\(^13\)

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\(^8\) Id.

\(^9\) Id.

\(^10\) Id.

\(^11\) Id.


\(^13\) Hunt & MacNaughton, supra note 78, at 32–34.


\(^15\) Hunt & MacNaughton, supra note 78, at 36–49.
While human rights principles are integrated into every step of the impact assessment, Step 4 is the key difference from other impact assessments. At this step the information collected on potential human rights impact is compared to the government’s human rights obligations and thus links the impact assessment methodology to an international and domestic system of legal and ethical accountability.

Human rights may be integrated into other forms of impact assessment methodology—such as social impact assessment or health impact assessment—or human rights impact assessment may be used as a stand-alone tool. The most suitable approach will depend on the user of the tool and the purpose of the assessment. For poverty lawyers, the best approach might be to advocate integrating human rights into forms of impact assessment that government or civil society organizations already carry out because carrying out a stand-alone human rights impact assessment entails substantial time and resources. However, if a legal aid organization, perhaps in collaboration with other civil society organizations, adopted a program on human rights impact assessment to assess proposed policies regularly, then a stand-alone methodology would be suitable.

V. The Added Value of a Human Rights Framework

How does a human rights framework add value to the strategies and tools—economic and social indicators and benchmarks, budget analysis, and impact assessment—used to monitor the policies and practices of the government? First, human rights lend moral and legal legitimacy to policy-making. They are grounded in international legal instruments to which governments worldwide, as members of the United Nations, have committed themselves. Also, the human rights norms in the Universal Declaration of Human Rights derive from the dignity and equality of all human beings. Because these values are held across cultural and ideological divides, these values lend these norms considerable moral authority. Moreover, people have legitimate expectations that their governments will conform to the legal and moral obligations imposed by international human rights law.

Second, the human rights framework is an opportunity to enhance coherence in policy-making and practice across sectors. Governments often lack interdepartmental coordination mechanisms, and, consequently, one department may inadvertently take action undermining the actions of another department. Human rights are a legitimate common framework to guide policy-making and practice in all divisions of the government, thereby bringing coherence to government action. The result is more effective policy-making and implementation as all divisions of the government work under the same framework and toward the same goals.

Third, human rights principles—including equality, participation, information, accountability, interdependence, and the use of an explicit human rights framework—generally improve the effectiveness of policy-making and implementation. Following these principles requires government processes to be transparent and participatory. In particular, people living in poverty must be able to participate meaningfully in decisions that affect their lives. Importantly human rights also require accountability at local, national, and international levels, and accountability empowers people and civil society. Overall human rights constitute a common language that helps unite civil society organizations and individuals working on different but interdependent human rights issues.

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87Id. at 21.

88Id.
Human rights frameworks, strategies, and tools are already being used by governments, advocates, organizers, and poor people to evaluate laws, policies, and practices to ensure that they promote economic and social rights and prevent violations of these rights. Despite the ambivalence of the federal government toward economic and social rights—as demonstrated by its failure to ratify the International Covenant on Economic, Social and Cultural Rights—human rights frameworks, strategies, and tools to advance these rights are finding their way into the United States, especially at the state and local levels. And the more that human rights are used in U.S. legal and policy advocacy work, the more they are integrated into U.S. laws and policies and available to be drawn on when needed. Advocates should consider how they might integrate human rights into their poverty law work.


Symposium Explores Use of Human Rights Norms in Legal Services

Bringing together community organizers, lawyers, professors, and activists who are working on human rights, the November 2010 DePaul Public Interest Law Symposium on "Bringing Human Rights to Legal Services" examined how human rights norms could be integrated into the mission of legal services organizations. At the symposium two attorneys from the Maryland Legal Aid Bureau, which has adopted a human rights framework for its legal aid work, discussed their process and how local organizations can adopt a similar framework. A recording of the symposium is available at http://bit.ly/f3PoYm. For more information on Maryland’s work, see J. Peter Sabonis, Using a Human Rights Framework at the Maryland Legal Aid Bureau, in this issue.
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