Clearinghouse Review

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• In the September–October 2011 Special Issue •

All articles on the human rights prism in poverty law

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The Maryland Legal Aid Bureau adopted, in 2009, a human rights framework to guide its advocacy. We did it because our client communities pushed us to align our advocacy with their broader needs, not simply their legal problems. A comprehensive 2008 statewide assessment of our client population in all twenty-four Maryland counties showed that our clients’ priority needs were affordable housing; jobs that pay living wages; affordable and comprehensive health care; and strong, safe communities.

As we subsequently engaged in programwide strategic planning in 2008 and 2009, we asked ourselves the same questions that legal services programs have asked themselves perennially: What should our advocacy goals be with respect to the needs that our clients identified? Do our current case priorities address these goals?

With ten local offices serving twenty-four counties as a statewide provider of legal services funded by the Legal Services Corporation (LSC), we receive about 45,000 requests for assistance annually. Under a state contract we provide direct representation for children in foster care and at risk of entering foster care. In light of the need to triage client needs, prioritize exigent cases, and manage client flow, our advocacy goals and resulting case priorities affect our entire operation. While feedback from the client population and other service providers validated our choice of priorities, we recognized that our advocacy objectives could seem limited relative to the broader needs expressed by the community.

Our case priorities in housing, for example, emphasized eviction and foreclosure defense. This work was natural and fitting with 589,293 landlord-tenant cases filed in Maryland in 2008. But, just as naturally, our broader advocacy goals in housing were dominated by our frustration with eviction and foreclosure processes and practices. Our advocacy goals did not speak to the broader community goal of increasing affordable housing. Similarly, in employment cases, we prioritized wage payment, discrimination, and Family and Medical Leave Act cases that the private bar eschewed. Again this made perfect sense, but it did little to advance the structural changes in the marketplace needed to achieve living wages.

Needless to say, we were wrestling with the limits of systemic legal advocacy itself. Lawyers and paralegals certainly have roles to play in achieving the public policy and marketplace changes to meet the needs of low-income communities. Before our strategic planning, however, we thought that tackling broad client needs was better suited

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for those organizations that were free of LSC restrictions and more accustomed to the ways of statehouse politics and private market powers.

The client-led and client-centered groups around us at the time seemed to affirm and to challenge this premise simultaneously. The United Workers Association, a low-wage worker group, had organized a successful multiyear campaign to increase the wages of laborers who clean Baltimore’s professional baseball and football stadiums. Casa de Maryland, a multiservice center and advocacy group for Maryland’s Hispanic immigrants, had repeatedly mobilized its clients to attain significant public policy gains. Yet each organization relied heavily on legal advocates to assist in identifying strategic issues, providing support, and coordinating advocacy action. Our own partnership with a community group in southwest Baltimore had produced a string of successful subsidized housing and economic development initiatives. The significant gains achieved by other grassroots organizations, such as the Coalition of Immokalee Workers and Long Island’s Workplace Project, showed similar legal-community partnerships.

While these groups differed from us in that organizing, not legal services, was their primary mission, they seemed to rely on something with which we were quite familiar: “rights” language—specifically, “human rights” language. Many of us were indeed familiar with the Universal Declaration of Human Rights, adopted as a framework for the United Nations in 1948, but we were a bit surprised at how this “letter to Santa Claus,” as former U.S. Ambassador Jeanne Kirkpatrick once called it, was stirring client-centered action.

We were equally surprised to discover that there was extensive legal scholarship and argument to support a movement to realize international human “economic” rights here in the United States. While the goal of establishing legally enforceable rights to housing, living wages, health care, food, adequate public assistance, and education still seems far off, we realized that grassroots groups were not only articulating our own clients’ needs but also doing it in language that pointed toward solutions. And even if these solutions seemed decades away from being realized, could that day be hastened if our advocacy goals (and significant legal resources) were aligned with human rights? We thought it could, and, with the imprimatur of our board of directors, we aligned our case priorities and advocacy goals accordingly in 2010.

To us, international human rights treaties were not tickets to more client-friendly United Nations and regional forums, although those forums could be utilized where necessary or appropriate. They also were not supremacy clause trump cards to be played in court when our own statutes failed to provide remedies, although again this was an option.

We saw incorporating human rights treaties into our work first as a mind-set that revived the best of our legal services roots. Most of our current attorneys were not alive when the federal Legal Services Program was created to be a tool in a national antipoverty initiative that emphasized maximum feasible participation by the relevant communities. Our advocates are more familiar with the federal restrictions on systemic advocacy and the idea that we exist primarily to give resource-strapped clients simple access

3Casa de Maryland, www.casademaryland.org (About; News Archives).
to justice in courts or administrative forums. The community immersion and law reform that dominated the early history of the legal services movement now seem reserved for a small group of heroic lawyers or programs.

Beginning with the premise that clients, because of their own humanity, are entitled to civil and economic rights, we hoped to trigger both systemic and individual advocacy that was characteristic of our early history: aggressive, creative, client-centered, and movement-oriented.

Building a Human Rights Framework for Systemic Work

Catherine Albisa, executive director of the National Economic and Social Rights Initiative, spoke at a programwide kick-off event in October 2009 and assisted us in constructing our human rights framework. Albisa acknowledged that our effort was akin to “building an airplane while you fly it,” but she gave us some principles that have been helpful in guiding our thinking in both systemic and individual advocacy to date:

- **What is the value added in raising a human rights argument?** Does it make my claim stronger? And if it does not, does it present an opportunity to use this legal and policy tool without compromising my case or project? If the answer to the last two of these questions is “no,” then the human rights framework is used only as an analytical starting point.

- **Just say it**—to judges, legislators, clients, advocates, and one another. As Albisa said to us, “if we who believe in these rights are not willing to say whenever and wherever we can that these are fundamental human rights and that the government has a sacred responsibility to protect them, then we aren’t likely to make much progress.”

- **Work in a multifaceted way, with a movement focus.** In Albisa’s words: “It is not just a court strategy, or a press strategy, or an organizing strategy. It has to happen on all fronts simultaneously so that we can create social assumptions about what people have a right to expect and what government has an obligation to do.” Albisa adds: “The activists aren’t just all working in their own silos; they are coordinating to create social movement in multiple sectors at once.”

These concerns are legitimate, and we at the Maryland Legal Aid Bureau are trying to formulate our own approaches by recognizing these pitfalls and dynamics. We hope to be savvy and engage in a praxis of action and reflection informed by a structural analysis of socioeconomic forces. We also hope to glean lessons from those who have previously battled (with or without success) to realize civil or economic rights.

While every era presents its own opportunities and political dynamics, most successful campaigns to realize previously unrecognized rights have involved organization. Organized people are often the only weapon that can defeat the organized resources that often oppose social change. Legal services to low-income persons can actively facilitate this organization or passively undermine it.

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Thus our first priority involved educating our legal advocates about how organization and mobilization help in achieving significant social change. On a more concrete level, we prioritized the representation of client-based groups who were pursuing goals compatible with our own. We also challenged our advocates, particularly those in communities without active organizing, to be creative in using legal education, outreach, and assistance to bring clients with common interests into contact with one another and with concerned activists. In short, we started to use the human rights bridge to link lawyers and organizers.

Surprisingly, our attempts to encourage organization raised more apprehension than adopting the human rights advocacy goals themselves. Many advocates and at least one major funder, accustomed to the proverbial tension between systemic and individual casework in legal services, expressed concern that we had sharply tipped the balance between the two to the systemic side at the cost of ignoring individual client needs.

We have assumed them, however, with our belief that our framework will eventually transform this traditional systemic-individual dichotomy. While group representation and organizing may divert time from direct representation, these activities can facilitate organization and advocacy that might not directly involve the Maryland Legal Aid Bureau but may result in significant systemic change. Representing or educating individual clients, and linking them with other individuals with similar issues and interests (through methods consistent with our ethical responsibilities), maximizes the opportunity for organization to develop. For better or for worse, we have a commodity—legal services and knowledge—that is valuable and needed by the communities we serve. The way we deliver this commodity can either facilitate community organization or ignore it.

**Human Rights Advocacy in Context**

We have also tried to lay a foundation for human rights advocacy in specific subject areas, confident that the interaction among our advocates, clients, client groups, and community leaders will produce specific strategies. Below is a discussion of two of these approaches. Whether these efforts will synthesize into coordinated statewide efforts remains to be seen.

**Housing.** The economic right to housing under international human rights standards is a challenging concept for legal services lawyers. To us, rights mean entitlements provided at state expense, regardless of fiscal limitations. A human right to housing as set forth in the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and its reference in the Convention on the Elimination of Racial Discrimination must mean a right to public housing or, at least, subsidized housing for all who need it, regardless of state budget limitations.

10Restrictions on the ability of the Legal Services Corporation (LSC) to organize are not as comprehensive as other restrictions (see Legal Services Corporation Act of 1974 § 1007(b)(7), Pub. L. No. 93-355, 88 Stat. 378, 381 (codified as amended at 42 U.S.C. § 2996(f)(b)(7))). Because this restriction is derived solely from the LSC Act, rather than the 1996 appropriations act, it is applicable only to LSC and private funds and does not apply to public or IOLTA (Interest on Lawyers’ Trust Account) funds. Of more concern is the risk of usurping “client” democracy, self-determination, and leadership development in creating such groups (see Jennifer Gordon, *Suburban Sweatshop* (2005); Camille D. Holmes et al., *Race-Based Advocacy: The Role and Responsibility of LSC-Funded Programs*, 36 *Clearinghouse Review* 74 n.56 (May–June 2002).
There being a federal income tax deduc-
tion for mortgage interest on owner-
occupied residences, most *private* hous-
ing in this country is publicly subsi-
dized.12 But this fact is also key to un-
derstanding international expectations 
relative to a right to housing. Economic 
or “positive” rights involve unique pub-
lic policy–oriented standards.13 States 
are expected to take steps “to the maxi-
mum of available resources with a view 
to achieving progressively” the right to 
housing.14 The Committee on Economic, 
Social, and Cultural Rights states further 
that “such steps should be deliberate, 
concrete and targeted,” involve estab-
ishment of a “minimum core obliga-
tion,” and progressively achieve housing 
for all by whatever public–private market 
mix and policies prove adequate to the 
task.15 In Maryland, as in most states, we 
are headed in the opposite direction.

Encouraged and guided by a housing ad-
vocacy strategy used in Cook County, Il-
inois, we required our local offices each 
to assemble housing data for their ser-
vice areas on the current supply of sub-
sidized and private housing and the rel-
ation of supply to demand.16 Data on the 
age of housing stock, the expiration dates 
of housing subsidies, the number and 
availability of housing vouchers, and the 
barriers (poor credit, criminal histories) 
to obtaining housing were also compiled. 
Offices were then charged to analyze the 
data, think critically about their com-

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12This federal tax expenditure was expected to cost an estimated $89.4 billion in 2010 (see Joint Committee on Taxation, 

13See MacNaughton, supra note 11.

14International Covenant on Economic, Social, and Cultural Rights, supra note 11, art. 2.1; see generally Maria Foscarinis 

15U.N. Committee on Economic, Social, and Cultural Rights, General Comment 3: The Nature of States Parties Obligations 
11; U.N. Committee on Economic, Social, and Cultural Rights, General Comment 4: The Right to Adequate Housing (Art. 
of Discrimination and Protection of Minorities, *The Realization of Economic, Social, and Cultural Rights: The Right to 

16Katherine E. Walz & Judith Levey, *Keeping an American Promise, Safe, Decent and Affordable Rental Housing for 

17See U.N. Committee on Economic, Social, and Cultural Rights, General Comment 3, supra note 14, ¶ 9; see also 
MacNaughton, supra note 11.

18Organizing puts more of a premium on self-determination, democracy, and leadership development than mobilizing.

19Under the International Covenant on Economic, Social, and Cultural Rights, housing should be affordable, habitable and 
accessible, adequately located, culturally adequate, and secure of tenure (see U.N. Committee on Economic, Social, and 
Cultural Rights, General Comment 4, supra note 15, ¶ 8).
needed to gain resources for housing stock rehabilitation or replacement.

At this point we have just finished the office assessments and have begun strategizing. In the meantime we testified about the status of affordable housing in Maryland before the United Nations Special Rapporteur on the Right to Adequate Housing during her recent visit to the United States.\textsuperscript{20} Also, in submitting testimony to the Baltimore City Housing Authority on its 2011 annual and administrative plans and its admissions and continued occupancy policies, we identified housing as a human right and set forth its seven elements.\textsuperscript{21} At a recent “Right to Housing” forum hosted by another legal services group, data we presented from our Legal Aid housing assessments sparked interest in a campaign to include such a right in local city and county charters.\textsuperscript{22}

The human rights to housing and development also informed the advocacy position of a tenants’ rights council that we represent.\textsuperscript{23} Faced with the planned redevelopment of its public housing complex into a new mixed-income, mixed-use community featuring public, affordable, and market-rate housing, the tenants’ council adopted a declaration of development that demands a one-to-one replacement of the public housing units in the project as well as meaningful participation in all stages of redevelopment planning. Recently the local housing authority capitulated and appointed the tenants’ council as part of the private development team.

Employment. The human right to employment can be found in Maryland’s case law, despite the lack of any state or federal constitutional authority.\textsuperscript{24} Workers’ rights to safety and fair treatment are recognized frequently in a patchwork quilt of federal and state laws and judicial decisions. Minimum-wage and overtime laws provide a floor, albeit low, for compensation, and Baltimore passed one of the nation’s first living-wage ordinances.\textsuperscript{25} In short, the employment-related rights articulated in international instruments appear to exist in Maryland.

Despite this, the employment realm is a classic example of the “implementation gap” that critics of human rights describe. Many of these legal protections are enforced in the breach for low-wage and immigrant workers. What good is another legal argument when most laws already are ignored?

The paucity of labor law enforcement is due primarily to the proverbial power imbalance between workers and employers. Lawyers alone cannot remedy that. But instead of accepting the imbalance and being content with handling employment cases of people who have already been fired—or soon will be after we assist them (notwithstanding antiretaliation laws)—we are assuming that we can play roles similar to the attorneys who work with Casa de Maryland, the United Workers Association, and the Coalition of Immokalee Workers in supporting or facilitating the worker organization or collective action that overcomes their power deficit.

After completing an office-by-office analysis of service area labor markets, we now hope to amend our case intake procedures to capture employment in-

\textsuperscript{20} A copy of the transcript of the Maryland Legal Aid Bureau’s testimony before the United Nations Special Rapporteur on the Right to Adequate Housing is on file with Tabinda Riaz, staff attorney, Maryland Legal Aid Bureau, Baltimore, Md.

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\textsuperscript{22} In Maryland any charter adopted by Baltimore or any county may be amended if the mayor of Baltimore and the Baltimore City Council, or the relevant County Council, or 20 percent of the registered voters of the city or county propose an amendment and said amendment passes by a popular vote (Md. Const. art. XI-A, § 5).


\textsuperscript{24} See Maryland v. Waldron, 426 A.2d 929, 948–51 (1981); Singer v. State, 19 A. 1044, 1045 (Md. 1890).

\textsuperscript{25} Baltimore, Md., City Ordinance 442 (Dec. 13, 1994).
formation and document work-related problems regardless of the presenting legal issue. The employment information may be used to develop outreach and community education strategies targeting particular workers and linking them with interested organizers. In the meantime offices handling individual employment cases are directed to investigate whether workers other than the presenting client have issues similar to the client’s and whether a collective remedy or action is an option. To further organizational relationships, offices are encouraged to prioritize clients referred from coalitions or groups that are engaged in worker advocacy.

Other Uses of the Human Rights Framework

Maryland’s Department of Human Resources promulgated, in October 2009, new regulations for its financially strapped Temporary Disability Assistance Program. The proposed changes put roughly 8,000 recipients at risk of losing the small monthly amounts that they used to house themselves, eat, or meet their personal needs. We joined with a coalition of advocates and service providers to decry and mobilize against the new regulations, and we encouraged the coalition to adopt human rights language. The campaign blog identified the program as a “human right,” regardless of its statutory status as conditional assistance limited by Maryland’s budget.26 Our appeal to the secretary of the Department of Human Resources used language from the Committee on Economic, Social, and Cultural Rights to make the case that there was a hierarchy of human needs and that the state had an obligation to avoid deliberately retrogressive measures unless absolutely necessary.27

When we were invited to testify before a legislative committee about the Temporary Disability Assistance Program, we used the indivisibility of political and human rights as the gateway to a human rights–oriented argument. We never claimed that Maryland’s proposed action violated the supremacy clause; nor did we even threaten to embarrass Maryland by filing a petition in an international forum. Rather, we exalted the political rights to vote, speech, and privacy and explained how meaningless they were to folks living on the street. The coalition then called a “human rights budget hearing” of those affected. At the hearing, coalition members presented state fiscal and economic data and produced a constitutional amendment requiring the governor to propose budgets that set forth a thorough and efficient system of meeting human economic rights. The amendment was delivered to the governor and the Maryland attorney general. The campaign succeeded. The regulations were withdrawn, and the Department of Human Resources closed the year with a program deficit, which was handled by the governor in the subsequent fiscal year.

In other state legislative hearings that we were invited to attend, we tried to use human rights language. In the current political environment this is not easy. With legislation relative to unemployment insurance reform, we reminded state legislators that the 1934 unemployment insurance program helped inform the 1948 Universal Declaration of Human Rights. In testimony relative to wage payment and collection, we reminded legislators of the human rights to worker fair treatment and remuneration that underlie the Fair Labor Standards Act.

In response to health care reform, Maryland has created a multifaceted advisory council tasked with making recommendations to the governor before the start of the legislative session in January 2011. In our oral and written testimony before various committees on the council, we repeatedly called health care a “human right” and cited and used key human rights principles to guide our positions:


universal access to quality care; equity; nondiscrimination; and private-sector accountability.\(^{28}\)

Recently the Baltimore City Council asked us to testify about a proposed ordinance to extend its living-wage ordinance to big-box private retailers. To get on board a legal advocacy ally hesitating to support the legislation because of its concerns about the legislation’s impact on necessary economic development, we repeatedly cited the human right to “just and fair remuneration” that ensures an “existence worthy of human dignity.”\(^ {29}\)

In fact, in the fast pace of legislative sessions where we often receive last-minute requests to testify and submit opinion, the human rights framework has served as a fixed and steady guide to our often frantic attempts to form policy positions consistent with our clients’ interests.

**Future Advocacy**

The recent visit by the Special Rapporteur on the Right to Adequate Housing, the filing of the United States’ initial report for Universal Periodic Review, and the accompanying stakeholder submissions by nonprofit service and advocacy groups have educated us about the Human Rights Council and Special Procedures. The California Legislature’s recent decision to encourage the submission of reports of local and state compliance with ratified human rights treaties to the U.S Department of State for consideration by the United Nations has bolstered the legal argument that state adherence to international human rights expectations is expected and required.\(^ {30}\)

The Maryland Legal Aid Bureau is an ideal candidate for reporting human rights violations across the state. To date, we have not characterized the presenting problems of our clients as human rights violations, but this is changing. The stories we hear daily about the denial or termination of housing, health care, and food and income assistance, or about the denials of employment and living wages, will be gathered, we hope, into annual reports to be submitted as part of the Universal Periodic Review.\(^ {31}\) In short, our database of 45,000 annual intakes is an ideal source for monitoring state compliance with human rights obligations. We hope that, to maximize statewide impact, this can be coordinated with other Maryland organizations and advocacy campaigns.

We are also confident that our advocates and their communities will continue to find creative ways to use the human rights framework. Framing client stories and community challenges with a human rights perspective certainly holds great promise in giving policy advocacy positions moral weight; it also has a track history of sparking the kind of client involvement necessary to achieve systemic change.

Of course, accomplishing this in a statewide, LSC-funded program that is more geared toward triaging requests for legal services is ongoing. New attorneys are introduced to our human rights framework during interviews with our executive leadership, and all new staff members receive instruction during our daylong program orientation. Program task forces organized by subject matter (i.e., housing, public benefits, employment, family, and consumer law) or by client population (elders, children, limited-English proficiency) discuss human rights principles germane to their advocacy efforts. Our website has a repository of human rights materials, with a particular focus on the body of scholarship supporting the applicability of economic human rights in the United States.\(^ {32}\) We give new clients a brochure explaining the human rights

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29Universal Declaration of Human Rights, supra note 4, art. 23(3).


31For more information on the Universal Periodic Review, see MacNaughton, supra note 11.

32See Maryland Legal Aid Bureau, MD JUSTICE, www.mdjustice.org (search term “Human Rights.”)
framework. While much remains to be done to incorporate the framework fully into our service delivery structure and outreach strategies, we have a unit devoted to statewide advocacy and support that will ensure that human rights goals guide our systemic advocacy in the interim.33

The needs of our client communities are consonant with the economic human rights articulated in international declarations and treaties. Grassroots organizations made up of client-eligible populations have achieved considerable success in organizing and mobilizing low-income people around a human rights framework.

For some, a human rights framework for legal services advocacy is perhaps too visionary, but its honesty and focus assist our analysis and work. While the stories of our clients differ, the common theme is the unjust distribution of community, state, and national resources. Advocacy for economic human rights puts these resource issues squarely on the public policy table and guides states in making more equitable distributions. Clever and creative legal and policy arguments alone will not change the fact that resource distribution decisions are controlled by those with political and economic power. But the organization and mobilization of our clients and allies to counter this power is happening in a number of communities. This movement is using human rights to transform clients, communities, and public policy. We would do well to follow their lead and craft our advocacy strategies accordingly.

33The unit is headed by a director of advocacy, with four assistant directors each responsible for housing, income security, long-term care, and children’s advocacy, respectively.
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