

A Different Lens: Applying a Human Rights Framework to Disparities in the United States

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Despite its complicated history in American politics and activism, human rights discourse is emerging once more as a powerful alternative framework to scrutinize issues related to poverty and race in the United States. This article offers a brief introduction of the U.S. Human Rights Network's (USHRN) 2013 report, "Advancing Human Rights: A Status Report on Human Rights in the United States," which outlines the implications of human rights as they relate, among other things, to housing, education and the criminal justice system. The article highlights pivotal policies reviewed in the report and examines the ways in which a human rights lens can provide a public forum for resolving civil rights abuses on a national level.

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While the language of civil rights, revolving around the U.S. Constitution, usually dominates much of mainstream discourse in this nation, for at least 65 years there has existed an alternative ethical and legal horizon. African-American organizations and individuals instantly recognized the rhetorical power and political potential of the emerging human rights discourse at its onset in response to the

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ravages of World War II and the Holocaust. Fully aware of the inherent contradiction of the United States' ascension to moral world leadership—while the nation was holding on to a system of segregation in the South and practicing unequal access in a variety of areas, including housing and education—the National Association for the Advancement of Colored People (NAACP) and others had, in Carol Anderson's words, "already decided that only human rights could repair the damage that more than three centuries of slavery, Jim Crow, and racism had done to the African American community." By contrast, "[c]ivil rights, no matter how noble, could only maintain the gap." Yet the NAACP's early efforts to establish human rights as the uncontested standard for equality in America were thwarted by several consecutive administrations who, in an effort to both protect the status quo and sanitize the nation's public image in the midst of the Cold War struggle, offered great resistance to allowing for American political discourse to be informed with the truly emancipatory rhetoric embedded in such founding

documents as the 1948 Universal Declaration of Human Rights. As Anderson further explains, any efforts to expose U.S. policies to human rights scrutiny were "ultimately destroyed ... by the Cold War and the anti-Communist witch hunts, which compromised the integrity of the black leadership, twisted the definition of human rights into the hammer and sickle, and forced the NAACP to take its eyes off the prize of human rights." The sixties saw another push for human rights, led by Malcolm X and Martin Luther King, Jr.'s efforts to bring the case of American racial injustice to the United Nations. In July of 1964, Malcolm X attended the meeting of the Organization of African Unity in Cairo, Egypt, where he petitioned the independent African States to urge the United Nations Commission on Human Rights to investigate the human rights abuses that African Americans endured as a result of racism. Unfortunately, because of pressure from the United States, they remained inactive.

Recent years have seen the re-emergence of human rights rhetoric within the context of the United States, with a concerted focus on using a human rights framework to address issues that are often solely viewed within the rubric of civil rights, such as housing, education and the criminal justice system. Civil rights organizations, realizing the benefits of employing a human rights framework that includes a broader international language, have participated in the drafting of shadow reports and international review processes in order to leverage the moral authority that international law tends to garner regarding human rights abuses in the United States. The US Human Rights Network (USHRN) recently published its annual report "Advancing Human Rights: A Status Report" (Please turn to page 4)

port on Human Rights in the United States,” which offers an alternative perspective on poverty and race in 2013.

Housing

As one of its central concerns, the report highlights housing issues such as the criminalization of the homeless, the lack of affordable housing, segregated neighborhoods, and housing discrimination, through the lens of Article 25 of the Universal Declaration of Human Rights, which essentially guarantees the right to adequate and safe housing. The lack of affordable housing, racially segregated neighborhoods and violations of the Federal Fair Housing Act have been well documented amongst housing advocates. What is less mentioned is that, according to human rights law, not only is access to adequate housing a human right, but so are the concomitant economic opportunities. Civil rights legislation, according to *Human Rights in Our Own Backyard*, “does not speak to the question of economic rights that would enable one to access these civil, social, and political rights in a meaningful way. If one cannot afford to purchase adequate housing in an economically viable neighborhood, one is de facto denied equal access to quality education, job opportunities, and so forth.” In this context, then, predatory lending practices have multiple human rights implications. As a result of, among other things, subprime lending (more specifically, predatory lending) and the attendant foreclosure crises, many homeowners were divested of large amounts of their wealth. Of them, African Americans were targeted and saw a loss of wealth of nearly \$200 billion, bringing the gap between white and black wealth to a staggering 20:1 ratio. Human rights organizations make the argument that the practice of predatory lending is a violation of human rights law vis-à-vis two of the treaties that the United States has signed. Armaline, Glasberg &

Purkayastha clarify that “Article 25 [of the UDHR] provides for the right to adequate shelter, among other elements of a decent standard of living, and the right to security should one lose one’s job, become ill or disabled, widowed, or too old to work, all of which are beyond an individual’s control.” In addition to this, the U.S. has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD or CERD), which asserts the human right to be free from racialized discrimination. In particular, “Article 5 lists the rights outlined in the UDHR, including a right to own property and a right to

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housing regardless of one’s racialized categorization.” The practice of predatory lending targeting communities of color appears to violate these rights.

The National Law Center on Homelessness and Poverty states in their report, “Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities,” that between 2009 and 2011 laws, criminalizing homelessness increased by as much as 10%. Homeless individuals are targeted for merely being in public spaces and performing normal functions including sitting and sleeping. Of the 234 American cities surveyed, 40% make it a crime to sleep in public spaces, 56% prohibit loitering in public places, 53% prohibit begging and panhandling in public. Participants in a survey said that they were either arrested or received citations for camping/sleeping in public (55%), loitering (55%), public storage of their belongings (20%), and sidewalk-sitting (19%). This criminalization has been criticized by international experts, including the U.N. Special Rapporteur on Extreme Poverty and Human Rights, who stated that the U.S. should repeal or reform any laws that

criminalize life-sustaining activities in public places and refrain from criminalizing sanitation activities. The United States Interagency Council on Homelessness and Department of Justice’s 2012 report, “Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness,” recognized for the first time that, in addition to possible violations under the United States Constitution, the criminalization of homelessness may contradict the United States’ human rights treaty obligations under the International Covenant on Civil and Political Rights (ICCPR) and Convention Against Torture (CAT).

Education

Because of the history of racial oppression in this country, race is inextricably linked to socio-economic status. Because of this and the segregation that it created, the funding structure for schools (which get a large percentage of their funding from property taxes) perpetuates a system of separate but unequal education. In its shadow report, “Still Segregated: How Race and Poverty Stymie the Right to Education,” the Leadership Conference on Civil and Human Rights (along with PRRAC and other civil rights groups) outlines that schools in America remain deeply segregated by race and class and that “schools serving low-income families and racial minorities consistently lack the funding, resources, and faculty experience and expertise necessary to improve the education outcomes of minority students.” Similarly, the Economic Policy Institute issued a study that suggests, “African American students are more isolated than they were 40 years ago, while most education policymakers and reformers have abandoned integration as a cause.” Indeed, “as of 2010, 74.1% of Black students and 79.1% of Latino students attended majority-minority schools.” This segregation is aggravated by the intersection of race and poverty. As such,

(Please turn to page 11)

improvements that are precisely the qualities HUD seeks to incentivize in its pursuit of “Mixed-Income Communities of Opportunity.” Accordingly, the federal government should be encouraged to expend funds to transform gentrification into a strategy for affirmative furthering fair housing, rather than allowing it to continue as yet another racialized dynamic that denies autonomy to the black and Latino families that remained in the neighborhoods that were hard hit by the policies of the last century. □

¹Adam Sternbergh, “What’s Wrong with Gentrification,” *N.Y. MAG.* (Dec. 11, 2011), <http://nymag.com/news/intelligencer/62675>.

(HUMAN RIGHTS: *Cont. from page 4*)

“[t]oday, many black children still attend schools in racially and economically isolated neighborhoods, while their families still reside in lonely islands of poverty: 39 percent of black children are from families with incomes below the poverty line, compared with 12 percent of white children.”

In addition to this, the recent mass closing of schools (particularly in places like Chicago), has disproportionately impacted students (and teachers) of color and could be construed to interfere with Article 26, giving parents the “right to choose the kind of education that shall be given to their children.” Some human rights organizations have even brought their concerns to the United Nations, asking them to monitor the nearly 50 school closings in Chicago. Although the right to an education has not always been viewed as a solution to social problems, one could, according to Armaline, Glasberg & Purkayastha, “easily argue that the manifest goals of public education are closely intertwined with the concept of [human rights].” The USHRN report recommends, among other things, that the United States fulfill its obligations under the International Covenant on Civil and Political Rights (ICCPR), which would include an aggressive federal role in ensuring equitable in-

vestment of resources in public schools. It also recommends that the United States ratify the Convention on the Rights of the Child (CRC) and the Committee on Economic, Social and Cultural Rights (CESCR) both of which articulate higher standards of accountability in ensuring the human right to education.

Criminal Justice

One population especially affected by the United States’ non-compliance with the United Nations Human Rights Council is prisoners. In particular, over the last two decades, prisons in the United States have increasingly relied on solitary confinement, even building entire facilities that primarily serve to hold individuals for years and sometimes even decades in extreme isolation. According to the ACLU, there are currently over 80,000 people held in solitary confinement in

America, oftentimes suffering from long-term depression and a slow and irreparable decline of a prisoner’s mind as a result. 2013 has seen unprecedented resistance to this form of punishment. On July 8, 2013, representatives of the inmates at Pelican Bay State Prison—an institution that, according to the UN High Commissioner for Human Rights, has held more than 400 prisoners in solitary confinement for over a decade, with an average time of 7.5 years spent in solitary confinement—demanded in a petition, upon other things, an end to long-term solitary confinement. Consequently, up to 30,000 California inmates participated in a 60-day hunger strike to protest the conditions of their imprisonment.

Outside of the prison system, resistance against solitary confinement has been simultaneously mounted from both civil liberties and human rights organization. In *Asker v. Brown* (Please turn to page 12)

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(2012), the Center for Constitutional Rights alleged that “prolonged solitary confinement violates Eighth Amendment prohibitions against cruel and unusual punishment, and that the absence of meaningful review for SHU [Pelican Bay’s Security Housing Unit] placement violates the prisoners’ right to due process.” In addition, and as a consequence of the Supreme Court’s failure to significantly curb the use of solitary confinement in the past, U.S.-based organizations are increasingly referring to international human rights laws to mount pressure on the administration. At a first-ever hearing on solitary confinement in the Americas in March 2013 the ACLU called on the Inter-American Commission on Human Rights (IACHR) to investigate the practice of solitary confinement in the United States, calling it “an extreme form of punishment.” In a reaction to the grievances of prisoners at Pelican Bay State Prison, the United Nations Special Rapporteur on torture, Juan E. Méndez, released a statement, arguing that solitary confinement in many cases amounts to torture, urging the U.S. Government “to adopt concrete measures to eliminate the use of prolonged or indefinite solitary confinement under all circumstances, including an absolute ban of solitary confinement of any duration for juveniles, persons with psychosocial disabilities or other disabilities or health conditions, pregnant women, women with infants and breastfeeding moth-

(DEVELOPMENT: Cont. from page 7)

of the EEJ scenario into the final plan. The 6 Wins Network demonstrated that a regional plan that leads with the needs of disadvantaged communities can better promote the general welfare. In doing so, the Network also won some tangible victories. For one, the agencies adopted a regional One Bay Area Grant (OBAG) program that conditions grants to local jurisdictions for planning activities and infrastructure on the completion of state-certified af-

PRRAC Update

- We are pleased to welcome **Rachel Godsil** to PRRAC’s Board of Directors. She is a law professor at Seton Hall Law School, with research interests in civil rights, housing, education, and environmental justice. Professor Godsil is also the co-founder and research director for the American Values Institute, a national consortium of social scientists, advocates and law professors focusing on the role of implicit bias in law and policy.
- PRRAC Board member **Damon Hewitt**, has joined the Open Society Foundations as a Senior Adviser. working on a variety of policy issues in U.S. Programs. His transition to OSF ends a twelve-

year stint at the NAACP Legal Defense Fund, where he served as Director of the Education Practice Group for the past four years.

- PRRAC Board member **Craig Flournoy** has received a National Endowment for the Humanities fellowship to work on his book project, *The New York Times, the Black Press, and the Epic Battle to Report the Civil Rights Movement in the U.S.*

- The Society of American Law Teachers has honored former PRRAC Board member **Florence Roisman** with their M. Shanara Gilbert Human Rights Award.

Conclusion

Culling data from civil and human rights organizations, the US Human Rights Network’s report seeks to provide a snapshot of human rights in America by looking at the connections and intersections between various policies, particularly at the crossroads of individuals’ various identities. For example, housing and segregation can have a direct bearing on the quality of

education an individual receives, which further impacts the job opportunities, earnings and housing they can afford, and ultimately translates into a vicious cycle that can span generations. The coming together of educational institutions and the criminal justice system through so-called school-to-prison pipelines adds another layer that is addressed in the report. Highlighting these particular issues from a human rights point of view can have an impact on their resolution at the local level. □

fordable housing plans.

Moreover, at the final hearing before the Plan’s adoption, the 6 Wins Network achieved three eleventh-hour amendments that hold out the promise of real change in the future. Among them are a commitment to adopt a strategy to fund improved levels of transit service, the integration of anti-displacement protections into the OBAG program, and the allocation of \$3 billion in anticipated “cap and trade” revenues in the region, with at least 25% to be spent to benefit disad-

vantaged communities.

The fight is far from over. Displacement pressures continue to mount as the housing share allocated to many suburban job centers falls far short of the real need. Yet the 6 Wins Network proved that a multi-issue, region-wide coalition could successfully change the discourse and priorities of a regional planning process, and bring legitimacy to community concerns and solutions. □