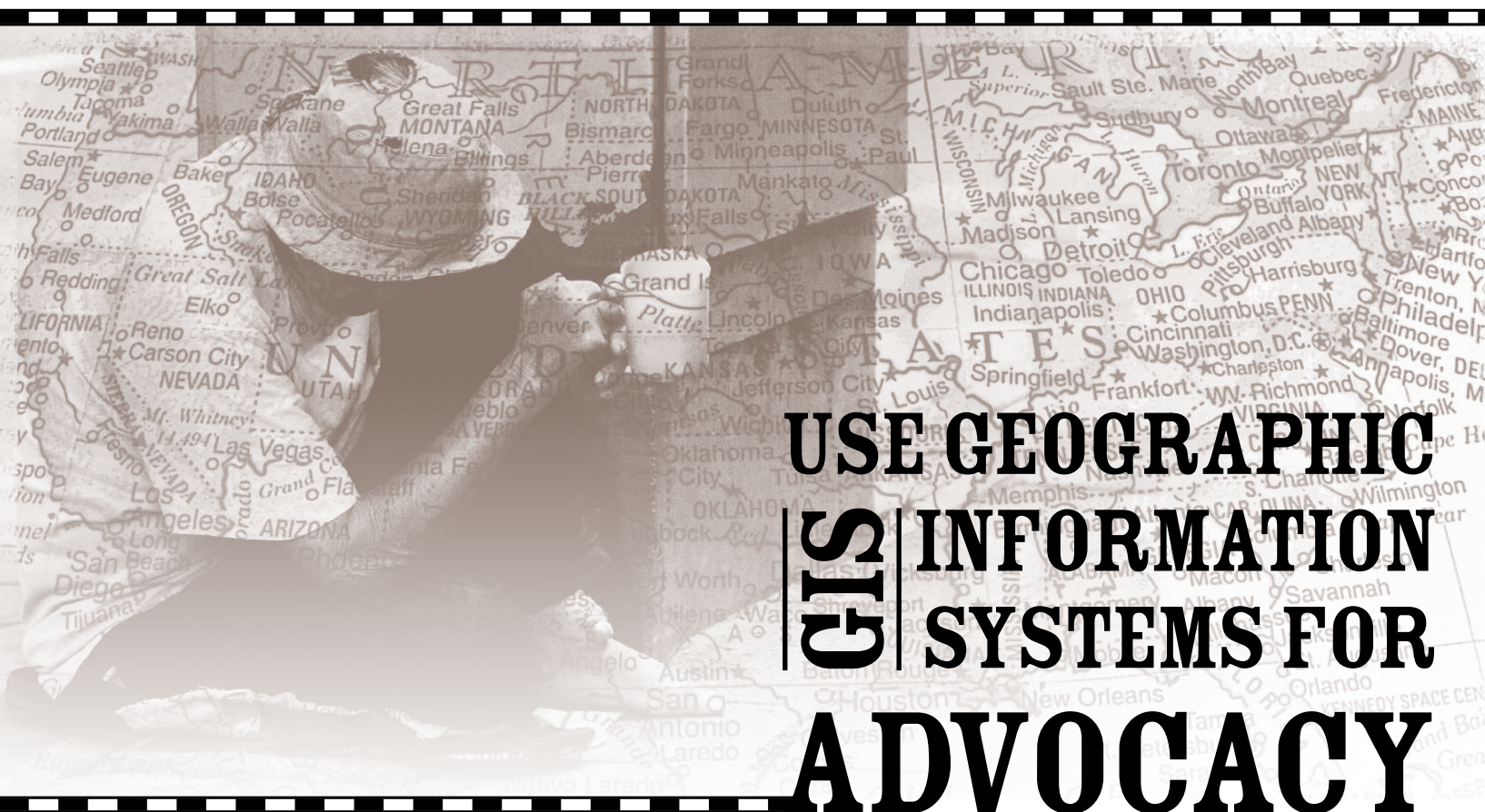


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Sargent Shriver National Center on Poverty Law



Who Knows What Lurks in the Hearts of Human Rights Violators?

The Shadow (Reporter) Knows

Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice

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To participate in a historic review of U.S. government policies by the United Nations Committee on the Elimination of Racial Discrimination (CERD), some 120 U.S. advocates, lawyers, and victims of human rights violations gathered in Geneva, Switzerland, on February 18, 2008. The gathering was the culmination of years of organizing by U.S. human rights advocates, who saw an opportunity to hold our government accountable to the standards it proclaims to the rest of the world and strategically advance human rights causes at the same time.

An intensive week followed—a week of early morning meetings, late night drafting sessions, and a series of briefings, lobbying efforts, and observation of the hearings. The CERD’s final statement on its review of the United States almost exactly matched advocates’ recommendations, and press from coast to coast picked up stories about the abuses described in the advocates’ reports. The CERD made extraordinary statements—comparing housing segregation in Chicago to apartheid, remarking on police brutality against transgender people of color, confronting the U.S. government on the huge disparate impact of domestic violence against Native American women. Attorneys and activists are now using the CERD recommendations to frame advocacy on critical social justice issues in a way that could scarcely be accomplished on solely the domestic front.

Months of organizing and a draft 600-page “shadow report” preceded the week of activity in Geneva and built on shadow reporting two years earlier before the Committee against Torture and the Human Rights Committee (HRC). But how did people get involved, and what came of it? Here I explore those questions and recommend ways in which others can benefit and participate in coming opportunities to craft in-

U.S.-Ratified Treaties

TREATY	MONITORING BODY	REPORTING DATES
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)	1994, 2005, 2010
Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)	Committee against Torture (also confusingly known as CAT)	2000, 2005, 2011
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Committee on the Elimination of Racial Discrimination (CERD)	2000, 2007, 2011

ternational law to promote the domestic causes for which we all work daily.

In particular, I seek to help readers understand

- the human rights treaty system;
- opportunities for strategic involvement;
- international-level language that can benefit domestic advocacy;
- the potential results of such involvement through a series of case studies; and
- select areas where future advocacy could be particularly opportune.

Shadow-Reporting Basics

The U.S. has ratified three of the eight core international human rights treaties.¹ When a country ratifies a treaty, it must periodically report on its progress in advancing the rights outlined therein. Each treaty has a monitoring body that reviews these reports, holds hearings with the country involved, and produces “Concluding Observations,” its official recommendations expressing concerns about rights violations and guiding the

country on how to implement its treaty obligations better. The three U.S.-ratified treaties, their corresponding monitoring bodies, and the dates of reporting (including the next report due date) are shown in the table above.

Although reports must be submitted to monitoring bodies every two to four years, the United States, like many countries, is perennially late in submitting its reports. After ratifying the International Covenant on Civil and Political Rights in 1992 and the Convention Against Torture and International Convention on the Elimination of All Forms of Racial Discrimination in 1994, the United States did not issue its initial report to the HRC until 1994 and to the Committee against Torture and the CERD until 2000. It did not submit follow-up reports until 2005 (HRC and Committee against Torture) and 2007 (CERD). These reports, as part of a constructive dialogue with the committees, are supposed to be frank self-examinations of the country’s actions in implementing the treaty; instead they present a very rosy picture of the United States, glossing over violations and trumpeting laws on the books that have serious deficiencies in implementation.

¹The eight core treaties are the International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, entered into force Jan. 4, 1969; International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976; International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976; Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987; Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003; and the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008.

A classic example is the approach taken to Hurricanes Katrina and Rita in the United States' 2007 report to the CERD. Under the treaty, "racial discrimination" is defined to include both intentionally discriminatory policies (e.g., purposefully segregated housing) and those which, although facially neutral, have a discriminatory effect (e.g., housing and tax policies that perpetuate de facto segregated housing).² Although the American public acknowledged that the hurricanes' aftermath vividly demonstrated America's racial divide, and one would expect a report on racial discrimination to dwell on such an occurrence in depth, the U.S. report devoted only one paragraph to the hurricanes. The paragraph begins:

Concern has been expressed about the disparate effects of Hurricane Katrina on housing for minority residents of New Orleans. Recognizing the overlap between race and poverty in the United States, many commentators conclude nonetheless that the post-Katrina issues were the result of poverty (i.e., the inability of many of the poor to evacuate) rather than racial discrimination *per se*.³

This statement purposefully ignores the treaty definition, which says that the overlap of poverty and race is the very racial discrimination that requires analysis in the report and remedial action by the government.

To correct this record and, more important, to advocate specific remedies where the United States has fallen short in fulfilling its human rights obligations, social justice organizations may submit shadow reports to the treaty committees. Shadow reports, a kind of amicus brief for the committees, give the committees additional information on which to question the United States during the hear-

ings and suggest language for Concluding Observations, which are the committees' final authoritative statements expressing concerns about rights violations and recommending corrective action.

While shadow reporting in the United States was previously undertaken largely by major international human rights organizations such as Human Rights Watch and Amnesty International, in the past few years domestic organizations have increasingly used shadow reporting to bring international spotlight to their concerns. Shadow reporting has grown in breadth, depth, and sophistication—from 13 individuals who traveled to Geneva to participate in the May 2006 Committee against Torture review, to 65 in July 2006 for the HRC review, to 128 in February 2008 for the CERD. In the most recent round of reports to the latter, about 130 organizations pooled their resources to form 26 working groups that married grassroots experience with legal expertise to produce a 600-page report to the CERD.⁴

At the hearings in Geneva, committee members convene several days of formal briefings and informal meetings with organizations before holding the official review of the U.S. government. This allows advocates to educate committee members about their concerns and press for specific questions to be put to the governmental delegation. Committee members hear from both policy experts and directly affected victims of human rights violations and inform their questioning with both hard facts and compelling stories. At the hearings themselves, which take place over two days, victims often feel empowered just to see the government finally put on the spot to answer for such violations.

Following the hearings, committee members issue Concluding Observations, which comprise their official findings of concern about violations and recommendations for action. Concluding Observa-

²International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 1, art. 1(1).

³UNITED STATES, PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE U.N. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION CONCERNING THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION ¶ 255 (April 2007), www.state.gov/documents/organization/83517.pdf.

⁴LISA CROOMS ET AL., HUMAN RIGHTS AND RACIAL JUSTICE: THE USHRN PROJECT ON THE INTERNATIONAL CONVENTION TO ELIMINATE ALL FORMS OF RACIAL DISCRIMINATION (ICERD) 1 (2008).

tions are not binding judicial decrees—indeed, they are intended to promote a constructive dialogue, not to be adversarial. The subject country is expected to disseminate the Concluding Observations to the appropriate branches of government and work on the recommendations through the country's own democratic system. While the U.S. government has not shown great initiative in disseminating the Concluding Observations widely, advocates have brought them to judges, local politicians, agency officials, and the public to continue the dialogue.

The treaties allow groups to deal with a wide range of social justice concerns, from voting rights to police brutality, education to health care, prison conditions to indigenous issues. To help newcomers understand more fully how this works, I will share two case studies, one concerning a specific local struggle from the criminal justice arena and the other on economic justice from a national perspective.

Torture in Chicago

On October 21, 2008, former Chicago Police Commander Jon Burge was arrested for the twenty years of torture that he and his deputies inflicted on hundreds of African American men.⁵ The arrest was in no way guaranteed—indeed, Burge had faced minimal discipline and evaded justice for over thirty years. He was fired, but he still continues to draw his \$3,000 per month police pension.⁶ By building on a solid base of local organizing and legal work, however, attorneys and activists used strategies, such as shadow reporting, that finally brought Burge to face his day in court.

From 1972 to 1993, in Chicago's Police Area 2 under Burge's command, 135 African American males were allegedly tortured in order to obtain confessions.⁷ Burge's torture techniques included beatings with telephone books; suffocation with typewriter covers; attaching alligator clips to ears, nose, mouth, and exposed genitals; electric shock; handcuffing arrestees to radiators, causing severe burns; and mock executions.⁸ In numerous cases the state's attorney's office was aware of the allegations but used the coerced statements to convict the victims at trial.⁹

Burge left the police force in 1993, but until October 2008 no criminal charges were ever filed against him or his deputies. Lawyers from the People's Law Office and activists from a number of Chicago organizations worked tirelessly to bring Burge to justice. Although numerous internal investigations found evidence of torture, both the state's attorney and federal prosecutors claimed that procedural bars prevented prosecution of Burge.¹⁰

Having run into one brick wall after another in the domestic legal system, activists turned to the international sphere. In April 2006 the Midwest Coalition for Human Rights included complaints about the Burge situation in a shadow report that a large number of domestic antipolice brutality groups submitted to the Committee Against Torture.¹¹ Representing the Coalition and the People's Law Office, attorney Joey Mogul joined a dozen other advocates in Geneva to bring the case to the committee the following month. At briefings and through informal conversations, Mogul moved committee members with her testimony. During the formal hearings with the U.S. government, the committee chair, Andreas Mavrommatis,

⁵Midwest Coalition on Human Rights, Chicago Police Torture Cases, www.midwesthumanrights.org/chicago-police-torture-cases-0.

⁶*Id.*

⁷See Police Brutality Working Group, *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse in the United States* 18 (2006).

⁸*Id.*

⁹*Id.*

¹⁰See *id.* at 19.

¹¹See Midwest Coalition on Human Rights, *supra* note 5; Police Brutality Working Group, *supra* note 7.

specifically questioned the government delegation regarding the failure to prosecute the cases.¹² Unsatisfied with the U.S. response, the committee noted in its official Concluding Observations “the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department (article 12)” and recommended “promptly, thoroughly and impartially” investigating to “bring perpetrators to justice.”¹³ The committee also asked the United States to supply follow-up information on the outcome of such investigations.¹⁴

The specific focus on the Chicago case brought vast press coverage both in Chicago and nationally.¹⁵ The committee’s response to the shadow report critically changed the tone: from then on, whenever the Burge case was mentioned in the media, Burge’s acts were referred to as “torture” rather than merely “police brutality,” almost always in connection with the condemnation by the U.N. body.¹⁶ The tide was beginning to turn for the advocates.

Following closely on the heels of the Committee against Torture hearings were the HRC hearings in July 2006. With more than sixty other U.S. advocates, Mogul returned to Geneva to repeat her call

for justice in the Burge case. Once again committee members specifically questioned the U.S. delegation on the case.¹⁷ The hearings coincided with the release of a major report on the case by state special prosecutors, who once again claimed that they were procedurally barred from filing charges. News coverage again shined the international spotlight on Chicago.¹⁸ The HRC’s Concluding Observations reiterated its concern about and called for increased efforts to eliminate police brutality, although the HRC did not refer specifically to the Burge case.¹⁹

Concluding Observations are not binding judicial decrees, however, and despite the international spotlight, in a report in July 2006, state special prosecutors continued to claim that they were procedurally barred from prosecuting Burge.²⁰ The status of the HRC’s Concluding Observations is unclear in U.S. law. A ratified treaty is “Supreme Law of the Land” under Article VI(2) of the Constitution, and treaty bodies are explicitly given jurisdiction to make suggestions for implementation.²¹ However, in ratifying the treaties, the U.S. Senate attached reservations, understandings, and declarations that make the treaty “non-self-executing,” or unavailable as a cause of action in U.S. courts without further legislative implementation.²² Neverthe-

¹²See U.N. Committee against Torture, Summary Record of the 703d Meeting ¶ 104, U.N. Doc. CAT/C/SR.703 (2006).

¹³Conclusions and Recommendations of the Committee Against Torture, United States of America ¶ 25, U.N. Doc. CAT/C/USA/C/2 (2006).

¹⁴*Id.*

¹⁵See, e.g., ABC 7 News, Judge Says Police Torture Report Should Be Released, May 19, 2006, <http://abclocal.go.com/wls/story?section=news/local&id=4186371>; Monica Davey, *Judge Rules Report on Police in Chicago Should Be Released*, NEW YORK TIMES, May 20, 2006, www.nytimes.com/2006/05/20/us/20chicago.html?scp=1&sq=%22Monica%20Davey%22%20+%20%22Police%20in%20Chicago%22&st=cse.

¹⁶See, e.g., Jodi Rudoren, *Inquiry Finds Police Abuse, But Says Law Bars Trial*, NEW YORK TIMES, July 20, 2006, www.nytimes.com/2006/07/20/us/20chicago.html?_r=1&pagewanted=print&oref=slogin.

¹⁷U.N. Human Rights Committee, Summary Record of the 2380th Meeting ¶ 61, U.N. Doc. CCPR/C/SR/2380 (2006).

¹⁸See Rudoren, *supra* note 16.

¹⁹U.N. Human Rights Committee, Concluding Observations on the Second and Third U.S. Reports to the Committee ¶ 30, UN Doc. CCPR/C/USA/Q/3/CRP.4 (2006).

²⁰*Id.*

²¹See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination, art. 9(2).

²²See U.S. reservations, declarations, and understandings in regard to the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 136 Cong. Rec. S17486-01 (daily ed., Oct. 27, 1990); U.S. reservations, declarations, and understandings in regard to the International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992); U.S. reservations, declarations, and understandings in regard to the International Convention on the Elimination of All Forms of Racial Discrimination, 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994).

less, legislative and executive agencies should, as a matter of good-faith compliance with the treaty, consider Concluding Observations in crafting legislation and executing their duties.

Advocates took this strategy of pushing good-faith local compliance to both the federal and local government. Relying on the Concluding Observations, they convinced the Cook County Board of Commissioners to hold a public hearing on July 10, 2007, at which advocates spoke of the ongoing violations and lack of justice.²³ As a result of those hearings and citing the Committee against Torture findings, the commissioners unanimously called for (1) the U.S. Attorney's Office in the Northern District of Illinois to investigate and prosecute any federal crimes committed by former Commander Burge and his men; (2) Illinois Attorney General Lisa Madigan to initiate new hearings for the twenty-six African American torture victims who remain convicted and incarcerated; and (3) the Illinois legislature and the U.S. Congress to criminalize acts of torture with no statute of limitations.²⁴

One week after the county hearings, the Chicago City Council introduced Mayor Richard M. Daley's ordinance establishing a new city agency, the Office of Professional Standards, to investigate police abuse. A week after that, the council held hearings on the status of the investigation and case. And on January 10, 2008, ending what one alderman called "a horrible chapter in the city's history," the Chicago City Council approved settlements totaling as much as \$19.8 million with four men who said they were tortured into murder confessions by Burge and those under his command.²⁵

In September 2007 the U.S. Attorney's office finally opened an investigation and, in October 2008, indicted Burge on two counts of obstruction of justice and one count of perjury. These charges were based on allegations that Burge lied and impeded court proceedings in November 2003 when he supplied false written answers to questions in a civil lawsuit alleging that he and others engaged in torture and abuse of suspects. Although the underlying torture has not yet been charged, U.S. Attorney Patrick J. Fitzgerald said that "it is not the end of the investigation of torture and abuse."²⁶

Shadow reporting added a tangible benefit to the Burge campaign by reframing a local case of police abuse as an international issue of torture. Advocates were able to apply the abstract standards of international human rights specifically to local issues, thereby circumventing a local political system that had perpetrated and covered up these abuses. Building on years of local organizing, they held city, county, and federal government officials accountable to a higher standard and achieved justice for the victims of these crimes. As Mogul concluded in her statement to the press on Burge's arrest, "[w]e are heartened that the federal government has heeded the call of the U.N. to step in and prosecute where local and state officials have failed to do so. We are gratified that Jon Burge will finally be brought to justice for his heinous violations of human rights."²⁷

Housing as a Human Right: From the International to the Local

In 1944 Franklin Delano Roosevelt declared that the United States had adopted

²³Advocates accessed other international mechanisms including the Inter-American Commission on Human Rights and U.N. Special Rapporteur on Racism, but that is another story. See Midwest Coalition on Human Rights, *supra* note 5.

²⁴See Cook County Board of Commissioners, Resolution in Support of a Complete Investigation and Prosecution by the U.S. Attorney for the Northern District of Illinois of All Indictable Federal Crimes Committed by Jon Burge and His Men (July 10, 2007); *id.*, Resolution in Support of New Hearings for Chicago Police Torture Victims Wrongfully Convicted and Incarcerated (July 10, 2007); *id.*, Resolution in Support of State and Federal Legislative Action to Establish the Crime of Torture (July 10, 2007).

²⁵See Midwest Coalition on Human Rights, *supra* note 5.

²⁶Mike Robinson, Associated Press, Prosecutors Widen Chicago Police Torture Probe, Oct. 26, 2008, <http://ap.google.com/article/ALeqM5jg6HblvKNixbSn3igLnZ0w2KDBMwD941M6100>.

²⁷Press Release, People's Law Office, Former Chicago Police Commander Jon Burge Arrested on Charges Relating to Torture of over 100 African Americans (Oct. 21, 2008) (in my files).

a “second Bill of Rights,” including the right to a decent home.²⁸ The United States signed the Universal Declaration of Human Rights in 1948, recognizing housing as a human right.²⁹ The concept of the right to housing has since been further developed at the international level.³⁰ However, the United States has fallen behind the rest of the world in making this right a reality. Portugal, France, Scotland, South Africa, and Ecuador have adopted the right to housing in their constitutions or legislation, leading to improved housing conditions.³¹ Over the past decade, we at the National Law Center on Homelessness and Poverty (NLCHP) have looked to the international system to try to reframe the American concept of housing as a commodity to one of housing as a basic human right. We work with international mechanisms to develop standards that can be applied strategically in their local and national campaigns.³²

Building on previous international work in the field of housing rights, we joined the coordinated shadow reporting to the HRC in 2006.³³ Although the right to housing falls most clearly under the mandate of the International Covenant on Economic, Social, and Cultural Rights, which the United States has not yet ratified, we saw many aspects of housing issues that manifest themselves in the civil and political rights framework of the International Covenant on Civil and Political

Rights. With pro bono assistance from the law firm of DLA Piper Rudnick Gray Cary, we drafted a shadow report that considered the right to life of homeless persons who suffer serious health problems due to lack of housing and experience discrimination based on property, gender, and race.³⁴

Our priority was HRC comments on the right-to-life issues, which we hoped would supplement our active litigation and policy campaigns promoting a right to shelter and opposing the criminalization of homelessness. We were encouraged by the HRC’s Concluding Observation from its review of Canada in 2005; the HRC had expressed concern that homeless persons’ exposure to the elements violated Article 6 of the International Covenant on Civil and Political Rights. At HRC hearings in Geneva in July 2006, we strategically lobbied Panamanian committee member Alfredo Castellero Hoyos, who was familiar with circumstances that refugees faced and that were somewhat analogous to homelessness. Drawing information directly from our shadow report, Castellero Hoyos directly questioned the United States about its large number of homeless persons, specifically about twenty-one who had died during an Arizona heat wave in 2005.³⁵ He also noted the disproportionate effect of homelessness on racial minorities and asked the delegation to describe efforts to remedy the lack of affordable housing.³⁶

²⁸Pres. Franklin Delano Roosevelt, State of the Union Address (Jan. 11, 1944), www.presidency.ucsb.edu/ws/index.php?pid=16518.

²⁹Universal Declaration of Human Rights, art. 25, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

³⁰See, e.g., ICESCR General Comment 4 (Sixth session, 1991): Article 11 (1): The Right to Adequate Housing, E/1992/23 (1991) 114 ¶ 8.

³¹PORTUGAL CONST., pt. I, art. 65; France Act No. 2007-290 of March 5, 2007; Homelessness (Scotland) etc. Act 2003; SOUTH AFRICA CONST., § 2, art. 26; ECUADOR CONST., tit. II, § 6, arts. 30–31.

³²See Maria Foscarinis et al., *The Human Right to Housing: Making the Case in U.S. Advocacy*, 38 CLEARINGHOUSE REVIEW 97 (July–Aug. 2004).

³³As with the Burge advocates, the National Law Center on Homelessness and Poverty worked through both the Inter-American Commission on Human Rights and the United Nations special rapporteurs. I consulted as the coordinator of the shadow-reporting efforts with the Committee Against Torture and the Human Rights Committee and served on the US Human Rights Network’s Committee on the Elimination of Racial Discrimination Coordinating Task Force.

³⁴National Law Center on Homelessness and Poverty, Homelessness and United States Compliance with the International Covenant on Civil and Political Rights (May 31, 2006), http://nlchp.org/view_report.cfm?id=188.

³⁵U.N. Human Rights Committee, Summary Record of the 2,380th Meeting ¶ 95, U.N. Doc. CCPR/C/SR/2380 (2006).

³⁶*Id.*

The U.S. representative replied to Castillero Hoyos's question with an extraordinary statement: that "housing rights are basic important rights guaranteed at both the state and federal level" and that "every person is entitled to shelter as a basic need."³⁷ Advocates present were wide-eyed with wonder. Was a Bush administration official really affirming that housing is a human right? Apparently the representative was not aware that the right to housing has legal content at the international level, so that such a casual reference has real meaning. Later, likely after having been briefed by U.S. Department of State officials more familiar with human rights standards, the representative backpedaled, saying, "Of course, our official statements are those in our written reports; we are only providing oral answers here for the information of the Committee."³⁸ Nonetheless, we immediately issued a press release with both the committee member's quote and the government's response.³⁹

In its Concluding Observations the HRC focused on the disparate racial impact of homelessness and said that the government "should take measures, including adequate and adequately implemented policies, to ensure the cessation of this form of de facto and historically generated racial discrimination."⁴⁰ The HRC also addressed racial segregation in education as a result of de facto segregated commu-

nities and the failure to take the needs of poor and minority communities into account in the post-Hurricane Katrina rebuilding.⁴¹ As with the Burge case, these conclusions received media coverage.⁴²

Seeking to build on this HRC success, we turned our attention to the CERD and its shadow reporting, with outreach and organizing goals in mind as well as policy and litigation goals. Thus, rather than recruiting a private law firm to draft the report pro bono, NLCHP staff chaired a convened US Human Rights Network working group to create a joint report. Eight housing and homelessness organizations that had participated in NLCHP trainings on the right-to-housing framework composed the working group.⁴³ With technical assistance from NLCHP, each group drafted its own section of the report and became more comfortable with the international framework. Housing sections of city-based reports from New York and Chicago were also included. These groups and another sixty organizations signed on to the final report, which was submitted as part of the 600-page coordinated effort by the US Human Rights Network.⁴⁴

The report clearly explains the overlap of race and poverty in the United States and consequent disparate impact of lack of affordable housing on minority populations, as well as international jurisprudence showing that such policies violate

³⁷*Id.* ¶ 97.

³⁸Notes from Human Rights Committee Hearing on U.S. Report (July 18, 2006) (in my files).

³⁹Press Release, National Law Center on Homelessness and Poverty, U.N. Says Racial Impact of Homelessness Is Human Rights Abuse (July 28, 2006).

⁴⁰U.N. Human Rights Committee, Concluding Observations on the Second and Third U.S. Reports to the Committee ¶ 22, UN Doc. CCPR/C/USA/Q/3/CRP.4 (2006).

⁴¹*Id.* ¶¶ 23, 26.

⁴²See, e.g., Interview with Eric Tars, Wake Up Call Radio, WBAI (Oct. 2, 2006) (in my files).

⁴³Partner organizations were Beyond Shelter, Coalition to Protect Public Housing, City University of New York International Women's Human Rights Clinic, George Washington University Law School International Human Rights Clinic, Heartland Alliance for Human Rights and Human Needs, National Alliance to End Homelessness, Public Counsel, and the US Human Rights Network Housing Caucus. For additional signatories, see A Report to the Committee on the Elimination of Racial Discrimination on Racial Discrimination in Homelessness and Affordable Housing in the United States (2007), www.nlchp.org/view_report.cfm?id=232.

⁴⁴Other groups submitted complementary reports. One, coordinated by the Poverty and Race Research Action Council, focused specifically on racial segregation in housing (www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN27.pdf); another, by Advocates for Environmental Human Rights and the People's Hurricane Relief Fund, examined the disparate impact of Hurricane Katrina, including the impact on housing (www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN23.doc).

human rights. Groups from Los Angeles contributed sections on the harassment of poor and homeless African Americans on skid row and on the potential positive use of California's housing element law, which requires cities to plan for the housing needs of people at all income levels but which is underenforced.⁴⁵ Chicago-based groups contributed information on the lack of affordable and public housing in their city and harassment of people of color to displace them from their neighborhoods. New York groups described similar conditions in that city and focused on the lack of legal representation in housing court for poor and minority residents as a major contributor to violations of the right to housing. Additional sections discussed antiimmigrant housing ordinances and the intersection of housing, race, and gender.

At the CERD hearings on the U.S. government in Geneva in February 2008, NLCHP and over 120 other individuals from almost as many organizations made their case. Dilip Lahiri, a committee member from India, spoke forcefully about his time as a student in Chicago and compared his experience with racial segregation there to apartheid in South Africa.⁴⁶ The U.S. government had its feet held to the fire regarding its overly narrow definition of racial discrimination. And, as described in the discussion of the Burge case above, questions drawn directly from the voices of victims were put to the government delegation and gave many victims a sense of accountability for the crimes against them.

At the end of the hearings, the CERD's Concluding Observations drew directly from the shadow report. The CERD

- cited with approval the reauthorization of the federal Violence Against Women Act, which protects domestic violence victims from discrimination and eviction in federally subsidized housing;
- cited with approval California's housing element law;
- criticized the United States for avoiding the racial-discrimination definition that requires remedying laws with discriminatory effect;
- criticized racial profiling and recommended passage of the End Racial Profiling Act;⁴⁷
- criticized residential segregation, substandard housing conditions, and inadequate access to services;
- criticized lack of indigent defense systems and recommended civil counsel for cases where basic needs such as housing are at stake;
- criticized incidents of rape and sexual violence in communities of color and recommended adequately funding prevention and shelters; and
- criticized the response to Hurricane Katrina and called for guaranteeing the right to return and access to adequate, affordable housing and consultation of affected groups.⁴⁸

In connection with these Concluding Observations, we at NLCHP again gained national media attention. I posted daily Web videos from Geneva to The Hub, a sort of YouTube for activists; the videos have been viewed over 6,000 times.⁴⁹ NLCHP also coauthored, with Cong. Alcee Hastings of Florida, a joint op-ed in the *Miami Herald*.⁵⁰

⁴⁵See CAL. GOV'T CODE §§ 65580–65589.8, 65751–65761 (Deering 2007).

⁴⁶See U.S. *Racial Discrimination Must Be Remedied: U.N. Says Post-Katrina Housing Rights Violations Also Cited*, LOUISIANA WEEKLY, March 10, 2008, <http://wiki.nlchp.org/download/attachments/4685940/Louisiana+Weekly+CERD+3-10-08.pdf?version=1>.

⁴⁷End Racial Profiling Act, S. 2132, 108th Cong. (2004).

⁴⁸See Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America ¶¶ 9, 10, 14, 16, 22, 26, 31, U.N. Doc. CERD/C/USA/CO/6, (2008).

⁴⁹See postings at <http://hub.witness.org/nlchp>.

⁵⁰See Alcee Hastings & Maria Foscarinis, *End Racial Disparities in Housing*, MIAMI HERALD, March 14, 2008, at A21.

While in Geneva we coordinated a meeting of the U.N. Special Rapporteur on Adequate Housing, the staff of the U.N. Independent Expert on Minority Issues, and groups dealing with housing issues specifically in the aftermath of Hurricane Katrina. The demolition of four public housing projects in New Orleans was at that point imminent, and advocates urged the rapporteur to call for a halt to the demolition. Following this meeting, at which the rapporteur was visibly moved by stories from the Gulf Coast, he invited groups to send him information and talking points on the situation. A week later the rapporteur and the independent expert issued a joint statement calling for a moratorium on the demolition of public housing.⁵¹ This statement received enormous coverage in New Orleans and the national media and elevated the struggle to preserve public housing in New Orleans to the national stage.⁵² The housing units were ultimately demolished, but advocates gained concessions on rebuilding.

Homelessness in New Orleans had doubled since before the hurricanes and a tent city sprang in front of City Hall; the affordable-housing situation in New Orleans has gone from bad to worse.⁵³ Rather than dealing with homelessness by offering housing, the New Orleans city council proposed to ban camping on city streets. Linking constitutional arguments with the HRC and the CERD Concluding Observations and the statements of the special rapporteur, we wrote to the city council. In essence, we told the council that it had the world's sympathy after the hurricanes, but now the eyes of the world were on it again for human rights violations. We urged the council not to tarnish its global image further

by punishing homeless persons for their status.⁵⁴ Local community organizations also strongly rejected the proposed ordinance. The council tabled it, resulting in at least temporary relief for homeless persons on the streets of New Orleans.

Next Steps

Although shadow reporting is now complete until at least 2010, opportunities for using the HRC and CERD Concluding Observations are ongoing, limited only by the advocate's imagination. While Concluding Observations may lack the immediate effect of a judicial decree, the Burge campaign shows that Concluding Observations can be used just as effectively as a court order. NLCHP and our local partners used the CERD and the HRC Concluding Observations to try to replicate the New Orleans victory in Minneapolis. A motion to repeal an ordinance that was disparately enforced against African American and homeless men there failed by only one vote.

As national attention focuses on the foreclosure crisis and families affected by lack of adequate housing, the time is ripe for advocates to push for constructive alternative policies. Support from Concluding Observations can lend legitimacy to such efforts. Advocates for a civil right to counsel can use the CERD's Concluding Observations on the issue as evictions and foreclosures skyrocket. The language commending the California housing element law can be used to promote measures elsewhere to preserve and create affordable housing stock. Advocates for domestic violence victims can use the commendation of the Violence Against Women Act and the critique of the lack of adequate shelters.

⁵¹See Press Release, Miloon Kothari & Gay McDougall, U.N. Experts Call on U.S. Government to Halt Ongoing Evictions and to Take Immediate Steps to Protect the Human Rights of African Americans Affected by Hurricane Katrina and the Demolition of Public Housing in New Orleans, Louisiana (Feb. 28, 2008), www.unhcr.ch/hurricane/hurricane.nsf/view01/907604B6DAF5E2F1C12573FD007AD7DC?opendocument.

⁵²See, e.g., *U.N. Experts, HUD Disagree on Housing*, TIMES-PICAYUNE, Feb. 28, 2008, www.nola.com/news/index.ssf/2008/02/un_experts_hud_disagree_on_hou.html; *Your U.N. at Work—III*, WALL STREET JOURNAL, March 1, 2008, at A8.

⁵³See, e.g., Shalia Dewan, *Resources Scarce, Homelessness Persists in New Orleans*, NEW YORK TIMES, May 28, 2008, www.nytimes.com/2008/05/28/us/28tent.html?scp=1&sq=&st=nyt.

⁵⁴See Letter from National Law Center on Homelessness and Poverty to New Orleans City Council Housing and Human Needs Committee (April 23, 2008), http://nlchp.org/view_report.cfm?id=252.



But the U.N. human rights bodies' Concluding Observations go far beyond housing, covering criminal and juvenile justice, education, and health care, among other issues. The more all of us use these human rights standards in our advocacy, the more they become part of our common political and legal discourse, the more effective they will become. Advocates who have run into domestic roadblocks based on narrow legal interpretations would be well advised to seek more expansive language at the international level and, where expansive language does not yet exist, to advocate through shadow reporting and other processes to create

it. The international human rights system is a new realm of advocacy for many, but, as our world continues to grow more interconnected, it becomes an increasingly useful venue for advocates to use in upholding the human rights of those here at home.

Author's Acknowledgment

I have gratefully adapted the title of this article from a title devised by Marty Rosenbluth for a panel on which I participated at the University of North Carolina Law School's 2008 Conference on Race, Gender, and Ethnicity.

COMMENTS?

Fill out the comment form at <http://tinyurl.com/Jan-FebCRSurvey>. Thank you.

—The Editors

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