

## Economic and Social Rights in the United States: Implementation Without Ratification

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### I. Introduction

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, which has since become the most widely known pronouncement of human rights around the world.<sup>1</sup> At that time, the United States government firmly supported the inclusion of economic and social rights—including the rights to health, education, housing, decent work, and an adequate standard of living—that are enshrined in the Declaration.<sup>2</sup> Indeed, the

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1 See Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR]. The UDHR has been translated into 384 languages. U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), *Universal Declaration of Human Rights*, <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx> (last visited Apr. 18, 2012).

2 See Daniel J. Whelan & Jack Donnelly, *The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight*, 29 HUM. RTS. Q. 908, 911 (2007) (“Other states certainly supported economic and social rights. None, however, did so with more genuine commitment or greater actual impact than the United States and Great Britain, the two leading Western powers.”); JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING AND INTENT* 237 (1999) (Eleanor Roosevelt, the delegate for the United States, maintained that all the articles in the UDHR were equally important and priority should not be given to one article over another); UDHR, *supra* note 1, arts. 23–24 (right to decent work

United States was a member of the U.N. Commission on Human Rights, which was responsible for drafting the document, and the Commission considered economic and social rights essential to the holistic framework of the Declaration.<sup>3</sup> From the initial draft of the then-labeled “International Bill of Human Rights” by John Humphrey, which was based largely upon the constitutions of the members of the United Nations at the time, to the final Declaration adopted on December 10, 1948, the United States supported this holistic human rights framework encompassing a full spectrum of economic, social, cultural, civil, and political rights.<sup>4</sup>

Times changed. Since 1948, the United States has been ambivalent and, at times, hostile to economic and social rights.<sup>5</sup> In 1977,

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and limitation on working hours), art. 25 (rights to adequate standard of living, including food, clothing, housing, medical care, social services, and social security), art. 26 (right to education).

- 3 See MORSINK, *supra* note 2, at 235 (drafters did not believe that there were two kinds of rights, but rather believed “in the fundamental unity of all human rights”); see also Gillian MacNaughton & Diane F. Frey, *Decent Work for All: A Holistic Human Rights Approach*, 26 AM. U. INT’L L. REV. 441, 451–61 (2011) (explaining the holistic human rights approach referenced in the preambles to the UDHR, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, as well as several U.N. declarations, including the Declaration on the Right to Development and the Vienna Declaration and Program of Action).
- 4 See U.N. Secretariat, Draft Outline of International Bill of Rights, U.N. Doc. E/CN.4/AC.1/3 (June 4, 1947) (cited in MORSINK, *supra* note 2, at 7, and reprinted in MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 271–74 (2001); U.N. Comm’n on Human Rights, Drafting Comm., International Bill of Rights: Documented Outline, U.N. Doc. E/CN.4/AC.1/3/Add.1 (June 11, 1947) [hereinafter Documented Outline] (setting out each of the forty-eight articles in Humphrey’s original draft, and following each article, the related provisions in fifty-three national constitutions and six draft proposals collected by the Division of Human Rights of the U.N. Secretariat); MORSINK, *supra* note 4, at 227 (the Declaration included the main rights then included in the national constitutions around the world).
- 5 Hope Lewis, “New” Human Rights? U.S. Ambivalence Toward the International Economic and Social Rights Framework, in BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 100, 100–01 (Cynthia Soohoo et al. eds. 2009) (providing a detailed account of the position of the United States toward economic and social rights over the past six decades); see also Philip Alston, *Putting Economic, Social, and Cultural Rights Back on the Agenda of the United States*, in THE FUTURE OF HUMAN RIGHTS: U.S. POLICY FOR A NEW ERA 121–23 (William F. Schultz ed. 2008) [hereinafter Alston, *Putting ESC Rights Back on the Agenda*] (summarizing the positions of the U.S.

President Jimmy Carter signed the two international human rights treaties implementing the Declaration—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)—but transmitted both treaties the next year to the U.S. Senate for advice and consent with substantial “reservations, understandings and declarations.”<sup>6</sup> The Senate Foreign Relations Committee did not support these treaties, and they remained in the Committee until the 1990s.<sup>7</sup> In 1992, the Senate finally approved the ICCPR, which was then ratified by the Bush administration.<sup>8</sup> The Senate, however, has never approved, and the United States has therefore never ratified, the ICESCR.<sup>9</sup> And it will not likely do so in the near future.<sup>10</sup> While the United States is now renowned for its failure to ratify most of the core internation-

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administrations from Roosevelt’s administration in the 1940s to the Bush administration in 2006).

6 Lewis, *supra* note 5, at 119. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, G.A. Res. 2200 (XXI), U.N. GAOR 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, (entered into force Jan. 3, 1976) [hereinafter ICESCR]. At the same time, President Carter sent the Senate the International Convention on Elimination of All Forms of Racial Discrimination (ICERD) and the American Convention on Human Rights. Lewis, *supra* note 5, at 119.

7 Lewis, *supra* note 5, at 121.

8 See *Status of Treaties, International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (last visited Jan. 22, 2012). Among the nine core international human rights treaties, the United States has ratified three: the ICCPR, ICERD, and the Convention Against Torture (CAT). See *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987) (United States signed on Apr. 18, 1988, ratified Oct. 21, 1994); ICCPR, *supra* note 6 (United States signed on Oct. 5, 1977, ratified on June 8, 1992); *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) (United States signed on Sept. 28, 1966, ratified on Oct. 21, 1994).

9 See *Status of Treaties, International Covenant on Economic, Social and Cultural Rights*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (last visited Jan. 22, 2012).

10 See Lewis, *supra* note 5, at 120–21.

al human rights treaties,<sup>11</sup> its reluctance to commit to the ICESCR is particularly strong. According to international human rights law scholar Hope Lewis, the ICESCR remains today “the most controversial human rights treaty for the United States.”<sup>12</sup>

Having failed to ratify the ICESCR, the United States government has no obligation to report to the Committee on Economic, Social, and Cultural Rights on its progress in implementing these rights.<sup>13</sup> Nonetheless, economic and social rights are being implemented in the United States in many ways. Importantly, not all international human rights obligations derive from the international treaties; some obligations arise simply from membership in the United Nations.<sup>14</sup> Accordingly, international human rights mecha-

11 The United States has not ratified the Convention on the Rights of the Child (CRC), which now has 193 state parties, making it one of only two countries in the world that has not ratified this convention. Additionally, the United States has not ratified: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which now has 187 state parties; the International Convention on the Protection of Migrant Workers and their Families, which now has 45 state parties; and the Convention on the Rights of Persons with Disabilities, which now has 112 state parties. See *Databases, Statuses of Treaties, Human Rights*, U.N. TREATY COLLECTION, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited Apr. 18, 2012) (containing information for each core U.N. human rights treaty, including the number of signatories and state parties); Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted Dec. 18, 1990, 2220 U.N.T.S. 3 (entered into force July 1, 2003); Convention on the Rights of the Child (CRC), adopted Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

12 Lewis, *supra* note 5, at 121.

13 See ICESCR, *supra* note 6, art. 16 (stating that State Parties to the ICESCR undertake to submit reports to the Economic and Social Council via the U.N. Secretary-General); Econ & Soc. Council Res. 1985/17, 1st Reg. Sess. 1985, Supp. No. 1, U.N. Doc. E/1985/17, para. (a) (May 28, 1985) (stating that the Working Group established by the Economic and Social Council to review reports submitted by States parties to the ICESCR shall be renamed “Committee on Economic, Social and Cultural Rights” (CESCR)).

14 See, e.g., U.N. Charter arts. 55–56 (stating that all members of the U.N. pledge to promote universal respect for and observance of human rights for all); IAN BROWNLIE & GUY GOODWIN-GILL, *BASIC DOCUMENTS ON HUMAN RIGHTS* 23 (Ian Brownlie & Guy S. Goodwin-Gill eds., 5th ed. 2006) (stating that UDHR is not a legally binding instrument but is an authoritative guide

nisms—including the United Nations Human Rights Council and the Special Procedures—investigate the record of the United States on respecting, protecting, and fulfilling the economic and social rights in the Universal Declaration of Human Rights.<sup>15</sup> Additionally, international economic and social rights norms are being implemented at the sub-national level by state, county, and city governments looking to international human rights laws to guide policy-making and programming.<sup>16</sup> Finally, advocates are turning to international economic and social rights in pressing their cases before courts, legislatures, and other governmental entities.<sup>17</sup> Thus, despite the ambivalence of the U.S. government toward these rights, they are being implemented in the United States at the local, state, and even national level.

While several other articles in this volume focus on opportunities for activists to use international economic and social rights in the United States to mobilize people, to analyze policies, and to advocate

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to the interpretation of the human rights to which the U.N. Charter commits all its members).

15 Risa E. Kaufman & JoAnn Kamuf Ward, *Using Human Rights Mechanisms of the United Nations to Advance Economic Justice*, 45 CLEARINGHOUSE REV. 259, 262–63 (2011).

16 See *infra* sections IV and V.

17 See, e.g., Cathy Hollenberg Serrette, *Invoking International Human Rights Law in Litigation: A Maryland Judge's Perspective*, 45 CLEARINGHOUSE REV. 238, 238–42 (2011) (arguing for the use of human rights law and norms in federal and state cases); The Opportunity Agenda, *Human Rights in State Courts: An Overview and Recommendations for Legal Advocacy*, 45 CLEARINGHOUSE REV. 233, 233 (2011) (citing *Graham v. Florida*, 130 S. Ct. 2011, 2034 (2010); *Roper v. Simmons*, 543 U.S. 551, 575–78 (2005); *Lawrence v. Texas*, 539 U.S. 558, 576–77 (2003); *Grutter v. Bollinger*, 539 U.S. 306, 342–43 (2003) (Ginsburg, J., concurring)) (“more and more legal advocates have begun to incorporate human rights arguments into their work” and U.S. Supreme Court “has increasingly cited human rights law as persuasive authority for constitutional decisions”); Brief for Leadership Conference on Civil and Human Rights et al. as Amici Curiae Supporting Respondents at 9–13, *State of Florida v. U.S. Dep’t of Health and Human Servs.*, 648 F.3d 1235 (2012) (No. 11-400) (arguing that the Medicaid expansion provision of the Patient Protection and Affordable Care Act furthers U.S. Compliance with its obligations under international human rights law to ensure equality of access to health care regardless of race); Mariah McGill, *Human Rights From the Grassroots Up: Vermont’s Campaign for Universal Health Care*, 14 HEALTH & HUM. RTS. 2–3 (2012), available at <http://hrjournal.org/index.php/hr/article/view/456/738> (documenting the success of the Vermont Workers’ Center campaign, “Health Care is a Human Right”).

on economic and social issues, among other strategies,<sup>18</sup> this article documents some of the ways in which the governments in the United States have already recognized their legal obligations for international economic and social rights.<sup>19</sup>

Following this introduction, Part II sets out the holistic human rights framework in the International Bill of Human Rights, which recognizes a full panoply of economic, social, cultural, civil, and political rights. Part III addresses the recognition and implementation of economic and social rights in the United States at the national level, specifically examining the record of the United States over the past decade in engaging with the U.N. Charter-based bodies on economic and social rights. Part IV discusses state-level recognition and implementation of economic and social rights, focusing on the Vermont Legislature's adoption of human rights principles to guide health care reform. Part V discusses city-level recognition and implementation of economic and social rights, focusing on the City of Eugene, Oregon's decision to become a "Human Rights City" and subsequent actions to realize this goal. The article concludes that, despite the reluctance of the United States to ratify the ICESCR, economic and social rights are being recognized and implemented here and to a greater extent every year.

## II. The International Human Rights Framework

The Post-World War II framework for international human rights law begins with the United Nations Charter. Article 1 of the Charter establishes that the purposes of the United Nations are "[t]o maintain international peace and security" and "to take other appropriate

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18 See, e.g., Risa Kaufman, *Framing Economic, Social and Cultural Rights at the U.N.*, 4 NE. U. L.J. 407 (2012) [hereinafter Kaufman, *Framing ESC Rights*]; Eric Tars, Julia Lum & E. Kieran Paul, *The Champagne of Housing Rights: France's Enforceable Right to Housing and Lessons for U.S. Advocates*, 4 NE. U. L.J. 429 (2012); Alexandra Bonazoli, *Human Rights Frames in Grassroots Organizing: CADRE and the Effort to Stop School Pushout*, 4 NE. U. L.J. 483 (2012).

19 It also illustrates the considerable moral force of the Universal Declaration of Human Rights, if not technically a legally binding instrument. See BROWNLIE & GOODWIN-GILL, *supra* note 14, at 23 (stating that UDHR is not a legally binding instrument); GLENDON, *supra* note 4, at 236 ("The Declaration's moral authority has made itself felt in a variety of ways. . . . Its nonbinding principles, carried far and wide by activists and modern communications, have vaulted over the political and legal barriers that impede efforts to establish international enforcement mechanisms.").

measures to strengthen universal peace.”<sup>20</sup> Additionally, the Article declares that the United Nations aims “[t]o achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”<sup>21</sup> Articles 55 and 56 of the Charter commit all members of the United Nations to promote “higher standards of living, full employment, and conditions of economic and social progress” as well as “universal respect for, and observance of, human rights.”<sup>22</sup> The Charter is a legally binding instrument that prevails over any conflicting obligations of the U.N. members under any other international agreement.<sup>23</sup>

Although the Charter does not detail the human rights to which the U.N. members commit themselves, those human rights are spelled out in the Universal Declaration of Human Rights.<sup>24</sup> The Preamble to the Declaration draws on President Franklin D. Roosevelt’s “Four Freedoms” speech delivered in 1941,<sup>25</sup> and proclaims “a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want” to be “the highest aspiration of the common people.”<sup>26</sup> In her book, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, Mary Ann Glendon asserts, “The Universal Declaration charted a bold new course for human rights by presenting a vision of freedom as linked to social security, balanced by responsibilities, grounded in respect for equal human dignity, and guarded by the rule of law.”<sup>27</sup>

The Declaration establishes a holistic human rights framework in thirty articles. Article 1 declares that “[a]ll human beings are born free and equal in dignity and rights.”<sup>28</sup> It also states that “[t]hey are endowed with reason and conscience and should act toward

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20 U.N. Charter art. 1, paras. 1–2.

21 *Id.* art. 1, para. 3.

22 *Id.* art. 55; *see id.* art. 56 (all member states pledge to take action to achieve the standards in art. 55).

23 *See id.* art. 103.

24 BROWNLIE & GOODWIN-GILL, *supra* note 14, at 23.

25 Franklin D. Roosevelt, President of the United States, Address to the Congress of the United States (Jan. 6, 1941), in 87 CONG. REC. 42, 46–47 (1941) [hereinafter Roosevelt, Four Freedoms] (discussing the “four freedoms”, which were later adopted in the preamble to the UDHR).

26 UDHR, *supra* note 1, pmbl.

27 GLENDON, *supra* note 4, at 235.

28 UDHR, *supra* note 1, art. 1.

one another in a spirit of brotherhood.”<sup>29</sup> Thus, Article 1, originally proposed by René Cassin, the French delegate to the Commission, encompasses the French ideals of freedom, equality, and brotherhood and links them to dignity and rights.<sup>30</sup> Subsequent articles declare a full range of civil, political, economic, social, and cultural rights drawn from the fifty-three national constitutions and five proposals that the U.N. Secretariat collected in 1947.<sup>31</sup> Article 28 concludes the section on rights, establishing that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”<sup>32</sup> This Article in particular conveys the holistic framework, in which all the rights proclaimed are equally important to the dignity of the person.<sup>33</sup>

Importantly, the Declaration includes economic and social rights, which were widely supported in the 1940s.<sup>34</sup> For example, in 1947, forty countries recognized a right to free and compulsory education in their constitutions.<sup>35</sup> The inclusion of economic and social rights in the Declaration also reflects the “freedom from want” to which President Roosevelt referred in his “Four Freedoms” speech.<sup>36</sup> Further, it implements Roosevelt’s 1944 proposal of a second Bill of Economic Rights, including: “[t]he right to a useful and remunerative job”; the

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29 *Id.*

30 GLENDON, *supra* note 4, at 67.

31 *See* Documented Outline, *supra* note 4.

32 UDHR, *supra* note 1, art. 28. Articles 29 and 30 establish duties to the community, limitations on the exercise of rights and rules on interpretation. UDHR, *supra* note 1, arts. 29–30.

33 MORSINK, *supra* note 2, at 222, 232, 238.

34 Whelan & Donnelly, *supra* note 2, at 911.

35 *See, e.g.*, MORSINK, *supra* note 2, at 213. Today, the rights to education and health or health care, for example, are recognized in a majority of national constitutions. *See* Special Rapporteur on the Right to Education, *Third Rep. on the Right to Education*, paras. 66–67, U.N. Doc. E/CN.4/2001/52 (Jan. 11, 2001) (by Katarina Tomasevski) (stating that the right to education is constitutionally guaranteed in 142 countries); OHCHR, Fact Sheet No. 31, *The Right to Health 10* (June 2008), available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> (stating that the right to health or the right to health care is recognized in at least 115 constitutions and 6 others impose duties on governments in relation to health, health services or health budgets); Eleanor D. Kinney & Brian Alexander Clark, *Provisions for Health and Health Care in the Constitutions of the Countries of the World*, 37 CORNELL INT’L L.J. 285, 287 (2004) (stating that 67.5% of countries have provisions on health or health care).

36 *See* Roosevelt, *Four Freedoms*, *supra* note 25.

right to earn enough to provide adequate food, clothing, and recreation; the right to a “decent home”; the rights “to adequate medical care and the opportunity . . . to enjoy good health”; “the right to a good education”; and the right to protection from economic insecurity in case of “old age, sickness . . . and unemployment.”<sup>37</sup> Finally, the Declaration reflects the obligations of the members of the United Nations, as spelled out in the U.N. Charter, to create “conditions of stability and well-being which are necessary for peaceful and friendly relations among nations” by promoting “higher standards of living, full employment, and conditions of economic and social progress.”<sup>38</sup>

The Declaration is a political commitment of the U.N. members, and importantly, is understood as the U.N. General Assembly’s authoritative interpretation of the Charter.<sup>39</sup> As such, “the Declaration has considerable indirect legal effect, and it is regarded by the Assembly and by some jurists as part of the ‘law of the United Nations.’”<sup>40</sup> Additionally, since 1948, the Declaration has been implemented in a series of international human rights treaties, which impose legal obligations upon the national governments that choose to ratify them. The U.N. General Assembly adopted the ICESCR and the ICCPR in 1966, and these treaties currently have 160 and 167 state parties respectively.<sup>41</sup> These two treaties, together with the Universal Decla-

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37 Franklin D. Roosevelt, President of the United States, Address to the Congress of the United States (Jan. 11, 1944), in 90 Cong. Rec. 54, 57 (1944); see UDHR, *supra* note 1, art. 23, para. 3 (“the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity”), art. 24 (“the right to rest and leisure”), art. 25, para. 1 (“the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”), art. 26, paras. 1–2 (the right to education “directed to the full development of the human personality”).

38 U.N. Charter art. 55(a).

39 BROWNLIE & GOODWIN-GILL, *supra* note 14, at 23 (stating that although the Declaration is not a legally binding instrument, some of its provisions reflect international customary law or the general principles of law).

40 *Id.*

41 See *Status of Treaties, International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (last visited Apr. 18, 2012); *Status of Treaties, International Covenant on Economic, Social and Cultural Rights*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

ration and Articles 55 and 56 of the U.N. Charter, compose what is commonly called the International Bill of Human Rights.<sup>42</sup>

The ICCPR recognizes human rights such as the right to life, the prohibitions against torture and slavery, and the rights to privacy, equality before the courts, freedom of association, freedom of expression, and freedom of religion.<sup>43</sup> Most of these rights are also enshrined in the United States Constitution, and the United States has ratified the ICCPR largely limiting the scope of the treaty to the protections already provided in domestic law.<sup>44</sup> The ICESCR recognizes human rights such as the rights to decent work, health, education, housing, social security, and an adequate standard of living.<sup>45</sup> Few of these rights (if any) are recognized in the United States Constitution, and the United States has not ratified this treaty.<sup>46</sup> Additional international human rights treaties address the human rights concerns of specific groups, such as women, children, migrant workers, and people with disabilities, or specific human rights issues, such as racial discrimination or torture.<sup>47</sup>

The United Nations has two systems for monitoring progress on the implementation of international human rights in the world: the Charter-based bodies and the treaty-based bodies.<sup>48</sup> The Charter-based bodies are created under the U.N. Charter and include the Human Rights Council (replacing the Commission on Human Rights in 2006) and the Special Procedures created by the Council. They include working groups, special rapporteurs, and independent experts with mandates to address specific human rights, countries, or

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aspx?src=TREATY&mtdsg\_no=IV-3&chapter=4&lang=en (last visited Apr. 18, 2012).

42 HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY* 175 n.1 (1st ed. 1980). Shue also includes the Optional Protocols to the ICCPR and the ICESCR in the International Bill of Human Rights. *Id.*

43 See ICCPR, *supra* note 6, arts. 6–27.

44 See Alston, *Putting ESC Rights Back on the Agenda*, *supra* note 5, at 120 (stating that the more traditional civil and political rights can be traced to the U.S. Constitution and therefore “their importance is almost never challenged in the United States.”).

45 See ICESCR, *supra* note 6, arts. 6–15.

46 See Alston, *Putting ESC Rights Back on the Agenda*, *supra* note 5, at 120 (most economic and social rights have no counterpart in the U.S. Constitution).

47 OHCHR, *Core International Human Right Instruments and Their Monitoring Bodies*, OFF. OF THE HIGH COMM’R FOR HUM. RTS., <http://www2.ohchr.org/english/law/index.htm#core> (last visited Apr. 18, 2012).

48 See Kaufman & Ward, *supra* note 15, at 260.

groups of people.<sup>49</sup> As a member of the United Nations, the United States government has obligations to implement the economic and social rights guaranteed in the U.N. Charter and set out in the Universal Declaration of Human Rights, and its progress in this regard is monitored by these Charter-based bodies.<sup>50</sup>

The treaty-based bodies monitor the progress that the state parties to the treaties make in implementing the rights in the treaties.<sup>51</sup> Only the countries that have ratified the specific treaty, however, are subject to supervision by the respective committee.<sup>52</sup> The United States is not a party to the ICESCR, and therefore does not report to the Committee on Economic, Social, and Cultural Rights. As a result, the primary international supervision of the United States government for its economic and social rights obligations is via the mechanisms of the Charter-based bodies.

In sum, international economic and social rights are relevant in the United States despite the failure of the United States to ratify the ICESCR. First, the United States has signed the ICESCR and therefore has some obligations for economic and social rights in that treaty. As a signatory, the United States is obliged to refrain from acts that would defeat the object and purpose of a treaty.<sup>53</sup> Additionally, some economic and social rights may be addressed by leveraging these issues under the equality and nondiscrimination provisions of the ICCPR and the ICERD, which the United States has ratified.<sup>54</sup>

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49 *Id.* at 262; OHCHR, UNITED NATIONS SPECIAL PROCEDURES: FACTS AND FIGURES 2010 1-2 (2011), available at [http://www.ohchr.org/Documents/HRBodies/SP/Facts\\_Figures2010.pdf](http://www.ohchr.org/Documents/HRBodies/SP/Facts_Figures2010.pdf) [hereinafter U.N. SPECIAL PROCEDURES: FACTS AND FIGURES 2010].

50 See Kaufman & Ward, *supra* note 15, at 263.

51 See *id.* at 262.

52 See, e.g., ICCPR, *supra* note 6, art. 40 (stating that parties to the ICCPR undertake to submit reports on measures they have adopted to implement the rights in the ICCPR and on the progress in enjoyment of these rights).

53 Vienna Convention on the Law of Treaties art. 18, opened for signature May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980); Michael Posner, Assistant Sec'y, Bureau of Democracy, Human Rights, and Labor, Address at the 105th Annual Meeting of the American Society of International Law: The Four Freedoms Turn 70 (Mar. 24, 2011), available at <http://www.humanrights.gov/2011/04/20/assistant-secretary-michael-h-posner-the-four-freedoms-turn-70/> (acknowledging that “[w]hile the United States is not a party to the Covenant, as a signatory, we are committed to not defeating the object and purpose of the treaty”).

54 See Kaufman, *Framing ESC Rights*, *supra* note 18, at 413; see also Alston, *Putting ESC Rights Back on the Agenda*, *supra* note 5, at 129 (indicating that when

Further, the U.N. Human Rights Council and the U.N. Special Procedures monitor the obligations of the United States government for economic and social rights arising under the U.N. Charter and the Universal Declaration of Human Rights. Finally, regardless of the position of the federal government, governments at the sub-national level are turning to international human rights frameworks, including economic and social rights, to guide their policy-making and programming. While the U.S. Senate has delayed action on these vitally important rights for decades, other governmental entities in the country are moving forward to implement the vision of a just society founded on respect for the equal dignity of every human being that is enshrined in the holistic framework of the Universal Declaration of Human Rights.

### III. National-Level Implementation of Economic and Social Rights

Over the past decade, the Charter-based bodies have had several opportunities to engage with the national government on its record with respect to implementing economic and social rights. The two primary mechanisms for this engagement have been the Universal Periodic Review before the U.N. Human Rights Council and the missions of the special rapporteurs and independent experts. The fact that the United States government has participated in this international supervision of its implementation of economic and social rights itself indicates to some extent that it recognizes that it has some obligations for these rights. While there is still a long way to go to get back to the 1940s and the four freedoms envisioned and enshrined in the Universal Declaration, evidence from the past decade shows that the situation is also a long way from the 1980s when the U.S. government refused to recognize that economic and social rights are “human rights” at all.<sup>55</sup>

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a government chooses not to make a right justiciable, then concerns over government policy on that issue will be brought as equal protection, nondiscrimination or due process claims); Gillian MacNaughton, *Untangling Equality and Non-discrimination to Promote the Right to Health Care for All*, 11 HEALTH & HUM. RTS. 47, 50–51 (2009) (noting that the right to equality in ICCPR article 26 extends equality guarantees to cover social sectors regulated by the government).

55 See, e.g., U.N. ESCOR, 42nd Sess., 29th mtg. at 15, U.N. Doc. E/CN.4/1986/SR.29 (Mar. 3, 1986) (statement of Ms. Bryne, United States of America)

### A. Universal Periodic Review Before the United Nations Human Rights Council

In 2006, the United Nations General Assembly established the Human Rights Council and mandated that the Council undertake a universal periodic review “of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.”<sup>56</sup> Pursuant to this mandate, the Council established the Universal Periodic Review mechanism 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 arising from the U.N. Charter, the Universal Declaration of Human Rights, and the human rights treaties that they have ratified.<sup>57</sup> Among the principles adopted to guide the Universal Periodic Review is that the procedure should “promote the universality, interdependence, indivisibility and interrelatedness of all human rights.”<sup>58</sup> Accordingly, the Council conducts its review within the holistic human rights framework that includes the full panoply of rights, including economic and social rights.

The United States filed its first report for Universal Periodic Review on August 20, 2010.<sup>59</sup> In preparation for the report, the Obama Administration held consultations with civil society in

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(matters to do with progressive achievement of better standards of living—“economic and social rights”—relate to the goals of government policy rather than constituting any legally enforceable rights, which are known as human rights); see also Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT’L L. 365, 372 (1990) [hereinafter Alston, *U.S. Ratification of CESCR*] (detailing the record of the Reagan administration’s policy of “simply defining economic rights out of existence”).

56 Human Rights Council, G.A. Res. 60/251, paras. 1, 5(e), U.N. Doc. A/RES/60/251 (Apr. 3, 2006). The Human Rights Council replaced the Commission on Human Rights. *Id.* para.1.

57 U.N. Human Rights Council Res. 5/1, Institution-Building of the United Nations Human Rights Council, 5th Sess., U.N. Doc. A/HRC/RES/5.1 (June 18, 2007).

58 *Id.* para. 3(a).

59 Press Release, U.S. Dep’t of State, Release of the U.S. Universal Periodic Review (U.P.R.) Report (Aug. 24, 2010), available at <http://www.state.gov/r/pa/prs/ps/2010/08/146233.htm> (U.S. submitted U.P.R. report to the OHCHR on August 20, 2010); United States of America, *National Report Submitted in Accordance with Paragraph 15(a) of the Annex to the Human Rights Council Resolu-*

New Orleans, New York City, Albuquerque, El Paso, San Francisco, Berkeley, Detroit, Chicago, Birmingham, and Washington, D.C.<sup>60</sup> Importantly, representatives from the U.S. Departments of Education, Health, Human Services, and Labor, among others, attended these meetings and listened to people express their concerns to the agencies specifically responsible for ensuring their economic and social rights.<sup>61</sup> Sarah Paoletti, senior coordinator of the Universal Periodic Review Project of the United States Human Rights Network, remarked, “These consultations marked the first time the government had gone on the road to hear individuals’ concerns about U.S. human rights obligations and the first time federal agency representatives from both Washington, D.C., and the local or regional offices directly participated in discussion on U.S. human rights obligations.”<sup>62</sup> The consultations are a milestone in the history of human rights in the United States, during which the government has largely conveyed that human rights as relevant only to people in other countries, not to people here in the United States.<sup>63</sup>

Notably, in its report, the United States discusses a full range of rights from the Universal Declaration of Human Rights.<sup>64</sup> The report devotes one of its three sections on specific rights to the area of economic and social rights.<sup>65</sup> This section is composed of ten paragraphs out of the total one hundred paragraphs in the report.<sup>66</sup> It begins with a reference to President Roosevelt’s 1941 “Four Freedoms” speech, specifically mentioning “freedom from want.”<sup>67</sup> This introductory paragraph is followed by one paragraph on education, five paragraphs

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tion 5/1, U.N. Doc. A/HRC/WG.6/9/USA/1 (Aug. 23, 2010) [hereinafter U.S. U.P.R. Report 2010].

60 Sarah H. Paoletti, *Using the Universal Periodic Review to Advance Human Rights: What Happens in Geneva Must Not Stay in Geneva*, 45 CLEARINGHOUSE REV. 268, 270 (2011).

61 *Id.* at 270–71.

62 *Id.* at 270.

63 *See id.* at 270–71 (noting that the participation of government representatives with responsibilities for economic and social rights within the United States was unprecedented as human rights issues are generally the domain of the State Department, which is concerned with the world beyond the United States).

64 *See* U.S. U.P.R. Report 2010, *supra* note 59.

65 *Id.* paras. 67–76.

66 *Id.*

67 *Id.* para. 67.

on health, and three paragraphs on housing.<sup>68</sup> Additionally, the section on equality also devotes six paragraphs to discussing equality at work, in housing, and in education.<sup>69</sup> In comparison to the report's coverage of other rights—two paragraphs on freedom of expression,<sup>70</sup> three on freedom of thought, conscience, and religion,<sup>71</sup> two on freedom of association,<sup>72</sup> and five on political participation<sup>73</sup>—the report indicates no particular preference for civil and political rights over economic and social rights.

The submission of the report was followed by the review before the Human Rights Council in Geneva on November 5, 2010.<sup>74</sup> Human rights scholars and practitioners noted that both the consultations and the report showed “a level of commitment not seen in prior United Nations human rights reviews.”<sup>75</sup> Nonetheless, the report “fell short of its stated promise of serving as ‘a roadmap for our ongoing work within our democratic system to achieve lasting change.’”<sup>76</sup> Despite this positive shift, at the review the government relied largely upon the U.S. Constitution, statutes, and policies, and failed to fully acknowledge the significant gaps between the rights provided in law and the reality on the ground.<sup>77</sup>

Following the November 5th proceeding, the Working Group on the Universal Periodic Review issued a report with 228 recommendations for the United States.<sup>78</sup> On March 8, 2011, the United States filed its response to these recommendations,<sup>79</sup> and then on

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68 *Id.* paras. 67–76.

69 *Id.* paras. 43–49.

70 *See* U.S. *U.P.R. Report* 2010, *supra* note 59, paras. 17–18.

71 *See id.* paras. 19–21.

72 *See id.* paras. 22–23.

73 *See id.* paras. 24–28.

74 OHCHR, *Universal Periodic Review—United States of America*, OFF. OF THE HIGH COMM'R FOR HUM. RTS., <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/USSession9.aspx> (last visited Aug. 24, 2012).

75 Paoletti, *supra* note 60, at 271.

76 *Id.* (quoting U.S. *U.P.R. Report* 2010, *supra* note 59, para.7).

77 *Id.* at 271–72.

78 *See* U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011) [hereinafter *U.P.R. Working Group Report*].

79 *See* U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United States of America, Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review*, U.N. Doc. A/HRC/16/11/Add.1 (Mar. 8, 2011) [hereinafter *U.S. U.P.R. Response*].

March 18th, U.S. representatives returned to Geneva to present its position.<sup>80</sup> In the area of economic and social rights, the government accepted a remarkable number of recommendations. Specifically, the government accepted without reservation that it has the following obligations:

- To “promote equal socio-economic as well as education opportunities for all both in law and in fact, regardless of their ethnicity, race, religion, national origin, gender or disability . . . ;”<sup>81</sup>
- To take further measures “in the areas of economic and social rights for women and minorities, including providing equal access to decent work and reducing the number of homeless people . . . ;”<sup>82</sup>
- To “[c]ontinue its efforts in the domain of access to housing, vital for the realization of several other rights, in order to meet the needs for adequate housing at an affordable price for all segments of the American society . . . ;”<sup>83</sup>
- To “[p]ersevere in the strengthening of its aid to development, considered as fundamental, in particular the assistance and relief in case of natural disasters . . . .”<sup>84</sup>

Additionally, the government accepted two other recommendations with some qualification:

- To “[e]nsure the realization of the rights to food and health of all who live in its territory . . . ;”<sup>85</sup>
- To “[e]xpand its social protection coverage . . . .”<sup>86</sup>

With respect to the rights to food and health, the government noted that it is not a party to the ICESCR, and accordingly understood the references to these rights to refer to other instruments that

80 Paoletti, *supra* note 60, at 273.

81 *U.S. U.P.R. Response*, *supra* note 79, para. 19 (referring to *U.P.R. Working Group Report*, *supra* note 78, para. 92.109).

82 *Id.* (referring to *U.P.R. Working Group Report*, *supra* note 78, para. 92.113).

83 *Id.* (referring to *U.P.R. Working Group Report*, *supra* note 78, para. 92.197).

84 *Id.* (referring to *U.P.R. Working Group Report*, *supra* note 78, para. 92.226).

85 *Id.* (referring to *U.P.R. Working Group Report*, *supra* note 78, para. 92.195).

86 *Id.* (referring to *U.P.R. Working Group Report*, *supra* note 78, para. 92.196).

it has accepted.<sup>87</sup> It also noted that it understood “that these rights are to be realized progressively.”<sup>88</sup> With respect to social protection coverage, the government explained that it seeks to improve the safety net that it already provides. Overall, these statements appear to be fairly significant steps forward on economic and social rights—simply because the government recognized that it has obligations for these rights within its own borders. In particular, the government acknowledged that it has an obligation to progressively realize the rights to food and health—and expressed this in terms of “rights.” It also accepted obligations for expanding social protection coverage, meeting the needs for adequate housing, and improving equal access to decent work.

Assistant Secretary Michael Posner of the Bureau of Democracy, Human Rights, and Labor reiterated these commitments on March 24, 2011, at the Annual Meeting of the American Society of International Law. In that speech, Posner stated that “[t]he Obama administration takes a holistic approach to human rights, democracy and development.”<sup>89</sup> Further, he maintained:

[W]e will push back against the fallacy that countries may substitute human rights they like for human rights they dislike, by granting either economic or political rights. To assert that a population is not “ready” for universal rights is to misunderstand the inherent nature of these rights and the basic obligations of government. All Four Freedoms are key to the Obama administration’s approach to human rights, national security and sustainable global prosperity.<sup>90</sup>

By embracing a “holistic approach,” committing to all Four Freedoms, and acknowledging obligations for economic and social rights—including the rights to food and health—the government took significant steps forward.

The government’s new understanding of its obligations for economic and social rights arose in the context of the U.N. Universal Periodic Review under which the record of the United States on implementation of economic and social rights at home was subject to scrutiny. In this sense, the U.N. is monitoring the implementation

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87 *U.S. U.P.R. Response*, *supra* note 79, para. 19 (referring to *U.P.R. Working Group Report*, *supra* note 78, para. 92.226).

88 *Id.*

89 Posner, *supra* note 53.

90 *Id.*

of economic and social rights in the United States, and the Universal Periodic Review is providing the opportunity for people in the United States to hold their government accountable for all its human rights obligations under the Universal Declaration of Human Rights. Like the reporting procedure under the ICESCR, the potential effectiveness of the review “clearly lies less in the formal exchange between the Committee [or in this case the Human Rights Council] and the state party and more in the mobilization of domestic political and other forces to participate in monitoring government policies and providing detailed critique . . . of the government’s own assessment of the situation.”<sup>91</sup> Certainly, in this way, the Universal Periodic Review was successful.

#### B. U.S. Missions of the United Nations Special Procedures<sup>92</sup>

The Human Rights Council (and previously the Commission on Human Rights) has also created the Special Procedures to investigate and respond to particular human rights themes and concerns in particular countries.<sup>93</sup> There are currently ten country-specific mandates<sup>94</sup> and thirty-five thematic mandates.<sup>95</sup> Several of the thematic mandates address economic and social rights, including the Special Rapporteurs on the rights to education, health, food, housing, and water, as well as the Independent Expert on extreme poverty.<sup>96</sup> The

91 Alston, *U.S. Ratification of CESCR*, *supra* note 55, at 371.

92 This section on the Special Procedures draws upon Gillian MacNaughton, *Human Rights Frameworks, Strategies, and Tools for the Poverty Lawyer’s Toolbox*, 44 CLEARINGHOUSE REV. 437, 441–43 (2011) [hereinafter MacNaughton, *Human Rights Frameworks*].

93 See U.N. SPECIAL PROCEDURES: FACTS AND FIGURES 2010, *supra* note 49, at 1. The predecessors to the Human Rights Council and its Advisory Committee were the Commission on Human Rights and Sub-Commission on the Promotion and Protection of Human Rights. See *supra* text accompanying note 56.

94 See OHCHR, *Special Procedures Assumed by the Human Rights Council, Country Mandates* (May 1, 2012), <http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx>. These are Cambodia, Côte D’Ivoire, Democratic People’s Republic of Korea, Haiti, the Islamic Republic of Iran, Myanmar, the Palestinian territories occupied since 1967, Somalia, Sudan, and the Syrian Arab Republic.

95 See OHCHR, *Special Procedures Assumed by the Human Rights Council, Thematic Mandates* (May 1, 2012), <http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx> (last visited July 2, 2012).

96 See Christophe Golay, Claire Mahon & Ioana Cismas, *The Impact of the U.N. Special Procedures on the Development and Implementation of Economic, Social and Cultural*

Special Procedures issue annual reports on the status of the enjoyment of the relevant rights globally, consider individual complaints, provide advice to governments, conduct studies on particular countries, and engage in promotional activities to raise awareness about human rights.<sup>97</sup> Importantly, the Special Procedures must be invited by a state's government before undertaking a mission to a country to investigate the human rights situation on the ground.<sup>98</sup>

Over the past decade, a number of thematic Special Procedures with mandates on economic and social rights have undertaken missions to the United States. In 2002, for example, Katarina Tomasevski, the U.N. Special Rapporteur on the Right to Education visited the United States, meeting with stakeholders in the fields of education and human rights in Mississippi, Kansas, New York, and the District of Columbia.<sup>99</sup> In her U.N. report on the right to education in the United States, Tomasevski concluded, "There is a desperate need for human rights education, as this term tends to be used only with reference to other countries."<sup>100</sup> She 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."<sup>101</sup> Moreover, she concluded that, "[t]he rule of inverse proportion reigns, and schools and teachers facing the greatest challenge are provided the least support."<sup>102</sup>

In 2005, Arjun Sengupta, the Independent Expert on Extreme Poverty undertook a mission to the United States.<sup>103</sup> In his report, he observed, "Despite the economic wealth of the United States and the efforts of the Government, the poverty rate remains high compared to other rich nations and there is no evidence that the incidence of pov-

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*Rights*, 15 INT'L J. OF HUM. RTS. 299, 299 (2011).

97 See, e.g., U.N. SPECIAL PROCEDURES: FACTS AND FIGURES 2010, *supra* note 49.

98 See *id.* at 11. Currently, seventy-eight countries have standing invitations to the U.N. Special Procedures. *Id.* at 12. The United States is not one of these seventy-eight countries. *Id.*

99 See Special Rapporteur on the Right to Education, *Mission to the United States of America (24 Sept.–10 Oct. 2001)*, U.N. Doc. E/CN.4/2002/60/Add.1 (Jan. 17, 2002) (by Katarina Tomasevski).

100 *Id.* para. 80.

101 *Id.*

102 *Id.* para. 84.

103 Independent Expert on Human Rights and Extreme Poverty, *Human Rights and Extreme Poverty*, Comm'n on Human Rights, U.N. Doc. E/CN.4/2006/43/Add.1 (Mar. 27, 2006) (by Arjun Sengupta).

erty, and especially extreme poverty, is on the decrease.”<sup>104</sup> Sengupta also concluded that the United States has “no national anti-poverty legislation” but only a limited “patchwork” of laws.<sup>105</sup> Further, he noted 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.”<sup>106</sup> Importantly, he concluded that “if the United States adopted a comprehensive national strategy and programmes based on human rights principles it would be possible to reduce poverty and eradicate extreme poverty.”<sup>107</sup>

In 2009, Raquel Rolnick, the Special Rapporteur on the Right to Adequate Housing, undertook a mission to the United States.<sup>108</sup> 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.”<sup>109</sup> Rolnick noted that increasing numbers of working families and individuals find themselves living on the streets, in shelters, or in transitional housing with friends and family.<sup>110</sup> In view of the affordable housing crisis, the Special Rapporteur recommended that the government: (1) increase opportunities for dialogue with civil society organizations; (2) put an immediate moratorium on demolition of public housing until one-for-one housing is secured and the right to return is 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.<sup>111</sup>

Most recently, Catarina de Albuquerque, the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, under-

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104 *Id.* at 2.

105 *Id.*; *id.* para. 84.

106 *Id.* at 2.

107 *Id.*

108 See Special Rapporteur on the Right to Adequate Housing, *Mission to the United States of America* (22 Oct.–8 Nov. 2009), Human Rights Council, U.N. Doc. No. A/HRC/13/20/Add.4 (Feb. 12, 2010) (by Raquel Rolnick).

109 *Id.* para. 79.

110 *Id.*

111 *Id.* paras. 82, 84, 87, 90, 94–95.

took a mission to the United States in March 2011.<sup>112</sup> She found that “[t]he United States has aging water and wastewater systems, with decreasing investment in research and development, coupled with an increase in [ ] population.”<sup>113</sup> Further, she noted that, despite near universal access to water and sanitation in the United States, the poorest and the most marginalized do not enjoy adequate and safe water and sanitation.<sup>114</sup> Studies in some areas have shown that “water shut-off policies disproportionately impact marginalized persons along race, class and gender.”<sup>115</sup> Additionally, she noted that the EPA found in its 2010 assessment that “92 per cent of people were served by community water systems that met applicable health-based drinking water standards.”<sup>116</sup> Among other things, the Special Rapporteur recommended that the United States develop a national water policy and plan of action, as well as make more concerted efforts to reach the poorest segments of the population.<sup>117</sup>

Like the Universal Periodic Review, visits by the Special Procedures are helpful in raising awareness of human rights among government officials and people affected by the absence of economic and social rights, and in providing a forum to initiate dialogue between the government and civil society on the human rights situation in the country. Further, each visit results in a U.N. report upon which civil society organizations can base further advocacy.<sup>118</sup> Notably, over the past decade, four Special Procedures on economic and social

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112 Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Mission to the United States of America* (22 Feb.–4 Mar. 2011), Human Rights Council, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011) (by Catarina de Albuquerque).

113 *Id.* para. 16.

114 *Id.* paras. 18–19.

115 *Id.* para. 50.

116 *Id.* para. 30.

117 *Id.* para. 88–89.

118 The National Law Center on Homelessness and Poverty (NLCHP), for example, was closely involved in the 2009 visit by the U.N. Special Rapporteur on the Right to Adequate Housing, holding a National Forum on the Human Right to Housing in Washington, DC, on the final two days of her visit. National Law Center on Homelessness and Poverty (NLCHP), *U.N. Rapporteur Visit to the United States*, NAT'L LAW CTR. ON HOMELESSNESS & POVERTY (Oct. 20, 2009), <http://www.nlchp.org/news.cfm?id=115>. NLCHP also provides advice on using the Special Rapporteur's U.N. report for advocacy on housing rights. The U.N. reports, news reports on the Special Rapporteur's mission, and advice for follow-up activities are available at *Street Lawyer: Legal Tools for Economic Justice*, THE NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, <http://>

rights came on missions to the United States—by invitation of the national government. Just as the government acknowledged its obligations for economic and social rights during the Universal Periodic Review, it has acknowledged these obligations repeatedly by hosting these Special Procedures. Via both mechanisms, the Charter-based bodies are monitoring the implementation of economic and social rights in the United States, and the government is participating in these monitoring processes. There is no doubt that the government could do much more to respect, protect, and fulfill human rights, especially economic and social rights.<sup>119</sup> Nonetheless, the evidence over the last decade indicates that the United States seems to be heading back in the direction of respecting, protecting, and fulfilling the full array of rights set out in the holistic framework of the Universal Declaration of Human Rights.

#### IV. State-Level Implementation of Economic and Social Rights

##### A. Human Rights in State Constitutions, Courts, and Legislatures

Implementation of international human rights norms and standards is also possible at the sub-national level.<sup>120</sup> The U.S. Senate has noted that states and localities have a significant role to play in complying with human rights treaty obligations under the United States' federalist system.<sup>121</sup> Importantly, state constitutions are often more friendly than the Federal Constitution to economic, social, and cultural rights. Most state constitutions assume responsibility for promoting the general welfare of state residents.<sup>122</sup> Further, all state constitutions guarantee a right to public education, and almost one-

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wiki.nlchp.org/display/Manual/Special+Rapporteur+on+the+Right+to+Adequate+Housing+Visit+2009 (last visited July 1, 2012).

119 In particular, the government could ratify the ICESCR and the Convention on the Rights of the Child.

120 Lewis, *supra* note 5, at 101.

121 Risa Kaufman, *State and Local Commissions as Sites for Domestic Human Rights Implementation*, in *HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM* 89, 90 (Shareen Hertel & Kathryn Libal eds., 2011) [hereinafter Kaufman, *State and Local Commissions*].

122 Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward an Entirely New Strategy*, 44 *HASTINGS L.J.* 79, 92 (1992).

third of state constitutions recognize some role for government in promoting and protecting public health.<sup>123</sup>

State courts also play an important role in the human rights implementation process. Advocates have begun making human rights-based arguments in state courts and are finding state court judges to be increasingly receptive.<sup>124</sup> The United States Constitution provides that ratified treaties are the “supreme Law of the Land” and are binding on state judges.<sup>125</sup> Thus, for example, state court judges deciding international child custody disputes must consider both state law and Article 20 of the Hague Convention on the Civil Aspects of International Child abduction in making their decisions.<sup>126</sup>

State court judges may also turn to human rights treaties for interpretive guidance regardless of whether those treaties have been ratified.<sup>127</sup> For example, the Missouri Supreme Court cited to the Convention on the Rights of the Child when it struck down the juvenile death penalty, despite the fact that this convention is not binding in the United States.<sup>128</sup> International human rights treaties can be particularly useful for state jurists as they attempt to analyze the positive rights embedded in state constitutions.<sup>129</sup> Because the Federal Constitution does not recognize a right to education or the responsibility

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123 Jessica Schultz, *Economic and Social Rights in the United States: An Overview of the Domestic Legal Framework*, 11 HUM. RTS. BRIEF 1 (2003); Elizabeth Weeks Leonard, *State Constitutionalism and the Right to Health*, 12 U. PA. J. CONST. L. 1325, 1328 (2010).

124 See Serrette, *supra* note 17; The Opportunity Agenda, *supra* note 17; Martha F. Davis, *Human Rights in the Trenches: Using International Human Rights Law in “Everyday” Legal Aid Cases*, 41 CLEARINGHOUSE REV. 414, 416 (2007); see also HUMAN RIGHTS INST. ET AL., HUMAN RIGHTS, SOCIAL JUSTICE AND STATE LAW: A MANUAL FOR CREATIVE LAWYERING (2008) available at <http://www.northeastern.edu/law/pdfs/academics/phrge-manual08.pdf>.

125 Martha F. Davis, *Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights*, in BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 258, 276 (Cynthia Soohoo et al. eds., 2008) [hereinafter Davis, *Thinking Globally*] (citing U.S. Const. art. VI, cl. 2.).

126 Serrette, *supra* note 17, at 239.

127 The Opportunity Agenda, *supra* note 17, at 235 (citing Penny White, *Legal, Political, and Ethical Hurdles to Applying International Human Rights Law in the State Courts of the United States (and Arguments for Scaling Them)*, 71 U. CIN. L. REV. 937, 950–51, 967–69 (2003)).

128 *Id.* at 233 (citing *Simmons v. Roper*, 112 S.W.3d 397, 411 (Mo. 2003), *aff’d*, 543 U.S. 551 (2005)).

129 Johanna Kalb, *Human Rights Treaties in State Courts: The International Prospects of State Constitutionalism After Medellín*, 115 PENN ST. L. REV. 1051, 1055 (2011)

of government to promote and protect public health, international human rights treaties may be helpful to state jurists as they attempt to define these rights that have no federal analogue.<sup>130</sup> The Supreme Court of Appeals of West Virginia, for example, considered the Universal Declaration of Human Rights in its decision to recognize the fundamental right to education.<sup>131</sup>

State legislatures have also recognized human rights in both foreign and domestic contexts. For example, in the 1970s, many states passed legislation aimed at ending apartheid in South Africa by curtailing private investment in corporations doing business with the regime.<sup>132</sup> Twenty-three states, fourteen counties, and eighty cities enacted divestment legislation, and this local-level activism is widely seen as an important factor in the downfall of the apartheid regime.<sup>133</sup> Further, many states have created human rights commissions that, in addition to ending racial discrimination and promoting equal opportunity, are also working to implement human rights standards at the local level.<sup>134</sup> For example, in 2007, the Washington State Human Rights Commission embarked on a project to address a housing shortage for farm workers in the state.<sup>135</sup> The Commission relied upon human rights principles drawn from the Universal Declaration of Human Rights in addition to the state's anti-discrimination statute and federal fair housing laws to make its final recommendations.<sup>136</sup>

State and local agencies also play a valuable role in monitoring the realization of human rights and advancing human rights implementation processes.<sup>137</sup> Indeed, the Vienna Convention on the Law

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(citing Martha F. Davis, *The Spirit of Our Times: State Constitutions and International Human Rights*, 30 N.Y.U. REV. L. & SOC. CHANGE 359, 360 (2006)).

130 *Id.*

131 *Pauley v. Kelly*, 255 S.E.2d 859, 864 n.5 (W.Va. 1979) (UDHR proclaims "education to be a fundamental right of everyone, at least on this planet").

132 Davis, *Thinking Globally*, *supra* note 125, at 261.

133 *See generally, id.* In the 1990s, states and cities also attempted to divest in Burma but these efforts were struck down by the United States Supreme Court in *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373–74 (2000).

134 Kaufman, *State and Local Commissions*, *supra* note 121, at 91–92.

135 *Id.* at 93.

136 *Id.*

137 COLUMBIA LAW SCH. HUMAN RIGHTS INST., IMPLEMENTING RECOMMENDATIONS FROM THE UNIVERSAL PERIODIC REVIEW: A TOOLKIT FOR STATE AND LOCAL HUMAN RIGHTS AND HUMAN RELATIONS COMMISSIONS 4 (2011), available at [http://www.law.columbia.edu/ipimages/Human\\_Rights\\_Institute/U.P.R. %20Toolkit.pdf](http://www.law.columbia.edu/ipimages/Human_Rights_Institute/U.P.R.%20Toolkit.pdf).

of Treaties recognizes that federal governments may need to delegate some responsibilities for human rights implementation to state and local governments.<sup>138</sup> Specifically, state and local agencies can advance the enjoyment of human rights by educating local communities, using human rights principles in local advocacy work, investigating human rights complaints, and integrating human rights standards into local policy and practice.<sup>139</sup>

These examples demonstrate that U.S. cities and states are involved in implementing human rights in a variety of ways. This article focuses on two examples of human rights implementation at the sub-national level, one by a state legislature and one by a city council.

### B. Case Study: The Vermont Legislature Adopts Human Rights Principles

In 2010, the State of Vermont became the first state to use a human rights framework to design a new health care system.<sup>140</sup> Vermont's human rights-based health care reform efforts began with the Vermont Workers' Center's grassroots campaign "Healthcare is a Human Right" that was launched in 2008.<sup>141</sup> The campaign used a human rights framework to mobilize Vermonters to support universal health care and to ensure that human rights principles were incorporated into Vermont health care law.<sup>142</sup> The human rights principles set forth by the campaign were universality, equity, accountability, transparency, and participation.<sup>143</sup> Specifically, the campaign asserted that

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138 See *id.*; see also Vienna Convention on the Law of Treaties, *supra* note 53, art. 29.

139 COLUMBIA LAW SCH. HUMAN RIGHTS INST., *supra* note 137, at 4.

140 No. 128. An Act Relating to Health Care Financing and Universal Access to Health Care in Vermont, 2010 Vt. Acts & Resolves 305, secs. 2–3 [hereinafter Act 128]; see also, Mariah McGill, *A Human Right to Health Care in the State of Vermont*, 37 VT. B. J. 28, 29 (2011) (highlighting the link between human rights principles and Vermont's health care legislation).

141 VT. WORKERS' CTR., VOICES OF VERMONT'S ECONOMIC CRISIS: THE CHALLENGE TO PUT PEOPLE FIRST (2011), available at <http://www.workerscenter.org/2011-preliminary-human-rights-report>.

142 *Human Rights Principles for Health Care*, VT. WORKERS' CTR., <http://www.workerscenter.org/human-rights-principles-for-healthcare> (last visited Jul. 3, 2012).

143 *Building a Grassroots Movement for the Human Right to Healthcare*, VT. WORKERS' CTR., <http://www.workerscenter.org/hchrhistory> (last visited Jul. 3, 2012) [hereinafter *Building a Grassroots Movement*]. Similar human rights principles are enumerated in numerous documents on the human rights-based approach. See, e.g., *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among U.N. Agencies*, HRBA PORTAL, <http://hrbaportal>.

every Vermont resident was entitled to comprehensive, quality health care; that systemic barriers must not prevent people from accessing necessary health care; that the health care system must be transparent in design, efficient in operation, and accountable to the people it serves; and that it was the responsibility of the government to ensure a health care system that satisfies these human rights principles.<sup>144</sup> Vermonters and their legislators found this to be a compelling framework for health care reform.<sup>145</sup>

On May 27, 2010, the Vermont Legislature passed Act 128,<sup>146</sup> incorporating this human rights framework into Vermont's new health care law. Act 128 created a roadmap for designing and implementing a universal health care system.<sup>147</sup> It also established a health care commission responsible for hiring an independent consultant to design three universal health care plans that each satisfied human rights principles.<sup>148</sup>

Act 128 does not recognize health care as a human right or use the term "human rights."<sup>149</sup> Nonetheless, it incorporates all five human rights principles promoted by the "Healthcare is a Human Right" campaign. For example, the Act states that it "is the policy of the State of Vermont to ensure universal access to . . . comprehensive, quality health care," thus recognizing the human rights principle of universality.<sup>150</sup> The Act addresses the principle of equity by stating that "[s]ystemic barriers must not prevent people from accessing healthcare."<sup>151</sup> By requiring any health care plan to be transparent,

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org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies (last visited July 28, 2012) (listing these human rights principles: universality and inalienability; indivisibility, inter-dependence and inter-relatedness; equality and non-discrimination; participation and inclusion; accountability and the rule of law); OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, U.N. Doc. HR/PUB/06/12 (2006), available at <http://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf> (listing among its principles: equality and nondiscrimination, participation, monitoring and accountability).

144 *Building a Grassroots Movement*, *supra* note 143.

145 Mariah McGill, *Using Human Rights to Move Beyond the Politically Possible*, 44 CLEARINGHOUSE REV. 459, 461–62 (2011) [hereinafter McGill, *Using Human Rights*].

146 Act 128, sec. 2–3, 2010 Vt. Acts & Resolves 305, 307–08.

147 *Id.* sec. 6, 2010 Vt. Acts & Resolves 305, 309–15.

148 *Id.* secs. 4–6, 2010 Vt. Acts & Resolves 305, 308–15.

149 McGill, *Using Human Rights*, *supra* note 145, at 463.

150 Act 128, sec. 2(1), 2010 Vt. Acts & Resolves 305, 307.

151 *Id.*

efficient, and accountable to the people, the Act ensures that the principles of transparency and accountability are satisfied.<sup>152</sup> The Act also makes it the responsibility of the state to ensure that Vermonters are able to participate in the design, implementation, and accountability mechanisms of the healthcare system and establishes that it is the government's responsibility to ensure that the health care system satisfies all these principles.<sup>153</sup>

In 2010, the newly established Vermont Health Care Commission selected Dr. William Hsiao of the Harvard School of Public Health to design the three health care plans.<sup>154</sup> Dr. Hsiao had previously designed Taiwan's successful single-payer health care system, and he led a team of consultants that included Dr. Jonathan Gruber of MIT, the architect of the Massachusetts health care reform legislation, to design the Vermont reforms.<sup>155</sup> In February 2011, Dr. Hsiao presented three plans for universal health care to the Vermont legislature.<sup>156</sup> The first plan was a government-run single-payer system with a uniform system of payment and a standard benefits package for all Vermonters.<sup>157</sup> The second plan was a "public option" to be administered by the government that would compete with private insurance plans on a health care exchange.<sup>158</sup> The third plan was a public-private single-payer system with a standard benefits package and a uniform payment system.<sup>159</sup> Dr. Hsiao recommended that Vermont adopt the third option.<sup>160</sup>

In the 2011 legislative session, the Vermont Legislature passed Act 48, "An Act Relating to a Universal and Unified Health System"

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152 *Id.* sec. 2(2), 2010 Vt. Acts & Resolves 305, 307.

153 *Id.* secs. 2(2), (9), 2010 Vt. Acts & Resolves 305, 307.

154 See Memorandum from Jim Hester, Dir., Health Care Reform Comm'n, to All Interested Parties (June 29, 2010), available at <http://www.leg.state.vt.us/jfo/Healthcare/Contractor%20Selection%20-%20Health%20Care%20Reform%20Design%20Study.pdf>.

155 Ann Galloway, *Vermont Commission Selects Hsiao for Health Care Design Study*, VT DIGGER (June 29, 2010), <http://vtdigger.org/2010/06/29/vermont-commission-selects-hsiao-for-health-care-design-study/>.

156 See WILLIAM HSIAO ET AL., ACT 128 HEALTH SYSTEM REFORM DESIGN: ACHIEVING AFFORDABLE UNIVERSAL HEALTH CARE IN VERMONT (2011), available at [http://www.leg.state.vt.us/jfo/healthcare/FINAL%20REPORT%20Hsiao%20Final%20Report%20-%202017%20February%202011\\_3.pdf](http://www.leg.state.vt.us/jfo/healthcare/FINAL%20REPORT%20Hsiao%20Final%20Report%20-%202017%20February%202011_3.pdf).

157 *Id.* at x.

158 *Id.* at xi.

159 *Id.* at xii.

160 *Id.* at xviii.

that was based in large part upon Dr. Hsaio's third plan.<sup>161</sup> It also retained the human rights principles in Act 128.<sup>162</sup> Act 48 creates a framework for designing and implementing a universal health care system known as Green Mountain Care.<sup>163</sup> The first step in the implementation process will be the establishment of a health insurance exchange as required under the federal Patient Protection and Affordable Care Act (PPACA) passed by Congress in March 2010.<sup>164</sup> Under the federal legislation, all states must create health insurance exchanges that will enable consumers to purchase private insurance policies in a transparent marketplace.<sup>165</sup> Vermonters will begin using this exchange by 2014.<sup>166</sup>

The second step in the implementation process will be to design the single-payer Green Mountain Care.<sup>167</sup> Under Act 48, Green Mountain Care must provide "comprehensive, affordable . . . publicly-financed health care coverage for all Vermont residents" as a "public good."<sup>168</sup> An independent board is responsible for designing and implementing the plan and is currently working to define the benefits package, create a three-year budget, and determine the financing mechanisms for the new health care system.<sup>169</sup> In December 2011, the government held a series of public meetings to get feedback from Vermonters on how the new health care system should

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161 No. 48. An Act Relating to a Universal and Unified Health System, 2011 Vt. Acts & Resolves 239 [hereinafter Act 48]; see HSIAO ET AL., *supra* note 156, at xviii.

162 See Act 48, 2011 Vt. Acts & Resolves 239; Act 128, sec. 2, 2010 Vt. Acts & Resolves 305, 307.

163 See Act 48, sec. 1, 2011 Vt. Acts & Resolves 239, 240.

164 See Act 48, sec. 4, 2011 Vt. Acts & Resolves 239, 259 (codified at VT. STAT. ANN. tit. 33, § 1801(b) (2012)).

165 See Act 48, sec. 4, 2011 Vt. Acts & Resolves 239, 259 (codified at VT. STAT. ANN. tit. 33, § 1801 (2012)).

166 Act 48, sec. 4, 2011 Vt. Acts & Resolves 239, 260 (codified at VT. STAT. ANN. tit. 33, § 1803(b)(1)(A) (2012)).

167 Act 48, sec. 4, 2011 Vt. Acts & Resolves 239, 266 (codified at VT. STAT. ANN. tit. 33, § 1822 (2012)).

168 See Act 48, sec. 1(a), 2011 Vt. Acts & Resolves 239, 240. The language declaring health care to be a "public good" rather than a human right was a compromise reached to avoid a veto of Act 128 by Republican Governor James Douglas in 2010. See McGill, *Using Human Rights*, *supra* note 145, at 461.

169 *Our Vision*, GREEN MOUNTAIN CARE BOARD, [http://healthcare.vermont.gov/green\\_mountain\\_care\\_board](http://healthcare.vermont.gov/green_mountain_care_board) (last visited July 5, 2012).

be financed.<sup>170</sup> The data from these meetings will be used to develop the new financing system, which will be presented to the Vermont legislature in 2013.<sup>171</sup>

Importantly, the Green Mountain Care Board must comply with Act 48's human rights principles of universality, equity, transparency, accountability, and participation in the design and implementation of the new system.<sup>172</sup> While many features of Green Mountain Care have not yet been determined, it is clear that human rights principles have already played a key role in the roadmap for health care reform in Vermont. Green Mountain Care will meet the principle of universality by providing "comprehensive, affordable, publicly-financed" health care coverage for all Vermont residents.<sup>173</sup> In order to meet the human rights principle of equity, the system must be both equitable in access and in financing.<sup>174</sup> The Green Mountain Care system will meet the principle of equity in access by providing health care in an "equitable manner" without regard to income, assets, or health status.<sup>175</sup> Act 48 also requires that the Green Mountain Care financing plan be developed consistent with the principles of equity.<sup>176</sup> Further, the Green Mountain Care system will be designed and implemented by an independent board that must report to the Vermont Legislature and the people of Vermont.<sup>177</sup> The independence of the board, along with the requirement that health care financing be transparent, helps to satisfy the transparency and accountability principles.<sup>178</sup> Finally, Act 48 requires that the Green Mountain Care Board pro-

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170 Alan Panebaker, *Shumlin Administration: A Game of Monopoly to Determine Preferences for Health Care Financing System*, VT DIGGER (Dec. 16, 2011), <http://vtdigger.org/2011/12/16/shumlin-administration-takes-pulse-of-businesses-preferences-for-health-care-financing-system/>.

171 *Id.*

172 Act 48, sec. 1(a), 2011 Vt. Acts & Resolves 239, 240; Act 48, sec. 3, 2011 Vt. Acts & Resolves 239, 244 (codified at VT. STAT. ANN. tit. 18, § 9371 (2012)).

173 *Human Rights Assessment of Act 48 (formerly H.202) Signed into Law on May 26, 2011*, VT. WORKERS' CTR. 1 (2011), <http://www.nesri.org/sites/default/files/Assessment%20Chart%20Act%2048.pdf> [hereinafter *Human Rights Assessment of Act 48*].

174 *Id.*

175 Act 48, sec. 4, 2011 Vt. Acts & Resolves 239, 266 (codified at VT. STAT. ANN. tit. 33, § 1821 (2012)).

176 Act 48, sec. 3, 2011 Vt. Acts & Resolves 239, 245 (codified at VT. STAT. ANN. tit. 18, § 9371(11) (2012)).

177 Act 48, sec. 1(a), 2011 Vt. Acts & Resolves 239, 240; *Human Rights Assessment of Act 48*, *supra* note 173, at 2.

178 Act 48, sec. 1a(3), 2011 Vt. Acts & Resolves 239, 240.

vide a process for public input with regards to decisions about the financing mechanism and the benefits package, which addresses the principle of participation.<sup>179</sup>

The importance of using human rights principles to guide health care reform was repeatedly demonstrated during the campaign. For example, in the final days before the passage of Act 48, an amendment was added to the bill to exclude undocumented workers from participating in the new health care system.<sup>180</sup> Campaign organizers reminded Vermonters that human rights are universal and that all people are entitled to health care regardless of immigration status.<sup>181</sup> The simplicity and resonance of these human rights principles—already enacted in Act 128 in 2010—enabled the campaign to mobilize Vermonters to pressure the legislature to strip the exclusionary language from the final bill.<sup>182</sup>

Nonetheless, there are some concerns regarding whether the Green Mountain Care system will ensure that all Vermonters receive health care as a human right. For example, the universality of Green Mountain Care depends on a waiver and funding from the federal government that have not yet been granted.<sup>183</sup> Even if Vermont were to receive the funding and the waiver, it is likely the system would not go into effect until 2017, leaving thousands of Vermonters without health care in the meantime.<sup>184</sup> Moreover, the fact that Vermonters will be required to purchase private health insurance plans and pay substantial premiums, co-pays, and deductibles during the health insurance exchange phase of the plan does not satisfy the principles of equity in access or financing.<sup>185</sup>

It is not clear when Vermont will be able to implement the universal Green Mountain Care system. The federal legislation allows states to seek waivers from the federal Department of Health and

179 Act 48, sec. 3, 2011 Vt. Acts & Resolves 239, 252 (codified at VT. STAT. ANN. tit. 18, § 9378 (2012)); *Human Rights Assessment of Act 48*, *supra* note 173, at 2.

180 Shay Totten, *Show Us Your Papers!*, SEVEN DAYS (May 4, 2011), <http://www.7dvt.com/2011show-us-your-papers>.

181 James Haslam, *We Are Not Arizona!*, VT. WORKERS' CTR. (Apr. 26, 2011), [http://www.workerscenter.org/we\\_are\\_not\\_arizona](http://www.workerscenter.org/we_are_not_arizona).

182 *Id.*; Anne Galloway, *Lawmakers Call for Study of Migrant Worker Health Care*, VT DIGGER (May 3, 2011), <http://vtdigger.org/2011/05/03/health-care-conference-committee-hammers-out-details-on-day-one/>.

183 Chris Garofolo, *Vt. Lawmakers Push for Health Care Waiver*, BRATTLEBORO REFORMER (Vt.), Jan. 19, 2011, at 1.

184 *Human Rights Assessment of Act 48*, *supra* note 173, at 1.

185 *Id.*

Human Services to operate alternative programs in lieu of the federal health benefit exchange program beginning in the year 2017.<sup>186</sup> Nonetheless, Vermont's congressional delegation is working toward obtaining a waiver for Vermont by 2014.<sup>187</sup> Once Vermont receives a waiver, the health benefit exchange will be transformed into the universal system of health care. Under Act 48, the universal health care system will go into effect 90 days after Vermont receives the federal waiver.<sup>188</sup>

Despite many challenges, Vermont's health care reform efforts demonstrate that a human rights framework can be successfully used to craft state-level legislation that promotes the enjoyment of human rights by all. The Vermont example also shows the relevance that international human rights principles may have on state-level law and policy debates regardless of whether the international human rights treaties have been ratified or otherwise recognized at the federal level.

## V. Local-Level Implementation of Economic and Social Rights

### A. Human Rights Cities

Human rights implementation is also occurring at the municipal level.<sup>189</sup> Dozens of U.S. cities have passed resolutions calling on the United States to ratify the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>190</sup> Other cities have gone further and attempted to implement human rights treaties at the local level. In 2009, the cities of Carrboro and Chapel Hill, North Carolina passed resolutions adopting the Uni-

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186 Ellen R. Shaffer, *State Single Payer Waivers in HR 3590*, CTR. FOR POL'Y ANALYSIS 1 (May 3, 2010), available at <http://www.equalhealth.info/wp-content/uploads/state2singlepayeroptionsrevised5-13-10.doc>.

187 Garofolo, *supra* note 183. See also Gillian MacNaughton, *The Human Right to Health Care in the United States*, 45 CLEARINGHOUSE REV. 208, 214 (2011) (the PPACA deliberately prevents states that wish to provide universal and equal access to health care from doing so until at least 2017).

188 Act 48, sec. 4, 2011 Vt. Acts & Resolves 239, 266 (codified at VT. STAT. ANN. tit. 33, § 1822 (2012)).

189 Human Rights are also being implemented at the county level. See, e.g., Roslyn Solomon, *Global Goes Local: Integrating Human Rights Principles into County Health Care Reform Projects*, 11 HEALTH & HUM. RTS. 105 (2009); *Task Force on Universal Access to Health Care*, LEWIS & CLARK CNTY., MONT., <http://www.co.lewis-clark.mt.us/departments/health/board-of-health/health-access-task-force.html> (last visited July 5, 2012).

190 Davis, *Thinking Globally*, *supra* note 125, at 267.

versal Declaration of Human Rights as guiding principles for city governance.<sup>191</sup> The same year, the City of Chicago adopted a resolution in support of the United Nations Convention on the Right of the Child (CRC).<sup>192</sup> The resolution calls upon the city to promote policies and practices that comply with the principles of the CRC.<sup>193</sup> These resolutions appear to be largely symbolic at the moment. However, they could be used by grassroots advocacy campaigns in the future to press for human rights implementation at the local level.

One of the most well known examples of successful city-level implementation is the CEDAW Ordinance in San Francisco, which was adopted in 1998.<sup>194</sup> San Francisco's CEDAW Ordinance obligates all city and county government programs, agencies, and departments to take all necessary measures to prevent all forms of discrimination against all women and girls.<sup>195</sup> The Ordinance defines discrimination broadly to include policies that have a discriminatory effect on women and girls.<sup>196</sup> Additionally, the Ordinance requires that all city departments participate in human rights training and that selected city departments undergo a detailed gender analysis to identify discriminatory policies.<sup>197</sup> To date, a gender analysis of seven city departments has been completed.<sup>198</sup>

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191 Carrboro, N.C., Board of Aldermen, Resolution 89/2008–09 (2009), *available at* [www.ci.carrboro.nc.us/boa/Minutes/2009/04\\_21\\_2009.pdf](http://www.ci.carrboro.nc.us/boa/Minutes/2009/04_21_2009.pdf) (“Adopting the Universal Declaration of Human Rights as Guiding Principles”); Chapel Hill, N.C., Town Council, Resolution 2009-11-23/R-11 (2009), *available at* [http://townhall.townofchapelhill.org/agendas/2009/11/23/5p/5p-2009-11-23\\_r11.pdf](http://townhall.townofchapelhill.org/agendas/2009/11/23/5p/5p-2009-11-23_r11.pdf) (“Adopting the Universal Declaration of Human Rights as Guiding Principles”).

192 COLUMBIA LAW SCH. HUMAN RIGHTS INST. & INT’L ASS’N OF OFFICIAL HUMAN RIGHTS AGENCIES, STATE AND LOCAL HUMAN RIGHTS AGENCIES: RECOMMENDATIONS FOR ADVANCING OPPORTUNITY AND EQUALITY THROUGH AN INTERNATIONAL HUMAN RIGHTS FRAMEWORK 9, 26 (2009), *available at* [http://www.ncdsv.org/images/CNDHRA\\_StateLocalHumanRightsAgenciesReport\\_2009.pdf](http://www.ncdsv.org/images/CNDHRA_StateLocalHumanRightsAgenciesReport_2009.pdf).

193 *Id.* at 9.

194 *Id.* at 8, 28.

195 *Id.*

196 Davis, *Thinking Globally*, *supra* note 125, at 269.

197 *Id.*

198 ANU MENON, S.F. DEP’T ON THE STATUS OF WOMEN, HUMAN RIGHTS IN ACTION: SAN FRANCISCO’S LOCAL IMPLEMENTATION OF THE UNITED NATIONS’ WOMEN’S TREATY (CEDAW) 4 (2010), *available at* <http://www.sfgov3.org/Modules/ShowDocument.aspx?documentid=314>.

Each department that has undergone a gender analysis has identified internal policies and practices that have had a discriminatory impact on women and have worked to resolve those issues.<sup>199</sup> For example, after completing a gender analysis, the Department of Public Works “recognized the need to make specific efforts to recruit women into non-traditional employment positions” within the department.<sup>200</sup> The gender analysis also made it clear that service delivery decisions often impacted women and men differently.<sup>201</sup> It revealed, for example, that decisions regarding the number and placement of curb cuts in the sidewalks had a disproportionate impact on women due to the fact that caregivers for the elderly and young children were predominantly women.<sup>202</sup> An insufficient number of curb cuts made it more difficult for caregivers to navigate city sidewalks while pushing wheel chairs and strollers.<sup>203</sup> San Francisco’s CEDAW Ordinance demonstrates that local-level human rights implementation can have a positive impact on residents’ quality of life in a variety of unexpected ways.

As enthusiasm for sub-national implementation has grown in the United States, a few municipalities have become part of a human rights movement involving dozens of cities around the globe. The “Human Rights Cities” movement has sprung from the efforts of the People’s Movement for Human Rights Learning, formerly the People’s Decade for Human Rights Education (PDHRE).<sup>204</sup> The PDHRE asserts that the people of all countries must learn about human rights and human rights frameworks for international human rights laws to be effective.<sup>205</sup> Once individuals are educated about their human rights, they are better able to assert those rights to make positive change.<sup>206</sup>

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199 *Id.* at 5–8.

200 *Id.* at 5.

201 *Id.* at 5.

202 *Id.*

203 MENON, *supra* note 198, at 5.

204 STEPHEN P. MARKS ET AL., HUMAN RIGHTS CITIES: CIVIC ENGAGEMENT FOR SOCIETAL DEVELOPMENT 46 (2008), available at [http://www.pdhre.org/Human\\_Rights\\_Cities\\_Book.pdf](http://www.pdhre.org/Human_Rights_Cities_Book.pdf). For an explanation regarding PDHRE’s name change, see *About the People’s Movement for Human Rights Learning*, PEOPLE’S MOVEMENT FOR HUM. RTS. LEARNING, <http://www.pdhre.org/about.html> (last visited June 24, 2012).

205 MARKS ET AL., *supra* note 204, at 46.

206 *See id.* at 38.

The PDHRE envisions Human Rights Cities as places where a human rights framework is incorporated into local policies for the purpose of improving the lives of residents.<sup>207</sup> The process begins with a community-wide dialogue among local residents, activists, policy makers, and local officials for the purpose of educating everyone about human rights.<sup>208</sup> Through these local dialogues, community members begin to internalize human rights principles and develop a decision-making process that emphasizes transparency, accountability, and equal participation for all.<sup>209</sup> The educational dialogue culminates in city-wide action plans to implement human rights principles at the local level.<sup>210</sup> To date, over twenty cities around the world—including three in the United States—have declared themselves to be human rights cities.<sup>211</sup>

In 2008, Washington, D.C. became the first human rights city in the United States when the city council adopted a human rights city ordinance in celebration of the 60th anniversary of the Universal Declaration of Human Rights.<sup>212</sup> Since the ordinance was passed, D.C. public schools have begun to incorporate human rights education into the curriculum.<sup>213</sup> In April 2011, the City of Boston also adopted a resolution declaring itself to be a human rights city.<sup>214</sup> On September 23, 2011, local activists held a forum to begin to strategize ways to further human rights in Boston.<sup>215</sup> Perhaps the best example of a human rights city in the United States is the City of Eugene,

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207 PDHRE INT'L OFFICE ET AL., HUMAN RIGHTS LEARNING AND HUMAN RIGHTS CITIES: ACHIEVEMENTS REPORT 3 (2007), <http://www.pdhre.org/achievements-HR-cities-mar-07.pdf>.

208 MARKS ET AL., *supra* note 204, at 45.

209 *Id.* at 45–46.

210 *See id.*

211 *See PDHRE: Human Rights Communities*, PEOPLE'S MOVEMENT FOR HUM. RTS. LEARNING, <http://www.pdhre.org/projects/hrcommun.html> (last visited Apr. 25, 2012). In addition to the Human Rights Cities listed on the PDHRE website, as of 2007, three U.S. cities—Washington, D.C., Boston, Mass., and Eugene, Or.—have declared themselves to be Human Rights Cities. *See infra* notes 214, 216, 218.

212 Washington, D.C., City Council, Resolution CER17-0461 (2008), *available at* <http://www.pdhre.org/DC-HRC-Resolution.pdf>.

213 Karen Dolan, *Human Rights City Toolkit*, INST. FOR POL'Y STUD. (Mar. 26, 2009), [http://www.ips-dc.org/articles/human\\_rights\\_city\\_toolkit](http://www.ips-dc.org/articles/human_rights_city_toolkit).

214 Bos., Mass., City Council, Resolution 0563 (2011) (“Proclaiming Boston as a Human Rights City”).

215 Shawn Musgrave, *Forum on Building Boston into a Human Rights City Friday 9/23*, OPEN MEDIA BOS. (Sept. 21, 2011), <http://openmediaboston.org/node/1999>.

which has begun to implement human rights norms and standards at the local level.<sup>216</sup>

### B. Case Study: Eugene, Oregon Becomes a “Human Rights City”

Eugene is a small city with a population of approximately 160,000 people.<sup>217</sup> Like many cities in the United States, Eugene has had a human rights commission, composed of volunteers appointed by the Eugene City Council, for many years.<sup>218</sup> Like many “human rights commissions” in the United States, however, the Human Rights Commission in Eugene focused primarily on civil rights, such as eliminating discrimination in employment, housing, and access to city services.<sup>219</sup>

Because the commission’s work largely focused on civil rights, important economic, social, and cultural rights were left unaddressed.<sup>220</sup> Additionally, the focus on intentional discrimination meant that the commission was often reacting to problems rather than working proactively to address issues before they arose.<sup>221</sup> Further, the ordinance establishing the commission made it difficult for the commission to address policies that had an unintentional discriminatory impact but were not overtly discriminatory.<sup>222</sup>

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216 See *History: Eugene, Oregon, and Local Implementation of Human Rights*, HUM. RTS. CITY PROJECT, <http://www.humanrightscity.com/history.html> (last updated Dec. 22, 2011) [hereinafter *History*, HUM. RTS. CITY PROJECT].

217 *Id.*

218 *Human Rights Commission*, CITY OF EUGENE, <http://www.eugene-or.gov/index.aspx?NID=526> (last visited July 1, 2012).

219 *History*, HUM. RTS. CITY PROJECT, *supra* note 216; see also Kaufman, *State and Local Commissions*, *supra* note 121, at 91, 95 (many state and local human rights commissions were originally created to address racial tension, discrimination, and civil rights violations); see generally, N.Y. CITY COMM’N ON HUM. RTS., <http://www.nyc.gov/html/cchr/home.html> (last visited Apr. 23, 2012); BOS. HUM. RTS. COMM’N, <http://www.cityofboston.gov/civilrights/rights.asp> (last visited Apr. 23, 2012); D.C. OFF. OF HUM. RTS., <http://ohr.dc.gov/page/about-ohr> (last visited Apr. 23, 2012).

220 See *History*, HUM. RTS. CITY PROJECT, *supra* note 216.

221 See U.S. HUMAN RIGHTS FUND, PERFECTING OUR UNION: HUMAN RIGHTS SUCCESS STORIES FROM ACROSS THE UNITED STATES 95 (2010), available at <http://www.justdetention.org/pdf/ushumanrightsfund.pdf>.

222 Eugene, Or., Ordinance No. 19732, §2.265 (Nov. 5, 1990), available at [http://ceapps.eugene-or.gov/portal/server.pt/gateway/PTARGS\\_0\\_0\\_5848\\_319\\_0\\_43/http%3B/cesrvlf02/CMOWeblink/0/doc/368176/Page1.aspx](http://ceapps.eugene-or.gov/portal/server.pt/gateway/PTARGS_0_0_5848_319_0_43/http%3B/cesrvlf02/CMOWeblink/0/doc/368176/Page1.aspx) (amending sections 2.013, 2.109, 2.260, 2.265, 2.270, 2.275, 2.280 of the Eugene Code). This

To address these issues, in 2007, the commission began exploring ways that it could more fully incorporate international human rights norms and standards into its work and into city government.<sup>223</sup> The commission launched a “Human Rights City Project” that aimed to: (1) perform research on human rights initiatives in other municipalities; (2) launch a community-wide dialogue on human rights and their relevance to the City of Eugene; and (3) create specific proposals for the city council that would implement human rights at the city level more broadly.<sup>224</sup> This initiative began when Ken Neubeck, a local resident, read about the San Francisco CEDAW Ordinance.<sup>225</sup> Neubeck was inspired by this idea and wanted to introduce human rights to Eugene, as well.<sup>226</sup> He began by inviting WILD, an organization that had played a pivotal role in the San Francisco ordinance, to lead a workshop on human rights implementation at the local level.<sup>227</sup>

The first major challenge was educating the public and policy makers about international human rights and the benefits that a human rights framework could have on local life.<sup>228</sup> The commission partnered with local groups to hold a series of events including human rights summits, panel discussions, and workshops, as well as write newspaper articles and participate in radio broadcasts.<sup>229</sup> The commission’s Human Rights City Sub-Committee also held a series of trainings for commission members, volunteers, and local leaders.<sup>230</sup> These events gave the commission an opportunity to inform the community about the Universal Declaration of Human Rights and explain how these international human rights principles could positively impact the City of Eugene.<sup>231</sup>

The city grounded its human rights work on a framework set out in the Declaration.<sup>232</sup> Although many economic, social, and cultural

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ordinance focused on investigating complaints of discrimination and ensuring compliance with local, state, and federal anti-discrimination laws, rather than on systemic changes.

223 COLUMBIA LAW SCH. HUMAN RIGHTS INST., *supra* note 137, at 9.

224 *Id.*

225 U.S. HUMAN RIGHTS FUND, *supra* note 221, at 95.

226 *Id.*

227 *Id.*

228 *History, HUM. RTS. CITY PROJECT, supra* note 216.

229 *Id.*

230 *Id.*

231 *Id.*

232 CITY OF EUGENE, EQUITY & HUMAN RIGHTS , GLOSSARY OF TERMS 4 (2010), available at <http://www.eugene-or.gov/DocumentCenter/Home/>

rights are not recognized in U.S. law, these rights were incorporated into the shared vision of human rights developed by city officials and local residents.<sup>233</sup> The city provided a glossary of human rights definitions on its website and defined human rights as “the basic rights and freedoms to which all humans are entitled . . . such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the rights to participate in culture, the right to food, the right to work and the right to education.”<sup>234</sup>

The community response to the commission’s efforts was quite positive.<sup>235</sup> Indeed, local social justice groups joined the commission to form the Community Coalition for Advancement of Human Rights (CCAHR).<sup>236</sup> The commission and the CCAHR co-sponsored a celebration of the 60th anniversary of the Universal Declaration of Human Rights on December 10, 2008, at which Mayor Kitty Piercy issued an official proclamation declaring Eugene’s commitment to implementing human rights principles at the local level.<sup>237</sup> The Human Rights Commission agreed to sponsor the workshop, and as a result of the workshop and a series of internal discussions, the commission made human rights implementation one of its goals.<sup>238</sup>

In 2009, the city launched the Diversity and Equity Strategic Plan (DESP).<sup>239</sup> The purpose of the DESP was to ensure that human rights and diversity issues were at the forefront of policy discussions across city government.<sup>240</sup> In the introduction to the Plan, City Manager Jon Ruiz wrote that, “diversity and human rights should no longer be viewed as ‘programs’ but as core values integrated into the

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View/489 [hereinafter GLOSSARY OF TERMS].

233 MacNaughton, *Human Rights Frameworks*, *supra* note 92, at 439.

234 GLOSSARY OF TERMS, *supra* note 232, at 4.

235 U.S. HUMAN RIGHTS FUND, *supra* note 221, at 96.

236 *History*, HUM. RTS. CITY PROJECT, *supra* note 216.

237 Eugene, Or., Proclamation Declaring Local Commitment to Human Rights (Dec. 10, 2008), *reprinted in* COLUMBIA LAW SCH. HUMAN RIGHTS INST., STATE AND LOCAL HUMAN RIGHTS AGENCIES: RECOMMENDATIONS FOR ADVANCING OPPORTUNITY AND EQUALITY THROUGH AN INTERNATIONAL HUMAN RIGHTS FRAMEWORK 24.

238 HUMAN RIGHTS FUND, *supra* note 221, at 95.

239 See CITY OF EUGENE, DIVERSITY AND EQUITY STRATEGIC PLAN 2009–2014 5 (2009), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/515> [hereinafter CITY OF EUGENE, DESP].

240 See *id.*

very fiber of the organization.”<sup>241</sup> The DESP laid out a detailed five-year plan of action to remove barriers to participation and implement human rights in all city departments.<sup>242</sup> The DESP identified six target areas: leadership; capacity; workforce and work environment; service delivery; communication and engagement; and measurement and accountability.<sup>243</sup> For every target area, the DESP identified a series of “action items” and a detailed plan of action to achieve each goal.<sup>244</sup>

For example, the first action item was to “[e]nsure plan implementation by factoring diversity and human rights issues into city priorities.”<sup>245</sup> The first step to achieving this goal was for each of the six city departments to create its own plan for achieving the DESP goals by the end of the first year.<sup>246</sup> Another action item called on city officials to create a plan to “integrate Human Rights City concepts into city policies and procedures by the end of the second year.”<sup>247</sup>

In order to assess the effectiveness of the various action plans outlined in the DESP, the DESP also required that departments begin using the “Triple-Bottom Line Assessment Tool” (TBL).<sup>248</sup> The TBL measures city policy and procedures based on their impact on social equity, environmental health, and economic prosperity.<sup>249</sup> Social equity is described as “placing priority upon protecting, respecting and fulfilling the full range of universal human rights including civil, political, social, economic and cultural rights.”<sup>250</sup> The TBL goes on to declare the city’s goal of ensuring an “equitable and adequate social system with access to employment, food, housing, [and] clothing . . . .”<sup>251</sup> It asked officials how current or proposed policies and procedures met basic human needs, addressed inequities, and built capacity to advance social equity, among other things.<sup>252</sup> The city pro-

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241 *Id.*

242 *Id.* at 7–29.

243 *Id.* at 9.

244 CITY OF EUGENE, DESP, *supra* note 239, at 10–24.

245 *Id.* at 10.

246 *Id.*

247 *Id.* at 11.

248 CITY OF EUGENE, TRIPLE BOTTOM LINE ASSESSMENT TOOL (2009), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/1100>.

249 *Id.*

250 *Id.* at 2.

251 *Id.*

252 *Id.* at 2–4.

vided extensive trainings to officials and city employees on human rights frameworks and how to use the TBL effectively.<sup>253</sup>

With the Plan and the TBL in place, the city began working to implement human rights at the local level in 2010.<sup>254</sup> To begin, the city relied on Article 1 of the UDHR.<sup>255</sup> It states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”<sup>256</sup> The city also established a human rights framework to address the means by which it could implement international human rights standards and principles in its operations, including by: (1) “[p]roviding human rights education”; (2) “[b]eing proactive in Human Rights efforts”; (3) “[a]ddressing human rights violations”; (4) “[i]nsuring active public participation”; (5) “[b]eing transparent and open”; and (6) “[b]eing publicly accountable for progress.”<sup>257</sup>

To implement the framework, The Human Rights and Equity Center, home to the Eugene Human Rights Commission, initiated extensive trainings and human rights events for the Eugene Community.<sup>258</sup> The Human Rights Commission also created guidelines for city departments to ensure broad public participation.<sup>259</sup> In line with the goals of broad public participation, the Center also embarked on a “Human Rights Listening Project” in 2011 to explore what local residents thought of the current state of human rights implementation in Eugene and what they wanted the city to focus on.<sup>260</sup> The Center made a particular effort to reach youth, immigrant communities, and residents who were currently unhoused to explore their opinions and human rights needs.<sup>261</sup> After completing the listening

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253 CITY OF EUGENE, DIVERSITY AND EQUITY STRATEGIC PLAN: ANNUAL REPORT YEAR TWO 2 (2011), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/517> [hereinafter CITY OF EUGENE, DESP REPORT YEAR TWO].

254 See CITY OF EUGENE, DIVERSITY AND EQUITY STRATEGIC PLAN: ANNUAL REPORT YEAR ONE 4 (2010), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/516>.

255 See GLOSSARY OF TERMS, *supra* note 232, at 4.

256 UDHR, *supra* note 1, art. 3.

257 CITY OF EUGENE, DESP REPORT YEAR TWO, *supra* note 253, at 13.

258 See *id.* at 13–14.

259 See *id.* at 14.

260 CITY OF EUGENE, HUMAN RIGHTS COMMISSION FY 12/13 WORK PLAN 2–3 (2011), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/2710>.

261 *Id.* at 2.

project, the Center and the Commission made a series of recommendations to the Eugene City Council, including continuing dialogue and education about human rights standards and norms throughout the community and working with community groups, neighborhood associations, and the Sustainability Commission to increase social equity and promote human rights in Eugene.<sup>262</sup>

One of the most important recommendations made by the Commission was to change the language of the city ordinance that had established the Human Rights Commission to include a broader definition of human rights.<sup>263</sup> These proposed revisions were approved by the City Council on November 28, 2011.<sup>264</sup> While the original ordinance had focused on discrimination in employment and housing, as well as civil rights more generally, the new ordinance gives the commission the responsibility for establishing and encouraging programs and policies that “place priority upon protecting, respecting, and fulfilling the full range of universal human rights as enumerated in the [UDHR].”<sup>265</sup>

Although the ordinance was only recently passed, city departments have already begun to address economic, social, and cultural rights, such as the right to housing, the right to the highest attainable standard of health, and the right to food.<sup>266</sup> It is too early to

262 *Id.* at 3–10.

263 Eugene, Or., Ordinance No. 20481, § 2.265 (Nov. 28, 2011), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/493> (amending sections 2.013, 2.265, 2.270, 2.275, & 2.280 of the Eugene Code). Unlike the previous ordinance, this ordinance recognizes the full range of human rights guaranteed by the Universal Declaration of Human Rights and gives the human rights commission the power to address systemic barriers to achieving these rights.

264 *What is the Eugene Human Rights City Project?*, HUM. RTS. CITY PROJECT, <http://www.humanrightscity.com/faq/what-is-the-eugene-human/> (last visited Apr. 19, 2012).

265 Eugene, Or., Ordinance No. 20481, sec. 2 (Nov. 28, 2011), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/493> (amending section 2.265(1) of the Eugene Code).

266 Eugene has adopted a number of policies to improve access to public services for Eugene’s homeless residents. See HUGH MASSENGILL & CAROLYN McDERMED, PROJECT HOMELESS CONNECT FOR LANE COUNTY (2010), available at <http://www.humanrightscity.com/resources/eugene-human-rights-issues/a-local-eugene-issue--homel.html> (details on Project Homeless Connect, a program that provides access to services such as dental, medical, legal, counseling, housing, and assistance with benefits applications for under one roof); U.S. HUMAN RIGHTS FUND, *supra* note 221, at 96 (noting that the Eugene Public Library no longer requires a fixed address to get a library card

know the impact the expanded human rights ordinance will have on the implementation of economic, social, and cultural rights in the City of Eugene. Nonetheless, Eugene has already come a long way in recognizing the full spectrum of human rights and in attempting to implement them. Rather than asserting that government has no role in ensuring a right to health care or to housing, the city has recognized those rights and is now working on developing means to achieve them for all residents.<sup>267</sup> Admittedly, many economic, social, and cultural rights will be difficult to achieve at the city level. But the fact that Eugene has recognized these rights and is trying whenever possible to achieve them is a significant accomplishment.

Eugene's success illustrates that the concept of the Human Rights City can have a remarkable impact on local attitudes towards community and human rights. Raquel Wells, the Equity and Human Rights Manager for Eugene, argues that focusing on human rights has created a new space for community conversations: "Diversity for folks here was about pointing out the difference. In a community that is predominantly European American, diversity becomes a narrow and divided framework. The human rights frame seems to be more unifying. It asks, 'what can we collectively do to make this a better, more responsive place?'"<sup>268</sup>

Eugene also demonstrates how human rights commissions can evolve to tackle human rights issues more broadly. Major cities across the United States have human rights commissions that, despite their name, have tended to focus exclusively on civil rights and particularly on enforcing anti-discrimination laws.<sup>269</sup> Eugene, the Human Rights City, demonstrates how these commissions can be repurposed to address economic, social, and cultural rights as well.

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in order to allow the homeless access to the internet and other library services); *City of Eugene Passes Resolution for Choice in Mental Health*, MIND FREEDOM, <http://bit.ly/eugene-4989-1> (detailing an ordinance recently passed by the Eugene City Council recognizing choice in mental health treatment as a human right); PLANNING & DEV. DEPT., CITY OF EUGENE, FOOD SECURITY SCOPING AND RESOURCE PLAN (2010), available at <http://www.eugene-or.gov/DocumentCenter/Home/View/1087> (outlining the City of Eugene's recently developed program to study food security issues to ensure that all residents have access to food).

267 Cf. GLOSSARY OF TERMS, *supra* note 232 (supporting the fact that Eugene is taking steps to recognize the human rights of people living in its city).

268 U.S. HUMAN RIGHTS FUND, *supra* note 219, at 96.

269 See Kaufman, *State and Local Commissions*, *supra* note 121, at 91.

## VI. Conclusion

While the United States was a major proponent of economic and social rights in the 1930s and 1940s, it later denied that economic and social rights were real human rights at all.<sup>270</sup> There is evidence, however, that over the past decade the possibility of a new era for economic and social rights is emerging. In fact, today there are a myriad of modes by which economic and social rights are implemented in the United States. As the United States asserted in August 2010 in its Universal Periodic Review report to the Human Rights Council:

From the UDHR to the ensuing Covenants and beyond, the United States has played a central role in the internationalization of human rights law and institutions. We associate ourselves with the many countries on all continents that are sincerely committed to advancing human rights, and we hope this UPR process will help us to strengthen our own system of human rights protections and encourage others to strengthen their commitments to human rights.<sup>271</sup>

By recommitting to the holistic human rights framework that encompasses all human rights—economic, social, cultural, civil, and political—this administration is taking one step toward fulfilling the commitments the United States government made in the 1940s to people in the United States and around the world. And the Vermont Legislature and City of Eugene cases demonstrate that there is much for sub-national governments to do to embrace this commitment to the International Bill of Rights as well. Thus, despite the failure of the U.S. Senate to approve ratification of the ICESCR, the examples in this article illustrate that governmental entities at the federal, state, and local level already recognize and implement—albeit in nascent stages—international economic and social rights.

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270 See Alston, *Putting ESC Rights Back on the Agenda*, *supra* note 5, at 121, 134.

271 U.S. U.P.R. Report 2010, *supra* note 59, para. 5.