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Framing Economic, Social and Cultural Rights for Advocacy and Mobilization: Towards a Strategic Agenda in the United States

Northeastern University - Program on Human Rights and the Global Economy

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Framing Economic, Social and Cultural Rights for Advocacy and Mobilization:

**Towards a Strategic Agenda
in the United States**

NOVEMBER 3-4, 2011

NORTHEASTERN UNIVERSITY SCHOOL OF LAW

SPONSORED BY

The Program on Human Rights and the Global Economy
Columbia Law School Human Rights Institute
The National Economic and Social Rights Initiative
Human Rights USA

IN COLLABORATION WITH

The ESCR Working Group of the Bringing Human Rights
Home Lawyers Network

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*Framing Economic, Social and Cultural Rights for Advocacy and Mobilization:
Towards a Strategic Agenda in the United States*

2011 ESCR Institute

November 3-4, 2011

Northeastern University School of Law

“Framing Economic, Social and Cultural Rights Advocacy and Mobilization: Towards a Strategic Agenda in the United States” was the third in a series of institutes on cutting-edge social justice issues sponsored in the last six years by the Program on Human Rights and the Global Economy (PHRGE) at Northeastern University School of Law (NUSL).¹ This Institute was a collaborative effort by PHRGE, Columbia Law School Human Rights Institute, the National Economic and Social Rights Initiative and Human Rights USA in conjunction with the ESC Rights Working Group of the Bringing Human Rights Home Lawyers Network. The Institute brought together the legal and non-legal activists in the Working Group and academics engaged in sophisticated social movement analysis to think through strategies for moving an ESC rights agenda forward in the United States.

Historically, the United States government has been ambivalent, and sometimes openly hostile, to economic, social and cultural (ESC) rights. This past year the Obama administration acknowledged that it has obligations to implement ESC rights. These statements appeared both in its reports to the UN Human Rights Council for the Universal Periodic Review and in a speech by Michael Posner, Assistant Secretary of State for Democracy, Human Rights and Labor, before the American Society of International Law in March 2011. Particularly because of this new development, it is timely for human rights scholars and advocates to re-examine strategies to advance ESC rights in the United States. Considering such diverse topics as housing, health and decent work, Institute participants began to develop effective frames for the multiple forums in which ESC rights are shaped and contested, such as media, grassroots organizing, legislative advocacy and litigation.

As discussed in more detail below, the two-day Institute began with a keynote delivered by legendary organizer and Harvard Kennedy School lecturer Marshall Ganz. Professor Ganz discussed the concept of leadership, particularly as it relates to organizing a movement and shared examples of his beliefs based on events from his own life. The first panel, moderated by Risa Kaufman, Executive Director of the Human Rights Institute at Columbia Law School, expanded on these themes and discussed strategies for building an ESCR social movement in the U.S. The second panel, moderated by Larry Cox, formerly the Executive Director of Amnesty International USA, considered various frameworks for advancing ESC rights in the U.S.

The second day found the Institute participants in workshops analyzing framing strategies and discussing frames for various economic, social and cultural rights. Charlotte Ryan, Co-Director of the Media Research Action Project at Boston College, led a seminar on framing for legal advocates and then the participants formed smaller groups to discuss framing the rights to health, housing, adequate standard of living/social security, civil *Gideon*, decent work, education, and issues of racial discrimination.

The Institute concluded with the participants reporting their findings to the group and discussing next steps to be taken by the participants.

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Institute Day 1:

Keynote: *Marshall Ganz, Senior Lecturer in Public Policy, Harvard Kennedy School*

Discussant: *Cathy Albisa, Executive Director, National Economic and Social Rights Initiative*

Marshall Ganz opened the Institute by highlighting the movements for social change occurring around the world, from the “Arab Spring” to Anna Hariri and her fight against corruption in India to Occupy Wall Street and its off-shoots. At the same time he noted that these movements teach us that deep change cannot be accomplished by one party or one person but instead requires effective mobilization and organization of many. The question is, then, what is necessary for an effective social movement? Professor Ganz’s answer is leadership and organization.

Professor Ganz defines leadership of an organization as “accepting responsibility for enabling others to achieve purpose under conditions of uncertainty.” He contrasts this type of leadership with the “diva” version of leadership “where you illuminate all those who gaze upon you.” The former form of leadership is mindful and purposeful, and is necessary when things are not working properly and there are challenges that must be overcome. It is not about controlling the minutia of day to day operations -- that is the role of management -- but it is about embracing uncertainty and moving towards certainty. It is about finding the skills within oneself and within others to effectively deal with the challenges and about strategizing to use your resources in new ways. It is about finding the courage, the confidence, and the hopefulness to take the risk and to sustain the effort of the cause in spite of the challenges. The leader of a social movement asks not “what is my issue?” but rather “who are my people?” “What are the challenges that they face?” “How do I work with them so that they develop the power to take on those challenges?” The leader does not do things for people but rather engages with people to help them stand together and find the will and courage to help themselves.

After his exploration of leadership, Professor Ganz offered his assessment of what organizing is really about. While working in Mississippi in the 1960’s, Professor Ganz learned that while it is nice to bring books to, or teach a few kids, it is not organizing for justice. Organizing for justice is about determining who has the power. It requires the organizer to ask the questions, “In the system as it exists who is benefitting, who is losing, and why?” Once these questions are answered, the next step is to determine how to shift the power away from those who have it. Power must come from somewhere, and for those who need to create it the best way is to realize that resources can be changed into power. For example, in 1965 the NAACP needed to create power to challenge the racist dynamic of the time. They realized that while they had no power on their own, they had a tremendous resource: people. They arranged for Rosa Parks to get arrested in Montgomery, Alabama for refusing to accept the rules of a segregated bus, which spurred the wider community to support her by refusing to use the community’s buses. The bus company depended on people using it, and by refusing to use it the people were able to take its power away completely, with an economic ripple effect throughout the local economy and governmental structure. Power depends on the cooperation of those against whom it is being used. By taking advantage of the resource of people, the NAACP was able to acquire power despite the myriad ways in which racial discrimination was embedded in the society.

It all sounds so simple in theory, but how does one go about building an organization? Professor Ganz asked. His answer: it begins with relationship building, finding the people with whom you want to work. Next is the creation of a narrative. Narrative and storytelling can instill values and give people the courage and the hope to deal with challenges. Dealing with obstacles is the “core texture of human life,” Professor Ganz believes. “It is when we are at our most human. We are

infinitely curious about how to get the resources to address the obstacles we face.” This curiosity and sharing of emotion is what brings people to work together.

Properly structuring this new collection of people organized to address a shared obstacle or value is difficult as many people will reject being completely under another’s authority. The trick is to find the place between no-structure and complete structure by using teams of leadership in a collaborative way. For example, an organizer can have those “in charge” focus on coaching and assisting rather than directing. Finally, there must be a coherent strategy, a plan to turn what you have into what you need to get what you want. Narrative is often the first step of a strategy as it can create the necessary emotion to cause people to want to help, but narrative alone is not enough. The organization must have a plan for what comes after the emotion has taken hold.

Professor Ganz concluded his remarks by responding to two questions posed by the audience. First he expanded on the relationship between a social movement and political power. He stated that the two are not opposites; a movement is not about avoiding politics and the political system but is about influencing politics in different ways. A movement should be careful about getting co-opted by an institution, but eventually, if it is successful, a movement will have to institutionalize to some degree. Finally, in response to a question about lawyers’ roles, Professor Ganz explained that lawyers play a crucial role in a social movement as partners and collaborators. There is often tension between lawyers and organizers with the latter trying to make the former into a “rescuer” when things go awry, and the former trying to play the role of organizer. The key is to find a balance in the partnership because the law can be a powerful means of helping to shift power.

Cathy Albisa, Executive Director of the National Economic and Social Rights Initiative, followed Professor Ganz with remarks about where we are as human rights advocates today. One of the most important things we are doing today, she averred, is “just saying it” -- saying out loud and believing that human rights exist and are obtainable rather than discussing whether or not human rights exist and are feasible. If we now start from the premise that they do, and they are, it then just becomes a matter of figuring out how. Albisa argued that we have to unite under this belief so that we can help organize those people who are suffering to take the power back from those who are abusing it.

Panel 1: Strategies for Building an ESCR Social Movement in the U.S.

Doyle Canning, Co-Director, smartMeme

Richard Healey, Executive Director, Grassroots Policy Project

Robert Raben, President and Founder, Raben Group

The first panel of the Institute focused on how to build a human rights social movement in the U.S. Three speakers, Doyle Canning of smartMeme, Richard Healey of the Grassroots Policy Project and Robert Raben, principal of the Raben Group, spoke about their experiences with framing, social movements, and the nuts and bolts of moving issues forward.

Mr. Healey began by explaining how the value of “framing” has increased in the last decade. Over this time he has learned that truth and facts actually do not work terribly well to attract people’s attention and win their hearts and minds. More important, he argues, is to present a “worldview” or “ideology,” which he defines as the “collection of beliefs, norms, value systems, core themes, popular wisdom and traditions that people draw upon to help them make sense of the world.” Today, the dominant worldview is a conservative one. Even though there may be a progressive world view, it is not framed in a sufficiently compelling manner to make an impact.

This conservative worldview is one we all know, with four familiar components: (1) the individual pulls himself up by his bootstraps; (2) the infallibility of the market and market competition; (3) the need for less government because government is elite and the market knows better; and (added after the Great Depression) (4) the idea that the white man works hard and should be allowed to keep his money while the government is taking that money and giving it to non-whites. In general, every policy issue discussed by conservatives contains these four elements. This consistency is what makes the conservative position so strong, supported by a coherent narrative that grabs peoples' attention. Healey suggests that those fighting for ESCR need to unite under a singular world view and that the Occupy Movement gives some basic elements that should be included: (1) markets are good servants but bad masters; (2) inclusion and justice for all; (3) inequality hurts all of society; (4) racial/ethnic/gender disparities must end; (5) everyone has inherent worth and dignity; and (6) everyone in society is in this together.

Next, Ms. Canning discussed the power of memes and narrative. Human beings, she says, are hardwired to create and find patterns and make meaning out of those patterns because we are narrative animals. We tell stories and stories tell us who we are and what our place is; for example, there is not really a giant spoon in the sky but the Big Dipper has meaning for us. She echoed Mr. Healey's sentiment when she said "the currency of narrative is not truth, it is meaning." There is a difference between truth and meaning, and while myths are not true, they have great meaning for us. When starting a social movement and looking at the question of who has the power, part of that question must become what are the stories and narratives that justify the status quo and make the agenda of those in power appear legitimate? After answering that question the movement must find a narrative that challenges the power and undermines the assumptions that sustain the status quo. Changing a narrative is not about changing what people *don't* know, but is about changing what they think they *do* know. To illustrate this, Healey gave an example of a cartoon depiction of the "first Thanksgiving." Thanksgiving is a myth that people want to believe in; we know that in reality the event never took place and there was actually genocide and murder, but the myth persists because most people prefer the myth to the reality.

A meme is a device that can create this type of belief. It is a unit of self-replicating cultural information, contagious ideas, stories, and images that spread from imagination to imagination over generations. Examples of recent memes include: "banks got bailed out people got sold out," "we are the 99%," and "death panels." A larger meme used by the U.S. government is the fall of Saddam Hussein. There is a widely-circulated image of the mass of people pulling down the statue of Saddam Hussein which shows hope and glory of the people and populist intent. However, the same event, seen from the top of a building rather than in the crowd, shows that there are in reality only a handful of people there and they were surrounded by U.S. tanks and armed soldiers. This wide lens image is not the one we see because the government is very good at framing the meme, i.e., the story that they tell the public. If those fighting for ESCR want to influence anything, Canning concluded, they need to learn to use memes and stories effectively.

Robert Rabin offered a different perspective, that of a professional lobbyist. He spoke about the things a movement like Occupy must do in order to be taken seriously by those in power and to be effective in influencing others. First, the organization needs a precise goal because the more vague or amorphous the goal, the easier it is to be taken over by your opponent or be killed off by your opponent or your friends. For example, years ago there was a movement that wanted a woman to be appointed to the U.S. Supreme Court. With Sandra Day O'Connor's appointment, they got exactly what they asked for but not what they actually wanted. Second, the organization must focus on who the audience is, including those you *want* to talk to and those with the levers of change who you *need* to talk to. Third there must be a strategy: a transparent statement

explaining how to go forward. Fourth, strategy is different from tactics; tactics involves resource allocation, the question of who is doing what, where, and when? Strategy, Raben explained, is the overall method that encompasses tactics. Fifth, communication is critical. Everyone believes they are right and wants to talk to like minded people who reinforce their beliefs, but you have to communicate to the audience who can move your agenda and not just those who make you feel good. Finally, Raben advised, outside people need to come in to evaluate your strategy and tactics.

Raben then offered some more general comments on effective organizations. Money is extremely important, he noted, but votes beat money. Do not get complacent and lose hope because you lack money. Instead, he advised, echoing the keynote earlier in the day, learn to use your resources differently, and remember that intensity beats support. For example, Raben averred, it doesn't matter how many members are actually in the National Rifle Association, but the fact that they are trained to call politicians repeatedly and say "my vote depends on you not passing gun laws" makes them effective even if they actually have small numbers. Know your enemies better and stop assuming that everything they say and do is wrong. Sometimes your enemies have good ideas and are right. When that is the case, Raben observed, your opposition to those ideas just makes you look foolish and spiteful. Your position must have internal integrity and you need the courage to tell your friends to shut up when necessary. Being able to tell a friend that they are wrong is crucial to effective leadership.

The questions from the audience explored some of the issues raised by the panelists, including the nature of narrative and the problems associated with narrative. First, a participant questioned why the articulation of truth was not a stronger approach to supporting change. Richard Healey explained that people spend so many years internalizing the dominant and repetitive worldview that when someone comes along and shows them the truth they say "oh I didn't know that," but they do not retain it. Also, many people arrogantly believe that truth is the end of the conversation, when in reality it is the beginning. Next, a participant asked how to deal with the fact that a new worldview will automatically seem just contrarian and provoke immediate opposition. Panelists advised that a movement activist must plan for opposition by tying his or her alternative worldview to short-term goals and use resources to build a base of intense believers. Also, how you present your view must differ based on the audience. You communicate your assumptions to those who do not share them, but you communicate your story and your passion to those who do share them. Finally, one participant asked why so much rhetoric demonizes opponents rather than focusing on more positive aspects of organizing. Robert Raben speculated that elected officials are increasingly partisan because of increasingly homogenous districts, in which they are punished at election time if they don't come out strongly on one side or the other. So long as the public is motivated by fear, he posited, it will be difficult for officials to appear moderate or "wishy-washy" on issues.

Panel 2: Frameworks for Advancing ESCR in the U.S.

Maisie Chin, Co-Founder and Director, CADRE

James Haslam, Director and Lead Organizer, Vermont Workers' Center

Steve Hitov, General Counsel, Coalition of Immokalee Workers

Bill Kennedy, Managing Attorney Legal Services of Northern California

Tara Melish, Associate Professor of Law and Director of the Buffalo Human Rights Center, The State University of New York, SUNY-Buffalo Law School

The second and final panel of day one involved Maisie Chin of CADRE, James Haslam of the Vermont Workers Center, Tara Melish of SUNY Buffalo Law School, Steve Hitov of the

Coalition of Immokalee Workers and Bill Kennedy of Legal Services of Northern California sharing their respective experiences with human rights framing and organizing efforts in the fields of education, health care, labor, and other core social rights.

Ms. Chin led off by discussing how important schools are as fora for narrative. Schools are places where the narrative -- often only the dominant narrative -- is reproduced and drilled into the impressionable minds of children. As a result, though education always has a place in the budget, it is a political hot-button as every group tries to use education to further their own agendas. Ms. Chin's story focuses on enabling the parents of students who are being mistreated, forced out, and marginalized to find their power and exercise it to protect their children, and to accomplish this through the concept of the right to education. It began very simply with knocking on doors and listening to the stories parents told of school officials not sharing information, not responding to questions or concerns, and of parents not being allowed any insight into what actually happens to their children in school. Ms. Chin and her colleagues learned that all the parents had feelings of disrespect. They harnessed these feelings and began organizing parents around the ideas that they deserve dignity and respect from the schools as well as the notion that schools themselves have accountability for their treatment of students. Ms. Chin's organization, CADRE, developed ten standards of dignity and rights that schools need to live up to. As a result of organizing parents, gathering stories, and documenting rights violations, CADRE has spurred a new conversation about reforming school discipline and creating better accountability and transparency.

Mr. Haslam told the story of Vermont's human rights-based efforts to realize an effective public health care system. He recalled that when the Vermont Worker's Center first began speaking to state legislators about health care reform, the response was "it's not politically possible." The Center launched the Health Care is a Human Right campaign to change the political calculus and to reframe the debate away from the questions of money and financing, and towards the fact that there is a human rights crisis in the community. Workers Center activists went door to door for a full year gathering stories about how the health care system failed people. Many of those first people who shared became community organizers to bring others into the fold. When legislation was introduced, the Center staged people's forums where legislators could hear the stories and where people could explain to the legislators exactly what was meant by "health care as a human right." In this way they ensured that people, not money, remained at the center of the movement. By 2011 many of the people who had said that health care change was impossible were now treating it as a presumption, with the winner of the gubernatorial election actually saying that health care was a human right. Because of this sea change, when an amendment was added to exclude undocumented immigrants from accessing care, the Worker's Center was able to gather over 2000 people to rally against it. As a result, the senators who sponsored the bill came out saying they wish they hadn't and the amendment was stricken. Said Haslam, "politically impossible" is meaningless in the face of a mobilized population.

Steve Hitov provided the point of view of a litigator in labor and employment disputes. In the fight to address forms of forced labor in the tomato industry, Mr. Hitov and the Coalition of Immokalee Workers discovered that they had to use a human rights approach because the domestic legal system ignores the plight of farm workers, excluding them from most labor protection. Mr. Hitov explained his view that there are four distinct groups with relationships to rights in the U.S.: "marginalized" people have civil rights, "mainstream" people have regular rights, "privileged" people define what rights are, while "excluded" people must rely on human rights. He determined that the most effective way to advocate for these rights—to change systems of power—was to organize people to attack the value of the brand names of the big tomato companies. To this end the Coalition mobilized people through the use of marches,

demonstrations, theater, petitions and a boycott to put public pressure on the large companies that were supporting the subjugation of the farm workers. They created a website to help inform the public and formed alliances with faith groups, students, unions and consumer groups. This pressure led the large companies to negotiate with the Coalition and agree to pay a fair price for tomatoes grown on farms and support a bonus system for workers. In addition, the large companies agreed to purchase tomatoes only from farms that agreed to a fair food code of conduct, which in turn forced the farms to agree to the code or risk losing all their business. This effort achieved effective enforceable change in worker health and safety, freedom from retaliation, worker education, and the creation of a complaint resolution system. Concluded Mr. Hitov, basic labor rights can be achieved through a combination of strategic mobilization and contract law.

Bill Kennedy offered insights about framing in a campaign with many players. He explained that in any campaign it's rarely enough to have a single frame. You need one frame that will bind your base supporters, but that frame may be unpopular outside of that base. For example, when working on an issue of discriminatory land use growth in Sacramento, CA, legal services lawyers began by framing the issue in terms of civil rights. However, civil rights groups were not the only people involved in this campaign, and a civil rights framework did not speak to the environmental groups, the labor groups vehemently disagreed with it, the health care and clean air groups were displeased, and the education advocates felt ignored. Eventually, in order to pass a progressive land use law, they had to abandon their civil rights/human rights banner and work with all partners to create multiple frameworks. It is important to remember that in a campaign with multiple issues you don't have to decide which issue is most important, you just have to remember that you all want the same thing in the end.

Tara Melish closed the panel by highlighting what she views as the principle framing "disconnects" that frustrate effective human rights advocacy in the United States today, especially in the social rights field. These normative disconnects, she asserts, result from the discursive non-alignment between, on the one hand, what local groups like CADRE, the Vermont Workers Center, and the Coalition of Immokalee Workers are in fact doing to promote a "human rights-based approach" to social rights problem-solving at the community level—with their focus on facilitating local voice and democratic participation, story gathering, community monitoring, and social accountability to people's articulated dignity-based needs—and, on the other hand, the dominant human rights narratives that prevail in the United States today. These latter narratives, Professor Melish asserts, include the dominant (1) constitutional narrative, (2) human rights narrative, and (3) social rights narrative, each structuring the way Americans understand the role and place of human rights in domestic governance. If a national strategic agenda on economic, social and cultural rights is in fact to emerge in the United States, says Melish, each of these three narratives must be affirmatively "reclaimed" by the U.S. human rights community.

The first—the dominant constitutional narrative—defines rights in America as limited to negative restraints on government intrusion in private life and market orderings, portraying rights to positive government action as distinctly "un-American." This view is, in turn, reinforced by the "anti-democratic" frame that underlies the dominant human rights narrative. That vision portrays international human rights not as broad dignity-based and participation-enhancing norms for local articulation and construction by affected communities themselves, but rather as rigid rules determined by foreign elites for uniform compliance, irrespective of popular will. These "un-American" and "anti-democratic" frames are further fortified by the dominant social rights narrative, which asserts that social rights are mere programmatic goals, constitutively different in substance from "real rights." Because these interlocking narratives serve to marginalize and delegitimize rights discourse in the social and economic sphere, and because they are so widely

embraced in the U.S. cultural imagination—including by many human rights and social rights advocates themselves—they must be a center of strategic policy attention for those interested in moving forward a national social rights agenda. Without doing so, Melish concludes, Americans will continue to tune out, reacting coolly if not with open hostility, to any domestic discourse that highlights human rights as a basis for advancing social policy in the United States. Rather, an array of equally powerful and culturally-resonant social narratives are conceptually available that speak just as powerfully and emphatically to core American values and history, while also moving beyond the “separate but equal” doctrine that has prevailed in human rights theory over the last six decades with respect to social rights. It is these narratives, Melish asserts, that can and must be affirmatively reclaimed today.

The question period raised the important issue of how to counter attacks on your frame. The first question asked how the Vermont Worker’s Center addressed the counter-frame that was raised during the campaign, i.e., “health care providers are enslaved to provide care for those who demand it.” Multiple panel members explained how specifically not responding can be a powerful tool. If you are speaking to a particular audience and the counter-frame is not speaking to that same audience, there may be no reason to respond at all. Also, the people the counter-frame is meant to speak to are often (though not always) the opposite of those to whom you are speaking and can help drive more people to support your base as they are turned off by the counter-frame. The final question of the afternoon asked how one offsets the “socialist” or “un-American” label that often gets attached to people doing this kind of work? In response, the panelists emphasized the need to underscore the longstanding domestic basis for social rights in the United States, including in constitutional history, legislative policy, and customary understandings of social citizenship. Unfortunately, some in the human rights field oppose this approach because they see it as advancing domestic rights and actually harming the universal nature of human rights.

Dinner: Alternative Organizing

Kenneth Bailey, Founder, Design Studio for Social Intervention

Ken Bailey of the Design Studio for Social Intervention presented on the work that his organization does and how it can be a model for ESCR organizing. The Design Studio is an organization that creates and tests alternative ways of tackling social problems. The studio’s methods combine activism, arts, community building, and simple social gatherings to engage people around important issues faced by marginalized populations. For example, the Studio organized a two-day event called Public Kitchen which showed people that “public” doesn’t necessarily mean “broken” or “poorly run” and provided a model for desperately needed public services that don’t exist today. It also brought a people together to think and learn about food justice and claiming public space while providing fresh food to a poor community.

Mr. Bailey’s message was one of excitement and energy. He is a proponent of creating new and innovative ways of getting messages across and encouraged his audience to get excited, and to excite others, about tackling social issues. By invoking super-heroes and mythical beasts, Mr. Bailey reminded the group that there is almost never only a single way to engage a social problem and that one should always be open-minded to different approaches; even one that seems a bit crazy could be the one that takes hold.

Institute Day 2: Workshops

The second day of the Institute focused on the practical questions raised in the context of framing particular human rights issues. Before breaking into smaller groups, Professor Charlotte Ryan and her team led a short session on “how to frame” an issue, giving participants a chance to practice this approach before gathering in their issue-focused groups. This practice session required that groups answer the following questions for a set of sample themes: (1) how does the theme appear in ESCR cases and campaigns?; (2) What are the challenges to campaigning on this theme or the methods the theme is undercut by opposition?; (3) What images could be used that would be useful to advance the theme?; (4) What person, or type of person, would be a credible messenger for advancing the theme?

This exercise was a good starting point for the workshops that followed. The workshops were organized around human rights topics and included around 10 participants each. To get the ball rolling, each group was given three questions to address in some form: (1) what are the strategic alliances we need to build and how do we build them?; (2) What should be the next steps for an ESCR movement in the US and how do we build support for the movement?; and (3) How can the ESCR Working Group support this agenda? These questions were used as jumping off points for in-depth conversation.

Right to Health:

Facilitator: *Maria Green, Visiting Scholar, Program on Human Rights and the Global Economy, Northeastern University School of Law*

Rapporteur: *Katrina Anderson, Human Rights Counsel, US Legal Program, Center for Reproductive Rights*

Facilitator Maria Green started off this session by asking the group to assess the status of the right to health in the U.S. at this time. Participants named the lack of a universal healthcare system as a fundamental problem then identified numerous barriers to the exercise or fulfillment of the right to health ranging from poor quality to lack of affordable goods and services, structural barriers, inequality, legal discrimination, health disparities, and poor outcomes.

The group identified the need to build strategic alliances among mainstream groups working to build the right to health and groups or issues that are often excluded out of fear they will jeopardize the larger goals (e.g., immigrants, reproductive rights). Sometimes groups do not want to work together even when they share common goals, as we saw in Vermont with the split between the health technocrats and reform activists. The group agreed that building a multi-disciplinary movement, although unwieldy and challenging, offers the best opportunity for real change because the problems are so entrenched and enormous. Groups we should connect with include unions, public health professionals, faith communities, direct service providers, nurses, caretakers, health education professionals, racial justice groups, child welfare groups, and legal service providers.

The first step towards building this movement is to determine a vision of what we want the right to health to be in the U.S. The group acknowledged the challenge of coming up with this vision on our own, since few advocates working on health care reform personally experience disparities in access or outcomes. However, the ESCR Working Group can begin the conversation by articulating a vision based on universality, dignity, and the idea that our national institutions should be organized to fulfill these principles. Next, we need to educate ourselves about what the right to health means under international human rights law, and how other movements to establish universal healthcare have succeeded.

We also need to identify the arguments against universal healthcare and acknowledge that some people may be giving something up under such a system. If we engage the quality of care argument with integrity, we can then argue that the costs to individuals are worth it because society as a whole will gain immeasurably. By engaging public health professionals, we can learn which messages can help to counter the opposition's personal responsibility and cost containment arguments. The working group can help that discussion along, in part by articulating a broad agenda in the right to health framework during the U.S. reporting processes to the human rights treaties. Rather than getting into the weeds of health policy, the working group's best role is to articulate the standards and principles the government ought to meet focusing on the procedural principles first, such as participation and transparency. Finally, we need to engage in a frank debate over equality as a goal of healthcare. There was disagreement among workshop participants between those who want to strive for equality as a goal, versus those who argue that equality is too hard to measure, will not resonate with the American public, and is not as strong as a non-discrimination framework.

Right to Housing:

Facilitator: *Maria Foscarinis, Executive Director, National Law Center on Homelessness and Poverty*

Rapporteur: *Gil Rochbert, Post-JD Fellow, Program on Human Rights and the Global Economy Northeastern University School of Law*

This session began with a discussion of the wide range of domestic work being done on this issue in the various participants' work. Town councils have been making sure to invest in affordable housing at the local level, advocates have addressed problems of domestic violence in public housing, and advocates have fought "banning lists" where people are excluded from property completely, tying this to the right to family. Advocates have also opposed segregation of housing by income, noting its affects on education. The Seven Concepts of the Right to Housing form an underpinning for this work. In general however, most of this work is done in a defensive posture, reacting to problems that arise rather than seeking to prevent them from occurring.

In terms of strategic alliances the group felt that there are a number of non-legal people that could be brought into the campaign. Echoing the sentiments of Robert Rabin, the group mentioned hiring communications experts to help reframe the images and create the "public housing world view." Additionally, urban planners, economists and the groups that engage in "take back the land" campaigns can help create a larger constituency. It is important to engage with people in many different areas because the right to housing necessarily involves issues of education, work, health and others. Also, we need to remember that we don't need to build alliances for all purposes, but can ally with a particular group for one purpose and another group for another purpose. The group also raised a question that we had difficulty answering: do you find partners first or determine your strategy first?

When discussing next steps the group realized that the problem with the movement is that we know what the right to housing does *not* look like, but we don't know what it *should* look like. We have no coherent vision for where we are going. The best we have at the moment are the Seven Concepts discussed by the National Law Center on Homelessness and Poverty: security of tenure; availability of services, materials and infrastructure; affordability; accessibility; habitability; location; and cultural adequacy. The problem is that these are very high level concepts and we lack a vision for what they look like practically.

One practical discussed included raising the minimum expected standard beyond simply the provision of emergency housing for vulnerable groups. Some cities are using linkage programs where any development being built is required to have a number of affordable units. There are many foreclosed properties available for rehabilitation and purchase and yet builders continue to create new properties. One possibility is to turn these properties into public or affordable housing. Additionally, community participation in these steps and any others taken is crucial. There was also discussion of examining legal frameworks in South Africa, New Zealand and Scotland, countries which have recently had to address similar issues in housing.

In terms of framing, we must move away from the stigmatization of public housing. People too often feel that it is a giant disaster and always associate it with crime- and poverty-ridden projects. We should change the image to show and celebrate model public housing environments, not just those that have struggled. We should be careful though to rehabilitate the image rather than move away from the image. If we try to dodge it we risk looking as if we are trying to hide the truth.

Finally, there are a few ways the Working Group can help support this agenda. Members of the Working Group can help answer the question “what does a right to housing look like?” by giving their opinions as well as putting the question to the communities they work with. The Working Group can help bring together the many groups that are working on these issues to share projects, successes and ideas. Lastly, the Working Group is affiliated with any number of groups, universities and organizations and can access resources to help accomplish our goals.

Right to Adequate Standard of Living/Social Security:

Facilitator: *Wendy Pollack, Director, Women’s Law and Policy Project, Sargent Shriver National Center on Poverty Law*

Rapporteur: *Lucy Williams, Professor of Law, Northeastern University School of Law*

Currently, roughly 15 percent of the population is considered to be in poverty. Despite this, states are making huge cuts in TANF and General Assistance programs; programs that are sometimes the only things standing between a person and starvation and homelessness. Meanwhile, the public discourse is trapped in the frame that “cash assistance creates dependence” causing many to oppose welfare programs while also ensuring that any time issues of poverty are raised they immediately remember their hatred of “handouts.” But poverty and standard of living issues go far beyond welfare, and we need to remind to stop stigmatizing the poor.

The group discussed how lessons can be learned from the ways that domestic violence became a social issue. Society accepted the need to talk openly about domestic violence because it was shown that it can affect anyone regardless of race, ethnicity, age, economic status, etc. Poverty similarly crosses all racial, gender and ethnic boundaries. From here, it was discussed that, just like the Vermont Worker’s Center did with health care, the movement should emphasize that the issue is not about budget or politics, but it is about people, and the inherent dignity that all people share. Additionally, it is important to start changing society’s impression of the generic “poor person” so that people remember the issue crosses all socially constructed boundaries and affects everyone.

Civil Gideon:

Facilitator: *Martha Davis, Professor of Law, Northeastern University School of Law*

Rapporteur: *Theresa Harris, Executive Director, Human Rights USA*

This group started with a discussion of the ideas behind civil *Gideon* (the right to be appointed counsel in a civil case) and what civil *Gideon* really means. Though the right to appointed counsel in a criminal case is deeply rooted in our constitutional jurisprudence, there is no comparable right in a civil case. Access to an attorney is an essential component of the health of our democratic system. It is a kind of preventive democratic health care: preventing people from being disenfranchised and from taking the law into their own hands. In spite of the importance of legal assistance, many people who have suffered real injury cannot afford the services of an attorney and are forced to go it alone, and possibly lose their chance to seek redress. We need to make sure our legal system isn't eroded because one side can afford to use it and the other one can't.

This could be especially compelling in the landlord/tenant context where resources are almost always unequal. There was a sense in the working group that "Access to Justice" is a more accurate and appealing term than "Civil *Gideon*." If we focus only on trials, we miss the opportunity to do reform work. If people cannot access an attorney until trial, it might be too late to stop a chain of events that leads to poverty.

Community organizing was emphasized as an important component of any access to justice campaign. Communities need to be their own advocates for solutions. Are there ways communities could take on some of the roles of lawyers, such as serving as advocates in administrative proceedings? Pros and cons of this were discussed. It was agreed that since a challenge to the movement is that it could be portrayed as a "job security" campaign for lawyers, community leadership would help counter that allegation. However, some expressed concerns about how a similar type of community paralegal program in administrative courts did not work in one case. Some possible solutions were discussed such as community housing counselors who could provide initial triage assistance and then if the case eventually went to court, hand it to an attorney. The working group pointed out that something similar might also help in family courts, where the need far outweighs the availability.

The group next discussed some of the key concepts that have been gaining traction in the movement: that the complexity of modern society requires specialized assistance to navigate the legal system; that there is inequity in access to that expert assistance, which results in further, deeper inequities; that when fundamental human needs are what is at stake, this lack of access to an attorney has devastating consequences; that the systems cannot be fair without access to justice. The biggest challenge to the campaign, though, is that the cost needs to be acknowledged, not glossed over. Because of the cost, incremental change is probably the most realistic goal. Showing cost savings could be a key to change. The working group discussed the need to look at efficiencies, savings over time of having a final determination, the savings in preventing homelessness, etc. However, there are some problems with this approach. For example, it is very difficult to track.

Other general criticisms that will need to be addressed include the question "why are we paying for this anyway?" -- the idea that these people got themselves into a mess so they should get themselves out or suffer the consequences. Another expected critique is that civil *Gideon* will allow lawyers to bring nuisance suits. Finally, many will ask why should taxpayers pay for the abusers' attorneys too?

The working group discussed the CERD Committee's recommendations to the U.S. to allocate resources for legal representation for minorities in civil proceedings when basic needs are at stake. It was agreed that the language that needs to be used in the international context was not as

compelling for a domestic audience. While the rights-based framework is compelling to attorneys, it may not be the most motivational message to U.S. constituencies. We need to connect the right to counsel with the underlying right it protects. This was suggested as an alternative: Equal access to the law so that one can protect one's own rights is essential in the U.S. because that is how we resolve conflicts in a democracy, through due process and fair hearings.

Finally, the group identified possible partners and next steps for the working group. The civil Gideon community, high school civics classes, community organizers and lawyers engaged in community-based lawyering are all people who should be included in any campaign for civil Gideon. The working group should engage with these people, then look at case studies where non-lawyers took the lead and see how they worked, look for cost/benefit studies, and think more about how to use international mechanisms and frameworks to advance campaign goals.

Right to Decent Work:

Facilitator: *Sarah Paoletti, Practice Associate Professor of Law and Director, Transnational Legal Clinic, University of Pennsylvania Law School*

Rapporteur: *Catherine Norris, Staff Attorney, Harlem Community Law Office*

This breakout session began with a discussion of the current state of the domestic movement for the right to decent work. Participants highlighted that the human rights frame is effective because virtually everyone can relate to the right to decent work and the import of being treated with dignity and respect in the workplace. Invoking such general values is often more powerful than citing violations of various statutes or treaties and captures injustices not recognized under U.S. law. Thus, the group discussed using the human rights frame in two key ways in this arena: (1) as a gap-filler where we lack domestic law or the existing law is bad, and (2) to change domestic law. Incorporating human rights into domestic litigation is challenging, but it has the potential to be a useful interpretive tool. It is key to remember that litigation is just one tool among many.

More concretely, the group reflected on the recent human-rights-based successes of the Coalition of Immokalee Workers, United Workers in Baltimore, and Vermont Workers' Center. United Workers found the human rights frame key to uniting diverse groups. The group explicitly relied on human rights as an organizing principle—appealing to the human rights values of respect, dignity, and sanctity of life—and a naming principle, according which it described workplace injustices as human rights violations.

The breakout group identified the following next steps for the domestic ESCR movement with respect to the right to decent work: adopt the right to worker dignity as the applicable frame; accumulate local wins and victories in small battles; continue learning from each others' challenges and successes to build something broader and bigger; link local struggles to create the meta-frame; and generally build the social movement, such that the courts eventually follow.

The discussion of strategic alliances underscored the import of engaging with groups that are already organized. Key targets for alliances include labor unions, Students Against Sweatshops chapters, women's rights groups, small business owners and entrepreneurs, economic development players (including good government and smart growth folks), the unemployed, and groups that focus on reentry work (combating barriers to employment for those who have been in the criminal justice system).

Participants were hopeful that the working group can help move the above ideas forward by cataloguing and circulating case studies of ongoing work and folks' successes and challenges. It was also suggested that the working group could assist with bringing claims in international fora to develop international law that can then be invoked at home.

Right to Education:

Facilitator: *Liz Sullivan, Human Right to Education Program Director, National Economic and Social Rights Initiative*

Rapporteur: *Gillian MacNaughton, Executive Director, Program on Human Rights and the Global Economy, Northeastern University School of Law*

This workshop first identified some of the significant problems in k-12 education in the United States. These include: (1) school pushout – certain populations being pushed out of school; (2) the disparities and inequity; (3) the achievement gap; (4) lack of student voice; (5) privatization of education; (6) new models repeatedly introduced and then dropped; (7) teacher unions under attack; and (8) lack of quality education. Several additional challenges surfaced during the discussion, including keeping survivors of bullying safe in schools when the perpetrators are in the same school, changing the perception that pushout is a “boys thing,” developing a discipline policy that is based on the goal of 100 percent graduation, and ensuring that policies adopted are implemented and monitored.

The group then discussed how human rights could be used to address some of these challenges. In particular, we acknowledged that different populations were affected differently and that it was important to identify different solutions for specific situations. One person suggested involving everyone in coming up with solutions, especially in case of the survivor/perpetrator attending the same school. The central idea of the right to education is to protect everyone's human rights and try to get everyone through school. Another person suggested a restorative justice model. One person stated that the right to education was about “access” to education but should be about staying in school to graduation.

For possible alliances, we identified youth, constitutional lawyers, teachers, progressive educator groups, teacher unions and student groups. One person mentioned that HREA already has a network for human rights in schools. For strategies to link up with these potential allies, suggestions included: (1) volunteer in a classroom and teach human rights, (2) incorporate human rights into teacher and social worker education, (3) do an in-service training for teachers. We also identified three projects for the working group: (1) review the model disciplinary code that NESRI is finalizing in December 2011; (2) organize an in-service training for teachers on human rights generally and the right to education specifically; and (3) draft a Right to Education Charter.

Race Discrimination and ESC Rights:

Facilitator: *Bill Kennedy, Managing Attorney, Northern California Legal Services*

Rapporteur: *Ejim Dike, Director of Human Rights Project, Urban Justice Center*

Participants here shared the view that race, as a subject, has disappeared from public discourse and this trend must be reversed. The group opened with the observation that race is more difficult to discuss in the time of Obama primarily because, to many people, the election of an African American President signals that the issue of racial inequality is in the past. We then circled the table with each participant discussing how they have seen the issue engaged in their day to day lives. Among the examples offered was the fact that policing in New York City consistently uses

racial profiling to stop and search suspects even though statistically they are no more likely to have contraband than whites. Legal challenges are difficult yet the continuing practice takes a heavy toll on the people affected.

We moved next to a discussion of race in the workplace. People found that it was very difficult to raise issues of race with co-workers. The group discussed these challenges and some relatively new psychological studies that revealed that people of color were reluctant to raise issues of racial disparities in the workplace even when they are obvious. This reluctance may hinder change, but the same study also pointed out that when people of color do complain about racial disparities they become victim to white stereotyping. This was a very sad commentary.

The group discussed race in the context of strategic alliances. Some suggested that the human rights frame can create “space” for discussions of race. Indeed, it was thought that moving the discussion from the civil rights frame to the human rights frame could open up opportunities that would not exist in the tightly defined world of civil rights advocates. Too often the civil rights frame unfolds in the context of perpetrator/victim which can be limiting while the human rights frame is fundamentally inclusive. One participant felt that the newly developing cognitive science that details the way bias is formed and can be overcome could help to spur discussions that lead to strategic alliances with people who understand the commonality of bias.

Public higher education was the next issue discussed. One participant told of a university case study questioning why only 4 out of 400 tenured professors who were African American. The study revealed the importance of in group/out group politics in advancement and the prevalence of cliques that support in group advancement. Racial/ethnic minorities do not have the critical mass needed to counter these prevailing obstacles to advancement, obstacles which are often invisible. We don’t seem to value inclusion as an outcome so we don’t look to remove these obstacles.

One participant mentioned the view that the human rights frame was embraced most often by white lawyers who were viewed as elitist. Others suggested that siloing of issues made broad application of the human rights framework difficult with many groups believing that a new framework would not be helpful.

When discussing next steps the group concluded that all too often the right people are not at the table. In a world clinging to the colorblind paradigm for analysis we must all act to ensure that any group making decisions for a community should reflect the racial/ethnic make up of that community.

Concluding Session:

The Institute closed with a conversation about how participants can take what was discussed over the last two days and use it in their own work, and how the ESCR Working Group should be moving forward. The first practical message mentioned was the notion that we need to find a different approach to human rights that appeals to Americans more strongly than the usual approaches used internationally; for example, we should deliberately tie the universal ideals of human rights to American ideals. Additionally, participants wanted to challenge the characterizations of the “big bad company and good government.” We need to realize that it is possible for companies to be good and the government to be bad.

The working group in the meantime can help create a communal “story” to frame ESCR generally by continuing to have conversations that are increasingly focused. The group should

share real life case studies to give others ideas and should look at messages and frames that have been field tested in other areas. The members of the working group have such a broad range of skills and experiences that they can help define the role of the lawyer within a movement and help allocate resources. Together they can also devise responses to the common arguments against the realization of ESCR and try to expand the reach of ESCR training into non-traditional areas like childhood education.

Participants in this year's Institute hope to augment their ongoing efforts by continuing this conversation in as many forums as possible.

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