

April 01, 2011

The Boston principles: an introduction

Hope Lewis

Northeastern University School of Law

Rachel E. Rosenbloom

Northeastern University School of Law

Recommended Citation

Lewis, Hope and Rosenbloom, Rachel E., "The Boston principles: an introduction" (2011). *School of Law Faculty Publications*. Paper 26. <http://hdl.handle.net/2047/d20001183>

This work is available open access, hosted by Northeastern University.

COMMENTARY

THE BOSTON PRINCIPLES: AN INTRODUCTION*

Hope Lewis** and Rachel E. Rosenbloom***

INTRODUCTION

The Boston Principles on the Economic, Social, and Cultural Rights of Noncitizens (“Boston Principles”) are a proactive response to two significant trends in the treatment of noncitizens in the United States.

Beginning in the mid-1990s and gaining momentum after September 11, 2001, the federal government has adopted increasingly harsh deportation policies and dramatically expanded immigration enforcement—all in the name of national security. Annual rates of deportation have increased tenfold over their levels just two decades ago.¹ Congress has stripped immigration judges of much of their authority to grant waivers of deportation on humanitarian grounds,² and has imposed restrictions on the filing of asylum claims.³ Federal

* The authors thank the many participants in the “Beyond National Security: Immigrant Communities and Economic, Social, and Cultural Rights Institute,” the staff of the Program on Human Rights and the Global Economy and Northeastern University School of Law, and the staff, students, and colleagues who contributed to, or commented on, the Draft Principles. Special thanks to PHRGE Post-J.D. Fellow and Project Researcher Jane Moisan, Ford Foundation Fellow Mariah McGill, PHRGE Executive Director Gillian MacNaughton, Associate Dean Martha F. Davis, and research assistants Melissa Joyce and Gil Rochbert. We thank the Ford Foundation and the Human Rights Interest Group of the American Society of International Law for sponsoring the Institute. We thank Professor Doug Cassel, Ms. Jolie Schwarz, and the organizers of the symposium. Professor Lewis is also grateful for the support and inspiration for this project provided by her mother, Blossom Stephenson.

** Professor of Law, Northeastern University School of Law.

*** Assistant Professor of Law, Northeastern University School of Law.

¹ Between 1990 and 2010, the annual number of deportations rose from 30,039 to 392,862. See OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SEC., 2009 YEARBOOK OF IMMIGRATION STATISTICS 95 (2009), available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf; Andrew Becker, *Unusual Methods Helped ICE Break Deportation Record, E-mails and Interviews Show*, WASH. POST, Dec. 6, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/05/AR2010120503230.html>.

² See generally AM. BAR ASS’N & LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUCATION FUND, *AMERICAN JUSTICE THROUGH IMMIGRANTS’ EYES* (2004), available at http://www.civilrights.org/publications/american-justice/american_justice.pdf.

immigration authorities are increasingly delegating immigration enforcement to state and local police,⁴ with mounting evidence in some jurisdictions that this delegation of authority has resulted in an increase in racial, ethnic, and religious profiling.⁵

During the same period, a wave of state and local laws has taken aim at the rights of noncitizens in areas such as employment, housing, health, family life, and education, often with the explicit aim of encouraging undocumented immigrants to “self-deport.”⁶ Examples of recent laws that have been proposed or enacted include a local ordinance barring landlords from renting apartments to undocumented immigrants,⁷ a state bill that would have required hospitals to check immigration status before providing basic medical care,⁸ a state law prohibiting ethnic and cultural studies courses,⁹ and a coordinated effort in several states to curtail the Fourteenth Amendment’s guarantee of birthright citizenship.¹⁰

Immigrant communities and their supporters within the United States are increasingly turning to the international human rights framework in response.¹¹ They have done so through shadow reports¹² and testimony to

³ See Philip G. Shrag, Andrew I. Schoenholtz, Jaya Ramji-Nogales & James P. Dombach, *Rejecting Refugees: Homeland Security’s Administration of the One-Year Bar to Asylum*, 52 WM. & MARY L. REV. 651 (2010).

⁴ See Jennifer M. Chacon, *A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights*, 59 DUKE L.J. 1563, 1579–98 (2010) (describing state and local involvement in immigration enforcement).

⁵ See RIGHTS WORKING GRP., *FACES OF RACIAL PROFILING: A REPORT FROM COMMUNITIES ACROSS AMERICA* 34–44 (2010) (describing profiling in immigration enforcement by state and local police). See also *id.* at 24–36 (describing profiling by federal immigration officers).

⁶ See Huyen Pham, *When Immigration Borders Move*, 61 FLA. L. REV. 1115, 1125 (2009) (describing the strategy of “enforcement through attrition”).

⁷ See *Lozano v. City of Hazleton*, 620 F.3d 170, 224 (3d Cir. 2010) (striking down on preemption grounds a local ordinance in Hazleton, Pennsylvania, prohibiting landlords from renting to tenants unable to prove U.S. citizenship or authorized immigration status).

⁸ Arizona Senate Bill 1405 would have required hospitals to check citizenship and immigration status before admitting patients for non-emergency care, and to inform federal immigration authorities of any patients who lacked authorized status. See S.B. 1405, 50th Leg., 1st Sess. (Ariz. 2011), available at www.azleg.gov/legtext/50leg/1r/bills/sb1405p.pdf (last accessed March 3, 2011). It was rejected by the Arizona State Senate. See Liuge del Puerto, *Arizona Senate Rejects Immigration Bills*, ARIZ. CAPITOL TIMES, Mar. 17, 2011.

⁹ See Marc Lacey, *Rift in Arizona as Latino Class is Found Illegal*, N.Y. TIMES, Jan. 7, 2011, at A1.

¹⁰ See Julia Preston, *State Lawmakers Outline Plans to End Birthright Citizenship, Drawing Outcry*, N.Y. TIMES, Jan. 6, 2011, at A16 (describing efforts in Arizona, Georgia, Oklahoma, Pennsylvania and South Carolina).

¹¹ See generally Inter-Am. Comm’n H.R., *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II, Doc. 78/10 (Dec. 30, 2010), available at <http://cidh.org/pdf%20files/ReportOnImmigrationInTheUnited%20States-DetentionAndDueProcess.pdf>; HUMAN RIGHTS WATCH, *FORCED APART* (2007), available at <http://www.hrw.org/en/node/10856/section/10>; AMNESTY INT’L, *JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA* (2007), available at <http://www.amnestyusa.org/uploads/JailedWithoutJustice.pdf>; NAT’L NETWORK FOR IMMIGRANT AND REFUGEE RIGHTS, *GUILT BY IMMIGRATION STATUS: A REPORT ON U.S.*

international human rights monitoring bodies, bringing cases to the Inter-American Commission on Human Rights,¹³ incorporating international standards into domestic legal briefs, and employing international human rights frameworks in media outreach and educational campaigns.

These developments led a group of human rights and immigrants rights scholars and advocates to organize an institute titled “Beyond National Security: Immigrant Communities and Economic, Social, and Cultural Rights” at Northeastern University School of Law in Boston, Massachusetts (United States of America) on October 14–15, 2010. Convened by the Program on Human Rights and the Global Economy (PHRGE) with the sponsorship of the Ford Foundation and the Human Rights Interest Group of the American Society of International Law, the institute brought together leading immigrants’ rights attorneys, human rights advocates, as well as scholars of law, political science, and sociology to discuss these developments during the course of an intensive two-day meeting.

The institute resulted in the drafting and circulation for adoption of the Draft Boston Principles. Versions of the Draft Boston Principles were circulated for discussion and comments before, during, and after the October institute. During closed working sessions, participants¹⁴ shared information and experiences about the impact of recent federal, state, and local laws and policies on the human rights of noncitizens. The group strategized on ways that international human rights-based approaches to housing, healthcare, education, and workers’ rights can support or strengthen existing social justice work. They explored responses to discrimination and violence targeted at particular groups within immigrant communities—including racial, sexual, ethnic, religious, or linguistic minorities, indigenous peoples, children, women, and persons with disabilities—and how such discrimination undermines other human rights.

We also welcomed the public—students, community groups, and people from local neighborhoods—to two roundtables (and a student-organized session on access to higher education) for further discussion of these critical issues. Institute participants are associated with a wide variety of social justice organizations and projects. We look forward to building on this

VIOLATIONS OF THE RIGHTS OF IMMIGRANT FAMILIES, WORKERS, AND COMMUNITIES IN 2008 (2009), available at <http://www.nnirt.org/resources/docs/GuiltybyImmigrationStatus2008.pdf>; NAT’L NETWORK FOR IMMIGRANT AND REFUGEE RIGHTS, OVER-RAIDED, UNDER SIEGE: U.S. IMMIGRATION LAWS AND ENFORCEMENT DESTROY THE RIGHTS OF IMMIGRANTS (2008), available at http://www.nnirt.org/resources/docs/UnderSiege_web2.pdf; AM. CIVIL LIBERTIES UNION OF MASS., DEPORTATION AND DETENTION IN THE AGE OF ICE (2008), available at http://www.aclum.org/sites/all/files/education/aclu_ice_detention_report.pdf.

¹² See, e.g., MINN. ADVOCATES FOR HUMAN RIGHTS, ET. AL., VIOLATIONS OF THE RIGHTS OF ALIENS (2006), available at <http://www.theadvocatesforhumanrights.org/Basic.html>.

¹³ See, e.g., *Smith v. United States*, Case 12.562, Inter-Am. Comm’n H.R., Report No. 81/10, OEA/Ser.L./V/II.139, doc. 21, (2010).

¹⁴ For a list of institute participants, see Program on Human Rights and the Global Econ., *Beyond National Security: Participant Biographies*, NORTHEASTERN U. SCH. L. (Oct. 2010), <http://www.northeastern.edu/law/academics/institutes/phrge/events/institute2010.html>.

network for the widespread adoption of these Principles and for future collaboration.

We believe that courtroom advocacy, legal reform, administrative policy, scholarly inquiry, popular education, and civil society activism are critical tools for sustaining social justice movements. We benefited from the work of scholars,¹⁵ international experts,¹⁶ and local advocates who have worked to adopt international human rights standards in state and local resolutions or legislation.¹⁷ The timing of the institute was also inspired by advocacy and activism surrounding the 2010–2011 review of U.S. human rights compliance by the United Nations Human Rights Council (the “Universal Periodic Review” (UPR)).¹⁸

The Boston Principles draw extensively on existing international human rights and humanitarian standards as well as on the perspectives, observations, and experiences of the participants, many of whom are engaged in work with community-based organizations. As part of the growing movement to “bring human rights home,” we believe that such principles can be used by advocates as a persuasive organizing tool and can be adopted by state and local governments in the United States.

Among the many international, regional, and domestic sources from which we drew draft language are the 1948 Universal Declaration of Human Rights (UDHR);¹⁹ the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR);²⁰ the 1966 International Covenant on Civil and

¹⁵ See, e.g., DAVID WEISSBRODT, HUMAN RIGHTS OF NON-CITIZENS (2008).

¹⁶ See, e.g., U.N. Comm. on the Elimination of Racial Discrimination, CERD General Recommendation No. 30 on Discrimination Against Non Citizens (Oct. 1, 2002), <http://www.unhcr.org/refworld/docid/45139e084.html> [hereinafter CERD General Recommendation No. 30]; Special Rapporteur on the Human Rights of Migrants, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, U.N. Human Rights Council, U.N. Doc. A/HRC/7/12/Add.2 (Mar. 5, 2008) (by Jorge Bustamante) [hereinafter *Promotion and Protection*]; Special Rapporteur on the Rights of Non-Citizens, *Prevention of Discrimination*, Commission on Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/23 (May 26, 2003) (by David Weissbrodt).

¹⁷ See, e.g., *CEDAW in San Francisco*, INT’L MUSEUM WOMEN, <http://www.imow.org/wpp/stories/viewStory?storyid=1849> (last visited Dec. 5, 2010) (discussing San Francisco’s municipal ordinance adopting the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women); Human Rights Now!, *California Votes for Human Rights!*, MEIKLEJOHN C.L. INST., 1 (Sept. 2010), <http://mcli.org/newsletter/ACR129.htm> (discussing California state legislation agreeing to publicize the text of three international human rights treaties ratified by the United States).

¹⁸ See generally *Universal Periodic Review*, U.S. DEP’T ST., <http://www.state.gov/g/drl/upr/> (last visited Dec. 15, 2010); *Universal Periodic Review (UPR) Project*, U.S. HUMAN RIGHTS NETWORK, http://www.ushrnetwork.org/campaign_upr (last visited Dec. 5, 2010).

¹⁹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/60/1, at 71 (Dec. 10, 1948).

²⁰ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI) A, U.N. GAOR, 16th Sess., Supp. No. 16, U.N. Doc. A/6316, at 49 (Dec. 16 1966).

Political Rights (ICCPR);²¹ the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);²² the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);²³ the 1990 Convention on the Rights of the Child (CRC);²⁴ the 2006 Convention on the Rights of Persons with Disabilities (CRPD);²⁵ the 2003 International Convention on the Protection of the Rights of All Migrant Workers and Their Families (CRMWF);²⁶ the Constitution of the United States of America;²⁷ the 1993 Vienna Declaration and Programme of Action on Human Rights (Vienna Declaration);²⁸ the 2004 General Recommendation No. 30 on Discrimination Against Noncitizens by the U.N. Committee on the Elimination of Racial Discrimination;²⁹ the 1998 Guiding Principles on Internal Displacement;³⁰ the 2007 U.N. Declaration on the Rights of Indigenous Peoples;³¹ the 1989 International Labour Organization Indigenous and Tribal Peoples Convention No. 169;³² internationally recognized labor standards such as those listed in the 1998 International Labour Organization Declaration of Fundamental Principles and Rights at Work and the 8 ILO Fundamental Conventions on Rights at Work;³³ the 2006

²¹ International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) A, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 52 (Dec. 16, 1966).

²² International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., Supp. No. 14, U.N. Doc. A/6014 (Jan. 4, 1969).

²³ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46, at 193 (Dec. 18, 1979).

²⁴ Convention on the Rights of the Child, G.A. Res. 44/25, Annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49, at 167 (Nov. 20, 1989).

²⁵ International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, U.N. Doc. A/RES/61/49, at 65 (Dec. 13, 2006).

²⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, Annex, U.N. GAOR, 45th Sess., Supp. No. 49, U.N. Doc. A/45/49, at 262 (Aug. 4, 1999).

²⁷ U.S. CONST. amend. XIV.

²⁸ World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, at 20, U.N. Doc. A/CONF.157/23 (July 12, 1993).

²⁹ CERD General Recommendation No. 30, *supra* note 16.

³⁰ Representative of the U.N. Secretary-General, *Guiding Principles on Internal Displacement*, Commission of Human Rights, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

³¹ U.N. Declaration on the Rights of Indigenous Peoples, Adopted by General Assembly Resolution 61/295 on 13 September 2007, *available at* <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

³² Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 6, 1989, 169 I.L.O. 1989, 28 I.L.M. 1382, *available at* <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>.

³³ Int'l Labour Org. [ILO], Declaration on Fundamental Principles and Rights at Work, Int'l Labour Conference, 86th Session, U.N. Doc. CIT/1998/PR20A (June 18, 1998), *available at* <http://www.unhcr.org/refworld/docid/425bbdf72.html>. The ILO has embarked on a campaign to achieve universal ratification of the following eight conventions considered fundamental to rights at work: Freedom of Association and Protection of the Right to Organise Convention,

Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles),³⁴ the 1984 Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights;³⁵ the 1993 U.N. Human Rights Committee General Comment No. 22 on the Freedom of Thought, Conscience, and Religion;³⁶ the 1983 Human Rights Committee General Comment No. 10 on the Freedom of Expression;³⁷ the Report of the Special Rapporteur on the Human Rights of Migrants, Dr. Jorge Bustamante (“Mission to the United States of America”); The Rights of Non-citizens;³⁸ Final Report of the Special Rapporteur, Mr. David Weissbrodt;³⁹ the Council Directive 2003/9/EC; Laying Down Minimum Standards for the Reception of Asylum Seekers (European Union);⁴⁰ and other legal, advisory, and interpretive statements.⁴¹

1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111), *available at* <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

³⁴ INT’L PANEL OF EXPERTS IN INT’L HUMAN RIGHTS LAW AND ON SEXUAL ORIENTATION AND GEND. IDENTITY, THE YOGYAKARTA PRINCIPLES: PRINCIPLES ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY [hereinafter YOGYAKARTA PRINCIPLES] (2007), *available at* http://yogyakartaprinciples.org/principles_en.pdf.

³⁵ United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985).

³⁶ Office of the High Comm’r for Human Rights, U.N. Human Rights Comm., *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion* (Art. 18), U.N. Doc. CCPR/C/21/Rev.1/Add.4 (Sept. 27, 1993), *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument).

³⁷ Office of the High Comm’r for Human Rights, U.N. Human Rights Comm., *General Comment No. 10: Freedom of Expression* (Art. 19) (1983), *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2bb2f14bf558182ac12563ed0048df17?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2bb2f14bf558182ac12563ed0048df17?Opendocument).

³⁸ Special Rapporteur on the Rights of Non-Citizens, *Promotion and Protection*, *supra* note 16.

³⁹ Special Rapporteur on the Rights of Non-Citizens, *Prevention of Discrimination*, *supra* note 16.

⁴⁰ Council Directive 2003/9, 2003 O.J. (L 31/18) (EC).

⁴¹ We also consider the implications of the "Guiding Principles on Human Rights and Business: Implementing the United Nations 'Protect, Respect, and Remedy' Framework." Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Principles on Human Rights and Business: Implementing the United Nations "Protect, Respect, and Remedy" Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011), *available at* <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>. *But see* Amnesty Int’l, et. al., *States’ Obligations to Respect and Protect Human Rights Abroad: Joint Statement on John Ruggie’s Draft Guiding Principles*, BUS. & HUM. RIGHTS RES. CTR.,

International law imposes legally binding as well as political obligations on the United States with regard to the human rights of noncitizens under its jurisdiction. The United States voted in the U.N. General Assembly to adopt the UDHR in 1948. It is a party to the ICCPR, the ICERD, and the 1967 Protocol to the 1951 Convention on the Status of Refugees. It has signed, but not ratified, the ICESCR, CEDAW, CRC, and the CRPD. However, the United States has neither signed nor ratified the CRMWF.

In March 2011, the administration of President Barack Obama announced that it would begin to take a more “holistic” approach to adherence to international human rights. In a keynote speech to the American Society of International Law (ASIL), for example, Michael Posner, U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor, stated that “Human rights reflect what a person needs in order to live a meaningful and dignified existence,”⁴² including economic, social, and cultural rights. Given the longstanding historical ambivalence toward the application of economic, social, and cultural rights in the United States, it remains to be seen what meaning such a statement will have at grassroots levels.

We hope that the Principles will highlight existing human rights of noncitizens as well as support advocacy for the recognition of additional rights. The Draft was circulated by the Program on Human Rights and the Global Economy to a broad network of U.S. immigrants’ rights and human rights advocates, scholars, and practitioners for comments beginning on December 10, 2010 (International Human Rights Day). The final version will be circulated subsequently to legislators, administrators, ombudsmen, and other policymakers at both state and local levels for adoption or endorsement.

available at <http://www.business-humanrights.org/media/documents/ruggie/fian-ngo-joint-statement-re-guiding-principles-state-duty-jan-2011.pdf> (last visited Mar. 1, 2011) (joint statement signed by twenty leading non-governmental organizations, twenty-two academics, and other individuals expressing the need for stronger protections in the draft Guiding Principles on Business and Human Rights). We also considered the latter NGO statement.

⁴² See Michael H. Posner, Assistant Secretary, U.S. Dep’t of State Bureau of Democracy, Human Rights, and Labor, Address to the American Society of International Law (March 24, 2011), <http://www.america.gov/st/texttrans-english/2011/March/20110328131142su0.167867.html?distid=ucs> (discussing change in U.S. policy toward the recognition of international economic, social, and cultural human rights). For a discussion of U.S. discomfort with the internal application of economic and social rights, see 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 103–44 (Cynthia A. Soohoo, Catherine Albisa & Martha F. Davis eds., 2007); and HUMAN RIGHTS AND THE GLOBAL MARKETPLACE: ECONOMIC, SOCIAL, AND CULTURAL DIMENSIONS, 75–77; 85–88; 154–74; 841–930 (Jeanne M. Woods & Hope Lewis eds., 2005) (discussing U.S. political attitudes and state and federal jurisprudence on economic and social rights).

APPENDIX

A Guide to The Boston Principles on the Economic, Social and Cultural Rights of Noncitizens (“The Boston Principles”)

What Are The Boston Principles?

The Boston Principles are thirty standards drawn from international human rights, humanitarian, and migration-related treaties, guidelines, and other statements of best practice as well as recommendations by U.S.-based civil society.

An early draft was launched at a gathering of lawyers, human rights, and immigrants’ rights advocates, scholars, students, and community organizers held at Northeastern University School of Law, Boston, Massachusetts from October 14–15, 2010. The meeting was co-sponsored by the Program on Human Rights and the Global Economy (PHRGE), the Human Rights Interest Group of the American Society of International Law, and the Ford Foundation. After incorporating comments from meeting participants, a second draft was launched for public comment on December 10, 2010, International Human Rights Day.

What’s In Them?

The Boston Principles reflect common standards on how people under U.S. jurisdiction, including noncitizens, should be treated. They begin with the basic understanding that all human beings have human rights. Further, national governments, and the state and local authorities under their jurisdiction, have obligations to respect, protect, promote, and fulfill those human rights in civil, political, economic, social, and cultural areas of life.

The Principles use language from some international treaties and standards that are already legally binding on the United States; other language is aspirational.

How Can They Be Used?

We hope that advocates at state, local, and community levels will use the Boston Principles to further human rights and social justice by:

- Supporting human rights education in schools and communities;
- Calling on local and state governments to adopt resolutions that pledge compliance with human rights standards;
- Reforming or adopting legislation;
- Holding federal, state, and local authorities accountable for compliance with international and domestic human rights standards; and
- Building awareness about human rights among communities, social networks, policymakers, lawmakers, judges, and ombudspersons.

THE BOSTON PRINCIPLES: A SUMMARY

A brief summary follows. The latest version of the detailed full text of the Boston Principles is available at <http://www.northeastern.edu/law/pdfs/academics/phrge-bostonprinciples-with-appendix.pdf>.

Equality and Non-discrimination

All individuals, including noncitizens, have the right to equality and non-discrimination. The Boston Principles apply without discrimination of any kind, such as race, color, sex, sexual orientation, gender or gender identity, disability status, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, property, birth, or other status. Immigration laws, policy, and enforcement must not be discriminatory in intent or effect. Necessary measures taken on grounds of national security must be narrowly-tailored, free of discrimination and must ensure that noncitizens are not subjected to racial, ethnic, or religious profiling or stereotyping. (Principles 1, 2 & 30)

The Rights to Recognition as a Person, to Participation, and to Equal Protection Under Law

Every individual, including every noncitizen, has a right to be recognized as a person before the law. All individuals have the right to associate freely and to participate fully in public affairs and enjoy equal protection of the law. (Principles 3 & 4)

Rights in Immigration Proceedings and Enforcement Actions

Immigration proceedings and enforcement actions must comply with internationally-recognized due process norms. Detention must be imposed only in accordance with such norms and must comply with internationally-recognized standards on human rights and human dignity. (Principle 5)

Access to Justice and Accountability for Violations

All individuals, including noncitizens, who are subjected to human rights violations have the right to adequate and effective remedies and protection from retaliation. They are entitled to have those responsible for the violation held accountable. (Principles 7 & 8)

The Right to an Adequate Standard of Living

All individuals, including noncitizens, have the right to an adequate standard of living, including food, water, sanitation, clothing, housing, social security, and humanitarian assistance. (Principles 9 & 21)

The Right to Access Public Benefits without Fear

All individuals, including noncitizens, have the right to seek assistance from public agencies that provide benefits or assistance to the general public without inquiry as to immigration or citizenship status unless absolutely necessary to the provision of such services, and with assurance that such inquiries, where necessary, will be kept strictly confidential. Government agencies have the obligation to ensure that appropriate and effective measures are taken to fulfill this right and to provide translation services for access to public benefits. (Principle 6)

The Right to Decent Work and to Just Conditions of Work

All individuals, including noncitizens, have the right to decent work, and all workers, regardless of work authorization status, have the right to just and favorable conditions of work and to full labor and employment rights (including, but not limited to, the right to organize, the right to form and join a trade union, the right to collective bargaining, and the right to fair wages) once an employment relationship has been initiated. (Principles 10, 11, 12, 13 & 16)

Expulsion, Work Permits and Residency Authorization, and Equal Treatment in Unemployment

No noncitizen should be expelled, deprived of a work permit or deprived of residence authorization solely on the grounds of temporary absence or failure to fulfill an obligation arising out of a work contract, nor in retaliation for the exercise of workers' rights or for seeking the protection of other human rights. Noncitizen workers should be protected from retaliatory expulsion and should enjoy equal treatment with citizens in respect to legal protections and public benefits. (Principles 13, 15, 17 & 18)

The Right to Health

All individuals, including noncitizens, and including individuals detained on the basis of immigration status, have the right to enjoy the highest attainable standard of physical and mental health. This includes

the right to health care and to the determinants of health, including the enjoyment of other human rights and fundamental freedoms as well as public health information and requirements. (Principle 20)

The Right to Education

All individuals, including noncitizens, have the right to education, and governmental authorities have the obligation to ensure that all children receive free and compulsory primary and secondary education. Higher education shall be made accessible to all. (Principle 19)

Family Life and Family Unity

Any state interest in expelling a noncitizen must be balanced against the interest of the individual and of the individual's family to remain united. The best interest of the child must be given due consideration in any immigration proceeding that may result in the deportation of a child or parent. (Principles 22 & 23)

The Rights of Minorities and Indigenous Peoples

The Boston Principles recognize the obligation of governmental authorities to eliminate discrimination against racial, ethnic, religious, or linguistic minorities and discrimination against indigenous peoples in all its forms, including against noncitizens, and to guarantee the right of all individuals to equality before the law and enjoyment of all the rights recognized in the Principles. All individuals belonging to a minority or an indigenous people have the right, in community with other members of the group, to enjoy their own culture, to profess and practice their own religion, and to use their own language. (Principle 24)

The Rights of Children

Every child, regardless of citizenship or immigration status, has the right to a life free from all forms of violence, abuse, neglect, and economic exploitation. Each child has the right from birth to a name, the right to acquire a nationality, and the right to know and be cared for by the child's parents, the best interests of the child being paramount. (Principle 25)

The Rights of Women

All women, including noncitizen women, have the right to equal protection of the law and freedom from discrimination or violence. (Principle 26)

The Rights of Persons with Disabilities

Persons with disabilities, regardless of immigration status, have the right of access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. Persons with disabilities, including noncitizens, have the right to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Governmental authorities have the obligation to take appropriate and effective measures to ensure these rights. (Principle 27 & 28)

The Right to Seek Asylum and Humanitarian Assistance

Noncitizens have the right to seek asylum and the right to be protected against forcible return to or resettlement in any place where the noncitizen's life, safety, liberty, and/or health would be at risk. (Principle 29)