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Strategies for the Selection and Pursuit of International Human Rights Objectives

David Weissbrod†

Introduction

Nongovernmental organizations or lawyers concerned with improving the observance of internationally recognized human rights are faced with the basic question: "Where do we begin?" During the past twenty-five years, an important evolution in human rights law has taken place. An internationally accepted body of human rights principles has been developed, and international procedures have been created for implementing those norms. The basic problem for the human

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European and inter-American human rights systems have also evolved during the recent past. See Council of Europe, Bringing an Application Before the European Commission of Human Rights, in 3 Case Law Topics 1 (1974); Farer & Rowles, The Inter-American Commission on Human Rights, in International Human Rights Law and Practice 68 (J.
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rights advocate today is how to use the present norms and procedures to achieve concrete improvement in actual conditions. This Comment considers how this herculean effort might be approached by examining the experience of domestic and international human rights organizations. It proposes a strategy that might be useful to nongovernmental organizations, lawyers, and activists concerned with human rights.

I. Alternative Strategies

International human rights organizations and activists have adopted a number of strategies which suffer from serious drawbacks. For example, some organizations have selected a single issue (such as torture) or


a cluster of issues which requires initial attention. Under such a strategy, however, an organization faces the problem of selecting an issue which can generate the requisite world consensus for effective implementation measures. In addition, the organization must then select which of many violations deserves first attention.4

A second approach is to select a target nation from among the most flagrant human rights violators without focusing on a single issue.5 It is, however, nearly impossible to compare different sorts of violations. For example, how can one identify the worst violator when one country imprisons,6 another country tortures,7 and a third causes many people
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to die from starvation.8

A third approach is to review the human rights problems of all na-
tions and to consider the potential for rectifying each problem in each
country. The Carter administration used this approach in developing a
strategy for each nation which encouraged improvements on a country-
by-country basis. While a government has the resources to take such a
universal approach and must maintain relations with all nations,9 non-
governmental and individual human rights activists lack the resources
to undertake a universal inventory of problems and have the ability to
be more selective in targeting areas for action.10

A fourth approach is to take problems on a first-come, first-served
basis. Unfortunately, the first case which may be brought to light
might not be particularly serious, or be amenable to improvement.
This approach could quickly overwhelm the organization with individ-
ual cases of relatively slight significance.

A fifth strategy combines some aspects of the other approaches, but
takes account of the limited resources and other difficulties facing non-
governmental and individual human rights advocates. Under this case-
by-case approach, the human rights activist might consider a series of
questions: first, is there sufficient information to document the alleged
violations and thus to justify the possible measures that might be used?
Different levels of information may support measures of differing
coefficence.11

Second, are the violations sufficiently serious to justify particular at-
tention? Almost all violators will contend that they have been unfairly
selected for attention. This defense is spurious, because all violators
should be encouraged to reform. Nevertheless, the human rights activ-
ists ought to allocate limited resources, and prepare against such a se-
lective persecution defense, by choosing only the most egregious
situations for attention. These serious cases should be capable of gen-
erating the broadest global consensus to ameliorate the situation. It
must be recognized that some extraneous political considerations may

8. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1979, at
463 (1980) (report on 1,500,000 people starving in Kampuchea).
9. Weissbrodt, Human Rights Legislation and United States Foreign Policy, 7 GA. J.
10. See Weissbrodt, The Role of International Nongovernmental Organizations in the Im-
plementation of Human Rights, 12 TEX. INT'L L.J. 293, 297 (1977). See also Clark, The Inter-
11. Weissbrodt & McCarthy, Fact-finding by International Nongovernmental Human
affect the ability to generate such a consensus, but the credibility of the actor depends on the ability to demonstrate an impartial concern for human rights.

Third, is there reason to believe that the problem is amenable to improvement by one or more of the measures available to the actor? Indications of the usefulness of action may be gauged from such subsidiary questions as: have measures with this country or with respect to this type of problem been successful in the past? Are the officials of the country receptive to initiatives from outsiders? What sort of intervention has the greatest potential for success and the least risk of further damage to the human rights victims? The case-by-case approach requires that a re-evaluation be regularly undertaken of the various issues which prompted pursuit of a particular human rights violation. Conditions change and the response of the target violator may require tactical shifts or even abandonment of the matter.

Fourth, given the political, financial, and practical constraints on human rights activists, which organization or individual is in the best position to take effective measures in this case? Nongovernmental organizations strive generally to appear impartial and independent in pursuing human rights problems, but each NGO is constrained by the nature of its staff, membership, financial supporters, geographical location, etc. NGOs must, in each case, balance the desire to appear independent and impartial against the need for self-preservation: in other words, actors must consider the question, how will the pursuit of this case affect us? The broader the NGO's political, financial, and membership base the more successful will be its efforts to achieve independence, impartiality, and effectiveness.

Fifth, how will any of the actor’s measures be received by political allies inside or outside of the target country? Will the contemplated action fit with the political perspectives of the human rights victims to be aided? Will they be able to use and build upon outside pressure for domestic purposes? Or could they instead consider the contemplated NGO action to be counterproductive to their cause? Can other NGOs, governments, and intergovernmental organizations be expected to support this measure and take complementary actions? For example, a U.S. based organization cannot concentrate on human rights violations in Eastern Europe without appearing politically biased. Human rights activity originating in Western Europe or in Third World countries

12. See H. Strack, Sanctions 33-39, 237-53 (1978) (U.N. sanctions against Rhodesia ineffectual given the importance of Rhodesia to many nations whose support was essential if sanctions were to succeed).
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might be more effective in improving conditions in Eastern Europe. Similarly, an Israeli organization would be ineffective in complaining about rights violations in Syria and vice-versa.

Sixth, having decided that a particular human rights problem deserves attention, there remains the issue of which measures or series of measures should be used. The tactics available to most human rights organizations include fact-finding, diplomatic initiatives, letter-writing campaigns, publicity, on-site missions, raising human rights issues diplomatically with violating governments, lobbying with governments, business, or influential organizations to take trade, aid, professional, or other measures against violating nations, legal action in the subject nation or in other countries, aid to human rights victims or their families, and the invocation of intergovernmental human rights procedures.

Any strategy should include an inventory of available techniques in approaching the problem that has been selected for action. No rule may be identified as to how measures should be ordered, although it is generally best to use less coercive measures first to determine their impact before resorting to more serious approaches. Also, less coercive and less public measures may be appropriate while the facts are still uncertain.

The five strategies outlined above and particularly the case-by-case approach with its six subparts suggest some of the principal ways nongovernmental or individual human rights activists may order their efforts.

II. The Experience of Some Nongovernmental Organization With Human Rights Strategies

A. Introduction

Having outlined a number of ways organizations and individual activists may select human rights problems for intervention, it is useful to see how several American public interest law organizations have actually selected matters for pursuit. While not perfectly analogous, the efforts of U.S. lawyers and activists to end racism and to pursue certain public interest issues may be more easily examined than those of international activists because the political limitations of a single country provide a focus not so easily found in the world arena.

Admittedly, the domestic civil rights advocate and the international human rights activist operate in quite different political and legal environments. Domestic civil rights and civil liberties lawyers work within a relatively finite legal structure that includes Congress, the federal
courts, federal agencies, and their state counterparts. International human rights lawyers have a far more diverse set of possible fora, including the U.N., UNESCO, the International Labour Organization, regional human rights systems (e.g., Organization of American States, Council of Europe), Amnesty International, International Parliamentary Union, other established nongovernmental organizations, as well as all the national legal systems. Within the U.N. alone there are more than a dozen principal bodies and several score procedures available for various sorts of human rights problems. Also, domestic civil rights and civil liberties lawyers confront a relatively confined political environment with a generally familiar roster of actors. International politics must take account of many different domestic political climates, the way those domestic realities are imperfectly represented by the individuals at international meetings, and the traditions and practices of the international organizations themselves.

Despite these differences, the civil rights lawyer and the international human rights advocate face similar basic problems. Indeed, the distinction between a domestic civil rights lawyer and an international human rights activist is becoming increasingly blurred. A competent domestic civil rights lawyer can no longer ignore the international procedures available if domestic remedies have been exhausted or do not permit the international human rights arguments in local courts. In addition, both domestic and international procedures require choices of client, target, forum, substantive principles, and requested remedy. Domestic and international organizations alike struggle with political, financial, membership, and other impediments, although the nature of these constraints may vary. The experience of domestic civil rights and civil liberties advocates is also helpful to international human rights activists, as these domestic efforts have enjoyed a relatively well documented and understood history which can assist analysis.

B. Strategic Choices of the Public Interest Movement in the United States

In this early stage of the development of the international human rights movement, one of the most pressing questions is how to focus the efforts of nongovernmental organizations and individuals concerned with human rights in a way that most effectively utilizes limited resources. The experience of the public interest law movement may provide lessons on how to allocate resources most effectively for the protection of poorly represented or powerless groups.

The public interest law movements as broadly defined in this Com-
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ment includes public interest law firms working with environmental and consumer issues, the Legal Services poverty law program, and the NAACP's campaign to end segregation. These diverse organizations


Finally, Burton Weisbrod offers a definition which emphasizes efficiency in the allocation of resources and equity in the division of society's income, output, and opportunities as relevant dimensions of the public interest. B. WEISBROD, J. HANDLER & N. KOMESAR, PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 8 (1978). For a comprehensive review of the literature on the public interest, see NOMOS V: THE PUBLIC INTEREST (C. Fredrick ed. 1962); V. HELD, THE PUBLIC INTEREST AND INDIVIDUAL INTERESTS (1970).

In general, public interest law is defined as the representation of the under-represented. S. JAFFE, PUBLIC INTEREST LAW 11 (1976). "The issues to which [public interest law] directs itself may run the gamut from the protection of wildlife to provision of adequate housing for the urban poor." Woods & Derrick, Symposium: The Practice of Law in the Public Interest—Introduction, 13 ARIZ. L. REV. 797, 798 (1971). Although the antecedents of the modern public interest law movement can be traced back to the early 1900's, the movement mushroomed in the late 60's as part of the nationwide protest against individual and public powerlessness in the face of big business and bureaucratic government. See Berlin, Roisman & Kessler, Public Interest Law, 38 GEO. WASH. L. REV. 675, 678 (1970); Riley, The Challenge of the New Lawyers: Public Interest and Private Clients, 38 GEO. WASH. L. REV. 547, 582-87 (1970).


possess a common goal of representing groups and values that historically have been underrepresented in the U.S. political and legal systems. Each organization has made strategic decisions about how best to address the massive tasks they have confronted.

Analysis of the public interest law movement reveals that, in general, an organization whose goal is to further the public interest has four levels of decisions to make about the services it will provide. First, it must decide whether an attempt should be made to help every potential client in need of assistance. Second, if everyone will not be helped, some policy must be devised for determining the general category of problems that will be addressed. Third, once an overall policy is established, criteria must be formulated to help determine which matters further the overall goals of the organization. Fourth and finally, the organization must decide whether processing cases is enough or whether furtherance of the overall policy requires organizational efforts outside the legal system.

The first two levels of decision are examined in light of the general experience of the Office of Economic Opportunity Legal Services program and public interest law firms. The third level, actual case selection, is explored by tracing the case selection strategy used by the NAACP in its attack on racial segregation in American institutions. The perceived successes and failures of the movement as a whole form the basis for investigating the fourth decisional level.

1. The First Level: The Decision to Select Clients

The first decision a public interest organization must make is whether to reject some clients who seek its help. Although this step seems clearly necessary if an organization desires to focus its energies, underlying assumptions about the legal system and the lawyer's role have made it difficult for some public interest organizations. In fact, early poverty lawyers resisted taking the step, to the point of almost permanently emasculating the young OEO-Legal Services program.14 The reason for the resistance was twofold. First, the Legal Aid program, a forerunner and parent of the Legal Services Corporation, attributed the problems of the poor to their limited access to justice-

14. Earl Johnson, Jr., director of the Legal Services program through its early years, has said that the decision to switch from a service orientation to the more focused law reform strategy was the most significant of his career. He predicts that if it had not been made, the program could not have had an impact on poverty. E. JOHNSON, JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE OEO LEGAL SERVICES PROGRAM 132-33 (1974); cf. Cooper, Public Interest Law: South Africa Style, 11 COLUM. HUM. RTS. L. REV. 105, 113-14 (1979-80) (contrast of U.S. with South Africa).
dispensing institutions.\textsuperscript{15} As a result, the founders of Legal Aid believed that supplying a lawyer to every poor person was the cure for poverty. The inherent assumption in this approach is that the legal system can rectify all injustice. Second, the belief that a public interest lawyer could effect social change while retaining the traditional lawyer’s role of the value-free advocate contributed to the reluctance to reject some clients. In this view, poverty lawyers should follow the example of their colleagues and let the client choose the issue. Interjecting the advocate’s values by selecting clients went against the legacy of the profession.\textsuperscript{16}

International human rights workers, many of them lawyers, also undoubtedly resist the idea of systematically ignoring some of the pleas for help that reach them. The staffs of human rights organizations are frequently overwhelmed by the volume of work, the pressing responsibility, and the lack of sufficient guidance concerning which cases require attention. The experience of the Legal Services Corporation teaches, however, that the decision to reject some cases in order to more thoroughly pursue others is crucial. One year after the federal program was funded, the folly of accepting too many clients and trying to reach too many goals became apparent to the Legal Services management.\textsuperscript{17} The offices were being swamped with more clients than the lawyers could adequately serve. The program was drifting towards complete preoccupation with processing case loads at the price of losing sight of innovative, pragmatic goals. In addition, critics of the early service orientation charged that the advocates themselves began to internalize the crisis syndrome of the poor, becoming wholly preoccupied with the demands of the present moment and losing the creative ability to avert

\textsuperscript{15} Reginald Heber Smith, founder of the Legal Aid movement stated: “We can end the existing denial of justice to the poor if we can secure an administration of justice which shall be accessible to every person no matter how humble. . . .” \textit{R. Smith, Justice and the Poor} 240 (1919). \textit{See generally J. Auerbach, Unequal Justice} (1976).

\textsuperscript{16} Some suggest that in the area of public interest law, client selection and rejection is not only a practical matter, but the only ethical strategy. The service-oriented public interest lawyer feels the tension between Canon 2 of the Code of Professional Responsibility, the obligation to serve, and Canons 6 and 7, the obligations to provide competent and zealous advocacy even where resources are inadequate. The inevitable corollary to an emphasis on the number of people served is that the quality of service received by each person is reduced. A combined reading of a number of code sections reveals a clear prohibition against falling below a certain level of quality in order to increase the quantity of clients served. Hence, client selection and rejection seem ethically as well as practically mandated for organizations seeking to further public interest goals. For further discussion of the ethics of rejecting clients under the Code of Professional Responsibility, see Bellow & Kettleson, \textit{From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice}, 58 B.U.L. Rev. 337, 343-53 (1976).

\textsuperscript{17} \textit{See E. Johnson, supra note} 14, at 127-38.
crisis. Accordingly, it was out of practical necessity that the Legal Services management devised a selection strategy.

Similarly, Amnesty International (A.I.) has struggled with the choice between work for individual prisoners of conscience and efforts on behalf of large groups of prisoners. In some countries, for example Indonesia, where there were thousands of prisoners, many unidentified, it seemed pointless to work for the release of a few dozen individuals. Also, A.I. found that in other countries, for example, Uganda under Idi Amin, it was counter-productive to work for the release of a named individual. Slowly—particularly in the late 1970's—A.I. shifted more and more effort towards country campaigns and diverted research resources away from individual prisoner adoptions. The pursuit of individual claims was not completely abandoned, however. A.I. found that individual prisoner adoptions were still necessary as they generated the greatest amount of personal involvement among the membership and provided an indispensable recruitment incentive. Moreover, individual cases usefully illustrated in a personal way the human dimension of massive human rights problems.

2. The Second Level: An Overall Policy

The experience of the public interest law movement forcefully demonstrates the need for case selection in order to allocate limited resources efficiently. The next level of decision requires settling upon an overall selection policy. In the public interest law movement the crucial question at this juncture has been to what degree client selection should be a product of the advocate's or organization's independent judgment. The decision to select certain clients alters the traditional client-lawyer relationship. The lawyer ostensibly takes this step in order to focus efforts and consequently improve the quality of service provided the constituency as a whole. The problem, however, then becomes accountability; determining what selection decisions would be most helpful to the constituency. At one end of the spectrum of possibilities is the assumption that the lawyer's subjective decision should

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control. On the other side is the view that a community organization should handle the selection question as representatives of the lawyer's constituency. 23

Many public interest law organizations have resolved the accountability problem by formulating an overall policy which limits the advocates' independent discretion and focuses the energies of the organization on actions that have wide-ranging and long-term effects. 24

Such a policy assures that selected cases will be responsive to the overall needs of the community while conserving resources for the "important cases". The international human rights organizations have analogous accountability problems. They also need to limit the number of human rights cases processed while remaining generally responsive to the needs of human rights victims. A clear articulation of an overall policy may serve both these goals.

23. Both models have inherent drawbacks. On the one hand, the advocate who sets up personal values and perspectives as the only guide to case selection is in danger of becoming unresponsive to the group of people he or she is trying to help. This danger is particularly real for lawyers who represent a diffuse set of interests such as consumer, environmental, civil, political, and economic values rather than an identifiable community. Reliance on individual discretion may not produce selection decisions that effectively allocate resources. Ralph Nader, an independent lawyer with no identifiable constituency, said he is held accountable by the public's opinion of him: "The best check on the honesty of public interest lawyers is their insecurity of role. If they're dishonest, or let the public down, they lose whatever impact they might have. If I make a mistake, if I charge General Motors falsely, I lose credibility." Comment, supra note 22, at 1130.

On the other hand, a requirement of rigid accountability deprives unorganized interests of any voice. The primary impetus for the public interest law movement was the desire to provide representation for powerless, unorganized groups and diffuse interests. G. HARRISON & S. JAFFE, THE PUBLIC INTEREST LAW FIRM 9 (1973). Public interest lawyers cannot be faulted for acting on their own initiative when no other perspective is voiced. Furthermore, even where a definite community exists and an organization could direct the activities of public interest lawyers, such control may not be advisable. Community boards and human rights organizations have been known to miss the reform potential in certain actions and steer advocates toward cases of immediate urgency and no long-term impact. Comment, supra note 22, at 1126. But see Cahn & Cahn, The New Sovereign Immunity, 81 HARv. L. REV. 929, 987-90 (1968) (asserting that poor people in the community often design far-seeing programs).

24. For example, the following guidelines are relied upon in the selection of cases for the Center for Law and Social Policy, Washington, D.C.:

(1) an important public interest is involved;
(2) the individuals and groups involved do not have the financial resources to retain and compensate competent counsel for the matter involved;
(3) no other legal institution is likely to provide effective representation;
(4) the area of the law has not been adequately explored;
(5) opportunities for innovation are present;
(6) the subject matter is one in which the staff of the Center has competence;
(7) the activity is one in which there is substantial room for participation by students at the Center; and
(8) the resources of the Center required are commensurate with the gains likely to be achieved.

Halpern & Cunningham, supra note 13, at 1106.
Analysis of public interest law policy determinations yields a list of factors an organization should consider when formulating an overall policy. First, the organization should have a policy focus, that is, a theory of the underlying cause of the conditions it seeks to change. Second, the organization should compare the effectiveness of alternative policies. Third, the feasibility of a proposed policy should be considered in light of current social and political circumstances. Fourth, the structure and character of the implementing organization should affect the policy choice. Fifth, the special skills of the staff and volunteers working in the organization should be considered. Finally, the degree of control an organization exercises over its clientele should be figured into the policy decision. Each of these factors will be examined in the context of the public interest law movement with the goal of helping international human rights organizations determine what factors are important to their own policy decisions.

The experience of the O.E.O. Legal Services program best illustrates the contribution a policy focus makes to the process of formulating an overall policy. At the time the Legal Services management decided to de-emphasize the service-oriented approach inherited from the Legal Aid movement, three policy options were formulated and available for implementation. Each had a distinct focus.

One option was based on the “civilian perspective” theory put forward by Edgar S. and Jean Camper Cahn.25 The Cahns asserted that the government’s war on poverty failed because the government agencies responsible for distributing income and opportunity were uninformed and unresponsive. In the Cahns’ view, the poor needed representatives who would force these agencies to consider the “civilian” perspective of the poor in their decision-making. The theory focused on the relationship between the poor and government agencies. Had this theory been accepted, Legal Services policy would have required neighborhood law offices staffed with lawyers whose mission was to act as liaison between the poor community and government agencies.

The social rescue theory or New Haven proposal formed the basis of the second policy alternative.26 This theory focused on the poor themselves and their alleged inadequacy. The social rescue theory pictured poor people as the victims of social, psychological, and educational deficiencies that had to be treated to enable them to compete for a share of the nation’s affluence. In this scheme, lawyers would be a part of a

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multidisciplinary team that would treat all the problems of a particular poor family.

The third policy option was law reform, which focused on the legal system itself. The existing system diverts income away from the poor. Law reformers attempted to modify the rules of the legal system and applied the changed rules to benefit the poor. O.E.O. Legal Services chose law reform as its overall policy for a number of reasons. Primary among them was the underlying belief that the legal system could be transformed from an institution that discriminated against the poor, to one that benefited them. This belief formed the foundation of their strategy.

A different and not as explicit focus is characteristic of public interest law firms concerned with consumer, environmental, and housing issues. In those firms, a version of the Cahns' "civilian perspective" theory directs the lawyers’ work. The public interest firm attempts to open the government agency and corporate decision-making process to the public. They trace the lack of public interest values in corporate and government actions to the closed decision-making procedures that prescribe those actions. Accordingly, case selection and other strategies used by poverty and public interest lawyers reflect their theories about the causes of the conditions they seek to change. Therefore, as a first step in formulating an overall strategy, international human rights organizations might be well advised to decide upon such a policy focus.

It is quite unclear whether the international human rights movement has even begun to analyze the underlying causes of the conditions it seeks to change—much less to start efforts at modifying the basic conditions which cause human rights violations. Instead, many concerned with human rights devote their energies to describing horrible violations without either trying to discern their causes or to develop techniques for improving the situation. Other human rights advocates have attempted to cajole the principal violators—that is, governments—into agreeing on the basic human rights norms and then have sought techniques for assuring the implementation of these norms. Even those

27. Id. at 132.
28. Id. See Comment, supra note 22, at 1072 ("Poverty is both a cause and a consequence of under-representation in the legal-political process.").
30. Chief Justice Burger, then on the D.C. Circuit, challenged the myth of public representation by government agencies in United Church of Christ v. Federal Trade Commission, 359 F.2d 994, 1003 (D.C. Cir. 1966) where he stated: "The theory that the Commission can always effectively represent listener interests . . . without the aid of . . . legitimate listener representatives . . . is . . . no longer a valid assumption . . . ."
who devote considerable energy to finding ways to reduce human rights violations are frequently trying to treat the symptoms represented by the violations without adequate analysis of their causes. Very different targets and techniques may be appropriate for dealing with causes of human rights problems than have been thus far used for treating the symptoms of violations.

For example, in addition to campaigns to end torture, the death penalty, political murders, etc., some thought might be given to why governments find a need to be repressive. One hypothesis might run as follows: governments—particularly in developing countries—have accepted an export-led growth model which requires social and political stability. In many countries the army is the only institution sufficiently organized to be capable of ensuring stability. The army takes control, represses dissent, and violates the human rights of dissenters. But the army is not capable of dealing successfully with the distribution of power and wealth in society. Hence, if economic development begins to occur, dissatisfaction grows, and the army feels the need to increase its repression. Strife ensues with very uncertain results.

If an organization accepts this hypothesis about the cause of human rights violations, anti-torture campaigns would be less important than efforts to re-evaluate the export-led growth model and to convince the army about the need to distribute the benefits of development more equitably in order to obviate the need for repression. In any case, far greater thought must be given to why human rights violations occur before a strategy can be charted to end those violations.

In choosing an overall strategy, a second important factor is the comparative cost effectiveness of alternative approaches. The law reform approach favored by the public interest law movement can create a large number of beneficiaries at low cost. The Social Rescue Theory, described above, was rejected by the legal services program partly on the grounds that only a few families could be helped at great expense. In contrast, a limited number of cases motivated by law reform objectives may change millions of lives. The NAACP case study contained in the next section amply illustrates this principle.

The third factor, practical feasibility, eliminates some policy alternatives. For example, a policy option at one time considered by the legal services movement involved a concentrated effort to organize poor people into groups that could exert pressure in the political and private economic spheres. One of the main reasons for dropping this option was its political unpopularity. It was predicted that the office holders who controlled the legal services budget would not be well-disposed toward a program that encouraged political unrest and developed a
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popular platform for future political opponents. Foundation-supported law firms consider themselves freer to take controversial stands and to implement politically unpopular programs than their governmentally financed counterparts. Clearly, international human rights organizations should be aware of the corresponding political and financial implications of the policies they choose.

A fourth element to be considered in developing a policy is the structure of the organization, including the number of volunteers and people on the staff. The structure and support staff of the public interest law firm permits an ongoing relationship with government agencies. The firm can monitor administrative maneuvers and know when to intervene in administrative processes, bring suit, or encourage legislative action. In addition, if the staff is large enough, each member has an opportunity to develop expertise in complicated areas and keep abreast of developments. Environmental and consumer interests probably could not have been as effectively represented by an organization that relied on a loose volunteer structure. The structure of international human rights organizations will also affect overall policy. The volunteer nature and small size of some human rights organizations probably precludes close, continual scrutiny of governments.

Fifth, the skills of the workers in an organization also influence the policy-making decision. For the public interest law movement, law reform was an attractive strategy because it enabled the lawyers to do what they do best. Community organizing or economic booster programs were not as attractive because they did not use the specific skills of the staff. An international human rights group should assess the skills of its staff and volunteers. If many are not lawyers or are unfamiliar with intergovernmental human rights procedures, a test-case type strategy may be less appropriate than efforts toward organizing interest groups and publicizing widespread violations.

Finally, the degree of control an organization has over its clientele also shapes policy. Environmental and consumer interest law firms monitoring agency activities can identify a possible litigation or lobbying opportunity and find a client. Because clients for these firms do not possess a substantial personal stake in the outcome of a case, the

31. The Reagan administration's effort to remove or prune the Legal Services Corporation on budgetary and political grounds demonstrates the potential for backlash when the activities of the public interest organization conflict with extant political realities. See Drew, Legal Services, New Yorker, Mar. 1, 1982, at 97, 98, 104, 106, 112.
32. A small group of people is not practically capable of continually monitoring the more than 160 nations in the world. Even within one of the largest human rights organizations a researcher may cover events in half a dozen nations or more. Hence, these NGOs often shift their focus as catastrophes occur.
33. Rabin, supra note 29, at 234. Two of the largest environmental public interest firms,
firm has a great degree of control. The legal services attorney, by comparison, is much more limited; he or she must weigh the welfare of a particular client against the desire to undertake a test case litigation. Many international nongovernmental organizations pursue human rights violations without much contact with the individual victims. In that sense, they have a large amount of control. In another sense, their duty to the human rights victims, like poverty lawyers' duties to their clients, limits their freedom to pursue strategies which may be unacceptable to victims.

For example, human rights victims in developing nations may not want their advocates to pursue bilateral governmental measures that take advantage of the economic dependence of developing countries and that may further those structures of dependence. Some nongovernmental organizations are sensitive to such concerns and others are not. This aspect of an organization's relationship with the people it is trying to help should also affect its strategy choices.

In sum, the interplay of these six factors, at least, should enter into an organization's determination of an overall strategy in its approach to international human rights problems.

3. The Third Level: Choosing Specific Cases

The experience of the public interest law movement recommends a type of test-case strategy as the most cost-effective policy for an organization of limited resources. In choosing cases or legislative initiatives, the initial and fairly obvious rule that emerges is a preference for cases and problems with the widest possible impact at the least cost. The most attractive issue for a public interest law firm is the one that modifies the law in a way which directly benefits a great number of its constituents. The poverty law field provides a substantial number of cases that increased the flow of resources to the poor community by, for example, liberalizing welfare eligibility requirements and increasing the minimum wage for migrant farm workers. In addition, several unsuccessful efforts have been made to force states to increase welfare

Natural Resources Defense Council (N.R.D.C.) and Environmental Defense Fund (E.D.F.) are membership organizations and each serve as their own plaintiff.


35. E.g., Rivera v. Division of Industrial Welfare, 265 Cal. App. 2d 576, 71 Cal. Rptr. 739 (1968) (ordering a $.25 an hour wage increase for 200,000 California farmworkers).
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benefit levels. More often than not, however, an organization does not meet social reform goals by winning one case. Normally, the reform process is incremental and requires strategic case selection at each stage.

One example of this type of strategy can be found in the NAACP's efforts to end racial segregation in U.S. education. Almost since its establishment in 1910, the NAACP focused its energies on confronting national issues concerning blacks, not on running local legal aid clinics. From 1910 on, lawyers and activists for the NAACP frequently met to discuss strategies that would be most effective in eliminating the racism then sanctioned under state and national law.

Segregation in education had always been of major concern to the NAACP, and in the 1920's it became the target of an NAACP legal campaign. Initially, the NAACP considered a strategy which targeted the seven most discriminatory states for a litigation effort aimed at equalizing separate facilities. They later abandoned this approach in favor of one that challenged segregation itself. The NAACP recognized the futility of a frontal attack on the nineteenth century Supreme Court decision in Plessy v. Ferguson which upheld “separate-but-equal” treatment of the races in public facilities. Hence, it concentrated on the inequality of education for blacks as a way of impugning the states' application of Plessy.

In line with this strategy, a plan was developed to attack segregation at the graduate and professional school levels. These schools were blatant examples of the unequal and discriminatory results of segregation. The immediate object of these lawsuits, admission of blacks to

38. It has been suggested that there is a parallel between the status of the Universal Declaration of Human Rights now and the status of the Fourteenth Amendment before 1954 (when the latter was contained in the Constitution, but its full potential in the struggle against segregation lay dormant). Blacks turned to the courts to achieve enforcement of the Amendment. Ultimately, the constituency for human rights will also make itself felt in the courts. International Human Rights Law Group, Civil Rights and Human Rights: Practitioner's Perspectives (September 1980) (unpublished summary of a conference held on September 7-9, 1979) (comments of Professor Woodward) (on file with The Yale Journal of World Public Order). See also Yudof, International Human Rights and School Desegregation in the United States, 15 Tex. Int'l L.J. 1, 2-3 (1980).
39. 163 U.S. 537 (1896).
40. There were practical problems in putting this strategy into action. Although it seemed preferable to begin the attack on segregation in a border state, where resistance was lower than in the Deep South, the NAACP had to bring suit where it could find willing plaintiffs. Many blacks were unaware of their rights at this time. Those who were aware were better educated and had more to lose from white reprisals; thus they often were unwilling to take such a hazardous step.
these institutions, was overshadowed by the larger purpose of establishing that due process and equal protection imposed upon the states the obligation to supply opportunities that were bona fide equal. The NAACP anticipated that the enormous expense of maintaining two sets of genuinely equal facilities would compel the abandonment of segregation in higher education. The NAACP could then turn its attention to desegregation of undergraduate colleges, secondary schools, and finally, the public elementary schools. There would also be less white resistance to desegregating higher education rather than the more socially sensitive primary schools.

Law schools were a prime target for initial attack. Judges, themselves most often lawyers, could see the inequality, and thus the illegality, of separate-but-equal law schools. In 1936, University of Maryland v. Murray became the first victory for blacks under the strategy when the Maryland Court of Appeals upheld a lower court order to admit the black plaintiff to the University of Maryland Law School. A few years later the Supreme Court reached a similar decision.

In 1950, the Supreme Court decided two cases that encouraged the NAACP and black litigants, yet held firm to the separate-but-equal doctrine. Sweatt v. Painter established that only real equality satisfies the constitutional requirements underlying the separate-but-equal doctrine. McLaurin v. Oklahoma State Regents for Higher Education marked another step by holding that if separate facilities were not provided, no individual or group should suffer harassment in an integrated school. Accordingly, graduate and professional schools were begrudgingly desegregated, while Plessy remained viable law.

Only two months after the Sweatt and McLaurin decisions, a Delaware state court, after finding inequality between the college facilities offered to the two races, ordered that black applicants be admitted to a white undergraduate university. Similarly, the Missouri Supreme Court chipped away at Plessy by holding that a black high school student was entitled to take an aeromechanics course offered at the white high school if his school did not provide one.

42. At the beginning of the 1930's there were only two graduate or professional schools for blacks in the South—Howard University in Washington, D.C. and Meharry Medical College in Nashville. See R. KLUGER, supra note 37, at 136.
43. 169 Md. 478, 182 A. 590 (1936).
47. See R. KLUGER, supra note 37, at 289-90 (the Delaware case was not officially reported).
Finally, in *Brown v. Board of Education of Topeka,* the Supreme Court directly confronted the constitutionality of the separate-but-equal doctrine in education. The Court addressed this sensitive issue because the lower court had established that the black and white schools were essentially equal. In a unanimous decision, the Supreme Court ruled that school segregation was unconstitutional as a violation of the equal protection clause of the Fourteenth Amendment.

The Supreme Court decision in *Brown* gave significant impetus to a mass political movement that ultimately did more to end desegregation than did all the Supreme Court decisions on the issue. *Brown* was

49. 347 U.S. 483 (1954). While the NAACP pursued its incremental attack on segregation, the mood of the country was changing. Beginning in the 1920's, social scientists launched an extensive attack on racism. See R. Kluger, supra note 37, at 309-14. This attack gained momentum with the publication of Gunnar Myrdal's frontal attack on racism. G. Myrdal, *An American Dilemma* (1944). The NAACP made substantial use of this sociological and psychological data in its struggle to end racism. See, e.g., *Brown v. Board of Education,* 347 U.S. 483, 494 (1954) (expert testimony on the impact of segregation on the psychological well-being of black children relied on by district court in one of its findings of fact).

In the 1940's the public condemnation of fascism intensified the awareness of the need for equality of black citizens. The United States was "'embarrassed in the conduct of foreign relations by acts of discrimination taking place in this country.'" Statement of Ernest Gross, Legal Advisor to the Secretary of State (Oct. 29, 1947), in R. Kluger, supra, at 253. President Truman reacted to this subtle change in attitude, and, in 1948, he issued executive orders ending official discrimination in Federal employment and segregation in the armed forces.


51. 347 U.S. at 495. While the Supreme Court declared school segregation unconstitutional, it was constrained by political realities in the South from ordering an immediate end to this unconstitutional condition. Southern reaction to the *Brown* decision ranged from restraint to outrage. Recognizing the problems of implementing *Brown* in light of the "'wide applicability of [the] decision, and because of the great variety of local conditions,'" the Court delayed its decision on implementation until it heard arguments from state and local authorities regarding the proper mode of enforcement. In 1955, the Court remanded the cases to the district courts, which were to retain jurisdiction during local implementation of the Court's order with concern for the "'varied local school problems'" and "'with all deliberate speed.'" *Brown v. Board of Education of Topeka,* 349 U.S. 294, 300-01 (1955) (Brown II). The South took full advantage of this vague mandate and successfully resisted integration in many areas for many years.

This Southern "foot-dragging" came to an early crisis in Little Rock during September 1957, when Arkansas' Governor Faubus defied the federal courts by ordering state troops to Little Rock's Central High School to prevent the admission of nine black children whose request to be enrolled had been upheld by judicial order. See R. Bardolph, supra note 41, at 432-34; Cooper v. Aaron, 358 U.S. 1 (1958). President Eisenhower sent in a unit of the United States Army to sustain the authority of the federal government.

Not until 1969 did the Court reconsider the pace of desegregation and state that "all deliberate speed . . . is no longer constitutionally permissible . . . . The obligation of every school district is to terminate dual school systems at once." *Alexander v. Holmes County Board of Education,* 396 U.S. 19, 20 (1969).

applied in other areas such as public transportation and use of public facilities. The Court, however, declined to apply the Brown doctrine to the very sensitive issue of anti-miscegenation laws. In a 1955 case brought by an attorney unconnected with the NAACP, the Court refused to address the constitutional issue of the validity of a Virginia statute prohibiting miscegenation, and in fact remanded the case to the Virginia Court of Appeals, which adhered to its prior decision voiding the racially mixed marriage. The Court hesitated to decide this most difficult and sensitive subject so soon after Brown, perhaps sensing the angry mood of white resistance and fearing a total repudiation of their authority. Not until 1967, in Loving v. Virginia, did the Court finally strike down the legal impediments to interracial marriage as a violation of the equal protection clause of the Fourteenth Amendment.

The international human rights movement has a number of lessons to learn from this brief history of the U.S. civil rights movement. First, in order to be at all effective one must identify an evil, such as racism. Second, one cannot expect to achieve an easy or prompt victory, but must pursue a gradualist strategy identifying those targets which are most amenable to change, for example, as the NAACP identified graduate schools in the border states. In regard to human rights as with any social problem, only incremental improvements feasibly may be sought. Initial targets ideally should elicit the weakest resistance by the violators of human rights and should at the same time be capable of generating the broadest public support and enthusiasm within the organization itself. Some matters may discourage volunteers and staff, while others may energize them. The selection of these initial targets might also be substantially influenced by the availability and location of potential complainants and informants.

The lawyer who sought prompt Supreme Court action in 1955 to void anti-miscegenation laws evidently committed a common error among activist lawyers who fail to think strategically. The lawyer sought a prompt ruling, which might have jeopardized the long-term development of legal principles against racism in the United States.


53. See, e.g., Gayle v. Browder, 352 U.S. 903 (1956), aff'g per curiam 142 F. Supp. 707 (M.D. Ala. 1956) (buses); Holmes v. City of Atlanta, 350 U.S. 879 (1955), vacating per curiam 223 F.2d 93 (5th Cir. 1955) (municipal golf courses); Mayor of Baltimore v. Dawson, 350 U.S. 877 (1955), aff'g per curiam 220 F.2d 386 (4th Cir. 1955) (public beaches and bathhouses).


56. 388 U.S. 1 (1967).
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Society, and therefore the Court, were not prepared for the issue of anti-miscegenation laws during that period soon after Brown. The lawyer, unlike the Supreme Court, lacked a sense of how important it is to build institutional legitimacy through the careful selection of matters to present for decision. Unfortunately, not all institutions possess the means, desire, or understanding to avoid such strategic errors. Activist lawyers and organizations must consider the impact of their efforts on the long-term legitimacy of the institutions from which they may seek relief.

A third lesson to be learned from the history of the civil rights movement is that activists must use a broad range of information about the causes of the evil they wish to eradicate. They should in turn attempt to generate scholarly and public awareness about the evil and early victories against it. These early victories must be used, insofar as possible, to create a broad basis of public concern and embarrassment—nationally and internationally. Indeed, sometimes a case may be pursued because it has the possibility of not only achieving some concrete improvement, but also of dramatizing the underlying problem. The possibility of remedy, even if insufficient, may attract far more public attention and may better contribute to the ultimate resolution of problems than direct efforts at seeking publicity, such as press releases and press conferences. These lawsuits, or other similar techniques, can constitute "publicity plus." Fifth, activists can be most effective in using the contradictions between the promises of the violators and any lack of fulfillment of these promises. Fifth, human rights activists must not be distracted from their ultimate objectives by momentary procedural victories. In addition, the benefits that might flow from the establishment of precedent should not be overlooked. For example, the U.N. Working Group on Chile helped to establish a precedent that later supported the formation of the Working Group on the Disappeared. Similarly, the U.N. Trust Fund for Human Rights Victims in Chile was converted into a trust fund for human rights violations


58. See note 63 infra.


throughout the world.  

4. *The Fourth Level: Beyond the Test-Case*

This discussion of public interest law strategies and the lessons they hold for the international human rights movement would not be complete without mentioning some basic criticisms of the test-case strategy. Critics charge that the test-case strategy deflects energy that should be devoted to alleviating the real causes of poverty and powerlessness. In this view, legal reform without social reform has little real impact. Test cases establish new legal rights, and additional grievances inundate the courts, but the *status quo* survives. These critics advocate a more direct attack on the U.S. economic hierarchy by organizing powerless groups into a potent political force. Organizations with this philosophy use test-cases to bring people together rather than to reform the law. Other critics say that the test-case strategy makes the powerless community dependent on the “foreign aid” of the public interest lawyer. They say the most cost-effective way to bring about social change is to concentrate on educating people about their rights and developing ways for them to be vindicated without the need of a legal representative. Moreover, these critics contend that the main bars to strategically developing legal self-sufficiency for the poor are the lawyers’ reluctance to relinquish control of the movement and institutional

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63. In many ways the promise of *Brown* is still unfulfilled in American society. There is equal access as a matter of law to educational institutions. There are more non-whites in schools, colleges, and graduate programs, but whites have departed the cities for the suburbs—thus resegregating schools and leaving many blacks in financially deprived school systems. The courts have refused to respond to such challenges as white flight. It was useful for courts and activists to attack the evils of overt and *de jure* racism in the early stages of the civil rights movement in order to dramatize the plight of blacks and in order to end segregationist laws. The courts and American society, however, have retained this insistence on a showing of intentional segregation as a predicate to a finding of unconstitutional treatment and have failed to pursue actual equality for all black citizens. See Freeman, *Legitimizing Racial Discrimination Through Anti-discrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1052-57 (1978). In some ways the civil rights activities of the NAACP and similar organizations have served to legitimize American society by ending overt racism and by promoting an ideology of equality of opportunity without achieving such an equality in fact.

Having ostensibly ended segregation by identifying the contradiction between the theory of separate-but-equal and the realities of very unequal systems for blacks and whites, the civil rights movement must now demonstrate the difference between the equality of opportunity promised by the courts and the inequality actually found in American society.

64. Comment, *supra* note 22, at 1079.
66. *Id.* at 1016-19.
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racism. At least far greater effort must be devoted to encouraging national human rights organizations and movements that can more directly achieve concrete improvements.

The natural reaction of a person or group trying to implement change is to act as if its own skills and training define the best route to change. Although the public interest law movement has succeeded in altering legal doctrine, it is debatable how close the movement can come to actually eliminating the problems that precipitated its creation. Likewise, the international human rights worker may eventually find that creating grounds and means for intervening when human rights violations occur is not enough. At some point, the problem has to be traced to root causes in the political, economic, and social structures which create oppression.

Conclusion

Most human rights organizations and advocates are so compelled by the terrible pressures of their critical work that they often lack the time or resources to undertake the dispassionate planning of their efforts. Nevertheless, they are forced each day to make policy choices from which one can derive some impressions of their strategic approach to human rights problems. This Comment has attempted a first response to the question: "Where does one begin in improving conditions by vindicating international human rights?" This question is of such breadth that the present effort can be considered only a meager, tenta-

67. Id. at 1031-45.

68. Unfortunately, most NGO organizations are not well situated to organize powerless groups at the grass roots level. Most international human rights organizations, such as Amnesty International and the International League, have been most effective in stimulating the interest of middle class or upper class supporters. In Third World countries, they have appealed principally to professional groups, such as lawyers and intellectuals. Nevertheless, these elite groups have the capacity to encourage indigenous human rights mechanisms that might, in turn, benefit broader sections of the society.

One of the most exciting examples of grass roots organization with an international aspect is the Land Army in India. By nonviolent group action, it has reclaimed large land holdings for previously landless peasants. The efforts of the Land Army have received the attention and intellectual support of the I.L.O. and the International Center for Law in Development, which have tried to disseminate information about this phenomenon to legitimate and give confidence to those who may wish to emulate its efforts. International Center for Law in Development, Law in the Modification and Participatory Organization of the Rural Poor for Self-Reliant Development 1-2 (unpublished memo, June, 1978).
tive beginning. One can only hope that, in the light of greater experience, others will improve the approaches suggested here.