

## **Submission to the UN Human Rights Committee for the US List of Issues**

### **I. Title**

Access to Justice, including Meaningful Legal Representation in Civil Cases

### **II. Reporting Organization(s)**

National Coalition for a Civil Right to Counsel; Maryland Legal Aid Bureau; Columbia Law School Human Rights Institute; Northeastern School of Law Program on Human Rights and the Global Economy; and the National Center for Access to Justice

### **III. Issue Summary**

Legal representation is fundamental to safeguarding fair, equal, and meaningful access to the legal system. Millions of Americans lack representation when facing crises such as eviction, foreclosure, workplace discrimination, termination of subsistence income and medical assistance, and loss of child custody. Although the U.S. Supreme Court has recognized the right to counsel in the criminal context, it has failed to establish a similar protection for individuals in the civil context when basic human needs are in jeopardy. The result is a crisis in unmet civil legal needs. Fewer than one in five low-income persons in the United States obtains necessary legal assistance in civil matters. Furthermore, federal law restricts the services that indigents receive through federally-funded legal services organizations. The result is inequality and a denial of fairness in the civil adjudication system, with disproportionate harm to those living in poverty, racial minorities, and women. Attempts at the federal level to address the justice gap have fallen short. Moreover, the United States fails to protect the human rights of migrant agricultural workers throughout the country by allowing and participating in the denial and limitation of access to these workers in their labor camp homes by legal advocates and other community service providers. This denial/limitation makes such workers vulnerable to systemic exploitation, including wage theft, pesticide exposure and, in some cases, human trafficking.

### **IV. Concluding Observations offered by the Human Rights Committee**

None to date.

### **V. U.S. Government Report**

In its 2011 report to the Human Rights Committee, the U.S. government concedes inequalities in its civil justice system, “in part because neither the U.S. Constitution nor federal statutes provide a right to government-appointed counsel in civil cases when individuals are unable to afford it.”<sup>1</sup> The government then identifies several mechanisms it employs to mitigate the justice gap. Chief among those mentioned are the federal *in forma pauperis* statute, the Department of Justice’s Access to Justice Initiative, and the Legal Services Corporation.<sup>2</sup>

None of these measures, however, are sufficient to address the justice gap in the United States. The *in forma pauperis* statute only authorizes courts to request an attorney represent an indigent litigant while providing no funding. In practice, this discretionary power is rarely exercised.

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<sup>1</sup> United States Report to the Human Rights Committee, para 301.

<sup>2</sup> US Report to HRC, para 302.

While promising, the Access to Justice Initiative has institutional and resource constraints that prevent it from fulfilling its potential and comprehensively addressing the dire need for civil legal services. The Legal Services Corporation, which provides grants for civil legal assistance, has experienced crushing budget cuts and severe restrictions on how NGO's funded by it can conduct their work.

## VI. Legal Framework

- ICCPR Articles 2; 14; 26

## VII. Human Rights Committee General Comments

General Comment 32 clarifies Article 14's guarantee of equality before the law. The Human Rights Committee explains that this guarantee encompasses access to the legal system, including in civil cases. It emphasizes that the availability of legal counsel "often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way." The Committee recommends that states provide legal assistance to those who cannot afford it, noting that this may be *required* in certain cases.

## VIII. Other UN Body Recommendations

The CERD Committee has taken particular notice of the United States' failure to provide counsel in civil cases. During its 2008 review of the United States, the CERD Committee expressed concern that the lack of civil counsel for persons living in poverty disproportionately and negatively affects racial minorities in the U.S.,<sup>3</sup> and recommended that the U.S. "allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs, such as housing, health care, or child custody, are at stake."<sup>4</sup>

A number of other UN bodies and independent experts have identified the importance of the civil right to counsel to vindicating other rights, particularly those relating to basic human needs. The Special Rapporteur on Adequate Housing has written, for example, that legal remedies against forced evictions are only effective where civil legal aid is also provided.<sup>5</sup> Other Special Procedures have made similar comments in regards to protecting the rights of racial minorities,<sup>6</sup> women,<sup>7</sup> and migrants.<sup>8</sup> The Special Rapporteur on Extreme Poverty recently summarized this relationship between counsel and the vindication of other rights: "[the] (l)ack of legal aid for civil

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<sup>3</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America. 8/05/2008. A/56/18, CERD/C/USA/CO/6, para. 22.

<sup>4</sup> *Id.*

<sup>5</sup> See U.N Human Rights Comm. – General Comment No. 7: The Right to Adequate Housing (Art. 11.1): Forced Evictions: 20/05/97, ¶ 15, 16<sup>th</sup> Sess. HRC, U.N. Doc. E/1998/22, Annex IV (1997).

<sup>6</sup> U.N Special Rapporteur on the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Annual Rep. to the Human Rights Council ¶10, ¶35, 18th sess. HRC, U.N Doc. A/HRC/18/44 (July 21, 2011) (by Githu Muigai).

<sup>7</sup> See U.N Special Rapporteur on violence against women, its causes and consequences, Annual Rep. to Comm. on Human Rights: *International, regional and national developments in the area of violence against women (1994-2003)* ¶90, 59th sess. CHR, U.N Doc. E/CN.4/2003/75 (Jan. 6, 2003); U.N Special Rapporteur on violence against women, its causes and consequences, Annual Rep. to Comm. on Human Rights: *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women* ¶83, 62nd sess. CHR, U.N Doc. E/CN.4/2006/61 (Jan. 20, 2006) (by Yakin Ertürk).

<sup>8</sup> U.N Special Rapporteur on the human rights of migrants, Annual Rep. to the Human Rights Council, ¶46, 7th sess. HRC, U.N Doc. A/HRC/7/12 (Feb. 25, 2008) (by Jorge Bustamante); See also U.N Special Rapporteur on the human rights of migrants, Annual Rep. to the Comm. on Human Rights ¶24, 59th sess. CHR, U.N Doc. E/CN.4/2003/85 (Dec. 30, 2002) (by Gabriela Rodríguez Pizarro).

matters can seriously prejudice the rights and interests of persons..., for example when they are unable to contest tenancy disputes, eviction decisions, immigration or asylum proceedings, eligibility for social security benefits, abusive working conditions, discrimination in the workplace or child custody decisions.”<sup>9</sup>

## **IX. Recommended Questions**

- Please provide information on the legislative, policy, and other measures being taken to address the deficiencies in current federal initiatives related to access to justice and to meaningfully expand access to the civil justice system, including the provision of civil legal services in cases where human needs are at stake.
- Please provide information on what measures the United States is taking to ensure the protection and enforcement of the rights of migrant farmworkers to receive visitors in their homes, including educational, religious, health and legal service providers.

## **X. Suggested Recommendations**

The United States should take the following steps to address the civil justice gap:

- support research to assess the immediate and long-term financial and other consequences for courts, court users, and communities when court users have counsel in civil cases, and to explore other ways to improve court access;
- enact federal legislation to guarantee right to counsel in immigration cases and all civil cases in federal court where liberty interests or fundamental human needs are at stake;
- fully fund the Legal Services Corporation at a level sufficient to meet the need for free or low cost legal assistance and lift restrictions that prevent legal services lawyers from providing the full array of necessary services;
- intensify the Access to Justice Initiative's activities with respect to civil legal services providers and provide it with the necessary leadership, funding and other support to reach its full potential;
- support and coordinate efforts on the state level to establish a civil right to counsel by developing, evaluating, and disseminating “best practices” for states; and
- take all reasonable measures to ensure the rights of migrant farmworkers to receive visitors in their homes, including educational, religious, health and legal service providers, including enforcement of the rights of migrant farmworkers by all appropriate federal and state agencies.

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<sup>9</sup> See U.N Special Rapporteur on Extreme Poverty and Human Rights, Report on Access to Justice for People Living in Poverty, ¶62, 21st sess. HRC, U.N Doc. A/67/278 (August 9, 2012) (by Maria Magdalena Sepúlveda Carmona).