

In the
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

**POOR PEOPLE'S ECONOMIC HUMAN RIGHTS CAMPAIGN, KENSINGTON
WELFARE RIGHTS UNION, CHERI HONKALA, JOY BUTTS, NATIONAL
EMPLOYMENT LAW PROJECT, THE URBAN JUSTICE CENTER, AND THE
CENTER FOR CONSTITUTIONAL RIGHTS**

vs.

THE UNITED STATES OF AMERICA

PETITION

PRELIMINARY STATEMENT

1. Petitioners, the Poor People's Economic Human Rights Campaign, the Kensington Welfare Rights Union, Cheri Honkala, Joy Butts, the National Employment Law Project, the Urban Justice Center and the Center for Constitutional Rights bring this petition against the United States on behalf of all US citizens and residents significantly harmed by recent and current US welfare law and policy -- in particular the changes wrought by the 1996 Personal Responsibility And Work Opportunity Reconciliation Act of 1996 ["PRWORA"]. Petitioners bring this petition against the United States for violations of the right to an adequate standard of living, the right to health, the right to protection for familial relations, the right to work under just and reasonable conditions, the right to education, the right to food, the right to housing, the right to social security, and the right to be free from discrimination.
2. Despite a growing economy, increasing wealth and federal budget surplus, US law

and policy has nonetheless steadily eroded the economic and social rights of its poor citizens and residents. The working poor, the unemployed and those who need assistance from the state face increasing economic insecurity and desperation, threatening the health and well-being of countless individuals and families across the country. Social welfare policies in the US have led to increasing inequality of income, with the harshest consequences, such as hunger, lack of health care, and homelessness, falling principally on single mothers and their children.

The enactment and implementation of PRWORA represents one of the most dramatic examples of this process and violates the obligation of the United States, under binding regional and international instruments and norms, progressively to improve the enjoyment of economic and social rights and to eliminate discrimination, particularly that based on sex, race, economic status, property, marital status and age. It does so, *inter alia*, by fixing arbitrary cut-offs of preexisting, and themselves inadequate, entitlements to survival benefits for the poor; by jeopardizing continuing entitlements to food and health care benefits; by forcing previously eligible recipients to lose their homes, and to work under violative conditions and at the risk of leaving their children unprotected; by providing incentives to states to hasten the downsizing of those entitled to benefits, often illegally; and by implementing these laws and policies without any mechanism for identifying and preventing harm to the most vulnerable. Thus, as a matter of international law, PRWORA works a cruel and illegal retrogression in the provision of survival benefits to the poor and a failure to guarantee the core minimum entitlement of each person to social and economic rights as well as to eliminate discrimination and ensure the protection of all, indivisible human rights to everyone.

I. PETITIONERS HAVE STANDING TO BRING THESE CLAIMS.

3. Petitioners have standing because they have either suffered or are at risk of suffering violations of their economic rights as a result of PRWORA or represent others who have suffered or are at risk of suffering such violations.
4. Petitioner, the Economic Human Rights Campaign is an umbrella organization housed in the offices of the Kensington Welfare Rights Union. See *infra* at par.6. Over 40 organizations across the nation have come together to form the Economic Human Rights Campaign. The Campaign engages in organizing, education, and raising public awareness of social and economic rights in the United States, and in particular of PRWORA's impact on these rights.
5. Petitioner, the Kensington Welfare Rights Union [KWRU] is a poor people's

organization, established in 1991, dedicated to advocacy and organizing for economic and social rights in the United States. KWRU is located in the neighborhood of Kensington -- one of the poorest sections of Philadelphia, Pennsylvania. KWRU's address is P.O. Box 50678, Philadelphia, Pa 19132. The President of KWRU is Cheri Honkala, a single mother who has been living under the poverty line in the United States most of her life. See *infra* at par. 6. KWRU is run by and for the poor. Current US welfare law and policy have significantly impacted every member of KWRU, and resulted in violations of economic and social rights of a substantial percentage of their membership. KWRU has members or affiliates in almost every state of the United States. Thus, petitioners have consistently represented the interests of the poor in the United States on a nationwide basis, and in particular have advocated against the regressive changes wrought by PRWORA.

6. Petitioner Cheri Honkala is a single parent living under the poverty line who was sanctioned and cut-off from cash assistance under PRWORA. She is also the president of the Kensington Welfare Rights Union. See *infra* par. 5. She was sanctioned by the state for refusing to make contact with her former abuser -- the father of her son. She sought an exemption from the requirement to make such contact, but was denied. She is temporarily residing at 519 Fairmount Apt. 2F Philadelphia, Pennsylvania 19123. She is currently receiving no social welfare benefits from the state, and economically survives on donations from friends and supporters. She lives in overcrowded conditions and in a situation of ongoing economic insecurity.
7. Petitioner Joy Esther Phillips Butts is currently receiving cash benefits under Title I of PRWORA. She is a single parent with three children. Her son is working part-time and makes between \$100 and \$250 per month. She also receives state-sponsored food assistance and medical insurance. She lives significantly below the poverty line. Often her state benefits do not cover basic living expenses and, when possible, she relies on charity to cover such expenses. She receives \$400 a month in cash benefits, \$74 of which she must use each month to pay for transportation for her two daughters to go to public school. Her utilities are approximately \$150 per month. She has consistently sought an opportunity to further her education and training, but has been unable to obtain it. She resides in public housing at 5426 Irving Street, Philadelphia, Pennsylvania 19139.
8. Petitioner, the National Employment Law Project is a national advocacy organization committed to improving the lives of the working poor and the unemployed. It represents the most economically marginalized members of society -- workfare participants, contingent workers, immigrants, other low-wage workers, and the unemployed, many of whom are directly and indirectly affected.

The National Employment Law Project's address is 55 John Street, 7th Fl., New York, NY 10038.

9. Petitioner, the Urban Justice Center is a not-for-profit agency dedicated to advocating on behalf of the poor and marginalized through a unique combination of direct representation, systemic advocacy, community education, and organizing. The Urban Justice Center works for and with the homeless and marginally housed, the mentally ill homeless, victims of family violence and lesbian and gay youth. The Center strives to serve its clients on all levels, from finding solutions to the problems of each person who comes to them for assistance, to addressing the system-wide failures and injustices they identify through their direct contact with those individuals. The Urban Justice Center's address is 666 Broadway 10th floor, New York, N.Y. 10012.
10. Petitioner, the Center for Constitutional Rights (CCR) is a non-profit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the United States Constitution, the Bill of Rights and the Universal Declaration of Human Rights. CCR has a long history of advocating for the rights of the poor and the obligation of the US to respect the indivisible concept of human rights embodied in the UDHR and the American Declaration on the Rights and Duties of Man, with particular attention to economic and social rights. The Center for Constitutional Right's address is 666 Broadway 7th Floor, New York, NY 10012.

II. THE COMMISSION HAS JURISDICTION OVER THE UNITED STATES FOR THESE CLAIMS.

11. The Commission has jurisdiction over the member states of the OAS by virtue of the Charter of the Organization of American States (Bogota 1948), as amended by the Protocol of Buenos Aires February 27, 1967. See Case 2141 at par. 15, Inter-Am. C.H.R. OAS/Ser./L/V/ II.54, doc. 9 rev.1 (1981) (discussing jurisdiction of Inter-American Commission). The US ratified the OAS Charter on April 23, 1968.
12. "As a consequence of articles 3(i),16, 51(e), 112 and 150 of this Treaty [OAS Charter], the provisions of other instruments and resolutions of the OAS acquired binding force." *Id.* at par. 16. Those instruments and resolutions approved with the vote of U.S. Government include the American Declaration of the Rights and Duties of Man (Bogota 1948) and the Statute and Regulations of the Inter-American Commission. *Id.*
13. Specifically, the Regulations of the Inter-American Commission state at art. 51

that "[t]he Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man, concerning the member states of the Organization that are not parties to the American Convention on Human Rights." Inter-Am. C.H.R. Regulations, OAS/Ser.L/V/II.92, doc. 31, rev. 3 (1996) [hereinafter "Inter-Am. C.H.R. Regulations at ___"].

14. The Inter-American Court has also found that "[f]or the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter. Moreover, articles 1(2)(b) and 20 of the Commission's Statute defines the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these states a source of international obligation related to the Charter of the Organization." Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-1089 at par. 45, Inter-Am. Ct.H.R. (Ser. A) no.10 (1989) [hereinafter "Interpretation of the American Declaration..."] The Court further noted that "[t]he General Assembly of the Organization has also repeatedly recognized that the American Declaration is a source of international obligation for the member states of the OAS. " *Id.*
15. Moreover, on June 1, 1977 the United States signed the American Convention on Human Rights. American Convention on Human Rights, *entered into force*, 18 July 1978, 1114 U.N.T.S., O.E.A./Ser.L/V/II.23 doc. 21 rev. 6 (1979), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/II.82 doc. 6 rev.1 at 25 (1992) [hereinafter "American Convention at ___"]. Although the US did not ratify the Convention, its signature obligates the US to "refrain from acts which would defeat the object and purpose of a treaty. . . ." The Vienna Convention on the Law of Treaties, *entered into force*, 27 Jan. 1980, at art. 18, U.N. Doc. A/Conf. 39/27 (1969), 1155 U.N.T.S. 331; *reprinted in* 8 I.L.M. 679 (1969) [hereinafter Vienna Convention].

III. DOMESTIC REMEDIES ARE UNAVAILABLE.

16. Exhaustion of domestic remedies is not required by article 37 of the Regulations of the Inter-American Commission on Human Rights because US law "does not afford due process of law for protection of [the economic and social] rights that have allegedly been violated." Inter-Am. C.H.R. Regulations, *supra* par. 13, at art. 37.
17. Despite its international obligations in regard to social and economic rights, the US legal system does not recognize any remedy for deprivation by Congressional

legislation of these rights. The United States Supreme Court has found that, as a general matter, the US government has no affirmative constitutional obligations. DeShaney v. Winnebago Co. Dep't. of Soc. Serv., 489 U.S. 189 (1989). In particular, the US has no duty or obligation to create the conditions necessary to protect social and economic rights. Harris v. Mcrae 448 U.S. 297 (1980). Thus, under Supreme Court case law the legislature has full discretion in this arena to limit or eliminate social welfare programs. See Lyng v. UAW, 485 U.S. 360 (1988); Lindsey v. Normet, 405 U.S. 56 (1972) (no constitutional guarantee to adequate housing); Dandridge v. Williams, 397 U.S. 471 (1970).

18. Neither does US law recognize the principle of indivisibility. Consequently, US law fails to provide a remedy where a failure to protect social and economic rights undermines civil and political rights. See e.g. Lyng v. UAW, 485 U.S. 360 (1988) (upholding 1981 Amendment which precluded households from becoming eligible for food stamps due to a member of the household going on a legally protected strike despite impact on freedom of association); Harris v. Mcrae 448 U.S. 297 (1980).
19. Finally, US law does not protect against PRWORA's systematic discrimination against children, women, and minorities, as the US Constitution only protects against intentional discrimination and not legislation that may have a disproportionate impact on a protected group, even when based on sex or race. Personnel Admin'r of Mass. v. Feeny, 442 U.S. 256 (1979); Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976).

IV. PETITIONERS' CLAIMS ARE TIMELY.

20. Petitioners contend that their petition is timely, in accordance with the requirements for admissibility pursuant to article 38 of Regulations of the Inter-American Commission. Inter-Am. C.H.R. Regulations, *supra* par. 13, at art. 38. The violations alleged herein are continuing in nature. Moreover, given their inability to exhaust domestic remedies, petitioners have brought this petition within a reasonable period of time since the implementation of PRWORA began to negatively affect the social and economic rights of petitioners and those they represent. *Id.*

V. THE US IS OBLIGATED TO PROTECT SOCIAL AND ECONOMIC RIGHTS UNDER INTER-AMERICAN AND INTERNATIONAL LAW.

A. PROTECTED RIGHTS.

21. As the Commission noted in Chapter V of its 1993 Annual Report, a broad array of instruments in the Inter-American System protect social and economic rights, specifically: the Charter of the Organization of American States ("OAS Charter"), the American Declaration of the Rights and Duties of Man ("American Declaration"), the American Convention on Human Rights ("American Convention") and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"). Inter-Am. C.H.R. 1993 Annual Report, Chpt. V, OEA/Ser/L/V/II.85, (1993) [hereinafter "Inter-Am. C.H.R. 1993 Report at __".] The Commission described the relationship between these instruments, explaining that : "[t]he principles articulated in the American Declaration of the Rights and Duties of Man were elaborated and expanded into the American Convention on Human Rights. Similarly, the Protocol of San Salvador is an extension of norms and principles set forth in the previous two texts as well as in the Charter." *Id.* at Ch.V part. II.
22. In article 34 of the OAS Charter, "[t]he Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development." OAS Charter at art. 34.
23. To achieve these basic objectives, the member states "likewise agree to devote their utmost efforts to accomplishing the following basic goals . . . b) equitable distribution of national income; g) fair wages, employment opportunities, and acceptable working conditions for all; j) proper nutrition, especially through the acceleration of national efforts to increase the production and availability of food; k) adequate housing for all sectors of the population; l) urban conditions that offer the opportunity for a healthful, productive and full life" *Id.* at art. 34.
24. In article 45 of the OAS Charter "[t]he Member States . . . agree to dedicate every effort to the application of the following principles and mechanisms: a) All human beings, without distinction as to race, sex, nationality, creed or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity and economic security; b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his [or her] family, both during his [or her] working years and in his [or her] old age, or when any circumstances deprives him of the possibility of working; [and] h) . . . development of an efficient social security policy" *Id.* at art. 45.
25. In article 49 of the Charter the member States agree to "exert the greatest efforts,

in accordance with their constitutional processes, to ensure the effective exercise of the right to education, on the following bases: . . . c) Higher education shall be available to all, provided that, in order to maintain its high level, the corresponding regulatory or academic standards are met." *Id.* at art. 49.

26. The American Declaration further defines and reaffirms these rights. See *supra* pars. 11-15. "For the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter." Interpretation of the American Declaration, *supra* par.14; American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L./V/II.82 doc.6 rev.1 at 17 (1992) [hereinafter "American Declaration at ___"]

27. The American Declaration specifically provides that:

Art VI: Every person has the right to establish a family, the basic element of society, and to receive protection therefor.

Art XI: Every person has the right to the preservation of his [or her] health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

Art. XII: Every person has the right to an education, which should be based on the principles of liberty, morality and human solidarity. Likewise every person has the right to an education that will prepare him to attain a decent life, to raise his [or her] standard of living, and to be a useful member of society. The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide

Art XIV: Every person has the right to work, under proper conditions, and to follow his [or her] vocation freely, insofar as existing conditions of employment permit. Every person who works has the right to receive such remuneration as will, in proportion to his [or her] capacity and skill, assure him [or her] a standard of living suitable for himself and for his [or her] family

Art XVI: Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his [or her] control that make it physically or mentally impossible for him to earn a living.

28. The American Convention, to which the United States is signatory and thus has obligations thereto, in article 26 provides broad protection for "the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires." American Convention, *supra* par.15, at art. 26. Moreover, the article 17 of the American Convention provides that: "family is the natural and fundamental group unit of society and is entitled to protection by society and the state." *Id.* at 17.
29. The Protocol of San Salvador, as a reaffirmation and clarification of the "economic, social and cultural rights [which had] been recognized in earlier international instruments of both world and regional scope" including the OAS Charter and in the American Declaration, also provides guidance as to the rights protected by the Inter-American System in regards to US citizens and residents. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural rights, 17 November 1988, O.E.A. /Ser.L/V/II.82 doc. 6 rev.1 at 67 (1979), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L./V/II.82 doc. 6 rev.1 at 67 (1992) [hereinafter "Protocol of San Salvador at ___"].¹
30. The Protocol of San Salvador protects the right to work, *id.* at art. 6, including the right to "family care" so that women have a real opportunity to work, *id.*; the right to just and equitable conditions of work, *id.* at art. 7; the right to social security, *id.* at art.9; the right to health, *id.* at art. 10; the right to food, *id.* at art. 12; the right to education, *id.* at art. 13; and the right to the protection of the family relations, *id.* at art. 15.
31. Also relevant are the extra-regional obligations of the United States in relation to social and economic rights. As the Inter-American Court has noted "the universality of the rights and freedoms which are entitled to protection form the core of all international protective systems. In this context, it would be improper to make distinctions based on the regional or non-regional character of the obligations assumed by States, and thus deny the existence of the common core of basic human rights standards." "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82 at par. 40, Inter-Am. Ct. H.R. (Ser. A.) no. 1 (1982).
32. Consistent with this view, the Commission has, as a regular matter, relied on UN

¹ As the Preamble of the Protocol of San Salvador notes, "economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, [however] it is essential that those rights be . . . reaffirmed, developed, perfected and protected . . ." Protocol of San Salvador, *supra* par. 29, at Preamble.

instruments. In the instant case, the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), *entered into force*, 3 Jan. 1976, 993 U.N.T.S. 3, *reprinted in* 6 I.L.M. 360 (1967) [hereinafter ICESCR Covenant], which the US has signed but not ratified,² as well as the views of the Committee on Economic, Social and Cultural Rights ("ICESCR Committee"), the designated body that oversees the treaty, are of particular relevance.

33. The ICESCR Covenant provides protection for: the right to work, *id.* at art. 6; the right to just and favourable conditions of work, *id.* at art. 7; the right to social security, *id.* at art. 9; the right to the protection of family relations, *id.* at art. 10; the right to an adequate standard of living, food, clothing and housing, *id.* at art. 11; the right to health, *id.* at art. 12; and the right to education, *id.* at art. 13. The ICESCR Committee has issued extensive general comments on the right to food and the right to housing. In particular, General Comment 12 states that: "[t]he human right to adequate food is of crucial importance for the enjoyment of all rights." E/C.12/1999/5 at par.1 (1999). Additionally, General Comment 4 states that: "[t]he human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights." UN Doc. HRI/GEN/1/Rev.2 at p. 59, (1996).

34. Thus, the Inter-American human rights system protects:

The right to an adequate standard of living, OAS Charter art. 45; American Declaration. arts. XI & XIV; ICESCR art. 11;

The right to health, OAS Charter arts. 34 & 45; American Declaration. art. XI; Protocol of San Salvador art. 10; ICESCR art. 12;

The right to protection of family relations, OAS Charter art. 45; American Declaration. art. VI; American Convention art. 17; Protocol of San Salvador art. 15; ICESCR art. 10;

The right to work under reasonable conditions, OAS Charter arts. 34 & 45; American Declaration. art. XIV; Protocol of San Salvador arts. 6 & 7; ICESCR arts. 6 & 7;

The right to education, OAS Charter art. 49; American Declaration art. XII; Protocol of San Salvador art. 13; ICESCR art. 13;

² Just as in the case of the American Convention, US obligation under this Covenant based on its signature is to refrain from violating the object and purpose of the treaty. American Convention, *supra* par. 15; Vienna Convention, *supra* par. 15.

The right to food, OAS Charter art. 34; American Declaration. art. XI; Protocol of San Salvador art. 12; ICESCR art. 11;

The right to housing, OAS Charter art. 34; American Declaration art. XI; ICESCR art. 11;

The right to social security, OAS Charter art. 45; American Declaration art. XVI; Protocol of San Salvador art. 9, ICESCR art. 9, and.

The right to non-discrimination, OAS Charter art.45, American Declaration. art. II, American. Convention. art. 24, the Protocol of San Salvador, art. 3, ICESCR art.2.

B. PROGRESSIVE ACHIEVEMENT AND NON-RETROGRESSION OF ECONOMIC AND SOCIAL RIGHTS.

35. While civil and political rights are generally rights of immediate obligation, in the case of economic and social rights, States are under a duty of progressive achievement. Inter-Am. C.H.R. 1993 Report, *supra* at par. 21, at Chpt. V, pt. II.
36. "The principle that economic, social and cultural rights are to be achieved progressively does not mean that governments do not have the immediate obligation to make efforts to attain the full realization of these rights. The rationale behind the principle of progressive rights is that governments are under the obligation to ensure conditions that, according to the state's material resources, will advance gradually and consistently toward the fullest achievement of these rights." *Id.*
37. "The principle of progressivity demands that as the level of development in a state improves, so must its level of commitment to guaranteeing economic, social and cultural rights." *Id.*
38. "It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal." ICESCR Committee General Comment 3, UN Doc. HRI/Gen/Rev.1, at p.45, par. 9 (1994) [hereinafter General Comment 3 at ___].
39. The principle of progressive achievement is "affirmed in article 32 of the OAS Charter which describes development as the 'primary responsibility of each country and should constitute an integral and **continuous process** for the establishment of a **more just** economic and social order.'" Inter-Am. C.H.R. 1993 Report, *supra* at par. 21, at Chpt. V, pt. II (quoting OAS Charter).

40. The principle of progressive achievement is also found in Commission Annual Reports, *Id.*, the American Convention, *supra* par. 15, at art. 26, the ICESCR Convention, *supra* par. 32 at art.2, and practically every regional and international instrument or other document regarding the implementation of economic and social rights. *See e.g.* The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/CN.4/1987/17 at pars. 16-24.
41. Inherent in the principle of progressive achievement, and a necessary corollary thereto, is the prohibition on retrogression. As the State is required to move towards a fulfillment of protected economic and social rights any retrogression would constitute a violation of the principle of progressive achievement. As noted by the ICESCR Committee, "any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for . . . and in the context of the full use of the maximum available resources."³ General Comment 3, *supra* par. 38, at par. 9.

C. MINIMUM CORE CONTENT GUARANTEES FOR PROTECTED RIGHTS.

42. The principle of progressive achievement, however, does not abrogate a State's obligation to provide a minimum core content of protected economic and social rights. As stated by the Inter-American Commission "the obligation of member states to observe and defend the human rights of individuals within their jurisdictions, as set forth in both the American Declaration and the American Convention, obligates them, regardless of the level of economic development, to guarantee a minimum threshold of these rights." Inter-Am. C.H.R. 1993 Report, *supra* par. 21, at Chpt. V, pt. II.
43. The Inter-American Commission's conclusions regarding minimum core content of protected economic and social rights is consistent with the international legal jurisprudence. *See* General Comment 3, *supra* par. 38, at par. 10 ("In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."); *see also* The Limburg Principles on the Implementation of the International Covenant on Economic,

³ While the ICESCR Committee is referring to the implementation of the rights in the ICESCR, its jurisprudence is pertinent here as the rights protected in the Inter-American system substantially overlap and are of the same character as those in the ICESCR Covenant. *See infra* sect. V(A).

Social and Cultural Rights UN Doc. E/CN.4/1987/17 at pars. 25 (recognizing an obligation to "ensure respect for minimum subsistence rights for all.")

D. SUBSTANTIVE REMEDIES FOR PROTECTED RIGHTS.

44. International law requires that States provide substantive remedies for violations of protected rights. The principle that national fora are the appropriate arena for an initial determination of the rights protected by the Inter-American system is implicit in the requirement to exhaust domestic remedies in art. 37 of the Regulations of the Inter-American Commission. Inter-Am. C.H.R. Regulations , *supra* par. 21, at art. 37.
45. "[A] State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not 'appropriate means' . . . [or] in view of the other means used, they are unnecessary. It will be difficult to show this . . . in many cases, the other 'means' used could be rendered ineffective if they are not reinforced or complemented by judicial remedies." ICESCR Committee, General Comment 9 at par. 3 E/C.12/1998/24 (1999).
46. The right to a remedy for protected rights has been reaffirmed by UN General Assembly. *See, e.g.*, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, GA RES. 53/144, at art. 9, U.N. GAOR, 85th Plenary Meeting, U.N.Doc. A/RES/53/144 (1999) ("everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.")

E. MONITORING OF PROTECTED RIGHTS.

47. A State's ability to fulfill its obligations regarding social and economic rights is necessarily dependent on a State's awareness of underlying conditions that affect the exercise of such rights. Without adequate monitoring a State cannot "ensure conditions that, according to the state's material resources, will advance gradually and consistently toward the fullest achievement of these rights." *See* Inter-Am. C.H.R. 1993 Annual Report, *supra* par. 21, at Chap. V, pt. II.
48. According to the ICESCR Committee, the obligation "to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion," is so fundamental that it is "not in any way eliminated as a result of resource constraints." General Comment 3, *supra* par. 38, at par. 11.

E. INDIVISIBILITY OF ALL PROTECTED RIGHTS.

49. It is a cardinal principle of international law that economic, social, cultural, civil and political rights are indivisible and interdependent. As noted by the Inter-American Commission, "[a]ny distinction drawn between civil and political rights and economic, social and cultural rights are categorical formulations that detract from the promotion and guarantees of human rights." Inter-Am. C.H.R. 1993 Report, *supra* par. 21, at Chpt. V, pt. I.
50. In particular the Inter-American Commission has noted the relationship between the right to participation and economic and social rights, stating that: "[T]he implementation of [economic and social rights] creates the conditions in which the general population is able, i.e. is healthy and educated, to participate actively and productively in the political decision-making process." *Id.*
51. The Inter-American Commission has also stated that:

"When the most vulnerable members of society are denied access to the basic needs for survival which would enable them to break out of their condition, it results in [a violation of] the right to be free from discrimination; the right to the consequent principles of equality of access, equity and distribution; and the general commitment to protect the vulnerable elements in society being willingly or complicity contravened. Moreover, without satisfaction of these basic needs, an individual's survival is directly threatened. This obviously diminishes the individual's right to life, personal security, and as discussed above, the right to participate in the political and economic processes." *Id.*
52. The principle of indivisibility is also reaffirmed in the Preambles to the American Convention, *see* American Convention, *supra* par. 15, at Preamble, and the Protocol of San Salvador, *see* Protocol of San Salvador, *supra* par. 29, at, at Preamble, as well as both the International Covenant on Civil and Political Rights ("ICCPR"), *entered into force*, 23 March 1976, 993 U.N.T.S. 171, *reprinted in* 6 I.L.M. 368 (1967) to which the US is a party, and the ICESCR Convention, *supra* par. 32.
53. Thus, any US failure to fulfill obligations regarding economic and social rights that impacts civil and political rights, such as the right to life, the right to participation, the right to privacy, reproductive rights, or the right against involuntary servitude and forced labor, results in violations of both civil/political and social/economic rights. .

G. NON-DISCRIMINATION.

54. Every regional and international instrument reaffirms the right to be free from discrimination. The OAS Charter specifically states that "[a]ll human beings, without distinction as to race, sex, nationality, creed or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity and economic security." OAS Charter at art. 45.
55. The principle of non-discrimination is reaffirmed in the American Declaration, the American Convention, the Protocol of San Salvador, the ICCPR, and the ICESCR Convention. See *supra* at par. 34.
56. Thus, US policy regarding economic and social rights which has a discriminatory impact is clearly violative of the above instruments.

VI. IN 1996, PRWORA SIGNIFICANTLY CHANGED US LAW REGARDING SOCIAL WELFARE.

57. Prior to 1996, social welfare law and policy in the US was already following several disturbing trends: a) continual reduction of benefits to a level significantly below the official poverty line, e.g., between 1970 and 1997 cash benefits declined by 23% in every state and by 50% in the median state; b) an elimination of benefits altogether for certain unpopular categories of needy individuals -- e.g., by 1996 only 15 states provided any cash benefits to unemployed, but purportedly employable, adults without children; c) increasing barriers to participation in welfare programs and increasing denials to children as a sanction for their parent's behavior; and d) an emphasis on diversion programs, i.e. policies intended to divert qualified individuals from obtaining their benefits. Tim Casey, *Welfare Reform and Its Impact in the Nation and in New York*, Federation of Protestant Welfare Agencies, Inc., August 1998.
58. PRWORA is only one example of how the policies of the US have failed in meeting obligations to fulfill social and economic rights. Many other individuals who are not directly affected by PRWORA are still suffering from hunger, homelessness and unemployment in a country with significant resources and during a period of a growing and vibrant economy. Nonetheless, PRWORA represents the culmination of many of the trends discussed above.

A. ELIMINATION OF GUARANTEE TO SOCIAL WELFARE.

59. Prior to the enactment of PRWORA, the federal government provided cash assistance to children and their families so long as they qualified as "needy." This cash assistance was considered an entitlement⁴ The federal government under this prior scheme provided open-ended matching funds for all needy persons. In other words, for every \$1 a state spent providing assistance to a needy person, the federal government provided approximately \$2 more under a 66% federal match rate.⁵ This created an enormous incentive for the state to provide funds, as otherwise it would forgo federal assistance.
60. After more than a 60-year commitment to provide such assistance to all needy families, Congress eliminated this entitlement in the enactment of PRWORA in 1996. Specifically, PRWORA states: "[t]his part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part." 42 U.S.C. § 601(b) (1999).
61. Title I of PRWORA repealed the Aid to Families with Dependent Children Program (AFDC), which previously provided cash assistance, and replaced it with the Temporary Assistance for Needy Families (TANF) Program. The US federal government now provides a "block grant," which is a limited sum of money to each state. In order to access this "block grant," states must contribute at their historic levels. 42 U.S.C. § 609(a) (7) (1999). PRWORA also determined that the federal government will provide the same level of funding for the next six years, regardless of fluctuations in the number of needy persons in the state. Moreover, PRWORA also creates incentives for states to reduce the number of benefits provided. *See infra* at § VI(C).
62. PRWORA is premised on the notion that by promoting work and marriage for the poor, the dependency of "needy parents" will end. 42 U.S.C. § 601 (1999). To this end, it limits the funds available without, however, providing any guarantee of work at a living wage or other alternative means for families to support themselves who are unable to work.⁶ Nor does it create the conditions, *see e.g. infra* § (VI)(G), that would make it possible for parents to work. As such, this scheme has had a severely detrimental effect on the poor. *See infra* § VIII.

⁴ Indeed, in *Goldberg V. Kelly*, 397 U.S. 254, 261-63 (1969), the United States Supreme Court found that benefits under a prior law were "a statutory entitlement for persons qualified to receive and the benefits could not be taken away without due process."

⁵ The rate ranged from 50% to 79% based on the state's Medicaid reimbursement rate.

⁶ Title II and XVI of the Social Security Act guarantees assistance under very strict rules to elderly and disabled persons. Thus, many families unable to work do not qualify for this alternative assistance.

B. ARBITRARY TIME LIMITS.

63. PRWORA sets arbitrary time limits after which "needy" individuals cannot receive federal cash assistance. After five years of receiving benefits, poor children and their families no longer qualify for further cash benefits, i.e. "TANF benefits". 42 U.S.C. § 608(a)(7) (1999). Persons who received benefits as minors have an additional five years as adults. Individual states, however, are permitted to impose even shorter time limits and many states have adopted time limits as short as 24 months. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM, SECOND ANNUAL REPORT TO CONGRESS, U.S. Dept. of Health and Human Services, August, 1999 (162-163).
64. PRWORA permits states to exempt 20% of the caseload from the time limits. 42 U.S.C. § 608 (a)(7)(c)(ii) (1999). The 20% figure is arbitrary and not based on any research on what percentage of welfare recipients still might need assistance after five years.
65. PRWORA does not guarantee work or alternative means of support after a needy family reaches a time limit.

C. PRWORA CREATES INCENTIVES TO DENY ECONOMIC AND SOCIAL RIGHTS

1. PENALTIES

66. PRWORA creates incentives to eliminate benefits to the poor through a series of requirements and penalties. TANF requires state to meet mandatory work participation requirements or face stiff penalties. 42 U.S.C. § 607 and § 609(a)(3) (1999). The potential penalty of losing up to 5% of the federal block grant is a strong incentive for states to meet the work requirements, and thus a strong incentive to cut-off, through sanctions⁷ or otherwise, families unable to meet these requirements. The law requires 40% of the caseload to participate in specific work activities by the year 2000, and 50% by the year 2002. 42 U.S.C § 607(a)(1) (1999). For two parent families, the participation rate is 90%. 42 U.S.C. § 607(a)(2) (1999).
67. If states reduce caseloads, TANF also reduces the level of mandatory work requirements to the extent of that state's reduction of the overall caseload (i.e. number of families receiving assistance) from levels in 1995. 42 U.S.C. § 607(b)(3)(1999). This caseload reduction credit will help states in subsequent

⁷ See *infra* at § VI(D).

years. For example, in the year 2000 the mandatory participation rate in work requirements for one-parent families is 40%. 42 U.S.C. §607(a)(1)(1999). If a state has a reduction of 40% in its year 2000 caseload compared to its 1995 caseload, the state already has met its federal mandatory work requirements and would not be subject to the penalty of up to 5% regardless of how many families on benefits were actually meeting the work requirement. This provides an additional incentive to reduce caseloads by any means.

2. PRIVATIZATION AND PROFITEERING.

68. TANF permits states to contract out program administration to charitable, private (profit-oriented) and religious organizations. 42 U.S.C. § 604a(a) (1999). TANF imposes no restrictions on contracting procedures nor requires any government accountability when TANF administration is contracted out or privatized. The law permits state to give contractors incentives to reduce caseloads and keep the profits generated from reducing caseloads.
69. Historically, non-profit agencies have worked in partnership with government agencies to provide social services, but never before in the history of the US have non-governmental entities had the ability to serve as gatekeepers for federal cash assistance programs. Privatization of this function represents a fundamental shift in how states deliver income support to their low-income populations. Not only does this shift allow private companies to amass profits from federal and state funds intended to provide basic human services to poor, but because the funds are limited block grants, these companies actually amass greater profits the more they are able to deny benefits to families.
70. Wisconsin was the first state to privatize all functions of its welfare program. The first state contracts for services (W-2 contracts) gave the private agencies (one for-profit and four non-profits) fiscal incentives to reduce caseloads, or to reduce services to clients because the profit was directly related to the surplus the agency generated. In the first year contractors reaped profits of \$13.5 million. The contracts lack oversight and acceptable performance measures such as self-sufficiency outcomes, and have weak accountability standards. Each agency has great flexibility in determining what services clients receive. Contractors can generate the surplus by denying services or providing reduced services to applicants. PRIVATE PROFITS, PUBLIC NEEDS: THE ADMINISTRATION OF W-2 IN MILWAUKEE, AFSCME Legislative Council, Wisconsin, October (1998).
71. Wisconsin's welfare program, Work First or W-2, makes it easy for W-2 agencies to deny services or provide reduced services. Applicants who are "job ready" must get a job. Applicants who are not job ready get W-2 services, which include

community services (workfare) assignments, and transportation and child care assistance. The contractors also can save money by reducing the type and amount of services they provide to families who do qualify for W-2. For example, they can assign applicants to community service rather than provide educational or training opportunities. When a public agency reduces services the money stays in the public domain. In contrast, when contractors reduce or deny services, the contractors reduce their contract expenses and can claim the surplus for their profit. *Id.* at 6.

D. WORK REQUIREMENTS AND SANCTIONS.

72. TANF imposes several work requirements on recipients. The law requires community service after two months unless the state opts out. 42 U.S.C. § 602(a)(1)(B)(iv) (1999). Most states have opted out of this requirement. Another provision requires parents to work once the state determines they are ready to work or have received assistance for 24 months. 42 U.S.C. §602(a)(1)(1999). A number of states also require recipients to work for private employers under "workfare" programs, but receive their "pay" in the form of benefits, from the state.
73. The work activities that count toward meeting the mandatory participation requirements are: unsubsidized work; subsidized private or public sector work; work experience; on-the-job training; job search and job readiness assistance (for no more than six or 12 weeks depending on the unemployment rate in the state); community service programs; vocational education training (limited to 12 months and 30% of persons required to work for purposes of meeting the federal participation rates); job skills training directly related to employment; education directly related to employment for recipients who have not received a high school diploma or a certificate of high school equivalency; satisfactory attendance at secondary schools or in a course of study leading to a certificate of general equivalence for recipients who have not completed secondary school or received a certificate; and providing child care services to a person in community service. 42 U.S.C. § 607(d) (1999).
74. As noted above, there are severe limitations on training and education. 42 U.S.C. § 607 (1999). The 12 month limit on vocational training or post-secondary school training is not based on any assessment of the training or educational needs of the poor. Such needs may include literacy training, English as second language instruction and basic job skills, all which could easily require more than 12 months.
75. Even where such training is permitted for 12 months, the restriction that only 30% of the people required to work may receive it is arbitrary and not based on any real

assessment of need. In addition, beginning in the year 2000, the 30% figure will include single teen heads of households or married teens who attend high school or education related to employment for at least 20 hours a week. *Id.*

76. TANF requires states to penalize or sanction recipients who fail to comply with the work requirements, usually by reducing or eliminating their benefits. 42 U.S.C. § 607(e)(1) (1999). States cannot sanction parents of children under six years for non-compliance with work requirements if the parent can prove that child care is unavailable. 42 U.S.C. § (e)(2). However, the burden of proof is on the parent, and if a child is over six and there is no childcare available this exemption does not apply. Additionally, leaving a child of seven years of age unattended could lead to charges of neglect and loss of parental rights under state and federal welfare laws. Under this scheme, needy families may be sanctioned by eliminating benefits even where they have good cause for being unable to comply with the work requirements. Seven states have a lifetime sanction on continued noncompliance; only ten states remove the sanction immediately upon compliance with the work requirement; fourteen states increased their sanction to a full benefit sanction and thirty six states increased their most severe level of sanction to a full benefit sanction. (Gallagher et al, at 29).
77. Many states sanction or penalize recipients for non-work requirements, including requirements, that their children receive immunizations and attend school. States establish their sanction structure but must impose a sanction (reduction in benefit) for the adult member who fails to perform the work requirement. The state can also eliminate or reduce benefits for the entire family (i.e. impose sanctions) for the alleged conduct of one member.⁸ Thirty-seven states sanction the entire family for non-compliance with work requirements. *Temporary Assistance for Needy Families (TANF) Program*, U.S. Dept. of Health and Human Services, Administration for Children and Families, Second Annual Report to Congress, August 1999.
78. The 1997 Balanced Budget Act added a provision to TANF permitting employers to compensate at less than minimum wage for workfare when the family is sanctioned. If a family's benefits are reduced because of a sanction, the lower benefit will not obligate the employer to reduce the number of required work hours to comply with minimum wage laws. 42 U.S.C. § 608 (1999).
79. Despite these work requirements, PRWORA does not create or provide jobs at wages that support families. In 1997, as part of the Balanced Budget Act, Congress appropriated \$3 billion over three years for welfare-to-work programs,

⁸ 42 U.S.C. § 607(e) (1999).

but the funds were insufficient to pay for job creation for the number of welfare recipients required to work. Moreover, states can use these funds for workfare -- i.e. work programs run by the state which are usually menial and sometimes degrading in nature, and which is considered an acceptable alternative under PRWORA to other work.

E. TANF RECIPIENTS DENIED THEIR RIGHTS TO FOOD STAMPS AND MEDICAID HEALTH BENEFITS

80. Under prior law, families who qualified for AFDC (cash assistance) automatically qualified for Medicaid (coverage of health care services) and Food Stamps (food assistance).
81. TANF cut the link between Medicaid and TANF, and now requires a separate determination of Medicaid eligibility.
82. TANF recipients are categorically eligible for food stamps but the amount of food stamps must be determined separately.
83. The new policies prevailing in most welfare offices, with its emphasis on getting people off the TANF rolls, has prevented many people from applying for other safety net services for which they still maybe eligible -- including food stamps and Medicaid. Thus, people dropped from the TANF rolls also are unjustly being dropped from the food stamp and Medicaid rolls.
84. PRWORA also permits states to sanction a TANF recipient who fails to comply with the work requirement by dropping him or her from the Medicaid Program, but this sanction may not extend to the entire family. This provision has been confusing to states and some have mistakenly terminated families from Medicaid. Even where correctly applied, individuals may be denied necessary medical services, even those necessary for survival, because they could not or would not meet work requirements.
85. States also must reduce or eliminate food stamp benefits for TANF clients sanctioned for failure to comply with the work requirement. States have the option of reducing a households' food stamp benefit up to 25 %. 7 U.S.C. § 2017(d)(1)(B) (1999). Thus, the entire family of an individual who is not able or willing to comply with work requirements is deprived of food, and children are penalized for parental conduct.

E. WEAKENING OF PROTECTIONS AGAINST DISPLACEMENT.

86. As explained above, TANF recipients must meet work requirements. Some TANF workers are not paid wages for their work, providing free labor to employers in the public or private sector. The prior law authorizing AFDC also had work requirements that included workfare, but the participation requirements were limited to a small percentage of the welfare caseload, restricted workfare to public or non-profit employers, and had strong labor protections for workfare workers.
87. TANF permits for-profit employers to participate in TANF workfare programs, supplying them access to free labor. Some states have imposed a restriction similar to the former law and limited workfare to the public or non-profit sector, but many have not. In effect, employers get free labor and TANF workfare workers do not participate in the Social Security Retirement System, and do not qualify for earned income tax credit (a cash credit provided to low-income working family each tax year) or unemployment compensation, as other low-wage workers do.
88. The former AFDC Program had strong displacement protections for the incumbent work force when workfare workers were placed in their place of employment. TANF weakened the displacement protections for current workers to the extent that they are almost impossible to enforce. The prior law prohibited employers from laying off workers with the effect of displacing them with welfare recipients. TANF prohibits employers from laying off workers with the intent of displacing them with welfare recipients. 42 U.S.C. § 607(f) (1999). Therefore, if the intent was to reduce operating costs, for example, it would be perfectly legal to displace workers.
89. The former law prohibited employers from reducing the non-overtime hours, wages and benefits of workers and have workfare workers perform the work. TANF eliminated this protection. Employers can reduce the non-overtime hours, wages and benefits of workers and have welfare recipients perform the work. This means employers can make full-time employees part-time and have workfare workers make up the difference.

G. ELIMINATION OF CHILD CARE ENTITLEMENT.

90. Under the former law, when AFDC recipients were required to work, the law guaranteed them child care. TANF eliminates the right to child care. The only provision protecting families is a weak provision that states single parents with children under the age of six cannot be sanctioned for not participating in work

activities if formal or informal child care is unavailable. However, the burden is on the parent to demonstrate the care is not available. 42 U.S.C. § 607(e)(2) (1999).

91. Thus, recipients with children over six who cannot find childcare must choose between being sanctioned and losing benefits for themselves and their children, or leaving their children unattended and possibly being charged with neglect and losing custody.

H. FAILURE TO GUARANTEE SECURITY FOR VICTIMS OF DOMESTIC VIOLENCE.

92. TANF permits, but does not require, states to enact exemptions for victims of domestic violence from work requirements. Twenty-two states have yet to certify that they will provide any exemption from work requirements, time limits, or cooperation with child support collection for such victims. *Temporary Assistance for Needy Families (TANF) Program*, U.S. Dept. of Health and Human Services, Administration for Children and Families, Second Annual Report to Congress, August 1999. Moreover, in the states that have provided the exemption, victims of domestic violence are routinely sanctioned nonetheless, and have no federal protection from such sanctions. These policies have the effect of greatly increasing the risk to violence to these victims.

I. ADEQUACY OF GRANTS.

93. Grant levels under TANF fall far below the poverty line. For example, Florida's grant for a family of three is \$303 per month; it has not changed in seven years. Nationally, the average welfare grant for a mother with two children is \$408 a month, about one third of the amount the Federal Government says a family need to escape poverty. The Mississippi benefit is \$170 a month for a family of three. "States Struggle to Use Windfall Born of Shifts in Welfare Law." Jason De Parle, New York Times (Aug. 28, 1999).

I. ARBITRARY DENIALS BASED ON IMMIGRATION STATUS .

94. Prior to the passage of PRWORA, lawfully present immigrants were generally Subject to the same eligibility rules as US Citizens in application for SSI, Medicaid or food stamps, with some deeming provisions that counted their sponsor's income in determining eligibility. See 8 U.S.C. §§ 1101-1525 (1994).
95. PRWORA imposed severe restrictions on the ability of lawfully present immigrants to access federal means tested benefits. PRWORA's retrogressive

measures reduced eligibility for many lawfully present immigrants; though the Balanced Budget Act of 1997 restored eligibility for some limited classes of immigrants who entered the country pre-1996, most remain ineligible for TANF, food stamps, SSI and Medicaid. See 8 U.S.C. §§ 1611, 1621 (1999). Lawfully present immigrants who entered the United States on or after August 22, 1996 are barred, with a few exceptions, from federal means-tested programs, which includes TANF, Medicaid, and Child Health Insurance Program (CHIP). 8 U.S.C. § 1612 (1999).

K. DENIALS BASED ON PRIOR CONVICTIONS.

96. 42 U.S.C. § 862(a) (1999) denies TANF assistance and food stamps to persons convicted of a felony that involves possession, use or distribution of a controlled substance under the Controlled Substances Act, 21 U.S.C. § 802(6), after August 22, 1996. This penalty is wholly arbitrary. In fact, the exclusion only applies to drug felonies, thus persons convicted of homicide, rape or other such serious violent crimes may continue receiving benefits.
97. If the person convicted of a drug felony lives in a household that receives food stamp benefits, the disqualified person's income and resources are considered to be income and resources of the household, although the person is not eligible for food stamp benefits. States can opt out of this provision but must enact laws to do so.
98. Consequently, this provision penalizes children whose parents have been convicted of a drug felony.

VII. SECTIONS OF PRWORA HAVE SEVERELY UNDERMINED THE SOCIAL WELFARE OF THE POOR IN THE UNITED STATES.

A. ECONOMIC CONTEXT IN WHICH THE US CONGRESS ENACTED AND THE STATES ARE IMPLEMENTING PRWORA.

99. The US Congress enacted PRWORA during a period of great economic prosperity coupled with increasing poverty for the poorest families. More than 34.5 million people in the US are under the official poverty line. U.S. Dep't of Commerce, Press Release, <<http://www.census.gov/Press-Release/www/1999/cb99-188.html>>. Child poverty, in particular, is extraordinarily high in the US economic context. It "is higher now than in any other Western industrialized nation. A child in the United States is 60% more likely than a British child, and three times more likely than a French or German Child to live in poverty." ARLOC SHERMAN, CHILDREN'S DEFENSE FUND, POVERTY MATTERS: THE COST OF CHILD POVERTY IN AMERICA (1997) [hereinafter "POVERTY MATTERS"]. For children under 6 in single mother

households the poverty rate is 54.8%. U. S. Dep't of Commerce, Press Release, <<http://www.census.gov/Press-Release/www/1999/cb99-188.html>>.

100. Moreover, in the US, employment is no protection against poverty. Over the past twenty years, the poverty rate among working families has increased by nearly 50 %. Second Harvest, Press Release, *The Truth Behind Welfare Numbers*, (August 4, 1999) <<http://secondharvest.org/websecha/e-pro803.htm>>; and NATIONAL COALITION FOR THE HOMELESS, EMPLOYMENT AND HOMELESSNESS, FACT SHEET #4 (1999) <<http://nch.ari.net/jobs.html>>.
101. As recently as 1967, a year-round worker earning the minimum wage earned enough to raise a family of three above the official poverty line. HOLLY SKLAR, AMERICAN FRIENDS SERVICE COMMITTEE, *JOBS, INCOME, AND WORK: RUINOUS TRENDS, URGENT ALTERNATIVES* (1995). From 1981-1990, however, the minimum wage was frozen at \$3.35 an hour, while the cost of living increased 48%. Congress raised the minimum wage to \$5.15 per hour in 1996. This increase made up only slightly more than half of the ground lost to inflation in the 1980s; thus, the real value of the minimum wage in 1997 was 18.1% less than in 1979. L. MISHEL, J. BERNSTEIN, AND J. SCHMITT, *THE STATE OF WORKING AMERICA:1998-1999* (1999) [hereinafter "THE STATE OF WORKING AMERICA"]. Full-time year-round minimum-wage earnings currently equal 84% of the estimated poverty line for a family of three, which is \$13,880 per year according to the US Department of Health and Human Services. Contrary to popular belief, the majority of minimum-wage workers are not adolescents: 71.4% are age 20 or older. *THE STATE OF WORKING AMERICA*.
102. This increasing level of economic insecurity is not the result of generalized economic problems in the US. On the contrary, as noted by President Clinton, in commenting on the political debate around welfare reform, "[w]e have the longest peacetime expansion in history, nearly 19 million new jobs; the lowest unemployment in a generation; the lowest minority unemployment ever recorded; the highest home ownership in history. From a deficit of \$290 billion we are moving to a surplus of \$99 billion. And this year alone we will be paying 85 billion on our national debt." Office of the Press Secretary, The White House, Remarks by the President at the National Forum on Welfare to Work, at the Navy Pier Festival Hall, Chicago, Illinois (Aug. 3, 1999).
103. "Unemployment declined from 6.9 % in 1993 to 5.6 % in 1995, and [to] 4.9 % in 1997. The Gross Domestic Product, the basic measure of the size of the economy, grew 5.8 % between 1993 and 1995, after adjusting for inflation, and an additional 7.5 % between 1995 and 1997." WENDELL PRIMUS ET AL, CENTER ON BUDGET AND POLICY PRIORITIES, *THE INITIAL IMPACTS OF WELFARE REFORM ON THE*

INCOMES OF SINGLE-MOTHER FAMILIES (1999) (hereinafter "PRIMUS, ET. AL.").

104. Yet from 1979 to 1994 real family income for the top 10% of the US population increased by 83%, while the bottom 10% lost 5%. The gap in the "fairness ratio" - - i.e. the ratio between the income of the top and bottom 20% of the population -- is much wider in the United States than in other industrialized countries. The ratio in the US is 13 to 1, while in Japan it is 4 to 1, in Canada 7 to 1, and in Germany 6 to 1. US CEO's were paid 209 times the average wage of their workers. This is three times the ratio in Germany and more than twice that of Japan.

B. EVEN IN THE FACE OF ABUNDANT RESOURCES, OFFICIAL POLICY AND PRACTICE IS TO REDUCE OR ELIMINATE SOCIAL WELFARE BENEFITS IRRESPECTIVE OF ECONOMIC NEED.

105. Over the past 20 years the poverty rate in working families has increased. Cash assistance in the US is generally provided through TANF benefits under PRWORA -- and previously through AFDC. There has been a drastic decline in the number of families receiving these benefits, from five million in 1994 to approximately three million in mid-1998. US General Accounting Office, GAO/HEHS-99-48 WELFARE REFORM - INFORMATION ON FORMER RECIPIENTS' STATUS, (1999). In March 1999, according to data from the US Department of Health and Human Services, the number of recipients dropped 47% from its 1994 peak, and in six states they dropped more than 70%.
106. The actual decline in the number of families receiving TANF cash benefits began even prior to the enactment of PRWORA because some states, in anticipation of the new federal welfare law, imposed strict work requirements even prior to its passage. The decline was accelerated dramatically, however, upon the enactment of the law.
107. During the years 1995 to 1997, the number of people receiving AFDC/TANF benefits dropped by 22.2 % (three million) while the number of single mother families that were poor before factoring in benefits declined by 5.4 % (770,000). PRIMUS ET AL. "[T]he drop in participation between 1995 and 1997 is much steeper than can be explained by increases in the earnings of poor households. In other words, caseloads [i.e. the number of recipients] declined more rapidly than economic need." *Id.* Moreover, during this period the economy continued to expand. *Id.*
108. Therefore, the number of families receiving TANF cash benefits did not decline solely because adults in those families found adequate employment, but rather for a number of other reasons. One significant factor in the continuing decline of the

number of recipients is "sanctions," i.e. states eliminating a family's benefits because the adult in the household purportedly did not comply with one of PRWORA's rules as implemented by the states.

109. Federal statistics show that in one three-month period in 1997, 38 % of the recipients who left welfare did so because of state sanctions imposed for a variety of infractions that ranged from missing appointments with caseworkers to allegedly refusing to look for work. D.H. FRIEDMAN, E. DOUGLAS. M. HAYES M.A. ALLARD, A POLICY BRIEF: MASSACHUSETTS (T) AFDC CASE CLOSING OCTOBER, 1993 - AUGUST 1997 (1998); BETTY REID MANDELL, FALLING THROUGH THE SAFETY NET: WOMEN AND CHILDREN FIRST (1997) [hereinafter "FALLING THROUGH THE SAFETY NET"].
110. Similarly in New York City, the number of recipients dropped more than 30 % between 1995 and 1998, from 1.16 million to 797,000, primarily as a result of tough rules forcing people "off the roles" -- i.e. eliminated their eligibility through sanctions for violations of those rules.
111. Many recipients who fail to meet the requirements of TANF's new rules are not unwilling, but unable to do so. "In a state-funded study of Utah families who were denied assistance because of failing to participate in required activities, 23% said they failed to participate due to lack of transportation; 18% due to lack of childcare; 43% due a health condition, and 20% due to mental health issues." ARLOC SHERMAN, ET. AL., CHILDREN'S DEFENSE FUND, WELFARE TO WHAT - EARLY FINDINGS ON FAMILY HARDSHIP AND WELL BEING (1998) [hereinafter "WELFARE TO WHAT"].
112. The loss of TANF cash benefits has had a large impact on children. "Welfare reciprocity among poor young children has fallen sharply." NATIONAL CENTER FOR CHILDREN IN POVERTY OF THE COLUMBIA UNIVERSITY JOSEPH L. MAILMAN SCHOOL OF PUBLIC HEALTH, YOUNG CHILDREN IN POVERTY A STATISTICAL UPDATE (1999). Today 36% of poor children under age six live with families receiving public assistance; by comparison 53% lived with families receiving public assistance in 1993. "Substantially smaller proportions of poor children are participating in [welfare] programs than was the case only a few years ago. PRIMUS ET AL. The proportion of children receiving cash assistance is lower than at any time since 1970, but the proportion of children in poverty remains high.
113. Despite this dismal situation, state and federal officials in the US have claimed that the reduction in the number of recipients of cash benefits under TANF is a success. "Success" is thus being measured, not by level of fulfillment of economic and social rights or the elimination of poverty, but rather by the drastic reduction of

government spending in securing these rights to the people of the United States.

C. IMPACT ON STANDARD OF LIVING AND SOCIAL SECURITY.

114. Since Congress enacted PRWORA, the standard of living, as measured by available income, has significantly decreased for the poorest families in the US. This decrease has been accompanied by an inevitable increase in economic and social insecurity.
115. Many former recipients of TANF cash benefits earn no money after their benefits are eliminated; even when former recipients find employment, many remain in poverty.
116. One follow up study in Maryland tracked 1,600 families whose cases closed between October 1996 and June 1997. They found that only a little more than half of respondents reported earnings the quarter after leaving welfare. The median earnings for those with earnings was \$2,082. One out of ten reported earnings of more than \$4,296. This means that only one out of twenty recipients whose case had closed was earning above the poverty level for a family of four, while many earned nothing at all. FALLING THROUGH THE SAFETY NET.
117. A New York state survey showed that from July 1996 through March 1997, only 29 % of former recipients made more than \$100 in the first three months after the state eliminated their benefits. *Id.*
118. Nationally, "[b]y March 1998, only 8% of the previous year's recipients' had jobs paying weekly wages above the three person poverty line . . . [and] the proportion with weekly wages below three-quarters poverty line surged upward [between 1990 and 1998] from 6% to 14.5%." WELFARE TO WHAT.
119. Average disposable incomes of the poorest 20 % of female-headed families (two million families, which include six million people living below 75% of the official poverty line) fell an average of 6.7%, or \$580, per family between 1995. About \$460 of this income loss or about 80 % of it was due to declines in social welfare programs. During that same period only single mother families with the highest incomes experienced income increases due to the expanding economy. PRIMUS ET AL; PAMELA LOPREST, THE URBAN INSTITUTE, HOW FAMILIES THAT LEFT WELFARE ARE DOING: A NATIONAL PICTURE (August 1999)[hereinafter "HOW FAMILIES THAT LEFT WELFARE ARE DOING"].
120. Moreover, because of a generalized fear among recipients of public assistance regarding the impact of PRWORA, many "voluntarily" left the program even prior

to the law's enactment. Most of these former recipients that attempted to survive economically on their own did not fare well. A University of Wisconsin study shows five of six persons who left AFDC in 1996, i.e. left the cash assistance program immediately before Congress enacted PRWORA, had lower earnings or no earnings under Wisconsin's new welfare system. WELFARE TO WHAT. Just one in six of those who lost their benefits had incomes above the poverty level, and 34 % had no earnings whatsoever. Only 28 % had annual earnings of \$10,000 for two consecutive quarters -- which is still below the official poverty line of \$13,880 per year for a family of three. K.B. Miranne and A.H. Young, *Women Reading the World: Challenging Welfare Reform in Wisconsin*, 25 J. OF SOCIOLOGY AND SOC. WELFARE 155 (1998) [hereinafter "WOMEN READING THE WORLD"].

121. In this economy, there is no shortage of public funds. Rather, there is a shortage of political will to expend those funds on the protection of social and economic rights. Recent reports indicate that many states are holding on to public funds that are designated for social welfare. "It is disturbing that substantial numbers of children and families are sinking more deeply into poverty when substantial amounts of funds provided to states to assist these families are going unused." Center on Budget and Policy Priorities, Press Release, *Average Incomes of Very Poor Families Fell During Early Years of Welfare Reform, Study Finds*, (Aug. 22, 1999).

D. WORK UNDER REASONABLE CONDITIONS.

122. Although, one of the alleged purposes of PRWORA is "promoting employment," such "promotion" under PRWORA does not include ensuring jobs or even assisting recipients in finding jobs. Indeed, there are no serious and effective efforts on a significant scale to ensure access to work under reasonable conditions that would enable recipients to maintain an adequate standard of living.
123. While many former recipients found some sort of employment after the state eliminated their benefits under PRWORA, from one-third to on-half did not. One national study found that the employment rate for former TANF recipients is 61%, and that rate is lower for single mothers. PAMELA LOPREST, URBAN INSTITUTE, *FAMILIES WHO LEFT WELFARE: WHO ARE THEY AND HOW ARE THEY DOING* (1999) [hereinafter "FAMILIES WHO LEFT WELFARE"]. "Nine state studies compiled by the National Governors' Association and other organizations found that 40% to 50% of families who left TANF did *not* have job at the time of the study." (emphasis in original). WELFARE TO WHAT. Current federal law provides no support for unemployed persons who either have been sanctioned under PRWORA or whose time limits under PRWORA has expired.

124. As noted above, many of those former recipients who did not find employment had no earnings or income whatsoever. Those who did find employment, however, for the most part remained in poverty.
125. There are simply not enough jobs available that pay enough to keep a family out of poverty. Nine state studies conducted by the National Governors Association found that most jobs held by former recipients paid between \$5.50 and \$7 per hour -- which keeps families under the poverty line. WELFARE TO WHAT.
126. Moreover, job insecurity for former recipients is extremely high. One study found that 75% of those in Wisconsin's program who found jobs lost them within 9 months. This is typical of the experience in other states where recipients have been forced out of the TANF cash benefits program. WOMEN READING THE WORLD.
127. Additionally, nonstandard work is widespread and often substandard. "About 70% of all workers held regular full-time jobs, leaving almost 30% in different nonstandard work arrangements." *The State of Working America*, 1998-1999, Economic Policy Institute. In fact, temporary agencies have become the greatest source of employment. Jeremy Rifkin, *The End of Work*, Putham, NY 1995.
128. Recipients of TANF cash benefits face multiple barriers to employment. A welfare monitoring project in Los Angeles surveyed 308 women receiving TANF cash benefits in thirty emergency shelters between April and early August 1998. They found that 71 % of the women had not found employment. The main barriers to employment were lack of housing (43%), lack of child care (35%), lack of job skills (24%), and lack of transportation (21%).⁹ The state offered little assistance with any of these problems. FALLING THROUGH THE SAFETY NET.
129. One study conducted of 50 families receiving TANF in the Greater Philadelphia area found that 40% of respondents had children with serious, chronic health problems; 33% of adults reported serious health problems; 26% had lost a job due to child-care problems; and 16% had lost a job due to their own or their child's health problem. Under PRWORA, states are likely to deny benefits to these kinds of families either for "refusing to work" or because their time limits are up. PHILADELPHIA CITIZENS FOR CHILDREN AND YOUTH AND UNITED WAY SOUTHEASTERN PENNSYLVANIA, WATCHING OUT FOR CHILDREN IN CHANGING TIMES (1998) [hereinafter "WATCHING OUT FOR CHILDREN"].

⁹ A National Conference of Mayors Study found that 84 percent of cities surveyed cited transportation as a problem with welfare to work initiatives, aggravated by the migration of jobs from the city centers to the suburbs.

130. One long-term study looked at the barriers to employment for AFDC (pre-TANF) recipients aged 27 to 35 and found that 90% had one to five potential barriers to employment: low basic skills, substance abuse, a health limitation, depression, or a child with a chronic medical condition or serious disability. Another Washington state survey showed that 36% of the caseload have learning disabilities. P. Edelman, *The Worst Thing Bill Clinton Has Done*, THE ATLANTIC MONTHLY, March 1997.
131. The current state of the law neither addresses the above- mentioned barriers to employment, nor provides support for those who are not currently employable.
132. Moreover, the regressive measures taken under PRWORA/TANF in regards to social welfare, affect workers who were not receiving benefits. For example, 34,000 people in New York City's "Work Experience Program" constitute a low-cost labor force that does a substantial amount of the work that had been done by municipal employees before Mayor Giuliani reduced the city payroll by about 20,000 employees, or about 10 %. FALLING THROUGH THE SAFETY NET. PRWORA weakened federal protection against this kind of impact to the point that it is, on a practical level, non-existent.¹⁰
133. The entrance of large numbers of former TANF welfare recipients into the low-wage job sector will push wages down for all low-wage workers. An Economic Policy Institute study found that if the low-wage labor market were to give jobs to former welfare recipients without displacing current workers, pay would fall by nearly 12% for the bottom 30% of workers - the 30 million earning less than \$7.19 per hour. In other words, welfare, as the basement level of the wage structure, may have bolstered wages by at least 12% by keeping recipients out of paid work. Pay for low-wage workers in states with relatively large welfare populations would fall even more - 17.8% in California and 17.1% in New York. New competition from former welfare recipients would cost low-wage workers about \$36 billion a year in income - about \$8.5 billion more than the federal expenditure on welfare in 1994. L. MISHEL, J. BERNSTEIN, AND J. SCHMITT, THE ECONOMIC POLICY INSTITUTE, CUTTING WAGES BY CUTTING WELFARE: THE IMPACT OF REFORM ON THE LOW-WAGE LABOR MARKET (1995).
134. The future of job growth does not appear promising for many workers: a 1998 study estimated that 46% of the jobs with the most growth between 1994 and 2005

¹⁰ This is New York City's practice, despite New York state law's prohibition against using workfare participants to perform a substantial portion of the work normally performed by regular employees, or replacing regular workers who have been laid off with workfare participants. As noted above, there is no strong federal mandate to enforce the state's law in a manner protective of workers.

pay less than \$16,000 a year; these jobs will not lift most families out of poverty. (National Priorities Project, 1998). NATIONAL PRIORITIES PROJECT AND JOBS WITH JUSTICE, WORKING HARD, EARNING LESS: THE FUTURE OF JOB GROWTH IN AMERICA (1998).

E. PROTECTION OF THE FAMILY.

135. PRWORA has caused a deepening of poverty for many families and increasing economic insecurity. According to a Children's Defense Fund study, there has been a sharp increase in extreme child poverty after the drop in TANF caseloads. The study defined extreme poverty as family income below one-half of the federal poverty line, or \$6,401 a year for a three person family. In calculating income, the study included income from tax credits and the value of noncash benefits such as Food Stamps, a definition broader than what the federal government uses to define poverty. The report found that between 1996 and 1997 the number of children living in extreme poverty as defined above increased by 426,000 (from 2.3 million to 2.7 million). Most of the increase occurred in single parent female headed households. ARLOC SHERMAN, CHILDREN'S DEFENSE FUND, EXTREME CHILD POVERTY RISES SHARPLY IN 1997 (1999) [hereinafter "EXTREME CHILD POVERTY"].
136. This increase in poverty and economic insecurity has served to undermine the family structure. Parents -- especially single parents -- find themselves unable to properly care for their children. There are many instances where the state -- after reducing or eliminating the parent's TANF cash benefits -- has taken custody of children and permanently separated them from their parents on the basis that the parents have become homeless, or can not provide adequate housing conditions (sufficient space, electricity, heat, etc), adequate food or provide for the child's other economic needs. Interview with Mary Sutherland of Arise for Social Justice, 718 State St. Springfield, Mass. 01109-4115 (Sept. 29, 1998).
137. Families also find that their economic problems are compounded by the combination of TANF's work requirements and the lack of adequate child care. In particular, TANF's work requirements pose serious child care problems for single-parent families.
138. Parents who are unable to find or afford good quality child care are often forced to make do with inadequate arrangements. A study done by the Families and Work Institute on children cared for in about 225 homes of relatives and non-relatives in Los Angeles, Dallas and Charlotte, N.C. rated only 9 % of the home-based care as high quality. More than half (56 %), of the care was rated as merely custodial and 35 % was judged harmful to the children's social and educational development.

FALLING THROUGH THE SAFETY NET.

139. New York City lacked child care for 61 % of the children whose mothers are required to participate in Workfare in 1998. *Id.*
140. A study by the Human Resources Administration, which runs the city's welfare programs, showed the city needs 29,000 more day care slots in order to move mothers from welfare to work. Yet, caseworkers are threatening mothers that if they do not find day care, they will lose their benefits. Many mothers, in desperation, are placing their children in substandard care. Steven Greenhouse, *Many Participants in Workfare Take the Place of City Workers*, N.Y. Times, Apr. 13, 1998; R. L. Swarns, *Mothers Poised for Workfare Face Acute Lack of Daycare*, N.Y. TIMES, Apr. 14, 1998; FALLING THROUGH THE SAFETY NET.
141. In Massachusetts, one mother was forced to put her child in an informal and inadequate child care arrangement that resulted in the death of the child. The child was killed by the care-taker, an adolescent who was a neighbor. The response of state authorities has been to prosecute the mother for negligent homicide. Interview with Mary Sutherland of Arise for Social Justice, 718 State St. Springfield, Mass. 01109-4115 (Sept. 29, 1998).
142. The Campaign for Children found that nationally there are 10 times the number of infants on waiting lists as there are available childcare spaces, 7 times the numbers of toddlers and two times the number of pre-school and school-aged children. FALLING THROUGH THE SAFETY NET.
143. Moreover, more than 25% of employed former recipients are working night hours, which presents special challenges for child care. FAMILIES WHO LEFT WELFARE.
144. According to one survey by the US Conference of Mayors, mayors across the country say there are not enough state funds to cover childcare for welfare mothers joining the workforce. In fact, "[n]o state is considering guaranteeing child care assistance to all families who would be eligible under the federal maximum allowable income levels." SHARON K. LONG, ET AL., URBAN INSTITUTE, CHILD CARE ASSISTANCE UNDER WELFARE REFORM: EARLY RESPONSES BY THE STATES (1998).

E. THE RIGHT TO EDUCATION.

145. Throughout the United States single mothers are no longer able to pursue higher education due to stringent work requirements and time limits as to the receipt of TANF cash benefits. Karen Kahn, *Workfare Forces Single Mothers to Abandon*

College Education, SOJOURNER, Vol:24.2 (1998). These barriers to education substantially increase the likelihood of remaining in poverty for single parents who would otherwise be able to build their capacity as independent economic actors.

146. Under federal TANF standards, states may allow some education to count for training -- in lieu of work requirements -- for up to 12 months. However by 1998, 35 states did not count education and training as a work activity, or counted it on a very limited basis. Only Maine and Wyoming allowed recipients to attend four-year colleges. FALLING THROUGH THE SAFETY NET.
147. Since the US Congress enacted PRWORA, there has been a steep drop in college enrollment among welfare recipients. For example, enrollment of welfare recipients at the City University of New York plummeted from 27,000 in 1994 to 14,000 in 1998; at the Milwaukee Area Technical College in Wisconsin, the number dropped in four years from 6,455 to 274. Derick Z. Jackson, *Women on Welfare Need Education -- Why Deny Them?*, THE BOSTON GLOBE, Apr. 15, 1998.
148. A study by the University of Wisconsin at Milwaukee found that as of 1998, only one out of six women forced off welfare -- i.e. off TANF cash benefits -- had a job that lifted her out of poverty. Meanwhile, the average salary of someone with a one-year or two-year degree from Milwaukee Area Technical College ranged from \$20,000 to \$24,000. *Id.*
149. One study found that 87% of recipients who graduated from 2 or 4 year colleges in New York, Illinois, Washington, Tennessee, Pennsylvania, and Wyoming were still off welfare six years later. *Id.*

G. HEALTH.

150. After Congress enacted PRWORA, large numbers of families lost Medicaid health care coverage -- i.e. public health insurance for poor people. Specifically, PRWORA's ancillary impact has been the loss of Medicaid benefits for 675,000 low-income people, the majority of whom were children (62 %). These people have no other health insurance. Moreover, a person below the poverty line is more likely to become uninsured as a consequence of welfare reform than those just above the poverty line. FAMILIES USA, LOSING HEALTH INSURANCE: THE UNINTENDED CONSEQUENCE OF WELFARE REFORM (May 1999) [hereinafter "LOSING HEALTH INSURANCE"].
151. This drop in coverage occurred principally for three reasons: 1) failure of the state to inform people of their ability to continue Medicaid after termination from

TANF; 2) the state taking action that would deter recipients from applying for Medicaid coverage; and 3) employment and removal from eligibility.

152. Prior to Congress enacting PRWORA, individuals who qualified for cash benefits, automatically qualified for Medicaid health care coverage -- i.e. public health insurance.¹¹ Moreover, as noted above, so long as an individual was "needy," she/he received cash benefits and thus automatically received health care coverage. Many families have lost their cash benefits under PRWORA, and are unaware that they still qualify for Medicaid. Because of the growing hostility on the part of states -- fueled by rhetoric, law and policy on the federal level -- states fail to inform needy individuals that they are still entitled to public health care services.
153. Moreover, PRWORA "decoupled" Medicaid public health insurance benefits from cash TANF benefits, i.e. recipients no longer automatically receive Medicaid when receiving TANF and have to qualify separately. States have reacted to this "decoupling" by creating bureaucratic barriers for recipients who need Medicaid coverage. Thus, States are impeding and denying Medicaid coverage even for needy families receiving TANF cash benefits.
154. Nationally, there has been an increase in the uninsured population and certain areas have reported dramatic declines in Medicaid enrollment. New York State reported a 26% decline between in Medicaid enrollment between 1995 and 1998, and in New York City 136,000 children have lost Medicaid since 1995. Paul Wise, M.D. M.P.H., Wendy Chavkin, M.D. M.P.H., Diana Romero, M.Phil. M.A., *Assessing the effects of welfare Reform on Reproductive and Infant Health*, AM. J. OF PUB. HEALTH Vol. 89 No. 10, 1514 (October 1999).
155. Finally, employment hinders medical coverage because the low-wage jobs taken by former recipients are unlikely to provide health insurance. Some former recipients who are employed are still eligible for Medicaid due to their limited income, but state policy in many states is to purposely fail to inform former recipients about eligibility. Other former recipients obtain jobs that, while still low-wage, remove them from income range where they qualify for Medicaid. These former recipients may be eligible for Medicaid for a transitional period, but states are also failing to inform former recipients of its availability. Only 23% of employed former recipients report having employer sponsored health care, and 36% of low-income single mothers have no health coverage. FAMILIES WHO LEFT WELFARE.

¹¹ Other individuals and families who did not receive cash benefits under the prior law were still able to obtain Medicaid coverage if they qualified separately.

156. This increasing lack of coverage is extremely perilous for the uninsured population in poverty and has even resulted in unnecessary deaths. For example, recently two mothers in New York City who were TANF recipients breastfed neonates who died of apparent malnutrition. In both cases, the women sought pediatric care but had been unable to obtain it because -- although eligible for Medicaid -- they were denied services due to bureaucratic hurdles set up after the enactment of PRWORA. Prior to the "decoupling" of cash benefits and Medicaid coverage, they state would have automatically provided them with Medicaid services because a recipients submitted a joint application for both services.
157. In a South Carolina study one in ten former recipients were unable to obtain needed medical care. WELFARE TO WHAT. Additionally, a charitable Catholic organization in the United States, reports, that nearly one-third of those surveyed found that they were unable to fill prescriptions because of cost. NETWORK, POVERTY AMID PLENTY (1999) [hereinafter "POVERTY AMID PLENTY"].
158. Recipients have also been sanctioned when they have taken time to address their health needs. The following case provides an example of the state implementation of new welfare's sanctions:
159. "In October of 1998, Ms. C., a pregnant teen, applied for Medicaid and other assistance at a [welfare office -- now called job centers in New York city]. She attended high school at night. Job Center personnel told her that she would have to search for work daily and participate in a "work experience" project, sweeping streets for the Department of Sanitation, in order to receive assistance. The next day Ms. C. went to an obstetric clinic instead of to the Job Center's orientation. Although she explained this to Job Center personnel, her Medicaid was still denied, along with her Food Stamps and cash assistance, for "failure to comply with Employment Center Orientation." LOSING HEALTH INSURANCE.
160. The changes wrought by PRWORA have made it increasingly difficult for the population of poor persons to meet their health needs. It poses health hazards for a population that already disproportionately suffers from health problems and sanctions poor individuals who may not be able to meet the inflexible requirements of PRWORA because of illness.

H. RIGHT TO FOOD.

161. Even prior to the enactment of PRWORA, poor persons in the US were not assured adequate access to food.
162. There are "11.2 million people in the US living in 4.2 million households [who]

are experiencing moderate or severe hunger. . .An additional 23.5 million people live in 7.8 million households that are experiencing food insecurity (defined as households with limited or uncertain availability of nutritionally adequate and sufficient foods), comprising 7.8% of the total number of households in the country. There are 2 million households with 4.2 million children experiencing hunger. This is 5.3% of households with children." Food Research and Action Center, *Recent Studies on Hunger in the United States*, <<http://www.frac.org>>.

163. Statistics taken from a 1999 USDA Report indicate the following: 10.5 million households in 1998 did not have enough food to meet their basic needs at all times. These 10.5 million households encompass thirty-six million human beings. Twenty percent of all United States children lived in those households. Food insecurity apparently increased between 1995 and 1997 and then decreased in 1998, but still remains high. State Works, Press Release, *USDA Releases New National Data on Household Food Security: Hunger and Food Insecurity Remain Stubbornly High Despite Strong Economy*, (August 1999).
164. A coalition of Catholic organizations in the United States, found that "[a]lthough food is relatively cheap and plentiful in the United States, for people subsisting on welfare and minimum wage jobs there is often not enough money to buy sufficient food, after rent, utilities and other bills are paid." POVERTY AMID PLENTY.
165. Just as in the case of Medicaid health care coverage, the number of families receiving food stamps declined dramatically after PRWORA took effect. The General Accounting Office (GAO) of the US government has found a decline in the Food Stamp Program from 25.5 million persons at the end of fiscal year 1996 to 18.5 million persons in the first half of fiscal year 1999. US General Accounting Office, *FOOD STAMP PROGRAM: VARIOUS FACTORS HAVE LED TO DECLINING PARTICIPATION*, GAO/RCED-99-185 (1999) [hereinafter "FOOD STAMP PROGRAM"]. Most of the decline in persons receiving food stamp benefits occurred after fiscal year 1996. *Id.*¹²
166. Unfortunately, the decline in the number of people receiving food stamps is not due to those families no longer having a need for these benefits. As the GAO report found, the number of children receiving food stamp nationwide is falling much faster than the number of children who are poor. *FOOD STAMP PROGRAM* The GAO report stressed that food stamp participation has dropped faster than related economic indicators would predict and food stamp use continued to plunge

¹² Non-governmental studies reach the same conclusions. Findings show that since 1997, TANF and food stamp receipt dropped very quickly. There was an additional drop of 20 percent in TANF recipients in 1997 and 1998 and another drop of 12.2 percent for food stamp recipients. PRIMUS ET AL.

in the late 90s.

167. Specifically, the GAO also concluded that:

"[T]here is a growing gap between the number of children living in poverty — an important indicator of children's need for food assistance and the number of children receiving food stamp assistance. In particular, during fiscal year 1997, the number of children living in poverty dropped by 350,000 (or 3 %) while the number of children participating in the Food Stamp Program dropped by 1.3 million (or 10 %).¹³ As a result, the percentage of children living in poverty who received food stamps declined." FOOD STAMP PROGRAM.

168. The GAO found that two out of three reasons for the decline in food stamp reciprocity are more stringent eligibility requirements under PRWORA, and state and local efforts to reduce the number of persons receiving TANF. *Id.* The report also found that at least seven states improperly denied food stamps to eligible families for a TANF violation. The third reason for the decline -- the growing economy -- can only account for a minority of the cases. *Id.*

169. The GAO also indicated that the use of alternative food programs such as free school lunches, church meal programs and food pantries is growing nationwide even as food stamp participation declined. *Id.* A 30-city survey conducted by the US Conference of Mayors, revealed an average increase of 14% in requests for emergency food assistance; 37% of adults requesting food were employed.

170. Since recent data show that the demand for alternative and emergency food assistance increased in recent years, a drop in food stamp assistance is not the result of a strong US economy and less need for food assistance. Rather, the drop in food stamp assistance means that people are going hungry. A Drexel University study, cited in a report by the Children's Defense Fund, states that in late 1997 36% of families who had recently lost TANF assistance were "eating less or skipping meals due to cost." WELFARE TO WHAT.

171. Former TANF recipients reported having to cut the size of meals in the past year ranging from 30% for two-parent families to 35% for single-parent families. FAMILIES WHO LEFT WELFARE.

172. Seventeen percent of former recipients in South Carolina reported after leaving TANF that at various times they had no way to buy food. WELFARE TO WHAT.

¹³ Moreover, as noted above, while the number of children living in poverty may have dropped due to the strong economy, the number of children living in extreme poverty increased, making food assistance even more necessary.

173. In Wisconsin the number of food stamp recipients dropped 32% between 1996 and 1998. According to Sherri Kay, of the Hunger Task Force of Milwaukee, "people are going hungry even when they have legal access to the food stamp program, partly because there are obstacles to getting food stamps." Jack Norman, *Food Stamp Use Plunges 32% in State, Federal Report Finds, Official Hails Biggest Drop in US; Others Fear Some in Need Aren't Getting Aid*, MILWAUKEE JOURNAL SENTINAL, Aug. 4, 1999.
174. Wisconsin has a policy in its state manual that is called the light touch policy. Although applicants might not be eligible for W-2 TANF assistance, they still may be eligible for food stamps and Medicaid but the "light touch" policy states: "The W-2 system [TANF] provides only as much service as an eligible individual asks for or needs. Many persons will do much better with just a light touch." Thus, state official policy is not to volunteer information to poor children and their families about food stamps and Medicaid when they apply for welfare. After news of the sharp declines in food stamps and Medicaid the state agreed to put \$500,000 into outreach for food stamps but the "light touch" policy remains in the Wisconsin Works Manual. There are no federal standards preventing states from adopting such "light touch" or more precisely deliberate withholding of information policies. WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT, WISCONSIN WORKS MANUAL, 1999.

L HOUSING.

175. The lack of access to affordable housing is of crisis proportions in the US. Every year up to 2 million people in the US experience homelessness. NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, OUT OF SIGHT - OUT OF MIND? A REPORT ON ANTI-HOMELESS LAWS LITIGATION AND ALTERNATIVES IN 50 US CITIES (1999). By further undermining economic security PRWORA is pushing even more families into homelessness.
176. A South Carolina study found that 29% of former recipients were unable to pay for their rent or mortgage. WELFARE TO WHAT.
177. "One in three former TANF recipients in an Idaho state mail-in survey described their present housing situation as "temporary." *Id.*
178. "In Atlanta nearly one-half of homeless families had recently lost TANF" benefits . . ." *Id.*
179. "[I]n Los Angeles 12% of homeless families surveyed attributed their

homelessness directly to benefit cuts." *Id.*

180. In one Wisconsin county, homelessness [after PRWORA] increased 50% for children [a group directly impacted by TANF] but only 1% for adult men (a group relatively unaffected by TANF). *Id.*

L. DISCRIMINATORY IMPACT.

181. The reduction and/or elimination of benefits and the new stringent work requirements accompanied by sanctions is having a disproportionate impact on children, women, immigrants and minorities.

1. Single Women and Their Children.

182. Ninety percent of families in which an adult is receiving TANF benefits are single-mother families. *PRIMUS ET AL.* Moreover, these families disproportionately belong to racial minorities. Under PRWORA, states have, therefore, been denying and reducing benefits almost exclusively to single women and their children, with a disproportionate impact on minority families.

183. Because these are one parent families, they are also hardest hit by the combination of stringent work requirements and lack of childcare. It is also these families who have been less able to access food through the food stamp program and health insurance through Medicaid. Moreover, PRWORA has as one of its stated objectives to "promote marriage" and structurally the only manner in which it appears to do so is to penalize and harm women who are not currently married (as well as their children).

2. Victims of Domestic Violence.

184. Moreover, PRWORA fails to insure that victims of domestic violence -- disproportionately women -- are not sanctioned because of their inability to comply with work or other requirements. While PRWORA allows states to provide exemptions from requirement for victims of domestic violence, this is optional. Moreover, even where states include the exemption in their laws, the exemption is not applied in an appropriate manner. In arguing for a very stringent and skeptical application of New York's exemption, the City Human Resources Commissioner claimed that women had an "incentive" to seek being designated as a victim of domestic violence. He and appealed to policy makers to not let "domestic violence inadvertently become a designation which permits individuals to not take responsibility for their lives." Susan Rabinowitz, *Commish: Women May Cry "Abuse" to Gain Benefits*, N.Y. Post Dec. 28, 1998.

185. A Massachusetts study found that about two-thirds of all adult recipients had been subject to domestic violence by a former or current husband or boyfriend - 20 % within the 12 months of the time of the survey. M.A. ALLARD, ET AL., IN HARM'S WAY? DOMESTIC VIOLENCE, AFDC RECEIPT AND WELFARE REFORM IN MASSACHUSETTS (1997).
186. An abusive partner often makes it impossible for a woman to meet work requirements, and if she attempts to do so she faces more violence. For example, abused women in one sample were 10 times more likely than never abused counterparts to have a current partner who did not like them going to school or work. JODY RAPHAEL, RICHARD M. TOLMAN, PH.D., TRAPPED BY POVERTY/TRAPPED BY ABUSE- NEW EVIDENCE DOCUMENTING THE RELATIONSHIP BETWEEN DOMESTIC VIOLENCE AND WELFARE, THE UNIVERSITY OF MICHIGAN SCHOOL OF SOCIAL WORK (1997). Abusive partners intentionally sabotage their efforts to go to work or school by means of everything from throwing away books to resetting alarm clocks. *Id.*
187. A New York State Department of Social Services survey found that, among clients receiving services for domestic violence, 59.9% had left a job at some point due to battering. Joan Meier, Domestic Violence, Character, and Social Change In The Welfare Reform Debate Studies confirm that abused women seek employment but are unable to maintain it. *Trapped by Poverty.*
188. Women who go on and off of welfare but who spend more overall time on welfare have a higher prevalence of domestic violence. Like women in general, abused women may be more likely than men to be unemployed, to be over-represented in jobs where frequent entries and exits go relatively unnoticed, and to find the process of finding and sustaining work increasingly difficult. This is all the more the case if they quit jobs because of injuries, embarrassment, or fear of discovery. Susan Lloyd, *The effects of violence on work and family*, POVERTY RESEARCH NEWS, Vol. II, No. 2 (Spring 1998).

3. Immigrants.

189. The reduction and, for many classes of immigrants, absolute elimination of benefits has lead to serious deprivations of their rights to food, work, and health. These deprivations, in turn, have resulted in a precipitous drop in the economic and social welfare of non-citizen residents as a class.
190. Approximately 900,000 legal immigrants were expected to lose access to food stamps, the primary government food supplement program, as of 1997. Victor

Oliveira, *Welfare Reform Affects USDA's Food-Assistance Programs*, Food Review January-April 1998, p. 12. Loss of food stamps is a significant factor contributing to increases in hunger seen in the immigrant population across the nation. For example, a March 1998 study conducted by Physicians for Human Rights of 682 households of legal immigrants in three states found that 79% were hungry or food-insecure; this figure is seven times the rate in the general US population. Food Research and Action Center ("FRAC") website: <http://www.frac.org>.

191. More than one in three of the immigrant households surveyed skipped meals, cut the size of meals, and/or go without food for an entire day or days due to lack of resources to purchase food. *Id.* The authors linked these results to the cuts implemented by PRWORA, and noted that none of the three states in which the immigrants were surveyed had fully reinstated food stamp benefits after the federal cuts. *Id.*
192. The hunger and resulting malnutrition experienced by the immigrant population has and will invariably continue to affect their morbidity and mortality rates and increase their need for health care; unfortunately, access to health care benefits for legal immigrants has also been reduced under PRWORA.
193. As the Urban Institute noted in a July 1998 study of data collected by the Los Angeles County Department of Public Social Services, the number of non-citizen applications for Medi-Cal declined sharply in the months after PRWORA was enacted in August, 1996. Wendy Zimmerman and Michael Fix, *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County*, Urban Institute July 1998, <http://www.urban.org/immig/lacounty/html>. The number of newly approved applications for non-citizen children dropped by a staggering 48% between January 1996 and January 1998; in comparison, the number for citizen children actually increased by 6% during this same period. *Id.* The consequences of this disproportionate drop are serious: The Urban Institute estimates that as many as 25,000 immigrant children in one county alone would have applied and been approved for Medi-Cal during this time period had the rate of applications and approvals been the same as it was prior to PRWORA. *Id.*
194. Part of the problem for the immigrant adults and children who are eligible for medical benefits under PRWORA is in accessing benefits; data indicates that eligible immigrants are not applying for fear that their application will delay naturalization petitions; increase the likelihood that they will be rejected for continued residence based on the government's assessment that they are likely to become a "public charge"; and/or increases their chances of deportation. *See generally*, Claudia Shlosberg, *Not-qualified Immigrants' Access to Public Health*

and Emergency services After the Welfare Law, National Health Law Program (1998) and Claudia Schlosberg and Dinah Wiley, *The Impact of INS Public Charge Determinations on Immigrant Access to Health Care*, National Health Law Program (1998), website: http://nherp.org/pubs/19980522_publiccharge.html [hereinafter "*The Impact of INS Public Charge*."]

195. The dangers of this failure to access care are serious and can be deadly. For example, a farm worker in Sonoma County, California, stitched his own hand rather than go to hospital emergency room after he cut himself badly on the job because he feared he would jeopardize his immigration application if INS officials found out he had used public benefits. "*The Impact of INS Public Charge*" at Appendix A. Similarly, a 65-year-old Vietnamese refugees living in Oakland, California, asked his health provider to withdraw him from Medicaid; when his provider questioned him about why, the man said he had been informed by an INS official that his application for adjustment of status would not be considered if he continued to receive Medicaid benefits. *Id.* Finally, a Haitian woman married to a US citizen has a daughter with cancer who was accepted into a program for severely ill and disabled children in Florida; when the mother attempted to re-enter the US after briefly returning to Haiti, she was rejected and told that she could not re-enter the country until her family had repaid the benefits her child received. *Id.*
196. Immigrants are a particularly vulnerable class, as they constitute a disproportionate share of the US poverty population. Although non-citizens make up only about 6% of the US population, they constitute double that share of the US population in poverty. See Wendy Zimmerman and Karen C. Tumlin, *Patchwork Policies: State Assistance for Immigrants Under Welfare Reform*, Urban Institute Occ. Paper No. 24, at Table 3. Furthermore, "[s]ince the passage of welfare reform, benefit participation rates among noncitizens have dropped faster than among citizens." *See id.* at 12.

K. MONITORING.

197. While the available data indicates that most former recipients are faring poorly, there is inadequate monitoring as to precisely how these families are doing and how they are surviving. In its study the Urban Institute concluded that "little is actually known about how, and if, former welfare families are making ends meet." HOW FAMILIES THAT LEFT WELFARE ARE DOING. The report also concluded that "too much emphasis has been placed on caseload reduction and insufficient attention paid to income and poverty outcomes." *Id.* The report states about 20% of former recipients "are not working, do not have a working spouse, and are not relying on government disability benefits. What they are living on is not known." *Id.* The report continues: "As welfare time limits expire and cash assistance is

terminated, people who leave welfare in the future may face greater economic hardships than the former recipients described here, and they will constitute a larger proportion of all former recipients." *Id.*

198. A 1999 report by the United States General Accounting Office (GAO) on information about the status of former recipients included several findings. Prior to reviewing those findings, however, it is important to bear in mind that PRWORA does not set out requirements for states to report on or monitor the status of former recipients. US General Accounting Office, WELFARE REFORM - INFORMATION ON FORMER RECIPIENTS' STATUS, GAO/HEHS-99-48 (1999).
199. At the time of the drafting of the GAO study only seven states had completed studies which were generalizable to the state level. *Id.* at 15. Eleven states had undertaken a nongeneralizable study. *Id.* Thirty-three states had not done any tracking studies. *Id.* Of the eighteen which had done studies less than half looked at child care; only four looked at health status; two looked at child school attendance/ achievement; one at teen pregnancies; and just over half obtained information on marital status. *Id.*
200. The observations of the General Accounting Office noted that little could be concluded about the status of the majority of families that have left welfare around the nation. Moreover, it is clear that for those who have left and found employment is low-wage employment. *Id.*
201. The US has more than adequate resources to monitor how social and economic rights fare under PRWORA. It has failed to do so. Rather, official government policy has been to emphasize and tout as a success how few people the government is providing assistance, and not how much assistance is needed to guarantee an adequate standard of living.

VIII. IMPLEMENTATION OF THE PRWORA HAS VIOLATED PRINCIPLES OF INTERNATIONAL LAW REGARDING THE OBLIGATION TO PROTECT AND FULFILL SOCIAL AND ECONOMIC RIGHTS.

202. US law and policy pursuant to PRWORA violates the right to an adequate standard of living as guaranteed by OAS Charter art. 45, American Declaration, arts. XI & XIV, and ICESCR art. 11.
203. US law and policy pursuant to PRWORA violates the right to health as guaranteed by OAS Charter arts. 34 & 45, American Declaration art XI, Protocol of San Salvador art. 10, and ICESCR art. 12.

204. US law and policy pursuant to PRWORA violates the right to protection for familial relations as guaranteed by the OAS Charter art 45, American Declaration. art. VI, American Convention art. 17, Protocol of San Salvador art. 15, and ICESCR art. 10.
205. US law and policy pursuant to PRWORA fails to fulfill and violates the right to work under reasonable conditions as guaranteed by the OAS Charter arts. 34 & 45, American Declaration art. XIV, Protocol of San Salvador arts. 6 & 7, and ICESCR arts. 6 & 7.
206. US law and policy pursuant to PRWORA violates the right to education as guaranteed by the OAS Charter art. 49, American Declaration art. XII, Protocol of San Salvador art. 13, and ICESCR art. 13.
207. US law and policy pursuant to PRWORA violates the right to food as guaranteed by the OAS Charter art. 34, American Declaration art. XI, Protocol of San Salvador art. 12, and ICESCR art. 11.
208. US law and policy pursuant to PRWORA violates the right to housing as guaranteed by the OAS Charter art. 34, American Declaration. art. XI, and ICESCR art. 11.
209. US law and policy pursuant to PRWORA violates the right to social security as guaranteed by the OAS Charter art. 45, American. Declaration art. XVI, Protocol of San Salvador art. 9, and ICESCR art. 9.
210. US law and policy pursuant to PRWORA violates the right against discrimination as guaranteed by the OAS Charter art.45, American Declaration art. II, American. Convention. art. 24, the Protocol of San Salvador, art. 3, and the ICESCR art.2. .
211. With respect to the aforesaid rights, the United States, as one of the richest nations in the world, has by enacting and implementing PRWORA, violated its fundamental obligation to implement these rights progressively consistent with the available resources not only by failing to improve the situation of poor people in this country but also by eliminating protection in violation of the principle of non-retrogression.
212. The United States has, by enacting and implementing the PRWORA violated its obligation to guarantee a minimal threshold or core minimum of these rights.
213. The United States has by enacting and implementing PRWORA eliminated previous guarantees and failed to provide judicial or other effective remedies for

the protection of the above fundamental economic and social rights and against arbitrary deprivations or even illegal practices.

214. The United States has by enacting and implementing PRWORA without providing for a mechanism to monitor and develop means to redress its harmful effects upon each person affected has violated the basic obligation to protect the minimum threshold of rights to all.
215. The US violations of the aforesaid obligations regarding economic and social rights negatively impact and, therefore, violate the US obligation to respect and ensure the ability of poor persons represented by petitioners to exercise their civil and political rights .
216. The actions of the US in enacting and implementing the PRWORA discriminate against poor persons based on sex, race, economic status, age, property, marital or other status. The obligation not to discriminate is one of immediate effect and encompasses discriminatory or disproportionate impact or consequences, overt or covert discriminatory purpose, as well as the obligation to take positive measures to eliminate historic discrimination.

ATTORNEYS FOR PETITIONERS:

Catherine Albisa
Rhonda Copelon
International Women's Human Rights Law Clinic
City University of New York Law School
65-21 Main Street
Flushing, NY 11367
Ph: (718)340-4247

Cecelia Perry

Peter Weiss
Jenny Green
Center for Constitutional Rights
666 Broadway 7th, Fl.
New York, NY 10012
Ph: (212) 614-6434

PETITIONERS:

CHERI HONKALA, on behalf of herself and
on behalf of the POOR PEOPLE'S ECONOMIC
HUMAN RIGHTS CAMPAIGN and the KENSINGTON
WELFARE RIGHTS UNION.

JOY BUTTS.

JIM WILLIAMS, on behalf THE NATIONAL
EMPLOYMENT LAW CENTER.

HEIDI DOROW, on behalf of the URBAN
JUSTICE CENTER.

PETER WEISS, on behalf of the CENTER FOR
CONSTITUTIONAL RIGHTS

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