

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

HOUSING IS A HUMAN RIGHT

In 1944, Franklin Roosevelt declared that the U.S. had adopted a “second Bill of Rights,” including the right to a decent home. The U.S. signed the Universal Declaration of Human Rights in 1948, recognizing housing as a human right. Since that time, the concept of the right to housing has been further developed at the international level. However, the U.S. has fallen behind the rest of the world in making this right a reality. France, Scotland, South Africa and Ecuador have adopted the right to housing in their constitutions or legislation, leading to improved housing conditions. Recent polling indicates that over 50% of Americans strongly believe that adequate housing is a human right, and 2/3 believe that government programs may need to be expanded to ensure this right. Nevertheless, government policies have not traditionally treated housing as a right, and thus the housing needs of the most vulnerable Americans have gone unfulfilled. U.S. housing advocates can and should use international human rights standards to reframe public debate, craft and support legislative proposals, supplement legal claims in court, advocate in international fora and support community organizing efforts.

In the human rights framework, every right creates a corresponding duty on the part of the government to respect, protect, and fulfill the right. In the U.S., we value the right to a fair trial in criminal proceedings, so for those who cannot afford one, the government pays for a lawyer. Having the right to housing does not mean that the government must build a house for every person in America and give it to them free of charge. It does, however, allocate ultimate responsibility to the government for ensuring all people have access to adequate housing.

The human right to housing consists of seven elements: Security of Tenure; Availability of Services, Materials, and Infrastructure; Affordability; Accessibility; Habitability; Location; and Cultural Adequacy. The government can choose how it will implement the right, whether through spending on public housing and voucher programs; by creating incentives for private development of affordable housing such as inclusionary zoning or the Low-Income Housing Tax Credit; through market regulation such as rent control; through legal due process protections from eviction or foreclosure; or by other means. The right to housing framework gives us a tool for holding the government accountable if not all those elements are satisfied.

The right to housing has been developed through a number of international treaties and other documents, many of which were signed or otherwise affirmed by the U.S. First included in the Universal Declaration of Human Rights in 1948, the right was codified in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966. The U.S. has signed, but not ratified the ICESCR, and thus is not strictly bound to uphold the right to housing as framed in that document. However, the U.S. has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR), both of which recognize the right to non-discrimination on the basis of race or other status, including in housing. Additional standards can be found in other documents such as the Habitat Declaration or the UN Basic Principles on Development-Based Evictions. Many of these standards have language that, if incorporated into domestic policies, would significantly improve on existing U.S. policies, and U.S. advocates could learn much from them.

Using Human Rights in the U.S.

U.S. groups are using international mechanisms to promote housing rights. In 2006, the U.N. Human Rights Committee reviewed the U.S. for compliance with the ICCPR. Following advocacy by NLCHP and others, the Committee, in its final report, expressed concern about the disparate racial impact of homelessness and ordered the U.S. to pursue “adequate and adequately implemented policies to ensure the cessation of this form of de facto and historically-generated racial discrimination.” In 2008, a similar review by the Committee on the Elimination of Racial Discrimination under the ICERD resulted in a number of observations concerning the right to housing, including segregation in housing, affordable housing planning, the right to civil counsel in housing court, lack of domestic violence shelters on Native American land, and the right to return for victims of Hurricane Katrina.

Bringing this international language back home, advocates in Minneapolis used the ICCPR and ICERD comments in pushing for the repeal of an “anti-lurking” ordinance, which was having a discriminatory impact on homeless and minority residents. Advocates also used the May 2008 visit of the U.N. Special Rapporteur on Racism to put an international spotlight on the ordinance. Although the motion to repeal the ordinance ultimately failed by one vote, the public pressure forced the police department to meet with advocates and reduced the harmful enforcement of the ordinance.

The Potential

Scotland provides us with a good example of the difference the right to housing approach can make. The Homeless Etc. (Scotland) Act of 2003 includes the right to be immediately housed for all homeless persons and the right to long-term, supportive housing as long as is needed for priority groups – a category that will be progressively abolished by 2012 at which point the right will extend to all. This includes particularly at risk groups, such as former prisoners, who are excluded from much housing assistance in the U.S. Crucially, this includes an individual right to sue if one believes these rights are not being met. Complementary policies includes a number of other rights, including the right to purchase public housing units and automatic referrals by banks to foreclosure prevention programs to help people remain in their homes. All these elements work together to ensure the right to housing is upheld.

2009 – The Year to Realize the Right to Housing

Advocates are working with Rep. Waters office to hold Congressional field hearings on the crisis in affordable housing in the spring of 2009 in several cities across the country, explicitly framing housing as a human right. Rep. Waters will introduce a resolution calling for a right to housing for children. Additional legislation, from the Protecting Tenants at Foreclosure Act of 2009 to funding the National Housing Trust Fund, will be advanced as steps toward realizing a right to housing. The Senate should pass the ICESCR as a basis for grounding economic recovery efforts in a rights-based framework.

Finally, two visits of international experts will help advocates shine a spotlight on local and national housing rights violations: the UN Advisory Group on Forced Evictions will visit New Orleans and the Gulf Coast in July 2009, and the UN Special Rapporteur on Adequate Housing will visit several cities across the United States in the fall of 2009.

For More Information

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