

NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

Housing Rights for All:
Promoting and Defending Housing Rights
in the United States
Fifth Edition, 2011

A Resource Manual on International Law and
the Human Right to Adequate Housing

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**ABOUT THE NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY**

The National Law Center on Homelessness & Poverty is committed to solutions that address the causes of homelessness, not just the symptoms, and works to place and address homelessness in the larger context of poverty.

To this end, we employ three main strategies: impact litigation, policy advocacy, and public education. We are a persistent and effective voice on behalf of homeless Americans, speaking effectively to federal, state, and local policy makers. We also produce investigative reports and provide legal and policy support to local organizations.

For more information about our organization, membership, and access to publications such as this report, please visit our website at www.nlchp.org.

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BACKGROUND TO “HOUSING RIGHTS FOR ALL: PROMOTING AND DEFENDING HOUSING RIGHTS IN THE UNITED STATES”

Undisputedly the wealthiest country in the world, the United States of America is home to literally millions upon millions of people who do not have access to an adequate home in which to live. Beyond the epidemic of homelessness in America, which itself affects an estimated 3.5 million Americans every year, 1.35 million of whom are children,¹ millions more Americans live in poor housing conditions that often rival those found in developing countries. While the human right to adequate housing is recognized in dozens of international human rights instruments and scores of related policy documents, and has been long regarded as essential to ensuring the well-being and dignity of the human person, there is a stark gap between these human rights principles and the current housing rights situation within the United States. This gap is made all the more disturbing when one considers the enormous economic power and wealth of the United States, leading one to question the political decisions and priorities that have led to the current situation.

It is also important to note that access to adequate housing directly affects the realization of other human rights; without it, employment is difficult to secure and maintain, health is threatened, education is impeded, violence is more easily perpetrated, privacy is impaired, and social relationships are frequently strained. Lack of affordable housing, in particular, places vulnerable groups in the impossible position of having to choose between the most basic of human necessities, between housing and food, between housing and health care, between housing and clothing, and the list goes on.

From housing discrimination to lack of housing affordability to inadequate living conditions, difficult housing issues affect large segments of the American population, and women, racial and ethnic minorities, the elderly, children, and the poor are disproportionately affected. For example, according to the National Low Income Housing Coalition, today, the average U.S. household must earn at least \$18.44 an hour to afford a two-bedroom apartment and meet basic subsistence needs, more than double the federal minimum wage of \$7.25 an hour.² As we all know, the rising cost of housing hits hardest those whose incomes are not likely to increase significantly over time. Women, who make up the majority of minimum wage workers, are especially vulnerable as they also tend to be the sole wage earner in single parent families.

According to a recent study by the Joint Center for Housing Studies at Harvard University, “The inexorable rise in home prices and rents represents a serious challenge for the nation’s 20 million lowest-income households. Although the plight of renters receives much attention, the vast majority of lowest-income owners also face severe housing affordability problems. Overall, some 8.6 million renters and 6.4 million owners

¹ See National Alliance to End Homelessness, *Homelessness Looms as Potential Outcome of Recession* (2009).

² National Low Income Housing Coalition, *Out of Reach 2010*, 6, (June 2010).

in this group pay more than 30 percent of their limited incomes for housing and/or live in structurally inadequate or overcrowded homes.”³

Beyond the crippling affordable housing crisis, add to this the discrimination suffered by African-Americans, Latinos, and Native Americans, among others, in the housing sphere. Indeed, in 2000, the Government of the United States of America admitted to the United Nations Committee on the Elimination of All Forms of Racial Discrimination that:

Although there has been significant progress in the improvement of race relations in the United States over the past half-century, serious obstacles remain to be overcome. Overt discrimination is far less pervasive than it was 30 years ago, yet more subtle forms of discrimination against minority individuals and groups persist in American society. In its contemporary dimensions discrimination takes a variety of forms, some more subtle and elusive than others. Among the principal causative factors are:

...

(f) Continued segregation and discrimination in housing, rental and sales of homes, public accommodation and consumer goods. Even where civil rights laws prohibit segregation and discrimination in these areas, such practices continue.⁴

Yet, despite all of these interrelated problems, relatively few housing advocacy organizations within the United States have attempted to address these issues using an international human rights framework. Certainly, the United States does have domestic legislation that serves to protect people against certain abuses within the housing rights sphere, and many organizations choose to wage their battles within the domestic courts. However, in many cases, these laws are inadequate to address the profound and diverse array of housing problems faced by so many people living within the United States. Moreover, the recent adoption of retrogressive laws and cuts in social and welfare benefits have also served to further erode the social safety net on which many individuals and families depend in times of greatest need.

NLCHP believes that the current housing situation in the United States must be addressed utilizing a human rights based approach; an approach that recognizes the legal duties of the government to respect, protect, and fulfill the right to adequate housing for every member of society without discrimination. We believe that this is an important opportunity to bring a new perspective, namely that of international human rights, to the familiar policy debates surrounding domestic housing issues.

³ Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing* (2002).

⁴ *Reports Submitted by States Parties Under Article 9 of the Convention, Third Periodic Reports of States Parties Due in 1999, Addendum, United States of America*, Committee on the Elimination of Racial Discrimination, ¶ 71(f), U.N. Doc. CERD/C/351/Add.1 (2000).

In the past decade, NLCHP has conducted hundreds trainings, both in the U.S. and internationally. These trainings covered domestic law topics such as housing, domestic violence, public benefits, civil rights, and homeless children’s right to education; international law topics such as the justiciability of housing rights and the enforcement of housing rights at the international, regional, and domestic levels; and the human right to housing in U.S. advocacy. Our trainings aim to reach lawyers, grass roots advocates, homeless and low-income people, and judges. Ultimately, however, our key beneficiaries are the homeless and inadequately housed people whose rights are affected.

ABOUT THIS RESOURCE MANUAL

Human rights education can be defined as a process of learning, discovery, and action that cultivates the knowledge, skills, attitudes, habits and behaviour needed for people to effectively know, assert, and vindicate their human rights consistent with the Universal Declaration and to respect the rights of others.

- Richard Pierre Claude, 1998

The purpose or goal of human rights education is **empowerment in order to bring about social change**. Many people who do not know their rights are more vulnerable to having them abused and may lack the language and conceptual framework to effectively advocate for them. Education for and about human rights is essential; it can contribute to the building of free, just, and peaceful societies and prevent human rights abuses.

With this premise in mind, NLCHP developed this resource manual as a guide for housing rights activists in the United States and for those interested in becoming involved in housing rights issues and/or for use as a resource during training programs. The manual presents information, articles, and activities, which provide, within the specific context of housing issues in the United States:

- An understanding of the various components of the right to adequate housing;
- Knowledge of international and domestic legal standards pertaining to the protection and promotion of the right to adequate housing;
- An understanding of the inter-relatedness between housing rights violations and other human rights violations, particularly violations of economic, social, and cultural rights;
- Expertise in various thematic areas related to housing rights, including women's housing rights, forced eviction, and housing discrimination;
- A practical guide to the different activities that housing rights activists and others can employ to ensure access to adequate housing for people in the United States, including:
 - Monitoring;
 - Documentation;
 - Domestic and International Advocacy; and
 - Legal Action.

The international and regional legal standards referenced in the manual and other helpful documents pertaining to the right to housing are available on NLCHP's website at http://www.nlchp.org/program_reportspubs.cfm?prog=1.

SECTION 1: THE RIGHT TO ADEQUATE HOUSING

I. FRAMING THE DISCUSSION ABOUT HOUSING RIGHTS

Worksheet 1: Questionnaire on Housing Rights

Read each statement and mark whether you agree or disagree. Use the comments column to elaborate on your answer. Please base your responses on your immediate feeling as you read each statement.

Statements	Agree	Disagree	Comments
The right to housing is equally important as other human rights.			
Housing rights are only an issue in the developing world.			
There is no clear definition of a housing rights violation.			
If property rights are guaranteed, there is little need to be concerned about housing rights.			
A government does not have to take immediate action to promote and protect economic, social, and cultural rights.			
The only effective way to protect housing rights is through legislation.			
In a free market, the government does not have to ensure that people have access to affordable housing.			
Housing rights cannot be fully implemented because the costs involved are unaffordable.			
National laws do not recognize housing rights, thus, neither can international law.			

Statements	Agree	Disagree	Comments
Adequate housing must be near employment options, health care services, schools, child-care centers, and other social facilities.			
Poor people live in slums because they are too lazy to help themselves.			
Generally, residents of subsidized housing are taking advantage of the system.			
Homeless people are usually drug addicts or drunks.			
The right to housing cannot be enforced through the courts.			
When national wealth increases, housing conditions and home ownership will automatically improve.			

Why Take a Rights-Based Approach to Housing Issues?

Q: There are many different ways to try to achieve housing rights for all. Some people try to do it by bringing about political change; others focus on development, or on grassroots struggle. Why do you advocate a rights-based approach to the housing rights issue?

A: Scott Leckie, former Executive Director of COHRE

The most important argument for favoring a rights-based approach is that it puts everything into a **common legal framework**. This framework creates legally binding obligations and duties upon one side (which is the state/government) and creates legally enforceable entitlements and rights on behalf of others (which are the people). Applying a rights framework says that every person in the world should have a right to basic minimum core requirements – a certain body of entitlements that must be provided in some way by the state/government. If they refuse to do that there are certain mechanisms and procedures in place that people can invoke very easily that should lead to governments changing their laws and policies so that they actually provide these things.

A rights based approach creates a common, **clear conceptual framework** for addressing these wider issues. It forces governments to spend money if they take rights seriously and to do actions that are going to benefit the largest number of people rather than the elite or whatever groups may be affiliated with the government. And it creates a framework, a formula, for measuring if they actually are doing that.

It's a way to **hold governments accountable under law**. It's not simply saying, "The government didn't perform well so we are going to vote it out so that more people get housing." The rights based approach says, "The government has consciously done certain things or not done certain things and as a result of that it has violated the rights of its citizens." These timeless universal standards place the individual in a very different role vis-à-vis the society, or the state/government, if you look at it through the lens of human rights or if you look at it through the lens of human development or pure politics.

Some countries that are very progressive and which actually do care about the plight of the poor or the lower middle classes and which you would expect to be pro Economic, Social, and Cultural rights are in fact reluctant to recognize them. Sweden is the classic example. It is the ultimate welfare state and Social Democrats have held control for about eighty-five years. They support in principle the concept of ESC rights but they don't support that the judges should be the ones who should decide whether or not these rights are being kept because it is not democratic. That's a very big issue that is not relevant to most countries, but it is a strong argument against a rights based approach in a country where you know that a social democratic party that prides itself on taking care of needs of the population is going to stay in power for a very long time.

This is another reason for taking a rights based approach: **it doesn't matter who is in power** because the government (whether it is right wing, moderate, or left wing) would

have to apply the same principles. So this is a way of really keeping and strengthening the fact that everyone, from the minute they are born to the minute they die, should have access to these basic requirements. Politics does change. Politics does favor some groups and not others. But human rights are so basic, so central to human life that you have to have them notwithstanding who's in power. If you only have a political framework, many groups lose out if their party doesn't win. The rights-based approach says: You will win no matter what.

The whole thing of being able to invoke human rights is also another major advantage of a rights based approach; it **provides you with remedies** that you would normally not have at all. If you were to be working in a purely political context, and you didn't get housing or education or a job, there's no one to turn to (or you could go to your Member of Parliament, maybe). Applying a rights based approach allows you to actually turn to official institutions and say "Hey, I know you have an obligation to see that this particular right of mine is protected, but I don't have that protection! Something's going wrong and we need an independent body to decide if you are doing something wrong and force you to do something about it."

A *purely* legal approach is probably not the wisest way to go. There should be a **combination** of that with popular struggle, with education, with support, and so on. International and domestic NGOs and human rights activists should work together with local and national institutions all driving in the same direction. That yields the best results.

There are people, very good people, who believe that the human rights approach is so legalistic, so formal, that it doesn't recognize the real reality. Some people argue that writing a constitution or a statute does nothing to help them. The only thing that really matters is that they get more money in their pockets, that they mobilize and get together and start improving their situation on their own because the role of the government is going to be so minimal anyway that people have to do it themselves. I think this is not an unreasonable view, but my own perspective would always be, better we combine forces and look at things through the lens of human rights and see what you can do at political, economic, and other levels to make it a reality.

Q: Why is it important to advocate for housing as a human right in the United States?

A: Maria Foscarnis, Executive Director of NLCHP

Homelessness has grown tremendously in the U.S. in the past two decades. The lack of affordable housing is generally considered a leading cause of this growth and, increasingly, housing is viewed as a key part of any solution to homelessness. Beginning in the mid-eighties, national policy has considered homelessness a national crisis, and has responded with federal legislation and funds. Much of these resources have focused on emergency shelter, however, rather than permanent housing. Since that time, an

increasing body of research and practice has pointed to the importance of housing as a more lasting and cost-effective solution.

More than ever, housing is relevant to homelessness, both domestically and internationally. In the human rights context, a body of law and policy has developed that addresses, in theory, the need for housing by defining and giving content to a right to housing. Since Habitat II, at least some countries comparable to the United States have adopted new laws and policies to further the right to housing. The U.S. has a patchwork of laws addressing housing needs, but there is no right defined and the resources provided through existing law are by far inadequate to the need.

Q: Does human rights advocacy in the U.S. have any practical value or impact?

A: Maria Foscarinis, Executive Director of NLCHP

Yes, absolutely. Human rights advocacy can add practical value to U.S. advocacy in several ways. International human rights treaties can be used as an interpretive guide in litigation. Recently, the U.S. Supreme Court has shown increased openness to using international norms and practices to determine issues in U.S. law, as evidenced by Roper v. Simmons, the case striking down the execution of minors as unconstitutional, as well as public statements by several justices. Lower federal and state courts have also cited international human rights law in support of their decisions in a variety of contexts relevant to poverty.

Concepts and language from international treaties also can serve as models for advocates engaged in legislative advocacy on the federal, state and local levels. In fact, a growing number of recent initiatives have incorporated human rights language and instruments. For example, several California cities have enacted resolutions adopting the Universal Declaration on Human Rights, and the California legislature recently incorporated in state law the definition of racial discrimination contained in the Covenant for the Elimination of All Forms of Racial Discrimination. In Chicago, advocates successfully persuaded the Cooke County Council to adopt a resolution affirming the human right to housing. Advocates in Pennsylvania successfully advocated for state law creating a committee to investigate the integration of human rights standards in the state's laws and policies. In Connecticut, the Department of Corrections has incorporated the U.N. Standard Minimum Rules for the Treatment of Prisoners into its administrative rules.

In addition, human rights advocacy can help energize and focus community organizing efforts—lending the support of human rights law and practice to these efforts, as is now happening with the organizing efforts by public housing residents and other advocates for social justice in Chicago, Pennsylvania, and elsewhere. Human rights law can add legitimacy and strength to organizers' demands.

Working with international or regional bodies can also be a helpful advocacy tool. Advocates can prepare “shadow” reports, or even testify before such bodies. For

example, NLCHP and other advocates testified recently before the Inter-American Human Rights Commission on the right to housing and U.S. compliance with the right.

Question: Do you think that human rights advocacy can make a difference in the public view of homelessness and poverty?

A: Maria Foscarinis, Executive Director of NLCHP

Yes, if we include public education in our advocacy. In fact, placing housing and other economic and social issues within a human rights framework can help reframe public debate on these issues. This is especially important now, when so much public discussion—and resulting policy and law—about homeless and poor people is premised on misguided, hostile, and divisive assumptions. Human rights are universal: they recognize and are based on the inherent dignity and value of all human beings. They also recognize that rights and responsibilities are linked. The human rights framework can help foster an inclusive, unifying model for a true social safety net based on justice.

II. Defining Housing Rights

Housing Rights are Human Rights

Housing rights involve more than the right to access shelter. Rather, they include the following indivisible, interdependent, and interrelated human rights:

- The human right to adequate housing.
- The human right to an adequate standard of living.
- The human right to access safe drinking water and sanitation.
- The human right to the highest attainable standard of physical and mental health.
- The human right to a safe and healthy environment.
- The human right of the child to an environment appropriate for physical and mental development.
- The human right to access resources, including energy for cooking, heating, and lighting.
- The human right of access to basic services, schools, transportation, and employment options.
- The human right to affordability in housing, such that other basic needs are not threatened or compromised.
- The human right to freedom from discrimination in access to housing and related services based on sex, race, and ethnicity, or any other status.
- The human right to choose one's residence, to determine where and how to live, and to freedom of movement.
- The human right to freedom from arbitrary interference with one's privacy, family, or home.
- The human right to security, including legal security of tenure.
- The human right to equal protection of the law and judicial remedies for the redress of violations of the human right to adequate housing.
- The human right to protection from forced evictions and the destruction or demolition of one's home, including in situations of military occupation, international and civil armed conflict, establishment and construction of alien settlements, population transfer, and development projects.

Worksheet 2: Housing Rights in the United States

1. What are the principal housing rights problems you believe affect people in the United States? List five in the chart below.

Housing Rights Problems in the United States
Problem 1:
Problem 2:
Problem 3:
Problem 4:
Problem 5:

Defining “Adequate” Housing

According to the UN Committee on Economic, Social and Cultural Rights, the human right to housing consists of seven elements:

- Security of Tenure;
- Availability of Services, Materials, Facilities, and Infrastructure;
- Affordability;
- Habitability;
- Accessibility;
- Location; and
- Cultural Adequacy.⁵

Human rights law requires that the progressive realization of the right, to the maximum of the country’s available resources, in a non-discriminatory manner.⁶ The government can use a wide variety of measures, from market regulation to subsidies, public-private partnerships to tax policy, to help ensure the right. Implementing the human right to housing would *not* require the government to immediately build a home for each person in America or to provide housing for all free of charge. But it does require more than some provision for emergency shelter – it requires an affirmative commitment to ensure fully adequate housing, based on all the criteria outlined above.

Each of these criteria is defined further, and the status of enjoyment in the U.S. is assessed below:⁷

- **Security of Tenure:** According to international standards, all persons—whether renters, homeowners or occupants of emergency housing or informal settlements—should possess legal protection against forced eviction and harassment. In the U.S. today, these protections are often lacking:
 - **Renters.** Renters enjoy legal protections in some communities, and the

⁵ General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).

⁶ *Id.*

⁷ The following discussion of each of these elements is excerpted from our 2011 Report “Simply Unacceptable: Homelessness and the Human Right to Housing in the U.S.” For further discussion, please see that report, available at:

Protecting Tenants at Foreclosure Act (enacted in 2009 and amended in 2010), provides, for the first time, some crucial federal protections for renters in foreclosure; some states have enacted stronger protections. But implementation and enforcement are lacking and renters, who are disproportionately low income and people of color, continue to lose their homes—and face homelessness—due to their landlords’ foreclosures.

- **Homeowners.** Over 2.5 million homes have been foreclosed upon since 2007;⁸ many of these foreclosures were preceded by predatory lending practices, which target primarily poor and minority borrowers (who may have no other options) with agreements that incorporate *insecure* tenure by their terms. At the same time, banks received billions in public dollars, diminishing the nation’s “available resources” to progressively realize the human right to housing, contrary to human rights obligations. Nevertheless, there are some important procedural safeguards, some in place before the crisis and others enacted in 2009, and some courts have acted to protect homeowners.
- **Access to Counsel:** The U.S. Constitution has not to date been interpreted to require counsel in civil matters, and this includes evictions and foreclosures. While some state and local governments are going or considering going further, the vast majority of civil litigants are unrepresented.
- **Emergency and Dire Circumstances:**
 - Criminalization of Homelessness. In cities across the country, homeless persons are increasingly criminalized for sleeping or sitting in public spaces despite lack of adequate shelter or affordable housing with anti-camping laws increasing 7% between 2006 and 2009.⁹
 - A few communities have adopted constructive alternative approaches, such as Portland, Oregon’s “A Key Not a Card” program, through which city-funded outreach workers place people living in public places into permanent affordable housing. While more resources are needed to meet the need, this is a very important step in the right direction.
 -
 - Domestic Violence. Domestic violence is a leading cause of homelessness, particularly for women. The Violence Against

⁸ Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, Center for Responsible Lending Research Report, "Foreclosures by Race and Ethnicity: Demographics of a Crisis" (June 18, 2010).

⁹ National Law Center on Homelessness & Poverty and National Coalition for the Homeless, *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities* (2009).

Women Act in 2006 created new housing rights for victims in public and subsidized housing, and several states have enacted broader protections. However, while positive steps, these rights are often not enforced. Regulations issued recently by HUD are another positive step, as is the appointment of a special White House Advisor on Domestic Violence.

- **Availability of Services, Materials, and Infrastructure:** An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.
 - In urban areas, systemic failure to adequately fund capital needs of public housing has created a \$30 billion dollar backlog in repairs, leaving many buildings and units in a state of chronic disrepair and threatening this vital safety net;¹⁰ in rural areas, impoverished and racially segregated areas suffer from lack of access to basic water and sanitation. Measured against the nation’s “available resources,” this failure is especially egregious.
- **Affordability:** The amount a person or family pays for their housing must not be so high that it threatens or compromises the attainment and satisfaction of other basic needs. According to the affordability principle, governments should take steps to protect tenants from unreasonable rent levels and rent increases, to ensure the availability of natural building materials for housing, and to establish appropriate channels for obtaining housing financing. These provisions must be interpreted to enable women and other marginalized groups, who often face economic discrimination, to afford adequate housing through appropriate credit and financing arrangements.
 - Among renters, close to one-quarter of households spend more than half their income on rent, putting them one paycheck away from homelessness; of extremely low-income renters, 71% pay more than half their income in rent.¹¹ Overall, in 2008 (the most recent year for which data is available), compared to need, and only 37 units were affordable and available for every 100 households.¹² Meanwhile, foreclosed homes and abandoned government properties stand vacant as families are living on the streets.
- **Accessibility:** Housing must be accessible to everyone. Disadvantaged groups

¹⁰ Sandra B. Henriquez, Testimony to the House Financial Services Subcommittee on Housing and Community Opportunity, Apr. 28, 2010, *available at* <http://portal.hud.gov/hudportal/HUD?src=/press/testimonies/2010/2010-04-28>.

¹¹ National Low Income Housing Coalition, *Out of Reach 2010*, 6, (June 2010).

¹² *Id.*

such as the elderly, the physically and mentally disabled, HIV-positive individuals, victims of natural disasters, children, and other groups should be ensured some degree of priority consideration in housing. Both housing law and policy must ensure their housing needs are met and it should be a central policy goal of governments to increase access to housing by the most impoverished segments of society. Additionally, in rental and housing markets, discrimination against disadvantaged groups is common and poses a significant barrier to housing access.

- The overly restrictive federal definition of homelessness prevents many in need of resources from receiving aid, and identification barriers prevent numerous homeless persons from accessing federal resources. Criminal and arrest records also prevent large populations from accessing housing, leading 1 in 11 released prisoners into homelessness.¹³ Post-disaster relief policies that fail to provide assistance by right leave many people in crisis unable to access needed resources. And even where needy applicants are able to obtain housing assistance or access affordable housing, they face discrimination in the private housing market on the basis of race, disability, gender, source-of-income, or other status, despite some strong de jure protections: over 30,000 complaints were registered in 2009 with housing protection agencies, and many more go unreported.¹⁴
- **Habitability:** For housing to be considered adequate, it must be habitable. Inhabitants must be ensured adequate space and protection against the cold, damp, heat, rain, wind or other threats to health, or structural hazards. Housing which lacks such protections is frequently associated with diseases and higher mortality rates. In this respect, women must also be protected from domestic violence, a clear threat to their health.
 - While overall housing conditions have improved significantly through the latter half of the 20th century to the present, many poor residents continue to face housing conditions that seem to be from another era. From 2005 to 2008, the number of people in families sharing the housing of others due to economic hardship increased by 8.5%, and some states have reported a doubling of their shared household families;¹⁵ poor maintenance of buildings leads to health problems, particularly for poor youth who experience double the rate of asthma of moderate income youth.¹⁶ Without

¹³ Bureau of Justice Statistics, 2009. "Prisoners In 2008", available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763> (last visited Jan. 21, 2011).

¹⁴ National Fair Housing Alliance, *Levels of Housing Discrimination Remain at Historic High in 2009*, May 16, 2010).

¹⁵ Joy Moses, Center for American Progress, *The New Housing Normal for Low-Income Families*, (June 15, 2010); M William Sermons, Peter Witte, National Alliance to End Homelessness, *State of Homelessness in America*, 26 (2011).

¹⁶ Gary W. Evans & Elyse Kantrowitz, *Socioeconomic Status and Health: The Potential Role of Environmental Risk Exposure*, 23 Ann. Rev. Pub. Health 303, 307 (2002).

a right to counsel, many housing code violations go unpunished and unremedied.

- **Location:** For housing to be adequate it must be situated so as to allow access to employment options, health care services, schools, childcare centers, and other social facilities. Housing must not be located in polluted areas.
 - Poor families in both urban and rural areas are separated by long commutes from employment options, many spending as much as 2.5 hours commuting each day;¹⁷ healthcare resources are similarly deficient in many impoverished communities – 80% of rural areas are medically underserved, and in urban areas, hospitals are closing in racial minority areas at twice the rate of other areas;¹⁸ failures to remedy historical segregation patterns continue to result in segregated and inadequate education for poor and minority youth at rates higher than in the 1960s when segregation was still legal.¹⁹ In many communities, homeless children continue to be placed in emergency housing without regard to school needs.
- **Cultural Adequacy:** Adequate housing should allow for the expression of cultural identity and cultural diversity. This means that cultural dimensions of housing, such as the way housing is constructed, the building materials used, and the policies supporting these, should not be sacrificed in the name of development or modernization.
 - The poor state of housing for Native Americans violates not only human rights, but also tribal treaty obligations through overcrowding, lack of maintenance, and destruction of historical cultural connections to land.

¹⁷ Mark Mather, Population Reference Bureau, *Housing and Commuting Patterns in Appalachia* 16 (January 2004).

¹⁸ Sidley D. Watson, *Mending the Fabric of Small Town America: Health Reform & Rural Economies*, 113 W. Vir. L. Rev. 1, 7-8, (Fall 2010); Opportunity Agenda, *Dangerous and Unlawful: A Report on why our health care system is failing New York communities and how to fix it* 3, (2007)..

¹⁹ Jonathan Kozol, “The Shame of the Nation: the Restoration of Apartheid Schooling in America,” Crown Publishers (New York 2005), 240.

Some Common Myths about Housing Rights

Though it is now generally accepted that the right to housing exists under international, regional, and domestic laws, there remain a number of misperceptions regarding the content and implications of this right. Many of these are similar to the misperceptions associated with economic, social, and cultural rights, more generally. There are many false myths about housing rights, but the following five are perhaps the most common:

Myth: Courts cannot protect housing rights. This is one of the most common myths spread about the right to housing and other economic and social rights. The notion that housing rights are non-justiciable is usually based on a comparison with civil and political rights. Proponents of this myth believe, among other things, that unlike civil and political rights, economic, social, and cultural rights, such as the right to housing, are too vague and too cost-intensive (requiring government action rather than inaction) to be litigated, and can be implemented only on the basis of policy, but not on law and justice.

Reality: Not only is the right to housing one of the most developed economic, social, and cultural rights in terms of content, but a number of the constituent elements of the right to housing are adjudicated in courts of law, tribunals, and other legal and quasi-legal forums on a daily basis. For example, in the United States, Landlord-Tenant relations are regulated by legislation and enforced in courts; discrimination with respect to accommodation is prohibited in “human rights” or civil rights legislation in many states, and such cases are commonly brought before adjudicators. Concurrently, regional and international human rights bodies, such as the UN Committee on Economic, Social and Cultural Rights (CESCR), the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) and the UN Committee Against Torture (CAT) have directly considered housing rights issues in their case law or jurisprudence.

General Comment No. 4, adopted by the CESCR, identifies six specific areas within the right to adequate housing that are capable of judicial scrutiny: legal appeals aimed at preventing planned evictions through the issuance of injunctions; legal procedures seeking compensation following an illegal eviction; complaints against illegal actions carried out or supported by landlords in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; allegations of any form of discrimination in the allocation and availability of access to housing; complaints against landlords concerning unhealthy or inadequate housing conditions; and class action suits in situations involving significantly increased levels of homelessness.

Myth: Housing rights require the government to build housing, free of charge, for the entire population. Opponents of housing rights have often argued that recognizing housing rights would require governments to build housing for the entire population - an entirely government-based, government-determined, and government-driven approach to housing.

Reality: The right to adequate housing has never been interpreted under international law to mean that nations must provide housing, free of charge, to all who request it. Under

international law, once a nation accepts the obligations attached to the right to housing, it agrees to endeavour, by all appropriate means possible, to ensure that everyone has access to housing resources adequate for health, well-being, and security. Upon assuming legal obligations, *nations are required to undertake a series of measures that indicate policy and legislative recognition of each of the constituent aspects of the right to housing, thus creating the necessary conditions so that all residents may enjoy the full entitlements of the right to housing within the shortest possible time-frame.*

This is both reasonable and realistic. Although international law may not require nations to provide housing for everyone who requests it, some countries have voluntarily taken on this responsibility. For example, homeless children in South Africa, homeless families in the United Kingdom, homeless persons in Scotland, victims of natural disasters, or others with acute housing needs in many countries do have rights to immediate housing relief. The CESCR has also provided some insight into whether nations have to construct housing for all upon demand. The Committee has indicated that *the ICESCR requires State parties (that is, nations that have ratified the ICESCR) to provide minimum subsistence rights for everyone regardless of the level of economic development of the country.* This means that States parties must ensure, at the very least, minimum essential levels of each of the rights in the ICESCR, including the right to housing. As a matter of priority, governments should also provide housing or access to housing resources to those people who are homeless, inadequately housed, or incapable of acquiring the bundle of entitlements that correspond with housing rights.

Myth: The Nation must fulfill all aspects of the right to housing immediately. Many countries are fearful of the right to housing because they mistakenly believe that the right to housing requires them to immediately implement all housing rights obligations to comply with international law.

Reality: Of course, it would be ideal if a country could fulfil all aspects of the right to housing immediately. International law has recognized the impracticality of this and has responded by interpreting this right to mean that States parties will have some legal obligations that must be undertaken immediately and others that are more long term or progressive in nature. In other words, protecting and enforcing the right to housing will involve some immediate action and some future action, all of which will eventually lead to the full, society-wide, enjoyment of this right. The immediate action required by State parties to the ICESCR arises out of article 2(2) of the ICESCR which stipulates that States parties “[...] undertake to take steps [...] by all appropriate means, including particularly the adoption of legislative measures.” In its General Comment No. 3, the CESCR interpreted this phrase to mean that State parties are obliged to immediately begin to adopt measures towards the full enjoyment by everyone of the right to housing. While the full realization of the right to adequate housing might be achieved progressively, steps toward the goal must be taken within a reasonably short time after the Covenant is ratified by the State. The Covenant also recognizes that some aspects of the right to housing may not be capable of immediate realization.

In turn, according to the Covenant, State parties are obliged to undertake to achieve progressively the full realization of the rights contained in the ICESCR. The use of the term “progressive realization” is a recognition that full realization of all economic, social, and cultural rights, including the right to housing, will generally not be possible to achieve in a short period of time. This does not mean, however, that State parties can indefinitely defer efforts to ensure the enjoyment of the rights in the Covenant.

Myth: Housing rights are necessary only in developing countries. There is a tendency to view housing rights as an issue solely affecting developing countries where housing rights are often denied to massive portions of society.

Reality: Every nation in the world faces at least some housing rights challenges, including the countries making up the European Union, the United States, Canada, and Australia. For example, in its 1998 review of Canada, the CESCR stated that they were “gravely concerned that such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada’s ten largest cities have now declared homelessness a national disaster.”

While it may be true that the housing conditions in affluent countries are relatively better than in non-affluent countries, this is an inappropriate comparison. The proper comparison is intra-State. That is, how do the housing conditions of poor persons and other disadvantaged groups in the United States compare with those of more advantaged groups? Both developed and developing countries share a number of housing problems, including rapidly growing homelessness, domestic violence, discrimination in the housing sector, forced evictions, harassment of tenants, and an increased reliance on market mechanisms to fulfill housing needs without a corresponding alteration of national policy to provide access to accommodations for those unable to access private housing.

Myth: Homeless people who live in public spaces or on private property to which they do not have title are criminals. Many cities and localities throughout the U.S. have enacted laws that essentially criminalize homelessness. Even as most areas of the country do not have adequate affordable housing and shelter space, local governments have made it illegal to sleep, sit, and perform other life-sustaining activities in public. Further, homeless people in urban areas may live on private property, if they feel they do not have any other safe place to live. In these situations, homeless people are often arrested, physically abused, beaten, and sometimes even killed. People living in such circumstances are frequently not provided with what they really need: security of tenure, housing, and to be treated with dignity and respect.

Reality: Treating homeless persons like criminals means turning a blind eye to the economic and social circumstances that have led to the increase in homelessness in the U.S. in the past several decades. Homeless persons do not live in these places to break laws or get a free ride, rather they are simply creating housing solutions where the housing sector failed to provide housing. The reality is that most jurisdictions in the U.S. do not have adequate affordable housing or shelter space to meet the need. If they had the

means, most homeless persons would choose to live in adequate housing with secure tenure - just like everyone else.

Government Obligations under the Right to Adequate Housing

Adapted from: Ravidran, D.J. (1998) Human Rights Praxis: A Resource Book for Study, Action and Reflection. Bangkok, Thailand: The Asian Forum for Human Rights and Development, and Comments by The United Nations Special Rapporteur on Economic, Social and Cultural Rights, H.E. Danilo Türk (1992).

See also, The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, and the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Document E/CN.4/1987/17

The International Covenant on Economic, Social and Cultural Rights is the most important legal source of housing rights under international law. It outlines the following key rights, which are all intrinsically linked to each other:

- The Right to **Work** and to **Favorable Conditions of Work**;
- The Right to Form and Join **Trade Unions**;
- The Right to **Social Security**;
- The Right to **Family Life**;
- The Right to an **Adequate Standard of Living**;
- The Right to **Adequate Food and Clothing**;
- The Right to **Adequate Housing**;
- The Right to the Highest Attainable Level of **Health and Health Care**;
- The Right to **Education**;
- The Right to **Free and Compulsory Primary Education**;
- The Right to **Culture**; and
- The Right to **Water**.

In contrast to civil and political rights that have been the subject of decades of examination, discussion, and elaboration, economic, social, and cultural rights have been largely ignored by the human rights movement until recently. Consequently, our understanding of these rights is much more limited. In addition, while in the traditional human rights movement, human rights were seen as a means to curtail government action, economic, social, and cultural rights in particular are being viewed increasingly as means for change and social transformation.

The idea of progressive realization contained in the ICESCR is very different from the wording of the International Covenant on Civil and Political Rights (ICCPR), which dictates immediate obligation. Consequently, ESC rights have been viewed by many as a statement of aspirations or goals rather than binding obligations like civil and political rights. Given that this school of thought prevailed for many years, it is important to be aware of the work of the CESCR, which is helping to provide an authoritative interpretation of the State's obligations under the ICESCR through its General Comments. In particular, the Committee has argued that many provisions of the ICESCR must be implemented immediately, particularly the anti-discrimination provisions contained in Article 2.

Under international law, certain commitments exist with regards to all economic, social, and cultural rights, including the right to adequate housing. Article 2(1) of the ICESCR deals with the obligations of State parties. According to the CESCR, Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by State parties to the Covenant. Article 2(1) of the Covenant states:

“Each State Party to the present Covenant **undertakes to take steps**, individually and through international assistance and co-operation, especially economic and technical, to the **maximum of available resources**, with a view to **achieving progressively** the full realization of the rights recognized in the present Covenant **by all the appropriate means**, including particularly the adoption of legal measures.”

Meaning of “Undertakes to Take Steps”

The CESCR has clarified that, “while the full realization of the relevant rights may be achieved progressively, *steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force* for the States concerned. Such steps should be *deliberate, concrete, and targeted* as clearly as possible toward meeting the obligations recognized in the Covenant.” This may entail the adoption of a national housing strategy, which, as stated in the Global Strategy for Shelter to the Year 2000, “defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures.” Such a strategy should be devised via extensive and meaningful consultation with and participation of affected groups. It should also be noted that the obligation “to take steps” includes both *policy development* and *effective implementation*.

Meaning of “By all Appropriate Means, Including Particularly the Adoption of Legislative Measures”

The CESCR recognized that Nations must decide the appropriate means, and it may depend on the right that is being implemented. However, the Committee stated, “*State Party reports should indicate not only the measures that have been taken but also the basis on which they are considered the most appropriate under the circumstances.*”

A State Party cannot avoid its obligations by merely saying that its policies are aimed at economic development and that poverty or illiteracy will be eradicated eventually.

As for the term “*adoption of legislative measures*,” the Committee stated that adopting legislation by no means exhausts the obligation of the nation. The mere existence of a law is not sufficient to prove that a State Party is carrying out its obligation under the Covenant. In addition to laws, the Committee has stressed the need for the “*provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.*”

Meaning of “Achieving Progressively”

It is normally assumed that due to the resources required for the realization of economic, social, and cultural rights, they are incapable of immediate implementation. However, the overall objective of the Covenant is to establish clear obligations for State parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as quickly and effectively as possible towards that goal. The fact that the full realization of most economic, social, and cultural rights, including the right to housing, can only be achieved progressively does not alter the nature of the legal obligation of nations. Nations cannot use the progressive realization provision as a pretext for non-compliance. Nor can the nation justify the deterioration or limitation of the rights recognized in the ICESCR on the basis of different social, religious, cultural, or ethnic backgrounds.

The Committee has concluded that “*progressive realization*” includes not only the continuous improvement, where some steps must be taken immediately and others as soon as possible, but also the obligation to ensure that there are no regressive developments. The burden is on the nation to demonstrate that it is making measurable progress towards the realization of the rights outlined in the ICESCR.

Meaning of “To the Maximum of Its Available Resources”

The notion that economic resources are essential for the implementation of economic, social, and cultural rights has been the major excuse for considering them secondary to civil and political rights. The Committee has acknowledged the importance of resources in fulfilling the rights but does not consider resource availability an escape clause. For example, it stated, “*in cases where significant numbers of people live in poverty and hunger, it is for the State to show that a failure to provide for persons concerned was beyond its control.*” That being said, in such cases, the State should, as soon as possible, request international co-operation in accordance with the ICESCR and inform the CESCR thereof.

The Committee has developed the idea of “*minimum core obligations*” to refute the argument that lack of resources hinders fulfillment of obligations. The Committee has observed that every nation has a minimum core obligation to satisfy minimum essential levels of each of the rights in the Covenant.

The Committee has made it clear that “even where the available resources are demonstrably inadequate, the obligation remains for a State Party to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.” In addition, the Committee stated, “*even in times of severe economic constraints [...] vulnerable members of the society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.*” Further, as recommended in the Global Shelter Strategy, nations should abstain from certain practices and commit to facilitate “self-help” by affected groups.

Fact Sheet No. 21 on the right to adequate housing of the United Nations Office of the High Commissioner for Human Rights notes that nations have obligations to **respect, protect, and fulfill housing rights**. It is only the duty to fulfill which is subject, in part, to progressive realization. Each obligation contains elements of obligation of conduct and obligation of result. The obligation of conduct means that nations must take actions reasonably calculated to realize the enjoyment of a particular right. The obligation of result requires nations to achieve specific targets to satisfy a detailed substantive standard. (See also Maastricht Guidelines on ESC Rights, Nos. 7 and 8.)

Meaning of “To Respect”

The duty to respect the right to adequate housing is an immediate obligation and means that governments should refrain from any action that prevents people from satisfying this right themselves when they are able to do so. Respecting this right will often only require abstention by the government from certain practices and a commitment to facilitate the “self-help” initiatives of affected groups. In this context, nations should desist from restricting the full enjoyment of the right to popular participation by the beneficiaries of housing rights and respect the fundamental right to organize and assemble.

In particular, the responsibility of respecting the right to adequate housing means that nations must abstain from carrying out or otherwise advocating for the forced or arbitrary eviction of persons and groups. Nations must respect people’s rights to build their own dwellings and order their environments in a manner that most effectively suits their culture, skills, needs, and wishes. Honoring the right to equality of treatment, the right to privacy of the home, and other relevant rights also form part of the nation’s duty to respect housing rights.

Meaning of “To Protect”

The duty to protect the right to adequate housing is also an immediate obligation. To protect effectively the housing rights of a population, governments must ensure that any possible violations of these rights by “third parties,” such as landlords or property developers, are prevented. Where such infringements do occur, the relevant public authorities should act to prevent any further deprivations and guarantee to affected persons access to legal remedies or redress for any infringement caused.

In order to protect the rights of citizens from acts such as forced evictions, governments should take immediate measures aimed at conferring legal security of tenure upon all persons and households in society who currently lack such protection. In addition, legislation and other effective measures should protect residents from discrimination, harassment, and withdrawal of services or other threats.

Nations should take steps to ensure that housing-related costs for individuals, families, and households are commensurate with income levels. A system of housing subsidies should be established for sectors of society unable to afford adequate housing, as well as for the protection of tenants against unreasonable or sporadic rent increases. Nations should also ensure the creation of judicial, quasi-judicial, administrative, or political

enforcement mechanisms capable of providing redress to alleged victims of any infringement of the right to adequate housing.

Meaning of “To Fulfill”

The obligation of a nation to *fulfill* the right to adequate housing is both positive and interventionary, and, unlike the obligations to respect and protect, is subject to progressive realization. It is in this category, in particular, that issues of public expenditure, government regulation of the economy and land market, the provision of public services and related infrastructure, the redistribution of income, and other positive obligations emerge.

The following case study demonstrates what it looks like when all aspects of the right to housing are being addressed by the government.

The Scotland Homeless Act: A Model of Protecting and Fulfilling the Right to Housing

Summary

The Homeless Etc. (Scotland) Act of 2003 (“the Act”) brought Scotland into the forefront of countries recognizing a right to housing and taking affirmative measures to prevent and address homelessness. This law creates an immediate right to placement in temporary housing with the assumption that people will be moved within a year to permanent housing. Mental health, employment, and other support services are integrated into housing placements to ensure a successful transition to secure housing.

History

The Homeless Act is the result of an ongoing effort by the Scottish Executive to create a comprehensive approach to homelessness in Scotland. The Executive established a Homelessness Task Force in 1999, composed of the Ministers for Social Justice and a wide array of national and city-based housing and homeless organizations. The recommendations of this task force were progressively adopted into legislation, based on the Housing 1987 Act, and updated with the Housing 2001 Act. A Homeless Monitoring Group was set up to monitor implementation of the law and assist in further revisions. References to “the Act” below mean the 2003 Act plus the previous legislation it amended.

Elements of the Law

The Act creates a right to temporary accommodation for homeless people, which for most individuals will transition into a permanent housing solution. Local authorities are required to ensure that the accommodation made available for unintentionally homeless people in priority need qualifies as permanent accommodation (e.g. no long shelter stays). The priority need test – for groups like those fleeing domestic abuse, disabled people, children, those reentering society from the prison system, etc. – is to be phased out by 2012, resulting in a right to housing for all homeless people.

The Act requires that temporary accommodation be given immediately after an assessment of homelessness has been made, prior to any investigation of the elements of homelessness (priority need, intentionality, and local connection). The duty on the state to provide accommodation continues even if the individual temporarily may find other short-term accommodation; only when permanent accommodation is secured does the duty end.

Placement into housing is combined with a right to “Any service which provides support, assistance, advice or counseling to an individual with particular needs, with a view to enabling that individual to occupy, or to continue to occupy...residential accommodation.” The law makes explicit that though this may cost more in the short-term, a high percentage of homeless cases had previously presented to homeless agencies and were returning, so by providing initial assistance, there would be efficiency savings in not having to reprocess these returning individuals. Additionally, families with children must be placed in housing appropriate for the entire family (children are not separated from their parents, as in many U.S. jurisdictions).

Accommodation can be made either in public housing, or through a Registered Social Landlord (RSL). The RSL is a non-profit corporation registered with the state for provision of housing.

Scotland Act con't.

Many localities are phasing out public housing altogether in favor of RSLs. Importantly, the Act ensures that RSLs have a duty to accept and place homeless individuals referred by the state into appropriate housing (appropriate includes family accommodations, disability, etc.)

The Act also requires localities to create local action plans, and then seeks to assist in the implementation of those plans. The fundamental guiding principle is that accommodating homeless people appropriately, with identified and relevant levels of support and without restriction or hurdles, will increase the likelihood of success in preventing and alleviating homelessness in the longer term.

To prevent homelessness, the Act restricts landlords' ability to evict tenants when rent arrears are due to a delay in payment of public housing benefits. Landlords must also notify local housing authorities when they are proceeding with an eviction, to enable authorities to focus resources on those threatened with eviction and allow for continuous care in the event of the eviction.

The Act is combined with a number of other policy initiatives, such as the Mortgage Rights law (2001) that allows for individuals in danger of foreclosure to sell their house to a RSL. The RSL then rents the property back to the owners, thus preventing homelessness for residents, allowing them to maintain their community connections, decreasing the burden on the state, and even decreasing the loss to the lender who would otherwise have to auction the property at a loss. This model of law could be very useful in the coming years as more balloon payment mortgages come due.

Results

Since the law has come into effect, Scotland has seen a significant rise in the number of applications for housing accommodation. Rather than trying to weed people off the rolls, the government actually perceives this increase in applications as a success of the law in reaching the previously "invisible" homeless. The concern lies in the possibility that the increase is also due to a lack of affordable housing and the Monitoring Group, that oversees the implementation of the law, has made this a priority area for research in the coming year.

The law protects homeowners and tenants by creating due process barriers to eviction and foreclosure, ensuring residents have adequate opportunities to stay in their homes. But equally importantly, the law takes affirmative steps to *fulfill* the right to adequate housing, by requiring jurisdictions to plan for the adequate affordable housing needs of all, and implement those plans. This obligation is enforced by requiring jurisdictions to ensure housing for all homeless persons who apply for it, and making that a justiciable right. These steps, which go above and beyond what most communities enjoy in the U.S., are what distinguishes a society which is truly implementing its full human rights obligations from those that make a lesser commitment.

III. HOUSING RIGHTS UNDER INTERNATIONAL AND REGIONAL LAW

International Legal Resources on Housing Rights

The legal resources listed below — declarations, covenants, and conventions — together form the body of international law recognizing housing rights. Although the legal nature of the various standards differ (just as the legal nature of a Constitution may differ from that of a municipal guideline at the national level), they are all relevant sources to refer to in support of housing rights for everyone, everywhere.

In legal terms, the most powerful documents are legally binding treaties, also called conventions, covenants, or charters. Declarations and recommendations are also of vital importance, but carry less legal weight than conventions, covenants and charters. Arguments supporting housing rights, therefore, are much stronger if a given country has ratified or acceded to a given treaty. The United States has only ratified a few human rights treaties, as noted below, but all the relevant treaties are referenced. For a full discussion of ratification, see section VIII.

The Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights is the first major international agreement on human rights. Although it is not a treaty, it is considered to have been the inspiration to all subsequent human rights treaties. It is also the first human rights standard to recognize housing rights. Adopted and proclaimed by the General Assembly on December 10, 1948, Article 25 (1) of the UDHR enshrines a specific right for everyone to adequate housing:

Everyone has the right to a standard living adequate for the health and well-being of himself [or herself] and of his [or her] family, including food, clothing, **housing** and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his [or her] control.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

At the international level, the most significant articulation of the right to housing is found in the ICESCR. The United States has not ratified the ICESCR, but it is a signatory to the Covenant.

The right to adequate housing is found in article 11(1). This is the most legally significant universal codification provision recognizing this right and has been subject to the greatest analysis, application, and interpretation of all international legal sources of housing rights. Although the Covenant recognizes the right to housing as a part of the larger right

to an adequate standard of living, under international human rights law the right to adequate housing is understood as an independent or freestanding right.

Article 11(1) states, “The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [or herself] and for his [or her] family, including adequate food, clothing and **housing**, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

For more information on the terms and use of the ICESCR, see Chapters I & II.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The United States has ratified ICERD, and is now legally bound to the obligations therein. The UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) monitors compliance with the Convention.

Article 3 states, “State Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

Article 5 states, “In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights: [...] (e) in particular [...] (iii) **the right to housing.**”

For more information on using ICERD in your advocacy, see Chapter IV.

International Covenant on Civil and Political Rights (ICCPR)

The United States has also ratified the ICCPR. The ICCPR guarantees several rights relevant to ensuring the right to adequate housing.

Article 2 states, “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 3 states “The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

Article 6 states, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Article 7 states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article 26 states, “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Using the ICCPR to Protect Housing Rights

In 1999, the UN Human Rights Committee, which oversees the implementation of the ICCPR, expressed concern that homelessness in Canada had led to serious health problems and even to death. The Committee recommended that the State Party take positive measures required by article 6, which protects the right to life, to address this serious problem.

In 2006, following coordinated advocacy by U.S. housing rights and other social justice organizations, the Human Rights Committee issued the following Concluding Observations on the United States, focusing on racial disparities in homelessness, de facto residential segregation, and housing rights for victims of Hurricane Katrina:

22. The Committee is concerned by reports that some 50 % of homeless people are African American although they constitute only 12 % of the U.S. population. (articles 2 and 26)

The State Party should take measures, including adequate and adequately implemented policies, to ensure the cessation of this form of de facto and historically generated racial discrimination.

23. The Committee notes with concern reports of de facto racial segregation in public schools, reportedly caused by discrepancies between the racial and ethnic composition of large urban districts and their surrounding suburbs, and the manner in which schools districts are created, funded and regulated. The Committee is concerned that the State party, despite measures adopted, has not succeeded in eliminating racial discrimination such as regarding the wide disparities in the quality of education across school districts in metropolitan areas, to the detriment of minority students. It further notes with concern the State party's position that federal government authorities cannot act under law absent an indication of discriminatory intent of state or local authorities. (articles 2 and 26) The Committee reminds the State Party of its obligation under articles 2 and 26 of the Covenant to respect and ensure that all persons are guaranteed effective protection against practices that have either the purpose or the effect of discrimination on a racial basis. The State Party should conduct in-depth investigations into the de facto segregation described above, and take remedial steps, in consultation with the affected communities.

26. The Committee, while taking note of the various rules and regulations prohibiting discrimination in the provision of disaster relief and emergency assistance, remains concerned about information that poor people and in particular African-Americans, were disadvantaged by the rescue and evacuation plans implemented when Hurricane Katrina hit the United States of America, and continue to be disadvantaged under the reconstruction plans. (articles 6 and 26)

The State Party should review its practices and policies to ensure the full implementation of its obligation to protect life and of the prohibition of discrimination, whether direct or indirect, as well as of the United Nations Guiding Principles on Internal Displacement, in the areas of disaster prevention and preparedness, emergency assistance and relief measures. In the aftermath of Hurricane Katrina, it should increase its efforts to ensure that the rights of poor people and in particular African-Americans, are fully taken into consideration in the reconstruction plans with regard to access to housing, education and healthcare. The Committee wishes to be informed about the results of the inquiries into the alleged failure to evacuate prisoners at the Parish prison, as well as the allegations that New Orleans residents were not permitted by law enforcement officials to cross the Greater New Orleans Bridge to Gretna, Louisiana.

Advocates for Environmental Human Rights and the US Human Rights Network are engaged in an ongoing campaign to use the recommendation on Katrina in their work on behalf of Katrina victims.

International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The United States has not ratified CEDAW, although a coalition of organizations in the United States has been working to secure CEDAW's ratification. The UN Committee on the Elimination of All Forms of Discrimination Against Women monitors State Party compliance with the Convention.

Article 14 states, “[...] 2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right [...] (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

International Convention on the Rights of the Child (CRC)

The United States has not ratified the CRC, and remains one of only two countries in the world that have yet to do so. The Committee on the Rights of the Child monitors State Party compliance with the Convention.

Article 27 states, “1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. [...] 3. State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and **housing**.”

International Convention Relating to the Status of Refugees

The United States has ratified this treaty, and is now legally bound to the obligations therein.

Article 21 states, “As regards **housing**, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.”

U.N. Guiding Principles on Internal Displacement

These are guiding principles, not legally binding in themselves, but drawn from other treaties, some of which are legally binding on the United States (see box above where the U.N. Human Rights Committee in reviewing the U.S. compliance with the ICCPR cites

to the Guiding Principles). Additionally, the U.S. has endorsed these principles for use abroad in their USAID Manual.

Principle 18 states, “1. All internally displaced persons have the right to an adequate standard of living. 2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

- (a) Essential food and potable water;
- (b) **Basic shelter and housing;**
- (c) Appropriate clothing; and
- (d) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 28 states, “1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.”

Using the Guiding Principles on Internal Displacement

Advocates for Environmental Human Rights (“AEHR”) is a nonprofit, public interest law firm that is dedicated to defending and advancing the human right to a healthy environment. In March 2005, on behalf of African American residents of Mossville, Louisiana, organized as Mossville Environmental Action Now, AEHR filed the first ever legal challenge against the U.S. government for establishing an environmental regulatory system that denies the fundamental human rights to life, health, and racial equality. AEHR filed this human rights petition with the Inter-American Commission on Human Rights of the Organization of American States, which has determined that a government’s failure to protect the environment can violate human rights. Since Hurricane Katrina, AEHR has expanded its activities to advocate for U.S. government compliance with the United Nations’ *Guiding Principles on Internal Displacement* (available at http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html) and its own U.S. State Department Policy, *Assistance to Internally Displaced Persons Policy* (available at <http://www.usaid.gov/policy/ads/200/200mbc.pdf>). These policies recognize that housing is a human right that must be protected for all people, including people displaced from their communities as a result of natural or man-made disasters. AEHR views the internal displacement human rights policies as gateways to securing fundamental human rights that have never been fully protected by the U.S. government prior to Hurricane Katrina, and are now being further violated by governmental actions that deny the right to return home to hundreds of thousands of predominantly African American people who are facing homelessness.

International Convention Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment

The United States has ratified this treaty and is legally bound by it.

Article 16 states: Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Using the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Uphold Housing Rights

The Convention Against Torture, to which the United States is a State party, should not be overlooked as a tool to prevent or remedy the practice of forced evictions. Forced evictions, as the UN Human Rights Commission affirmed in 1993, violate a range of human rights. As shelter is so integral to a safe, healthy and dignified life, forced eviction not only directly violates the right to adequate housing and the right to be free from arbitrary or unlawful interference with the home, but also jeopardizes a person's right to life, their right to security of the person, their right to humane treatment, and their right to the highest attainable standard of health. As such, deliberate acts of forced eviction clearly constitute cruel or inhuman treatment, and under certain circumstances may amount to torture itself under international human rights law.

Under its individual complaint procedure, the Committee against Torture receives complaints, called communications, from individuals or on behalf of individuals who claim to be victims of a violation by a State Party of the provisions of the Convention Against Torture. In a monumental development, the CAT recently recognized forced eviction as a violation of the Convention.

On the basis of an application submitted jointly by the European Roma Rights Center (ERRC), the Belgrade-based NGO Humanitarian Law Center (HLC), and attorney Dragan Prelević, the CAT found forced eviction to be in violation of the Convention Against Torture, and by doing so not only provided a remedy to the victims of forced eviction but also provided human rights advocates with beneficial jurisprudence. On December 2, 2002, the CAT held that the forced eviction and destruction of a Romani community in Serbia and Montenegro violated the Convention, even though public officials did not perpetrate the eviction. The case, *Hijrići v. Yugoslavia*, involved the forced eviction and destruction of the Bozova Glavica Romani settlement in the city of Danilovgrad by private residents who lived nearby. Earlier, the perpetrators had threatened to “exterminate” the community and “burn down” their houses. The Danilovgrad Police Department reacted by telling the Romani community that they should evacuate the settlement immediately as they, the police, would be unable to protect them. Most of the Romani residents fled their homes, leaving a few behind to protect their housing and other possessions. During the afternoon of April 15, 1995, the non-Romani residents entered Bozova Glavica shouting slogans such as “we shall evict them” and “we shall burn down the settlement.” The crowd soon began to break windows and set fire to the housing, resulting in the entire settlement being levelled and all properties belonging to its Romani residents being completely destroyed. Several days later the debris of Bozova Glavica was completely cleared away by municipal construction equipment, leaving no trace of the community.

The CAT found that the Police Department did not take any appropriate steps to protect the residents of Bozova Glavica, and that the burning and destruction of the settlement constituted acts of cruel, inhuman, or degrading treatment or punishment within the meaning of Article 16. Consequently, the Committee held that the Government of Serbia and Montenegro had violated Article 16 of the Convention by not protecting the rights of the residents of Bozova Glavica. For the first time, and although the right to compensation for victims of acts of ill treatment other than torture is not expressly provided in the Convention, the Committee concluded that the State Party should compensate the victims of this violation. As a direct result of the Committee's finding, the Montenegrin Government agreed on June 19, 2003, to pay 985,000 Euro in compensation to seventy-four Romani victims of the Danilovgrad tragedy.

UN Human Rights Council and Human Rights Monitors

In addition to the treaty bodies described in the previous sections, the UN Human Rights Council, and other UN human rights monitors are a source of international law and present opportunities for advocacy on housing rights. In particular, these are rich sources of commentary directly on housing rights violations in the U.S., and recommendations for U.S. actions.

The UN Human Rights Council (the Council) is the main human rights policy body of the United Nations. It is made up of 47 Member States, elected from the UN's 192 Members. It was formed in 2006 as the successor to the previous Human Rights Commission, which had lost support due to its manipulation by human rights abusing States. In addition to dealing with emerging human rights crises, the Council has two ongoing mechanisms for dealing with human rights issues: the Universal Periodic Review (UPR) and the Special Procedures. Each will be discussed below.

The United States' history with the Council has shifted radically since the Council's creation by the General Assembly in March 2006. When the Council replaced the United Nations Commission on Human Rights, a body that was highly criticized for allowing membership to some of the world's worst human rights abusers, the Bush administration opted not to join it citing continuing concerns regarding the credibility of the body's membership. Initially the U.S. served as an observer but eventually withdrew from the Council altogether.²⁰ However, the Obama administration's foreign policy approach differed from the previous Administration's and in May 2009, the U.S. joined 46 other UN Member States to serve on the Council.

The Universal Periodic Review

Every four years, the Council must review the human rights record of all 192 UN Member States. This on-going, state-driven process is called the Universal Periodic Review, or UPR. The UPR is an assessment tool of the United Nations to measure government adherence to human rights obligations. The standard of review for the UPR is each nation's compliance with the U.N. Charter, the Universal Declaration of Human Rights, human rights treaties ratified by the country, a government's voluntary commitments, and other applicable international law. The UPR is applied to all Member States in identical form and measure. One country is not more rigorously reviewed than any other and the process does not offer leniency based on political might. Due to its comprehensive nature and international scope, the UPR presents an opportunity to measure how a nation is meeting its human rights obligations and to apply pressure on the government to live up to those obligations.

²⁰ "General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, with 3 Abstentions," Department of Public Information, General Assembly Document GA/10449, March 15, 2006, at www.un.org/News/Press/docs/2006/ga10449.doc.htm.

In November 2011, the Council reviewed the U.S. human rights record and its adherence to its human rights obligations. This review, our country’s first since the advent of the Council, began with a nation-wide consultation process. This process resulted in a collective effort, by hundreds of non-governmental organizations and human rights advocates, to conduct a yearlong assessment of the status of human rights around the country. Reports of these coordinated findings were given to the government to help inform its official report to the Council. Following its review of both the official government report and accompanying shadow reports, the Council’s Member States issued recommendations to the U.S. on how to improve its human rights record.²¹ Many of the UN recommendations highlighted specific human rights abuses in the U.S. and the need for a clear commitment from the U.S. to ensure economic, social, and cultural rights, like the right to housing. On March 18, 2011, the Obama Administration responded to these recommendations remaining strategically uncommitted to any right it was not yet fulfilling.²²

Timeline of the UPR Process

Consultations	January – March 2010
Shadow Reporting	March – April 2010
U.S. Report	August 2010
Country Advocacy/Briefing	Fall 2010
Review	November 5, 2010
Adoption of Final Report	March 18, 2011

a. Consultations

One of the most important aspects of the UPR is the mandatory involvement of civil society. This requirement ensures that NGOs and other stakeholders serve a powerful role throughout the entire UPR process. Government consultation with NGOs and other civil society stakeholders may occur through a variety of formal or informal mechanisms but should include government agencies that deal with domestic policy. This inclusion allows the conversation about human rights to expand from a strictly foreign framework, to one that deals with domestic issues and violations at home. The UN requires that the official report, submitted by the government under review, reflect this civil society participation.

For U.S. housing advocates, there were three key purposes of the consultation phase of the UPR:

²¹ For more information about shadow reporting see Eric Tars, *Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice*, 42 CLEARINGHOUSE REV. J. of Poverty Law and POL’Y 475 (2009).

²² For more information about the UN recommendations see National Law Center on Homelessness & Poverty, UPR: Recommendations to the United States Re Housing and Homelessness Domestic Policies (2011), available at <http://wiki.nlchp.org/download/attachments/12189726/UPR+-+Response+to+Recs+re+housing+and+homelessness+3-14-11.pdf?version=1&modificationDate=1300894808267>.

- 1) To move the conversation about human rights out of the exclusive realm of the State Department and into the realm of domestic agencies like the Departments of Justice and Housing & Urban Development.
- 2) To enable directly affected victims of human rights violations to share their testimony with those officials who can influence the policies that create those violations.
- 3) To help create a record of the state of human rights in the U.S.

Consultations were held in 10 cities across the U.S. from January to March, 2010. In each city, advocates worked to reach out to the local communities to encourage them to highlight issues of importance that also reflected national priorities. The Law Center coordinated these efforts for housing rights groups, and with a small steering committee developed priorities in the areas of public housing, the criminalization of homelessness, and the foreclosure crisis, that reflected previous human rights work done in these areas as well as current needs.

For example, during the Chicago Consultation, advocates discussed how the use of arrest records as a screening mechanism to prevent people from accessing public housing has had a devastating effect on the city's most vulnerable populations. Participants in the meeting described how homeless persons were targeted and arrested for sleeping on the streets and how, under this policy, such an arrest regardless of a resulting conviction, prevented homeless persons from obtaining public housing. In addition to this Catch-22, both an arrest history, as well as a lack of address, serve as barriers to employment, further ensuring people have no option but to stay on the streets. The consultation was attended by representatives from both the Departments of Justice and Housing and Urban Development and helped illustrate how one small, immediate step taken to stop the use of arrest records to screen out the neediest of housing applicants, could make a huge difference to the City's most vulnerable. Because of the UPR entry point, we were able to show how the government could tangibly demonstrate that it is serious about making human rights a reality here in the U.S.]

b. Shadow Reports and lobbying governments

Following the consultations, the next entry point for civil society involvement in the UPR process was in the drafting of shadow reports. Shadow reporting provided the opportunity for various stakeholders to collaborate and articulate in writing the issues that are critical on the ground at home. Shadow reports were submitted to the Council and addressed issues that the government's official report often gave insufficient or inaccurate attention to. Because the UPR covers the full range of human rights violations, from housing to workers rights, Guantanamo to Los Angeles, coordinating competing priorities among organizations was crucial. In order to facilitate this process, the Law Center took part in a coordinating committee, helping to produce 24 issue-area shadow reports that were submitted to the Council in April. The compiled report, over 400 pages long and endorsed by hundreds of organizations, is available on the US Human Rights Network website.²³

²³ See US Human Rights Network and UPR Working Group, *Universal Periodic Review Joint Reports*

c. Government Report

In August, after gathering information and input from stakeholders, the U.S. composed and submitted its official report to the Council. The twenty-page report included responses to previous UN recommendations, as well as challenges the U.S. faced in rectifying human rights violations and implementing domestic solutions. Although the report takes into account the full range of human rights issues, it gives short order to each. However, the official government report is supplemented with ten-page summaries of both recommendations from U.N. Member States as well as civil society's shadow reports. The inclusion of these summaries demonstrates how important it is for groups to participate in the UN reviews between now and the next UPR, when, as part of previous UN recommendations, they could be included alongside the government's official report. By continuing to participate in UN reviews, advocates are constantly creating the record the U.S. will be reviewed on.

d. Review

Once the written presentations have been compiled and released, NGOs take the critical step of informing and educating delegates from foreign nations participating in the review. In the time between the submission of the State's and NGO shadow reports and the review in Geneva, lobbying and briefing member countries is an important step in the cycle of advocacy. As other member countries will be reviewing and questioning the U.S., lobbying and briefing of foreign delegates informs the process and aids in holding the government accountable to its human rights obligations. Prior to contact, advocates research the countries they wish to contact, reach out to such countries, and informally and formally meet and brief. The UPR Steering Committee organized several events in September and October to facilitate advanced lobbying for multiple groups and countries, and will be facilitating more such events in the week leading up to the review.

The review itself took place in Geneva on November 5, 2010. The US Government, represented by Attorney General Eric Holder and Secretary of State Hillary Clinton, presented the government's official report and answered questions from UN Member States. Although civil society organizations were not allowed to ask questions at this session, many of those asked by Member States were influenced by information provided to them by advocates through previous lobbying in the U.S. embassies as well as direct lobbying in Geneva, in addition to the shadow reports. Following this session, Member States presented the U.S. with a list of 228 specific recommendations for ways to improve government commitment to human rights.

There were a number of key recommendations on housing rights issues. A full list is available on the Law Center's wiki page on the UPR process, but a few of the strongest include:

(2010), http://www.ushrnetwork.org/upr_reports.

1. That further measures be taken in the areas of economic and social rights for women and minorities, including providing equal access to decent work and reducing the number of homeless people. (Norway)(A/HRC/WG.6/9/L.9/92.113).
2. Reinforce the broad range of safeguards in favor of the most vulnerable groups such as persons with disabilities and the homeless to allow them the full enjoyment of their rights and dignity. (Morocco)(A/HRC/WG.6/9/L.9/92.198).
3. Continue its efforts in the domain of access to housing, vital for the realization of several other rights, in order to meet the needs for adequate housing at an affordable price for all segments of American society. (Morocco)(A/HRC/WG.6/9/L.9/92.197).

e. Adoption of Final Review

After submitting its preliminary outcome report to the Council, the U.S. had two weeks to make changes to it. This was another important time for advocacy as the Law Center and its partners held meetings with HUD, Justice, and State Department officials to accept recommendations or maintain language supporting housing and related human rights. On March 18, when the Human Rights Council formally adopted the U.S. outcome report, civil society had one last opportunity to ask questions and raise issues that they felt were not sufficiently addressed during the review. The Law Center held a Congressional briefing, on March 31, 2011, attended by close to 50 Congressional staffers, government representatives, and other advocates to highlight the advances of the UPR process, and explain to Congress their role in implementing the recommendations of the Council. Over the next four years, until its next UPR, advocates must hold the U.S. government accountable to the commitments it made in the final outcome report of its UPR.

UN Human Rights Monitors – Special Rapporteurs and Independent Experts

The UN Human Rights Council appoints independent monitors for various thematic and country-based human rights issues. These monitors, known collectively as “special procedures” are called either Special Rapporteurs or Independent Experts, with the Special Rapporteurs having slightly more power to make stronger recommendations to Members States.

Special Procedures are useful because they can receive information on specific allegations of human rights violations from victims and advocates and send urgent appeals or letters of allegation to governments asking for clarification, or issue press releases drawing attention to current or imminent violations.

Special Procedures also carry out country visits to individual countries, but they must be invited to carry out their missions. Some countries have issued standing invitations which means the Special Procedures can visit at any point. The U.S. has not issued a standing invitation, so Special Procedures must request permission each time to visit. After their visits, Special Procedures issue reports containing their findings and recommendations to the Human Rights Council, and the country reviewed has an opportunity to respond.

Luckily, invitations have been fairly forthcoming in the past few years, and since 2006, the U.S. has received a number of visits from Rapporteurs and Experts dealing with housing issues. These include:

- The Independent Expert on Human Rights and Extreme Poverty in 2006;
- The Special Rapporteur on Racism in 2009;
- The Special Rapporteur on the Right to Adequate Housing in 2010;
- The Advisory Group on Forced Evictions in 2010;²⁴
- The Special Rapporteur on Violence Against Women in 2011; and
- The Independent Expert (now Special Rapporteur) on the Right to Water and Sanitation in 2011.

When the Special Procedures are able to schedule a visit, they reach out to civil society organizations to help them meet with relevant government officials, directly-affected individuals, and advocates all across the country. With the assistance of NLCHP and other groups such as the US Human Rights Network and the National Economic & Social Rights Initiative, their visits have been strategically designed to expose them to key issues and actors, resulting in detailed reports offering specific recommendations which lent support to current campaigns. A full listing of the housing-related recommendations are available at:

<http://wiki.nlchp.org/download/attachments/12189726/UN+Findings+2006+2010.doc?version=1&modificationDate=1267714496000>, but a few key recommendations are highlighted below.

The **UN Independent Expert on Human Rights and Extreme Poverty**, after his mission to the U.S., expressed the following concerns:²⁵

76. There are no significant trends to indicate that extreme poverty is being reduced over time. In fact, there is qualitative and anecdotal evidence pointing to a rise in extreme poverty. The federal and local governments need to examine in depth the face of poverty in the United States, which seems largely racial and has serious gender dimensions. The institutional systems and policy environment has not been able to address these issues effectively. Inability to address these challenges, combined with a reduction in programmes such as legal aid, has meant lack of effective voice and human rights violation.

81. Social safety nets for poor families should be provided through entitlement programmes and measures should be taken to facilitate participation in these programmes and to ensure that cumbersome enrolment procedures do not discourage people who

²⁴ The Advisory Group is not a Special Procedure of the Human Rights Council, but an advisory body to the UN-HABITAT agency. However, its methodology and mechanisms are similar to other special procedures.

²⁵ The full report is available at:

<http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2006/43/Add.1&Lang=E>

qualify for social benefits from applying.

85. This policy of the United States is in direct conflict with the fundamental moral values that the United States, both its Government and people, has upheld in the name of freedom throughout its constitutional history. In view of this, the independent expert would suggest that the United States authorities and their people consider adopting the following steps which would be consistent with the foundational norms of the United States Constitution and the moral principles of democracy and freedom that their Government claim to uphold.

87. Once this group of people suffering from extreme poverty is identified, the United States authorities should adopt legislative provisions to accord them the legal entitlement to all the programmes that are needed and recognized in most of the existing provisions to take them out of these conditions of poverty. This legal entitlement would allow the individual members of this group of extremely poor people, or their representatives, to have recourse to the courts of law in case they are denied their entitlement.

The **UN Special Rapporteur on Racism**, after a mission in the United States, expressed concerns that:²⁶

64. “A particular dimension of the housing problem highlighted by civil society lies in homelessness. The Special Rapporteur visited the Skid Row area in Los Angeles, interacting with a number of homeless persons and civil society support groups. Interlocutors highlighted the disproportionate impact of homelessness among minorities, particular African Americans, as also highlighted by the Human Rights Committee in its 2006 of the United States periodic report. This problem is often reinforced by the reduction of funds for the construction of public housing. In addition, relations between law enforcement and homeless persons were also highlighted as an important problem, particularly with regard to the enforcement of minor law enforcement violations which often take a disproportionately high number of African American homeless persons to the criminal justice system. A recent report by the National Fair Housing Alliance described paired tests that showed that in 20 percent of tests, African American or Hispanic testers were denied service or provided limited service by real estate agents.”

65. “The issue of residential segregation was directly observed by the Special Rapporteur, who examined the issue in-depth in his visits outside the capital. Despite some progresses in the 1980-2000 period they contributed little to change the overall static patterns of residential segregation in the country. Furthermore, civil society noted that residential segregation has a direct impact on school segregation and that the two problems should be tackled together.”

²⁶ The full report is available at:
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.36.Add.3.pdf>

74. “The Federal Government is not fulfilling its obligation to create adequate conditions for the return of the displaced [after Hurricane Katrina], particularly in terms of housing. Serious concerns were voiced regarding the demolition of public housing and substitution by private development projects. The demolition of public housing in New Orleans was deemed to have a particularly grave impact for the African-American population, which constitutes the vast majority of public housing residents.”

90. “The consequences of the overlap of poverty and race were clearly seen in the aftermath of Hurricane Katrina. Minorities, as the poorest segments of the population, lived in more vulnerable neighborhoods and were more exposed to the effects of the storm. It is thus not unexpected that these groups suffered from disproportional displacement or loss of their homes. Katrina therefore illustrates the pernicious effects of socio-economic marginalization and shows the need for a robust and targeted governmental response to ensure that racial disparities are addressed.”

The UN Special Rapporteur recommends that:

99. The Federal Government intensifies its efforts to enforce federal civil rights laws, particularly in the area of housing.

107. Increase funding for testing programs and “pattern and practice” investigations to assess discrimination, particularly in the area of housing.

110. Increase assistance to the persons displaced by Hurricane Katrina particularly in the realm of housing.

The UN Special Rapporteur on the Right to Adequate Housing, after a mission in the United States, recommended:²⁷

86. Additional funding be provided to properly maintain and restore the remaining public housing, and legislation on health standards for subsidized buildings, including proper maintenance and pest control, should be strengthened.

87. The Special Rapporteur considers that, given the crisis in affordable housing, an immediate moratorium be declared on the demolition and disposition of public housing until one-for-one replacement housing is secured, and the right of return is guaranteed to all residents. Housing be made available for displaced residents prior to the demolition of any unit.

88. The Special Rapporteur urges the Government to ensure that, in the context of the Choice Neighborhoods Initiative, poor communities will be able to stay in their neighbourhoods once development takes place.

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http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.20.Add.4_AE_V.pdf

89. In some cases the geographic area used to define the area median income should be re-examined, so that income threshold criteria actually lead to access to affordable housing.

90. More resources be devoted to Section 8 vouchers and legislative action be taken to encourage extension of Section 8 contracts and affordable housing programs involving private landlords.

91. The Special Rapporteur urges Congress to reinsert the provision on the right to first purchase in the draft preservation bill.

92. Tenant protection legislation should be further strengthened for renters of foreclosed properties. The Helping Families Save Their Home Act (P.L. 111-22): Protecting Tenants at Foreclosure Act (Title VII) should be extended beyond 2012 and become permanent protection.

93. Empty foreclosed properties should be made available using incentives for the sale of the property to non-profit organizations or community land trusts, in order to increase the stock of affordable housing.

95. The Interagency Council on Homelessness develop constructive alternatives to the criminalization of homelessness. Homeless persons should be permitted to shelter in public areas when there is no other shelter available.

96. The administration and Congress should encourage the expansion of the definition of homelessness to include those living with family or friends due to economic hardship. The Department of Housing and Urban Development (HUD) should ensure that households living with others due to economic hardship are eligible for rental and other assistance, including from the Emergency Shelter Grant programme.

97. Congress should pass H.R. 582 and increase funding for vouchers for homeless persons or persons at risk of becoming homeless.

101. The Special Rapporteur acknowledges the Government's efforts to maintain a safe environment within subsidized housing developments. However, she suggests that zero tolerance policies are not an answer for achieving this aim, and suggests the Government commit resources to determine the real effects of such policies on families, particularly minority families, and reform these policies.

102. The Special Rapporteur was dismayed to observe the dire housing situation faced by some Native American tribes. She encourages the Government to devote greater resources and attention to this urgent question and would welcome further information on any plans and developments in this respect. She also encourages tribal housing authorities to institutionalize mechanisms for real community participation and transparency.

103. A national prohibition be declared on housing discrimination based on source of income.

104. The Special Rapporteur recommends that the United States federally prohibit the use of criteria such as drug tests and criminal records, for gaining access to subsidized housing.

106. The Government should create mechanisms to improve the participation of affected tenants in planning and decision-making processes. Residents' councils should be directly elected by residents and not appointed by housing agencies.

108. The Special Rapporteur strongly encourages the United States Government to ratify the International Covenant on Economic, Social and Cultural Rights.

Inter-American Legal Resources on Housing Rights

Organization of American States

The Inter-American system on human rights also has several standards relevant to the promotion and protection of housing rights. Please note that while the United States is bound by the Charter of the Organization of American States and the American Declaration on the Rights and Duties of Man, it has yet to ratify the Inter-American Convention on Human Rights.

Charter of the Organization of American States

- To accelerate their economic social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the Inter-American System, the Member States agree to dedicate every effort to achieve the following goals...(k) Adequate housing for all sectors of the population. [Article 34 (k)]

American Declaration on the Rights and Duties of Man adopted at the Ninth International Conference of American States at Bogotá in 1948:

- Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will. [Article 8]
- Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care to the extent permitted by public and community resources. [Article 11]
- Every person has the right to own such property as meets the essential needs of decent living and helps maintain the dignity of the individual and of the home. [Article 23]

The American Convention on Human Rights defines the human rights which the ratifying States parties have agreed to respect and ensure. The rights include, *inter alia*, the right to life (Article 4); the right to humane treatment (Article 5); the right to personal liberty (Article 7); the right to compensation (Article 10); the right to privacy (Article 11); and the right to property (Article 21). Through the Convention, States parties also agree to “undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, 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.” Finally, the Convention creates the Inter-American Court of Human Rights.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights otherwise known as the “Protocol of San Salvador,” represents the first legally binding Inter-American initiative completely devoted to economic, social, and cultural rights. The United States is not a Party to the Protocol. The Protocol of San Salvador recently came into force after Costa Rica deposited its ratification on 16 November 1999. It should be noted, however, that this instrument makes no direct mention of either the right to property, nor to the right to housing. However, certain Articles of the Protocol of San Salvador are relevant to these rights, and as such may be invoked when pursuing housing rights claims within the Inter-American system.

- ...although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) Preamble]
- Everyone shall have the right to live in a healthy environment and to have access to basic public services. [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), Article 11]

Using the Inter-American System for Human Rights Protection in the U.S.

Because the U.S. has not ratified the Inter-American Convention on Human Rights, which allows for access to the Inter-American Court of Human Rights, U.S. advocates can only bring cases to the Inter-American Commission on Human Rights. The Commission has two different procedures: individual petitions and thematic hearings.

Individual Petitions: Individual petitions are akin to civil cases in the U.S. in that you need an individual or multiple petitioners who are protesting violations of their rights. The petition may be brought by the individuals, or by a group on their behalf. There are three key criteria for bringing a petition: 1) timeliness – within 6 months of the violation (can be any time if the violation is ongoing; 2) exhaustion of domestic remedies – the petitioner must demonstrate they have attempted to resolve the violation domestically, or that it would be futile to do so; and 3) the same violation has not been submitted to another international body for consideration. The Commission will consider the case, and if it deems it admissible, will communicate the petition to the State, who will have an opportunity to respond. This exchange may go on, and may occur in writing or in oral hearings. Eventually, if the Commission is unable to get the parties to reach a friendly settlement, they will issue a ruling on the merits of the case. There is no formal enforcement mechanism, and the U.S. often ignores the rulings of the Commission, however rulings can be used for moral persuasiveness in ongoing public campaigns.

Thematic Hearings: Thematic hearings allow groups and individuals to present thematic issues, such as the violation of housing rights in the U.S., to the Commission. NLCHP and COHRE presented at such a hearing in 2005 (see the full text, available on NLCHP's website at <http://www.nlchp.org/content/pubs/Testimony%20of%20MF%20to%20Inter-American%20Comm%20on%20HR1.pdf>). Thematic hearings can be used to raise the profile of an issue both internationally and domestically, and are often used to explore the Commission's views on a topic before bringing an Individual Petition. However, while the Commissioners can comment on violations during the hearing, they will not issue an explicit ruling on the subject of the hearing. Thus, thematic hearings should be approached as part of an overall campaign, with forethought being given to media and other mechanisms to utilize the hearing to its maximum effect.

More information on the Commission can be found at www.cidh.org

IV. DISCRIMINATION AND HOUSING RIGHTS

The Rights to Non-Discrimination and Equality

Article 2(2) and **Article 3** of the ICESCR deal with non-discrimination with respect to the enjoyment of the rights set out in the Covenant. Article 2(2) is similar to other instruments in stating that the rights should be enjoyed without discrimination on the grounds of “race, colour, sex, language, religion, political, or other opinion, national, social origin, property, birth, or other status.”

Article 3 is more specific. It provides for the “equal right of men and women to enjoy the rights [...] set forth in the Covenant.”

The concept of “progressive realisation” does not limit the non-discrimination clause or the obligation to ensure equal rights of men and women. A State is obliged to ensure the non-discrimination and equality clause immediately rather than progressively.

The obligation to ensure equal rights of men and women includes affirmative action to eliminate conditions that contribute to discrimination and inequality. Nations must also give priority to members of the most vulnerable and disadvantaged groups, including minorities in the United States, and consequently facilitate the achievement of these rights by members of said groups for themselves.

In addition to these general prohibitions of discrimination from the ICESCR, there are additional specific protections for women and minorities, discussed below.

Discrimination Against Women and Housing Rights

Women face widespread discrimination in all aspects of housing, land, and property, including sexual harassment in housing and the eviction of and denial of housing to women who are victims of domestic violence. The latter is especially problematic as domestic violence is a leading cause of homelessness nationwide, with about 20% of homeless women reporting domestic violence or abuse as a reason for their homelessness.²⁸ This ongoing discrimination calls for the specific recognition of women's rights to adequate housing and women's rights to security of tenure and person. Housing laws, policies, and legislation also need to recognize that some groups of women are particularly vulnerable to homelessness and other housing rights violations – widows, households and families headed by women, women who are victims of forced evictions, low-income women, women who are victims of domestic violence, women of color, disabled women, immigrant women, and indigenous women. It is critical, therefore, that any response is steeped in the recognition that international human rights law accords to all women.²⁹

What does the right to “adequate” housing mean for women?

According to international human rights law, in order for housing to be adequate it must provide more than just four walls and a roof over one's head; it must, at a minimum, include certain elements, which follow. The significance of each aspect for women is highlighted.

- **Security of tenure** Secure tenure protects people against arbitrary forced eviction, harassment, and other threats. *Even in this day and age, tenure for women is too often dependent upon their relationship to a male. Women who are victims of domestic violence, without a legal claim in the home and facing financial obstacles to obtaining housing on their own, must often face the choice of homelessness or remaining prisoners of violence. In addition, women often experience sexual harassment by landlords in housing.*

- **Availability of services, materials, facilities and infrastructure** Adequate housing requires access to potable water, energy for cooking, heating, and lighting, sanitation, washing facilities, food storage, refuse disposal, drainage and emergency services. *The importance of the proximate availability of these services is clear, considering the reality of many women's daily lives, often bearing the primary responsibility for the care of the household, children, and other family or community members. Meeting these needs can be especially challenging for rural and low-income women.*

²⁸ National Law Center on Homelessness & Poverty, *Insult to Injury: Violations of the Violence Against Women Act*, April 2009, available at www.nlchp.org.

²⁹ See generally *Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, Commission on Human Rights, U.N. ESCOR, U.N. Doc. E/CN.4/2005/43 (2005) (citing recommendations for governments on overcoming the prevalent crisis of women's rights to housing).

• **Affordability** The housing affordability principle stipulates simply that the amount a person or family pays for their housing must not be so high that it threatens or compromises the attainment and satisfaction of other basic needs. *This provision must be interpreted so that women, often economically marginalized, are able to afford adequate housing through appropriate credit and financing arrangements.*

• **Habitability** Inhabitants must be ensured adequate space and protection against the cold, damp, heat, rain, wind, or other threats to health, or structural hazards. *In this respect, women must also be protected from domestic violence, a clear threat to their health and safety.*

• **Accessibility** Disadvantaged groups such as the elderly, children, the physically and mentally disabled, HIV-positive individuals, victims of natural disasters, and other groups should be ensured some degree of priority consideration in housing. *Women are also a traditionally disadvantaged group vis-à-vis housing, due to societal and cultural discrimination and subordination. Women with disabilities or HIV/AIDS are even further marginalized. As such, States must undertake specific measures to address the needs of specific groups of women.*

• **Location** Housing must be situated so as to allow access to employment options, health care services, schools, childcare centers, and other social facilities. *The location of housing is especially vital for allowing women the opportunities to fulfill other fundamental rights.*

• **Cultural adequacy** Housing must allow for the expression of cultural identity and recognize the cultural diversity of the world's population. *Women must be given the chance to partake in the planning of housing to ensure a reflection of their collective identity.*

U.S. Groups Participate in UN Report on Women and Right to Adequate Housing

The Special Rapporteur on Adequate Housing of the United Nations High Commission on Human Rights, Miloon Kothari, held a special consultation on the effects of violence, displacement, discrimination and other factors on women's housing in Washington, DC on October 15-17, 2005. This event, coordinated by NLCHP and a number of other U.S. and Canadian NGOs included a training and personal testimonies from women victims of housing rights violations.

The consultation highlighted the removal of children from their parents because of inadequate housing, the dangers faced by homeless women living on the street, and the relationship between domestic violence and women's homelessness, among other topics.

Over 65 women from the U.S. and Canada drew on their personal experiences in a day of training designed to connect their experiences to the larger struggle for human rights. 20 women from the U.S. and Canada provided oral testimony to the Special Rapporteur over two days about violations of their housing rights, and dozens more participated in submitting written testimony

The Special Rapporteur included information from these hearings in his final report on the gender dimensions of the right to adequate housing, presented to the UN Commission on Human Rights in February 2006. This report, which contains a wealth of beneficial information and recommendations, can be accessed at

Racial Discrimination

As mentioned in Section III of this manual, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) also contains provisions that prohibit discrimination in the housing context. The UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) monitors compliance with the Convention.

Every year in the United States, more than 3.7 million fair housing violations are committed against African Americans, Asian Americans, Latinos, and American Indians.³⁰ This number does not include discrimination in the following areas: lending, insurance, racial and sexual harassment, planning, and zoning. Discrimination in planning and zoning works in direct conflict with the nation's goals for affordable and workforce housing. This discrimination particularly affects families with children, people with disabilities, African Americans, and Latinos.

Discrimination has a significant impact on a community's tax base. Without the benefits of homeownership and integrated neighborhoods, minority populations must bear the costs of lost income and segregation. Costs of segregation include those related to: personal and community finance; reduction in tax base; isolation and racism. Although minority homeownership rates grew significantly during the 1990s, as the housing crisis has disproportionately affected homeowners with more recent loans and more costly payments, minorities have disproportionately suffered.³¹

The ICERD goes beyond U.S. laws in several ways. First, it recognizes that policies with discriminatory effects are equally as harmful as purposefully discriminatory actions, and it therefore requires governments to stop both. Second, it requires affirmative measures to make up for past discrimination.

The U.S. government must report periodically to the CERD on its compliance with the treaty. In April 2007, the State Department issued a report referencing a number of housing-related issues. A press release issued by NLCHP summarized the report as follows:

³⁰ National Fair Housing Alliance, *Dr. King's Dream Denied: 40 Years of Failed Federal Enforcement* (2008) citing John Simonson, Center for Applied Public Policy, University at Wisconsin-Plattville, available at <http://www.nationalfairhousing.org/Portals/33/reports/2008%20Fair%20Housing%20Trends%20Report.pdf>

³¹ National Low Income Housing Coalition, *2009 Advocates' Guide To Housing and Community Development Policy*, available at <http://www.nlihc.org/doc/AdvocacyGuide2009-web.pdf>.

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U.S. State Department Fails to Recognize Racial Discrimination in Housing
Homeless Assistance and Human Rights Activists Say More Needs to Be Done

WASHINGTON, DC, April 25, 2007— The U.S. State Department failed to address the fact that a disproportionate number of African Americans experience homelessness in its report to the UN Committee on the Elimination of Racial Discrimination (CERD) this week. Instead, their report stated “The United States is a vibrant, multi-racial... democracy in which individuals have the right to be protected against discrimination based... on race in virtually every aspect of social and economic life.”

“The right to be protected against racial discrimination the government proclaims in its report creates an obligation on the government to guarantee that right,” said Maria Foscarinis, Executive Director of the National Law Center on Homelessness & Poverty (NLCHP). “Advocates for racial justice in housing in this country know that while African Americans constitute just 12% of the population, they represent 50% of homeless people. So it’s obvious that obligation is not being met.”

The U.S. report is a routine procedure that is supposed to occur every two years for countries that ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The U.S. signed and ratified the treaty in 1994, but the report – its second – is more than four years late.

“The government report touts the benefits of HUD housing assistance to minority communities,” according to Eric Tars, Human Rights Staff Attorney at NLCHP, “But they don’t mention that these programs have been systemically cut over the past 25 years, and that waiting lists for these benefits are miles long.”

“The government is trying to pull one over on the world by simply saying ‘we have these programs in place,’” Tars continued, “But we will not let them get away with telling the world that we’re doing everything we can to overcome racial discrimination when the demand for these programs remains, but the government shirks its obligation to supply the necessary funding.”

The CERD will conduct hearings on the U.S. report in February 2008, and issue recommendations for how the U.S. can better meet its obligations to protect and ensure equal rights for all.

NLCHP’s mission is to prevent and end homelessness by serving as the legal arm of the nationwide movement to end homelessness. To achieve its mission, NLCHP pursues three main strategies: impact litigation, policy advocacy, and public education.

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When the U.S. issues its report, non-governmental organizations (NGOs) issue “shadow reports,” tracking the U.S. report and correcting its oversights and errors to help the treaty committees in properly evaluating the U.S. record, and ensuring that the priorities of the victims of human rights abuses are brought to global attention. Following the overwhelming success of the coordinated shadow reporting effort before the Committee Against Torture and the Human Rights Committee in 2006 (see Section III), many groups have participated in similar coordinated efforts with CERD in years to follow.

A group of homeless and housing advocacy organizations produced a joint shadow report covering the racially discriminatory impacts of federal, state, and local housing policy, criminalization of homelessness, discrimination against immigrant communities, and the intersectionality of gender and race. The executive summary of this report is excerpted below.

Executive Summary

1. In the United States, some 750,000 people experience homelessness on any given night.³² Over the course of a year, an estimated 2.5 to 3.5 million people experience homelessness.³³ African-Americans are disproportionately represented in these numbers, making up an estimated 45% of the homeless population; some 41% are Caucasian; 11% Hispanic; 8% Native American.³⁴ Approximately 41% are families with children, and 44% of homeless adults worked at some point in any given month. 66% of homeless adults reported problems with mental illness, drug or alcohol abuse, or some combination of these problems.
2. The lack of affordable housing is the primary cause of homelessness. Some 13.7 million households, or 14% of all households, have “critical housing needs,” meaning that they spend more than 50% of their incomes on housing or live in substandard housing.³⁵ Inadequate incomes are directly linked to this problem: a person working a regular work week at the legal minimum wage cannot afford the fair market rent for a one-bedroom apartment anywhere in the United States.³⁶
3. Racial minorities constitute a disproportionate percentage of people living in acutely substandard housing or suffering from unmanageably severe rent burdens. These marginalized minority communities thus constitute a disproportionate number of

³² See Martha Burt, et al., *Helping America’s Homeless* (2001).

³³ Bruce Link, et al., *Life-time and Five-year Prevalence of Homelessness in the United States*, 65 *American Journal of Public Health* (1994).

³⁴ Homelessness: Programs and the People They Serve, Findings of the National Survey of Homeless Assistance Providers and Clients. Highlights. Interagency Council on the Homeless, December 1999.

³⁵ Stegman et al., *Housing America’s Working Families at* http://www.huduser.org:80/periodicals/urm/urm_12_2000/urm1.html on August 2, 2001.

³⁶ National Low Income Housing Coalition, *Out of Reach 2005*, (based on federal affordability guidelines, or 30% of income or less spent on rent).

people relying on the United States government for housing assistance. More than 50% of the population with worst case housing needs are black or Hispanic, although they represent only about 25% of the total U.S. population. At the same time, between 2003 and 2005, the number of households with worst case housing needs increased by 16 percent.³⁷ In that same period, of those households with worst case needs, numbers of white and Hispanic households increased by 12 to 13 percent, while the number of black households with worst case needs increased by 28 percent.³⁸

4. Rather than increasing assistance to homeless individuals, many communities have instead enacted ordinances criminalizing behavior of homeless persons, or are disproportionately enforcing other laws such as jaywalking or littering against homeless persons, with a disparate impact on racial minorities. In Los Angeles's Skid Row, over 12,000 citations have been issued in the past year, almost exclusively to homeless African American men.
5. Los Angeles and Illinois are case studies of the racially disparate impact of the lack of affordable housing in the U.S., and the inadequacy of government response.
6. Women of color and the gay and lesbian community are disparately impacted by lack of affordable housing, shelter space, and domestic violence leading to homelessness.
7. Because the populations eligible for government housing assistance are disproportionately composed of members of racial minorities, and federal policies have led to less available housing, vulnerable minority populations suffer systemic discrimination as their housing needs are increasingly disregarded, in violation of articles 2(1)(c), 2(2), and 5(e)(iii) of the International Convention on the Elimination of Racial Discrimination ("ICERD" or "the Convention").
8. The following policy changes are recommended to cure these violations and shortcomings of the United States' obligations under the Convention:
 - Eradicate laws and policies at the federal, state, and local levels that criminalize homelessness by reviewing existing federal, state, and local laws to ensure effective protection against racial discrimination and disparate impacts;
 - Prohibit the disproportionate enforcement of laws against minority homeless persons;
 - Create a National Affordable Housing Trust Fund with dedicated sources of funding for the creation, rehabilitation, and preservation of rental housing that is affordable to low income families; and
 - Adequately fund the existing Housing Choice Voucher program (Section 8) and public housing facilities.

³⁷ Id.

³⁸ Id. at 17.

- Encourage states to adopt, follow, and enforce best practices such as the California Housing Element law which requires each local jurisdiction to plan appropriately to meet the housing needs of all segments of its society;
- Encourage local municipalities to adopt, follow, and enforce such housing elements and to maximize the expansion of affordable housing through the incentives, processes, and planning practices in their existing land use and police powers;
- Increase resources for fair housing within the state and federally subsidized housing stock, including robust enforcement plans; and
- Encourage the inclusion of line item appropriations in state budgets for the construction and preservation of statewide affordable housing and ensuring funding for the state housing trust funds.
- Clarify the constitutional prohibitions against city and county enactment of legislation that limits the opportunities of undocumented immigrants through housing restrictions and adopt effective measures to enjoin the enforcement of such legislation and to make reparations for any resulting harm.
- Extend the model protections created for public housing in the Violence Against Women Act to protect all persons experiencing domestic violence in public or private housing;
- Adequately increase resources for domestic violence shelters and transitional housing and permanent housing to meet the need and providing priority to domestic violence victims in obtaining permanent housing; and
- Encourage state legislatures to revise their domestic violence statutes with a more comprehensive definition of “family” to afford the necessary protections to victims of same-sex domestic violence

At the end of the hearings, the CERD’s Concluding Observations contained a large number of recommendations drawn directly from the shadow report. These included:

- Citing positively reauthorization of the federal Violence Against Women Act, which protects domestic violence victims from discrimination and eviction in federally subsidized housing
- Citing positively the California Housing Element Law
- Criticizing the U.S. for avoiding the definition of racial discrimination that requires remedying laws with discriminatory effect
- Criticizing racial profiling and recommending passing the End Racial Profiling Act
- Criticizing residential segregation and substandard housing conditions with inadequate access to services
- Criticizing lack of indigent defense systems, including recommending civil counsel for cases where basic needs such as housing are at stake
- Criticizing incidence of rape and sexual violence in communities of color and recommending adequately funding prevention and shelters

- Criticizing response to Hurricane Katrina and calling for guaranteeing the right to return and access to adequate, affordable housing and consultation of affected groups³⁹

NLCHP gained national media attention for the Observations. We posted daily web videos from Geneva to The Hub, a sort of YouTube for activists, which have been viewed over 6,000 times.⁴⁰ NLCHP also published a joint op-ed in the Miami Herald with Congressman Alcee Hastings of Florida.⁴¹

In 2010, housing and human rights organizations will have another opportunity to hold the government accountable to human rights standards through the Universal Period Review (UPR) process before the UN Human Rights Council. Groups such as NLCHP and the US Human Rights Network are seeking resources to help train people in drafting shadow reports and conducting coordinated advocacy around the UPR hearings. If you are interested in participating in this process, please contact these groups for more information. For resources on shadow reporting, check out the US Human Rights Network's website at <http://www.ushrnetwork.org>.

UN HUMAN RIGHTS COMMITTEE (HRC)

In addition to CERD, the Human Rights Committee (HRC) monitors the anti-discrimination provisions of the International Covenant on Civil and Political Rights. As noted under the ICCPR heading in Section III, the HRC questioned the U.S. at its most recent hearing in 2006 and, as a result of the concerted action of U.S. NGO activity, issued concluding observations condemning the racial discrimination in homelessness, segregated housing leading to segregated education, and racial discrimination in the response to Hurricane Katrina. Both COHRE and NLCHP submitted shadow reports to the HRC on racial discrimination in housing and homelessness; these are available on their websites.

³⁹ See Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America, U.N. Doc. CERD/C/USA/CO/6, (2008), at paras. 9, 10, 14, 16, 22, 26, 31.

⁴⁰ See postings at <http://hub.witness.org/nlchp>.

⁴¹ See Alcee Hastings & Maria Foscarinis, End Racial Disparities in Housing, Miami Herald, March 14, 2008.

V. VIOLATIONS OF HOUSING RIGHTS

Violations of ESC Rights in General

Several important concepts should be understood before determining if a violation of economic, social, and cultural rights has taken place.

- Acts of Commission and Omission
- Deliberately Retrogressive Measures
- The Decency Threshold
- Minimum Core Entitlements

Acts of Commission and Omission: Human rights violations in the traditional approach to civil and political rights are often seen as particular actions undertaken by the state against a person or a group of people (i.e., acts of commission). When considering violations of economic, social, and cultural rights, however, it is important to remember that violations can also result from a nation's failure to take appropriate action as required by law (i.e., acts of omission).

The two key documents that outline acts of commission and omission by nations that can result in violations of ESC rights are "The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights" and "The Maastricht Guidelines" (both documents are available at <http://www.unhchr.ch/tbs/doc.nsf/0/6b748989d76d2bb8c125699700500e17?Opendocument>). Though not legally binding *per se*, the international community has repeatedly "emphasised the importance" of both documents.

Deliberately Retrogressive Measures are policies or legislative procedures undertaken by the nation, which undermine its obligations to respect, protect, and fulfill economic, social, and cultural rights.

The Concept of Minimum Core Obligations was developed by the UN Committee on Economic, Social and Cultural Rights. It is used to establish a baseline. If a Nation fails to achieve this baseline, a violation of rights is said to have taken place.

The Committee developed this concept mainly to refute the argument that a lack of resources hinders fulfillment of obligations. The Committee has stated that every State Party has a minimum core obligation to satisfy minimum essential levels of each right of the Covenant. The Committee has clarified that a State Party "in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is *prima facie*, failing to discharge its obligations under the Covenant."

Inability to comply

In determining which actions or omissions amount to a violation of an economic, social, or cultural right, it is important to distinguish the inability from the unwillingness of a

nation to comply with its treaty obligations. A nation claiming that it is unable to carry out its obligation for reasons beyond its control has the burden of proving that this is the case. A temporary closure of an educational institution due to an earthquake, for instance, would be a circumstance beyond the control of the nation, while the elimination of a social security scheme without an adequate replacement programme could be an example of unwillingness by the nation to fulfill its obligations. (Maastricht Guideline 13)

Criminal sanctions: The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights stipulate in (Paragraph 21) that victims of violations of economic, social, and cultural rights should not face criminal sanctions purely because of their status as victims, for example, through laws criminalizing persons for being homeless. Nor should anyone be penalized for claiming their economic, social, and cultural rights. While the Maastricht Guidelines are not technically legally binding, they are nonetheless an important interpretive guide which advocates can utilize when crafting their arguments about state obligations vis-à-vis protecting the right to adequate housing and preventing forced evictions. The Maastricht Guidelines are relied upon by experts and advocates alike who seek to understand the nature of violations of economic, social, and cultural rights.

Individuals and groups: As is the case with civil and political rights, both individuals and groups can be victims of violations of economic, social, and cultural rights. Certain groups suffer disproportionate harm in this respect. (Maastricht Guideline 20).

Criminalization of Homelessness

The housing and homelessness crisis in the United States has worsened over the past two years, particularly due to the current economic and foreclosure crisis. On average, cities reported a 12% increase in homelessness in 2008. However, rather than remedy the source of homelessness, many municipalities, with the acquiescence of the federal government, have instead chosen to try to sweep the problem under the rug. Even though most cities do not provide enough affordable housing, shelter space, and food to meet the need, many cities use the criminal justice system to punish people living on the street for doing things they need to do to survive. These measures prohibit activities such as sleeping/camping, eating, sitting, and begging in public spaces, or the disproportionate enforcing of other laws, such as jaywalking and littering, against homeless persons, usually including criminal penalties for violation of these laws.

Advocates are using the CERD shadow reporting process discussed above to raise awareness of these violations and gain support for potential future litigation to stop this behavior. The practice of criminalizing the behavior of homeless and minority persons is counter to the recommendations made by both the HRC and the CERD, which indicated in its 2001 concluding observations on the U.S. that the Government has “obligations under the Convention and, in particular, to article 1, paragraph 1, and general recommendation XIV, to undertake to prohibit and to eliminate racial discrimination in all its forms, including practices ... that may not be discriminatory in purpose, but in effect. All appropriate measures should be taken to review existing legislation and federal, state and local policies to ensure effective protection against any form of racial discrimination and any unjustifiably disparate impact.” The U.S. should take immediate steps to inform state and local officials that disproportionate enforcement of laws against minority homeless persons violates our treaty obligations, and that rather than criminalizing homelessness, government at all levels should instead take positive steps to fulfill the right to housing.

As criminalization measures can be counterproductive in many ways, the U.S. Congress recently passed and the President signed legislation, the Helping Families Save Their Homes Act of 2009, which requires the federal Interagency Council on Homelessness to devise constructive alternatives to criminalization measures that can be used by cities around the country.

Source:

National Law Center on Homelessness & Poverty, *Homes not Handcuffs: The Criminalization of Homelessness in U.S. Cities*, July 2009, available at www.nlchp.org.

Acts Constituting Violations of the Right to Adequate Housing

The first UN Special Rapporteur on Housing Rights, Justice Rajindar Sachar of India, listed about 30 acts of commission and omission that are seen as constituting violations of the right to adequate housing.

Acts of commission that constitute violations include:

- Carrying out, sponsoring, tolerating, or supporting the practice of forced evictions
- Demolishing or destroying homes or dwellings as a punitive measure
- Actively denying basic services such as water, heating, or electricity, to sectors of society despite a proven ability to provide these
- Acts of racial and other forms of discrimination in the housing sphere
- Adoption of legislation or policies clearly inconsistent with housing rights obligations, particularly when these result in homelessness, greater levels of inadequate housing, the inability of persons to pay for housing, and so forth
- Repealing legislation consistent with and in support of housing rights, unless obviously outdated or replaced with equal or more consistent laws
- Unreasonable reductions of public expenditure on housing and other related areas, in the absence of adequate compensatory measures
- Overtly prioritizing the housing interests of high-income groups when significant portions of society live without their housing rights having been achieved
- Constructing or allowing the building of housing upon unsafe or polluted sites threatening the lives and health of future occupants
- Harassing, intimidating, or preventing NGOs, community-based organizations, grassroots movements, and groups concerned with housing rights from operating freely.

Acts of omission (i.e., failure to act) that constitute a violation include:

- Failing to take “appropriate steps” as required under the Covenant on Economic, Social and Cultural Rights
- Failing to reform or repeal legislation inconsistent with the Covenant
- Failing to enforce legislation inherent in the fulfillment and recognition of housing rights
- Failing to intervene in the housing market, especially concerning rent levels, rent control, rent subsidies, issues of security of tenure, and prevention of undue speculation
- Failing to incorporate and implement accepted international minimum standards of achievement concerning housing rights
- Failing to provide infrastructure and basic services (water, electricity, drainage, sewage, etc.)
- Failing to prohibit or prevent individual or civil actions amounting to housing rights violations by any person capable of committing such acts
- Failing to use all available resources for the fulfilment of these rights

- Failing to integrate and fully consider the implications for housing rights when developing macro-economic policies impacting upon housing-related social spheres; and failing to submit reports as required under Articles 16 and 17 of the ICESCR, as well as under other treaties; or
- Failing to submit reports required under Articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights, as well as other treaties.

Tips for Arguing that ESC Rights Have Been Violated

- Is the violation an act of omission or an act of commission?
- Use of the term “violation” rather than terms such as “failure to give effect to obligations.” This will raise the stature of the act or omission.
- Use the term “violation” cautiously. Not every undesirable action or situation should be called a violation of economic, social, and cultural rights. When the term violation is used, it must really be a violation on the basis of law. The term should be used in such a way that it strengthens economic, social, and cultural rights rather than undermines them.
- The principles of indivisibility and interdependence, human dignity, equality, non-discrimination, and any other notion of integrated personhood should guide and form the basis of any conception of legal process linked to violations.
- Although almost all components of economic, social, and cultural rights are justiciable, violations may occur whether or not they are subject to judicial scrutiny.
- Examine violations of economic, social, and cultural rights on a case-by-case basis unless the act or omission concerned is already universally recognized as a clear violation of human rights.
- All violations of human rights have to be considered serious with regard to the rule of law. It is important always to link economic, social, and cultural rights to the rule of law.
- Any failure by States to comply with an international legal obligation must be examined in terms of whether the State in question is unable to implement the obligation or is simply unwilling to do so. There must be a clear distinction between ability and inability.
- Few States will ever officially admit that they are currently violating any human rights. It is up to its citizens to prove that any rights are being violated.

Housing Rights Remedies, Compensation, and Restitution

What can be done about housing rights violations? What remedies are available? This issue is addressed in the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Guidelines 22-25 & 27:

Access to remedies

Any person or group who is a victim of a violation of an economic, social, or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels. (Guideline 22)

Adequate reparation

All victims of violations of economic, social, and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction, or guarantees of non-repetition. (Guideline 23)

No official sanctioning of violations

National judicial and other organs must ensure that any pronouncements they may make do not result in the official sanctioning of a violation of an international obligation of the nation concerned. At a minimum, national judiciaries should consider the relevant provisions of international and regional human rights law as an interpretative aide in formulating any decisions relating to violations of economic, social, and cultural rights. (Guideline 24)

National institutions

Promotional and monitoring bodies such as national ombudsman institutions and human rights commissions should address violations of economic, social, and cultural rights as vigorously as they address violations of civil and political rights. (Guideline 25)

Impunity

Nations should develop effective measures to preclude the possibility of impunity of any violation of economic, social, and cultural rights and to ensure that no person who may be responsible for violations of such rights has immunity from liability for their actions. (Guideline 27)

Worksheet 3: Violations of Housing Rights

Do the following constitute acts of omission or acts of commission?

1. Actively denying ESC rights to particular individuals or groups, whether through legislated or enforced discrimination

2. Failing to monitor the realization of economic, social, and cultural rights, including the development and application of criteria and indicators for assessing compliance

3. Failing to enforce legislation or put into effect policies designed to implement provisions of the ICESCR

4. Actively supporting measures adopted by third parties which are inconsistent with ESC rights

5. Failing to regulate activities of individuals or groups so as to prevent them from violating economic, social, and cultural rights

6. Adopting any deliberately retrogressive measure that reduces the extent to which any ESC right is guaranteed

7. Failing to utilize the maximum of available resources towards the full realization of economic, social, and cultural rights

8. Reducing specific public expenditures without adequate measures to ensure minimum subsistence rights for everyone, resulting in the non-enjoyment of ESC rights

9. Failing to meet a generally accepted international minimum standard of achievement that is within the nation's powers and ability to meet

10. Failing to take into account the nation's international legal obligations in the field of ESC rights when entering into bilateral or multilateral agreements with other nations, international organizations, or multinational corporations

VII. FORCED EVICTIONS

Understanding Forced Eviction as a Violation of Housing Rights

The CESCR considers that instances of forced evictions are clearly incompatible with the requirements of the ICESCR and can be justified only in the most exceptional circumstances, and in accordance with the relevant principles of international law.

There are eight key differences between the practice of forced eviction and other types of forced removal or flight of people from their homes (such as internal displacement, population transfer, mass exodus, refugee movements, and ethnic cleansing). As a result of these differences, forced eviction is regarded as a distinct practice under international law, which creates particular legal obligations for nations and particular rights for people threatened with forced eviction:

1. Forced evictions always raise issues of human rights (other forms of displacement might not invariably involve human rights concerns);
2. Forced evictions are generally planned, foreseen, or publicly announced (other types of coerced movement may occur spontaneously and not necessarily be part of a national policy or legal regime);
3. Forced evictions often involve the conscious use of physical force (other kinds of displacement do not always involve physical force);
4. Forced evictions raise issues of national responsibility (determining liability for a forced eviction will often be much easier than doing the same for other manifestations of displacement);
5. Forced evictions affect both individuals and groups (most other forms of displacement are only mass in character);
6. Forced evictions are generally regulated or legitimized by national or local law (other types of displacement may be more random or simply not addressed legally);
7. Forced evictions are often carried out for specific stated reasons (rarely are evictions carried out which do not involve a rationalization of the process by those sponsoring the evictions in question); and
8. Not all evictions are forced evictions, and evictions can sometimes be consistent with human rights. (Most other forms of displacement cannot be justified on human rights grounds, whereas evictions may be justified for reasons of public order, the safety and security of the dwellers, and threats to public health). However, even in the exceptional case where an eviction is envisaged by law, it will nonetheless violate human rights norms if it is

undertaken without due process, or proper investigation of alternatives; if it renders persons homeless; if it is infected with any form of discrimination; or no effective remedy is made available.

A range of human rights bodies have adopted international standards specifically addressing forced evictions in recent years, and forced evictions are addressed within all national legal jurisdictions. Most notable among these is General Comment 7, adopted by the CESCR in 1997. General Comment 7 affirms that forced eviction violates the ICESCR and defines the practice in terms of concrete elements that lend themselves to judicial enforcement.

Main Causes of Forced Evictions in the United States

The increasing gap between housing costs and the incomes of minimum- and low-wage workers accounts for the bulk of forced evictions in the United States, both before the housing crisis and currently. Not only have subprime lending practices spiked home ownership costs, but rental costs are also still rising faster than wages. As a result, minimum-wage workers, fixed-income elderly persons, low-income single parent families, and individuals with disabilities who rely on public benefits simply cannot afford to pay for housing. The public housing stock in the United States cannot meet this need: only one in three households eligible for rental assistance receives it. To close this gap, the United States would have to produce 250,000 units of affordable housing every year for more than 20 years. Far from meeting this need, current trends in affordable housing, such as the demolition of public housing and replacement with smaller numbers of mixed-income units under the HOPE VI program, continue to decrease the supply. Between 1976 and 2005, there has been a net loss in public housing units due to destruction of public housing and expired subsidies.

Evictions due to foreclosure have also been on the rise. The foreclosure and economic crises are significantly increasing homelessness in communities across the country. Before the current downturn, between 2.5 and 3.5 million people were “literally” homeless each year, living in shelters, transitional housing, or public places. Including those who had lost their own homes and were sleeping on the floors or couches of family or friends, but were no (yet) “literally” homeless, the number jumps to 4.5 million.

Additional factors also contribute to forced evictions in the United States. For example, gentrification continues to be an issue in urban areas and has resulted in evictions of thousands of families and individuals in cities across the country. While gentrification causes housing costs to rise dramatically, it does little to provide higher incomes to long-time urban residents. This exacerbates the gap between housing costs and incomes and leads to the eviction of low-income residents.

Sources:

National Law Center on Homelessness & Poverty, *Foreclosure to Homelessness 2009: the forgotten victims of the subprime crisis*, 2009.

National Law Center on Homelessness & Poverty, *An Ounce of Prevention: Programs to Prevent Homelessness in 25 States*, February 25, 2009.

Government Obligations to Prevent Forced Evictions

Governments should use “all appropriate means” to promote and protect the right to housing and to protect against forced evictions. This can be achieved in a number of ways, for example via:

Review of Legislation

Nations can review legislation to ensure that it conforms with human rights standards. Such legislation should include measures which:

- guarantee security of tenure to occupiers of houses and land;
- conform to international human rights standards, including General Comment no. 7 of the UN Committee on Economic, Social and Cultural Rights;
- are designed to control the circumstances under which evictions may be carried out; and
- ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out without appropriate safeguards, by private persons or bodies.

Procedural Protections

Procedural protections are required in those exceptional cases where there is no alternative to eviction. Procedural protection should include:

- an opportunity for genuine consultation with those affected;
- adequate and reasonable notice for all affected persons prior to the date of the eviction;
- information on the proposed eviction should be made available in a reasonable time to those affected;
- government officials or their representatives should be present during an eviction and persons carrying out the eviction should be properly identified;
- evictions should not take place in particularly bad weather or at night;
- legal remedies should be available; and
- legal aid should be available to those in need of it to seek redress from the courts.

Prevent Homelessness

Nations should also ensure that no individual or family is rendered homeless as a result of the eviction. In turn, where those affected are unable to provide for themselves, the nation should take all appropriate measures to ensure that adequate alternative housing, resettlement, or access to productive land, as the case may be, is available.

Legal Sources on Forced Evictions

There are various international human rights standards that are applicable to cases of forced eviction. These include (1) due process rights; (2) the right to security of the person (broadly conceptualized to include the right to privacy, the right to life, as well as protections against arbitrary interference with the home); (3) the right to adequate housing and an adequate standard of living, and (4) the rights to non-discrimination and equality. Many of these rights are protected by various instruments to which the U.S. is a State Party, most notably the ICCPR and CERD.

There are a number of international legal standards that oblige states to prevent forced evictions or to ameliorate the consequences of past evictions. Additionally, there are numerous statements of principle, often adopted by the consensus of the international community. These statements not only condemn the practice of forced eviction generally, but also are intended to either prevent specific planned evictions, condemn specific past evictions, or both.

Over the years several United Nations bodies, including the UN Commission on Human Rights, have developed consistent standards unequivocally stating that forced evictions constitute grave violations of human rights, especially the right to adequate housing. Indeed, bodies such as the CESCR have increasingly developed the practice of declaring certain countries to have violated the rights of their residents because of forced evictions. Reliance on international standards and mechanisms has even resulted in preventing planned evictions.

General Comments No. 4 and 7 of the CESCR contain some of the more prominent international standards and statements of principle addressing the practice of forced eviction. Both of these General Comments, taken together, make up a useful two-part test: 1. exceptional, 2. due process. This test can be used by advocates in the US to determine whether evictions comply with international human rights standards.

As is noted in General Comment No. 4, “instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.” The Committee on Economic, Social and Cultural Rights has promoted an approach to eviction that upholds the principle that, even when evictions are deemed lawful, they should only be used as a last resort. Determining whether an eviction is being carried out in truly “exceptional circumstances” is the first half of the “two part” test. If an eviction fails to meet the “exceptional circumstances” standard, it can be considered a forced eviction.

Even if the “exceptional circumstances” requirement is met, however, evictions must still be carried out in accordance with international principles of fairness and due process. These principles are articulated in detail in General Comment No. 7, and those standards make up the second half of the “two-part” test. If an eviction fails any element of the

standards articulated in General Comment No. 7, it can also be considered a forced eviction.

In addition, the general principles of reasonableness and proportionality apply in all cases of eviction, both from the perspective of the Covenant on Civil and Political Rights (with regard to interference in the home) and from the perspective of the Covenant on Economic, Social and Cultural Rights (with regards to forced evictions). The UN Committee on Economic, Social and Cultural Rights has similarly noted in General Comment No. 7 that “Forced eviction ... as a punitive measure [is] also inconsistent with the norms of the Covenant.”

General Comment No. 7 on the Right to Adequate Housing: Forced Evictions is the leading legal interpretation of the right to be protected against forced eviction. This general comment represents the most far-reaching decision yet under international law on forced evictions and human rights, detailing what governments, landlords, and institutions must do to prevent forced evictions. It states:

- Forced evictions are incompatible with the requirements of the Covenant.
- A forced eviction is “the permanent or temporary removal against their will of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Human Rights Covenants.”
- Forced evictions frequently violate other human rights such as the right to life, the right to security of the person, the right to non-interference with privacy, family, and home, and the right to the peaceful enjoyment of possessions.
- Before carrying out any evictions State Parties must ensure that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.
- Legal remedies or procedures should be provided to those who are affected by eviction orders.
- State Parties also have to ensure that all the individuals concerned have a right to adequate compensation for any property which is affected (see also Article 2.3 of the International Covenant on Civil and Political Rights).
- In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.
- The following procedural protections should be applied in relation to forced evictions:
 - (a) an opportunity for genuine consultation with those affected
 - (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction
 - (c) information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in a reasonable time to all those affected

- (d) especially where groups of people are involved, that government officials or their representatives be present during an eviction
 - (e) that all persons carrying out the eviction be properly identified
 - (f) that evictions do not take place in particularly bad weather or at night unless the affected persons consent otherwise
 - (g) provision of legal remedies
 - (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.
- Evictions should not result in individuals becoming homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing is available.

South African Right to Housing Gives Concrete Protection from Forced Eviction

On August 29, 2007, South African Safety and Security Minister Charles Nqakula was found to be in contempt of a court order and committed to jail after failing to rebuild a homeless encampment burned down by police officers under his supervision.

Chapter 2, Sec. 26 of the South African Constitution is based on the international human right to adequate housing. It states:

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Lawyers are showing what a difference this recognition of rights can make.

In this instance, lawyers brought a case on behalf of the homeless people living on vacant land in Moreletapark after police officers burned down their homes and attacked the residents. Based on the constitutional right to housing, Pretoria High Court judge Bill Prinsloo gave police 12 hours to rebuild their shacks. Eight days later, after the police took no action, the judge ordered Security Minister Nqakula committed to jail and imposed a fine of R10 000. The judge suspended the order for two weeks, giving the Minister time to make amends.

The fact that it is almost unthinkable that a U.S. judge would hold U.S. police officials accountable for similar actions against homeless persons demonstrates how much the U.S. could benefit from right-to-housing legislation. For example, earlier this year, the St. Petersburg police destroyed a tent village, by slashing their tents and throwing them in dumpsters. Residents captured video of this destruction, which is available at <http://www.youtube.com/watch?v=LrPdZmPB36U>.

However, lacking any enforceable right to housing in this country, there has been no action taken against the police officers to date.

Strategies to Prevent Forced Evictions

Governments, NGOs, and housing rights activists can play an important role in preventing forced evictions before they occur. The following are some examples of possible activities:

- Governments can enact and enforce legislation guaranteeing universal security of tenure. This would constitute the single most effective action governments could undertake to curtail the practice of forced eviction. Security of tenure - the legal right to protection from arbitrary or forced eviction from the home or land - plays a significant role in discouraging the evictions.
- Community-based groups and NGOs often undertake a number of activities to prevent forced eviction such as: the development of alternative plans in instances where evictions are planned; the establishment of housing rights campaigns or movements; and publicizing and exposing planned evictions. These responses to threats of forced eviction have been successful in a number of circumstances, resulting in the prevention of the eviction as well as encouraging positive legislation aimed at reducing the prevalence or scale of evictions.
- Invoking international and regional legal remedies provides another avenue for eviction prevention. For example, human rights complaint mechanisms at the United Nations or at the regional level can be utilized. All UN treaty monitoring bodies, for example, have agreed to receive written submissions from NGOs and hear oral information from them in the context of its consideration of reports of State Parties. In the case of the United States, the U.S. periodically presents its State Party Report to the Human Rights Committee (which monitors the implementation of the ICCPR) and the UN Committee on the Elimination of Racial Discrimination (which monitors the implementation of CERD). Both of these committees can address forced evictions as a human rights violation. Claims can also be brought forth before the Inter-American Commission on Human Rights, which allege that forced evictions in the U.S. violate the Government's obligations under the American Declaration on the Rights and Duties of Man. While some of these mechanisms are only quasi-legal, if used in conjunction with strategies on the domestic front, they can contribute to the prevention of forced evictions.

Worksheet 4: When Can Evictions be Justified?

Scenario one:

The International Olympic Committee has agreed that the Olympic Summer Games will be held in Phoenix in 8 years time. The Phoenix Municipal Development Committee argues that the Games will bring economic opportunity to the city, and will result in the development of much needed infrastructure. Tourism is also anticipated to increase significantly as a result of the Games, bringing in added revenue.

One economically depressed neighborhood of the city has been selected to be “redeveloped” in preparation for the Games. This neighborhood will be the primary site for construction, which will result in the demolition of several hundred low-income housing units. Approximately 1,200 families, many of them low-income and on public assistance, are threatened with eviction as a result of the Games. Residents affected by the Games have formed the ‘Evict the Games, Not the People!’ campaign. They argue that the evictions are illegal and can not be carried out.

What do you think? Is the City of Phoenix justified in evicting people to enable them to build the infrastructure necessary to bring the Olympic Games to Phoenix? What guidance do international human rights standards provide in this case? What are the obligations of the Government? Under what circumstances would you accept such an eviction taking place?

Scenario two:

A family of six in St Louis lives in public housing. Last week, the family’s eldest daughter was found guilty of illegal drug possession. The family is now facing eviction from public housing in accordance with the State’s “one-strike” policy. The family has been given 30 days to vacate their home. They will be ineligible for public housing in the future.

What do you think? Is the State justified in evicting this family? What guidance do international human rights standards provide in this case? What are the obligations of the Government? Under what circumstances would you accept such an eviction taking place?

Scenario three:

In Duluth, the “Hope VI” program envisages destroying some 200 public housing units in order to better integrate low-income families into mixed income communities. While 200 units have been slated for demolition, only 45 new units of public housing will be replaced. The majority of the displaced families will be receiving housing vouchers, and will be expected to enter the housing market. Many of the families express concern that the vouchers do not provide long-term security (as the program may be cut in the future), and that there is a short supply of low-income accommodations available in the City.

What do you think? Is the City justified in evicting these families in order to create more mixed income communities? What guidance do international human rights standards provide in this case? What are the obligations of the Government? Under what circumstances would you accept such an eviction taking place?

**Section 2: ACCESSING THE RIGHT TO ADEQUATE
HOUSING – STRATEGIES TO PROMOTE HOUSING
RIGHTS**

VII. NON-JUDICIAL STRATEGIES TO PROMOTE HUMAN RIGHTS

Making a Positive Difference: The Role of Organizing!

- NGOs and activists can mobilize and collaborate with communities and other organizations;
- NGOs and activists can educate the population about their housing rights;
- NGOs and activists can respond to individual and community complaints about violations;
- NGOs and activists can monitor and report on their own government's compliance with, or its violations of, international obligations;
- NGOs and activists can apply international housing rights standards to the domestic system;
- NGOs and activists can develop indicators on housing rights;
- NGOs and activists can advocate for the right of everyone to adequate housing both domestically and internationally.

Monitoring Housing Rights

Monitoring is the process of systematically tracking activities of and actions by institutions, organizations or governmental bodies. The main purpose of monitoring human (and housing) rights is to determine the truth about the compliance of a government with its human rights obligations. Monitoring involves the collection of information (fact-finding) and documentation of findings for the purpose of bringing about social change. Very often, monitoring alerts you to rights abuses.

While monitoring needs to be undertaken by governments themselves, it is of vital importance that human rights organizations and activists engage in monitoring as well. As Guideline 32 of the Maastricht Guidelines states, “**Documenting and monitoring violations of economic, social and cultural rights should be carried out by all relevant actors**, including NGOs, national governments and international organisations. It is indispensable that the relevant international organisations provide the support necessary for the implementation of international instruments in this field.[...]” [emphasis added].

As an activist monitoring violations of housing rights in the United States, you must first identify, realistically, the objectives of your monitoring activities. What do you intend to do with the documentation you gather? This will, in part, determine the types of information you gather. Worksheet 5, which follows, may help in this assessment.

Before conducting fact-finding missions, human rights monitors must make a preliminary assessment of the situation. A first step in this preparation is the analysis of relevant domestic and international legal standards that govern the particular abuse/s being monitored. This will help you determine the types of facts needed to prove abuse. It also illustrates a nation’s compliance with international legal standards and allows you to identify which domestic laws are the source of rights violations.

With this knowledge in hand, human rights monitors must begin to systematically and consistently collect information that may be related to the rights violation being monitored. Sources of information can include:

- Newspapers, magazines, and other forms of print media;
- Radio broadcasts;
- Internet websites;
- Testimony from victims and witnesses of human rights abuse, as well as of alleged perpetrators;
- Reports from human rights organizations and activists or other organizations;
- Official reports, including police reports, forensic reports, medical certificates, etc.;
- and
- Court records.

Information to look for while monitoring includes:

- Demographic data, such as the size and age of the affected group, particularly compared to the rest of society, race or ethnicity of the affected group, legal status (i.e. property owner, legal tenant, illegal occupant, permanent resident);
- Social indicators, such as access to government-provided housing, ability to rent/purchase property, housing conditions, location in relation to public services, employment, schools, etc., level and type of interaction with the local community;
- Economic data, including number of people living in government-provided housing in a given area, level of unemployment, etc.;
- Information on the local political situation; and
- Reports of allegations of rights abuse.

An important monitoring function is to build a network of contacts working in the field of housing in the United States who you can possibly look to for information and support.

The results of your monitoring should answer the following:

WHO did What to WHOM? WHEN, WHERE, HOW and WHY?

Worksheet 5: Potential Objectives of Monitoring

In the chart below are examples of objectives of monitoring. Complete the table in relation to your organization.

- For which of the objectives listed do you or your organization conduct monitoring activities? Indicate your answer by placing a check beside the relevant objectives.
- For what types of housing rights issues does your organization conduct monitoring activities?
- Provide some examples of monitoring activities that your organization might undertake.

Purposes	Types of Housing Rights Issues	Monitoring Activities
<input type="checkbox"/> Providing immediate assistance <input type="checkbox"/> Education and mobilization <input type="checkbox"/> Monitoring to assess progressive realization <input type="checkbox"/> Litigation <input type="checkbox"/> Undertaking legislative advocacy and policy formulation <input type="checkbox"/> Making submissions to intergovernmental agencies		<i>e.g.</i> , gathering first hand information from victims

Monitoring Progressive Realization of Housing Rights Through the Use of Benchmarks and Indicators

Adapted from: Diokno, Maria I. Socorro, "Monitoring the Progressive Realisation of Housing Rights." Focus Asia-Pacific, Newsletter of the Asia-Pacific Human Rights Center, Vol. 16, June 1999.

Benchmarks

To determine the progressive realization of housing rights through benchmarks, one may need to answer the following questions:

- Has the government set benchmarks or targets towards the realization of housing rights? If so, what benchmarks or targets has the government set? Are the benchmarks set by the government appropriate?
- If the government has not established benchmarks, why has it failed to do so? What can be done to pressure the government into establishing these benchmarks?
- Has the government actually met the benchmarks or targets or goals it has established?
- If the government has established benchmarks but has failed to meet them, why has the government been unable to meet its benchmarks? What can be done to pressure the government into meeting its benchmarks?

Indicators

The enjoyment and guarantee of housing rights, and the level of compliance by government of its obligations, must be periodically monitored to assess progress in the realisation of the right. The assessment often takes the form of qualitative and quantitative measurements, called indicators. Indicators are statistical (numerical) data which "indicate" the prevailing circumstance at a given place at a given point in time.

But an indicator is not simply a statistical series. It also involves a set of assumptions that requires careful examination and testing before use. Despite their limitations (i.e., they do not always reflect the human condition in a meaningful way) indicators are valuable tools that have the potential to adequately and accurately measure not only the existence of housing rights - or any derogation there from - but also any advances that may develop.

It is essential to use indicators that are compatible with the legal duties of the government under existing domestic and international human rights law. See Worksheet 6 which follows.

Examples of indicators relating to the right to housing

- **Information on housing tenure**, e.g., types of housing tenure, number of persons in different types of housing tenure broken down by gender, age, social class, race, ethnicity and geographic location, etc.
- **Information on the housing population**, broken down by age, gender, race, social class, ethnicity, and geographic location, e.g., number of homeless persons, number of persons currently inadequately housed, number of persons on waiting lists for obtaining accommodations, number of persons currently classified as living in “illegal” settlements or housing, number of persons evicted, and so on.
- **Data on housing affordability**, e.g., number of persons whose housing expenses are above any state-set limit of affordability, based upon the ability to pay or as a ratio of income, broken down by age, gender, race, social class, ethnicity and geographic location, cost of housing materials, rent levels, etc.
- **Information on the extent of access to natural resources** broken down by geographic location, e.g., proportion of households with access to safe and clean potable water, types of access to such water, proportion of households with access to sanitation facilities, proportion of households with access to energy sources, etc.
- **Gender indicators** should involve more than just gender disaggregated statistics. Issues such as allocation of household resources, for example, should be considered. Possible indicators could include: who predominantly controls household resources, who makes decisions within the household, who is entitled to resources upon separation, divorce, or death of a spouse.

Worksheet 6: Developing a Plan for Progressive Realization of a Government's Housing Rights Obligation

- Select **ONE** of the Government's obligations with regard to the progressive realization of housing rights in your country.
- Use the framework provided below to outline a plan for monitoring the obligation you selected. Consider how this plan would address gender issues related to housing rights.
- Apply the steps from the perspective of an NGO.
- Write your plan for monitoring progressive realization of this obligation below.

OBLIGATION: _____

1. SET BENCHMARKS

- Explain the process you would follow to set benchmarks for monitoring in this case.
- Decide how to obtain the necessary information.
- Decide who should be involved in this process of information gathering and explain why.
- Ensure that gender issues are considered.

2. DEVELOP INDICATORS

- Describe indicators that could be used to monitor progressive realization.
- Decide who should be involved in developing the indicators. Explain why.
- Ensure that gender issues are considered.

3. COLLECT DATA

- Identify some of the important steps in the data collection process.
- Decide who should be involved and why.

4. FORMULATE POLICY OBJECTIVES

- How can NGOs use monitoring to promote legislative and policy change?
- Who should be involved and why?

5. STRATEGY EVALUATION

- Evaluate what challenges you might face in putting your plan into practice.

Collecting and Documenting Information

Adapted From: Ravindran, D.J., Guzman, M.; Ignacio, B. (Ed.). (1994). Handbook on Fact-Finding and Documentation of Human Rights Violations. Bangkok: Asian Forum for Human Rights and Development (Forum Asia).

Buhl, Dana. (1997). Ripple in Still Water: Reflections by Activists on Local and National Level Work on Economic, Social and Cultural Rights. Washington, D.C.: International Human Rights Internship Programme, pp. 41-47.

Information is collected by human rights organizations and activists to determine the truth as accurately and completely as possible concerning alleged human rights violations for the purposes of monitoring human rights practices of governments. In some cases, information is also collected on alleged human rights violations committed by armed opposition groups and private citizens. Human rights organizations and activists collect first-hand information to verify the facts for themselves and to make credible reports on alleged violations of human rights.

Documentation is the process of systematically recording and organizing the information for easy retrieval and dissemination. The word documentation is normally understood as a collection of existing documents. However, human rights organizations and activists also use it to mean recording facts, including collection of documents and establishing a system for easy retrieval and dissemination.

Once a violation has been identified, the next step is to conduct an investigation to collect and document the “evidence.” This is done by carrying out fact-finding activities and carefully recording the findings.

Guiding Principles for Human Rights Fact-Finders

- **Impartiality and Accuracy**
Fact-finding must be thorough, accurate and impartial. Ensure the credibility of information collected and disseminated by seeking direct and supporting evidence. Direct evidence includes victim and witness testimony, statements by alleged perpetrators, official reports, including police reports, court records, medical certificates, forensic reports, etc. Supporting forms of evidence include media reports, government reports, and reports by NGOs, etc. Assess the reliability of the evidence gathered and pay attention to any contradictions in the information gathered. Any questions of fact will need further investigation.
- **Application of International Standards**
Apply international human rights standards and constitutional rights guarantees to help identify and define what information to collect and to assess the information gathered.
- **Be Prepared Before Entering the Field**
Before entering the field, empower yourself by thoroughly researching relevant legal standards and case background. Compile a list of everything you already know about

the locations, and the incident, and make a list of all the information you are missing. Create a list of questions/issues you need to address during interviews to allow a proper assessment of the issue at hand.

- **Using Diverse Sources of Information**

Locate and use as many sources of information as possible. Interview the victims (individuals and communities) and witnesses of an event as well as the violator. Collect and evaluate ALL available evidence. This evidence could include periodic government budget or policy reports; legislative and judicial records; papers and studies produced by academic or research institutions; reports by or interviews with NGOs, official reports, including police reports, medical certificates, building permits, documents attesting to security of tenure, etc.

- **Respect all Parties**

All efforts should be carried out within an atmosphere of utmost respect for those concerned.

- **Ensure Safety/Take Steps Against Victimization**

It is very important to consider both the safety of the victims of the rights violation you are documenting as well as your own and to take all measures possible to avoid or prepare individuals for any backlash they might suffer as a result of agreeing to participate in your investigation and subsequent actions. Monitors and fact-finders must therefore develop a plan of action and consider the above in relation to it. Ensure that the victims and witnesses to human rights and housing rights abuses you interview understand the way you intend to use the information they provide as well as any possible repercussions they may face as a result so that they have all the facts in making their decision to co-operate. If potential interviewees agree to divulge information on a particular rights abuse after having this explained to them, proceed with your fact-finding activities. If at any time you feel that either the victims of and witnesses to abuse or yourself are in danger, cease your actions immediately. The purpose of human rights monitoring and fact-finding is not to place persons in the way of further harm.

Testing to Prove Racial Discrimination

Excerpt from Alemu, Fitsum. "Testing to Prove Racial Discrimination" in **Roma Rights** No 3/2000. European Roma Rights Center. Budapest, 2000.

Testing is a technique that is used to collect evidence when there is an allegation of discrimination. It is applied if a member of a protected class group suspects disparate treatment on grounds of his or her national origin, religion, gender, the colour of his or her skin, or other characteristics covered by legal prohibitions on discrimination. It can be employed to gauge the existence or extent of discrimination in housing. [...] There are two kinds of testing: research-oriented testing, which is used for auditing, and enforcement-oriented testing, which uses the results of testing to file a law suit or monitor compliance with injunctive relief. [...]

In enforcement-oriented testing, first litigators should discuss the case with the complainant to

draw up questions to be addressed by testing. One should also collect all materials concerning the firm or the club being tested, such as licenses and earlier complaints against the firm, as well as legal provisions and case law. Then the selection and training of testers begins.

Testers are objective fact-finders who, after extensive training in both the classroom and the “field”, conduct testing to uncover discrimination. A test requires two testers: a “protected tester” and a “comparison tester”. [...] For example, in cases alleging discrimination against an African-American person, an African-American person would serve as a protected tester, while a white person would be in the role of a comparison tester. In a case of gender discrimination against a woman, a woman would be in the protected tester status while a man would be in the role of comparison tester. In general, testers should be quite similar. The key difference should be the quality at issue in the “test”, for example, the race or national origin of the tester where racial discrimination is alleged.

Training should include practice testing under close supervision, orientation about the uses of testing results to enforce civil rights laws and information regarding the nature of legal procedures in which testers may eventually be involved. During the training, paired testers should work closely with each other, get to know each other, and develop a sense of teamwork. Testers should be asked to declare explicitly that they accept the roles in the project as objective fact-finders, and to promise to maintain confidentiality.

Testers conduct their tests on the same day, posing as *bona fide* job or home seekers, for example. In the process of the test, testing team partners are sent at closely spaced intervals to seek information about a job, an apartment, or the availability of a certain service. When conducting a test, testers should dress appropriately for the occasion. In testing employers, each tester should take actions that are comparable to those likely to be undertaken by his or her paired partner while still following the natural flow of each job application process. For instance, the protected class should apply first for the job at issue either by telephone or in person. Tailoring testers’ conduct to the particular circumstances of each job application, maintaining a clear and complete record of the test experience, and ensuring that each tester acts in ways comparable to his or her partner is necessary to obtain evidence for litigation.

Testers record their experiences on assignment forms immediately after completion of each test. The report filed by each tester should include detailed information about job or housing availability, the application process, terms and conditions, questions asked by the tester and information volunteered by the agent or the employer. Beyond answers to the questions in the report forms, it may be worthwhile to request that testers write a detailed narrative description of their experiences during the test.

The forms on which testers record their experience should include at least the following: the time of application; information demanded of applicants (e.g. the length of interviews, the characteristics of interviews, questions asked at interviews); the flow of information (e.g. information provided spontaneously, information that had to be requested); how applicants are treated (e.g. length they must wait, level of hospitality offered); manner in which jobs are described (e.g. discussion of salaries and benefits, the length of employment, and so on). Such well-organized testing aims at examining minute, discrete components of the hiring process and can be used to corroborate as well as dispel allegations of discrimination that have been leveled against an employer.

Evidence of the ultimate disparity — that one tester was offered a home while the other was not — should be documented as carefully as possible. It is not the role of the tester to determine

whether discrimination has occurred, but rather to act as an unbiased recorder of information. Only the test coordinator (the organization or the attorney) can evaluate whether differential treatment has taken place. During the test, the tester should refrain from making any leading remarks about race or ethnicity in the neighborhood they are testing; testers should be observant, meticulous record-keepers so that their experiences will be completely and accurately documented. They should record their experiences independently and should not discuss their experiences with each other until after they have been documented. Under no circumstances should a tester discuss the testing experience or the institution tested with anyone unless authorized by the test coordinator or ordered by a court. If differential treatment is established, then the organization can file a lawsuit against the perpetrator.

Enforcement-oriented testing may call upon testers to serve as plaintiffs and witnesses in litigation. This imposes at least three additional considerations in selecting testers. First, the personal backgrounds of testers must be free from any difficulties that might reduce their credibility as witnesses. Second, testers must be sufficiently articulate to present their experiences clearly in written witness statements and oral testimony. Third, because litigation may last for several years, testers must be willing to remain in contact with the testing program and return periodically to participate in legal proceedings over an extended period. [...]

Worksheet 7: Conducting a Fact-Finding Mission

a) Define a **Precise Focus**

- What is the scope of your investigation? _____

b) Establish **Clear Criteria**

- What criteria will you use for determining the reliability of the information you gather? _____

c) Identify the **Sources of Information**

- Who is/are the victim(s)? _____

- Who is the alleged violator? _____

- Who are the witnesses?

- those who saw the event _____

- those who would know the background _____

- Who can help identify additional sources? _____

d) Identify **Written and Documentary Evidence**

- What documentary evidence is available that can help your investigation? _____

- Is the information reliable? _____

e) Conduct **On-site Inspection**

- What should be done **Before** visiting the site? _____

- What should be done **During** the on-site visit? _____

- What should be done *After* the visit?

- Who can assist with the investigation?

f) Determine the **Level of Proof Required**

- What level of proof is sufficient to arrive at reasonably founded conclusions?
- What factors impact on the establishment of the level of proof?

g) **Corroboration**

- How will you crosscheck the information you have gathered?

h) **Human Rights Standards**

- What human rights standards would you apply in this case?

Some additional questions to consider:

1. Once you have completed your investigation and prepared your report, where should you send it?
2. What additional action should you undertake to ensure that housing rights are realized?

Domestic and International Advocacy Options

**Adapted from the COHRE and ERRC manual on Housing Rights in Slovakia*

Human rights organizations and activists working from a localized, grassroots level to a national level have a number of advocacy options available to them in pursuing the realization of the right to adequate housing in the United States.

Probably the most important activity is educating individuals and communities as to what exactly their rights are with respect to access to adequate housing. Many victims of rights abuse are victims because they do not possess adequate knowledge about what access to a specific right entails.

Once a particular housing rights abuse has been well documented, you may choose to pursue one or many of the different advocacy strategies elaborated below. Regardless of which activity you choose to engage in, think carefully about the potential effects your action may have on both yourself and the people you are advocating on behalf of. As with monitoring activities, safety and victimization must figure into your advocacy plan. If you feel the potential for harm as a result of your actions outweighs the potential for positive change, consider engaging in another type of advocacy activity or postponing your action until a later time. Another aspect to consider is possibly building coalitions with other groups who may face similar problem and therefore have similar interests.

The general guidelines provided can be employed regardless of which level, from local to international, your advocacy activity targets.

Working with the Media

The media, print, radio, television, or Internet, is a very important tool for human rights activists and organizations, as your message must reach the widest possible audience. It is therefore crucial that you foster a good relationship with media representatives and journalists from as many publications as possible. Over time, you will learn which media is most receptive to your information and you can take a more tailored approach to using the media to convey your message.

Some tips for developing a good relationship with journalists and other media personnel include being clear about your message and flushing out all the details while ensuring that all of the facts are covered (who, what, why, when, where, and how). Focus on the accuracy of your message and don't add your opinion. The facts will speak for themselves. When you approach media sources, introduce yourself by telephone first and then in person. Present the information about the housing rights issue you have documented and offer to reduce their workload by providing them the information you have collected or giving an interview on the topic. You may also consider holding a press conference in order to reach the widest range of media sources possible in a short amount of time. If you choose to hold a press conference, if possible, deliver background materials to all invited media personnel beforehand to maximize your time in their presence.

Organizing Demonstrations

A number of housing advocacy groups in the United States have successfully demonstrated to access their right to adequate housing.

While one may choose many strategies when organizing a rally or a demonstration, the following are some basic guidelines you may want to follow when organizing housing rights advocacy demonstrations.

Depending on the importance or urgency of the issue you are demonstrating, you may choose to invite the media. Before the demonstration, send a news release about your demonstration to media outlets, inviting them to your event as the presence of media will multiply the number of people your message reaches greatly. The day before the demonstration is to take place, follow-up on your invitation with a phone call to confirm receipt of the news release. This will also permit you an additional opportunity to stress the importance of the issue you are demonstrating about.

Organize the persons affected by the issue you are demonstrating, and invite activists, organizations, and other persons who are sympathetic to your cause. Before the demonstration, assign one member of your group to act as mediator with the media. This person must possess a good understanding of the issue. The designation of the media mediator will avoid any possible confusion or dilution of your message to the media. It is a good idea for the mediator to practice conveying your message in a clear and concise manner beforehand.

At the demonstration, display posters clearly portraying your message. Use large, readable print. Because most persons will pass you by within a few seconds, clear visual tools will allow even these people to understand your message. This also offers great opportunities for getting a photograph of your demonstration printed in the media. A member of your group should also be designated to pass out additional literature about the issue that appears on your posters. Appear and act in a professional and respectable manner to reduce the number of people who will dismiss your actions without even a glance.

After your demonstration, it is important to reflect on what happened leading up to and at the demonstration. This evaluation will provide useful information on what worked and what did not for the next time you organize such an event.

Petitioning/Letter Writing

Writing to your local council, government bodies or Members of Congress does make a difference. It can either alert the government of a problem or remind it of a persistent problem and the fact that they have yet to take sufficient actions towards a resolution.

Before writing your petition or letter, decide which is the most appropriate person or office to address. This means asking yourself, “Who is responsible for the matter I’m concerned with?” Your private landlord, local council, an office within your local government agency assigned to deal with housing issues, or an office of the federal

government may be most appropriate. You will also need to consider any steps already taken. For example, if you have already addressed your local council with no success, you will want to go to the next level. An important consideration in petitioning and letter writing campaigns is timing. There are times, such as national or local elections, when your letter can carry more weight than usual. Use such events to your advantage in your petitioning or letter writing campaign.

After introducing yourself, get right to the point in the text of your letter or petition. Long petitions or letters that dance around an issue will not likely have influence. Make reference to relevant documents or policies. Use any available statistics as well with a reference to where they came from. This lets the reader know that you are knowledgeable about the issue and mean business. Always ask for a written response. This way, you will know that your letter or petition has received attention and can give you leverage later if additional action is necessary to resolve an issue.

Whenever possible, prepare and use letter templates to save time. Use email to share letters with all interested parties so they can easily send them too. You can also send petitions electronically to gather as many signatures as possible before sending it off to your target.

Lobbying

Lobbying by individuals and organizations is a powerful tool for change. People who approach their elected officials for support can generate creative solutions to overcome the root causes of housing problems. Personal stories are a powerful component of lobbying and as local activists and NGOs, you are closer to the victims of housing rights violations than the policy makers. Policy makers can learn from and use your knowledge. Various methods of lobbying include meeting with government officials and lawmakers, providing information about the housing situation or a specific event to committees and government offices, testifying in committee and negotiating with policy makers and other lobby groups for legislative or policy changes.

Before your lobbying visit, prepare yourself. Decide on the issue you would like to address and stick to it during the meeting. It is important to have a good basis of knowledge going into the meeting, but you need not know everything. Don't be afraid to say "I don't know," but offer to provide follow-up information after the meeting. Set in advance your goal for the visit: for example, you may be seeking the initiation of housing programmes, new legislation where none exists or the repeal/amendment of a bad law. If a group of people will engage in your lobbying activity, set out in advance who will discuss what.

Listen and watch actively. Listening and watching the person you are meeting with will give you good insight as to where s/he stands on the particular issue you have brought before him or her as well as what information s/he may be lacking. Be prepared with questions and informational materials in the event that the person you meet does not offer much to the dialogue as a method to draw them into the conversation. Pay attention that you don't get bogged down in detail or on one specific point, it is important to convey

your entire message. It is also important to avoid being argumentative or confrontational...you want the person you are meeting to be on your side or at minimum, to not become your enemy. If the person you meet has made a positive impact on the issue you are advocating, acknowledge this and express your gratitude during the visit.

Know when to end the meeting. When you have achieved your set goal, thank the person you have met for their time and leave. It is also a good time to leave when you feel you will not reach an understanding with the person you are meeting, but leave open the possibility to continue the discussion at a later date.

Be sure to follow-up on your lobbying visit with a letter of appreciation to all persons present and reiterate any agreements that were reached during the meeting. Also provide any information you promised to send after the meeting.

Communications within the International Treaty System

A very important opportunity for advocacy action around housing rights relates to the state reporting process under an international treaty. As a State Party to certain international treaties, the United States has to present periodic reports to a number of Committees on its compliance with its obligations under a given Convention; including CERD and the Human Rights Committee. At the same time, NGOs, activists and other interested parties are invited to present their own comments on the government's performance, calling attention to information excluded from the government report or to refute allegations made by the state that it is complying with its obligations.

NGOs and activists can submit written materials to the Committees at any time. For these materials to be most effective, they should take the form of an alternative or shadow report or shorter documents in response to the State Party's response to the List of Issues or fact sheets. Information to include in your report on the government's compliance with an international treaty includes:

- An introduction of yourself and/or your organization and your interest in the issue;
- Statistical information about the housing situation in the United States;
- Specific information on the level of homelessness, the number of people inadequately housed or living in overcrowded conditions and without access to basic services;
- The number of persons forcibly evicted and/or living without legal security of tenure;
- The number of persons paying more than the average cost of housing;
- The number of persons on waiting lists for housing, the average length of waiting;
- Legislation that restricts access of persons to adequate housing or information on the lack of sufficient legislation in a given area related to housing; and/or
- The lack of government-supported monetary schemes with the aim of enabling disadvantaged persons to remedy their own housing situation.

Prior to the formal review of a State's compliance with a treaty, Committees often hold a Pre-Sessional Working Group to identify the questions on which to focus during dialogue with representatives of the country under review. You can provide written or in-person information to the working group relating to matters on the agenda.

On the first afternoon of each formal session, Committees often also hold NGO hearings in which it allows NGO representatives to make presentations. Official approval from the Committee Secretariat or Chairperson is required before you can actually speak to the Committee.

It is important to meet the Committee Member named “Rapporteur” for the U.S. when it is up for review. The Rapporteur takes the lead on deciding what issues are presented to the government and what is said in the Committee’s Concluding Observations about that country.

As detailed in Section III above, groups in the U.S. have been using the treaty shadow reporting process to develop detailed recommendations on U.S. housing rights issues. For more information on participating in coordinated actions as the treaty reporting cycles develop in 2011 and 2012, please contact the Law Center.

Communications with other UN Human Rights Monitors

Also, as detailed in Section III, other UN human rights monitors are available to come to the U.S. to conduct country visits as well as issue press releases or communicate privately with government officials to raise issues of specific violations. These can be incredibly powerful ways to raise the profile of local issues as human rights violations.

The contact information for each of the UN human rights monitors, known as “special procedures” is available on the website of the Office of the High Commissioner for Human Rights: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>

In communicating with human rights monitors, it is useful to present information in as complete, but concise manner as possible. Include references and links to media coverage of issues where possible. Additionally, framing issues in human rights terms can help make it easier for the monitors to quickly address your issue. For assistance with this, please contact the Law Center.

Recent State and Local Human Rights Advocacy

As a result of housing advocates’ efforts, several localities have passed resolutions to recognize the right to housing, as well as other social and economic rights. For example, in response to local advocates’ efforts, the Pennsylvania state legislature adopted resolutions in 2002 and 2003 to investigate incorporating international human rights principles into state law. The resolutions recognized that “all citizens of this Commonwealth have the right to freely determine their political status and freely pursue their economic, social and cultural rights.” A special legislative committee held extensive hearings and, in 2004, generated a report that was sympathetic to applying

international norms in the state and recommended that the state establish task forces to evaluate access to basic economic rights in the state, including housing.

In addition to these efforts, other advocates have had success incorporating international human rights norms into local legislation. For example, city councils in Berkeley, Oakland, and San Francisco, California, have passed resolutions adopting the Universal Declaration of Human Rights and the International Covenant for Economic, Social and Cultural Rights, and supporting the rights contained in those documents. In 2004, the Council of Cook County, Illinois, which contains Chicago, also adopted a resolution stating its commitment to respect the human rights of all people and supporting a pending state law to create a Rental Housing Support Program. The pending state law passed in turn – increasing the funding for low-income housing subsidies.

Furthermore, advocates have had some success in attempting to fight discrimination problems through international human rights law. For instance, in 2003, California adopted the definition of racial discrimination from the International Convention on the Elimination of All Forms of Racial Discrimination, which encompasses actions with a discriminatory purpose and/or a discriminatory effect. The definition also provides that affirmative action is not ‘racial discrimination.’ This statute has already been successfully used in court to defend a voluntary desegregation policy in Berkeley’s public schools against an attack under CA Prop. 209.⁴² Although the validity of this definition under the California Constitution has been called into question, the state has demonstrated its willingness to incorporate international rights standards into its legislation.⁴³

⁴² Eric Tars, *State Adoption of CERD Definition of Discrimination*, U.S. Human Rights Online, <http://www.ushumanrightsonline.net/stateadoptionofcerddefini881.cfm> (visited August 17, 2006).

⁴³ *Id.* The California law (Section 8315) “has been raised in at least four cases in which plaintiffs have challenged affirmative action programs[,] with mixed results.

In April 2004, in *Avila v. Berkeley Unified School District*, the Alameda Superior Court held that application of Prop. 209 to a voluntary school desegregation plan would be inconsistent with Section 8315. The court found that Sec. 8315’s definition of racial discrimination, combined with the fact that the BUSD’s desegregation plan did not create racial preferences or quotas but merely distributed students among all public schools with race being one factor in that distribution, did not conflict with Prop. 209’s prohibition on preferences. The plaintiffs attorneys, the Pacific Legal Foundation (PLF), who are conducting a concerted campaign against Sec. 8315, chose not to appeal this decision.

In September 2004, in *C&C Construction, Inc. v. Sacramento Municipal Liability*, another case brought by the PLF, the appeals court for California’s 3rd District affirmed a lower court ruling that a municipal affirmative action program violated Prop. 209. The court rejected the argument that the affirmative action program did not constitute racial discrimination under the CERD as incorporated by Section 8315. The court held that because an earlier California Supreme Court case, *Hi-Voltage Wire Works v. City of San Jose*, had defined racial discrimination under the California Constitution to include affirmative action, and the Supreme Court is the ultimate interpreter of the Constitution, Sec. 8315 was void as an unconstitutional attempt to amend the Constitution. The defendants in *C&C* also argued that the U.S. Senate’s ratification of CERD in 1996 made its definition applicable to the states under the Supremacy Clause. (This argument was not raised in the *Hi-Voltage* case.) However, the court declined to address the argument on the merits because the defendants had failed to raise it at the trial level.

In addition to adopting resolutions, several cities have created organizations to monitor and enforce international human rights standards. One such city is San Francisco. In 1964, the city passed an ordinance creating the San Francisco Human Rights Commission. The Commission promotes human rights in several ways, including enforcing local anti-discrimination laws and monitoring affirmative action programs, monitoring City compliance with the Disadvantaged Business Enterprise Ordinance, enforcing federal fair housing law, and administering the City's Hate Violence Reduction Program.⁴⁴ Seeking to eliminate discrimination and promote social and economic rights within the City, the organization directly implements policies based on international human rights standards.

In addition, the City and County of San Francisco created the Commission on the Status of Women, which works to locally enforce the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). From providing technical assistance to advocacy groups and promoting public awareness, to crafting and monitoring legislation that affects the status of women and girls, to administering funds to emergency shelters for women experiencing domestic and sexual violence, the Commission fights discrimination against women from many angles to promote women's human rights.⁴⁵

Another city group working to enforce international human rights standards is the New York City Human Rights Initiative (NYCHRI).⁴⁶ In 2002, a group of community-based organizations, service providers, advocacy groups, policymakers, labor unions, and human rights activists and educators formed this coalition to address discrimination issues in New York City using a human rights framework.

In 2004, NYCHRI proposed the Human Rights in Government Operations Audit Law (Human Rights GOAL), which draws its principles from CERD and the CEDAW. The

In May 2005, in *Connerly v. CA Department of Finance*, Ward Connerly, California's perennial challenger of affirmative action, together with the PLF, brought suit against a multitude of California agencies with various affirmative action policies. The State failed to challenge C&C Construction's holding, and therefore the Sacramento Superior Court held it was bound by that precedent to declare Sec. 8315 unconstitutional and issued an injunction against the policies.

Finally, in July 2005, the PLF filed yet another case challenging affirmative action in public schools against the Capistrano Unified School District.”

⁴⁴ Discussion of the San Francisco HRC is based on the SFHRC's website at http://www.sfgov.org/site/sfhumanrights_index.asp.

⁴⁵ Discussion of San Francisco's Commission on the Status of women is based on the Commission's website, at http://www.sfgov.org/site/cosw_index.asp?id=10841.

⁴⁶ This discussion is based on information provided on the NYCHRI's website, www.nychri.org.

law would create pro-active measures to prevent all forms of unlawful discrimination including discrimination against groups protected by New York City's Human Rights Law. This existing law prohibits discrimination in employment, housing, and public accommodations because of actual or perceived differences, including those based on race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, and marital status. Human Rights GOAL would expand on the current law and create additional mechanisms to change and prevent discriminatory activity without litigation.

Through such local, state, and national advocacy, human rights activists in the United States have sought to bridge the gap between domestic law and international human rights norms. As a final example, in 2006, following a training in Los Angeles on housing as a human right co-sponsored by NLCHP, COHRE, and Beyond Shelter, advocates formed an ad hoc coalition to explore the use of human rights in their local campaigns. By bringing international norms to bear in domestic courts and incorporating international human rights principles into state and local legislation, advocates can continue to lead the United States towards a greater recognition of the right to housing.

Worksheet 8: Devising Your Advocacy Strategy

A number of different advocacy actions open up to you once you possess good information on the ability of persons to access adequate housing in the United States. Each action can be employed both domestically and internationally, and actions may be combined to produce a greater impact. As an activist for housing rights, devise your advocacy strategy on the basis of this knowledge. Some questions to ask yourself include:

- What do you hope to achieve through your advocacy efforts?
- What advocacy strategies are available to you?
- Which strategy will have the best results in the short-term?
- Which strategy will have the best results in the long-term?
- Which strategy/strategies will you employ to reach your goal?
- What steps will you take in executing your advocacy action?

VIII. THE JUSTICIABILITY OF HOUSING RIGHTS

Justiciable Components of Housing Rights

Pursuing the enforcement of housing rights via legal measures is another available option that is widely used. The right to adequate housing, including the right to be protected from forced eviction, has increasingly been the subject of judicial and quasi-judicial review at the international, regional, and national levels. As a result, there exists a growing body of housing rights jurisprudence that may be helpful should you choose to pursue legal action in cases of alleged housing rights violations. It is therefore important that you identify a lawyer or a network of lawyers with whom you can work to bring housing rights cases to both domestic, then international, courts and other tribunals.

The following aspects of the right to adequate housing can be pursued via litigation:

- Forced Evictions and Demolition;
- Security of Tenure;
- Non-discrimination and Equality of Access;
- Housing Affordability;
- Landlord-Tenant Relations;
- Access to Services;
- Property Rights;
- The Substantive Right to Accommodation;
- The Right to Counsel and Legal Aid;
- The Right to Participation;
- The Right to Habitable Housing.

Treaty Obligations

Nations are legally obligated to perform their treaty obligations in good faith. This means that nations must adjust their domestic legal structure to comply with the international standards to which they have committed themselves. The Vienna Convention on the Law of Treaties (1969) says, at Article 27, “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” Therefore, the obligation to perform treaties in good faith applies, as far as international law is concerned, irrespective of any conflicting domestic law;

- Nations cannot justify their failure to implement international obligations on the basis of a domestic law which is inconsistent with the international norm. Nations must ensure that courts, at a bare minimum, use international obligations of the nation as an interpretative aide in determining the actual meaning of a domestic law of the same theme;
- Nations must ensure that courts do not intentionally misinterpret international obligations in court.

Engaging in Strategic Litigation in the United States

Adapted from Maria Foscarinis, Brad Paul, Bruce Porter, and Andrew Scherer, The Human Right to Housing: Making the Case in U.S. Advocacy, 38 Clearinghouse Review 97 (2004); National Law Center on Homelessness & Poverty, Homelessness in the United States and the Human Right To Housing (2004).

Federal law in the United States provides little support for a right to housing. However, advocates can and should continue to raise international human rights norms in courts in housing and related homelessness cases. Though advocates may not want to use international norms as the sole legal basis for housing rights claims in litigation, international norms can provide important context and persuasive arguments in court proceedings. Through litigation, a growing group of activists and lawyers are using legal action, in conjunction with other tools of reform, to change legal rules, raise public consciousness, and alter patterns of behavior on issues ranging from human rights to racial discrimination. Because it would be practically impossible for human rights organization and activists to bring every case of housing rights violations experienced in the United States to court, the principles of strategic litigation should be taken into account. These include:

- Whether the case raises an issue of general public importance with respect to the protection of housing rights;
- Whether the case constitutes a particularly grave violation of housing rights, for example, a forced eviction;
- The quality of legal representation and the viability of the proposed legal strategy;
- The potential for the case to have an impact on similar cases or on domestic jurisprudence; and
- The potential for publicity about the case to serve a wider educational purpose.

On the international and domestic fronts, the U.S. government has shown considerable determination to resist the growing recognition of the right to housing and other social and economic rights. At the U.N.-sponsored Istanbul Conference on Human Settlements (Habitat II), which focused on the right to housing, the U.S. initially contended that the conference should refuse to recognize any human right to housing. Only after significant pressure from other countries and nongovernmental organizations did the United States agree to a final declaration affirming the right.⁴⁷

The United States has not ratified most of the major treaties protecting economic and social rights. While President Jimmy Carter signed the International Covenant on Economic, Social and Cultural Rights in 1977, the covenant has never been referred to

⁴⁷ Philip Alston, *The U.S. and the Right to Housing: A Funny Thing Happened on the Way to the Forum*, 1 Eur. Hum. Rts. L. Rev. 120-133 (1996); National Law Center on Homelessness and Poverty, *Habitat II and U.S. Implementation: Background and Overview* (1998).

the Senate for ratification. Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women, which guarantees the equal enjoyment of social and economic rights, was signed in 1980 but never ratified; the Convention on the Rights of the Child, which guarantees the right to housing for children, was signed by President Bill Clinton in 1995 but never ratified. Nevertheless, as a signatory to these treaties, the United States is obliged under international law to “refrain from acts which would defeat the object and purpose of [the] treaty . . . until it shall have made its intention clear not to become a party”⁴⁸

Further, the United States has signed and ratified both the Convention on the Elimination of All Forms of Racial Discrimination, which includes a guarantee of equal enjoyment of the right to housing, and the International Covenant for Civil and Political Rights. Although the latter does not include an explicit right to adequate housing, its preamble recognizes that “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his [or her] economic, social and cultural rights.” In its first statement of understanding following ratification of the International Covenant for Civil and Political Rights, the United States also accepted the covenant’s principle of non-discrimination, which includes distinctions based on property, birth, and other status, subject to the understanding that distinctions on any of these grounds are permitted “when such distinctions are, at minimum, rationally related to a legitimate government objective.”⁴⁹ And while the U.S. declared rights under the covenant to be non-self-executing, so as to avoid direct judicial enforcement of its provisions, it has accepted that “American courts are not prevented from seeking guidance from the Covenant in interpreting American law.”⁵⁰

The U.N. Human Rights Committee, which oversees compliance with the treaty, finds in the context of its review of Canada that the right to life imposes direct obligations on governments to take “positive measures to address homelessness” and that the effects of cuts on social programs on women, racial minorities, people with disabilities, and children must be considered in light of the right to equality and non-discrimination. In 1995, in its first review of compliance, the committee expressed its concern about the contradiction between the extent of poverty in the United States and the guarantee of equality. The concern suggested a substantive understanding of the right to equality and non-discrimination that would view failures to address disproportionate levels of poverty and homelessness among particular groups in the United States as a potential treaty violation:

⁴⁸ The Vienna Convention on the Law of Treaties, May 23, 1969, art. 18, 1155 U.N.T.S 331 (entered into force Jan. 27, 1980) [hereinafter Vienna Convention].

⁴⁹ U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992) (Understandings ¶ 1) [hereinafter ICCPR Understandings].

⁵⁰ *Concluding Observations of the Human Rights Committee: United States of America*, CCPR/C/79/Add.50;A/50/40, ¶ 276 (1995).

The committee notes with concern that information provided in the core document reveals that disproportionate numbers of Native Americans, African Americans, Hispanics and single parent families headed by women live below the poverty line and that one in four children under six [lives] in poverty. It is concerned that poverty and lack of access to education adversely affect persons belonging to these groups in their ability to enjoy rights under the Covenant on the basis of equality.⁵¹

Under the U.S. Constitution, treaties are binding law with the same status as federal statutes once ratified through the signature of the President and the advice and consent of two-thirds of the Senate.⁵² However, unless ratification includes the clear intent that the treaty be directly enforceable by the courts (i.e., “self-executing”),⁵³ or unless Congress passes implementing legislation, the treaty is not judicially enforceable. The Senate typically ratifies human rights treaties with “reservations” that they are not “self-executing,” and the courts uphold this limitation.

However, even though not directly enforceable under these circumstances, treaties are legally relevant and even determinative in certain cases. The U.S. Supreme Court holds that domestic law - federal, state, and local – must be interpreted whenever possible not to conflict with ratified treaties, whether self-executing or not, or with “customary international law.”⁵⁴ The latter, another source of international law, is the general and consistent practice of nations; it is not only widespread but also based on the belief that the practice is required. Customary international law requires no implementing legislation; it is U.S. law and has the status of federal common law.⁵⁵ Thus, a federal statute overrides conflicting customary international law, but customary international law controls absent federal law on point or where that law is ambiguous. Customary international law overrides conflicting state law.

⁵¹ *Id.* at ¶ 291.

⁵² U.S. Const. art. VI, § 2; *Id.* art. II, § 2, cl. 2.

⁵³ *See* U.S. ex rel. Pfefer v. Bell, 248 F. 992, 994 (E.D.N.Y. 1918) (self-executing treaties are enforceable and override earlier conflicting federal statutes, according to the last-in-time rule); *Sei Fujii v. California*, 242 P.2d 617, 620 (1952) (self-executing treaties override all inconsistent state and local laws).

⁵⁴ *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64 (1804).

⁵⁵ *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964); *The Paquete Habana*, 175 U.S. 677, 708 (1900); *Jon Doe I v. Unocal Corp.*, 395 F.3d 932, 967 (9th Cir. 2002).

Applying International Human Rights Norms in the United States

Advocates in the United States have incorporated international human rights norms into their efforts in many creative ways, through litigation and legislation on the national, state, and local levels. As the right to housing is much more clearly established in international than in domestic law, international norms can greatly enhance domestic advocacy. This section considers whether domestic law as it relates to housing and homelessness is congruent with international human rights law as outlined above.

How U.S. Courts Can Use Human Rights Norms

Both federal and state courts apply international human rights law, as well as international practices, in deciding domestic cases. Courts use international human rights law as an interpretive guide, to give content to general concepts such as standards of need and due process, and in further support of analyses under domestic law.

For example, in *In Re White*, the California Court of Appeals cited the Universal Declaration of Human Rights in support of its conclusion that both the U.S. and California Constitutions protected the right to intrastate and intramunicipal travel, a matter upon which the U.S. Supreme Court had not ruled, as well as the right to interstate travel, which a Supreme Court ruling has protected.⁵⁶ At issue in *White* was a challenge to a condition of probation imposed for prostitution; the condition barred the probationer from entering or simply being in certain defined areas of the city.

Courts also apply the directive to interpret domestic law to be consistent with international law by looking to human rights law as a source of content in cases where domestic legal standards are ambiguous or vague. For example, in *Boehm v. Superior Court*, indigent plaintiffs sought to prevent the reduction of general assistance benefits for indigent persons. A state statute provided that “[e]very county . . . shall relieve and support all incompetent, poor, indigent persons” and required each county to adopt standards of aid and care. While the statute gave counties discretion to determine the type and amount of benefits, the court held that benefit levels must be sufficient for survival. In making the determination, the court required the county to consider the need for food, housing, transportation, clothing, and medical care and cited the Universal Declaration of Human Rights (the declaration refers specifically to these elements).⁵⁷

A similar example of the use of international law is *Lareau v. Manson*, in which a federal district court considered whether alleged overcrowding and other prison conditions violated the due process clause of the U.S. Constitution.⁵⁸ As part of its analysis, the

⁵⁶ *In Re White*, 158 Cal. Rptr. 562, 567 (Ct. App. 1979).

⁵⁷ *Boehm v. Superior Court*, 178 Cal. App. 3d 494, 502 (1986).

⁵⁸ *Lareau v. Manson*, 507 F. Supp. 1177, 1189 (D. Conn. 1980) *aff'd in relevant part*, 651 F.2d 96 (2d Cir. 1981).

court looked to the United Nations' Standard Minimum Rules for the Treatment of Prisoners, a nonbinding document. The court reasoned that these standards constituted an authoritative international statement of basic norms of human dignity and thus could help define the "canons of decency and fairness which express the norms of justice embodied in the Due Process Clause" and the "evolving standards of decency" relevant to evaluating Eighth Amendment challenges.

Further, the court noted that the standard minimum rules might have acquired the force of customary international law and thus constituted binding legal authority. The court also cited the International Covenant on Civil and Political Rights, which had not then been ratified by the United States. Nevertheless, the court considered it to have been so widely adopted that it constituted customary international law. This is particularly significant because the analysis supports the use in litigation of the International Covenant on Economic, Social and Cultural Rights, the treaty that contains the most detailed protection of the right to housing (and other economic rights) but has not yet been ratified by the United States.

The practices of other nations can be also relevant even if they do not support a claim of customary international law. Courts, including the U.S. Supreme Court, cite and rely on such practices without analyzing whether they rise to the level of customary international law. For example, in a 1997 decision concerning the constitutionality of a state law banning assisted suicide, the Court cited the practices of other countries (in particular, "Western democrac[ies]").⁵⁹ Recently, the Supreme Court cited the practices of other nations, as well as international treaties, in its decision that abolished the death penalty for juveniles.⁶⁰ Several federal courts have recognized such norms in dicta, and continued advocacy will increase the prominence of international human rights in domestic proceedings.⁶¹

Making the Argument for the Right to Housing in the U.S.

As noted, the most significant treaty protecting the right to housing is the International Covenant on Economic, Social and Cultural Rights. As a signatory, the United States is obliged under the Vienna Convention to "refrain from acts which would defeat the object and purpose of a treaty."⁶² Thus the United States is bound not to take "retrogressive" actions with respect to the rights that the treaty protects. Further, as noted above,

⁵⁹ *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997).

⁶⁰ *Roper v. Simmons*, 125 S. Ct. 1183, 1198 (2005).

⁶¹ *See, e.g., Dandridge v. Williams*, 397 U.S. 471, 521 (1970); *Demjanjuk v. Petrovsky*, 1993 WL 394773 (6th Cir. 1993).

⁶² Vienna Convention, *supra* note 17.

jurisprudence emanating from the Human Rights Committee under the International Covenant on Civil and Political Rights recognizes obligations under the right to life in Article 6, as well as under guarantees of non-discrimination, to take positive measures to address poverty and homelessness. While the latter treaty is not self-executing, it can be used as an interpretive guide in cases where domestic law is absent or ambiguous; it may also be considered customary law and thus binding with the status of federal common law.

For example, the International Covenant on Civil and Political Rights protects the “right to liberty of movement and the freedom to choose [one’s] residence,” both of which are relevant to challenges to laws criminalizing homelessness.⁶³ However, while the U.S. Supreme Court has ruled that the Constitution protects the right to interstate travel, it has not ruled on the constitutional status (if any) of the intrastate right to travel. Some circuits protect that right while others do not; arguably U.S. law is ambiguous on this point, and the covenant could be cited to support recognition of the right. The covenant protects “equal protection of the law” and prohibits discrimination “on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁶⁴ This is also relevant to challenges to laws criminalizing homelessness and their unequal enforcement; such laws are often facially neutral but discriminatorily applied to homeless people based on their status - which could be considered either a property status or an “other” status of homelessness.⁶⁵

The Universal Declaration of Human Rights defines basic minimum economic standards as human rights. While it is not a treaty, and thus not binding by its terms, numerous scholars and courts have argued that the declaration is binding because it has acquired the status of customary international law.⁶⁶ Citations by numerous U.S. courts lend support to the view. This is particularly relevant to statutes that establish a general standard of need and to state constitutions that contain general statements about meeting needs.

⁶³ International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 12, 99 U.N.T.S. 171 (entered into force 1976).

⁶⁴ *Id.* art. 26.

⁶⁵ To argue, however, that the ICCPR creates a protected class status on these bases, as that term is understood in U.S. constitutional law, would be much more difficult. Indeed, in ratifying the ICCPR, the United States specifically noted its understanding that distinctions were permissible if rationally related to a legitimate government purpose and that distinctions with a disparate impact on protected class members were permitted. *See* ICCPR Understandings, *supra* note 11.

⁶⁶ Scott Leckie, *International Institute for Environment and Development, From Housing Needs to Housing Rights: An Analysis of the Right to Adequate Housing Under International Human Rights Law* 10 (1992); *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1384 (9th Cir. 1998) (violating the prohibition against arbitrary arrest and detention found in, *inter alia*, the UDHR and the ICCPR constitutes a potential violation of the law of nations); *See generally* Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32 *Am. U. L. Rev.* 1 (1982).

The Istanbul Declaration and the Habitat Agenda, a longer document elaborating on the declaration that was signed by the nations participating in the conference, are likewise not binding, nor do advocates contend that they are customary international law. Nevertheless, 171 nations, including the United States, signed and agreed to these documents, and they are very relevant to homelessness. In discussing the prohibition on forced evictions – part of the right to housing – the Habitat Agenda explicitly prohibits punishment of homeless persons based on their status. It also generally prohibits discrimination based on status in gaining “equal access to housing, infrastructure, health services, adequate food and water, education and open spaces.” For example, “sweeps” that remove people from outdoor encampments without notice or relocation to other housing can be considered “forced evictions” that violate the right to housing. Similarly, the destruction of public housing units – and consequent eviction of their residents – can be considered “forced evictions,” and advocates in one community are using this argument to challenge that destruction.⁶⁷

The United Nations’ Standard Minimum Rules for Treatment of Prisoners is a potential source of human rights law protecting prisoners who are released without housing and often deprived of rights, including the right to live in subsidized or public housing. The rules impose some duty to ensure a “home” and other means of support upon release and impose a duty on prisons for a plan for release. Further, they state that the purpose of imprisonment should be rehabilitation, not retribution. The International Covenant on Civil and Political Rights also prohibits punishment of prisoners beyond that imposed by their confinement. The Human Rights Committee urges that “persons deprived of their liberty not be subjected . . . to any hardship or constraint other than that resulting from deprivation of liberty.”⁶⁸

Current Status of the Right to Housing in U.S. Law

While a right to housing is well established under international law, in terms of purely domestic law, the existence of such a right is at least less certain. Under federal constitutional law, it is not clear whether a right to housing exists, and it seems unlikely that such a right would be found were it to be adjudicated before the current Supreme Court. While a right to housing, subject to a number of limitations, may have been developing under federal statutory law, this process appears to have been halted or at least postponed by changes made to public assistance programs in 1996. However, there is evidence that a right to housing could be developed under a number of state

⁶⁷ Noah Leavitt, *International Human Rights Violations Here in the U.S.: A U.N. Visit to Chicago’s Cabrini-Green Housing Project*, available at <http://writ.corporate.findlaw.com/leavitt/20040506.html> (2004); Laurene Heybach & Patricia Nix-Hodes, *Is Housing a Human Right?*, Homeward Bound (Chicago Coalition for the Homeless 2003). For more information, visit the Coalition to Protect Public Housing website at www.cpph.org.

⁶⁸ Human Rights Committee, *General Comment No. 21: Replaces General Comment 9 Concerning Humane Treatment of Persons Deprived of Liberty*, ¶ 3, 44th Sess., U.N. Doc. A/47/40 (1992).

constitutions and the right may be developing across the United States through state statutes and case law.⁶⁹

Constitutional Law

The U.S. Constitution does not mention a right to housing.⁷⁰ Moreover, the prevailing view of our Constitution appears to be one of negative liberties rather than affirmative duties, which would seem to run counter to finding a governmental duty to ensure housing.⁷¹ Nor is there any stated legislative recognition of a right to housing, and recent legislative changes have arguably undermined provisions in existing federal statutes. Nonetheless, some scholars and commentators have made arguments in support of such a right, and current federal laws and programs may be viewed as steps on which such a right could be built. But while long-term progress is possible, the immediate prospects for such recognition or creation of a right to housing seem challenging at best.⁷²

Lindsey v. Normet, a case often cited for the proposition that there is no right to housing under the U.S. Constitution,⁷³ addressed whether three provisions of the Oregon Forcible Entry and Wrongful Detainer (FED) Statute violated the Due Process or Equal Protection Clauses of the Fourteenth Amendment. In response to the homeless plaintiffs' claim that

⁶⁹ Florence Wagman Roisman, National Support Center for Low Income Housing, *Establishing a Right to Housing: An Advocate's Guide* 9 (1991) [hereinafter Roisman].

⁷⁰ See, e.g., Geoffrey Mort, *Establishing a Right to Shelter for the Homeless*, 50 Brook. L. Rev. 939, 943 n.23 (1984) ("Nowhere in the United States Constitution is such a right [to housing] even implied, and few, if any, cases have attempted to assert this position."); Christine Robitscher Ladd, *Note: A Right to Shelter for the Homeless in New York State*, 61 N.Y.U. L. Rev. 272, n.7 (1986) ("There is no affirmative right to shelter under the federal Constitution"); *Id.* (characterizing *Lindsey v. Normet*, 405 U.S. 56, 74 (1972), as standing for this proposition). The fact that such a right is not explicit does not foreclose the possibility of its existence. The Supreme Court has found a number of rights to be implicit in the Constitution, including the "right to privacy" and the "right to travel." Alexander Tsesis, *Eliminating the Destitution of America's Homeless: A Fair, Federal Approach*, 10 Temp. Pol. & Civ. Rts. L. Rev., 103, 122–23 (2000).

⁷¹ See, e.g., Judge Richard Posner's comment that "[t]he Constitution is a character of negative liberties; it tells the state to let people alone; it does not require the federal government or the state to provide services, even so elementary a service as maintaining law and order." *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982). See also, Lawrence Tribe, *The Abortion Funding Conundrum: Inalienable Rights, Affirmative Duties, and the Dilemma of Dependency*, 99 Harv. L. Rev. 330, 330 (1985) ("[T]he rights protected by the United States Constitution ... are ... usually understood ... to impose on government only a duty to refrain from certain injurious actions, rather than an affirmative obligation to direct energy or resources to meet another's needs."). For an apparently contrary view, see Charles L. Black, Jr., *Further Reflections on the Constitutional Justice of Livelihood*, 86 Colum. L. Rev. 1103, 1111–15 (1986) (arguing that affirmative duties on government are very much a part of the Constitution) [hereinafter Black].

⁷² It is important to note here that the constitution/statute/administrative program distinction is somewhat artificial and is being drawn for organizational clarity. There is obviously important interplay between these categories, and statutes, in particular, cannot be properly looked at separate from the relevant constitution(s).

⁷³ 405 U.S. 56 (1972).

the “need for decent shelter” and the “right to retain peaceful possession of one’s home”⁷⁴ are fundamental interests for the poor and that a higher level of constitutional scrutiny than minimum rationality was therefore mandated, Justice White stated that, “the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality, or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease without the payment of rent or otherwise contrary to the terms of the relevant agreement. Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions.”⁷⁵

There are at least two reasons why *Lindsey* should not be cited as making a categorical determination on the existence of a right to housing. First, at issue in that case was not the right to *any* shelter or housing but rather the right to housing meeting a certain level of *quality* and habitability. The homeless plaintiffs were citing the “need for *decent* shelter”⁷⁶ [emphasis added]; the majority declined to find a “constitutional guarantee of access to dwellings of a *particular quality*”⁷⁷ [emphasis added]. Justice Douglas’ dissent also focuses on the quality of housing rather than the right to any housing, quoting a passage about housing adequacy and then making reference to that adequacy as the “vital interest ... at stake.”⁷⁸ While some courts and commentators have read *Lindsey* as focusing on the “right to housing,” others have not. The Fifth Circuit, in *United Farmworkers of Florida Housing Project v. Delray Beach*, for example, stated that “we should note here that the farmworkers’ appeal is not based primarily upon a claim of denial of a fundamental right to *decent* housing, see *Lindsay v. Normet*.”⁷⁹

Further, the focus of the Court was on the terms of the lease; the Court apparently assumed that a right to “decent shelter” implied that that shelter would also be free. But, as explained above, human rights law does not necessarily require that housing be provided at no cost to all. Nor would it necessarily invalidate the specific provisions of a lease. Thus, it is possible to interpret *Lindsey v. Normet* as not relevant to the

⁷⁴ *Id.* at 73.

⁷⁵ *Id.* at 74.

⁷⁶ *Id.* at 73.

⁷⁷ *Id.* at 74.

⁷⁸ *Id.* at 84, quoting Judge Wright in *Javins v. First National Realty Corp.*, 138 U.S. App. D.C. 369, 372 (D.C. Cir. 1970) (“When American city dwellers, both rich and poor, seek ‘shelter’ today, they seek a well known package of goods and services – a package which includes not merely walls and ceiling, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance. This vital interest that is at stake may, of course, be tested in so-called summary proceedings.”).

⁷⁹ 493 F.2d 799 (5th Cir. 1974).

constitutional status of the right to housing as that housing is defined and understood in human rights jurisprudence.

A number of constitutional scholars, writing both before and after *Lindsey*, suggest that the Constitution should or may be interpreted to provide a right to minimum subsistence. Such a right is often defined as including not only housing but also food, livelihood, medical care, and other basic services. Commentators come to this conclusion by way of a number of different constitutional theories. Charles Black, for example, using the Ninth Amendment⁸⁰ as legitimating a search for unenumerated rights, argues that the Declaration of Independence and the preamble to the Constitution's "general welfare" clause⁸¹ support a "a constitutional right to a decent material basis for life."⁸²

Akhil Amar finds a federal government duty "to provide all individuals with a minimum level of sustenance and shelter"⁸³ in the Thirteenth Amendment.⁸⁴ Frank Michelman contends that the government has an affirmative obligation to meet the subsistence needs of the poor⁸⁵ under the Equal Protection clause of the Fourteenth Amendment.⁸⁶ Finally, Lawrence Tribe states that "the day may indeed come when a general doctrine under the Fifth and Fourteenth amendments recognizes for each individual a constitutional right to

⁸⁰ "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. amend. IX.

⁸¹ "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." U.S. Const. pmb.

⁸² Black, *supra* note 33 at 1105. Black finds that the Declaration of Independence supports such a right because poverty "is overwhelmingly, in the whole world, the commonest, the grimmest, the stubbornest obstacle we know to the pursuit of happiness." *Id.* at 1106. He finds such a right in the preamble's declaration that the Constitution's purpose is to "promote the general welfare." *Id.*

⁸³ See Robert C. Ellickson, *The Untenable Case for an Unconditional Right to Shelter*, 15 Harv. J.L. & Pub. Pol'y 17, 18–19 (1992), describing Akhil R. Amar, *Forty Acres and a Mule: A Republican Theory of Minimal Entitlements*, 13 Harv. J.L. & Pub. Pol'y 37, 39 (1990).

⁸⁴ "Neither slavery nor involuntary servitude ... shall exist within the United States, or any place subject to their jurisdiction Congress shall have the power to enforce this article by appropriate legislation." U.S. Const. amend. XIII.

⁸⁵ Professor Michelman's argument is based on his understanding of John Ely's case that the Constitution is meant to be "representation reinforcing," and he contends that effective political participation will not come from a person without a certain level of subsistence. Frank I. Michelman, *Welfare Rights in a Constitutional Democracy*, 1979 Wash. U. L.Q. 659, 666–79, n.1; John H. Ely, *Democracy and Distrust: A Theory of Judicial Review*, 77–104 (1980).

⁸⁶ U.S. Const. amend. XIV, § 1. ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall ... deny to any person within its jurisdiction the equal protection of the laws.")

a decent level of affirmative governmental protection in meeting the basic human needs of physical survival and security, health and housing, work and schooling”⁸⁷

Federal Statutes

Prior to 1996, the federal-state Aid to Families with Dependent Children (AFDC) program, including the Emergency Assistance and Special Needs Programs, offered states the opportunity to receive federal contributions for the support and maintenance of families with dependent children, and to improve their housing conditions in particular.⁸⁸ Established under Title IV-A of the Social Security Act of 1935, the program was designed to encourage “the care of dependent children *in their own homes or in the homes of relatives* by enabling each State to furnish financial assistance and rehabilitation and other services ... to needy dependent children and the parents or relatives with whom they are living”⁸⁹ Advocacy efforts involving AFDC focused on setting more realistic standards of need and associated benefit levels as well as securing “actual shelter, housing or housing assistance.”⁹⁰ There were significant advocacy and litigation successes as regards both approaches.⁹¹

In the context of the right to housing, two aspects of AFDC are significant. First, it was an entitlement program; if families with dependent children had incomes and resources below the standard of need, they were guaranteed some, however inadequate, funding.⁹² Second, although AFDC was an entitlement to public assistance generally, close links can be drawn between the program and housing, as noted above.⁹³ Therefore, despite its shortcomings, AFDC could have been a route to fulfilling U.S. obligations under the Habitat Agenda and under international law, at least for households eligible for assistance.⁹⁴ Its repeal was an unfortunate development and possibly a backward step in that regard.

⁸⁷ See Laurence H. Tribe, *American Constitutional Law*, 779 (2d Ed. 1988), as quoted in *Moore v. Ganim*, 233 Conn. 697, n.61 (1995) (Berdon, J., dissenting).

⁸⁸ The following description of AFDC and its relationship to the “right to housing” relies heavily on Roisman, *supra* note 38, at 13–29.

⁸⁹ 42 U.S.C. § 601, as cited in Roisman, *supra* note 38, at 13.

⁹⁰ *Id.* at 17.

⁹¹ *Id.*

⁹² *Quern v. Mandley*, 436 U.S. 725, 740 (1978), as quoted in Roisman *supra* note 38, at 18.

⁹³ Vancouver Declaration on Human Settlements and Plan of Action, U.N. Conference on Human Settlements, U.N. Doc. A/CONF.165/PC.1/INF.8 (1976).

⁹⁴ “If the public assistance benefit to which AFDC recipients are entitled were held to include housing, or housing assistance, that would create an entitlement to housing or housing assistance for AFDC-eligible households.” Roisman, *supra* note 38, at 18.

The Temporary Assistance for Needy Families program (TANF)⁹⁵ replaced the AFDC, Emergency Assistance, and Special Needs programs in 1996 as Title I of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).⁹⁶ TANF provides block grants (fixed lump sums) to the states and allows states, subject to statutory limitations, broad discretion in the administration and design of welfare programs. States can determine who is eligible for assistance, what levels of what types of benefits they will receive, and how long they will receive those benefits, among other things.⁹⁷ While TANF is directed at a similar group, namely families with dependent children, it is a significantly different program. First, and most importantly for purposes of a right to housing, it is not an entitlement program.⁹⁸ While progress under AFDC might have moved towards a right to housing, expansion of benefit levels under TANF or the inclusion of housing assistance would likely be a shaky foundation for a right to housing.

Another federal statute that provides some housing rights protections for certain groups is the Fair Housing Act. The Fair Housing Act (FHA) prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability. Therefore, the FHA prohibits discriminatory actions, including refusal to rent, refusal to make a mortgage loan, or differential treatment in the sale, rental or financing of dwellings, against people in these categories. The FHA also forbids landlords from refusing to allow people with disabilities to make reasonable modifications to their dwellings or common use areas to accommodate those disabilities. Fair housing complaints can be filed with the U.S. Department of Housing and Urban Development or individuals can file a private suit on their own for violations of the FHA.

Finally, the recently passed Violence Against Women Act of 2005 (VAWA 2005) creates new housing protections for victims of domestic violence, dating violence, sexual assault, and stalking.⁹⁹ The new law recognizes that domestic violence greatly contributes to

⁹⁵ Personal Responsibility and Work Opportunity Reconciliation Act, 42 U.S.C.A. §§601-619 (1996) [hereinafter PRWORA].

⁹⁶ *Id.*

⁹⁷ As described in Sheryll D. Cashin, *Federalism, Welfare Reform, and the Minority Poor: Accounting for the Tyranny of State Majorities*, 99 Colum. L. Rev. 552, 561 (1999). This article also makes the interesting argument that given the risk of the “tyranny of the majority,” TANF’s decentralization of fundamental redistributive questions to the states is likely to produce consequences inconsistent with its stated purpose of “providing assistance to needy families so that children may be cared for.” *Id.* at 554-5. The author argues that the federal government should therefore be “more interventionist by including more national standards or incentives that direct state action” but that beyond that, decentralization’s potential benefits exceed its risks to the poor. *Id.* at 555.

⁹⁸ PRWORA, *supra* note 64, § 601 (b) (“No Individual Entitlement – This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part”).

⁹⁹ The discussion of VAWA 2005 is taken primarily from: National Law Center on Homelessness and Poverty, *The Impact of the Violence Against Women Act of 2005 (VAWA) on the Housing Rights and Options of Survivors of*

homelessness in the United States, and victims of domestic violence experience housing discrimination because of their abusers' actions. Thus, the law contains explicit housing protections to help overcome these problems.

VAWA 2005 ensures that one's status as a victim of domestic violence, dating violence, or stalking may not be used as a basis for denying federal housing assistance. It also establishes an exception to the federal "one-strike" criminal activity eviction rule for public housing tenants who are victims. Furthermore, it amends federal housing planning requirements to ensure that the needs of victims are considered in local planning processes.

Like the FHA, VAWA aims to eliminate barriers to housing. Though it does not create an entitlement to adequate housing, it extends access to adequate housing to a larger group of people. By creating an exception to the "one-strike" eviction rule and prohibiting denial of housing based on a person's status as a victim, it also implies that those in need of housing should be able to have access to it unless there is a specific reason why they may not. Although these protections only work within discretionary programs, they take steps towards equality in housing access.

Federal Administrative Programs

There are also a number of federal programs¹⁰⁰ related specifically to housing that may help address U.S. fulfillment of the right to adequate housing.¹⁰¹ These programs, administered by the Department of Housing and Urban Development (HUD), include the Public Housing Program,¹⁰² the Housing Choice Voucher Program (Section 8),¹⁰³ the HOME Program¹⁰⁴ and supportive housing for particular vulnerable groups, including

Domestic and Sexual Violence (2006) (hereinafter *VAWA Fact Sheet*).

¹⁰⁰ See generally Chester Hartman, *The Case for a Right to Housing*, 9 *Housing Pol'y Debate* 223- 246 (1998), for a discussion of several statutes on which a right to housing might be founded.

¹⁰¹ At least one commentator, taking the view that a right to housing was, if not conclusively determined under *Lindsey*, at least unlikely to change in the near future, stated that any entitlement to housing should come in legislative form. Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 *U. Miami L.Rev.* 315, 325-6 (1990).

¹⁰² This program provides "decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities." HUD, *Public Housing Program Fact Sheet*, available at <http://www.hud.gov/renting/phprog.cfm> (last visited Oct. 16, 2007) [hereinafter *Public Housing Fact Sheet*] (site also includes other information on the federal public housing program).

¹⁰³ This program is "the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe and sanitary housing in the private market" and operates through the payment of housing subsidies through local public housing agencies. HUD, *Housing Choice Voucher Program Fact Sheet (Section 8)*, available at http://www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm (last visited Oct. 16, 2007) [hereinafter *Section 8 Fact Sheet*] (site also includes other information on the Section 8, Housing Choice Voucher program).

¹⁰⁴ "HOME is the largest Federal block grant to State and local governments designed exclusively to create

those for the elderly (Section 202)¹⁰⁵ and those for persons with disabilities (Section 811).¹⁰⁶ In addition, VAWA 2005 creates new programs to meet the needs of victims of domestic violence, dating violence, and stalking.¹⁰⁷ The statute creates a new federal grant program for public and assisted housing agencies to address domestic violence through agency policy changes, training, and best practices, and a new program to ensure local community collaboration in developing long term affordable housing for victims. It also acts to ensure voluntary participation in supportive services within the existing transitional housing program for victims of domestic violence, and to permit operating expenses to be an eligible use of funds. These programs do not create entitlements; rather, they are “discretionary” programs that provide assistance only to the degree that they are funded.

On the positive side, these programs serve a vitally important role in helping some inadequately housed and homeless families and individuals. In reference to the definition of the right to adequate housing by the Special Rapporteur on the Right to Adequate Housing under the U.N. Commission on Human Rights, these programs do help some segments of the target population¹⁰⁸ to receive or “access” “housing resources.”¹⁰⁹ Further, the programs arguably do represent “policy and legislative recognition” of some “constituent aspects of the right,”¹¹⁰ and thus represent “tak[ing] steps” towards a “progressive” realization of the right. In some limited ways, the affected group can make

affordable housing for low-income households.” HUD, *HOME Investment Partnerships Program Purpose*, available at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm> (last visited Oct. 16, 2007) (site also includes other information on the HOME program).

¹⁰⁵ This program “provides capital advances to finance the construction, rehabilitation or acquisition...of structures that will serve as supportive housing for very low-income elderly persons...and provides rent subsidies for the projects to help make them affordable.” HUD, *Section 202 Supportive Housing for the Elderly Program Summary*, available at <http://www.hud.gov/offices/hsg/mfh/progdsc/eld202.cfm> (last visited Oct. 16, 2007) (also includes a description of the Supportive Housing for the Elderly program).

¹⁰⁶ This program “provides funding to nonprofit organizations to develop rental housing with the availability of supportive services for very low-income persons with disabilities, and provides rent subsidies to help make them affordable.” HUD, *Section 811 Supportive Housing for Persons with Disabilities Summary*, available at <http://www.hud.gov/offices/hsg/mfh/progdsc/disab811.cfm> (last visited Oct. 16, 2007) (also includes a description of the Section 811 program).

¹⁰⁷ Discussion based on *VAWA Fact Sheet*.

¹⁰⁸ The target population includes the “homeless, inadequately housed ... [and those] generally incapable of acquiring the bundle of entitlements implicitly linked with housing rights.” *Special Rapporteur’s Report on The Right to Adequate Housing*, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, U.N. ESCOR, U.N. Doc. E/CN.4/Sub.2/1995/12 (1995). [hereinafter Special Rapporteur’s report].

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at ¶ 12(c).

a “claim or demand ... upon society” for fulfillment of their right to housing.¹¹¹ Members of certain defined groups – low-income families, the elderly and the disabled – can make claims for the “provision of or access to housing resources,”¹¹² although because the programs are not adequately funded, these claims may not be honored, or the wait for them to be fulfilled may take years.¹¹³ Finally, many of the programs address concerns of adequacy, under the seven-prong definition given in General Comment No. 4. They tend to focus in particular on the prong of “affordability,” which has been widely noted as a special concern in U.S. housing markets.

However, these programs fall short of fulfilling the right to housing in important ways. First, they do not represent steps taken to the “maximum of available resources” to realize the right by “all appropriate means.”¹¹⁴ These terms are imprecise because they are context-driven and written in generalized language; nevertheless, they remain useful benchmarks. Given that the U.S. is the wealthiest nation in the world, the “maximum of available resources” should be more than sufficient to adequately finance these programs. In many of these programs, however, demand well exceeds the inadequate funding available. Under the Public Housing and Section 8 programs, “long waiting periods are common” for just this reason.¹¹⁵ Prioritization is a key issue here; even in the area of federal housing subsidies, only a relatively small amount goes toward low-income housing.¹¹⁶

Similarly, these programs do not “ensure *everyone* has access to housing resources” [emphasis added].¹¹⁷ While this requirement is subject to “progressive” fulfillment,¹¹⁸

¹¹¹ *Id.* at ¶ 12(a).

¹¹² *Id.*

¹¹³ *See, e.g.,* U.S. Conference of Mayors, *2003 Report on Hunger and Homelessness* 84 (2003). (In the cities surveyed, average wait for public housing was 24 months, for Section 8 certificates 26 months, and for housing vouchers 27 months.)

¹¹⁴ CESCR, Article 2(1). Understanding that the U.S. has not ratified the CESCR, this document is still useful as an interpretive guide to the parameters of the “right to adequate housing.”

¹¹⁵ *Section 8 Fact Sheet*, *supra* note 72; *Public Housing Fact Sheet*, *supra* note 71.

¹¹⁶ By way of illustration, it is significant to note that the bulk of these housing subsidies go to the Mortgage Interest Tax Deductions, Property Tax Deductions, and Capital Gains provisions, which support home ownership, rather than to programs like the Low Income Tax Credit, which benefit very low income individuals. The housing revenue lost due to the total 2004 tax deductions totaled \$119.3 billion, more than three times the 2004 low income housing assistance spending. In total, the top fifth of the population (people making \$148,138 on average) received a benefit of \$100 billion from the various housing subsidies in 2004, while the bottom fifth (people making \$10,295 on average) received a benefit of only \$30.4 billion. Cushing N. Dolbear, Irene Basloe Saraf, & Sheila Crowley, Nat’l Low Income Hous. Coal., *Changing Priorities: The Federal Budget and Housing Assistance 1976-2005* (2004) <http://www.nlihc.org/doc/cp04.pdf>.

¹¹⁷ Special Rapporteur’s report, *supra* note 77 at ¶ 12(a).

¹¹⁸ CESCR, article 2(1).

within the context of abundant resources, the qualification should be a minor one. The limitation on eligibility for assistance to certain groups of people in need also is not consistent with access being provided to everyone. The Public Housing program, for example, is limited to low-income families and elderly and disabled individuals. Further, not all who are eligible are aided, as demonstrated by lengthy, sometimes closed, waiting lists for housing assistance.

Finally and perhaps most obviously, these programs do not provide that members of society should be able to make a “*claim or demand ... upon society* for provision of or access to housing resources.”¹¹⁹ First of all, as noted in the preceding paragraph, not all of the homeless or inadequately housed can make any demand on society. Most individuals are excluded *de jure* from making such demands. Second, the value of such a claim on society will be determined by the remedy society provides for that claim. The remedy here is often inadequate or very slow in coming by virtue of the limited resources committed to these programs. This effectively prevents many families from satisfaction of their demands on society. Third, as the ability to make these demands is created by federal program, rather than statute or constitution, it can presumably be more readily abrogated. That which can be so readily extinguished by administrative fiat arguably does not rise to the level of a “right,” which is in part defined by its theoretical (although not practical) inalienability.

State Law

State constitutional and statutory law may provide more opportunity for finding and developing a right to housing in the United States.¹²⁰ Individual states, rather than the national government, may be more likely to develop compliance with international law as regards the right to housing.

State Constitutions with Explicit Housing or Subsistence Provisions¹²¹

Several state constitutions contain the seeds of a right to housing. This nascent potential has been cultivated by some advocates for the poor, with varying degrees of success. In at least one state, a right to housing and a concomitant state duty to provide that housing has emerged, albeit with some qualifications. This section will discuss whether state constitutions could and should support a right to housing. It will then look at the

¹¹⁹ Special Rapporteur’s Report, *supra* note 77 [emphasis added].

¹²⁰ Roisman, *supra* note 38.

¹²¹ Note that this report did not do an entirely independent review of state constitutions, relying heavily on earlier articles written on the subject. The particularly significant articles include: Roisman, *supra* note 38; Alexander Tsesis, *supra* note 39; Daan Braveman, *After the War: Poverty Law in the 1980s: Children, Poverty and State Constitutions*, 38 Emory L.J. 577 (1989) [hereinafter Braveman]; and Langdon & Kass, *Homelessness in America: Looking for the Right to Shelter*, 19 Col. J.L. & Soc. Probs. 305, 308 (1986) [hereinafter Langdon & Kass].

potential of state constitutions in developing a right to housing and where states have taken steps toward or achieved such a right.

State constitutions are a recognized and important source of rights apart from the U.S. Constitution. “[T]he issue is directed at what states *should* do, not what they *may* do. It is clear that states are free to interpret their own constitutions without regard to interpretations of the federal Constitution.”¹²² States have a “sovereign right” to construe their constitutions more broadly than the federal Constitution,¹²³ with the latter document essentially setting a “floor” on rights, which states are free to rise above but cannot fall below.¹²⁴

Many commentators have further stated that not only can states follow an independent path as regards rights under their own constitutions but also that they should do so. One commentator has argued that there is a “myth of parity”¹²⁵ between the federal and state constitutions and that for state courts to be “guided by federal constitutional law in their state constitutional jurisprudence is an error not merely of judgment, but of logic.”¹²⁶ There are a number of arguments as to why state courts should not hesitate to diverge from interpretations of the Federal Constitution. Legal methodologies typically favor interpreting constitutions based on their text, tradition, policy implications, and/or associated case law, all of which can be and often are different for states than they are for the Federal Constitution. As a practical matter, it may be useful for advocates to focus on claims under state constitutions.¹²⁷

¹²² Braveman, *supra* note 90 at 593.

¹²³ *Pruneyard Shopping Center v. Robbins*, 447 U.S. 74, 81 (1980), *quoted in* Braveman, *supra* note 90, at 593. *See also* *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 293 (1982), *cited in* Cohen, *After the War: Poverty Law in the 1980s: More Myths of Parity – State Court Forums and Constitutional Actions for the Right to Shelter*, 38 *Emory L.J.* 615, 623 (1989) (“a state court is entirely free to read its own State’s constitution more broadly than [the Supreme Court] reads the Federal Constitution, or to reject the mode of analysis used by [the] Court in favor of a different analysis of its corresponding constitutional guarantee.”).

¹²⁴ Braveman, *supra* note 90, at 593.

¹²⁵ *See* Neuborne, *The Myth of Parity*, 90 *Harv. L. Rev.* 1105 (1976) (criticizing the Supreme Court’s holding in *Stone v. Powell*, 428 U.S. 465 (1976). *Stone* held that a state court can afford a party the opportunity to vindicate their federal constitutional rights as well as a federal court). Neuborne’s article argued that there are a number of differences between federal courts and state courts that make federal courts better at vindicating parties’ federal rights. Neuborne, *as cited and interpreted in* Cohen, *supra* note 92, at n.8.

¹²⁶ *Id.* at 617; *see also* Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 *Harv. L. Rev.* 1131 (1999) (arguing that the policy concerns mandating rational review in federal constitutional analysis (efficiency and federalism, in particular) are not relevant for state constitutions and state courts should therefore be free to employ strict scrutiny in circumstances where federal courts are bound to use rationality review).

¹²⁷ Some have argued that state constitutions may more closely embody Americans’ fundamental values: “In ways that are simply beyond their reach at the federal level, the people of a state have the opportunity to make immediate choices about fundamental issues of constitutional law. State constitutions are documents of aspiration as well as of government. They reflect historic and contemporary debates over great issues. They allow the people to articulate and refine a theory of self-government, to decide what values they hold most

State constitutions may be divided into two categories relevant to a possible right to housing: those with explicit provisions that can be related to the poor, and those without such provisions. These will both be discussed in turn.

dear, to fashion protections for individual rights, and, in the final analysis, to act responsibly for themselves and their posterity.” Howard, *Introduction: A Frequent Recurrence to Fundamental Principles*, in *DEVELOPMENTS IN STATE CONSTITUTIONAL LAW*, xi, xxiii (B.McGraw ed. 1985) (bibliography).

At least twenty-five state constitutions¹²⁸ contain provisions concerning aid to the poor or the protection of the public's health or welfare.¹²⁹ The relevant language in each of these

¹²⁸ The twenty-five states are: Alabama (“It [is] the duty of the legislature to require the several counties of this state to make adequate provision for the maintenance of the poor.”) Ala. Const. art. IV, § 88; Alaska (“The legislature shall provide for public welfare.”) Alaska Const. art. VII, § 5; California (authorizes legislature to enact laws relating to relief administration) Cal. Const. art. XVI, § 11; Colorado (requiring the provision of a pension to Colorado residents – and United States citizens – over the age of sixty, subject to other requirements determined by the legislature) Colo. Const. art. 24 § 3; Delaware (“The General Assembly shall provide for the establishment and maintenance of a State Board of Health which shall have supervision of all matters relating to public health.”) Del. Const. art. XII, § 1; Georgia (authorizes local governments to contract with public entities for the care of its indigent sick) Ga. Const. art. IV, § 3, para. 1; Hawaii (reaffirms a belief in government with “an understanding and compassionate heart toward all the peoples of the earth.”) Haw. Const. pmbl; Idaho (State must establish and support “education, reformatory, and penal institutions,” to provide for the “public good” of the “insane, deaf and dumb.”) Idaho Const. art. X, § 1; Illinois (the state Constitution is ordained and established among other reasons to “eliminate poverty and inequality; assure legal, social and economic justice; [and] provide opportunity for the fullest development of the individual.”) Ill. Const. pmbl; Indiana (authorizes county boards to establish farms to house those who “have claims upon the ... aid of society”) Ind. Const. art. IX, § 3; Kansas (“The ... counties of the state shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon the aid of society.”) Kan. Const. art. VII, § 4; Louisiana (authorizes legislature to establish welfare and unemployment compensation as well as public health measures) La. Const. art. XII, § 8; Michigan (“The legislature shall pass suitable laws for the protection and promotion of public health.”) Mich. Const. art. IV, § 51; Mississippi (authorizes legislature to provide homes to those who have claims upon the aid of society) Miss. Const. art. XIV, §262; Missouri (“[T]he general assembly shall establish a department of public health and welfare[.]”) Mo. Const. art. IV, § 37; New York (“The aid, care and support of the needy ... shall be provided by the State[.]”) N.Y. Const. art. XVII, §§ 1, 3; Nevada (“Institutions for the benefit of the Insane, Blind and Deaf and Dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the State, subject to such regulations as may be prescribed by law.”) N.V. Const. art. 13 § 1; North Carolina (“Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.”) N.C. Const. art. XI, § 4; New Mexico (authorizes state and local governments to make provisions relating to the care of sick and indigent persons) N.M. Const. art. IX, § 14; Oklahoma (“The several counties of the State shall provide, as may be prescribed by law, for those inhabitants who, by reason of age, infirmity, or misfortune, may have claims upon the sympathy and aid of the county.”) Okla. Const. art. XXVII, § 3; Rhode Island (“All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens.”) R.I. Const. art. I, § 2; South Carolina (“The health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern.”) S.C. Const. art. XII, § 1; Texas (authorizes payment of assistance to needy) Tex. Const. art. III, § 51a; West Virginia (“Coroners, overseers of the poor and surveyors of roads shall be appointed by the county court”) W.V. Const. art. IX § 2; and Wyoming (duty of the legislature to provide for “the health and morality of the people.”) Wyo. Const. art. VII, § 20. Until 1988, Montana also had such a provision. Mont. Const. art. XII, § 3 (3) (1987) (“The legislature shall provide such economic assistance and social and rehabilitative services ... for those ... who ... *may have need for the aid of society.*” [emphases added]). Montana now fits in the second category of Constitutions, which authorize but do not require aid to the poor. See Mont. Const. art. XII, § 3 (3) (1988) (“[t]he legislature may provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities or misfortune *are determined by the legislature to be in need.*” [emphases added]). This list and the quotations are primarily an updating of Braveman, *supra* note 90, at 595 & nn.85–96.

¹²⁹ Other commentators differ on the number of state constitutions containing such provisions, due to definitional differences (provisions related to aid of the poor compared with provisions related to aid of the poor or the general welfare). Compare Dennis D. Hirsch, *Making Shelter Work: Placing Conditions on an Employable Person's Right to Shelter*, 100 Yale L.J. 491, 508 (1990) (citing Langdon & Kass, *supra* note 90, at 332-334), with Braveman, *supra* note 90, at 595 & nn.85–96.

constitutions varies significantly. However, the constitutions can be roughly divided into the following three categories, corresponding to increasing levels of government obligation: those containing a statement of principle regarding the less fortunate, those that contain provisions authorizing the state or local government entities to provide for the poor or the health of its citizens, and those that refer to a governmental obligation to care for the needy or protect the health or welfare of all citizens.¹³⁰ While the former two categories may provide some opportunities, the latter category has proven to be both the most frequently adjudicated and the most successful in developing a right to housing.

Of these twenty-five state constitutions, there are at least four containing statements of principle regarding the less fortunate: Hawaii, Illinois, Rhode Island and South Carolina. The preamble to the Hawaii Constitution, for example, affirms that government should have “an understanding and compassionate ear toward all the peoples of the earth.”¹³¹ The South Carolina Constitution states that “[t]he health, welfare and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern.”¹³²

Given their generality, these provisions are unlikely to form a primary basis for housing rights; and, in fact, they appear not to have been adjudicated. They could, however, provide secondary or additional support of such a right. However, they have apparently not done so. The purposes of the Illinois Constitution, for example, are to “eliminate poverty and inequality; assure legal, social and economic justice; [and] provide opportunity for the fullest development of the individual.”¹³³ Despite the seeming relevance of the preamble, however, the Illinois Supreme Court did not even mention the preamble in deciding, on state constitutional grounds, that there is no obligation to support the poor and that the legislature therefore has broad discretion in designing welfare laws.¹³⁴

There are at least eight state constitutions containing provisions authorizing the state or a local government entity to provide for the poor or the health of its citizens. These

¹³⁰ These categories are drawn from Braveman, *supra* note 90, at 595–97. Note that Professor Braveman’s list of relevant state constitutions is the same but for three additional states included in this analysis: Colorado, Idaho, and Rhode Island. Those states were drawn from other lists, including Langdon & Kass, *supra* note 90; and Tsesis, *supra* note 39.

¹³¹ Haw. Const. pmbl, *supra* note 97.

¹³² S.C. Const. art. XII, § 1, *supra* note 97.

¹³³ Ill. Const. pmbl, *supra* note 97.

¹³⁴ *Warrior v. Thompson*, 96 Ill. 2d 1, 12 (1983). Decision criticized in Braveman, *supra* note 90, at 593 (“Noticeably absent from the decision was any reference to the preamble. At the very least, the court should consider the language of the preamble and whether it might justify more careful line drawing by the state legislature in the area of social welfare.”).

provisions directly refer to the care of either the poor or the health of state citizens without defining a specific governmental obligation to provide for that care. The state constitutions at issue include those of California, Georgia, Indiana, Louisiana, Mississippi, New Mexico, and Texas. Article XVI, § 11 of the California Constitution provides an example of one of these provisions, which tend to give quite broad authority while being relatively clear that they are not creating a governmental duty:

The Legislature has plenary power to provide for the administration of any constitutional provisions or laws heretofore or hereafter enacted concerning the administration of relief, and to that end may modify, transfer, or enlarge the powers vested in any state agency or officer concerned with the administration of relief or laws appertaining thereto. The Legislature, or the people by initiative, shall have power to amend, alter, or repeal any law relating to the relief of hardship and destitution, whether such hardship and destitution results from unemployment or from other causes, or to provide for the administration of the relief of hardship and destitution, whether resulting from unemployment or from other causes, either directly by the State or through the counties of the State, and to grant such aid to the counties therefor [sic], or make such provision for reimbursement of the counties by the State, as the Legislature deems proper.¹³⁵

Third and finally, there are thirteen or more constitutions referring to a government obligation to care for the needy or to protect the health or welfare of all citizens. Given the relative specificity of these provisions and the explicit governmental obligation, it is not surprising that these constitutional provisions have been the most frequently adjudicated in the search for a right to housing.¹³⁶ A right to housing or public assistance has come up in nearly half of these states, with varied results.¹³⁷ Constitutions of this type seem to be the most promising route for right to housing advocates, as evidenced by their qualified success.

Language about the poor or the health and welfare of all citizens in the constitutions of Alabama, Alaska, Delaware, Idaho, Kansas, Michigan, Missouri, Montana, New York, North Carolina, Oklahoma, West Virginia, and Wyoming is quite varied, but all note

¹³⁵ Cal. Const. art. XVI, § 11.

¹³⁶ The crucial difference between constitutions that authorize and those that obligate particular treatment of the poor is further illustrated by the experience of Montana discussed in a section below.

¹³⁷ Note that this refers to state *constitutions* only, as statutory rights to housing or minimum public assistance have been found in a number of these states, including those where constitutional issues on the right to housing have not been adjudicated (*e.g.* West Virginia).

governmental duties to these groups. The Constitution of North Carolina, for example, states that “[b]eneficent provision for the poor, the unfortunate, and the orphan is one of the first *duties* of a civilized and Christian state. Therefore the General Assembly *shall* provide for and define the *duties* of a board of public welfare.”¹³⁸ The Wyoming Constitution, in contrast, says that it is the “[*d*]uty of the legislature to protect and promote the health and morality of the people.”¹³⁹ Article XVII of the New York Constitution states simply that, “The aid, care and support of the needy ... *shall* be provided by the State.”¹⁴⁰

A right to housing or some form of minimum subsistence has come up in six of these states, namely Alabama, Delaware, Kansas, New York, Montana, and Idaho.¹⁴¹

Alabama: Alabama has found a governmental duty to provide for the maintenance of the poor but unfortunately has done so in what appears to be a legally unenforceable manner. The state has, however, found a narrow duty to provide for the involuntarily committed.

In 1953, the Alabama Supreme Court found that the legislature has a mandatory duty to require counties to provide adequately for the maintenance of the poor under Article IV, § 88 of the state constitution.¹⁴² Unfortunately, however, the court then turned this important governmental obligation, backed by force of law, into the practical equivalent of nothing more than moral imperative by commenting that “of course there is no way to force the legislature to perform that duty, although it has always undertaken to do so.”¹⁴³ The court also defers entirely to the legislature in defining who does and does not constitute the poor,¹⁴⁴ further taking the teeth out of the governmental duty to the poor. Two Alabama cases in 1989 and 1992 suggest that there is a right to “pre-commitment care and treatment” for indigent “citizens who had been involuntarily committed to the custody of the Department of Mental Health.”¹⁴⁵ However, this right to “care” is not defined.

¹³⁸ N.C. Const. art. XI, § 4, *supra* note 97 [emphasis added].

¹³⁹ Wyo. Const. art. VII, § 20, *supra* note 97 [emphasis added].

¹⁴⁰ N.Y. Const. art. XVII, §§ 1, 3, *supra* note 97 [emphasis added].

¹⁴¹ Of the other six states, at least one, West Virginia, has found a statutory right to housing.

¹⁴² Ala. Const. art. IV § 88, *supra* note 97, as interpreted by *Atkins v. Curtis*, 259 Ala. 311 (1953).

¹⁴³ *Atkins*, 259 Ala. at 315.

¹⁴⁴ *Id.* at 316.

¹⁴⁵ *Childree v. Health Care Authority of the City of Huntsville*, 548 So.2d 419 (Ala. 1989); and *Health Care Authority of the City of Huntsville v. Madison County*, 601 So.2d 459 (Ala. 1992).

Delaware: In *Tilden v. Hayward*, the Delaware Court of Chancery held that there was no right to “financial assistance to secure housing,” in the Federal or Delaware Constitutions or statutes.¹⁴⁶ The Court recognized, however, that both moral and economic considerations “plainly support the plaintiffs’ position.”¹⁴⁷ On the moral side, the judge noted that “[t]his case is about basic human rights” and that government has a “moral obligation to eliminate the evils of poverty, of which one of the most serious modern examples is homelessness.”¹⁴⁸ As an economic consideration, the judge pointed out that “[i]t has been shown again and again that it is more economical to house an intact family than to provide child protective services for a single child.”¹⁴⁹

Despite this “plain support,” the judge reasoned that to decide in accordance with these policy concerns would be to ignore courts’ institutional role and “principles of restraint”¹⁵⁰ and that there would be “severe practical problems” with “crafting a meaningful judicial decree.”¹⁵¹

Despite this result, the Delaware decision has been cited in support of a right to minimum subsistence. The dissent in a landmark 1995 case before the Connecticut Supreme Court, for example, stated that *Tilden* “expressly recognized that other state constitutions do, in fact, provide such a right, and noted that the language of a state constitution and its history are important factors to consider in determining whether such a state constitutional right exists.”¹⁵²

Idaho: Under Article X, § 1 of its state Constitution, Idaho is bound to establish “institutions ...for the benefit of the insane, blind, deaf and dumb.”¹⁵³ This provision arguably creates “an affirmative right to the homeless who are mentally ill.”¹⁵⁴

Kansas: In Kansas, the state has a duty to “inhabitants who ... may have claims upon the aid of society,”¹⁵⁵ but the requirements of this duty to provide some public assistance do

¹⁴⁶ *Tilden v. Hayward*, 1990 WL 131162 (Del. Ch. 1990).

¹⁴⁷ *Id.* at 17.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at n.20.

¹⁵² Moore, 233 Conn. at 688 (A.J. Berdon, dissenting).

¹⁵³ Idaho Const. art. X, § 1, *supra* note 97.

¹⁵⁴ Tesis, *supra* note 39, at 124.

¹⁵⁵ Kan. Const. art. VII, § 4.

not appear to have been clarified.¹⁵⁶ Article VII, § 4 of the Kansas Constitution states that “[t]he ... counties of the state shall provide ... for those inhabitants who ... may have claims upon the aid of society.”¹⁵⁷ This provision was noted in a 1922 case involving emergency medical aid for a homeless child, which held that it is the

duty of the overseer to care for the poor, and to see that they are given relief, and it is the duty of the board of county commissioners to raise money and pay for such care and relief (Gen. Stat. 1915 §§ 6820, 6822, 6851). The constitution enjoins this care and commands that counties of the state shall provide for the poor and those who have claims upon the sympathy and aid of society. (Art. 7, § 4.) When an overseer of the poor finds a poor person in need of care, it is his duty to furnish him prompt and proper relief.¹⁵⁸

There may be arguments that emergency medical care is fundamentally different from shelter and that the state duty to provide one does not imply a state duty to provide the other. Some other courts have, however, suggested that both (in addition to food) are required elements for “minimum subsistence necessary for humane survival.”¹⁵⁹

Montana: In 1987, the Montana Supreme Court found a state constitutional duty to aid the poor.¹⁶⁰ However, the state legislature amended the state constitution the following year to make the commitment to the poor discretionary.

In *Butte Community Union v. Lewis*, the Montana Supreme Court found that “[c]learly and grammatically ... the State Constitution imposes upon the legislature a duty to provide necessary economic assistance to inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.”¹⁶¹ While it found that there was no

¹⁵⁶ See *Bullock v. Whiteman*, 254 Kan. 177 (1993). *Bullock* was cited by the Connecticut Supreme Court for the proposition that there are no “affirmative state constitutional rights to subsistence benefits” in Kansas. *Moore*, 233 Conn. at 584. The dissenting opinion in the same case, however, points out that the *Bullock* opinion “explicitly avoided” this holding. *Id.* at 692 (Berdon, A.J., dissenting). *Bullock* itself does not deny the existence of a duty to the poor, stating that “[t]he real issue is the depth, and breadth, of that duty.” 254 Kan. at 183. This case raises interesting questions about how to define who is “poor” and therefore eligible for aid but it does not undermine the Kansas Supreme Court’s 1922 holding, in *Caton & Starr v. Board of County Commissioners*, that a duty to the poor does exist. 110 Kan. 711, 714 (1922).

¹⁵⁷ Kan. Const. art. VII, § 4.

¹⁵⁸ *Caton & Starr*, 110 Kan. at 714.

¹⁵⁹ *Moore*, 233 Conn. at 661 (A.J. Berdon, dissenting).

¹⁶⁰ *Butte Community Union v. Lewis*, 229 Mont. 212 (1987).

¹⁶¹ *Id.*

fundamental right to welfare because the provision in question was not in the Constitution's Declaration of Rights, it did say that welfare benefits are "lodged in" the Montana Constitution and warrant a heightened, middle-tier level of constitutional scrutiny.

The following year, a constitutional amendment changed the obligatory language ("shall") and character of this constitutional provision to one authorizing governmental intervention.¹⁶² The new provision states that, "[t]he legislature *may* provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities, or misfortune *are determined by the legislature to be in need.*"¹⁶³

New York: New York's constitution is arguably the most hospitable to minimum subsistence rights.¹⁶⁴ Article XVII, § 1 of the New York Constitution states that "[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means as the legislature may from time to time determine."¹⁶⁵ In 1977, in *Tucker v. Toia*, the State Court of Appeals held that this constitutional provision imposes an obligation on New York to aid the needy.¹⁶⁶ The court stated that, "[i]n New York State, the provision for assistance to the needy is not a matter of legislative grace; rather, it is specifically mandated by our Constitution."¹⁶⁷

Two years later, in *Callahan v. Carey*, a New York state trial court, in a ruling on a motion for a preliminary injunction, found that the homeless plaintiffs had a substantial likelihood of success in claiming that Article XVII and a number of statutory requirements that New York City care for the needy included an obligation to shelter the homeless. The court ordered a temporary mandatory injunction preventing the Department of Social Services from closing particular shelters in advance of the coming winter.¹⁶⁸ In 1981, after the ruling on the preliminary injunction, the suit was settled by a

¹⁶² Making the current version of the Montana Constitution more like the second group of constitutions.

¹⁶³ Mont. Const. art. XII, § 3 (3) (1988) (emphasis added).

¹⁶⁴ Note that this is not to suggest that New York State has done the best job nationally at reducing homelessness or providing adequate shelter or housing, only that it has the most compliant constitutional framework in this regard.

¹⁶⁵ N.Y. Const., art. XVII, § 1.

¹⁶⁶ 43 N.Y.2d 1, 371 N.E.2d 449, 400 N.Y.S.2d 728 (1977).

¹⁶⁷ *Id.* at 7, 371 N.E.2d at 451, 400 N.Y.S.2d at 730.

¹⁶⁸ *Callahan v. Carey*, No. 79-42582 (N.Y. Sup. Ct. Dec. 15, 1979), *reprinted in* N.Y.L.J., Dec. 11, 1979, at 10 (ruling on a motion for a preliminary injunction).

consent decree,¹⁶⁹ entered into by both the City and State, guaranteeing a right to shelter for all homeless men in the City and establishing minimum health and safety standards for homeless shelters. This decree was extended to include homeless women in 1983¹⁷⁰ and families in 1986.¹⁷¹ Under this decree, shelter has been provided for “hundreds of thousands” of homeless New Yorkers.¹⁷²

Two decades later, however, the rights of the needy generally and the rights of the homeless under the consent decree particularly have been significantly undermined. The former has resulted from the effective negation of the obligation to help the needy as a result of courts broadly construing legislative discretion in determining whom it classifies as needy.¹⁷³ In *RAM v. Blum*, the court seemed to make the obligation practically avoidable at legislative discretion.¹⁷⁴ In that case, the State’s constitutional obligation was deemed satisfied without judicial inquiry into the merits of the claim that the recipients’ aid level had “fallen significantly below that recognized as ‘subsistence’ level by the legislature six years earlier.”¹⁷⁵

The rights of the homeless to shelter have been undermined by court-sanctioned restrictions imposed on that right by city officials. One example of this is the 1998 decision *McCain v. Giuliani*, where a New York Supreme Court found that eligibility requirements for shelter were within the State Department of Social Services rulemaking power.¹⁷⁶ These eligibility requirements allowed exclusion of applicants who did not cooperate with an agency needs assessment or of recipients who failed to comply with the agency’s independent living plan. More noteworthy, however, was the great deference

¹⁶⁹ A consent decree is a binding obligation entered into by opposing parties in a dispute.

¹⁷⁰ *Eldredge v. Koch*, 459 N.Y.S.2d 960, 961 (N.Y. Sup. Ct.1983) (stating that the claim that women should also be included in the consent decree under the 14th Amendment to the U.S. Constitution is “so obviously meritorious that it scarcely warrants discussion.”).

¹⁷¹ *McCain v. Koch*, 484 N.Y.S.2d 985 (N.Y. Sup. Ct. 1984), *aff’d as modified* by 502 N.Y.S.2d 720 (1986).

¹⁷² Coalition for the Homeless, *Modern Mass Homelessness in New York City: A Brief History and Current Threats to the Right to Homelessness*, at <http://www.coalitionforthehomeless.org:8080/top/CFTH/downloads/callahanhistory2002.pdf> (last visited Oct. 16, 2007).

¹⁷³ *See, e.g.*, *Bernstein v. Toia*, 43 N.Y.2d 437, 373 N.E.2d 238, 402 N.Y.S.2d 342 (1977); *RAM v. Blum*, 103 Misc. 2d 237, 425 N.Y.S.2d 735 (Sup. Ct., N.Y. County, 1980), *aff’d*, 77 A.D.2d 278, 432 N.Y.S.2d 892 (1st Dep’t 1980). The seeds for this judicial deference were sown in *Tucker* itself, where the court stated that the N.Y. Constitution “provides the Legislature with discretion in determining the means by which this objective is to be effectuated, in determining the amount of aid, and in classifying recipients and defining the term ‘needy.’” *Id.* at 8, 371 N.E.2d at 452, 400 N.Y.S.2d at 731.

¹⁷⁴ *Id.*

¹⁷⁵ Ladd, *supra* note 39 at 278–79.

¹⁷⁶ *McCain v. Guiliani*, 252 A.D.2d 461 (1998), *appeal dismissed*, 93 N.Y. 21 848 (1999).

afforded by the court to the legislature. The court stated that this regulation was acceptable because it “does not on its face permit the arbitrary, outright denial of temporary shelter,”¹⁷⁷ with the “on its face” language implying that discriminatory effect would not be a consideration in looking at restrictions.

State Constitutions without Explicit Housing or Subsistence Provisions

The absence of an express provision in the other twenty-five constitutions does not mean that it is impossible to find an implicit constitutional right to minimal subsistence or housing. This, therefore, is the second major category of state constitutions that may support such rights, especially in the context of a given state’s traditions and case law.¹⁷⁸ The experience in Connecticut and New Jersey suggests that arguments supporting a right to housing or public assistance may be compelling, as in Connecticut, or at least ambiguous, as in New Jersey. Indeed, in some respects this type of state constitution may prove to be a better starting point for finding a right to housing or minimum subsistence than those constitutions that mention the poor or the public welfare but do not create a governmental obligation to them.

In Connecticut, in dissenting and concurring opinions in *Moore v. Ganim*, three of seven Supreme Court justices recognized a governmental obligation to provide a minimal safety net to Connecticut’s poorest residents, the components of that safety net at least including “shelter, food and essential medical care.”¹⁷⁹ They found this obligation in broad constitutional provisions¹⁸⁰ that, they reasoned, lead to Connecticut “law and customs” that preceded the 1818 constitution¹⁸¹ and that support a state constitutional right to minimum subsistence.¹⁸² The minority opinions in *Moore* individually or collectively contain a number of other interesting and compelling lines of argument as well: they

¹⁷⁷ *Id.*

¹⁷⁸ See, e.g., *Moore v. Ganim*, 233 Conn. 557, 661 (1995) (Berdon, A.J., dissenting) (“The state constitution, which was first formally adopted in 1818, does not explicitly provide for the right of the poor to receive subsistence from the towns. Nevertheless, we have previously recognized that there are some rights that are so fundamental they need not be set forth in the state constitution.”).

¹⁷⁹ *Id.* at 646.

¹⁸⁰ Conn. Const. preamble (“The People of Connecticut acknowledging with gratitude, the good providence of God, in having permitted them to enjoy a free government; do, in order more effectually to define, secure and perpetuate the liberties, rights and privileges which they have derived from their ancestors; hereby, after careful consideration and revision, ordain and establish the following constitution and form of civil government”) and *id.*, Art. I, § 10 (“All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay”).

¹⁸¹ *Moore*, 233 Conn. at 646 (Berdon, A.J., dissenting).

¹⁸² *Id.* at 617, 661.

appeal to international law as a basis for the right to minimum subsistence,¹⁸³ they discuss the role of the judiciary vis-à-vis the legislature with regards to defining the right,¹⁸⁴ and they suggest that the right is so fundamental to modern democracy that it cannot be ignored.¹⁸⁵

The New Jersey Constitution, like the Connecticut Constitution, does not include a provision that on its face addresses the government's obligation (or lack thereof) to the poor.¹⁸⁶ The existence of a right to housing for the homeless in New Jersey is unclear. The New Jersey Supreme Court has chosen not to rule on a right to housing under the state constitution, despite two opportunities to do so,¹⁸⁷ stating quite clearly in the later case that "the question before us is not whether the homeless have a constitutional right to shelter."¹⁸⁸ The fact that a right to housing might still be found under a provision that on its face is not directly related to the poor, suggests that such a right might be found

¹⁸³ The concurring opinion cites Article 25(1) of the Universal Declaration of Human Rights and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, as examples that "contemporary economic circumstances and contemporary conceptions of democracy" have "led the international community to incorporate a right to subsistence into the international law of human rights." *Moore*, 233 Conn. at 637 (Peters, C.J., concurring).

¹⁸⁴ The concurring opinion states that objections to recognizing a right on grounds that it will be "judicially unmanageable" do not "foreclose the recognition of a limited constitutional right that obligates government to provide only minimal subsistence but reserves to government broad discretion about the manner in which such an obligation is to be implemented." *Id.* at 639–40 (Peters, C.J., concurring). The dissenting opinion states that the appropriate level of constitutional scrutiny to be applied by the judiciary is not important here, as all that is at issue is humane survival. This leaves making "a greater level of benefits" available to "the poor and needy" within "the authority of the legislature, of course." *Id.* at 699 (Berdon, A.J., dissenting).

¹⁸⁵ The dissenting opinion states that "this right to minimal subsistence is a right so fundamental that without it no other guaranteed rights, explicit or implicit, can be enjoyed. It is the right to life itself – the right to subsistence, sufficient for humane survival." *Id.* at 700. (Berdon, A.J., dissenting).

¹⁸⁶ At least one commentator has argued that the safety and security provisions of Article I provide a textual basis for finding a right to housing under the New Jersey constitution. Article I reads:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of *pursuing and obtaining safety* and happiness.

All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

[emphasis added] N.J. Const., art. 1.

¹⁸⁷ *L.T. v. Dept. of Human Services*, 134 N.J. Super. 304, 624 A.2d 990 (1993); and *Franklin v. Dept. of Human Services*, 225 N.J. Super. 504, 543 A.2d 56 (1988).

¹⁸⁸ *L.T.*, 134 N.J. at 323.

under other, similar state constitutions. At least one commentator has suggested that a right to emergency shelter for the homeless under the New Jersey Constitution is supported by legislative history, preexisting case law, and state traditions.¹⁸⁹

The twenty-five state constitutions without applicable explicit reference to the poor, then, may be useful in finding a right to minimum subsistence. International law, as well as state legislative history, case law and traditions, may provide sources of support for such a right.

State Statutes

In addition to state constitutions and their provisions for the aid of the poor, both explicit and implicit, there are also states and localities where a right to housing or minimum subsistence has been found under statute.¹⁹⁰ Commentators have identified two primary types of applicable laws: general assistance (GA) statutes and adult protective services statutes.

GA programs are cash and in-kind assistance programs financed and administered wholly by the state or locality in which they operate and are intended to meet the needs of low-income people ineligible (or waiting for) federally funded cash assistance (*e.g.* TANF or Supplemental Security Income (SSI)).¹⁹¹ These programs are quite small, in terms of recipients, when compared with the major federal assistance programs.¹⁹² Thirty-five states, including the District of Columbia, have state GA programs.¹⁹³ Of the remaining sixteen states, at least six contain one or more county or municipality providing some form of General Assistance.¹⁹⁴

¹⁸⁹ John C. Connell, *A Right to Emergency Shelter for the Homeless under the New Jersey Constitution*, 18 Rutgers L.J. 765 (1987).

¹⁹⁰ The review here is descriptive rather than comprehensive and there may be strong (or stronger) claims for a right to adequate housing under statutes from states not mentioned herein.

¹⁹¹ Explanation and following data drawn from L. Jerome Gallagher, *A Shrinking Portion of the Safety Net General Assistance from 1989-1998*, April 1999 [hereafter "State GA Programs"]. This report is based on information current up to the summer of 1998.

¹⁹² *Id.* at 5.

¹⁹³ These states are Alaska, Arizona, California (Los Angeles County), Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho (Ada County), Illinois (City of Chicago), Indiana (Center Township of Marion County), Iowa (Polk County), Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada (Clark County), New Hampshire (City of Manchester), New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota (Minnehaha County), Utah, Vermont, Virginia (Fairfax County), Washington, and Wyoming (Dane County). *Id.* at 3.

¹⁹⁴ These states are Florida (Dade County), Georgia (Fulton County), Kentucky (Jefferson County), Montana (Yellowstone County), North Carolina (Durham County), and North Dakota (Cass County). *Id.*

While there is considerable variety across states on income eligibility limits, most states limit access to this program to those with incomes less than one-half of the poverty level, otherwise called the “severely poor.”¹⁹⁵ Finally, these benefits are even lower than the inadequate levels of aid distributed under federal assistance programs. These programs have been a target of advocates for the homeless because of two of their characteristics: they usually contain clear language on the government’s duty to the needy, and this government obligation to the poor should also hold for the homeless as the “poorest of the poor.”¹⁹⁶

There are significant problems with GA statutes in finding a right to adequate housing, however. First of all, they clearly miss a very broad swath of the population, including only the “severely poor;” some impose other eligibility requirements as well.¹⁹⁷ A second major problem is that current GA programs do not nearly provide sufficient funds to help secure “adequate” (as defined by General Comment No. 4) housing. As a recent report has stated, “the maximum monthly benefits available to General Assistance recipients are generally set far below the federal poverty line.”¹⁹⁸ Both of these problems, among others, would arguably have to be remedied before state statutes would fulfill the right to adequate housing. That said, however, state GA programs, modified for eligibility, funding levels, and nature of benefits, do at least provide a base from which to work towards a state statutory right to shelter.

¹⁹⁵ *Id.* at 3.

¹⁹⁶ John H. Whitfield, *A Guide to Finding a Right to Shelter for the Homeless*, 9 Miss. Coll. L. Rev. 295, 313 (1989).

¹⁹⁷ These non-financial requirements include, for example, Connecticut’s prohibition of disbursement for employable persons without children. *See* State GA Programs, *supra* at 160.

¹⁹⁸ State GA Programs, *supra* at 160.

There are at least thirty-eight states with Adult Protective Services statutes.¹⁹⁹ These statutes are intended to provide emergency care and services to adults deemed unable to protect themselves from abuse or neglect.²⁰⁰ This care typically includes the provision of basic necessities, including shelter. There are at least ten statutes specifically referring to shelter,²⁰¹ as well as a number that do not explicitly mention but could be interpreted to include shelter. These statutes include those such as Wisconsin and Kentucky that refer to the provision of “social services,” those such as Arizona and Tennessee that offer “appropriate” services, and those such as Wyoming that refer to the narrower group of “necessary” services. In addition to a shelter provision (explicit or possibly interpreted), there are arguably two other characteristics that are significant in finding a right to housing under these statutes.²⁰²

First, language that is mandatory rather than discretionary is preferable. This condition is often satisfied. Of the thirty-eight statutes mentioned here, at least seventeen states make the provision of services to the eligible population a duty.²⁰³ There are others, such as Alabama, Kentucky, Tennessee and Virginia that make provision of services mandatory to the extent of available funds. There are also those such as Arkansas, Colorado, South Carolina, Wisconsin and Wyoming, less promising in the right to housing context, that make provision of services more discretionary.

¹⁹⁹ These states are: Alabama (Ala. Code §§ 38-9-1 to -11), Arizona (Ariz. Rev. Stat. Ann. §§ 46-451 to -454), Arkansas (Ark. Stat. Ann. §§ 59-1301 to -1314), California (Cal. Wel. & Inst. Code, §§ 15750-5), Colorado (Colo. Rev. Stat. §§ 26-3.1-101 to -105), Connecticut (Conn. Gen. Stat. Ann. §§ 46a-14 to -26), Delaware (Del. C. §§ 3901-13), District of Columbia (D.C. Code, §§ 6-2502-13), Florida (Fla. Stat. Ann. §§ 415.101-112), Hawaii (HRS §§ 346-221 to -253), Idaho (Idaho Code §§ [39-5301 to -5312] 39-5201 to -5212), Indiana (Ind. Code Ann. §§ 12-10-3-2 to -31), Kansas (Kan. Stat. Ann. §§ 39-1401 to -1410), Kentucky (Ky. Rev. Stat. Ann. §§ 209.010-.990), Louisiana (La. Rev. Stat. Ann. § 14:403-2), Maine (Me. Rev. Stat. Ann. tit. 22, §§ 3470-87), Maryland (Md. Family Law Code Ann., Title 14), Michigan (Mich. Comp. Laws Ann. §§ 400.11-.11f), Minnesota (Minn. Stat. Ann. § 626.557), Montana (Mont. Code Ann. §§ 52-3-101 to -813), Nebraska (R.R.S. Neb. §§ 28-348 to -387), Nevada (Nev. Rev. Stat. §§ 200.5091 to .5099), New Hampshire (N.H. Rev. Stat. Ann. §§ 161-E:1), New Jersey (N.J. Stat. §§ 52: 27D-406 to -422), New Mexico (§§ 27-7-1 to -31), New York (N.Y. Soc. Serv. Law §§ 473-473a), North Carolina (N.C. Gen. Stat. §§ 108A-99 to -111), North Dakota (N.D. Cent. Code §§ 50-25.2-01 to -13), Ohio (Ohio Rev. Code Ann. §§ 5101.60 to .72), Oklahoma (Okla. Stat. Ann. tit. 43A, §§ 10-106, 107 & 111), Oregon (Or. Rev. Stat. §§ 410.610 to .700), Pennsylvania (Penn. Stat. § 5608), South Carolina (S.C. Code Ann. tit. 43, Ch.35), Tennessee (Tenn. Code Ann. §§ 71-6-1), Virginia (Va. Code §§ 63.1-55.1 to .7), West Virginia (W. Va. Code §§ 9-6-1 to -8), Wisconsin (Wis. Stat. Ann. §§ 55.001 to .07), and Wyoming (Wyo. Stat. §§ 35-20-101 to -108). Given the range of possible titles for programs of this type, this survey may have missed some states and may not include every state with an adult protective services program.

²⁰⁰ This definition is drawn from Langdon & Kass, *supra* note 90, at 327.

²⁰¹ These ten states are Alabama, Colorado, Connecticut, Idaho, Kansas, Maryland, North Carolina, Ohio, Oklahoma and West Virginia.

²⁰² This analysis draws heavily on the Appendix in Langdon & Kass, *supra* note 90, at 379–86, which suggests that these characteristics are particularly important and catalogues them as of roughly 1985.

²⁰³ These seventeen states are Arizona, Connecticut, Florida, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon and West Virginia.

Second and more difficult, is how the statute defines the population eligible for relief. Many of these statutes limit eligibility to individuals with “mental or physical impairment,” for example, or those with developmental difficulties. Some, such as Virginia, make eligibility contingent in some cases on a lack of other willing caretakers. There are, however, a few protective services statutes that are more inclusive. West Virginia, for example, includes adults incapacitated by “mental, physical or other infirmity.”²⁰⁴ In the case of *Hodge v. Ginsburg*, the Supreme Court of Appeals of West Virginia found that a homeless person is an “incapacitated adult,” as “other infirmity” included “the recurring misfortunes of life” leading to homelessness.²⁰⁵ Homeless people were therefore the intended beneficiaries of the Social Services for Adults Act of 1981 and the state was required to provide them with emergency shelter, food and medical care.

There are also sub-groups within the homeless population that might be eligible for assistance under these statutes where homeless persons as a group are not. These groups include the elderly, the physically or mentally disabled, substance abusers and/or those in ill health.

For summaries of U.S. cases dealing with housing and other economic rights see http://www.nlchp.org/program_reportspubs.cfm?prog=1.

²⁰⁴ W. Va. Code § 9-6-1(4).

²⁰⁵ 303 S.E.2d 245, 249-50 (W. Va. 1983).

Case Studies in Human Rights & Litigation

Northern California Legal Services Forces County to Address Lack of Affordable Housing

Summary:

According to a California law, passed in response to the lack of affordable housing in the state, each county has an obligation to assess, plan for, and address the existing and projected housing needs of all the economic segments of the community. This information is then included in the housing element of community development plans throughout the state, guiding affordable housing policies and programs. The California housing element law is so comprehensive that the United Nations Committee on the Elimination of Racial Discrimination cited it as a model for other domestic housing laws. One of the main reasons why the law has received such international attention is because it contains a positive obligation to ensure affordable housing for all people, a key component of international human rights law.

In Mendocino County, the 2004 Housing Element projected that nearly 2000 affordable housing units were required to address the county's housing needs. However, Northern California Legal Services (NCLS) filed suit questioning the adequacy of the zoning provisions in the Housing Element. As that case developed, very little action was taken by the County to implement the Housing Element or address housing needs, so in 2007, NCLS brought a second suit, this time advocating for the comprehensive implementation of the Housing Element. Though litigation spanned several years, NCLS was able address the issues with the county's implementation of the housing plan and fight for additional programs and zoning for affordable housing.

The Situation:

Mendocino County is a rural community in northern California. From the mid-1980s to 2000 there was a 70% increase in farm labor. However, housing units that were designated for farm works actually decreased resulting in a shortage of housing for its agricultural workforce. Beyond agricultural worker housing, there was also an overall lack of affordable housing in the county.

In 2003, after a decade of failing to conduct the mandated 5-year periodic reviews and general non-implementation of its housing plan, the County finally began the process of updating the Housing Element of its long-term development plan. In 2004, the County determined that close to 2000 units were required to meet its affordable housing obligations as set out in the current Housing Element.

During this process, NCLS discovered the county's non-compliance with the state law and non-implementation of the current Housing Element. NCLS, believing that the Housing Element inadequately provided for the county's affordable housing needs, advocated not only for implementation but also for the inclusion of active programs to further the Housing Element's goals. NCLS focused on anticipated additional units that

were projected to be needed by the county and whether or not the county adequately allocated land to be able to accommodate that need.

NCLS investigated how Mendocino County was implementing the requirements set forth in its housing element and discovered that the land that the county had identified as available for affordable housing had no infrastructure, no water, no sewer, and that a majority of sites zoned for housing were zoned in areas with water moratoriums which mandated no new water hook ups. In its first lawsuit, filed in 2004, NCLS asserted that the sites were inadequate to be zoned for affordable housing.

NCLS had two litigation objectives: 1) to ensure that land zoned for development had the infrastructure to support the anticipated target population as well as the ability to accommodate anticipated future capacity increases and 2) to get more housing built for the agricultural workforce.

NCLS alerted the state Department of Housing and Community Development (HCD), which oversees the Housing Element law, of the situation in Mendocino County. HCD communicated to the county that the Housing Element was not adequate and it needed to be changed. The county committed to redrafting their housing element and rezoning 50 acres of land that had water and sewer available to it, within a certain time frame. The state gave the county a tentative compliance certification, on the condition that the county rezone additional land by a 2007 deadline.

The deadline to implement the zoning changes passed without compliance or the promised punitive state action. In 2007, NCLS pressed for a trial based on the claim that the state failed to adopt a legally sufficient housing element. NCLS wanted to force the county to comply with its state-mandated obligations. Unfortunately, a new California case precedent, Fonseca v. City of Gilroy, established that the county had the entire 5-year planning period to complete the rezoning even though its own housing element mandated compliance by the 2007 deadline.²⁰⁶ With the Fonseca precedent binding the court, it ruled against NCLS and no action was taken to have Mendocino County meet its rezoning obligations.

NCLS appealed the decision and was heard in early 2009. During this time, NCLS had continued to pressure the state to revoke the tentative compliance certification it had granted back in 2007. Ten days before oral arguments, the state finally revoked its tentative approval of the Mendocino Housing Element. However, the court of appeals refused to consider this fact, finding instead that the Fonseca decision controlled and the county had the entire 5-year planning period to comply with the state housing mandates.

When the lower court first decided against NCLS in 2007, NCLS pushed forward and filed a new lawsuit against the county for failing to implement the policies and programs in the 2004 Housing Element.

²⁰⁶ Fonseca v. City of Gilroy (2007) 148 Cal. App. 4th 1174

Complementary Non-Litigation Advocacy:

While NCLS was litigating in the courts it was also putting pressure on the county by going to public meetings and highlighting how ineffective zoning approvals were without an infrastructure to support the development. Media coverage and press releases also increased NCLS's visibility and helped strengthen and solidify its credibility in the community. Moreover, because the litigation had spanned several years, the county's planning and building department had a personnel change and its new director was more open to addressing the controversial housing issues. Additionally, the threat and cost of continuing litigation, as well as the withholding of housing element certification, making the county ineligible for state redevelopment grants, was enough to prompt the county to act.

Much of the county's opposition arose out of the fear that property values would decrease and the low-income population would increase if affordable housing was built. One of NCLS' key undertakings was educating various stakeholders that affordable housing benefits everyone. It emphasized the importance of "workforce housing" for teachers, office, and service workers by showing that even the employed could not earn enough to afford a house or apartment in the county.

Outcomes:

NCLS continued to exert both public and political pressure, and as county officials became more educated on the benefits of affordable housing, combined with the continued withholding of state funds, they became more open to NCLS' demands. However, even as the county scrambled to rezone the fifty acres needed to comply with state mandates, only about fourteen were actually developable. Eventually NCLS was able to settle the 2008 lawsuit, with the county agreeing to rezone an additional 24 acres of land for affordable housing. This time around NCLS made sure safeguards were in place to ensure that these parcels would be located in areas suitable for the infrastructure needed to meet expected capacity levels. The settlement also mandated that the county focus on identifying land in agricultural communities that would be suitable for farm-worker housing.

Lessons Learned:

Many states have "housing elements" or similar planning requirements, though many may not create as strong a legal obligation as California's, which has been commended at the international level as a model for promoting human rights. Where similar laws exist in the U.S., advocacy groups must be actively engaged in the planning and monitoring processes in order to hold local governments accountable to their obligations. Where such laws do not exist or are weak, advocates should press for their enactment and enforcement

In the human rights framework, governments are required to respect, protect, and fulfill rights, including the right to adequate housing. The Housing Element law is an excellent tool to help make the obligation to fulfill the right to housing real (or at least create the conditions for it) at the local level.

Canadian Supreme Court overturns Homeless Criminalization Ordinance Using International Law

Summary:

In an attempt to find a safe and warm place to rest in Victoria, British Columbia, homeless people found a park and created a tent city. In response to this, the city filed for an injunction to have them removed. The law firm of Underhill, Boies Parker (Firm) stepped in on behalf of the inhabitants of the tent city. The Firm argued that based on the *Canadian Charter of Rights and Freedoms (Charter)* the injunction infringed upon the homeless peoples' rights to life, liberty, and security of the person in a manner not in accordance with the principles of fundamental justice.

Despite the combined legal efforts of the Attorney General of the Province of British Columbia and the city of Victoria, the Firm persisted in its litigation, arguing for homeless people's rights to make a shelter for themselves in the absence of suitable shelter spaces within the city. Eventually, by combining international human rights law, empirical statistical evidence, and affidavits containing personal and graphic stories of life on the streets, the Firm was able to win on its constitutional arguments and preserve a right for homeless persons to shelter themselves when there is no other shelter available.

Situation:

Over 1,500 homeless people live in the city of Victoria, British Columbia. However, as in most cities in the U.S., available shelter space accommodates only a fraction of the need. In Victoria, there is a total of 400 spaces but only 150 of them are available at any given time. Without anywhere to go for shelter, homeless people began erecting tents in a city park and gradually a small tent city developed. In 2007, the City responded by serving a notice of eviction and filing an injunction to have the inhabitants of the tent city removed. The city asserted that according to the *Parks Regulation Bylaw* and the *Streets and Traffic Bylaws of the City of Victoria* (Bylaws) loitering or erecting temporary shelter on public property was prohibited.

The Firm tried to stop the injunction by claiming that the Bylaws were contrary to section seven of the *Charter*, granting everyone the right to life, liberty and security of the person.²⁰⁷ The Firm argued that if all the shelter beds were full, and the law left no place where the homeless could protect themselves from the elements, then the health risk inherent in living outside on the streets would infringe upon the most basic of human rights – the right to life itself.

In October 2005, bound by precedent, the trial court found that the *Charter* rights argument could not be used to stop the injunction. However, the court set a ten-month expiration on the injunction in order prompt the government to bring the case to court so

²⁰⁷ Canadian Charter of Rights and Freedoms, Constitution Act, 1982, §7 (Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.)

that the constitutional arguments could be heard. Unfortunately, this was not enough to move the government to take action and no substantive changes in policy were made.

In the summer of 2007, the Attorney General of British Columbia intervened on behalf of the city and the Firm found itself fighting against the combined legal might of both the local and provincial governments. The Government filed a preliminary motion to discontinue the case but the court set aside the discontinuance finding that the constitutional argument raised by the Firm warranted a decision on its merits. At this hearing it was also discovered that the City had recently appended the Bylaws in order to allow sleeping outside. However, the ban against erecting a shelter under which to sleep remained in place. The City had failed to notify the Firm or its clients of the change in law.

When the Firm finally succeeded in scheduling the case for trial, the Government had it postponed pending the results of a report, by the Mayor's Task Force, on the state of homelessness in Victoria. Although the Firm was initially frustrated with this additional delay, the Task Force report proved to be very helpful. Issued in late October, 2007, it uncovered the above-cited statistics on the numbers of homeless persons and the lack of adequate shelter spaces to house them. The data clearly illustrated that there was literally no place for homeless people to go and no public land where they could erect shelter.

Although prohibitions on sleeping outside have serious ramifications for those that are forced to live on the street, they do not directly affect the lives of the general public. Therefore, a lot of the Firm's advocacy efforts centered upon helping the court to understand the lives and challenges faced by Victoria's homeless population. In addition to having experts testify and present evidence as to the harmful impact and detrimental health effects of sleeping outside without shelter, the Firm also sought to gather the testimony of those most expert in the impacts of living outside – their own homeless clients.

Gathering client testimony was a difficult undertaking as its clients were living in marginalized and vulnerable situations and often had a deep dislike or mistrust of authority. Although many were willing to tell their stories to Firm employees and volunteers from a local law school, it was challenging to get signed affidavits from them. To make matters worse, once the tent city was dispersed in October 2005, it was hard to keep track of people who once more found themselves without the basic level of comfort, security, and stability that the tent city had provided. In the words of one of the lawyers, "When people are struggling to find a place to sit, eat, rest, or sleep it makes it much harder for them to be part of a lawsuit." Fortunately, before the tent city was dispersed, the Firm and its law student volunteers were able to collect a good number of affidavits. These documents allowed the Firm to present the court not only with statistics and expert medical evidence, but also with personalized accounts of daily life on the street.

In the spring of 2008, the British Columbia Civil Liberties Association (BCCLA) intervened on behalf of the defendants and argued that the Bylaws undermined the notions of dignity and autonomy underlying the liberty right granted by the Charter. It

argued that such regulations offended principles of fundamental justice and interfered with the homeless persons ability to be free and meaningfully participate in the democratic process. It also argued that the Charter “must be interpreted and applied in a manner consistent with Canada’s international obligations including ... those international obligations that recognize adequate housing or shelter as a human right.”²⁰⁸ The Supreme Court of British Columbia agreed concluding, “...while the various international instruments do not form part of the domestic law of Canada, they should inform the interpretation of the *Charter*...”²⁰⁹

Complementary Non-Litigation Action:

Prior to the start of litigation, two filmmakers and homeless advocates had produced a documentary, *Love and Fearlessness*, which profiled a homeless man and right-to-sleep campaigner who lived in the tent city.²¹⁰ It was one of the filmmakers who initially approached the Firm for legal help. *Love and Fearlessness* garnered a lot of media attention throughout the litigation and as the case continued, the city’s awareness of homeless issues increased and many began seeking out housing and poverty related volunteer opportunities. The media coverage and public attention likely motivated the city to initiate the Task Force whose report provided the statistical evidence eventually used by the Firm in its litigation.

Outcomes:

The combination of human rights law and direct evidence of human suffering helped motivate the court to find that forbidding people to erect their own shelter when the city fails to provide adequate shelter space itself, constituted an interference with the life, liberty and security of the person of homeless people and was in violation of the *Charter*. Additionally, the court concluded that the prohibition was both arbitrary and overbroad and thus inconsistent with the principles of fundamental justice.

Lessons Learned:

The Firm and BCCLA’s use of international law and the human rights framework shifted the litigation away from the City’s claim that homeless persons had violated the city Bylaws by sleeping in and erecting shelter in the park. The Defendants, through strategic use of a counterclaim, elevated the case to one that implicated the fundamental notions of justice underlying the city’s *Charter*. The Defendants’ effective outreach to and use of

²⁰⁸ Written Submission of the Intervenor at 2, *Victoria (City) v. Adams*, 2008 BcSc 1363, available at <http://www.canlii.org/en/bc/bcsc/doc/2008/2008bcsc1363/2008bcsc1363.html>.

²⁰⁹ Several precedents were cited in support of this argument. This included Canadian cases: **Baker v. Canada**, [1999] 2 S.C.R. 817 (finding that international human rights law is “a critical influence on the interpretation of the scope of the rights included in the *Charter*”); **R. v. Ewanchuk**, [1999] 1 S.C.R. 330 (stating the *Charter* is the primary vehicle through which international human rights achieve a domestic effect); **United States v. Burns** [2001] 1 S.C.R. 283, (stating that “where the various sources of international human rights law — declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals, customary norms — must, in my opinion, be relevant and persuasive sources for interpretation of the *Charter*’s provisions”); *Victoria (City) v. Adams*, 2008 BcSc 1363, available at <http://www.canlii.org/en/bc/bcsc/doc/2008/2008bcsc1363/2008bcsc1363.html>.

²¹⁰ *Love and Fearlessness: Interactive Documentary*, available at <http://www.loveandfearlessness.com/home.html>

law student volunteers, homeless persons and tent city advocates, as well as the government's own Task Force, allowed them to present the court not only with effecting affidavits from their clients, but also with stark statistical data. Each of these pieces proved to be crucial factors in the success of the litigation.

APPENDIX: ADDITIONAL REPORTS FOR FURTHER READING

The National Law Center on Homelessness & Poverty regularly produces investigative reports to fuel homelessness advocacy. The following reports have been released since 2009 and are available for download at www.nlchp.org. Fact sheets, older reports, and additional advocacy tools may also be found on the site.

Simply Unacceptable

The National Law Center on Homelessness & Poverty's report, "'Simply Unacceptable': Homelessness and the Human Right to Housing in the United States," assesses the current level of U.S. compliance with the human right to housing in the context of American homelessness. According to international standards, 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 report provides a letter-grade ranking for the current status of each aspect of the right in the U.S., and initial findings show there is much work to do to realize the right to housing.

On the Edge

This Law Center report offers an in-depth analysis of the Homelessness Prevention and Rapid Re-Housing Program, created by the Department of Housing and Urban Development with \$1.5 billion in funding as part of the 2009 economic stimulus package. "On the Edge: How HUD Can Improve the Homelessness Prevention and Rapid Re-Housing Program" assesses the program's effectiveness and makes recommendations for future HUD homelessness prevention efforts. It is based on a survey of 121 service providers one year after HPRP funds were made available.

A Place at the Table

The Law Center and the National Coalition for the Homeless jointly presented "A Place at the Table: Prohibitions on Sharing Food with People Experiencing Homelessness," a report focusing on cities that have created ordinances, policies and tactics to limit groups from sharing food with homeless people. Alternative solutions and programs to penalizing food-sharing activities are highlighted in the report.

Staying Home

Despite the Protecting Tenants at Foreclosure Act, enacted in 2009 to protect renters living in foreclosed properties, many tenants across the country are still being threatened with eviction and are being forced to leave their homes on short notice. "Staying Home: The Rights of Renters Living in Foreclosed Properties," explains the impact of the new law and discusses problems with its implementation, and summarizes the results of a 50-

state survey of developments in state laws protecting tenants living in foreclosed properties since early 2009. The report reveals that while progress has been made at both the federal and state levels to protect the rights of renters living in properties subject to foreclosure, further protections for renters – and better enforcement of existing protections – are needed.

Shortchanging Survivors

Despite the Family Violence Option, a federal program that could improve access to the major federal welfare program (Temporary Aid to Needy Families) for domestic violence survivors, many survivors are being denied this potentially life-saving aid. This report by the Law Center, “Shortchanging Survivors: **The Family Violence Option for TANF Benefits,**” shows how poor state and local implementation of an important federal waiver can leave survivors in severe economic distress.

Homes Not Handcuffs

This joint report by the Law Center and the National Coalition for the Homeless tracks a growing trend in U.S. cities – the criminalization of homelessness. “Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities” focuses on specific city measures from 2007 and 2008 that have targeted homeless persons, such as laws that make it illegal to sleep, eat, or sit in public spaces. The report includes information about 273 cities nationwide and also ranks the top 10 U.S. cities with the worst practices in relation to criminalizing homelessness. The national ranking is based on a number of factors, including the number of anti-homeless laws in the city, the enforcement of those laws, the general political climate toward homeless people in the city, and the city's history of criminalization measures. The report also identifies examples of more constructive approaches to homelessness. An updated report on criminalization and constructive alternatives will be available later in 2011.

Insult to Injury

At the urging of advocacy groups to address issues facing victims in public and Section 8 housing, Congress included important new housing provisions in the reauthorization of the Violence Against Women Act, in January 2006, which provide protections for victims of domestic violence. The Law Center launched “Insult to Injury: Violations of the Violence Against Women Act” to gather information on violations of the law's housing provisions. The Law Center analyzed more than 3,300 HUD-approved Public Housing Authority plans to determine whether PHAs were complying with the law. In addition, the Law Center, along with key partners, launched a nationwide survey of service providers to assess their experiences with denials and evictions based on domestic violence, dating violence, and stalking.

An Ounce of Prevention

For both renters and owners who are in danger of homelessness due to foreclosure, existing homelessness prevention programs can help. “An Ounce of Prevention: Programs to Prevent Homelessness in 25 States” highlights the range of approaches employed by state agencies to assist those facing unexpected or uncontrollable financial crises. The report also includes recommendations for bolstering funds to support such homelessness prevention programs.

Without Just Cause

Renters of foreclosed properties are among those most at risk of homelessness. If a landlord is foreclosed, tenants who have diligently paid their rent on time may come home to find locks changed and their belongings on the street. The status of renters in foreclosure cases is a matter of state law, and these laws vary throughout the U.S. “Without Just Cause: A 50-State Review of the (Lack of) Rights of Tenants in Foreclosure,” a report by the Law Center and the National Low Income Housing Coalition, highlights laws for renters of foreclosed properties in all 50 states and Washington, D.C., and analyzes the impact of 2008’s Emergency Economic Stabilization Act.