

2004

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Recommended Citation

Clearinghouse Review, Vol. 38, Issue 3 and 4 (July-August 2004), pp. 97-114

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The Human Right to Housing: Making the Case in U.S. Advocacy

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Advocates working on a range of poverty law issues in the United States have begun to explore human rights approaches, and advocates who address homelessness and housing are focusing on housing as a human right. Such advocacy draws on the central place of the right to housing in international human rights law, on social movements in the United States, both past and present, that affirm the right to housing, and on a growing awareness in this and other countries of the importance of human rights frameworks in challenging and addressing systemic patterns of social and economic deprivation and inequality.

Advocates acknowledge that recognition of a right to housing would not immediately, or necessarily ever, solve the problems of homelessness and inadequate housing that affect increasing numbers of people in the United States. However, human rights law can help conceptualize and articulate in legal terms the assaults on human rights, dignity, and social inclusion that constituents who are affected experience; human rights law also can help give legal content to emerging advocacy goals. At the same time, a paradigm shift that recognizes housing as a human right may help build support for the housing resources, policy changes, and improved legal protective measures needed to end homelessness and address the access to adequate housing denied to millions of Americans.

Federal legislative initiatives have emerged to give form to progressive voices and movements seeking to bring to the fore a right to housing, and several bills are pending in Congress. The Bringing America Home Act, a comprehensive bill sponsored by Rep. Julia Carson of Indiana, is designed to transform federal homelessness policy by putting Congress on record as recognizing a right to housing in the service of ending homelessness.¹ Reps. Charles Rangel of New York and Jesse Jackson Jr. of Illinois have introduced legislation to amend the U.S. Constitution to establish a right to housing.² Further efforts to secure certain housing rights can be found in the

¹Bringing America Home Act, H.R. 2897, 108th Cong. (2003)

²H.R.J. Res. 32, 108th Cong. (2003) (to amend the U.S. Constitution with respect to decent safe, sanitary, and affordable housing); H.R.J. Res. 47, 108th Cong. (2003) (to amend the Constitution of the United States with respect to the right to a home).



Emergency Mortgage Relief Act introduced by Rep. Chaka Fattah of Pennsylvania, the Living Wage and Jobs for All Act introduced by Rep. Barbara Lee of California (the latter act including a right to housing provision), and the large-scale low-income housing production proposal in the National Housing Trust Fund Act introduced by Rep. Bernie Sanders of Vermont.³

The National Law Center on Homelessness and Poverty, the Chicago Coalition for the Homeless, the Chicago-based Coalition to Protect Public Housing, Beyond Shelter, and the National Policy and Advocacy Council on Homelessness, among others, have sought to develop action programs, translate human rights concepts into U.S. housing law, and highlight linkages between housing rights and homelessness policy. Advocates identified ways to raise the issue of a right to housing in advocacy in the United States and, with these in mind, organized the first national forum on housing as a human right in April 2003.⁴ With a variety of housing, homelessness, and legal groups participating, several specific ideas

emerged, including educating judges, lawyers, and the public; identifying specific legal challenges in which human rights law might serve as an "interpretive guide"; developing and advocating models that advance the right to housing; and organizing and writing reports to United Nations (U.N.) committees monitoring treaties that the United States ratifies. Since the forum, advocates have identified additional strategies, including analyzing the closure of public housing and removal of residents as a "forced eviction," preparing submissions to the U.N. Human Rights Committee, and developing and advocating cities' adoption of resolutions establishing a right to housing.

In this article we consider the right to housing in international human rights law and in domestic law, how to evaluate compliance with the right in the United States, and how to employ legal strategies in support of claims to the right. We review the status of international law in U. S. law and courts and discuss legislative, regulatory, and litigation strategies to support a right to housing. We conclude with reflections on earlier social movements that affirmed the right to housing in the United States and on the way forward.

The Right to Housing in International Human Rights Law

In his foreword to a recent book on national perspectives on housing rights, Nelson Mandela reflected on the phenomenon of the "globalization of human rights" and the central place of the right to housing in the modern human rights movement:

The international world has gradually come to realise the critical importance of social and economic rights in building true

³Emergency Mortgage Relief Act, H.R. 1357, 108th Cong. (2003); A Living Wage, Jobs for All Act, H.R. 1040, 108th Cong. (2003); National Housing Trust Fund Act, H.R. 1102, 108th Cong. (2003).

⁴The right to housing under international human rights law can be an interpretive tool in litigation where federal or state law is unclear; serve a "standard setting" function in policy advocacy, and help reframe and reconceptualize advocacy. See Maria Foscarinis, *Homelessness and Human Rights: Toward an Integrated Strategy*, 19 SAINT LOUIS U. PUBLIC LAW REVIEW 327 (2000); Chester Hartman, *The Case for a Right to Housing*, 9 HOUSING POLICY DEBATE 223 (1998) The Centre on Housing Rights and Evictions, based in Geneva, and the National Law Center on Homelessness and Poverty, based in Washington, D.C., organized the forum.

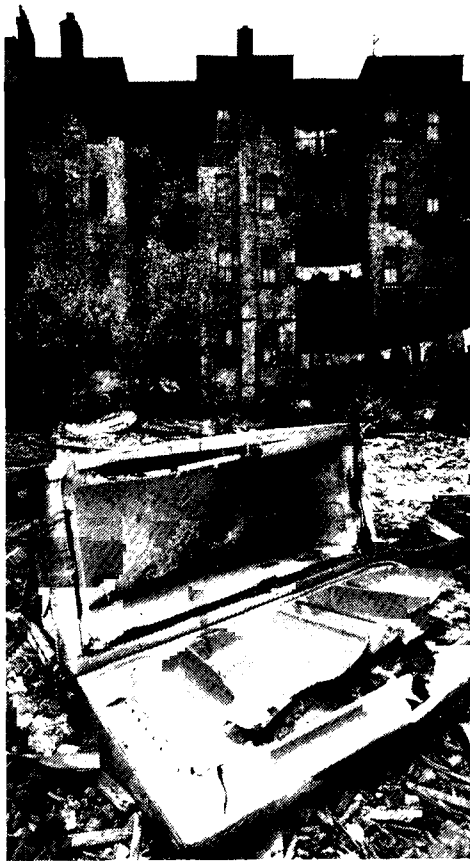
democracies, which meet the basic needs of all people. The realisation of these needs is both an essential element of a genuine democracy, as well as essential for the maintenance of democracy.

This is nowhere more evident than in the right to housing. Everyone needs a place where they can live with security, with dignity, and with effective protection against the elements. Everyone needs a place which is a home.⁵

This link between a secure home and the basic values of dignity, security, and democratic citizenship that lie at the heart of the international human rights movement has ensured a prominent place for the right to housing in international human rights law. The Universal Declaration of Human Rights, developed under the leadership of Eleanor Roosevelt and adopted by the U.N. General Assembly in 1948, states: "Everyone has the right to a standard of living adequate for the health and well-being of himself [or herself] and of his [her] family, including food, clothing, housing and medical care and necessary social services"⁶

In 1951 the U.N. General Assembly drafted two covenants, or treaties, to develop further and to implement the Universal Declaration; these are the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights.⁷ While the treaties are separate, both recognize their interdependence, which has been repeatedly affirmed in resolutions of the General Assembly and other international bodies.⁸

The right to housing is defined most clearly in Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights and in the guidance of the committee that oversees the covenant's implementation. The right is defined to consist of seven elements: security of tenure, affordability, adequacy, accessibility, proximity to services, availability of infrastructure, and cultural adequacy. Because implementing the right fully may require allocation of resources, the obligation that the covenant imposes on states is to apply the "maximum of available resources" toward "progressive realiza-



⁵Nelson Mandela, *Foreword*, in NATIONAL PERSPECTIVES ON HOUSING RIGHTS xvii (Scott Leckie ed., 2003).

⁶Universal Declaration of Human Rights, G.A. Res. 217(III) U.N. GAOR, 3d Sess., Supp. No. 13, at 71, U.N. Doc. A/810 (1948) (art. 25).

⁷International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976 [hereinafter ICESCR]; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976 [hereinafter ICCPR].

⁸Vienna Declaration and Program of Action, World Conference on Human Rights, Vienna, June 14–25, 1993, U.N. Doc. A/CONF 157/24 (pt. I) at 20 (1993).

tion” of the right over time. However, the additional obligation to ensure that people can exercise the right without discrimination is effective immediately.⁹

While the concept of “progressive realization” recognizes that the right to housing may be realized over time, it does not mean that state compliance cannot be subject to ongoing review and adjudication.¹⁰ The “maximum of available resources” standard imposes a serious obligation on states to take measures to fulfill the right to housing according to a sliding scale based on available resources and institutional development. Moreover, deliberately retrogressive measures—those that diminish existing housing rights—violate the right to housing under international human rights law unless justified under the “full use of the maximum available resources” standard.¹¹

Domestic Implementation of the Right to Housing: the Global Perspective

The growing recognition of the right to housing in international human rights law has been accompanied in many countries by domestic law measures to protect the right. Many new constitutional democracies, such as South Africa, explicitly recognize the right to housing as judicially enforceable.¹² In countries without such an explicit constitutional recognition, courts have been increasingly willing to protect many of the right’s components by way of other

broadly framed rights, such as the right to life or to equality.¹³ Litigation strategies in countries such as Canada have focused on implementing the right to housing in international law as a component of other rights and as an interpretive framework for domestic law affecting access to adequate housing.¹⁴ Advocates in many countries are thus turning to international human rights law as a source of a more unified and expansive framework for human rights advocacy.

Courts that have begun to interpret and apply the right to housing in domestic law have recognized the inherent connection between the right to housing and the core human rights values that all constitutional democracies share. As the Constitutional Court in South Africa noted in its first decision addressing the constitutional guarantee of the right to housing in 2001: “All the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter.”¹⁵

As domestic courts become more accustomed to claims of a right to housing, concerns about justiciability and judicial competence to adjudicate such claims are alleviated. That the right to housing and other social and economic rights may be subject to “progressive realization” or their fulfillment limited by a scarcity of resources and competing

⁹International Covenant on Economic, Social and Cultural Rights, art. 2.

¹⁰See *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 20 HUMAN RIGHTS QUARTERLY 691–705 (1998).

¹¹Committee on Economic, Social and Cultural Rights, General Comment 3, The Nature of States parties obligations (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991).

¹²See Scott Leckie, *Where It Matters Most: Making International Housing Rights Meaningful at the National Level*, in NATIONAL PERSPECTIVES ON HOUSING RIGHTS, *supra* note 5, at 17–18.

¹³See, e.g., *Francis Coralie v. the Union Territory of Delhi*, A.I.R. 1981 S.C. 746; *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 S.C.C. 545; *Shanti Star Builders v. Naryan Khimalal Totame & Ors* (JT 1990 (1) S.C. 106, Civil Appeal No. 2598 of 1989; *Dartmouth/Halifax County Regional Housing Authority v. Sparks* (1993) 101 D.L.R. (4th) 224 (N.S.C.A.).

¹⁴See Bruce Porter, *The Right to Adequate Housing in Canada*, in NATIONAL PERSPECTIVES ON HOUSING RIGHTS, *supra* note 5, and *Rewriting the Charter at 20 or Reading it Right: The Challenge of Poverty and Homelessness in Canada*, in CONTEMPORARY MORAL ISSUES 373–86 (Wesley Cragg & Christine Koggel eds., 2004).

¹⁵*Government of the Republic of South Africa v. Grootboom* (2001) (1) SALR 46 (CC) ¶ 23

demands has not proven to be a significant impediment to courts' willingness to adjudicate claims and impose remedies. Even in the most difficult situations of competing demands on resources, such as in South Africa, which faces many socioeconomic legacies of apartheid and a tragic HIV (human immunodeficiency virus) and AIDS (autoimmune deficiency syndrome) crisis, the role of the courts has proven important.

Moreover, as the South African Constitutional Court noted, the question of whether a government is meeting its "progressive realization" housing right obligations can be approached through a standard of reasonableness, that is, "whether the measures taken by the State to realise the right afforded by [the right to housing] are reasonable."¹⁶ A prime consideration is whether the needs of the most vulnerable groups have been considered and, if not, whether meeting those needs is possible without unreasonably burdening government expenditures.¹⁷ The Canadian Supreme Court points out that analysis of these positive obligations toward disadvantaged groups is a critical component of meaningful judicial protection of equality and is not unlike the "undue hardship" standard that human rights law has long applied in reasonable accommodation claims. Courts can appropriately review whether government choices are consistent with fundamental rights while leaving to governments the implementation of appropriate programs and policies.¹⁸

The U.S. Position on the Right to Housing in International Law

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 United States 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.¹⁹

The United States has not ratified most of the major treaties protecting economic and social rights. While Pres. Jimmy Carter signed the International Covenant on Economic, Social and Cultural Rights in 1977, the covenant has never been referred to 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 Pres. Bill Clinton in 1995 but never ratified.²⁰ Nevertheless, as a signatory to these treaties, the United States is obliged under international law to "refrain from

¹⁶*Id.* ¶ 41.

¹⁷*Id.* ¶¶ 44, 63, 66.

¹⁸*Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624 ¶ 73. See Bruce Porter, *Judging Poverty: Using International Human Rights Law to Refine the Scope of Charter Rights*, 15 JOURNAL OF LAW AND SOCIAL POLICY 117, 149–53 (2000).

¹⁹Philip Alston, *The U.S. and the Right to Housing: A Funny Thing Happened on the Way to the Forum*, 1 EUROPEAN HUMAN RIGHTS LAW REVIEW 120–33 (1996); *Habitat II Brings Victories, Opportunities*, JUST TIMES (National Law Center on Homelessness and Poverty), Aug. 1996.

²⁰Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981, arts. 14(2), 16(h); Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990 (art. 27).

acts which would defeat the object and purpose of [the] treaty ... until it shall have made its intention clear not to become a party²¹

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.²² 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] civil and political rights, as well as 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 nondiscrimination, which includes distinctions based on "property, birth and other status, subject to the understanding that distinctions on any of the grounds are permitted "when such distinctions are, at minimum, rationally related to a legitimate government objective."²³ And while the United States declared rights under the covenant to be nonself-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."²⁴

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 to social programs on women, racial minorities, people with disabilities, and children must be considered in light of the right to equality and nondiscrimination.²⁵ In 1995 in its first review of the U.S. 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 nondiscrimination that would view failures to address disproportionate levels of poverty and homelessness among particular groups in the United States as a potential treaty violation:

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.²⁶

²¹Vienna Convention on the Law of Treaties, art. 18, 1155, U.N.T.S. 331, entered into force Jan. 27, 1980

²²International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, 20 U.N. GAOR, Supp. No. 14, at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969 (art. 5(e)(iii)); ICCPR, *supra* note 7.

²³U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. 54781-01 (daily ed., April 2, 1992) (Understandings ¶ 1)

²⁴Concluding Observations of the Human Rights Committee: United States of America. 03/10/95. CCPR/C/79/Add.50; A/50/40, ¶¶ 275-76, Oct. 3, 1995.

²⁵United Nations Human Rights Committee, Concluding Observations on Canada, CCPR/C/79/Add. 105 (1999) (April 7, 1999) ¶¶ 12, 20. The ICCPR 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" (art. 6, sec. 1)

²⁶Concluding Observations of the Human Rights Committee: United States of America. 03/10/95. CCPR/C/79/Add.50; A/50/40 ¶ 291, Oct. 3, 1995

Evaluating Compliance with the Right to Housing in the United States

As noted above, the right to housing is defined in several treaties and the guidance of the U.N. committees charged with monitoring their implementation. In order to capture evaluative norms in a single document, the Centre on Housing Rights and Evictions, a Geneva-based nongovernmental organization, convened a group of international housing and human rights experts who drafted a set of guidelines (expected to be released later this year) for implementation of housing rights under international law. Referred to as the “Bangkok guidelines” after the city in Thailand where the meeting took place, the guidelines set standards for domestic implementation of the right to housing and are divided into sections that correspond to different aspects of public policy, along a continuum from creation to use to loss of housing. Using these guidelines to measure the adequacy of U.S. housing legislation, policies, and programs, it is clear that many areas would need to improve substantially for the United States to assure a right to housing.

Development of Adequate Housing.

Legislation, policies, and programs related to development of adequate housing to ensure universal housing access is a significant concern of the draft Bangkok guidelines. This area addresses planning, the regulation of building construction, the housing finance system, and freedom of movement to choose one’s residence.

In the United States, on both the federal and state levels, governmental commitment to financing and subsidizing affordable housing for low-income people has declined precipitously in recent years.

Between 1976 and 2002 budget authority for federal housing assistance dropped by \$28.1 billion. In January 1977 the Ford administration submitted to Congress a budget request for the U.S. Department of Housing and Urban Development (HUD) that would have funded 506,000 additional low-income housing units. Subsidized housing commitments dropped to 60,590 in 1982, to 33,491 in 1995, and to 8,493 in 1996. HUD has been increasing funding for housing units since 1996 but to nowhere near the level of the late 1970s.²⁷ Average time on waiting lists for public housing has grown steeply.²⁸ While the commitment to create new subsidized units has tapered off to nearly zero, the stock of federally subsidized housing is being rapidly depleted as owners of privately owned but publicly subsidized housing stock prepay government-insured mortgages or opt out of government contracts. Since 1996, an estimated 120,000 affordable units have been lost in this manner, and 1.4 million HUD-subsidized units are in jeopardy.²⁹

This retreat from government commitment to develop affordable housing has led to a precipitous decrease in the availability of affordable housing. In central cities almost five very-low-income households are vying for every three unsubsidized units that they can afford; in the suburbs two very-low-income households are vying for every affordable unit on the market.³⁰ Even amidst the prosperity of the 1990s the stock of housing available to the poorest decreased. Units affordable to renters of very low income (below 50 percent of area median income) fell by almost 900,000 from 1993 to 1995, and over 300,000 affordable units were lost for low-income (below 80 percent of area median) renters between 1997 and 1999.³¹

²⁷CUSHING DOLBEARE & SHEILA CROWLEY, NATIONAL LOW-INCOME HOUSING COALITION, CHANGING PRIORITIES: THE FEDERAL BUDGET AND HOUSING ASSISTANCE 1976–2007 (2002), available at www.nlihc.org/pubs/changingpriorities.pdf.

²⁸NATIONAL COALITION FOR THE HOMELESS, NCH FACT SHEET NO. 7: HOMELESS FAMILIES WITH CHILDREN (June 2001), available at www.nationalhomeless.org/families.html. According to the fact sheet, waits grew to thirty-three months for the largest public housing authorities and to twenty-eight months for Section 8 vouchers.

²⁹ERIC S. BELSKY & MATTHEW LAMBERT, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, WHERE WILL THEY LIVE: METROPOLITAN DIMENSIONS OF AFFORDABLE HOUSING PROBLEMS 6 (Sept. 2001), available at www.jchs.harvard.edu/publications/communitydevelopment/belskylambert_w01-9.pdf.

³⁰*Id.* at 15.

³¹*Id.* at 6.

Access to Housing. The draft Bangkok guidelines address access to housing by considering whether adequate legislation, programs, and policies are in place to ensure equal access for groups facing systemic discrimination. The U.N. Human Rights Committee identified this as an area of concern in its review of U.S. compliance with the International Covenant on Civil and Political Rights, as noted above. Despite civil rights laws, vast racial and ethnic disparities in housing access persist.

Segregation between black and white children under 18 increased by 3 percent in metropolitan areas in the 1990s and by nearly 5 percent in metropolitan areas that were already more than 10 percent black.³² Major racial disparities in homeownership rates persist in the United States; minority groups have considerably lower homeownership rates than whites. Compared to 43.6 percent of blacks, and 41.8 percent of householders of Hispanic origin, 69.2 percent of whites owned homes in 1995. Ownership rates among elderly are higher, but disparities persist: 79 percent of whites versus 64 percent for all nonwhites; 79 percent for white non-Hispanics versus 59 percent for Hispanics.³³

Disparities in housing conditions are evident: Among owners, 3.8 percent of whites live in severely or moderately deficient housing, while the rate for blacks is 22.2 percent and for Hispanics, 13.0 percent. Among renters, 7 percent of whites have severely or moderately deficient housing, compared to 24.4 percent of blacks and 17.6 percent of Hispanics.³⁴

Adequacy of Housing. Another significant area of concern of the draft Bangkok guidelines is the adequacy of housing,

including security of tenure, habitability, affordability, physical accessibility for the elderly and those with disabilities, location with adequate access to transportation employment, health care, education, and lack of environmental hazards.

In the United States in 1999, half of all renter households (51 percent) had either moderate or severe housing problems. Forty-three percent had high housing costs, with 21 percent facing severe cost burdens (over 50 percent of income) and 22 percent having moderate cost burdens (30–50 percent of income). Twelve percent lived in housing with severe or moderate physical problems, and 5 percent were overcrowded. Moreover, 57 percent of overcrowded households also had problems of quality or cost burden. Half (51 percent) of households with quality problems were also overcrowded or had high cost burdens.³⁵

The impact of housing problems on children is an important measure of housing adequacy. A 1998 joint report by physicians at Boston Medical Center and Housing America found that inadequate housing had numerous health effects on children. Specifically, among other effects,

- 21,000 children have stunted growth attributable to a lack of stable housing;
- 10,000 children between 4 and 9 years old are hospitalized annually for asthma attacks triggered by substandard housing factors including smoke, cockroaches, dust mites, mold, rats, and mice;
- over 120,000 children suffer from anemia attributable to their families' inability to afford both rent and food;

³² Michael O. Emerson et al., *Does Race Matter in Residential Segregation? Exploring the Preferences of White Americans*, *AMERICAN SOCIOLOGICAL REVIEW* 922–35 (Dec. 2001).

³³ CHARLOTTE F. MULLER ET AL., *INTERNATIONAL LONGEVITY CENTER—USA, HOUSING AND LIVING ARRANGEMENTS OF THE ELDERLY: AN INTERNATIONAL COMPARISON STUDY*, ch. 6 at 13 (1999), available at www.ilcusa.org/_lib/pdf/publicationschapter6.pdf

³⁴Id.

³⁵NATIONAL LOW-INCOME HOUSING COALITION, *LOW-INCOME HOUSING PROFILE 2001*, available at www.nlihc.org/pubs/profile/index.htm

- 187 children die each year in house fires attributable to faulty electrical heating and electrical equipment (such deaths are up to nine times more common in poor communities);
- 2.5 million IQ points will be lost among children 1–5 years old from lead poisoning, with virtually all affected children poisoned at home;
- 14 million U.S. children younger than 6 years old live in housing with lead paint, and one million suffer from lead poisoning; and
- 77 percent of children with a chronic disease require modification of their home environment for treatment (such alterations are typically unavailable to families who are unable to obtain safe and affordable housing).³⁶

Overall in the United States 1.4 percent of occupied units lack some or all plumbing facilities, 6.7 percent have inadequate heating, and 1.6 percent have an incomplete kitchen (lacking a functioning sink, refrigerator, and oven or burners).³⁷ The primary source of water for 9,340,000 units (8.8 percent of occupied units) is unsafe to drink.³⁸

Lack of affordable housing is the most widespread adequacy problem. Over 14 million working households are moderately burdened (paying 30–50 percent of income for housing) or severely burdened (paying over 50 percent of income for housing) in struggling to afford

housing.³⁹ In forty states—home to almost 90 percent of all renter households in the nation—two full-time workers earning minimum wage cannot afford a two-bedroom home at the HUD-established fair market rents. In eleven states two minimum-wage earners would each have to work over sixty hours every week of the year to afford an average two-bedroom home.⁴⁰ Two-thirds of the working poor paid more than 30 percent of their income for housing in 1997, and 25 percent paid over half of their income. Among the working poor of very low income (under 50 percent of area median income), 71 percent of unsubsidized renters are facing significant housing burdens.⁴¹

People who have disabilities and whose sole source of income is federal disability benefits are effectively priced out of the private housing market. In 1998, as a national average, a recipient of Supplemental Security Income (SSI) benefits had to spend 69 percent of monthly income to rent a one-bedroom apartment at the fair market rent. In more than 125 housing markets the cost of a one-bedroom apartment at the fair market rent was more than a person's total monthly SSI income.⁴²

Loss of Housing. The draft Bangkok guidelines address the adequacy of protection from unwarranted eviction and displacement, including due process protection prior to eviction, protection from displacement due to development

³⁶BOSTON MEDICAL CENTER CHILDREN'S HOSPITAL, THE DOC4KIDS PROJECT, NOT SAFE AT HOME: HOW AMERICA'S HOUSING CRISIS THREATENS THE HEALTH OF ITS CHILDREN (1998), available at www.bmc.org/pediatrics/research/Research/Doc4Kids/docs4kids_report.pdf

³⁷U.S. CENSUS BUREAU & U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF POLICY DEVELOPMENT AND RESEARCH, AMERICAN HOUSING SURVEY FOR THE UNITED STATES: 2001, at x (Oct. 2002), available at www.census.gov/prod/2002pubs/h15001.pdf

³⁸*Id.*, tbl. 2-4

³⁹JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 4 (2003), available at www.jchs.harvard.edu/publications/markets/son2003.pdf

⁴⁰NATIONAL LOW-INCOME HOUSING COALITION, OUT OF REACH, available at www.nlihc.org/or2003/introduction.htm. See also NATIONAL COALITION FOR THE HOMELESS, NCH FACT SHEET NO. 4 (Feb. 1999).

⁴¹BELSKY & LAMBERT, *supra* note 29, at 10.

⁴²NATIONAL COALITION FOR THE HOMELESS, NCH FACT SHEET NO. 15: HOMELESSNESS AMONG ELDERLY PERSONS (June 1999), available at www.nationalhomeless.org/elderly.html, citing TECHNICAL ASSISTANCE COLLABORATIVE & CONSORTIUM FOR CITIZENS WITH DISABILITIES HOUSING TASK FORCE, PRICED OUT IN 1998: THE HOUSING CRISIS FOR PEOPLE WITH DISABILITIES (1999) (available from Technical Assistance Collaborative, 1 Center Plaza, Suite 310, Boston, MA 02108, 617.742.5657)

and economic causes, and alternative affordable housing for those who are evicted and displaced so that they are not rendered homeless.

Very little data, and virtually no aggregate national data, are collected on evictions in the United States, although one recent article estimates that “many millions” of households are forced to leave their homes involuntarily each year.⁴³ However, some local data show significant numbers of evictions in large metropolitan areas. A Massachusetts study, for example, estimated that 5 percent of all renters in the state were evicted annually because of inability to pay rent; in New York City the Bureau of City Marshals reported that close to 24,000 households were evicted in 2001; and a San Jose, California, study found it likely that 10 percent of the city’s residents were forced to move each year.⁴⁴ Numerous studies found that those who were evicted were typically poor, women, and minorities.⁴⁵

Homelessness. Another measure of domestic housing legislation, programs, and policies under the Bangkok guidelines is the treatment of people who are homeless: the adequacy of programs for rehousing; the rights accorded to people who are homeless to live in dignity with a right to health care, to vote, to exercise freedom of speech, expression, and association; and the right not to be treated as criminals.

Homelessness continues to grow at an alarming rate in the United States, and

about 3.5 million people, 1.35 million of them children, are likely to experience homelessness in a given year.⁴⁶ Homeless people do not receive adequate emergency assistance. A study of twenty-seven U.S. cities found that 37 percent of requests for emergency shelter in 2001 went unmet due to lack of resources—a 13 percent increase from the previous year.⁴⁷ For families, the numbers are even worse: 52 percent of emergency shelter requests from families were denied, a 22 percent increase from the previous year.⁴⁸ A review of homelessness in fifty cities found that, in nearly all, official estimates of the number of homeless people greatly exceeded the number of emergency shelter and transitional housing spaces.⁴⁹

The impact of homelessness is most severely felt by children; homeless children are 50 percent more likely than housed poor children to die before their first birthday.⁵⁰ Of the children and youth identified as homeless by state departments of education in fiscal year 2000, only 35 percent lived in shelters. Thirty-four percent lived doubled-up with family or friends, and 23 percent lived in motels and other locations. Yet these children and youth may not immediately be recognized as homeless and are sometimes denied access to shelters, schools, and school services.⁵¹ Homeless children suffer almost twice the respiratory infections, five times the diarrheal infections, seven times the iron deficiency, twice the hospitalizations, and significantly worse health sta-

⁴³Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUSING POLICY DEBATE 461 (2003).

⁴⁴*Id.* at 471–72.

⁴⁵*Id.* at 467, citing studies from New York City, Chicago, Baltimore, Philadelphia, Los Angeles, and Oakland.

⁴⁶NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, HOMELESSNESS IN THE UNITED STATES AND THE RIGHT TO HOUSING (2004); NATIONAL COALITION FOR THE HOMELESS, NCH FACT SHEET No. 2: HOW MANY PEOPLE EXPERIENCE HOMELESSNESS? 2 (Sept. 2002), available at www.nationalhomeless.org/howmany.pdf, citing URBAN INSTITUTE, A NEW LOOK AT HOMELESSNESS IN AMERICA (2000), available at www.urban.org.

⁴⁷NATIONAL COALITION FOR THE HOMELESS, *supra* note 46, at 1.

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰Julia C. Torquati & Wendy C. Gamble, *Social Resources and Psychosocial Adaptation of Homeless School Aged Children*, 10 JOURNAL OF SOCIAL DISTRESS AND THE HOMELESS 305 (2001).

⁵¹NATIONAL COALITION FOR THE HOMELESS, *supra* note 46, at 1.

tus than housed children.⁵² And homeless children are likely to be separated from their parents to an astounding degree: in 1996 in New York City 60 percent of residents in shelters for single adults had children who were not with them; in Maryland only 43 percent of parents living in shelters had children with them; and in Chicago 54 percent of a combined street and shelter homeless sample were parents, but 91 percent did not have children with them.⁵³

While the level of housing-related deprivation in the United States may seem insignificant in comparison to that in many less affluent countries, from the standpoint of international human rights law, violations of the right to housing in the most affluent country in the world are particularly egregious. As Miloon Kothari, special rapporteur on adequate housing for the United Nations Commission on Human Rights, noted in a preface to a recent report documenting homelessness and violations of the right to housing in the United States, “[s]uch a scale of human rights denial is a shocking testimony to the fact that the United States has failed to uphold the human rights of its own residents. Compounding this dire reality is the ironic fact that the U.S. is one of the wealthiest nations in the world and a proud promoter of democracy and freedoms across the world.”⁵⁴

The U.S. population is often described as having adequate housing; for example, people are “generally very well-housed,

in that over two-thirds of households live in housing that is affordable, physically adequate, and uncrowded.”⁵⁵ But when housing is recognized as an enforceable right, that other third will have claims of violation against their right to housing.

Under international human rights law, decreased federal funding of housing for low-income people in the face of rising homelessness—and consequent loss of housing rights for thousands of people—would likely constitute “retrogressive measures” that violate the right to housing if not justified by severe resource constraints.⁵⁶ The destruction without replacement of public housing units and the resulting “forced evictions” of tenants violate obligations to refrain from forced evictions where access to appropriate alternative housing is not ensured or where the result may be homelessness.⁵⁷

The Judicial System

Under international law, obligations to uphold the right to housing include the obligation to provide effective remedies for violations of the right. Such remedies need not always be judicial in nature. International human rights law offers flexibility with respect to different legal systems and traditions. Nevertheless, a fundamental obligation prevails—to provide effective remedies and to interpret and apply domestic law in a manner consistent with international human rights law.⁵⁸

⁵²BOSTON MEDICAL CENTER CHILDREN'S HOSPITAL, *supra* note 36, at 14.

⁵³NATIONAL COALITION FOR THE HOMELESS, NCH FACT SHEET NO. 7: HOMELESS FAMILIES WITH CHILDREN (June 2001), available at www.nationalhomeless.org/families.html, citing Marybeth Shinn Beth Weitzman, *Predictors of Homelessness Among Families in New York City: From Shelter Request to Housing Stability*, 88 AMERICAN JOURNAL OF PUBLIC HEALTH 1651–57 (1998) (available from Beth Weitzman, Wagner Graduate School of Public Service, New York University, 40 W. 4th St., New York, NY 10003; weitzman@is2.nyu.edu).

⁵⁴NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, HOMELESSNESS IN THE UNITED STATES AND THE HUMAN RIGHT TO HOUSING iii–6 (2004).

⁵⁵MULLER ET AL., *supra* note 33, ch. 6 at 1, quoting HOUSING STATISTICS OF THE UNITED STATES at xi (Patrick A. Simmons ed., 1st ed.1997).

⁵⁶Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties [sic] Obligations (art. 2 ¶ 1) 14/12/90. UNCESCR ¶ 9.

⁵⁷Committee on Economic, Social and Cultural Rights, General Comment No. 7: The Right to Adequate Housing (Forced Evictions), E/C.12/1997/4. UNCESCR ¶ 16.

⁵⁸*Id.*, General Comment No. 9 ¶¶ 2, 15.

Rather than offering any meaningful protection of the right to housing, however, the U.S. judicial system is frequently enlisted in support of violations of the right. Homelessness in the United States is increasingly criminalized, with cities banning associated activities such as sitting, sleeping, or loitering in public places.⁵⁹ This use of criminal law to punish homeless people for conduct inherent in their status constitutes discrimination based on “property, birth or other status” in contravention of the International Covenant on Civil and Political Rights and other treaties.⁶⁰ Further, it contravenes the U.S. commitment in a provision of the Habitat Agenda that homeless people will not be penalized for their status.⁶¹

A Right to Housing in the United States: Litigation and Law Reform Strategies

Under the 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.⁶² However, unless ratification includes the clear intent that the treaty be directly enforceable by the courts—(i.e., “self-executing”), and unless Congress passes implementing legislation, the treaty is not judicially enforceable.⁶³ 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.”⁶⁴

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 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.⁶⁵ 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.

The practices of other nations can also be 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]”).⁶⁶ Recently individual justices also spoke of

⁵⁹See NATIONAL COALITION FOR THE HOMELESS, *ILLEGAL TO BE HOMELESS: THE CRIMINALIZATION OF HOMELESSNESS IN THE UNITED STATES* (2003), available at www.nationalhomeless.org/civilrights/crim2003/report.pdf.

⁶⁰Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, June 3–4, 1996, U.N. Doc. A/CONF.165/14 ¶ 61 (b) (1996).

⁶¹This provision was sponsored by the U.S. delegation and adopted on its initiative.

⁶²U.S. CONST. art. VI, § 2; art. II, § 2.

⁶³Self-executing treaties are enforceable and override earlier conflicting federal statutes, according to the “last-in-time rule” (*U.S. v. Bell*, 248 F. Supp. 992 (E.D.N.Y. 1918)). They override all state statutes (*Sei Fujii v. California*, 242 P.2d 617, 621 (1952)).

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

⁶⁵*Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964); *The Paquete Habana*, 175 U.S. 677 (1900).

⁶⁶*Washington v. Glucksberg*, 521 U.S. 702, 710 (1997).

the relevance of international law and practice to U.S. law.⁶⁷

U.S. Courts and Human Rights Law

Both federal and state courts apply international human rights law, as well as international practices, in deciding domestic cases.⁶⁸ 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 Appeal 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 had protected.⁶⁹ 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.⁷⁰ 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 that 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).

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.⁷¹ As part of its analysis, the 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

⁶⁷Justice Stephen Breyer, The Supreme Court and The New International Law, The American Society of International Law, 97th annual Meeting, Washington, D.C. (Apr. 4, 2003); Justice Ruth Bader Ginsburg, Remarks for the American Constitution Society, Looking Beyond Our Borders: The Value of a Comparative Perspective in Constitutional Adjudication (Aug. 2, 2003); Justice Sandra Day O'Connor, Keynote Address, American Society of International Law, Proceedings of the Ninety-Sixth Annual Meeting of the American Society of International Law (March 16, 2002).

⁶⁸For a summary of some such cases, see NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, HUMAN RIGHTS FACT SHEET: U.S. FEDERAL AND STATE CASE LAW ASSERTING ECONOMIC AND SOCIAL RIGHTS AS HUMAN RIGHTS, available at www.nlchp.org. See also Maria Foscarnin, *Homelessness and Human Rights: Towards an Integrated Strategy*, 19 SAINT LOUIS U. PUB. L. REV. 317 (2000), for a discussion of litigation and other strategies; 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.news.findlaw.com/commentary/20040506_leavitt.html; and Laurene Heybach & Patricia Nix-Hodes, *Is Housing a Human Right?*, HOMEWARD BOUND (Chicago Coalition for the Homeless 2003).

⁶⁹*In Re White*, 168 Cal. Rptr. 562, 567 (Ct. App. 1979).

⁷⁰*Boehm v. Superior Court*, 178 Cal. App. 3d 494 (1986).

⁷¹*Lareau v. Manson*, 507 F. Supp. 1177 (D.C. Conn. 1980), aff'd in relevant part, modified and remanded in part, 651 F.2d 96 (2d Cir. 1981).

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.⁷²

The Human Right to Housing in the United States: Litigation Strategies

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.”⁷³ Thus the United States is bound not to take “retrogressive” actions with respect to the rights that the treaty protects. Further, as noted above, 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 nondiscrimination, 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. A number of its provisions could be used in these ways.

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.⁷⁴ 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*.”⁷⁵ 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.⁷⁶

The Universal Declaration of Human Rights defines basic minimum economic standards as human rights.⁷⁷ While it is not a treaty, and thus not binding by its terms, numerous scholars argue that the declaration is binding because it has acquired the status of customary inter-

⁷²Some commentators and advocates argue that state courts have a special duty to apply international human rights laws relating to economic and social rights when interpreting state constitutions and statutes. See, e.g., brief of amici curiae Center for Economic and Social Rights, International Women’s Human Rights Law Clinic, and Center for Constitutional Rights (filed with the New Jersey Supreme Court) in support of plaintiff-appellants in *Sojourner A. v. New Jersey Department of Social Services*, available at www.cesr.org/PROGRAMS/us%20program/sojourner2.pdf.

⁷³Vienna Convention on the Law of Treaties, art. 18, 1155, U.N.T.S. 331, entered into force Jan. 27, 1980.

⁷⁴ICCPR, Dec. 16, 1966, art. 12, 99 U.N.T.S. 171.

⁷⁵*Id.*, art. 26 (emphasis added).

⁷⁶To argue, however, that the ICCPR creates 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.

⁷⁷Universal Declaration of Human Rights, Dec. 10, 1948.

national law.⁷⁸ Citations by numerous U.S. courts lend support to that view.⁷⁹ This is particularly relevant to statutes that establish a general standard of need and to state constitutions that contain general statements about meeting needs.⁸⁰

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.⁸¹ 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.⁸²

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 to 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 the deprivation of liberty.”⁸³

Law Reform: Legislative and Administrative Strategies

Human rights law can also be a model for legislative advocacy, and some cities have adopted resolutions identifying themselves as human rights cities. In California, San Francisco, Berkeley, and Oakland have passed resolutions affirming the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and opposing any legislation or action that infringes on those rights.⁸⁴ Legislation, including recognition of a right to housing, has been introduced in

⁷⁸ 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).

⁷⁹ See, e.g., *Boehm*, 178 Cal. App. 3d at 494.

⁸⁰ See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *supra* note 54.

⁸¹ Istanbul Declaration on Human Settlements, Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul (June 3–14, 1996).

⁸² Leavitt, *supra* note 68.

⁸³ While this appears to apply to the conditions of confinement itself, the rationale would seem to extend to and be even stronger for those released from confinement. General Comment 21 ¶ 3.

⁸⁴ Berkeley, California, Resolution to Support the Universal Declaration of Human Rights, the International Covenant on Economic, Cultural and Social Rights, and Proclaim Berkeley to Be a Human Rights City (July 17, 1998), Oakland, California, Resolution of the Oakland City Council on Economic, Social and Cultural Rights (July 17, 1998), San Francisco, California, Declaring San Francisco as a Human Rights City and Pledging to Oppose Any Legislation or Action that Impinges on the Fundamental Rights of Human Beings (July 17, 1998).

Congress, most recently as part of the Bringing America Home Act, an omnibus bill to end homelessness.⁸⁵ In Pennsylvania advocates secured legislation that created a legislative commission to investigate the integration of human rights law into state law.⁸⁶ And in Chicago a coalition of public housing residents and advocates secured passage of a resolution by the Cook County Council stating that housing is a human right and supporting a state bill that would increase rental assistance for low-income persons.⁸⁷

Aspects of the right to housing and the interpretive guidelines issued by the relevant U.N. committees can also be used as models, and there is precedent for such a strategy. In the *Lareau* case described above, the Connecticut Department of Corrections, a defendant, had adopted the Standard Minimum Rules for Treatment of Prisoners as part of its own administrative guidelines, thus literally incorporating them into state law; this gave the court an independent basis for its holding.⁸⁸ As U.N. bodies develop and the international community uses detailed guidelines to implement the right to housing, such strategies will be increasingly relevant to housing advocates.⁸⁹

Advocates can also advance this cause by working directly with U.N. committees that can issue helpful guidelines. Drafting and submitting "shadow reports" that analyze U.S. homelessness and housing issues in human right terms would support such an effort. While the United States is now a number of years late in submitting a periodic report to the Human Rights Committee on the implementation

of rights under the International Covenant on Civil and Political Rights, the committee has been willing, in other cases, to consider submissions from nongovernmental organizations where state parties have not reported.

Historical Perspective: Social Movements and New Rights Paradigms

Housing rights in the United States must be viewed through the lens of history. While efforts to codify the right to housing along the lines of voting or other enforceable civil rights have not fully succeeded, mass movements in the United States have often overlapped with state-sponsored activism at decisive moments and formed the basis for progressive policies and action moving toward a right to housing. Moreover, over the past century, broad-based social justice and political movements have frequently sought to include a right to housing as a key component of a larger agenda.

The 1870s and 1890s witnessed the emergence of aggressive antivagrancy laws designed to address the problem of the "tramp." In response, trade unions and informal workers' committees petitioned city governments to erect municipal housing and socially governed factories as alternatives to incarceration.⁹⁰ This contest between rights and order in an era of economic uncertainty ultimately was the foundation for negotiated legislative reforms, including tenement housing, health, and property codes, that unfolded over the next generation and through the Progressive Era.

⁸⁵Bringing America Home Act, *supra* note 1

⁸⁶H.R. 144, 187th General Assembly, 2003–2004 Sess., Pa. Laws (April 30, 2003).

⁸⁷Cook County, Illinois, Resolution to Support House Bill 4100 (March 23, 2004).

⁸⁸*Lareau*, 507 F. Supp. at 1177.

⁸⁹See, e.g., the discussion of the draft Bangkok guidelines *supra* under the heading "Evaluating Compliance with the Right to Housing in the United States."

⁹⁰DAVID MONTGOMERY, *CITIZEN WORKER: THE EXPERIENCE OF WORKERS IN THE UNITED STATES WITH DEMOCRACY AND THE FREE MARKET DURING THE NINETEENTH CENTURY 87–89* (1993).

The collapse of the stock market in 1929 and subsequent mass unemployment and homelessness gave particular form and meaning to the nascent housing rights movement. Unemployed Councils emerged, principally in industrial areas, as massive layoffs were swiftly followed by widespread evictions. The councils not only advocated (often successfully) improved social and economic conditions for the poor but also fostered interethnic cooperation and greater political muscle at explosive moments, such as antieviction struggles that the councils led in Detroit and New York.⁹¹

But housing advocacy during the 1930s sought more than an economic share within the market or specific legal protection. In railing against monopolies of land and capital and rampant housing speculation, and in calling for rent strikes, tenant organizing, and non-equity cooperatives, housing rights advocacy during the Depression thoroughly mixed the language of labor and political reform in an appeal for a more just social order. These traditions of direct action and radical politics that focused on housing rights cemented into place a more activist state response and paved the way to formulating and legitimizing the policies of the New Deal.

Indeed, the passage of the 1937 Housing Act and the creation of public housing, public works projects, and a range of state-sponsored programs promoting economic security provided a welfare state scaffolding of housing rights.⁹² To be certain, the plight of unemployed and homeless workers moved the state to

enact a range of National Industrial Recovery Administration-sponsored experiments. Beyond legislation that created the nation's largely urban public housing system, subsistence homesteads, resettlement communities, and cooperative associations run by unemployed workers were the basis for securing housing and economic rights in areas such as the depression-wracked rural South.⁹³

A civil and political commitment to the right to housing manifested itself through wartime rent controls, the Sailors and Soldiers Civil Relief Act of 1940, the 1944 Economic Bill of Rights, and the continued development of public housing construction and financing. Furthermore, these policies were the template for progressive legislation in the postwar era, such as the watershed Housing Act of 1949, which established a goal of "a decent home and suitable living environment for every American family," and the GI Bill.⁹⁴ The postwar era also witnessed the popularization of the notion of an "American dream" rooted in homeownership. However market based or driven, the emergence of a popular mythology centered on economic rights was a dramatic assertion of the power of state housing policies to shape social organization. The very creation of a Department of Housing and Urban Development in 1965 and the inclusion of a fair housing title within the Civil Rights Act perhaps are further testament to this phenomenon.⁹⁵ This trend essentially held until the early 1980s, when drastic budget cuts in federal

⁹¹James Tracy, *Activists Take a Lesson from the Unemployed Councils of the 1930s*, RACE, POVERTY & THE ENVIRONMENT, Summer 2002, at 22–23; Daniel J. Leab, "United We Eat": The Creation and Organization of the Unemployed Councils in 1930, LABOR HISTORY, Fall 1967, at 8; Roy Rosenzweig, *Organizing the Unemployed: The Early Years of the Great Depression, 1929–1933*, RADICAL AMERICAN, July–Aug. 1976, at 10.

⁹²Pub. L. No. 412, 50 Stat. 888 (Sept. 1, 1937), created the United States Housing Authority for low-rent housing and slum clearance projects.

⁹³WAYNE FLYNT, POOR BUT PROUD: ALABAMA'S POOR WHITES 305–7 (1989), GWENDOLYN WRIGHT, BUILDING THE DREAM: A SOCIAL HISTORY OF HOUSING IN AMERICA 222–29 (1992).

⁹⁴The Housing Act of 1949, Pub. L. 81-171, 63 Stat. 413, July 15, 1949, established the national housing objective to provide federal aid to assist slum clearance, community development, and redevelopment programs. See Alexander Von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949*, 11 HOUSING POLICY DEBATE 299–36 (2000).

⁹⁵The Department of Housing and Urban Development Act, Pub. L. 89-174, 79 Stat. 667 (1965), established the Department of Housing and Urban Development; the Civil Rights Act of 1968, Pub. L. 90-284, 82 Stat. 73, includes Title VIII covering fair housing (42 U.S.C. §§ 3601, 3605(d)–(e)).



housing programs signaled a fundamental shift in the nation's political philosophy. Seeking housing rights within a dismantled welfare state became subsumed in the larger debate over the very role of public welfare.

To be certain, the state-sponsored housing activism of the New Deal, the direct action of Unemployed Council of the 1930s, and progressive efforts to end homelessness in the United States operate within particular economic, social, legal, and political contexts that unfold along specific threads and trajectories. Binding these disparate efforts is a collective response to housing instability and the struggle for rights and security of tenure within those challenges.

■ ■ ■

Recent legislative initiatives, as well as proposed legal advocacy and law reform campaigns, show promise in retrieving and reconstructing a right to housing movement in the United States. Through advocacy, litigation, or both, advocates can take steps toward recognition of the right. Unlike proscriptive rights that primarily bar the state from acting to interfere with human behavior (the right to free expression, the right to travel, the right to be free from cruel and unusual punishment, the right to privacy, and the like), if the right to housing is to be meaningful, the nation and the individual states must act affirmatively by adopting legislation and policies and by spending money. Whether through broad measures or incremental steps, advocates must be aggressive in promoting a right to housing. Human rights law and practice offers a framework through which to critique current policy and advocate reform.