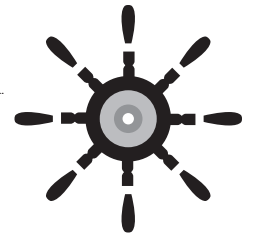


Housing as a Human Right



By Eric Tars, Senior Attorney, National Law Center on Homelessness & Poverty

Recent polling indicates that three-quarters of Americans believe that adequate housing is a human right, and two-thirds believe that government programs need to be expanded to ensure this right. The federal government is responding to this pressure. Beginning in 2012, the U.S. Interagency Council on Homelessness (USICH) adopted a human rights approach to addressing homelessness, and is actively promoting human rights standards as part of the federal housing policy conversation. In 2015, the Department of Justice (DOJ) and HUD both took strong action against the criminalization of homelessness as a result of human rights advocacy. At the state level, there is a trend of homeless bills of rights, and locally, a number of municipalities have passed resolutions declaring their belief in housing as a human right.

Housing advocates in the United States can and should use international human rights standards to reframe public debate, craft and support legislative proposals, supplement legal claims in court, advocate in international fora, and support community organizing efforts. Numerous United Nations (UN) human rights experts have recently visited the United States or made comments directly bearing on domestic housing issues including affordable and public housing, homelessness, and the foreclosure crisis, often providing detailed recommendations for federal- and local-level policy reforms. In 2016, advocates will work to consolidate these gains and push for action to accompany the rhetoric.

HISTORY

In his 1944 State of the Union address, President Franklin D. Roosevelt declared that the United States had accepted a “Second Bill of Rights,” including the right to a decent home. In 1948, the United States signed the Universal Declaration of Human Rights (UDHR), recognizing housing as a human right.

The Universal Declaration is a non-binding declaration, so the right to housing was codified in binding treaty law in the International Covenant on

Economic, Social and Cultural Rights (ICESCR) in 1966. The United States signed, but has not ratified, the ICESCR, and, thus, is only required to uphold the “object and purpose” of the treaty, but is not strictly legally bound. However, the United States ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1994. Both recognize the right to be free from discrimination, including in housing, on the basis of race, gender, disability, and other status. The U.S. also ratified the Convention Against Torture (CAT) in 1994, protecting individuals from torture and other cruel, inhuman and degrading treatment, including the criminalization of homelessness.

The United States signed another declaratory document, the Habitat Agenda, in 1996, committing itself to more than 100 housing-related goals. In 2006, the United States approved the UN Basic Principles and Guidelines on Development-Based Evictions, which provides useful standards for ensuring participation of poor and minority groups in zoning and development decisions affecting them.

In recent years, advocates organized several high-profile visits by human rights monitors to examine U.S. housing issues. The UN-HABITAT Advisory Group on Forced Evictions and UN Special Rapporteur on the Right to Adequate Housing visited in 2009. The Special Rapporteur on the Right to Water and Sanitation visited in 2011. In all these visits, monitors met directly with local and national advocates, government officials, and media. The visits resulted in extraordinarily detailed assessments of U.S. housing policies, which contain specific conclusions and recommendations based in large part on recommendations from U.S. advocates, ranging from one-for-one replacement of subsidized housing units to condemning criminalization of homelessness as potentially cruel, inhumane, and degrading treatment.

In 2012, USICH and the Department of Justice (DOJ) issued *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness*,

a report which recognizes that, in addition to possible violations under the U.S. Constitution, the criminalization of homelessness may implicate our human rights treaty obligations under the ICCPR and CAT, a first for a domestic agency report. USICH, DOJ, and HUD all now address criminalization of homelessness as a human rights issue on their websites. In 2014, the U.S. underwent review by the three treaty bodies charged with monitoring the ICCPR, ICERD, and CAT, and in 2015 the U.S. was reviewed by the Human Rights Council. Each review specifically inquired about the criminalization of homelessness in the U.S.—addressing it from angles of cruel, inhumane, and degrading treatment and racial discrimination—and made recommendations for federal funding incentives and enforcement action to discourage the practice. As noted above, in response to those recommendations, the DOJ filed a statement of interest brief arguing criminalization of homelessness violates the 8th Amendment and HUD gave up to two points on their funding applications to Continuums of Care that could demonstrate the steps they were taking to end and prevent criminalization. Homeless people on the streets of America are sleeping safer today because of this international human rights advocacy.

ISSUE SUMMARY

According to the UN Committee on Economic, Social and Cultural Rights, which oversees the ICESCR, the human right to adequate housing consists of seven elements: (1) security of tenure; (2) availability of services, materials, and infrastructure; (3) affordability; (4) accessibility; (5) habitability; (6) location; and (7) cultural adequacy.

In the human rights framework, every right creates a corresponding duty on the part of the government to respect, protect, and fulfill the right. Having the right to housing does not mean that the government must build a house for every person in America and give it to them free of charge. It does, however, allocate ultimate responsibility to the government to progressively realize the right to adequate housing, whether through devoting resources to public housing and vouchers, by creating incentives for private development of affordable housing such as inclusionary zoning or the Low Income Housing Tax Credit, through market regulation such as rent control, through legal due process protections from eviction or foreclosure, by ensuring habitable

conditions through housing codes and inspections, or by other means. Contrary to our current framework which views housing as a commodity to be determined primarily by the market, the right to housing framework gives advocates a tool for holding each level of government accountable if all those elements are not satisfied.

Other countries have made significant headway in making the right to housing real and legally enforceable. Other countries—including France, Scotland, and South Africa—have adopted a right to housing in their constitutions or legislation, leading to improved housing conditions. In Scotland, for example, the Homeless Act of 2003 includes the right for all homeless persons to be immediately housed and the right to long-term, supportive housing for as long as it is needed. The law also includes an individual right to sue if one believes these rights are not being met, and requires jurisdictions to plan for development of adequate affordable housing stock. Complementary policies include the right to purchase public housing units and automatic referrals by banks to foreclosure prevention programs to help people remain in their homes. All these elements work together to ensure the right to housing is upheld. Although implementation challenges remain, in general, homelessness in Scotland is a brief, rare, and non-recurring phenomenon.

FORECAST

Our country's current struggle with budget deficits is not a reason to defer actions to improve Americans' access to adequate housing. Rather, it is precisely in this time of ongoing economic hardship that the need to do so is most acute, and a rights-based approach to budgeting decisions would help generate the will to protect people's basic human dignity first, rather than relegating it to the status of an optional policy. In 2016, housing advocates will be building on the gains from international recognition of housing and homeless as a human rights violation to promote housing policy goals from the federal to local levels.

Following its second Universal Periodic Review by the UN Human Rights Council in May 2015, the U.S. government accepted, in part, a recommendation to “ensure the right to housing for all,” and is convening an ongoing series of interagency consultations (including officials

from HUD, DOJ, and Health & Human Services, among others) to discuss its domestic human rights analysis and implementation of recommendations from international reviews. The National Law Center on Homelessness & Poverty (NLCHP) is helping to coordinate non-governmental strategy for all these opportunities.

At the state level, Rhode Island, Illinois, and Connecticut have all passed Homeless Bills of Rights, and California, Colorado, Delaware, Oregon, Hawaii, and other states are considering similar legislation.

Locally, advocates in many cities are working to pass right to housing resolutions or directly implement the right to housing. Advocates in Eugene, OR have successfully used human rights framing to create political will for a safe camping area for homeless persons. Groups such as the Chicago Anti-Eviction Campaign are organizing eviction and foreclosure defenses and using a state law allowing non-profits to take over and rehabilitate vacant properties to draw attention to and directly implement the human right to housing.

Both the American Bar Association and the International Association of Official Human Rights Agencies (the association of state and local human rights commissions) have passed resolutions endorsing domestic implementation of the human right to housing and opposing criminalization of homelessness, which local groups are using as tools in their advocacy. The U.S. Conference of Catholic Bishops has consistently spoken in favor of the human right to housing. And, during his first visit to the United States, Pope Francis highlighted the fact that Jesus was born homeless, and called for the human right to housing to be implemented.

NLCHP, together with many other housing and homelessness organizations (including NLIHC), will be launching a campaign for Housing, Not Handcuffs in mid-2016, linking local and national advocacy against criminalization of homelessness and for the human right to housing.

TIPS FOR LOCAL SUCCESS

Local groups wishing to build the movement to recognize the human right to housing in the United States can use international standards in many different ways to promote policy change, from rallying slogans to concrete legislative proposals. Groups can start with a non-binding resolution stating that their locality recognizes housing as a human right in the context of the ongoing economic and foreclosure crisis, such as that passed by the Madison, Wisconsin, city council in November 2011, which later served as a basis for an \$8 million investment in affordable housing. Advocates can also use international standards to measure local violations of housing rights, as advocates in Sacramento, Calif, have done around access to water and sanitation. Using international mechanisms, and the domestic process around them, such as the Universal Periodic Review of the United States by the Human Rights Council, can also help cast an international spotlight on local issues.

WHAT TO SAY TO LEGISLATORS

It is important for legislators and their staff to hear their constituents say, “Housing is a human right,” and demand policies to support it as such, to reframe the conversation around housing. In talking about human rights, it is often helpful to start with the United States’ origins and acceptance of these rights in President Roosevelt’s “Second Bill of Rights” and the polling data above, and showing the affirmations of this language by USICH, HUD, and the DOJ. Using the recommendations made by human rights monitors reinforces advocates’ messages by lending international legitimacy.

FOR MORE INFORMATION

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