

Housing as a Human Right

By Eric Tars, Legal Director, National Homelessness Law Center

In 2021, the United States inaugurated a president, vice-president, and HUD Secretary who repeatedly affirmed “housing should be a right, not a privilege.” Representative Cori Bush (D-MO) held the nation’s conscience to account to extend the eviction moratorium with a sleep-out on the steps of the Capitol on the principle that housing is a human right. The U.S. Interagency Council on Homelessness (USICH) stated the right to housing would be a “core value” of its new federal strategic plan to end homelessness. Further, California and Connecticut have ongoing campaigns to add housing as a human right to state constitutional or statutory protections.

None of these steps should be taken for granted. They are a sign that advocates have shifted the conversation to lay a strong basis for things like the eviction moratorium and the right to eviction counsel campaigns across the country.

The human right to housing is a holistic and powerful frame, carrying the weight of international law and tapping into our deep cultural understanding of the importance of upholding human and civil rights. The human right to housing frame is necessary because it addresses not only the affordability and basic supply of housing, but interdependent issues such as racial equity, public health, and educational opportunity. Pairing legal standards with the popular resonance of the call for the human right to housing is how this holistic approach is uniquely able to prevent homelessness and housing instability from happening in the future.

However, language pertaining to the right to housing can become co-opted. Sacramento Mayor Darrell Steinberg introduced a city ordinance creating a so-called “right to housing and obligation to use it” that re-defines housing to include tents and shelters, and threatens those who refuse to relocate with criminal penalties.

This is *not* a rights-based approach to addressing homelessness and housing insecurity. Indeed, thanks to well-organized advocacy, the USICH, the Department of Justice, and HUD have taken enforcement actions and adopted human rights language against the criminalization of homelessness.

While stating that housing is a human right and making it happen in policy are two different things, changing the rhetorical frame is important to changing the policy. Faced with unprecedented threats from the pandemic, but also unprecedented opportunities to try to ensure we do not return to unacceptable pre-pandemic norms, housing advocates can use the human right to housing framework 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 (U.N.) human rights experts have recently visited the United States or made comments directly bearing on domestic housing issues including housing obligations during the COVID crisis, providing detailed recommendations for federal- and local-level policy reforms. In 2023, advocates must work to consolidate these gains and push for action to accompany the rhetoric.

HISTORY

In his 1944 State of the Union address, President Franklin Roosevelt declared that the United States had 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 adequate housing as a component of the human right to an adequate standard of living.

The UDHR is a non-binding declaration, so the right to adequate housing was codified into a binding treaty law by the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966. The United States signed the ICESCR, and thus must uphold the “object and purpose”

of the treaty, even though the U.S. has not yet ratified it. The U.S. ratified the [International Covenant on Civil and Political Rights](#) in 1992 and the [International Convention on the Elimination of All Forms of Racial Discrimination](#) in 1994. Both recognize the right to be free from discrimination, including in housing, on the basis of race, gender, disability, and other status and emphasize the need for equitable policies to make up for past discrimination. The U.S. also ratified the [Convention Against Torture](#) in 1994, protecting individuals from torture and other cruel, inhumane, and degrading treatment, including the criminalization of homelessness.

More recently, the U.S. government supported, in part, a recommendation from the [Human Rights Council](#) in 2015 to “guarantee the right by all residents in the country to adequate housing, food, health and education, with the aim of decreasing poverty, which affects 48 million people in the country.” In October 2016, the U.S. signed onto the [New Urban Agenda](#), “commit[ing] to promote national, sub-national, and local housing policies that support the progressive realization of the right to adequate housing for all as a component of the right to an adequate standard of living, that address all forms of discrimination and violence, prevent arbitrary forced evictions, and that focus on the needs of the homeless, persons in vulnerable situations, low-income groups, and persons with disabilities, while enabling participation and engagement of communities and relevant stakeholders in the planning and implementation of these policies including supporting the social production of habitat, according to national legislations and standards.”

The U.S. has hosted several official and unofficial visits from top U.N. human rights officers in recent years that garnered significant press, as well as meetings with high profile elected officials. In 2019, the National Law Center on Homelessness and Poverty and others worked with Senator Cory Booker’s (D-NJ) office to host a packed-room [congressional briefing](#) on the U.N.’s [special rapporteur on extreme poverty and human rights report](#) on his mission to the U.S.

When Vice President Harris joined President-Elect Biden’s ticket, she brought the housing as a right framing into his [platform](#).

The rhetoric has now moved into the political mainstream, with countless local, state, and federal officials stating their belief that housing is a human right in recent years. What is needed now is to pair that rhetoric with accountability to the full scope of the standards of the human right to adequate housing described below.

ISSUE SUMMARY

The human right to housing, as defined by international law, is a powerful framework that considers the current, imperfect reality, while also setting forth the numerous, interdependent and holistic pieces that are required for the full realization of the right. It promotes [racial justice](#) and housing justice, and supports other human rights. The right to housing includes negative and positive rights: for example, the government must refrain from imposing cruel and unusual punishments, such as punishing individuals for sleeping or sheltering themselves outdoors in the absence of adequate alternatives (negative right) but must also ensure adequate supply of affordable housing (positive right).

According to the U.N. 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 decent, accessible, and affordable housing, whether by devoting resources to public housing, universal vouchers, or renters tax credits, by creating

incentives for the 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, and upholding the right to counsel to enforce those protections and ensuring habitable conditions through housing codes and inspections, or by ensuring homeless persons are not threatened with civil or criminal penalties for sheltering themselves in the absence of adequate alternatives. Contrary to the current framework that 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 any of those elements are not satisfied. Crucially, the human rights framework states clearly that the right to housing includes the right to participate in decisions on housing policy for those directly impacted by those policies. Human rights also actively embraces “special measures” for historically-marginalized populations, including affirmative action or reparations.

France, Scotland, South Africa, and several other countries have adopted a right to housing in their constitutions or legislation, leading to improved housing conditions. In Scotland, the “Homelessness 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 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 the 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 that the right to housing is upheld. Although challenges remain in its implementation, in general, Scotland’s homelessness is brief, rare, and non-recurring.

FORECAST FOR 2023

Building on recent successes in mainstreaming the human right to housing into the policy conversation, 2023 could be a breakout year for moving the right into practice.

On the positive side, increasing adoption of the language around the human right to housing by presidential candidates and Members of Congress indicates a comfort with this framing and a potential for a mutually reinforcing cultural shift. Ambitious legislative proposals including the “Ending Homelessness Act”, “Housing is a Human Right Act”, and others show a move toward a rights-based approach, as opposed to one that accepts artificial budget limitations as an excuse to not meet the need.

That said, the threat posed by COVID-19 and the accompanying economic crisis, and Congress’ failure to pass meaningful longer-term measures to address housing inequality, could make things far worse before they get better. Millions could lose their homes, with life-long consequences, and state and local budgets will be cut due to lost tax revenue. Without a major COVID-relief package that adopts a human rights approach, it will be difficult to “build back better”. It is precisely in this time of ongoing economic hardship that a rights-based approach to budgeting and policy decisions will help generate the resolve to protect basic human dignity first, rather than relegating it to the status of an optional policy. The National Homelessness Law Center, together with many other housing and homelessness organizations (including NLIHC), launched the Housing Not Handcuffs Campaign in 2016 and the National Coalition for Housing Justice in 2020, both of which call for human right to housing policies in the U.S.

TIPS FOR LOCAL SUCCESS

Local groups wishing to build the movement around the human right to housing in the United States can use international standards to promote policy change, from rallying slogans to concrete legislative proposals. Groups like the #Moms4Housing use human rights to take

direct action like taking over vacant buildings and to support broader local and statewide legislative advocacy. The UN has created [model guidance](#) for implementing the human right to housing, including policies to ensure it during the [COVID-19 crisis](#), and a former UN official has created numerous resources to help advocates [Make the Shift](#) to a rights-based conversation. Advocates can also hold local governments accountable to human rights standards by creating an annual [Human Right to Housing Report Card](#). Using international mechanisms (like those described above) can also cast an international spotlight on local issues.

WHAT TO SAY TO LEGISLATORS

It is important for legislators and their staff (as well as other advocates) to hear constituents say that housing is a human right and ask for them to say it too, as we work toward policies that support it as such. This helps change the normative framework for all of the housing issues that we work on: *because* housing is a human right, we need to create a right to counsel in eviction court; *because* housing is a human right, we need to fund universal vouchers or create a renters tax credit; all this creates the momentum for the next time we need to say “*because* housing is a human right, we need to [insert your housing priority]”. Tying the concept to the United States’ origins and acceptance of these rights in Roosevelt’s “Second Bill of Rights,” polling data, and the growing widespread acceptance by political leaders all emphasize that it is a homegrown idea rather than one imposed from abroad. On a somewhat converse point, using the recommendations made by human rights monitors can also reinforce advocates’ messages by lending them international legitimacy.

Numerous national associations, including the [American Bar Association](#), [American Medical Association](#), [American Public Health Association](#), and [International Association of Official Human Rights Agencies](#) have passed resolutions endorsing a domestic implementation of the human right to housing, which local groups are using as tools in their advocacy. In reaching out

to religiously motivated communities, it may be helpful to reference the numerous endorsements of the [U.S. Conference of Catholic Bishops](#) in favor of the human right to housing and to point out that Pope Francis called for the human right to housing to be implemented during his 2015 visit to the U.S. All of these can lead us to a future where housing is enjoyed as a right by all Americans.

FOR MORE INFORMATION

National Homelessness Law Center (formerly the National Law Center on Homelessness & Poverty), 202-638-2535, <https://homelesslaw.org/>.

