

Housing as a Human Right

By Eric Tars, Legal Director, National Law Center on Homelessness & Poverty

Polling results indicate 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. However, New Deal commitments to ensure that our neighbors do not go unhoused were broken in the massive cutbacks to federal housing funding in the early 1980s and have never been restored, resulting in the current homelessness crisis. Today only one out of four income-eligible renters receives assistance and reports of homeless encampments have surged more than 1,300% over the past 10 years, indicating that we are far from a rights-based approach. Human rights framing has made its way into federal policy, however. Beginning in 2012, thanks to well-organized advocacy, the U.S. Interagency Council on Homelessness (USICH), the U.S. Department of Justice (DOJ), and HUD have all taken enforcement actions and adopted human rights language against the criminalization of homelessness. At the state level, there is a trend of developing “homeless bills of rights,” and locally, many municipalities have passed resolutions declaring their belief in housing as a human right.

Many in the housing advocacy world believe that housing should be a right for all but are not as vocal or insistent on a rights-based framework as the issue demands. Now, faced with the prospect of more cuts to already inadequate housing programs at the federal, state, and local levels, housing advocates can use the international human rights framework, which deems housing a basic human right, 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 affordable and public housing, homelessness, and the foreclosure crisis, often providing detailed recommendations for federal- and local-level policy reforms. In 2019, advocates must work to consolidate these gains and push for action to accompany the rhetoric.

HISTORY

In his 1944 State of the Union address, 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. The U.S. also ratified the Convention Against Torture in 1994, protecting individuals from torture and other cruel, inhuman and degrading treatment, including the criminalization of homelessness.

More recently, there were hints that the U.S. might have interest in revitalizing the human right to housing. In March 2011, the U.S. made commitments to the U.N. Human Rights Council to “reduce homelessness,” “reinforce safeguards to protect the rights” of homeless people, and continue efforts to ensure access to affordable housing for all. In 2015, the U.S. government supported, in part, a recommendation from

the Human Rights Council 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, the outcome report of the U.N. Habitat III conference. The signatories “commit 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 Agenda also stated, “we commit to combat homelessness as well as to combat and eliminate its criminalization through dedicated policies and targeted active inclusion strategies, such as comprehensive, inclusive, and sustainable housing first programs.”

As of the writing of this chapter, USICH, DOJ, and HUD all currently address the criminalization of homelessness as a human rights issue on their websites and have implemented the recommendations of human rights bodies. This is the result of advocacy related to visits by U.N. human rights monitors and reviews by human rights bodies in Geneva. The DOJ filed a statement of interest brief arguing that the criminalization of homelessness violates the 8th Amendment and human rights standards while HUD provided up to two points on their funding applications to Continuums of Care that demonstrated steps taken to end and prevent criminalization. Homeless people on the streets of America are sleeping safer today because of international human rights advocacy, but much more remains to be done to ensure that the human right to adequate housing is a reality for all.

ISSUE SUMMARY

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 adequate housing, whether by devoting resources to public housing and vouchers, 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, as well as upholding the right to counsel to enforce those protections and ensuring habitable conditions through housing codes and inspections. Contrary to our 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.

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 a brief, rare, and non-recurring phenomenon.

FORECAST FOR 2019

The current U.S. Administration and Congress pose threats both to the enjoyment of the right to adequate housing by Americans and to the acceptance of a rights-based approach to housing. Issues to monitor in 2019 include proposals to cut non-defense spending in reaction to the deficits caused by last year's tax cuts, which directly conflicts with a rights-based approach and would be devastating to affordable housing programs including Section 8 vouchers, public housing, and project-based rental assistance (which need to increase every year to keep pace with inflation), welfare reform-type changes such as work requirements and time limits to all anti-poverty programs, which again undermine the ability to access needed housing as a right, and block granting of more funds (which can make it easier to use anti-poverty funding for other purposes).

It is precisely in this time of ongoing economic hardship that a rights-based approach to budgeting and policy 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. The National Law Center on Homelessness & Poverty, together with many other housing and homelessness organizations (including NLIHC), launched the Housing Not Handcuffs Campaign in 2016 linking local and national advocacy against the criminalization of homelessness and in favor of housing access.

Advocates can take advantage of two opportunities to address housing as a human right at the federal level in 2019. First, Sen. Cory Booker (D-NJ) is sponsoring a briefing on the report of the U.N. Special Rapporteur on Extreme Poverty & Human Rights' mission to the

U.S., planned for late January 2019. Second, the U.S. will be reviewed by the U.N. Human Rights Council in May 2020, but non-governmental reports to the Council are due in September 2019. Groups are organizing now to develop a joint submission highlighting housing and homelessness issues.

At the state level, Rhode Island, Illinois, and Connecticut have all passed Homeless Bills of Rights and California, Colorado, Delaware, Florida, Oregon, Pennsylvania, and Hawaii are all likely to consider similar legislation in 2019.

Locally, advocates in many cities are working to pass right to housing resolutions or to 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 like the Chicago Anti-Eviction Campaign are organizing eviction and foreclosure defenses and using a state law allowing nonprofits to take over and rehabilitate vacant properties to draw attention to and directly implement the human right to housing.

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 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 the resolution passed by the Madison, WI, city council and the surrounding Dane County Board of Supervisors in November 2011, which later served as the basis for an \$8 million investment in affordable housing. Advocates can also hold local government accountable to human rights standards by creating an annual Human Right to Housing Report Card. Using international mechanisms and the domestic process around them, such as the review by the U.N. Human Rights Council 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 their constituents say that housing is a human right and call for policies to support it as such, as this helps to change the normative framework for all of the housing issues that we work on. That said, there are also times when it is more strategic not to utilize the language of human rights *per se*, but to emphasize or advocate for the underlying programs or policies that would help to better guarantee the right in practice.

For the situations where it is appropriate to frame the broader case on housing as a human right, tying the concept to the United States' origins and acceptance of these rights in Roosevelt's "Second Bill of Rights," the polling data above, and showing the affirmations of this language by USICH, HUD, and the DOJ 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.

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 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 Law Center on Homelessness & Poverty,
202-638-2535, www.nlchp.org.