

# Housing as a Human Right

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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 receive 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. Thanks to well-organized advocacy, the [U.S. Interagency Council on Homelessness \(USICH\)](#), the U.S. [Department of Justice \(DOJ\)](#), and Department of [Housing and Urban Development](#) 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.

2019 saw for the first time numerous Presidential candidate platforms and Congressional statements openly embracing a human right to housing framework. While saying 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. This was demonstrated by the embrace of healthcare as a human right framing that preceded the passage of the “Affordable Care Act.” Faced with the prospect of more cuts to already inadequate housing programs at the federal, state, and local levels, 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 affordable and public housing, homelessness, and the foreclosure crisis, often providing detailed recommendations for federal- and local-level policy reforms. In 2020, 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. They also 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.

In more recent years, 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 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.”

USICH, DOJ, and HUD all currently address the criminalization of homelessness as a human rights issue on their websites. Implementing recommendations of human rights treaty bodies, the DOJ filed a [statement of interest brief](#) arguing that the criminalization of homelessness violates the 8<sup>th</sup> Amendment and human rights standards, and HUD provided two points on their funding applications to [incentivize Continuums of Care](#) to demonstrate steps taken to end and prevent criminalization.

The U.S. has hosted several official and unofficial visits of top U.N. human rights in recent years which have garnered significant press, as well as meetings with high profile elected officials. In 2019, the National Law Center on Homelessness & Poverty and others worked with Sen. Cory Booker’s office to host a packed-room [Congressional briefing](#) on the report of the U.N. [Special Rapporteur on Extreme Poverty & Human Rights](#) on his mission to the U.S. There, the Law

Center called on the attendees to embrace human right to housing framing. Following further meetings, now seven of the leading Democratic candidates for President (Senators [Booker](#), [Harris](#), [Sanders](#), and [Warren](#), former HUD Sec. [Castro](#), former Rep. [O’Rourke](#), and Tom [Steyer](#)) have addressed housing as a human right in their speeches and platforms, those in Congress have introduced bills to address the right, and all of the members of “[the Squad](#)” have been actively messaging the human right to housing on the House floor in introducing their housing legislation.

## 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, 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, as well as 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 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 2020

Building on the success of 2019, 2020 could be the true breakout year for the human right to housing in the U.S.

On the positive side, the increasing adoption of the language of 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 renters tax credits, reparations for decades of racist exclusions from the housing market for racial minorities, and a new commitment to public housing, while not likely to be immediately enacted, show a move toward a rights-based approach, as opposed to one that accepts budget limitations as an excuse to not meet the need.

That said, the current U.S. Administration poses a dire threat both to the enjoyment of the right to adequate housing by Americans and to the acceptance of a rights-based

approach to housing. Most worryingly, as of the time of this writing, the Administration is reportedly working on an executive order that would potentially include mechanisms to raze homeless encampments and forcibly relocate and effectively incarcerate people experiencing homelessness in mass encampments or in vacant properties. In the meantime, the President’s budget repeatedly cuts funding for affordable housing, and his new appointment to head the USICH indicates a turn away from housing-based solutions and toward criminalization of homelessness and mass homeless incarceration facilities.

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 also take advantage of the [Universal Periodic Review](#) of the U.S. by the U.N. Human Rights Council in May 2020 as an opportunity to highlight the U.S.’s poor performance on housing and generate recommendations to reinforce our policy solutions.

At the state level, Rhode Island, Illinois, and Connecticut have all passed [Homeless Bills of Rights](#) and California is reportedly considering human right to housing legislation for 2020.

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 ask for them to say it too, 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. 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 or other leading political figures 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](http://www.nlchp.org).