

**“Simply Unacceptable”:
Homelessness and the
Human Right to Housing
In the United States
2011**

**A Report of the
National Law Center on Homelessness & Poverty**

June 2011

1411 K Street, NW, Suite 1400
Washington, DC 20005
Phone: 202-638-2535
Fax: 202-628-2737
www.nlchp.org

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The National Law Center on Homelessness & Poverty is committed to solutions that address the causes of homelessness, not just the symptoms, and works to place and address homelessness in the larger context of poverty.

To this end, we employ three main strategies: impact litigation, policy advocacy, and public education. We are a persistent and effective voice on behalf of homeless Americans, speaking effectively to federal, state, and local policy makers. We also produce investigative reports and provide legal and policy support to local organizations.

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Khalid Abdul-Khaliq

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Housing Attorney

Maria Foscarinis

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Whitney Gent

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Communications Director

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Domestic Violence Attorney

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Civil Rights Program Director

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Policy Director

Eric Tars

Human Rights Program
Director/Children & Youth
Attorney

Development Interns

Dana Moutis
Rachel Oliveri
Linda Rodriguez

Legal Interns

Cara Baldari
Jeff Hill
Mili Patel

Human Rights Fellow

Déodonné Bhattarai

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EXECUTIVE SUMMARY

Current Context

In 2011, the United States is facing a housing crisis of proportions not seen since the Great Depression, when President Franklin D. Roosevelt lamented in his Second Inaugural Address that he saw “one third of our nation ill-housed, ill-clad, and ill-nourished.”¹

Prior to the foreclosure crisis and economic recession, homelessness was already a national crisis, with 2.5 to 3.5 million men, women and children experiencing homelessness each year, including a total of 1.35 million children and over a million people working full or part time—but unable to pay for housing.²

Since then, homelessness has increased dramatically:

- In 2010 alone, family homelessness rose at a shocking average of nine percent in U.S. cities.³
- In the year from 2008 to 2009, the number of people living doubled up with family or friends out of economic necessity increased by 12%, to over 6 million people.⁴
- In the 2008 to 2009 school year, nearly 1 million school children were homeless—up 41% from the previous two years.⁵

The Human Right to Housing

In 1948, the U.S. led the world in shaping the Universal Declaration of Human Rights, which provides, among other things, that “everyone has the right to an adequate standard of living...including the right to housing.”⁶ However, the following year, the 1949 federal Housing Act stated a *goal* of “a decent home and suitable living arrangement for every American family,” but that goal was never enshrined as a *right* for every American.⁷

More recently, in 2010, President Obama stated that it is “simply unacceptable for individuals, children, families and our nation’s veterans to be faced with homelessness in

¹ President Franklin Roosevelt, Second Inaugural Address (Jan. 20, 1937).

² See National Alliance to End Homelessness, *Homelessness Looms as Potential Outcome of Recession* (2009).

³ The United States Conference of Mayors, Hunger and Homelessness Survey: a Status Report on Hunger and Homelessness in America’s Cities, 17 (2010).

⁴ M William Sermons, Peter Witte, National Alliance to End Homelessness, *State of Homelessness in America*, 2 (2011).

⁵ National Center for Homeless Education, *Education for Homeless Children and Youth Program Data Collection Summary*, 4 (2010).

⁶ Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., pt. 1, art. 25(1), U.N. Doc. A/810 (1948).

⁷ The Housing Act of 1949, (Title V of P.L. 81-171).

this country.”⁸ And in March 2011, the U.S. acknowledged for the first time that rising homelessness implicates its human rights obligations.⁹ This recognition came in the Obama Administration’s official response to the United Nations Human Rights Council’s first ever comprehensive review of the United States’ human rights record. That response included a commitment to take action to “reduce homelessness,” to “reinforce safeguards to protect the rights” of homeless people, and to continue efforts to ensure access to affordable housing for all.¹⁰

The response to the Human Rights Council was followed a week later by a statement by the State Department that after 70 years, the U.S. would be returning to a commitment to uphold the full range of the Four Freedoms outlined by President Roosevelt during the Great Depression, including the Freedom from Want.¹¹ In acknowledging our renewed embrace of the full spectrum of economic, social, and cultural rights alongside civil and political rights, Assistant Secretary Michael Posner singled out the right to housing among others, stating “Our government’s commitment to provide for the basic social and economic needs of our people is clear, and it reflects the will of the American people...They ask us to provide shelter for the destitute...and we do. In the wake of the housing crisis, last year the federal government committed almost \$4 billion to target homelessness.”¹² But this \$4 billion for homelessness prevention is not enough in the scope of a housing crisis that is much larger. While our political dialogue has now come full circle to reaffirm the human right to housing, those who are homeless on the streets of America await the actions necessary to make the right a reality.

This Report: Holding the U.S. Accountable

This report assesses the current level of U.S. compliance with the human right to housing in the context of American homelessness. In doing so, we consider the country as a whole, and policy at all levels of government, as it related to homelessness, including its prevention. It is not, and not intended to be, a comprehensive review and assessment of implementation of all aspects of the right.

According to international standards, the human right to housing consists of seven elements: security of tenure; availability of services, materials, and infrastructure; affordability; accessibility; habitability; location; and cultural adequacy.¹³ Human rights law requires that the progressive realization of the right, to the maximum of the country’s

⁸ United States Inter-Agency Council on Homelessness, *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* (2010).

⁹ Report of the Working Group on the Universal Periodic Review, United States of America, *Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/16/11/Add.1, para. 19, (Mar. 8, 2011).

¹⁰ *Ibid.*

¹¹ Asst. Sec. of State for Democracy, Human Rights, & Labor Michael Posner, *The Four Freedoms Turn 70*, (Mar. 24, 2011).

¹² *Ibid.*

¹³ General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003).

available resources, in a non-discriminatory manner.¹⁴ The government can use a wide variety of measures, from market regulation to subsidies, public-private partnerships to tax policy, to help ensure the right. Implementing the human right to housing would *not* require the government to immediately build a home for each person in America or to provide housing for all free of charge. But it does require more than some provision for emergency shelter – it requires an affirmative commitment to ensure fully adequate housing, based on all the criteria outlined above.

Our initial findings show there is much work to do to realize the right to housing. We have given a letter-grade ranking for the current status of each aspect of the right.¹⁵ We recognize that overall enjoyment of housing rights is better in the U.S. than in many nations, but the human right to housing is one that is progressively realized based on the resources available to the country. Given that the U.S. is still the wealthiest nation in the world, with a well-developed democratic and judicial system, we need to hold ourselves to a higher standard, which is reflected in the poor grades assigned below:

- **Security of Tenure:** According to international standards, all persons—whether renters, homeowners or occupants of emergency housing or informal settlements—should possess legal protection against forced eviction and harassment. In the U.S. today, these protections are often lacking:
 - **Renters.** Renters enjoy legal protections in some communities, and the Protecting Tenants at Foreclosure Act (enacted in 2009 and amended in 2010), provides, for the first time, some crucial federal protections for renters in foreclosure; some states have enacted stronger protections. But implementation and enforcement are lacking and renters, who are disproportionately low income and people of color, continue to lose their homes—and face homelessness—due to their landlords’ foreclosures. **B-**
 - **Homeowners.** Over 2.5 million homes have been foreclosed upon since 2007;¹⁶ many of these foreclosures were preceded by predatory lending practices, which target primarily poor and minority borrowers (who may have no other options) with agreements that incorporate *insecure* tenure by their terms. At the same time, banks received billions in public dollars, diminishing the nation’s “available resources” to progressively realize the human right to housing, contrary to human rights obligations. Nevertheless, there are some important procedural safeguards, some in place before the crisis and others enacted in 2009, and some courts have acted to protect homeowners. **D+**

¹⁴ *Id.*

¹⁵ Grades were assigned based on the following criteria: 1) Was a law passed or policy adopted that protects the right to housing? 2) Are laws that are in place to protect the right to housing being implemented and enforced? 3) Have laws been enacted or are laws being enforced that undermine the right to housing? 4) Have resources to further the right to housing been added or are they being taken away? Starting with a “neutral” C grade, points were added or taken away based on these criteria, with + or – used to reflect nuance such as the significance of a law or the magnitude of harm.

¹⁶ Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, Center for Responsible Lending Research Report, “Foreclosures by Race and Ethnicity: Demographics of a Crisis” (June 18, 2010).

- o **Access to Counsel:** The U.S. Constitution has not to date been interpreted to require counsel in civil matters, and this includes evictions and foreclosures. While some state and local governments are going or considering going further, the vast majority of civil litigants are unrepresented. **D**

- o **Emergency and Dire Circumstances:**
 - Criminalization of Homelessness. In cities across the country, homeless persons are increasingly criminalized for sleeping or sitting in public spaces despite lack of adequate shelter or affordable housing with anti-camping laws increasing 7% between 2006 and 2009.¹⁷ **F**
 - A few communities have adopted constructive alternative approaches, such as Portland, Oregon’s “A Key Not a Card” program, through which city-funded outreach workers place people living in public places into permanent affordable housing. While more resources are needed to meet the need, this is a very important step in the right direction. **A-**

 - Domestic Violence. Domestic violence is a leading cause of homelessness, particularly for women. The Violence Against Women Act in 2006 created new housing rights for victims in public and subsidized housing, and several states have enacted broader protections. However, while positive steps, these rights are often not enforced. Regulations issued recently by HUD are another positive step, as is the appointment of a special White House Advisor on Domestic Violence. **B-**

- **Availability of Services, Materials, and Infrastructure:** In urban areas, systemic failure to adequately fund capital needs of public housing has created a \$30 billion dollar backlog in repairs, leaving many buildings and units in a state of chronic disrepair and threatening this vital safety net;¹⁸ in rural areas, impoverished and racially segregated areas suffer from lack of access to basic water and sanitation. Measured against the nation’s “available resources,” this failure is especially egregious. **D**

- **Affordability:** Among renters, close to one-quarter of households spend more than half their income on rent, putting them one paycheck away from

¹⁷ National Law Center on Homelessness & Poverty and National Coalition for the Homeless, *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities* (2009).

¹⁸ Sandra B. Henriquez, Testimony to the House Financial Services Subcommittee on Housing and Community Opportunity, Apr. 28, 2010, *available at* <http://portal.hud.gov/hudportal/HUD?src=/press/testimonies/2010/2010-04-28>.

homelessness; of extremely low-income renters, 71% pay more than half their income in rent.¹⁹ Overall, in 2008 (the most recent year for which data is available), compared to need, and only 37 units were affordable and available for every 100 households.²⁰ Meanwhile, foreclosed homes and abandoned government properties stand vacant as families are living on the streets. **D**

- **Accessibility:** The overly restrictive federal definition of homelessness prevents many in need of resources from receiving aid, and identification barriers prevent numerous homeless persons from accessing federal resources. Criminal and arrest records also prevent large populations from accessing housing, leading 1 in 11 released prisoners into homelessness.²¹ Post-disaster relief policies that fail to provide assistance by right leave many people in crisis unable to access needed resources. And even where needy applicants are able to obtain housing assistance or access affordable housing, they face discrimination in the private housing market on the basis of race, disability, gender, source-of-income, or other status, despite some strong de jure protections: over 30,000 complaints were registered in 2009 with housing protection agencies, and many more go unreported.²² **C-**
- **Habitability:** While overall housing conditions have improved significantly through the latter half of the 20th century to the present, many poor residents continue to face housing conditions that seem to be from another era. From 2005 to 2008, the number of people in families sharing the housing of others due to economic hardship increased by 8.5%, and some states have reported a doubling of their shared household families;²³ poor maintenance of buildings leads to health problems, particularly for poor youth who experience double the rate of asthma of moderate income youth.²⁴ Without a right to counsel, many housing code violations go unpunished and un-remedied. **C-**
- **Location:** Poor families in both urban and rural areas are separated by long commutes from employment options, many spending as much as 2.5 hours commuting each day;²⁵ healthcare resources are similarly deficient in many impoverished communities – 80% of rural areas are medically underserved, and in urban areas, hospitals are closing in racial minority areas at twice the rate of other areas;²⁶ failures to remedy historical segregation patterns continue to result in

¹⁹ National Low Income Housing Coalition, *Out of Reach 2010*, 6, (June 2010).

²⁰ *Id.*

²¹ Bureau of Justice Statistics, 2009. “Prisoners In 2008”, available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763> (last visited Jan. 21, 2011).

²² National Fair Housing Alliance, *Levels of Housing Discrimination Remain at Historic High in 2009*, May 16, 2010).

²³ Joy Moses, Center for American Progress, *The New Housing Normal for Low-Income Families*, (June 15, 2010); M William Sermons, Peter Witte, National Alliance to End Homelessness, *State of Homelessness in America*, 26 (2011).

²⁴ Gary W. Evans & Elyse Kantrowitz, *Socioeconomic Status and Health: The Potential Role of Environmental Risk Exposure*, 23 Ann. Rev. Pub. Health 303, 307 (2002).

²⁵ Mark Mather, Population Reference Bureau, *Housing and Commuting Patterns in Appalachia* 16 (January 2004).

²⁶ Sidley D. Watson, *Mending the Fabric of Small Town America: Health Reform & Rural Economies*, 113

segregated and inadequate education for poor and minority youth at rates higher than in the 1960s when segregation was still legal.²⁷ In many communities, homeless children continue to be placed in emergency housing without regard to school needs. **D**

- **Cultural Adequacy:** The poor state of housing for Native Americans violates not only human rights, but also tribal treaty obligations through overcrowding, lack of maintenance, and destruction of historical cultural connections to land. **D**

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 economic crisis 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. There are many steps that would bring us closer to compliance with our human rights obligations and require few additional resources, including laws and regulations to rebalance rights within the private housing market. Where additional public resources are required, framing these expenditures as part of our government's basic obligations to its citizens, the same as its duty to ensure freedom of speech or a speedy and fair trial, allows us to establish a new baseline as budget debates intensify.

Because the human right to housing framework itself is so broad, the list of remedies to present violations is similarly broad. Our report lists more than 30 recommendations that would make positive first steps toward ensuring the right to housing; we have highlighted the ten most critical—and most relevant to ending and preventing homelessness:

Increase Housing Funding and Resources

1. Congress and the Department of Housing & Urban Development (HUD) should allocate at least \$1 billion per year to homelessness prevention programs to fund emergency housing, rental assistance, and rapid re-housing resources.
2. Congress and HUD should ensure every person can afford adequate housing through a combination of new construction of subsidized units, expanded funding for Section 8 and other subsidies, and funding the National Housing Trust Fund at a minimum of \$1 billion per year.
3. Congress and HUD should protect and strengthen the McKinney-Vento Title V and the Base Realignment and Closure surplus property programs, which require vacant or underutilized federal property and military bases be made available to homeless service providers at no cost, by increasing the number of useful properties made available and easing the application process.

W. Vir. L. Rev. 1, 7-8, (Fall 2010); Opportunity Agenda, *Dangerous and Unlawful: A Report on why our health care system is failing New York communities and how to fix it* 3, (2007)..

²⁷ Jonathan Kozol, "The Shame of the Nation: the Restoration of Apartheid Schooling in America," Crown Publishers (New York 2005), 240.

Strengthen Rights

4. Congress and the Administration should make permanent the Protecting Tenants at Foreclosure Act (PTFA), with the addition of a private right of action to enable better enforcement of the law and give HUD, bank regulatory agencies and the Department of Justice authority to investigate reports of noncompliance with PTFA.
5. States should provide a right to counsel in all civil cases involving the potential loss of housing or inadequate housing conditions, and significantly expand funding to legal aid services to facilitate the implementation of this right.
6. HUD and the Department of Justice should promulgate guidance for communities emphasizing the negative consequences of measures criminalizing homelessness and providing incentives for constructive alternatives.
7. Congress and HUD should expand the Violence Against Women Act's housing protections to other federal housing programs, so that victims and their families are not unjustly evicted into homelessness.
8. In order to facilitate access to housing and other services, states should take steps to reduce barriers to homeless persons obtaining identification, such as providing cost waivers and assisting persons with obtaining necessary documentation.

Improve Economic Justice and Fairness

9. Congress and the Social Security Administration should create a federal living wage, and increase Supplemental Security Income benefits, so that both working and disabled people can afford adequate housing while paying under 30% of their income for housing costs.
10. Congress should amend the Stafford Disaster Relief and Emergency Assistance Act to reflect the UN Guiding Principles on Internal Displacement, and HUD and the Federal Emergency Management Agency should develop regulations and guidance to similarly integrate those principles.

INTRODUCTION

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.²⁸ Indeed, we believe, as President Obama has stated, “It is simply unacceptable for individuals, children, families and our nation’s Veterans to be faced with homelessness in this country.”²⁹

But when we look around, we quickly see that we do accept this. The foreclosure crisis has millions of homes standing empty while millions of people are on the streets.³⁰ Two million children are estimated to have become homeless due to the foreclosure crisis in the past two years, millions more families are arbitrarily evicted with no access to legal counsel, experience poor housing conditions, and live in neighborhoods without adequate schools, transportation, or other services.³¹ Meanwhile, federal and local budgets to create affordable housing options are being slashed.³² These problems disparately impact poor people of color, women, persons with physical and mental disabilities, indigenous peoples and the lesbian, gay, bisexual, transgender, and queer community.³³

According to the UN Committee on Economic, Social and Cultural Rights, the human right to housing consists of seven elements: security of tenure; availability of services, materials, and infrastructure; affordability; accessibility; habitability; location; and cultural adequacy.³⁴ In the human rights framework, every right creates a corresponding duty on the part of the government to respect, protect, and fulfill the right. 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. Rather, governments may ensure the right by 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; 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

²⁸ Opportunity Agenda, *Human Rights in the U.S.: Opinion Research with Advocates, Journalists, and the General Public*, 19, 22 (2007).

²⁹ United States Inter-Agency Council on Homelessness, *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* (2010), available at <http://www.usich.gov/OpeningDoors.html> [hereinafter *Opening Doors*].

³⁰ See National Alliance to End Homelessness, *Homelessness Looms as Potential Outcome of Recession* (2009) [hereinafter *Homelessness Looms*].

³¹ Phillip Lovell & Julia Isaacs, *The Impact of the Mortgage Crisis on Children* (2008).

³² Michael Leachman, Erica Williams & Nicholas Johnson, *Governors are Proposing Deep Cuts in Services, Likely Harming their Economies* (2011).

³³ See A Report to the Human Rights Council on the Right to Adequate Housing in the United States of America (2010), available at http://www.nlchp.org/content/pubs/UPR_Housing_Report4.19.10.pdf, (last visited Mar. 18, 2011).

³⁴ General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003). [hereinafter General Comment 4],

to housing framework gives advocates a tool for holding each level of government accountable if the seven elements of the right are not satisfied.

The international community has increasingly taken note of America's failure to uphold the right to housing. In 2006, the UN Human Rights Committee expressed concern about the disparate racial impact of homelessness in the U.S. and called for "adequate and adequately implemented policies, to ensure the cessation of this form of racial discrimination."³⁵ In February 2008, the Committee on the Elimination of Racial Discrimination expressed additional concerns about the disparate racial impact of segregated housing communities, and called for a right to counsel in civil cases where housing is threatened.³⁶ In June 2008, the UN Special Rapporteur on Racism conducted a visit to the U.S. and condemned racial disparities in housing and local policies that criminalize homelessness in his report.³⁷ In the fall of 2009, the UN Special Rapporteur on the Right to Adequate Housing conducted her first official mission to the U.S. Her comprehensive report, issued in March 2010, covers affordable and public housing, homelessness, and the foreclosure crisis, and provides detailed recommendations for federal and local level policy reforms.³⁸

This report begins with a brief history of the right to housing in the U.S., looking both at our international and domestic commitments. It then provides an analysis of U.S. housing policy according to the seven elements of the right to adequate housing as articulated by the UN Committee on Economic, Social, and Cultural Rights and recognized internationally. Each section of the report concludes with recommendations for actions and policies that can help us progressively implement the right.

Assessing housing policy from a rights-based framework would fundamentally change the dialogue about our resource allocation and regulatory policies to ensure people's basic rights are at the highest priority, not a side-note to the best workings of the market. In 2008, our government gave hundreds of billions of our tax dollars to bail out banks overwhelmed by the foreclosure crisis. A rights-based policy would have, at a minimum, demanded that the banks renegotiate mortgages to allow families to remain in their homes in exchange for this unprecedented rescue. Instead, the banks got their bail out and quickly returned to profitability, all while continuing to force American families – who paid for their bailout with their taxes – out of their homes. Now, millions of foreclosed homes stand empty while families are homeless on the streets. Recognition of the human

³⁵ Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, CCPR/C/USA/CO/3 (2006), at para. 22 [hereinafter HRC 2006].

³⁶ Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by State Parties Under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, CERD/C/USA/CO/6 (2008), at para. 9 [hereinafter CERD 2008].

³⁷ U.N. Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009) [hereinafter Racism Rapporteur].

³⁸ U.N. Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Raquel Rolnik, on her mission to the United States of America (22 October - 8 November 2009)*, U.N. Doc. A/HRC/13/20/Add4 (Feb. 12, 2010) [hereinafter Housing Rapporteur]

right to housing would demand a remedy to this gross human rights violation.

More than ever, housing advocates in the U.S. are using 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.³⁹ By conducting an analysis of U.S. housing policy according to the seven components of the internationally recognized right to adequate housing, this report aims to reframe the domestic policy debate to one that looks comprehensively at the right, and identifies failures to uphold the full scope of the right not as mere statistics or market “glitches,” but as human rights violations which require remedy. In the U.S., a patchwork of laws address housing needs, but there is no defined *right* and the resources provided through existing law are woefully inadequate. Understanding the human right to housing, how it has been defined and implemented around the world, and how it may be integrated into U.S. law and policy, will help advance solutions to the housing crisis in the U.S. at this crucial time, and move us closer to translating President Obama’s inspirational rhetoric into meaningful action.

³⁹ See Maria Foscarinis and Eric Tars, *Housing Rights and Wrongs: The U.S. and the Right to Housing*, in *Human Rights At Home*, edited by Cynthia Soohoo, Catherine Albisa and Martha Davis (Praeger Publishers, December 30, 2007).

I. A BRIEF HISTORY OF THE RIGHT TO ADEQUATE HOUSING IN THE U.S.

The United States played an important role in promoting a rights-based approach to housing and other economic and social rights in the early days of the human rights movement, but in subsequent years has taken steps back from its leadership in this area. This section describes our government's history working for (and against) recognition of the human right to housing internationally, as well as steps it has taken domestically to address some aspects of the right, while never fully embracing it.

A. *International Recognition*

Coming out of the Depression, and heading into World War II, President Franklin Roosevelt set out four freedoms essential for world peace in his 1941 State of the Union address: freedom of speech, freedom of religion, freedom from want, and freedom from fear.⁴⁰ This notion of interdependent civil, political, economic, and social freedoms laid the groundwork for the Atlantic Charter later that year, which also embraced these four freedoms.⁴¹ In his 1944 State of the Union address, Roosevelt took another bold step, declaring that the United States had accepted a "second Bill of Rights," including the right of every American to a decent home.⁴²

The international community embraced this rights-based approach to ending war and injustice in the months following the end of World War II. President Roosevelt's wife, Eleanor Roosevelt, played a key role in drafting the Universal Declaration of Human Rights, which the United States signed in 1948. It includes this provision: "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, *housing* and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."⁴³ (Emphasis added).

The right to housing was codified in binding treaty law in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966.⁴⁴ As the Committee on Economic, Social and Cultural Rights, which monitors the ICESCR, has stated, "[a]lthough a wide variety of international instruments address the different dimensions of the right to adequate housing, article 11(1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions."⁴⁵ That article states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing

⁴⁰ Franklin D. Roosevelt, State of the Union Message to Congress (January 6, 1941).

⁴¹ The Atlantic Charter; et. al. (Payson S. Wild Jr. ed., 1943)(Vol. 41, US Naval War College International Law Documents).

⁴² Franklin D. Roosevelt, State of the Union Message to Congress (January 11, 1944).

⁴³ Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., pt. 1, art. 25(1), U.N. Doc. A/810 (1948) (emphasis added).

⁴⁴ See International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, art. 11(1), 993 U.N.T.S. 3, 5 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

⁴⁵ General Comment 4, *supra* note 34, at para. 3.

and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”⁴⁶

While the United States signed the ICESCR in 1977, the Senate has never ratified it.⁴⁷ However, the United States ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992⁴⁸ and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1994.⁴⁹ Both of these treaties recognize the right to be free from discrimination, including in housing, on the basis of race, gender, disability, and other statuses.

Additional treaties the U.S. has signed, but not ratified, recognize aspects of the right to adequate housing either explicitly (in some cases for particular groups) or by supporting the right from which it is derived, namely the right to an adequate standard of living. These include the Convention on the Elimination of All Forms of Discrimination Against Women,⁵⁰ the Convention on the Rights of the Child,⁵¹ and the Convention Relating to

⁴⁶ See ICESCR, *supra* note 44, at art. 11(1).

⁴⁷ Ratification/Signature Status of the International Covenant on Economic, Social and Cultural Rights, at http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_3.html. (Under the U.S. Constitution, the President signs treaties, and the Senate must ratify them by a 2/3 vote. See U.S. CONST. Art. II, Sec. 2.)

⁴⁸ [U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights](#), 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992); [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* Mar. 23, 1976 (Article 2(1): “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”) [hereinafter ICCPR].

⁴⁹ [U.S. reservations, declarations, and understandings, International Convention on the Elimination of All Forms of Racial Discrimination](#), 140 Cong. Rec. S7634-02 (daily ed., June 24, 1994); [International Convention on the Elimination of All Forms of Racial Discrimination](#), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969 (Article 5(e)(i): In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:... (e) Economic, social and cultural rights, in particular:... (iii) The right to housing...” [hereinafter ICERD].

⁵⁰ International Convention on the Elimination of All Forms of Discrimination Against Women, art. 14(2)(h) opened for signature Dec. 18, 1979 (Article 14(2): “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications”).

⁵¹ Convention on the Rights of the Child, arts. 16(1) and 27(3), opened for signature Nov. 20, 1989 (Article 16(1): “No child shall be subject to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation”; and Article 27(3): “States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing”).

the Status of Refugees.⁵² The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,⁵³ and the International Labour Organization Convention No. 117 concerning Social Policy,⁵⁴ which the U.S. has *not* signed, also recognize the right in part.

In Vancouver, British Columbia, in 1976, the U.S. participated with representatives from 132 nations in the first United Nations (UN) Conference on Human Settlements called Habitat I. Habitat I produced the Vancouver Declaration on Human Settlements⁵⁵, which expressed international concern over the “extremely serious condition of human settlements,” focusing on housing as a component of equitable development and as an integral part of human rights.

The Vancouver Declaration emphasizes that environmental concerns, planning and development, transportation, infrastructure and services, and participatory decision-making are essential to achieving the goal of adequate housing for everyone. The Declaration states that “adequate shelter and services are a basic human right,” and reflects the view that this right intersects with and is dependent upon the fulfillment of other human rights.⁵⁶ Further, it places the obligation for fulfillment of these rights on governments, which are to satisfy this commitment by means ranging from “direct assistance to the least advantaged [to] guided programmes of self-help and community action.”⁵⁷ Unfortunately, though broadly supportive of the document, the U.S. voted against the Declaration.⁵⁸

Recognizing adequate housing as essential to the healthy development of individuals and

⁵² Convention relating to the Status of Refugees, art. 21, opened for signature July 28, 1951 (Article 21: “As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances”).

⁵³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 43(1)(d), opened for signature Dec. 18, 1990 (Article 43(1): “Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to ... (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents”).

⁵⁴ International Labour Organization Convention No. 117 concerning Social Policy, arts. 2, 4(d) and 5(2) (Article 2: “The improvement of standards of living shall be regarded as the principal objective in the planning of economic development”; Article 4: “The measures to be considered by the competent authorities for the promotion of productive capacity and the improvement of *standards of living* of agricultural producers shall include ... (d) the supervision of *tenancy* arrangements and of working conditions with a view to securing for *tenants* and labourers the highest practicable *standards of living* and an equitable share in any advantages which may result from improvements in productivity or in price levels” [emphases added]; Article 5(2): “In ascertaining the *minimum standards of living*, account shall be taken of such essential family needs of the workers as food and its nutritive value, *housing*, clothing, medical care and education”) [emphases added].

⁵⁵ Vancouver Declaration on Human Settlements and Plan of Action, UN Doc. A/CONF.165/PC.1/INF.8 (1976).

⁵⁶ *Id.* at para 8.

⁵⁷ *Id.*

⁵⁸ See Jon Tinker, *Habitat: The Final Reckoning*, The New Scientist, June 17, 1976, 650, indicating the U.S. vote against was more due to an opposition to language linked to anti-Zionism than to the housing provisions.

communities and the prevalence of problems associated with its lack, the UN convened the second UN Conference on Human Settlements, Habitat II, in Istanbul, Turkey in June 1996. The conference resulted in the Habitat Agenda, “a global call to action,” in the form of an international, non-binding declaration of commitment to the twin themes of “adequate shelter for all” and “sustainable human settlements development in an urbanizing world.” Habitat II also produced the Istanbul Declaration, which broadly declared the signing governments’ endorsement of these two goals. In contrast to the Vancouver Declaration, primarily an expression of concern, the Istanbul Declaration and Habitat Agenda are far more developed and specific,⁵⁹ including a Global Plan of Action for the implementation, monitoring and evaluation of the Agenda.⁶⁰

Like the Vancouver Declaration, the Habitat Agenda reaffirms that “all human rights – civil, cultural, economic, political and social – are universal, indivisible, interdependent and interrelated.”⁶¹ But the Habitat Agenda also states that there is a “right to adequate housing,”⁶² and creates an obligation on states to “take appropriate action in order to promote, protect and ensure the full and progressive realization” of this right.⁶³ As discussed in detail later in this report,⁶⁴ the right to housing does not create a positive duty on the state to provide a home to every individual free of charge.⁶⁵ Further, the right does not require states to act to fulfill it immediately;⁶⁶ rather, they are charged by the Habitat Agenda with “progressive realization” of the right.⁶⁷ Decisions of some international courts in Europe suggest that states may be required to regulate markets to ensure housing affordability⁶⁸ and they may have to take measures to ensure that housing

⁵⁹ This is not to suggest that the Habitat Agenda is necessarily sufficiently specific or developed for its stated purposes, just that it is more so relative to the Vancouver Declaration.

⁶⁰ Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, June 3-14, 1996, U.N. Doc. A/CONF.165/14, at paras. 53-241 (1996) [hereinafter Habitat Agenda].

⁶¹ *Id.* at para. 26.

⁶² Note that the U.S. delegation conceded the inclusion of a reference to a right to housing in the Agenda in return for the language stating such a right would largely be realized through market mechanisms.

⁶³ Habitat Agenda, *supra* note 60, at para. 61.

⁶⁴ The parameters of the right to housing are discussed further in Sections II-VIII, *infra*.

⁶⁵ See National Law Center on Homelessness and Poverty, *Habitat II and U.S. Implementation: Background and Overview* (March 1998) [hereinafter *Habitat II and U.S. Implementation*]; See also, Centre on Housing Rights and Evictions Web Site, *Common Myths about Housing Rights*, available at <http://www.cohre.org/hrbody6.html> (on June 26, 2001) [hereinafter *Common Myths*] (“The right to housing has never been interpreted under international law to mean that States must provide housing, free of charge, to all who request it”).

⁶⁶ See *Common Myths*, *supra* note 65 (“[I]t would be ideal if States could fulfill all aspects of the right to housing immediately. International law has recognized the impracticality of this and has responded by interpreting this right to mean that States parties will have some legal obligations that must be undertaken immediately and others that are more long-term or progressive in nature”).

⁶⁷ They are of course required to make some efforts to fulfill this right. See *id.*, (“This does not mean, however, that States can indefinitely defer efforts to ensure the enjoyment of the rights in the Covenant.”).

⁶⁸ *Case of James and others v. U.K.*, 98 Eur. Ct. H.R. (Ser. A) (1986) (rent control programs’ infringement on property rights justified because housing is a “prime social need, the regulation of which cannot entirely be left to play of market forces.”). See also, *Mellacher and Others v. Austria*, 169 Eur. Ct. H.R. (Ser. A) (1989) (social interest in assuring affordable housing outweighed property interests of landlords claiming government-regulated rent reductions violated their right to peaceful enjoyment of possessions).

conditions are not intolerable.⁶⁹ The Agenda also includes language addressing the criminalization of homelessness, declaring that “homeless people should not be penalized for their status.”⁷⁰

Although the Habitat Agenda, like the Vancouver Declaration that preceded it and the New York Declaration that followed it, is not a treaty, its importance stretches beyond the legal status of the document. In participating countries around the world, including the United States, preparatory committees began meeting more than a year before Habitat II.⁷¹ These meetings included business leaders, community activists, governmental officials and academics; there were also community-based meetings that allowed citizen contributions to the dialogue.⁷² In addition, a number of mayors attended the conference.⁷³ Non-governmental organizations played a key role both before and during the conference. From the United States, a small group of advocates, including the National Law Center on Homelessness & Poverty (the Law Center), played a key role before and during the conference, including in the drafting of the final document. Following the event, in the United States, the Meeting America’s Housing Needs (MAHN) project, a collaborative effort organized by U.S. non-governmental organizations, continued the participatory dialogue after the conference, bringing together interested stakeholders in an effort to identify and address areas of conflict, promote areas of collaboration, and make voluntary commitments to help achieve the goals of the Habitat Agenda.⁷⁴ In many ways, the robust, coordinated movement for the human right to housing we see in the U.S. today stems from the initial involvement in Habitat II and this follow-up effort.

In 1991, the Committee on Economic, Social, and Cultural Rights, which oversees the implementation of the ICESCR, issued its General Comment 4 on the right to adequate housing, defining and elaborating on the right to adequate housing.⁷⁵ General Comments serve much as regulations do for U.S. statutes – taking the broad language of the treaty and creating clear guidelines to which implementing governments can be held accountable. In General Comment 4, the Committee stated that the right to adequate

⁶⁹ *Guzzardi v. Italy*, European Commission on Human Rights, Application No. 7367/76. Report of December 7, 1978, at 34.

⁷⁰ Habitat Agenda, *supra* note 60, at para. 61(b).

⁷¹ Janet Ellen Stearns, *Voluntary Bonds: The Impact of Habitat II on U.S. Housing Policy*, 16 St. Louis U. Pub. L. Rev. 419, 425 (1997).

⁷² *Id.*

⁷³ Mayor Kurt Schmoke of Baltimore, who attended Habitat II, stated that “We have had representatives from both democratic and republican parties, mayors from cities throughout the country and we just wanted people to know that we feel how important this conference is. It is the beginning of a new era with local government officials being listened to in the development of UN documents and we see this as kind of the wave of the future. There will be more and more of these conferences in which we try to solve local problems through these international forums.” Joan M. Veon, Transcript of Interviews from Rio+5, Istanbul and Annapolis at <http://www.ninehundred.net/~jveon/USA-EXCE.html> (as of January 14, 2004).

⁷⁴ More specifically, the MAHN established four broad areas for dialogue: housing affordability, discrimination, housing supply and the economic viability of communities. See *Habitat II and U.S. Implementation*, *supra* note 65, at 11.

⁷⁵ General Comment No. 4, *supra* note 34.

housing does not merely mean “having a roof over one’s head.”⁷⁶ Rather, the Committee specified that the right consists of seven elements: (1) Legal security of tenure,⁷⁷ (2) services, materials, facilities, and infrastructure must be available,⁷⁸ (3) housing must be affordable,⁷⁹ (4) habitable,⁸⁰ and (5) accessible;⁸¹ and (6) located in a place with access to employment options, healthcare facilities, schools, child care centers, and other social facilities,⁸² and (7) housing design must be culturally adequate.⁸³ Aspects of each of these elements are intersecting and mutually reinforcing.

Subsequent guidance from the Committee clarified the obligation to meet these requirements. Under the ICESCR, States Parties are bound to “take steps” to the “maximum of [their] available resources” to “progressively” but “fully” realize the right to adequate housing “by all appropriate means, including the adoption of legislative measures.”⁸⁴ “Maximum of available resources” has been defined as requiring that States show that “every effort has been made to use all resources that are at its disposal in an effort to satisfy, *as a matter of priority*,” its obligations [emphasis added].⁸⁵ However, each right contains a “core minimum content” and immediately enforceable aspects, such as the prohibition on discrimination. In 2009, the UN High Commissioner on Human Rights noted:

[A] State could discharge its duties regarding the right to housing if it has complied with minimum core obligations, including the provision of shelter for homeless people and protection against forced eviction, and it is devoting the maximum of its available resources to ensure reasonable housing solutions, even if not everyone is

⁷⁶ *Id.* at para. 7.

⁷⁷ *Id.* at para. 8(a). (“All persons should possess legal protection against forced eviction, harassment and other threats. States are therefore required to take immediate measures to confer legal security of tenure for those lacking such protection, following genuine consultation with affected persons and groups.”).

⁷⁸ *Id.* at para. 8(b). (“All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”).

⁷⁹ *Id.* at para. 8(c). (“All costs associated with housing should be at a level sufficient to ensure that the attainment and satisfaction of other basic needs are not threatened or compromised. Housing subsidies should be available for those unable to obtain affordable housing, and tenants have to be protected from unreasonable rent levels”).

⁸⁰ *Id.* at para. 8(d). (Adequate housing implies that inhabitants are provided with adequate space, and protected from the elements and other threats to health such as structural hazards and disease. Physical safety of the occupants must be guaranteed.)

⁸¹ *Id.* at para 8(e) (“Adequate housing must be accessible to those entitled to it. Disadvantaged groups such as the elderly, children, physically disabled persons, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be assured of some degree of priority consideration in the housing sphere.”) *Id.*

⁸² *Id.* at para. 8(f).

⁸³ This discussion includes clarifications only for those areas deemed relevant to a comparative analysis of international and U.S. domestic law. A more in-depth discussion of this issue can be found at United Nations High Commissioner for Human Rights, Fact Sheet No. 21, The Human Right to Adequate Housing, at <http://www.unhchr.ch/html/menu6/2/fs21.htm> (as of January 14, 2004) (interpreting the findings of the Committee on Economic, Social and Cultural Rights) [hereinafter Fact Sheet No. 21].

⁸⁴ ICESCR, *supra* note 44, art 2(1).

⁸⁵ Fact Sheet No. 21, *supra* note 83.

ensured long-term security of tenure.⁸⁶

As the right to housing developed, interest in it grew among advocates. In the United States, building on their participation in the Habitat II conference and the subsequent MAHN project, advocates organized the first national meeting to discuss potential strategies for advocating for the human right to housing in the U.S. Held in April 2003, in Washington, DC, the first national Forum on the Human Right to Housing was organized by the Law Center and the Center on Housing Rights and Evictions, and drew participants from around the country. Subsequent national forums, as well as regional, state and local forums on the right to housing, some organized by both groups and some by NLCHP, were held, helping to build momentum, as well as an expanding group of advocates familiar with and interested in human rights strategies.⁸⁷

In 2006, the Special Rapporteur on the Right to Adequate Housing drafted, and the U.S. voted to approve, the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, which provides useful standards for ensuring participation of poor and minority groups in zoning and development decisions affecting them.⁸⁸

The U.S. government began to engage more directly with international human rights monitors beginning in 2006, when it was reviewed for compliance with the International Covenant on Civil and Political Rights. As noted above, the right to housing is not directly addressed in the treaty, but the right to non-discrimination and the right to life are. Advocates submitted “shadow reports” to the Committee, including one organized by the Law Center on behalf of a coalition of homelessness and housing organizations.⁸⁹ The Human Rights Committee, which oversees the treaty, questioned the U.S. delegation on issues ranging from treatment of African Americans after Hurricane Katrina to deaths of homeless persons due to exposure in areas where there is inadequate shelter.⁹⁰ The Committee in its Concluding Observations, expressed concern “that some 50% of

⁸⁶ UN Economic and Social Council, Report of the High Commissioner for Human Rights on the implementation of economic, social, and cultural rights, E/2009/90 (June 8, 2009), at para. 14.

⁸⁷ For a more detailed description of the growth of this work, see Maria Foscarnis, *The Growth of a Movement for a Human Right to Housing in the U.S.*, 20 *Harvard Human Rights Journal* 35 (2007); Maria Foscarnis, *Advocating for the Right to Housing: Notes from the U.S.*, 30 *N.Y.U. Rev. of L. and Soc. Change* 447 (2006); Maria Foscarnis, Brad Paul, Bruce Porter and Andrew Scherer, *The Human Right to Housing: Making the Case in U.S. Advocacy*, 38 *Clearinghouse Rev.* 97 (2004).

⁸⁸ Basic Principles and Guidelines on Development-Based Evictions and Displacement, A/HRC/4/18 (2006).

⁸⁹ Centre on Housing Rights and Evictions, Written Submission of the Center on Housing Rights and Evictions to the Human Rights Committee at its 86th and 87th Sessions (2006), available at <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/cohre.doc> (last visited January 21, 2011); Coalition to Protect Public Housing, Written Submission to the Human Rights Committee at its 85th Session (2006), available at <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/coalition.doc> (last visited January 21, 2011); National Law Center on Homelessness & Poverty, Homelessness and United States Compliance with the International Covenant on Civil and Political Rights, Submitted to the Human Rights Committee (2006), available at <http://nlchp.org/content/pubs/Homelessness%20and%20US%20Comp%20with%20ICCPR.pdf> (last visited January 21, 2011).

⁹⁰ Human Rights Committee, Summary Record of the 2380th Meeting, CCPR/C/SR.2380, July 27, 2006, para. 95.

homeless people are African American although they constitute only 12% of the U.S. population,” and recommended the government “take measures, including adequate and adequately implemented policies, to bring an end to such de facto and historically generated racial discrimination.”⁹¹ It further noted that, “[i]n the aftermath of Hurricane Katrina, it should increase its efforts to ensure that the rights of poor people and in particular African-Americans, are fully taken into consideration in the reconstruction plans with regard to access to housing.”⁹²

In 2008, the Committee on the Elimination of Racial Discrimination (CERD) reviewed the U.S. for compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). U.S. organizations, including a coalition organized by the Law Center, again submitted multiple reports on housing discrimination,⁹³ prompting the Committee members to unfavorably compare segregated housing conditions in the U.S. to apartheid South Africa, as well as condemning disparate treatment of African Americans after Hurricane Katrina.⁹⁴ In positive terms, the CERD noted “with satisfaction the *California Housing Element Law of 1969*, which requires each local jurisdiction to adopt a housing element in its general plan to meet the housing needs of all segments of the population, including low-income persons belonging to racial, ethnic and national minorities.”⁹⁵ The CERD also recommended the government: (i) support the development of public housing complexes outside poor, racially segregated areas; (ii) eliminate the obstacles that limit affordable housing choice and mobility for beneficiaries of Section 8 Housing Choice Voucher Program; and (iii) ensure the effective implementation of legislation adopted at the federal and state levels to combat discrimination in housing, including the phenomenon of “steering” and other discriminatory practices carried out by private actors,”⁹⁶ as well as “increase its efforts in order to facilitate the return of persons displaced by Hurricane Katrina to their homes, if feasible, or to guarantee access to adequate and affordable housing, where possible in

⁹¹ HRC 2006, *supra* note 35, at para. 22.

⁹² *Id.* at para. 26.

⁹³ Center on Housing Rights and Evictions, Written Submission to the Committee on the Elimination of Racial Discrimination at its 72nd Session (2008), *available at* <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/COHRE.pdf> (last visited January 21, 2011); Monique Harden, Nathalie Walker, and Kali Akuno, Racial Discrimination and Ethnic Cleansing in the United States in the Aftermath of Hurricane Katrina (2007), *available at* <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN23.doc> (last visited January 21, 2011); A Report to the Committee on the Elimination of Racial Discrimination on Racial Discrimination in Homelessness and Affordable Housing in the United States (2007), *available at* <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN28.doc> (last visited January 21, 2011); Residential Segregation and Housing Discrimination in the United States, Violations of the International Convention on the Elimination of All Forms of Racial Discrimination (2007), *available at* <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN27.pdf>, (last visited January 21, 2011);

⁹⁴ U.S. racial discrimination must be remedied, UN says: Post Katrina housing rights violations also cited, *The Louisiana Weekly*, March 10, 2008, *available at* <http://wiki.nlchp.org/download/attachments/4685940/Louisiana+Weekly+CERD+3-10-08.pdf> (last visited January 21, 2011).

⁹⁵ CERD 2008, *supra* note 36, at para. 9.

⁹⁶ *Id.* at para. 16. (“Steering” is the process by which realtors or lenders guide prospective renters or homebuyers towards or away from different neighborhoods based on race or other statuses).

their place of habitual residence.”⁹⁷

Also in 2008, the Special Rapporteur on Racism (Racism Rapporteur) visited eight cities across the U.S. on his first official mission to the country. The Law Center and other housing advocates organized testimony and site visits, and the Racism Rapporteur’s resulting report raised concern about reducing housing segregation and countering the racially disparate impact of policing patterns on homeless communities of color.⁹⁸ In particular, the Racism Rapporteur recommended establishing a bi-partisan commission to examine the ongoing process of housing re-segregation and intensifying funding for testing programs and “pattern and practice” investigations to assess discrimination in housing.⁹⁹

In 2009, the Law Center and other advocates organized two high-profile visits by human rights monitors to examine U.S. housing issues. The UN-HABITAT Advisory Group on Forced Evictions (AGFE) visited New Orleans in July and the UN Special Rapporteur on the Right to Adequate Housing (Housing Rapporteur) visited New York, Chicago, New Orleans, Pine Ridge Indian Reservation, Los Angeles, and Washington, DC in October and November. In both visits, monitors met with directly affected victims of human rights violations, local and national advocates, government officials, and media. The visits resulted in detailed assessments of housing policies in the U.S. and contain specific conclusions and recommendations, including several priority recommendations from U.S. advocates, ranging from one-for-one replacement of subsidized housing units to condemning criminalization of homelessness.¹⁰⁰

Also in 2009, Washington, DC as a host city of World Habitat Day for the first time, with celebratory ceremonies convened by HUD Secretary Sean Donovan. HUD brought in a broad number of partners to host numerous side events to educate the public about basic housing rights.¹⁰¹ In his remarks, Secretary Donovan welcomed “the opportunity to demonstrate our national commitment to make socially and environmentally sustainable communities rooted in safe, decent, and affordable shelter a reality for families across the globe.” He did not, however, affirm housing as a basic human right.¹⁰²

Over the course of 2010, the U.S. government prepared for, and received its first-ever review by the UN Human Rights Council under the Universal Periodic Review mechanism. Hundreds of advocates from coast to coast testified before representatives from HUD and other government agencies. According to one State Department official, housing was the “number one human rights issue” brought to the attention of federal officials through the consultation process.¹⁰³ This unprecedented process was a vital step

⁹⁷ *Id.* at para. 31.

⁹⁸ Racism Rapporteur, *supra* note 37.

⁹⁹ *Id.*, at paras. 97 and 107.

¹⁰⁰ Housing Rapporteur, *supra* note 38.

¹⁰¹ WHD Partners, <http://www.hud.gov/whd/appreciation.cfm> (last visited Jan. 21, 2011).

¹⁰² Shaun Donovan, Remarks at World Habitat Day Opening Ceremony, Oct. 5, 2009, *available at* <http://www.hud.gov/whd/speech.cfm> (last visited Jan. 21, 2011).

¹⁰³ David Sullivan, Office of Legal Adviser, State Department, Human Rights on the Hill, May 25, 2010.

in bringing the human rights conversation out of the exclusive State Department domain and into the domestic policy agencies and the public sphere.

Despite the compelling testimony of advocates and citizens and the fact that we are in the midst of an unprecedented housing crisis, the right to adequate housing received short shrift in the U.S. official report to the Human Rights Council. Although citing favorably to President Roosevelt's "Four Freedoms" speech as the basis for the international human rights movement, the report carefully sidesteps naming housing and other economic and social rights as rights, stating, "[o]n subjects such as 'freedom from want,' the United States has focused on democratic solutions and civil society initiatives while the U.S. courts have defined our federal constitutional obligations narrowly and primarily by focusing on procedural rights to due process and equal protection of the law."¹⁰⁴ The report does mention the disparate effects of the housing crisis on racial minority communities,¹⁰⁵ but downplays the severity of the crisis overall, stating only, "[a]lthough we are fortunate to have a high-quality housing stock and a high percentage of homeownership, meeting our nation's housing needs will require continued effort, particularly in expanding the availability of affordable housing in all communities as our population grows."¹⁰⁶

At the UN Review in November 2010, the Council made dozens of specific housing, homelessness, and poverty-related recommendations, to which the U.S. government replied with a verbatim repetition of the "democratic solutions" to economic and social rights violations language in its report.¹⁰⁷ To its credit, however, HUD issued a press statement affirming that "[t]he U.N.'s Universal Periodic Review process helps to inform and influence our nation's effort to dramatically increase the amount of affordable housing, especially for those struggling to find a place to call home."¹⁰⁸ In March 2011, the government officially responded to the recommendations, supporting a large number of recommendations regarding housing rights and homelessness.¹⁰⁹

Throughout the process, NLCHP and other advocates repeatedly insisted the U.S. embrace the full range of economic, social, and cultural rights alongside civil and political rights. This was finally realized later in March in an announcement from Assistant Secretary of State for Democracy, Human Rights, and Labor, Michael Posner, that the U.S. would finally be returning to recognizing the full scope of rights promised in President Roosevelt's Four Freedoms speech.¹¹⁰ While rife with caveats about what the U.S. will and will not do in support of economic & social rights, Posner's announcement

¹⁰⁴ Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights In Conjunction with the Universal Periodic Review, 2010, at para. 67. [hereinafter U.S. UPR Report].

¹⁰⁵ *Id.* at para. 46.

¹⁰⁶ *Id.* at para. 74.

¹⁰⁷ *Minutes from the U.S. Universal Periodic Review* (Nov. 5, 2011), on file with author.

¹⁰⁸ U.S. Dept. of Housing and Urban Development Statement on the U.S. Participation in the United Nations' Universal Periodic Review, Nov. 5, 2011.

¹⁰⁹ Report of the Working Group on the Universal Periodic Review, United States of America, Addendum, A/HRC/16/11/Add.1 (2011), at paras. 6, 19.

¹¹⁰ Asst. Sec. of State for Democracy, Human Rights & Labor, Michael Posner, "The Four Freedoms Turns 708," (March 24, 2011).

clearly stated, “we will push back against the fallacy that countries may substitute human rights they like for human rights they dislike, by granting *either* economic or political rights. To assert that a population is not “ready” for universal human rights is to misunderstand the inherent nature of these rights and the basic obligations of governments.”¹¹¹ Equally as important, Posner made clear that human rights have both international and domestic implications, explicitly citing increased funding for homelessness as a relevant representation of our work to promote these rights.¹¹²

These recent steps represent a fundamental change in official recognition of the human right to housing, but much remains to be done to make the rhetorical shift real for homeless families whose right to housing is violated on a daily basis. Advocates will continue to meet with HUD and other agencies to ensure the Council’s recommendations are implemented, and will hold briefings with Congress regarding their human rights obligations. But with the higher baseline of official recognition of a universal, rights-based framework, advocates have a new tool to use in their work for the human right to housing for all.

B. Domestic Recognition

The federal Housing Act of 1949¹¹³ included the expressly stated goal of a “decent home and suitable living environment for every American family as soon as feasible,”¹¹⁴ echoing the earlier call by President Franklin Roosevelt for an economic bill of rights.¹¹⁵ But this language was aspirational, stating a goal rather than a specific commitment to a number of units or level of funding. Indeed, current estimates are that only one fourth of all of those who are poor enough to qualify for federal housing assistance actually receive it, due to under-funding of assistance programs.¹¹⁶ While there have been some periods of significant, though never sufficient, funding, housing program funding has been dramatically cut over the past few decades¹¹⁷ and continues to be at risk.

1. Constitutional Recognition

The U.S. Constitution does not explicitly mention a right to housing.¹¹⁸ *Lindsey v.*

¹¹¹ *Id.*

¹¹² *Id.*, stating, “Our government’s commitment to provide for the basic social and economic needs of our people is clear and it reflects the will of the American people. They ask us to provide shelter for the destitute...and we do... In the wake of the housing crisis, last year the federal government committed almost \$4 billion to target homelessness.”

¹¹³ The Housing Act of 1949, (Title V of P.L. 81-171).

¹¹⁴ David Listokin, “Federal Housing Policy and Preservation: Historical Evolution, Patterns and Implications,” *Housing Policy Debate* 2 (1991):157, 159-160.

¹¹⁵ Franklin D. Roosevelt, State of the Union Message to Congress (January 11, 1944).

¹¹⁶ National Law Center on Homelessness & Poverty, *Homelessness in the United States and the Human Right to Housing* (Washington: National Law Center on Homelessness & Poverty, 2004), v-vi.

¹¹⁷ National Low Income Housing Coalition, *The Crisis in America’s Housing: Confronting Myths and Promoting a Balanced Housing Policy*, 7 (Washington: National Low Income Housing Coalition, 2005).

¹¹⁸ The Supreme Court has found a number of rights to be implicit in the Constitution, including the “right to privacy” and the “right to travel.” *Noted in* Alexander Tseisis, *Eliminating the Destitution of*

Normet,¹¹⁹ a 1974 case often cited for the proposition that there is no right to housing under the U.S. Constitution,¹²⁰ addressed whether three provisions of the Oregon Forcible Entry and Wrongful Detainer Statute violated either the Due Process or Equal Protection Clause of the Fourteenth Amendment. The homeless plaintiffs claimed that the “need for decent shelter” and the “right to retain peaceful possession of one’s home”¹²¹ are fundamental interests for the poor and that a higher level of constitutional scrutiny than minimum rationality was therefore mandated. Justice White stated in response, “the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality, or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease without the payment of rent or otherwise contrary to the terms of the relevant agreement. Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions.”¹²²

There are at least two reasons why *Lindsey* should not be cited as making a categorical determination on the existence of a right to housing. First, at issue in that case was not the right to *any* shelter or housing, but rather the right to housing meeting a certain level of *quality* and habitability. The homeless plaintiffs were citing the “need for *decent* shelter”¹²³ [emphasis added]; the majority declined to find a “constitutional guarantee of access to dwellings of a *particular quality*”¹²⁴ [emphasis added]. Justice Douglas’ dissent also focuses on the quality of housing rather than the right to any housing, quoting a passage about housing adequacy and then making reference to that adequacy as the “vital interest ... at stake.”¹²⁵ While some courts and commentators have read *Lindsey* as addressing a general “right to housing,” others have read it as addressing only a narrow question of the right to housing of a particular quality. The Fifth Circuit, in *United Farmworkers of Florida Housing Project v. Delray Beach*¹²⁶, for example, stated that “we should note here that the farmworkers’ appeal is not based primarily upon a claim of denial of a fundamental right to *decent* housing, see *Lindsey v. Normet*.”¹²⁷

America’s Homeless: A Fair, Federal Approach, 10 Temp. Pol. & Civ. Rts. L. Rev., 103, 122–23 (2000).

¹¹⁹ *Lindsey v. Normet*, 405 U.S. 56 (1972).

¹²⁰ *Id.*

¹²¹ *Id.* at 73.

¹²² *Id.* at 74.

¹²³ *Id.* at 73.

¹²⁴ *Id.* at 74.

¹²⁵ *Id.* at 84, quoting Judge Wright in *Javins v. First National Realty Corp.*, 138 U.S. App. D.C. 369, 372 (D.C. Cir. 1970) (“When American city dwellers, both rich and poor, seek ‘shelter’ today, they seek a well known package of goods and services – a package which includes not merely walls and ceiling, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance. This vital interest that is at stake may, of course, be tested in so-called summary proceedings.”). See, e.g., Geoffrey Mort, *Establishing A Right to Shelter for the Homeless*, 50 Brook. L. Rev. 939, n23 (“Nowhere in the United States Constitution is such a right [to housing] even implied, and few, if any, cases have attempted to assert this position.”). See also Christine Robitscher Ladd, Note: *A Right to Shelter for the Homeless in New York State*, 61 N.Y.U. L. Rev. 272 (1986) (“There is no affirmative right to shelter under the federal Constitution”).

¹²⁶ *United Farmworkers of Florida Housing Project v. Delray Beach*, 493 F.2d 799 (1974).

¹²⁷ *Lindsey v. Normet*, 493 F.2d 799 (1974).

Further, the focus of the Court was on the terms of the lease; the Court apparently assumed that a right to “decent shelter” implied that that shelter would also be free. But, as explained above, human rights law does not necessarily require that housing be provided at no cost to all. Nor would it necessarily invalidate the specific provisions of a lease. Thus, it is possible to interpret *Lindsey v. Normet* as not conclusive on the constitutional status of the right to housing as that housing is defined and understood in human rights jurisprudence.

A number of constitutional scholars, writing both before and after *Lindsey*, suggest that the Constitution should or may be interpreted to provide a right to minimum subsistence. Such a right is often defined as including not only housing, but also food, livelihood, medical care and other basic services. Commentators come to this conclusion by way of a number of different constitutional theories. Charles Black, for example, using the Ninth Amendment¹²⁸ as legitimating a search for unenumerated rights, argues that the Declaration of Independence and the preamble to the Constitution’s “general welfare” clause¹²⁹ support “a constitutional right to a decent material basis for life.”¹³⁰ Akhil Amar finds a federal government duty “to provide all individuals with a minimum level of sustenance and shelter”¹³¹ in the Thirteenth Amendment lest people be forced into slavery.¹³² Frank Michelman contends that the government has an affirmative obligation to meet the subsistence needs of the poor¹³³ under the Equal Protection clause of the Fourteenth Amendment.¹³⁴ Finally, Lawrence Tribe states that “the day may indeed come when a general doctrine under the Fifth and Fourteenth amendments recognizes for each individual a constitutional right to a decent level of affirmative governmental protection in meeting the basic human needs of physical survival and security, health and housing,

¹²⁸ U.S. Const. amend. IX. “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

¹²⁹ “We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.” [emphasis added]. U.S. Const. pmb.

¹³⁰ Charles L. Black, Jr., *Further Reflections on the Constitutional Justice of Livelihood*, 86 Colum. L. Rev. 1103, 1105 (1986). Black finds that the Declaration of Independence supports such a right because poverty “is overwhelmingly, in the whole world, the commonest, the grimmest, the stubbornest obstacle we know to the pursuit of happiness.” *Id.* at 1106. He finds such a right in the preamble’s declaration that the Constitution’s purpose is to “promote the general welfare.” *Id.*

¹³¹ See Robert C. Ellickson, *The Untenable Case for an Unconditional Right to Shelter*, 15 Harv. J.L. & Pub. Pol’y 17, 18–19 (1992), describing Akhil R. Amar, *Forty Acres and a Mule: A Republican Theory of Minimal Entitlements*, 13 Harv. J.L. & Pub. Pol’y 37, 39 (1990).

¹³² U.S. Const. amend. XIII. (“Neither slavery nor involuntary servitude ... shall exist within the United States, or any place subject to their jurisdiction Congress shall have the power to enforce this article by appropriate legislation.”)

¹³³ Professor Michelman’s argument is based on his understanding of John Ely’s case that the Constitution is meant to be “representation reinforcing,” or enabling a full enjoyment of the rights granted in the Constitution, and he contends that effective enjoyment of political rights will not come from a person without a certain level of subsistence. Frank I. Michelman, *Welfare Rights in a Constitutional Democracy*, 1979 Wash. U. L.Q. 659, 666–79, n1; John H. Ely, *Democracy and Distrust: A Theory of Judicial Review*, 77–104 (1980).

¹³⁴ U.S. Const. amend. XIV, § 1. (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall ... deny to any person within its jurisdiction the equal protection of the laws.”)

work and schooling ...”¹³⁵

In the years since *Lindsey*, advocates have not pressed the issue of finding a constitutional right to housing at the federal level, though numerous cases have been brought under state constitutions.¹³⁶ However, as political consciousness continues to evolve, an explicit recognition of a constitutional right to housing, either through amendment or interpretation remains a long-term goal of the human rights movement. The following section will discuss steps along the road of political recognition of the human right to housing. These steps may one day lay the basis for the ultimate acknowledgement of a right to housing in the U.S.

2. Legislative and Administrative Recognition

As noted above, the 1949 Housing Act established a national goal, but not a right of every family to a decent home. Despite signing numerous declarations and treaties affirming the right to adequate housing, the government has only taken a series of partial steps in terms of domestic implementation. Many of these will be discussed in further depth throughout this report, but a short overview of certain laws and policies is appropriate, particularly with regard to policy toward homeless persons, who face an absolute deprivation of adequate housing.

There are a number of federal programs¹³⁷ related specifically to housing that may help address U.S. fulfillment of the right to adequate housing.¹³⁸ These programs, administered by HUD, include the Public Housing Program,¹³⁹ the Housing Choice Voucher Program (Section 8),¹⁴⁰ the HOME Program¹⁴¹ and supportive housing for

¹³⁵ See Laurence H. Tribe, *American Constitutional Law* 779 (2d Ed. 1988), as quoted in *Moore*.

¹³⁶ See, e.g., *Moore v. Ganim*, 233 Conn. 557, 661 (1995) (Berdon, A.J., dissenting) (“The state constitution, which was first formally adopted in 1818, does not explicitly provide for the right of the poor to receive subsistence from the towns. Nevertheless, we have previously recognized that there are some rights that are so fundamental they need not be set forth in the state constitution.”). See, generally, National Law Center on Homelessness & Poverty, *Housing Rights for All: Promoting and Defending Housing Rights in the United States*, 78-90 (2009).

¹³⁷ See, generally, Chester Hartman, *The case for a Right to Housing*, 9 Housing Pol’y Debate 223- 246 (1998) for a discussion of several statutes on which a right to housing might be founded.

¹³⁸ At least one commentator, taking the view that a right to housing was, if not conclusively determined under *Lindsey*, at least unlikely to change in the near future, stated that any entitlement to housing should come in legislative form. Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 U.Miami L.Rev. 315, 325-6 (1990).

¹³⁹ This program provides “decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities.” U.S. Department of Housing & Urban Development [HUD], *HUD’s Public Housing Program*, at http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog (as of January 21, 2011) (this site also includes other summary information on the program).

¹⁴⁰ This “program is the federal government’s major program for assisting very low-income families, the elderly, and the disabled” and operates through the payment of housing subsidies through local public housing agencies. HUD, *Housing Choice Voucher Program Fact Sheet*, at http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8 (as of Jan. 21, 2011) (this site also includes other summary information on the program).

¹⁴¹ “HOME is the largest Federal block grant to State and local governments designed exclusively to create affordable housing for low-income households.” HUD, *HOME Investment Partnerships Program*, at

particular vulnerable groups, including those for the elderly (Section 202)¹⁴² and those for persons with disabilities (Section 811).¹⁴³ These programs do not create entitlements; rather, they are “discretionary” programs that provide assistance only to the degree that they are funded.

In 1987, as homelessness in the U.S. reached crisis levels, Congress passed the McKinney-Vento Homeless Assistance Act (McKinney-Vento) as the first federal response specifically to homelessness.¹⁴⁴ McKinney-Vento established the Federal Interagency Council on Homelessness and created various programs across a range of government agencies. It also provides federal funding to individual states for a comprehensive range of services related to the problem of homelessness, such as emergency shelter, transitional housing, and job training. McKinney-Vento has been reauthorized and amended several times, including significant amendments to include homeless individuals in the Supplemental Nutritional Assistance Program (formerly Food Stamps) and to extend job training to homeless veterans. In 2001, a section of the Act related to homeless youth was reauthorized and absorbed into the No Child Left Behind Act.

At the 2009 National Forum on the Human Right to Housing hosted by the Law Center, Fred Karnas, Senior Advisor to HUD Secretary Sean Donovan stated, “whether we formally acknowledge the ‘human right to housing’ or not, I believe it is our job to proceed to craft and implement national, state and local housing policies which uphold its spirit.”¹⁴⁵ Karnas then went on to conduct a brief analysis of federal housing programs according to the seven elements of the right to housing. Although clearly not constituting an official recognition of the right, this application of the framework and acknowledgement of a spirit of compliance were important steps in that direction.

In 2010, the federal government adopted a comprehensive plan to end homelessness for the first time. The Federal Strategic Plan to Prevent and End Homelessness provides a “reference framework” for the allocation and reorganization of government resources

<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/> (as of Jan. 21, 2011) (this site also includes other summary information on the program).

¹⁴² This program “provides capital advances to finance the construction and rehabilitation of structures that will serve as supportive housing for very low-income elderly persons and provides rent subsidies for the projects to help make them affordable. HUD, *Section 202 Supportive Housing for the Elderly Program*, at <http://www.hud.gov/offices/hsg/mfh/progdesc/eld202.cfm> (as of Jan. 21, 2011) (also includes a summary description of the program).

¹⁴³ This program “provides grants to nonprofit organizations to develop and construct or rehabilitate rental housing with supportive services for very low-income persons with disabilities. The companion Mainstream Program awards funding for Section 8 rental vouchers and certificates to very low-income families whose head, spouse, or sole member is a person with a disability.” HUD, *Section 811 Supportive Housing for Persons with Disabilities Program Description*, at <http://www.hud.gov/offices/hsg/mfh/progdesc/disab811.cfm> (as of Jan. 21, 2011) (also includes a summary description of the program).

¹⁴⁴ McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301, *et seq.* The Act has a complex definition of homelessness, described in depth in Section IV *infra*.

¹⁴⁵ Fred Karnas, Remarks at the National Forum on the Human Right to Housing (November 9, 2009) (n file with author).

directed toward the goal of ending most forms of homelessness in the United States within ten years.¹⁴⁶ It provides an overview of homelessness in America and clarifies certain objectives that the federal government considers critical to accomplishing its goal. The President states in the Introduction that he hopes the Plan will serve to educate Americans in both the public and private sector about the problem of homelessness and how they can contribute to a solution. For this reason, some of the objectives set goals for capacity building and developing leadership around the issue. Others describe practical solutions directly related to housing, sustainable employment, and access to resources that can help homeless individuals become self-supporting.

While the Plan is comprehensive and generally promotes a progressive approach to eliminating homelessness, it contains no specific "action plan," and is silent as to how the Plan's objectives will be funded.¹⁴⁷ The Plan does not name any specific dollar amount to be allocated across agencies for the purpose of, for example, developing affordable housing or implementing employment training and search strategies.¹⁴⁸ These are all critical tools necessary for homeless individuals to become self-sufficient, but while these and other goals are discussed seriously in the Plan, actualizing them unquestionably will require a significant investment of funds not discussed in the Plan. The failure of the Plan to identify funding for its implementation or to identify any government body accountable for ensuring its goals and objectives are realized seriously undermines the Plan's likelihood of success.¹⁴⁹

On the positive side, current government programs serve a vitally important role in helping some inadequately housed and homeless families and individuals. With respect to adequate housing as defined under the ICESCR, these programs have helped some segments of the target population¹⁵⁰ to receive or "access" "housing resources."¹⁵¹ Further, the programs arguably represent "policy and legislative recognition" of some "constituent aspects of the right [to adequate housing],"¹⁵² and thus represent "tak[ing] steps" towards a "progressive" realization of this right. In some limited ways, homeless individuals and families have been able to make "claim[s] or demand[s]... upon society" for fulfillment of their right to housing.¹⁵³ Members of certain defined groups – low-income families, the elderly and the disabled – can make claims for the "provision of or access to housing resources,"¹⁵⁴ although their claims may not be honored because the programs are not adequately funded. Most cities have long waiting lists for assistance, typically 5 years.¹⁵⁵ Many even have chosen to close their waiting lists due to excess

¹⁴⁶ *Opening Doors*, *supra* note 29.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ General Comment 4, *supra* note 34, at paras. 11-17.

¹⁵¹ *Id.*

¹⁵² *Id.* section (c).

¹⁵³ *Id.* section (a).

¹⁵⁴ *Id.*

¹⁵⁵ Douglas Rice and Barbara Sard, *The Effects of the Federal Budget Squeeze on Low-Income Housing Assistance*, Center on Budget and Policy Priorities, 10 (February 1, 2007) [hereinafter *Budget Squeeze*].

demand.¹⁵⁶ Finally, many of the programs address concerns of adequacy under the seven-prong definition given in General Comment No. 4. They tend to focus in particular on the prong of “affordability,” which has been widely noted as a special concern in U.S. housing markets.¹⁵⁷

However, these programs fall short of fulfilling the right to housing in important ways. First, they do not represent steps taken to the “maximum of available resources” to realize the right by “all appropriate means.”¹⁵⁸ These terms are imprecise because they are context-driven and written in generalized language; nevertheless, they remain useful benchmarks. Given that the U.S. is the wealthiest nation in the world, the “maximum of available resources” should be more than sufficient to adequately finance these programs. In many of the programs, however, demand well exceeds the allocated funding. Under the Public Housing and Section 8 programs, long waiting periods are common for just this reason.¹⁵⁹

Prioritization is a key issue here; even in the area of federal housing subsidies, only a relatively small amount goes toward low-income housing. By way of illustration, it is significant to note that tax breaks for homeowners far exceed the expenditures for low-income housing programs. The mortgage interest tax deduction was expected to cost \$144 billion in 2008 with 75% of the money benefiting homeowners that earn more than \$100,000 a year.¹⁶⁰ However, in this same year, federal low-income housing programs only received \$46 million in funding.¹⁶¹ The mortgage interest deduction is the second largest single break in the tax code with the bulk of this benefit going to wealthier Americans.¹⁶²

Similarly, these programs do not “ensure *everyone* has access to housing resources” [emphasis added].¹⁶³ While this requirement is subject to “progressive” fulfillment,¹⁶⁴ within the context of abundant resources, the qualification should be a minor one. The limitation on eligibility for assistance to certain groups of people in need also is not consistent with access being provided to everyone. The Public Housing program, for example, is limited to low-income families and elderly and disabled individuals. Further, not all who are eligible are aided, as demonstrated by lengthy – sometime closed – waiting lists for housing assistance.

Finally, and perhaps most obviously, these programs do not provide that members of

¹⁵⁶ The United States Conference of Mayors, *Hunger and Homelessness Survey: a Status Report on Hunger and Homelessness in America’s Cities*, 22-23 (2008).

¹⁵⁷ See Section V *infra*, on Affordability in the U.S.

¹⁵⁸ ICESCR, *supra* note 44, Article 2(1). Understanding that the U.S. has not ratified the ICESCR, this document is still useful as an interpretive guide to the parameters of the “right to adequate housing.”

¹⁵⁹ *Budget Squeeze*, *supra*, note 155 at 10.

¹⁶⁰ Western Regional Advocacy Project, *Without Housing 2010* update, 39 (September 28, 2010), available at http://www.wrphome.org/pages/index.php?option=com_content&id=376 (last visited on January 20, 2011) [hereinafter *Without Housing 2010*].

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ Housing Rapporteur, *supra* note 38, at section (a).

¹⁶⁴ ICESCR, *supra* note 44, at article 2(1).

society should be able to make a “*claim or demand ... upon society* for provision of or access to housing resources”¹⁶⁵ [emphasis added]. First of all, as noted in the preceding paragraph, not all of the homeless or inadequately housed can make any demand on society. Most individuals are legally excluded from making such demands. Second, the value of such a claim on society will be determined by the remedy society provides for that claim. The remedy here is often inadequate or very slow in coming by virtue of the limited resources committed to these programs. This effectively prevents many families from realizing their demands. Third, as the ability to make these demands is created by federal program, rather than statute or constitution, it can be more readily abrogated. That which can be so readily extinguished by administrative fiat arguably does not rise to the level of a “right,” which is in part defined by its theoretical (although not practical) inalienability.

C. Conclusion

Although initially leading the charge for housing as an essential component of a human right to an adequate standard of living, the U.S. has since fallen far short of recognizing the right in law and fact. Governmental resistance to recognizing the right in international treaty commitments is mirrored by the failure to adequately fund or implement programs to realize the right domestically. But by recognizing the right to housing as a basic human right, we can begin to hold ourselves accountable to the ongoing process of achieving compliance with its demands. Ultimately, it is a question of priorities: do we believe that our country has a duty to ensure that no person is faced with inadequate housing in order to ensure their basic dignity as human beings? If so, we should recognize adequate housing as a human right, and then dedicate ourselves with the passion required to ensure that right is upheld.

¹⁶⁵ Housing Rapporteur, *supra* note 38.

II. LEGAL SECURITY OF TENURE

Legal security of tenure refers to a tenant's guarantee of legal protection against forced eviction, harassment and other threats.¹⁶⁶ According to the Committee on Economic, Social, and Cultural Rights:

Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”¹⁶⁷

This section will examine U.S. laws and policies that affect the legal security of tenure of tenants, homeowners, and homeless persons to evaluate successes and failures of U.S. protection of the human right to housing.

A. Rental Accommodation

While the plight of homeowners in the foreclosure crisis has been well documented in the news media, little attention has been given to the renters who are evicted when landlords lose property through foreclosure. As the Housing Rapporteur's report noted, many of the renters displaced by this crisis had faithfully paid their rent and complied with all other obligations required in the rental contract. They were given no prior notice of their landlord's mortgage default, or their own eviction, nor were they advised of their rights as tenants or of any means of legal recourse.¹⁶⁸ In 2008-2009, 20% of properties in foreclosure were rental properties.¹⁶⁹ It is estimated that 1.5 million Americans are likely to experience homelessness due to the economic crisis in 2008-2010 over and above the normal 3.5 – 4 million who experience homelessness each year.¹⁷⁰ The National Low Income Housing Coalition estimates that 40% of families facing eviction due to foreclosure are renters.¹⁷¹

The Protecting Tenants at Foreclosure Act of 2009 (PTFA) preserves most renters' tenancy through the end of their lease term with the exception of a few, selected instances.¹⁷² Its goal is to prevent tenants in good standing from being evicted when their landlord is foreclosed upon for defaulting on their mortgage. The PTFA imposes

¹⁶⁶ See General Comment 4, *supra* note 34.

¹⁶⁷ *Id.*

¹⁶⁸ Housing Rapporteur, *supra* note 38, at para. 48.

¹⁶⁹ National Low Income Housing Coalition, *Renters in Crisis*, 11 (Feb. 20, 2009) [hereinafter *Renters in Crisis*].

¹⁷⁰ *Homelessness Looms*, *supra* note 30.

¹⁷¹ *Renters in Crisis*, *supra* note 169, at 11.

¹⁷² *Protecting Tenants at Foreclosure Act of 2009*, Public Law 111-22 (May 20, 2009) [hereinafter PTFA].

particular requirements on the "immediate successor" to the defaulting landlord, with respect to leaseholders. It requires that the successor landlord be subject to the terms of any "bona fide"¹⁷³ lease entered into before the notice of foreclosure. When the successor assumes control of the rental property, the successor must also issue existing tenants a notice to vacate a minimum of ninety days prior to the date that the successor wishes them to vacate the premises.¹⁷⁴

The law was passed in response to evidence, assembled by the Law Center and the National Low Income Housing Coalition, indicating that large number of tenants were at risk of being evicted in violation of their lease terms in the wake of the housing and mortgage crisis.¹⁷⁵ It allows renters an important time window for seeking legal advice, making arrangements with the new property owner, or finding a new residence and saving for a deposit, as the circumstances require. The Act also proposes similar protections for households receiving Section 8 assistance from the federal government. The PTFA was effective originally through the end of 2012, and has been extended through 2014.¹⁷⁶ Unfortunately, it remains a temporary solution despite the explicit recommendation of the Housing Rapporteur that it be made permanent.¹⁷⁷

State laws regarding tenants' rights in foreclosure evictions vary from state to state. However, common trends do exist. As of 2009, only 26 states specifically required that a tenant whose residence is subject to foreclosure, either be notified of, or included in the proceedings.¹⁷⁸ A majority of states allow the automatic termination of a tenant's lease following foreclosure, with the attending circumstances for this allowance varying widely from state to state.¹⁷⁹ For example, some states only allow automatic termination if the renter was notified or made a party to the foreclosure proceedings.¹⁸⁰ Other states have no such requirement or the tenancy terms are automatically modified (*e.g.* to become tenancy-at-will).¹⁸¹ In a few jurisdictions such as New Jersey and the District of Columbia, foreclosure is not a valid cause for eviction and the tenancy survives the proceedings.¹⁸²

Since the major mortgage and foreclosure crises began in 2007, thirteen states have considered or are currently working on legislation that addresses foreclosure and eviction

¹⁷³ *Id.* A "bona fide" lease is defined as: (1) The mortgage holder or the child, spouse, or parent of the mortgage holder is not the tenant; (2) the lease or tenancy is a business transaction; and (3) the lease or tenancy requires the payment of rent that approximates a fair market price (unless the unit's rent is reduced or subsidized by a state or federal agency or entity).

¹⁷⁴ *Id.*

¹⁷⁵ National Law Center on Homelessness & Poverty and National Low Income Housing Coalition, *Without Just Cause* (Feb. 1, 2009) [hereinafter *Without Just Cause*].

¹⁷⁶ National Low Income Housing Coalition Press Release, *Dodd-Frank Reform Bill Includes Extension of Protecting Tenants at Foreclosure Act, Additional Housing Provisions*, available at: <http://www.commondreams.org/newswire/2010/07/19-13> (last checked on January 3, 2010).

¹⁷⁷ Housing Rapporteur, *supra* note 38, at para. 92.

¹⁷⁸ *See Without Just Cause*, *supra* note 175, at 7.

¹⁷⁹ *Id.* at 8.

¹⁸⁰ *Id.* at 8.

¹⁸¹ *Id.* at 8.

¹⁸² *Id.* at 8.

concerns.¹⁸³ Much of the focus has been on stronger regulation of lenders and brokers, strengthening borrowers' rights and some new protections against predatory "foreclosure rescue scams."¹⁸⁴ Most laws that have increased renter protection in foreclosure involve creating or extending the tenant's right to notice prior to foreclosure sale or eviction.¹⁸⁵ Some states are considering allowing tenants the right to cancel or modify their lease terms upon receipt of a notice of foreclosure, but few have taken comprehensive steps to protect tenants rights permanently.¹⁸⁶

Massachusetts has protected tenants living in foreclosed properties more robustly than other states. On August 7, 2010, Massachusetts enacted the Act to Stabilize Neighborhoods (Senate, No. 2407), which became the most comprehensive law in the country protecting people living in foreclosed-upon properties.¹⁸⁷ The central element of the law is a provision forbidding banks from evicting tenants of foreclosed-upon properties without "just cause," such as failure to pay rent or damaging the property.¹⁸⁸ The bill also creates penalties for banks that fail to allow borrowers to renegotiate or refinance mortgages by imposing a longer pre-foreclosure period before a sale is allowed, and it explicitly criminalizes mortgage fraud.

B. Homeowners

The foreclosure crisis, and consequent collapse of the housing market beginning in 2007, has resulted in a dramatic loss of home ownership. Between 2005 and 2006, banks began issuing a greater number of loans to homebuyers. Many of these loans were adjustable rate mortgages, which required little to no down payment, and often began with interest-only payments before sharply rising over time. In a practice known as "predatory lending," realtors and lenders deliberately targeted potential homebuyers with limited education or support and misrepresented information about the payments mortgage-holders would be responsible for, and their eligibility for other loans. As buyers' mortgage payments increased incrementally, many people found that they could not afford to pay them, due to the corresponding spike in their interest rate. By 2007, people had begun defaulting in droves.

In the month of November 2010 alone, a total of 262,339 properties in the U.S. had entered or completed the foreclosure process.¹⁸⁹ This means that in the United States, one in every 492 homes faced foreclosure that month.¹⁹⁰ By the end of 2009, 2.8 million

¹⁸³ *Id.* at 8.

¹⁸⁴ *Id.* at 8.

¹⁸⁵ *Id.* at 8.

¹⁸⁶ *Id.* at 8.

¹⁸⁷ *An Act to Stabilize Neighborhoods* (April 29, 2010), Senate of the Commonwealth of Massachusetts, No. 2407, available at <http://www.mass.gov/legis/bills/senate/186/st02pdf/st02407.pdf>, (last visited Dec. 22, 2010).

¹⁸⁸ *Id.*

¹⁸⁹ RealtyTrac Inc., *Properties with Foreclosure Filings* - available at <http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=6180&acctnt=64847>.

¹⁹⁰ *Id.*

homes had entered into foreclosure proceedings and in 2010 the number topped 3 million. By the end of 2010, 1.2 million homes had been repossessed by banks.¹⁹¹ The Center for Responsible Lending estimates that since the beginning of 2007, a total of 2.5 million homes completed foreclosures.¹⁹²

The foreclosure crisis has had a disparate impact upon people of color.¹⁹³ Using mortgage data collected by the federal government under the Home Mortgage Disclosure Act of 1975,¹⁹⁴ the Center for Responsible Lending (CRL) estimates that between 2009 and 2012, African Americans will have lost approximately \$194 billion in equity.¹⁹⁵ The CRL found that for every 10,000 completed foreclosures between 2007 and 2009 on owner-occupied homes purchased with mortgages between 2005 and 2007, 790 were owned by African-Americans. In contrast, only 452 were owned by whites.¹⁹⁶ Government programs designed to mitigate the economic effects of the crisis could ultimately end up perpetuating economic, and ultimately racial, segregation, as short deadlines for disbursing federal funding compel local governments to target more easily reached or connected beneficiaries, rather than the ones who need help the most.¹⁹⁷

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 (EESA) was signed into law¹⁹⁸ to allow the Secretary of the Treasury to use \$700 billion to purchase and dispose of the troubled assets of qualified institutions.¹⁹⁹ Specifically, Section 109(a) of the EESA states, “to the extent the [Treasury] acquires mortgages, mortgage backed securities, and other assets secured by residential real estate, including multifamily housing, the [Treasury] shall implement a plan that seeks to maximize assistance for homeowners . . . and encourage the servicers of the underlying mortgages . . . to take advantage of the HOPE for Homeowners Program . . . or other available programs to minimize foreclosures.” Section 109(a) also provides that the Treasury may “use loan guarantees and credit enhancements to facilitate loan modifications to prevent avoidable

¹⁹¹ *Id.*

¹⁹² Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, Center for Responsible Lending Research Report, “Foreclosures by Race and Ethnicity: Demographics of a Crisis” (June 18, 2010) [hereinafter *CRL Report*].

¹⁹³ Jacob S. Rugh and Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 *Am. Sociological Rev.* 629 (Oct. 2010).

¹⁹⁴ Home Mortgage Disclosure Act, Pub. L. 94-200, 89 Stat. 1125. This act authorizes the FDIC to collect data on mortgages including terms of borrowing and demographics of borrowers. It was enacted for the purpose of “provid[ing] the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.” HMDA, Title III, § 302(b) (codified to 12 U.S.C. 2801).

¹⁹⁵ *CRL Report*, *supra* note 192; *see also, id.*

¹⁹⁶ *Id.* at 3.

¹⁹⁷ See Vicki Been and Ingrid Gould Ellen, *In the Wake of the Foreclosure Crisis: Targeting Neighborhood Stabilization Funds*, Nov. 17, 2009, available at <http://merage.uci.edu/ResearchAndCenters/CRE/Resources/Documents/Been-Gould%20Ellen.pdf>, (last visited Feb. 28, 2011).

¹⁹⁸ Emergency Economic Stabilization Act of 2008, Division A of the Troubled Asset Relief Program, P.L. 110-343, (October 3, 2008) [hereinafter EESA].

¹⁹⁹ *Road to Stability*, available at FinancialStability.gov, last visited Dec. 20, 2010.

foreclosures.”

Under the Troubled Asset Relief Program (TARP) established by the EESA, the Treasury was granted authority to purchase directly up to \$700 billion in mortgages and other troubled assets owned by financial institutions.²⁰⁰ However, since passage of the EESA, the Treasury has used funds from TARP to make direct equity investments in certain financial institutions themselves rather than purchase any of their troubled assets. The use of funds in this manner, rather than to acquire mortgages, makes it unclear whether the provisions of Section 109(a) can be implemented as intended to help homeowners stay in their homes.²⁰¹

In addition to homeowner protections, Section 109(b) requires the Treasury to coordinate with other federal entities that hold troubled assets to (i) “identify opportunities for the acquisition of classes of troubled assets that will improve the ability of the [Treasury] to improve the loan modification and restructuring process” and (ii) “where permissible, to permit bona fide tenants who are current on their rent to remain in their homes under the terms of the lease.”²⁰² To date, there have been no implementing regulations or other statements to provide guidance on this ambiguous legislative language.

In May, 2009, Congress enacted the Helping Families Save Their Homes Act,²⁰³ which imposed broad and extensive regulations on banks' ability to foreclose upon homeowners who default on their mortgage loans (and also included the above-referenced PTFA).²⁰⁴ The Act also limits banks ability to foreclose upon a multi-unit property and immediately evict the tenants. It requires that a 30 day notice of default must be given to a borrower at least 30 days prior to the Notice of Sale being recorded in the County Auditor's office.²⁰⁵ The borrower must also receive notice of the foreclosure sale 90 days prior to the date of the sale itself. A minimum of 190 days must transpire between the date of the default and the date of the foreclosure sale.²⁰⁶

In February, 2010, President Obama established the Hardest Hit Fund which allocates money to help families in states particularly devastated as a result of the mortgage crisis. The money is dispersed to the housing agencies of individual states, which use the money to create targeted programs tailored to the specific needs of their state.²⁰⁷ States that received TARP money via the Hardest Hit Fund include Alabama, Arizona, California, Georgia, and Illinois.²⁰⁸ On October 3, 2010, the government's ability to make new investments under TARP expired, although the Treasury continues to disperse funds that honor existing programs such as the Hardest Hit Fund, the Making Home Affordable

²⁰⁰ EESA, *supra* note 198.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Helping Families Save Their Homes Act of 2009, Pub. L. 111-22 (May 20, 2009)

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

Program, and the Emergency Homeowner Loan Program.²⁰⁹

As a result of both longstanding principles and these recent legislative advancements, homeowners in the U.S have many procedural protections that guarantee their legal security of tenure. However, lenders and mortgage brokers persistently seek to evade both the spirit and letter of these laws in pursuit of profits. Recent examples of law firms and mortgage holders using “robo-signers” – individuals signing thousands of mortgage or foreclosure documents without verifying the information as required by law – dramatically demonstrate this concern for profit over individuals’ legal rights.²¹⁰ While some judges have begun to put holds on foreclosures, showing the strength of our legal system, many families have already lost their homes without the courts recognizing these rights violations.²¹¹

C. Access to Legal Counsel

For both homeowners and renters, a major hurdle in protecting an individual or family’s right to legal security of tenure is the lack of access to legal counsel. One cannot effectively fight evictions, foreclosures or other disputes with landlords or banks without the aid of someone knowledgeable with the intricacies of the legal system. Defending ones’ rights against banks and landlords with representation is challenging even with legal counsel: in some states researchers found that unrepresented tenants never prevailed in claims against their landlords regardless of whether the landlords had representation.²¹² Yet, one survey found that fewer than 20 percent of indigent civil litigants’ needs are currently met.²¹³

Since racial minorities are disproportionately poor, their housing needs suffer the greatest from the lack of civil counsel. In its Concluding Observations in the 2008 U.S. report, the Committee on Elimination of Racial Discrimination recognized these effects and recommended that the U.S. “allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs, such as housing, health care, or child custody, are at stake.”²¹⁴

The U.S. Constitution has been construed to guarantee counsel for indigent defendants in

²⁰⁹ *Id.* See also, Press Release, Treasury Department and HUD, Obama Administration announces additional support for targeted foreclosure-prevention programs for homeowners struggling with unemployment (Aug. 11 2010), available at: http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-176 (last visited Mar. 18, 2011).

²¹⁰ See, e.g., Brady Dennis, ‘Robo-signer’ played quiet role in huge number of foreclosures, The Washington Post, Sept. 22, 2010, at <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/22/AR2010092206650.html>.

²¹¹ *Ibid.*

²¹² Russell Engler, *Shaping A Context-Based Civil Gideon From the Dynamics of Social Change*, 15 TEMP. POL. & CIV. RTS. L.REV. 697, at 715 (2006).

²¹³ Alan Housman, *Civil Legal Aid in the United States: An Update for 2007* (Center on Law and Social Policy, Aug. 22, 2007), at p.9.

²¹⁴ CERD 2008 *supra* note 36, at para. 22 (May 8, 2008).

criminal cases where the individual's liberty is at stake. That right has yet to be given to indigent persons in civil cases even when facing critical rights-based issues such as housing. A number of states and municipalities have taken steps to enhance legal security of tenure by extending the right to counsel in limited civil matters. New York City is a leading example. A bill is pending before the New York City Council that would grant indigent senior citizens in eviction proceedings a right to legal counsel provided by the city.²¹⁵ In addition, in February of 2010, New York Attorney General Andrew M. Cuomo reached a settlement with a New York City landlord, Vantage Properties, which requires Vantage to pay \$1 million to compensate for tenant harassment and fund legal and educational services.²¹⁶ Although the settlement does not allocate government funds to low-income individuals who are evicted or harassed, it requires Vantage to pay \$250,000 to non-profit organizations that provide legal services to low-income individuals seeking such redress.²¹⁷

While these new developments are excellent steps in the right direction, they remain inadequate to address the needs of low-income families with children and fall short of meeting the needs of all the individuals who require, but cannot afford, legal counsel to prevent eviction.

D. Emergency and Dire Circumstances

1. The Criminalization of Homelessness

Despite our nation's treaty commitments and obligations to uphold the basic human dignity of every person, many states have enacted laws or ordinances that target homeless individuals by making it illegal to sleep or sit on the sidewalk, ask for money, or "camp" outside.²¹⁸ These ordinances are being enacted even though nationally, as well as in cities enacting them, there is a severe shortage of shelter space to meet even the emergency needs of the homeless population.²¹⁹ Other ways that cities have criminalized homelessness include: sweeps of areas in which homeless people sleep, laws that restrict their freedom of movement, search and seizure of their personal property, selective enforcement of general provisions, and anti-panhandling laws.²²⁰

In Orlando, Florida, for example, an anti-camping law prohibits camping on all public

²¹⁵ *Providing Legal Counsel for Certain Tenants Subject to Eviction, Ejectment or Foreclosure Proceedings*, Int. 0648-2007 available at <http://webdocs.nycouncil.info/textfiles/Int%200648-2007.htm?CFID=145960&CFTOKEN=17680038>.

²¹⁶ Media Office of the Attorney General, *Attorney General Cuomo Announces \$1 Million Settlement with New York City Landlord "Vanguard Properties" to Stop Tenant Harassment* (February 11, 2010), available at http://www.ag.ny.gov/media_center/2010/feb/feb11a_10.html (last visited Dec. 21, 2010).

²¹⁷ *Id.*

²¹⁸ Ashland, OR: Prohibited Camping Ordinance, Municipal Code § 10.46 and "Sleeping Prohibited" Ordinance § 10.68.230.

²¹⁹ See *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006). See also, National Law Center on Homelessness & Poverty and National Coalition for the Homeless, *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities* (2009) [hereinafter *Homes Not Handcuffs*].

²²⁰ *Id.*; See also *Johnson v. Freeman*, 351 F. Supp. 2d 929 (E.D. Mo. 2004).

property without authorization. “Camping” is defined as “sleeping or otherwise being in a temporary shelter out-of-doors, sleeping out-of-doors, or cooking over an open flame or fire out-of-doors.”²²¹ Similarly, police in Fresno, California engaged in targeted sweeps of areas in which homeless individuals were known to congregate. In the sweeps, police destroyed homeless peoples' property, including medicine, identification documents, and clothing.²²²

Many of the individual laws targeting homeless individuals have faced Constitutional challenges.²²³ In *Pottinger v. City of Miami*, for instance, homeless individuals brought a class action suit against the city of Miami, Florida, claiming that police were harassing them for performing life-sustaining activities in public when no alternative shelter or location was available.²²⁴ They argued in part that such harassment was unconstitutional under the Eighth Amendment bar against cruel and unusual punishment and a violation of the Equal Protection Clause of the Fourteenth Amendment, and the City of Miami was ordered to provide redress.²²⁵ The decision of the district court survived on appeal.

Similarly, in *Jones v. City of Los Angeles*, the Ninth Circuit Court of Appeals struck down as unconstitutional a Los Angeles city ordinance, which prohibited sleeping, sitting, or lying on the street at any time of day and was selectively enforced in the downtown area of Los Angeles known as “Skid Row.”²²⁶ The Ninth Circuit held that the ordinance violated the Eighth Amendment's prohibition on cruel and unusual punishment for criminalizing conduct that is unavoidable.²²⁷

Despite the decision in *Jones*, Los Angeles has continued its trend of criminalization of homelessness through the so-called “Safer Cities Initiative.” This policy has sent hundreds more police officers to Skid Row, but rather than addressing violent crime, the officers have been targeting homeless and poor African Americans for minor violations such as jaywalking and littering.²²⁸ This program has drawn the attention of both the Racism Rapporteur and Housing Rapporteur, prompting recommendations to cease the disparate enforcement²²⁹ and allow homeless persons to shelter themselves in public when there is inadequate shelter space.²³⁰

During a mission in March, 2011, the UN Independent Expert on the Right to Water & Sanitation heard testimony from the Law Center and visited a homeless encampment in

²²¹ Orlando City Code § 43.52; *See also*, *Joel v. City of Orlando*, 232 F.3d 1353 (11th Cir. 2000), Cert. denied, 149 L.Ed.2d 480 (2001).

²²² *Kincaid v. City of Fresno*, 244 F.R.D. 597 (E.D. Cal., 2007).

²²³ For an overview of the trend and litigation, see Maria Foscarnis, Downward Spiral: Homelessness and its criminalization, 14 Yale L. & Pol’y Rev. 1 (1996).

²²⁴ *Pottinger v. City of Miami*, 40 F. 3d 1155 (11th Cir. 1994).

²²⁵ *Id.*

²²⁶ *Jones*, *supra* note 219.

²²⁷ *Id.* at 1138.

²²⁸ GARY BLASI ET.AL, POLICING OUR WAY OUT OF HOMELESSNESS? THE FIRST YEAR OF THE SAFER CITIES INITIATIVE ON SKID ROW, (Sept. 2007), *available at* <http://www.law.ucla.edu/docs/Skid%20Row%20Safer%20Cities%20One%20Year%20Report.pdf>.

²²⁹ Racism Rapporteur, *supra* note 37, at para. 97 and 107.

²³⁰ Housing Rapporteur, *supra* note 38, at para. 95.

Sacramento, CA.²³¹ The Independent Expert released her preliminary report on March 4.²³² She noted the increase in criminalization of homelessness and detailed the story of Tim, a homeless man who facilitates the removal of hundreds of pounds of human wastes from the homeless encampment each week.²³³ The Expert stated, “The fact that Tim is left to do this is unacceptable, an affront to human dignity and a violation of human rights that may amount to cruel, inhuman or degrading treatment. An immediate, interim solution is to ensure access to restrooms facilities in public places, including during the night.”²³⁴ This is the strongest, most clear statement by a UN expert to date on the issue of criminalization, and given its condemnation in terms similar to our own 8th Amendment’s protection from cruel and unusual treatment, one that may lend itself to protecting homeless persons rights in the courts.

In 2009, Congress passed the HEARTH Act,²³⁵ which required the Federal Interagency Council on Homelessness to produce a plan to end and prevent homelessness; that Plan was published in June 2010. In a separate provision, the Act requires the Interagency Council to promote alternatives to the criminalization of homelessness.²³⁶ Although the Council has to date held a national Summit, bringing together cities, providers and advocates to discuss constructive alternatives to criminalization of homelessness, it has to date not taken concrete steps to prevent their enactment.²³⁷

Several cities have had great success in combating homelessness by finding creative alternatives to criminalization. One example is, “A Key Not a Card,” enacted by the city of Portland, Oregon. As part of its ten-year plan to end homelessness, the City of Portland has funded an initiative that enables outreach workers at various city-funded agencies to offer permanent housing immediately to people living on the street. Five different city service provider agencies participate in the program. The funding is flexible and can be used to pay rent, back rent, and security deposits. The goal is to house individuals for up to two years, during which time, the individuals will make every effort to secure permanent subsidies, public benefits, or employment.²³⁸

The program has met with great success. From the program’s inception in 2005 through

²³¹ National Law Center on Homelessness & Poverty, Homelessness and the Human Right to Water & Sanitation, (Feb. 2011), available at http://nlchp.org/view_report.cfm?id=349, (last visited Mar. 31, 2011).

²³² Catarina de Albuquerque, UN Independent Expert on the right to water and sanitation: Mission to the United States of America from 22 February to 4 March 2011, (Mar. 4, 2011), available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10807&LangID=E>, (last visited Mar. 31, 2011).

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ McKinney-Vento Homeless Assistance Act As Amended by S. 896 [111th], The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, [hereinafter HEARTH Act].

²³⁶ The Plan includes the following quote from Maria Foscarnis, Executive Director of NLCHP: “Criminally punishing people for living in public when they have no alternative violates human rights norms, wastes precious resources, and ultimately does not work.” *Opening Doors*, *supra* note 29, at 112.

²³⁷ National Coalition For the Homeless, *National Strategic Plan*, available at: <http://www.nationalhomeless.org/advocacy/nationalstrategicplan.html> (last visited Jan. 4, 2011).

²³⁸ *Homes Not Handcuffs*, *supra* note 219, at 31.

spring 2009, 936 individuals in 451 households have been housed, including 216 households placed directly from the street. At twelve months after placement, at least 74% of households remain housed. At three and six months after placement, at least 93% and 87% remain housed, respectively.²³⁹

As the problem of homelessness grows with the housing crisis, the city of Puyallup, Washington has responded positively to a national trend of “tent cities.” In November 2010, the city passed an ordinance that provides permits to religious organizations for the specific purpose of hosting tent encampments for homeless individuals.²⁴⁰ The ordinance is part of a Comprehensive Plan drawn up by the Puyallup City Council describing various objectives for eliminating homelessness in Puyallup. The ordinance provides a critical first step because it offers religious organizations the ability to host one encampment for up to 40 people at any given time.²⁴¹ However, there are numerous areas for improvement, such as granting this right to non-religious organizations as well as religious ones and expanding the size and number of the camps, given that one encampment of 40 individuals is insufficient to meet the needs of the hundreds of homeless individuals in Puyallup. Moreover, it as advocates and the Comprehensive Plan make clear, legalized tent cities are not a long-term solution to homelessness – that is something only adequate, affordable housing can provide.

2. Domestic Violence

Domestic violence is a leading cause of homelessness nationally. Among cities surveyed in 2005, 50% identified domestic violence as a primary cause of local homelessness.²⁴² A recent study found that one out of every four homeless women is homeless because of violence committed against her.²⁴³ In several regions where studies have been conducted, between 22% and 57% of homeless women report that domestic violence was the immediate cause of their homelessness.²⁴⁴

Women residing in low-income neighborhoods are twice as likely to be victims of intimate partner violence in comparison to women residing in more advantaged communities.²⁴⁵ Low-income women are also more likely to experience repeat victimization and to be more severely injured by their abusers. Exacerbating this crisis is the severe shortage of affordable housing. Domestic violence survivors attempting to flee abuse are in desperate need of immediate and long-term housing assistance, yet federal housing assistance programs are under-funded and insufficient to meet the growing need. This problem is compounded by housing denials and evictions because of one’s status as

²³⁹ *Ibid.*

²⁴⁰ *An Ordinance of the City Council of the City of Puyallup, Washington, amending Title 20 of the Municipal Code to provide for the permitting of homeless encampments by adding a new chapter, Chapter 20.73, which is titled, “Temporary Encampments”, Sept. 14, 2010.*

²⁴¹ *Id.*

²⁴² National Law Center on Homelessness and Poverty, *Lost Housing, Lost Safety: Survivors of Domestic Violence Experience Housing Denials and Evictions Across the Country*, 5 (Feb. 2007).

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

a victim of domestic violence.

The federal Violence Against Women Act (VAWA), first enacted in 1994, and reauthorized in 2000 and 2005, provides legal protections for survivors of violence against women by encouraging victims to seek civil protection orders against their abusers, to summon police in response to domestic violence, or to seek other services.²⁴⁶ The law also provides law enforcement, prosecutors, courts, and other community systems with resources to develop the needed expertise in responding to this national problem. Many victims of domestic violence across the nation now choose to take the protective measures encouraged by VAWA over the last 12 years, but may subsequently find themselves revictimized by the loss of their housing.

Fortunately, with the most recent VAWA 2005 reauthorization, Congress recognized that domestic violence is a leading cause of homelessness nationally, and that victims of domestic violence around the country are discriminated against in housing because of the acts of their abusers against them. In its findings, Congress noted that 92% of homeless women have experienced “severe physical or sexual abuse at some point in their lives.”²⁵⁰ Congress found almost 150 “documented eviction cases in the last year alone where the tenant was evicted because of the domestic violence crimes committed against her,” and that nearly 100 persons were “denied housing because of their status as victims of domestic violence.”²⁵¹ Most disturbing, Congress found that many domestic violence victims return to their abusers because they are unable to secure long-term housing.²⁵² The Housing Rapporteur echoed these concerns in her recent report.²⁵³

To protect victims from losing their housing as they seek safety, VAWA amended the federal public housing and Section 8 housing assistance statutes to ensure that victims and their families are not wrongfully evicted from or denied housing in these programs. These housing statutes now provide that an individual’s status as a victim of domestic or sexual violence is not an appropriate basis for evictions or denials of housing. VAWA explicitly provides that an incident of actual or threatened domestic violence, dating violence, or stalking does not qualify as a “serious or repeated violation of the lease” or “good cause for terminating the assistance, tenancy, or occupancy rights of the victim.”²⁵⁴ Further, a public housing authority (PHA) or Section 8 landlord may bifurcate the lease in order to evict the abuser while still allowing the lawful tenant to keep her housing.²⁵⁵ However, these protections are limited to public and Section 8 housing, leaving the residents of a majority of private housing, as well as other federally funded housing, unprotected.

²⁴⁶ *Violence Against Women Act of 1994 (VAWA)*, Pub. L. 103-322, Title IV, Sept. 13, 1994, 108 Stat. 1902.

²⁵⁰ *Violence Against Women Reauthorization Act of 2005*, Pub. L. 109-162, Jan. 5, 2006, 119 Stat. 2960.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ Housing Rapporteur, *supra*, note 38, at para. 74.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

In addition to these recent federal protections, some states have enacted laws to ensure housing rights for domestic violence survivors. For example, Arizona, Washington, DC, Illinois, Rhode Island, and Washington have enacted legislation prohibiting landlords from evicting tenants who call the police in response to attacks by their domestic partners.²⁵⁶ Colorado provides an eviction defense in housing court designed to ensure that judges consider facts related to domestic violence in their decision-making.²⁵⁷ Louisiana permits a battered tenant, upon providing specified documentation, to terminate her lease early without financial penalty.²⁵⁸ Texas law explicitly prohibits a landlord from interfering with a victim's right to call the police²⁵⁹ or have her locks changed in response to domestic violence. The law also provides an avenue for recovery of civil damages equal to one month's rent, injunctive relief, and attorney's fees against landlords who violate this provision.²⁶⁰ When enforced in tandem with VAWA protections, these state laws help domestic violence survivors break free from abusive relationships without falling into homelessness.

E. Recommendations

1. Congress and HUD should allocate at least \$1 billion per year to homelessness prevention programs to fund emergency housing, rental assistance, and rapid re-housing resources.
2. Congress and the Administration should make permanent the Protecting Tenants at Foreclosure Act (PTFA), with the addition of a private right of action to enable better enforcement of the law and give HUD, bank regulatory agencies and the Department of Justice authority to investigate reports of noncompliance with PTFA.
3. States should provide a right to counsel in all civil cases involving the potential loss of housing or inadequate housing conditions, and significantly expand funding to legal aid services to facilitate the implementation of this right.
4. HUD and the DOJ should promulgate guidance for communities emphasizing the negative consequences of criminalization measures and providing incentives for constructive alternatives.
5. The Civil Rights Divisions of both the DOJ and HUD should open investigations in areas where laws are being implemented in ways with a clear disparate effect on racial minority communities, persons with disabilities or other protected classes.

²⁵⁶ Ariz. Rev. Stat. Ann. § 33-1315; *Protection from Discriminatory Eviction for Victims of Domestic Violence Amendment Act*, D.C. Code 1981 § 16-1001(5)(A); *Safe Homes Act*, 765 ILCS 750; 2002 R.I. Pub. L. 118 (codified at R.I. General Laws §§ 34-37-1, -2, -2.4, -3, -4); E.H.B. 1645, 58th Leg. (Wash. 2003).

²⁵⁷ Col. Rev. Stat. Ann. § 13-40-107.5(5)(b).

²⁵⁸ 2004 La. Acts 444 (codified at La. Rev. Stat. Ann. § 40.506(D)). Signed into law on June 24, 2004 and became effective immediately.

²⁵⁹ Texas Prop. Code. Ann. § 92.015.

²⁶⁰ *Id.*

6. Congress and HUD should expand VAWA's housing protections to other federal housing programs, so that victims and their families are not unjustly evicted into homelessness.
7. HUD should create a position within the agency for a designated individual who will oversee VAWA implementation and ensure that PHAs consistently uphold protections for victims and their families.
8. HUD should conduct trainings and outreach to ensure that all guidance regarding VAWA is widely understood and implemented by PHAs.
9. Congress should request a study on VAWA implementation by the Government Accountability Office (GAO) to determine how well VAWA housing provisions are being executed and what more must be done to improve its implementation and enforcement.
10. Congress should authorize HUD's Office of Fair Housing and Equal Opportunity (FHEO) to receive complaints, investigate and prosecute cases in which a PHA, Section 8 owner or agent has violated a victim's rights under VAWA.

III. AVAILABILITY OF SERVICES, MATERIALS & INFRASTRUCTURE

As the Committee on Economic, Social and Cultural Rights (CESCR) has stated, adequate housing must provide inhabitants with not only basic facilities to reside safely within, but also access to essential services, materials, facilities and infrastructure. The CESCR defines and explain these elements of adequate housing as follows:

An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.²⁶¹

The availability of services, materials, and infrastructure overlaps significantly with other elements of the right to adequate housing, especially habitability and location, which will be discussed in further depth below. Deficiencies in these essential elements are most pronounced in low-income housing, particularly in predominantly racial minority urban and rural communities.

A. Urban Infrastructure

Studies indicate that low-income urban neighborhoods receive poorer basic municipal services, such as police, fire and sanitation, than their more affluent, urban counterparts.²⁶² In her visit to Chicago, the Housing Rapporteur noted the Atgeld Gardens public housing complex located in Chicago's far south side lacks basic services due in large part to the permanent closure of most local businesses. Many apartments in the complex are vacant due to extended renovations, and businesses have been crippled by the dropping occupancy rates.²⁶³

There has been a systemic underinvestment in maintaining public housing over the past several decades, resulting in a capital backlog of up to \$20 billion in unmet renovation needs.²⁶⁴ Between 2000 and 2006 alone, the basic operating appropriations to public housing fell to \$6.7 billion below the actual need.²⁶⁵ This results in higher costs being passed on to residents for otherwise unfunded repairs, unmet maintenance and security needs, and even loss of units due to deterioration or sale to meet the funding shortfall.²⁶⁶

In July 2009, the UN-HABITAT Advisory Group on Forced Evictions (AGFE) conducted

²⁶¹ General Comment No. 4, *supra* note 34, at para. 8(b).

²⁶² Gary W. Evans & Elyse Kantrowitz, *Socioeconomic Status and Health: The Potential Role of Environmental Risk Exposure*, 23 *Ann. Rev. Pub. Health* 303, 318 (2002), [hereinafter *Socioeconomic Status and Health*].

²⁶³ Housing Rapporteur, *supra* note 38, at para. 40.

²⁶⁴ Sandra B. Henriquez, Testimony to the House Financial Services Subcommittee on Housing and Community Opportunity, Apr. 28, 2010, *available at* <http://portal.hud.gov/hudportal/HUD?src=/press/testimonies/2010/2010-04-28>.

²⁶⁵ Econsult, *Assessing the Economic Benefits of Public Housing Final Report*, 6 (2007).

²⁶⁶ *Id.* at 6-7.

a mission to New Orleans. Several residents of the Iberville public housing development showed AGFE damages to their homes they had requested the Housing Authority of New Orleans (HANO) to repair, including sewage systems that frequently back up, mold on the walls, and exposed electrical wiring.²⁶⁷ Many of the damages were minor and could be easily fixed, however, residents told the mission that HANO has not repaired many of the units despite repeated requests.²⁶⁸ Many residents believe this is part of a strategy by HANO to allow the development to fall into such disrepair that demolition would be the most obvious solution.²⁶⁹ Like many public housing developments, Iberville is located on the edge of an expanding business district, and as the value of the land increases, so too does pressure to evict the long-time residents in favor of new development. In the meantime, HANO's failure to make repairs forces residents to live in inhumane and unsafe conditions. Many residents, particularly those with respiratory conditions, have fallen ill or experienced a worsening of existing illnesses from the chronic mold problems.²⁷⁰ This systemic and persistent underfunding of capital needs has created a deliberate crisis in public housing conditions.

B. Rural Infrastructure

Rural poverty in the United States is a persistent problem, and it is these rural areas throughout the nation, particularly the remote and poor rural counties, that bear a disproportionate share of the nation's poverty burden. Most of the poor counties in the U.S., and most of the persistently poor²⁷¹ counties are rural. In 2009, 7.9 million people living outside of metropolitan areas had incomes below the poverty level. Moreover, a 2010 study found that 27.6% of rural households were near poverty compared to 22.6% of metropolitan households, and that 36.9% of children under 18 lived below 150% of the poverty line in non-metropolitan areas compared to 31.2% in metropolitan areas.²⁷² Many residents in these poor rural communities suffer acute problems when it comes to accessing basic services, facilities, and infrastructure.²⁷³

In the United States, there are also important racial differences in housing quality and availability of services. For example, according to a study by the Population Reference Bureau in 2000, incomplete plumbing was more prevalent in the homes of racial minorities (incomplete plumbing involves housing units that lack either hot and cold piped water, a flush toilet, or a bathtub or shower²⁷⁴). Specifically, African Americans in

²⁶⁷ Advisory Group on Forced Evictions, Mission Report to New Orleans, (2010), 32 [hereinafter AGFE Report].

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

²⁷¹ Persistent poverty refers to the length of time spent living in poverty. Counties are considered persistently poor if 20 percent or more of their populations have lived in poverty for the past 30 years. (United States Department of Agriculture Economic Research Service. Rural Development Research Report Number 100 (July 2004) Available at <http://www.ers.usda.gov/publications/rdr100/rdr100.pdf>)

²⁷² Housing Assistance Council, *Poverty in Rural America*, 1-2 (October 2010), available at (<http://www.ruralhome.org/storage/documents/PovertyAmerica1010.pdf>) [hereinafter *Poverty in Rural America*].

²⁷³ *Id.* at 4.

²⁷⁴ Population Reference Bureau, *Housing and Commuting Patterns in Appalachia* 6 n.12, (January 2004)

the United States were more than twice as likely and Hispanics were more than three times as likely as non-Hispanic whites to live in homes with incomplete plumbing.²⁷⁵ These disparities are exacerbated in rural areas. Minorities in rural areas are among the poorest and worst housed groups in the entire nation. Non-white and Hispanic rural households are three times more likely to live in substandard housing than white, rural households,²⁷⁶ and rural poverty amongst African-Americans far exceeds the poverty rate of any other ethnic group.²⁷⁷ Nearly one in three non-metropolitan African-Americans lives in poverty, three times the rate of rural whites.²⁷⁸ And according to 2000 data from the U.S. Department of Agriculture Economic Research Service, in 47% of rural counties with poverty rates of 20% or more, the majority of the poor residents were black, or it was only the high incidence of poverty amongst black residents that brought the county's poverty rate above 20%.²⁷⁹

The development of "Colonias" in the southwest region of the United States offers a stark example of racial minority housing lacking essential facilities. According to the United States Code, a Colonia is a community that (1) is located within the state of Arizona, California, New Mexico, or Texas; (2) lies within 150 miles of the U.S.-Mexico border, except for any metropolitan area exceeding one million people; (3) on the basis of objective criteria, lacks potable water, adequate sewage systems, and decent, sanitary housing; and (4) existed as a Colonia before November 28, 1990.²⁸⁰ In addition, Colonias are primarily Hispanic and located within close proximity to agricultural and industrial employment opportunities.²⁸¹ These communities tend to be located in unincorporated areas within states that have granted their counties minimal land-use or building-code enforcement powers.²⁸² Lax enforcement of building codes combined with the extreme poverty of Colonia residents has resulted in communities that are afflicted by insufficient infrastructure or a complete lack of basic utilities.

In response to the lack of infrastructure, Colonia residents improvise basic services such as sewage disposal systems, but these systems often prove inadequate and can create exposure to contaminated water supplies.²⁸³ Site drainage is also a pervasive problem in Colonias where the absence of flood-control infrastructure results in the accumulation of hazardous standing water.²⁸⁴ The health repercussions of living in a habitation without services such as safe drinking water or refuse disposal are severe. Colonia residents are susceptible to outbreaks of cholera, viral infections, and myriad skin and intestinal disorders, conditions one expects to encounter in very poor developing countries, not

(prepared by Mark Mather).

²⁷⁵ *Id.* at 7.

²⁷⁶ Housing Assistance Council, *Taking Stock of Rural People, Poverty, and Housing for the 21st Century*, (2002).

²⁷⁷ Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. Rev. 1095, 1116 (June 2008) [hereinafter *Inside Out*].

²⁷⁸ *Poverty in Rural America*, *supra* note 272.

²⁷⁹ *Inside Out*, *supra* note 277, at 1116.

²⁸⁰ 42 U.S.C. § 1479 (f)(8).

²⁸¹ *Inside Out*, *supra* note 277, at 1115.

²⁸² *Id.*

²⁸³ *Id.* at 1115-1116.

²⁸⁴ *Id.* at 1116.

within the wealthiest nation in the world.²⁸⁵

C. Recommendations

1. Congress and HUD should increase capital investment for reviving and maintaining public housing stock to adequately meet the backlog over the next 5 years and then maintain adequate funding.
2. Congress, HUD, and state and local governments should increase funding for infrastructure in poor communities to maintain adequate public health.
3. Government at all levels should produce and examine racially disaggregated data to determine where investments are necessary to overcome a structurally imposed disparate racial impact of poverty.

²⁸⁵ *Id.* at 1095 n.71.

IV. AFFORDABILITY

The lack of affordable housing is the primary cause of homelessness in the United States.²⁸⁶ Due to the combination of stagnant incomes²⁸⁷ and rising housing costs, affordable housing has become unobtainable for an increasing portion of the population, and as the disparity between wages and housing costs increases, more individuals are at risk of homelessness. In General Comment 4, the CESCR defines affordability in housing as follows:

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials.²⁸⁸

In the current national market, there is no county in the country where even a one-bedroom apartment at fair market rent is affordable for a person working full-time at minimum wage.²⁸⁹ Many individuals and families, coping with high rent burdens due to the shortage in affordable housing, are required to spend a large percentage of their income on housing. For far too many others, the financial burden is untenable and they are forced into homelessness. This problem is especially acute for racial minorities. African-Americans constitute 45-47% of the homeless community, and approximately 60% of homeless people are racial minorities.²⁹⁰ Where some form of housing is available, racial minorities are disproportionately plagued by substandard housing or severe rent burdens. African-Americans and Hispanics make up over 50% of the population with the greatest housing needs in the country, despite the fact that they represent only 25% of the total U.S. population.²⁹¹

A. Housing costs should not compromise other basic needs

According to federal guidelines, established by the Department of Housing and Urban Development, affordable housing should account for no more than 30 percent of

²⁸⁶ Housing Rapporteur, *supra* note 38, at para. 56.

²⁸⁷ National Coalition for the Homeless, "Why Are People Homeless?", July 2009. Available at <http://www.nationalhomeless.org/factsheets/why.html>; U.S. Department of Housing and Urban Development, FY 2010 Budget: Road Map for Transformation 9 (2009).

²⁸⁸ General Comment No. 4, *supra* note 34, at para. 8(c).

²⁸⁹ National Low Income Housing Coalition, *Out of Reach 2010*, 6, (June 2010) [hereinafter *Out of Reach*].

²⁹⁰ U.S. Council of Mayors, Hunger and Homelessness Survey 15 (2007).

²⁹¹ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AFFORDABLE HOUSING NEEDS: 2005 (2007).

household income.²⁹² Using 30 percent as a gauge, it becomes clear that affordability is a major problem in the United States. From 2000 to 2007, the number of households facing serious affordability constraints increased by 33 percent.²⁹³ By 2007, approximately 22 percent of the 36.9 million rental households in the United States were spending more than half of their income on rental costs.²⁹⁴

Low-income families must make difficult decisions about how to allocate their limited funds between high housing costs and other basic needs. Even in cases where homelessness is avoided, individuals and families are forced to reduce their spending on other necessities such as food, medication, and transportation.²⁹⁵ Moreover, the lack of affordable housing compels many to move into housing that is deficient in one or more of the elements that the CESC has identified as essential to adequate housing. In such cases, people inhabit housing that is overcrowded or unhealthy, or in neighborhoods with failing schools, high crime rates, or limited access to basic services, thus interfering with the enjoyment of other aspects of the right to housing.²⁹⁶

For disabled individuals living solely on Supplemental Security Income (SSI), housing may be completely unaffordable. Studies indicate that on average, persons with disabilities face housing costs of 112% of their monthly income, with some cities, such as Washington, DC, having the cost of a one-bedroom rental close to two times the entire monthly income of the SSI benefit.²⁹⁷ This forces many people with disabilities to live in nursing or group homes, not due to medical necessity, but because they cannot afford decent housing in the community and still be able to provide for their other basic needs.²⁹⁸

B. Housing costs should be commensurate with income levels

A person working 40 hours a week should be paid a wage that allows him or her to afford adequate housing. Unfortunately, for those households dependent on minimum wage jobs, the prospect of affordable housing is not promising. The federal minimum wage increase in 2009 helped decrease the gap between minimum wage and the full-time hourly wage one would need to earn in order to pay for “fair market rent,” as defined by HUD, without spending more than 30 percent of their income.²⁹⁹ Despite this improvement, to afford a two bedroom apartment at fair market rent a person would have to secure a full-time job paying \$18.44 an hour, more than double the federal minimum wage of \$7.25 an hour.³⁰⁰ The number of minimum wage jobs a person would have to

²⁹² Housing Rapporteur, *supra* note 38, at para. 17.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ Center on Budget and Policy Priorities, *Decade of Neglect Has Weakened Federal Low-Income Housing Programs*, (Feb. 2009) [hereinafter *Decade of Neglect*].

²⁹⁶ *Id.*

²⁹⁷ Emily Cooper, Henry Korman, Ann O’Hara, and Andrew Zovistoski, *Priced Out in 2008: The Housing Crisis for People with Disabilities*, 1 (2009).

²⁹⁸ *Id.*

²⁹⁹ *Out of Reach*, *supra* note 289, at 6.

³⁰⁰ *Id.*

work to pay for such housing ranges from 1.1 in Puerto Rico to 4.3 jobs in Hawaii (requiring more hours than there are in a day).³⁰¹ It is not just people earning minimum wage that face affordability obstacles in the housing market. The average renter makes an hourly wage of \$14.44 and still has to work 51 hours a week in order to afford the average national cost of a two-bedroom apartment.³⁰²

In her 2010 report on her mission to the U.S., the Housing Rapporteur notes, “Effective homelessness prevention strategies should include provisions that increase the stock of affordable housing available to low-income workers and for those at risk of becoming homeless.”³⁰³ As discussed below, a lack of sufficient funding is a common impediment to creating and maintaining low-income housing. There are methods, however, such as inclusionary zoning and repurposing vacant government-owned properties, which can improve access to affordable housing without additional government funding.

In the case of inclusionary zoning, developers can be encouraged or required to include low-income housing in development plans. This has the benefit of not only increasing the number of low-income housing units, but also ensuring that those new units are located in vibrant communities. Such location is vital to ensuring that other elements of adequate housing, such as accessibility and location, are addressed.

Currently, community development plans often are heavily imbalanced in favor of higher income units. For example, in 2007, Los Angeles built 14,000 new housing units. Of those, 12,000 were priced for households making more than \$90,000 per year, and only 1,300 were for those making between \$29,000 and \$90,000; despite the city knowing that at least 8,000 units were needed in the \$29,000-90,000 range, and far fewer were needed for the upper income bracket.³⁰⁴ Mandatory inclusionary zoning would help rebalance the market without requiring government investment.

In most areas of the country, the U.S. does not have an absolute housing crisis. Generally, there are sufficient units available for the number of residents, but there is an *affordable* housing crisis because too many of the units that are available or are being built, are for high-income persons rather than working class or poor Americans. To that end, the Housing Rapporteur recommends that “[e]mpty foreclosed properties should be made available using incentives for the sale of the property to non-profit organizations or community land trusts, in order to increase the stock of affordable housing.”³⁰⁵

The federal government has two programs that make vacant properties available to homeless service organizations. The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (“the Base Closure Act”) requires that plans to convert closed bases from military to nonmilitary use take into account the needs of homeless

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ Housing Rapporteur, *supra* note 38, at para. 98.

³⁰⁴ Mary Leslie, *Mission Imperative: LA’s Workforce Housing Crisis*, Los Angeles Business Journal, (Dec. 10, 2007).

³⁰⁵ Housing Rapporteur, *supra* note 38, at para. 93.

persons in the community and establishes a process for homeless service providers to receive base property at no cost.³⁰⁶ Title V of the McKinney-Vento Homeless Assistance Act (“Title V”) requires vacant or underutilized federal property be made available to homeless service providers at no cost.³⁰⁷ While service providers have obtained millions of dollars worth of vacant federal properties since the program began in 1989, and have in turn served hundreds of thousands of homeless persons, these programs remain underutilized due to the difficulty of the application process and other problems with the programs’ administration.³⁰⁸ Further, other federally-owned properties, including foreclosed homes owned by Fannie Mae and Freddie Mac have not been made available for use by homeless families and individuals. The Single-Family Property Disposition Initiative authorized by Congress has been administratively shut down since the mid-1990s, preventing thousands of homes from being made available for use as transitional or low-income housing.³⁰⁹

The Neighborhood Stabilization Program (NSP) was created and funded through several stimulus bills to provide federal funding to state and local governments for purchasing and rehabilitating foreclosed properties for use as affordable housing.³¹⁰ NSP was intended to help prevent the blight facing many neighborhoods with large numbers of foreclosures in close proximity, creating a cumulative effect on crime and property conditions.³¹¹ NSP has met with some success, but on March 16, 2011, the House of Representatives voted to end the NSP, though this is likely to be opposed by the Senate and President.³¹²

State and local governments also own properties that are under-utilized or vacant, and with the recent foreclosure crisis, many privately-owned homes are coming into public ownership due to unpaid property taxes. States and municipalities should develop programs similar to the Base Closure Act and Title V to enable these properties to be redeveloped and used for housing and homeless services

New York City serves as a timely example of just how powerful the repurposing of vacant properties could be as a solution to the affordable housing crisis. It has been suggested that there is a sufficient number of empty housing units in abandoned buildings to house the city’s entire homeless population.³¹³ A partial survey of the city, which

³⁰⁶ Pub. L. 103-421, 108 Stat. 4346, 10 U.S.C. 2687 note (2004); 24 CFR §§586.1-45.

³⁰⁷ Pub. L. 100-77, July 22, 1987, 101 Stat. 509, 42 U.S.C. § 11411 (2008).

³⁰⁸ See National Law Center on Homelessness & Poverty, *Unused but still useful: Acquiring federal property to serve homeless people*, v-vii (2004).

³⁰⁹ See A Report to the Human Rights Council on the Right to Adequate Housing in the United States of America, para. 15 (2010), available at http://www.nlchp.org/content/pubs/UPR_Housing_Report4.19.10.pdf, (last visited Mar. 18, 2011).

³¹⁰ National Low Income Housing Coalition, *2010 Advocates Guide to Housing & Community Development Policy*, 150 (2010) [hereinafter *Advocates Guide*].

³¹¹ *Ibid.*

³¹² Pete Kasperowicz, House Votes to End Third Housing Program, *The Hill*, Mar. 16, 2011, available at <http://thehill.com/blogs/floor-action/house/150281-house-votes-to-end-third-federal-housing-program>, (last visited Mar. 18, 2011).

³¹³ Picture the Homeless, *Homeless People Count Vacant Properties in Manhattan*, 5, available at http://www.picturethehomeless.org/PTH_Homeless_People_Count_Report.pdf, (last visited March 18,

inspected nine community districts, discovered 264 fully constructed residential buildings that were either fully or partially vacant. These buildings represented 4,092 individual housing units available for occupancy, compared to the 3,483 unsheltered homeless individuals in a 2006 street count.³¹⁴ Rather than letting these residential buildings remain unoccupied in the typically low-income and racial minority neighborhoods they inhabit, homeless advocates are promoting the conversion of the units into low-income housing. By exercising their power to acquire distressed and financially troubled properties, city and state governments can facilitate the conversion process, especially for properties that are delinquent on tax payments. Upon acquisition, these buildings could be converted into public housing stock or turned over to community land trusts for other appropriate redevelopment.³¹⁵

C. Housing costs should be subsidized where necessary

When households find themselves in situations that preclude access to affordable housing, they should have recourse to some form of government assistance. For members of such households in the United States, there are a number of federal housing assistance programs available, including the Housing Choice Voucher Program, the project-based Section 8 program, Low Income Housing Tax Credits, and public housing.

Although they provide several million units of housing nationwide, federal housing assistance falls far short of adequately addressing the country's low-income housing needs. Funding is a primary liability for all of the major low-income housing programs. Under current funding levels, federal assistance is only available for approximately one out of every four eligible low-income families.³¹⁶ A lack of sufficient resources has hindered the government's ability to keep up with low-income families' housing needs and led to deteriorating housing conditions in government subsidized housing.

It should be noted that while low-income housing is being chronically short-changed, our *high*-income subsidization program remains relatively immune and outside the general political dialogue. The mortgage interest deduction is the second largest single break in the tax code, costing over \$144 billion in 2008, with 75% of the money benefiting homeowners who earn more than \$100,000 a year.³¹⁷ However, in this same year, all federal low-income housing programs combined only received \$46 million in funding.³¹⁸ As recommended by the Housing Rapporteur, "[t]he criteria for the distribution of federal housing assistance should be based on a real survey of housing needs and the distribution should be on a per capita basis, with priority for the low-income population."³¹⁹

2011).

³¹⁴ The Right to the City Alliance, *People Without Homes and Homes Without People A Count of Vacant Condos in Select NYC Neighborhoods 5*, available at http://www.urbanjustice.org/pdf/publications/People_Without_Homes_and_Homes_Without_People.pdf, *last* visited Mar. 18, 2011.

³¹⁵ *Id.* at 49-53.

³¹⁶ *Decade of Neglect*, *supra* note 295, at note 19.

³¹⁷ *Without Housing 2010*, *supra* note 160, at 39.

³¹⁸ *Ibid.*

³¹⁹ Housing Rapporteur, *supra*, note 38, at para. 23.

1. Housing Choice Voucher Program

The Housing Choice Voucher Program is the most prevalent form of low-income housing assistance provided by the federal government. It provides housing assistance for approximately two million low-income families and individuals.³²⁰ The voucher program directs federal funds to local, state, and regional housing agencies that are then responsible for distributing the vouchers to qualified recipients.³²¹ Under this program, low-income families are provided with vouchers that allow them to pay for housing in the private market. The rules governing the distribution of the vouchers are intended to target families most in need, and as such, the vouchers are only available for low-income families with children, the elderly, and people with disabilities.³²² Typically, voucher recipients are required to contribute 30 percent of their incomes towards the rent and utilities of their residences; their vouchers then cover any remaining costs, up to a limit set by HUD.³²³

Although the vouchers represent the largest low-income housing assistance program in the country, budget cuts led to the loss of over 150,000 vouchers between 2005 and 2007.³²⁴ Moreover, most cities offering the vouchers have prohibitively long waiting lists for applicants, typically 5 years. In some cases, the demand for vouchers has so exceeded the supply, that cities have simply closed their waiting lists.³²⁵

2. Project-Based Section 8 Program

The project-based Section 8 program, much like the Housing Choice Voucher Program, directs federal funds into the private housing market. Under this program, subsidies were provided for the construction or rehabilitation of privately owned residential buildings.³²⁶ The participating property owners are able to coordinate with the Department of Housing and Urban Development or a state or local housing agency to provide rent restricted housing units in exchange for government funded rental assistance.³²⁷ Rents in the subsidized housing are based on resident income with the amount of rent typically limited to 30 percent of household income.³²⁸ As of 2008, the project-based Section 8 program provided 1.27 million housing units nationwide.³²⁹

The project-based section 8 program has been in decline over the last two decades. With

³²⁰ Center on Budget and Policy Priorities, *Policy Basics The Housing Choice Voucher Program*, May 15, 2009.

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ Housing Rapporteur, *supra* note 38, at para. 36.

³²⁵ *Id.*

³²⁶ *Decade of Neglect*, *supra* note 295.

³²⁷ *Id.*

³²⁸ *Id.* at 37.

³²⁹ *Id.* at 35.

the exception of a small number of units set aside for people who are homeless, no new units have been added to the program since the mid-1980s due to lack of funding.³³⁰ Worse yet, a sharp drop in units is on the horizon, as many of the 20-40 year contracts created at the beginning of the program are expiring, giving the property owners the option of converting the residential property into market rate units.³³¹ Many owners have already chosen not to renew their expiring Section 8 contracts, and as a result, the number of project-based Section 8 units has been declining by 10,000 to 15,000 units per year.³³² In the next four years, expiring contracts will result in the potential loss of approximately 300,000 units.³³³ Tenants are organizing efforts to purchase impacted buildings and renew their Project-Based Section 8 contracts.³³⁴ The Housing Rapporteur in her 2010 report recommended that “[l]egislative mechanisms should be established in order to encourage the extension of expiring Section 8 unit contracts, as well as other expiring affordable housing programmes involving private landlords,” and urged Congress to “reinsert the provision on the right of first purchase,” so Project-Based Section 8 tenants have the option to purchase their buildings.³³⁵

3. Low Income Housing Tax Credits

Unlike the HUD programs, Low Income Housing Tax Credits (LIHTC) were created under the Tax Reform Act of 1986 and are administered by the Internal Revenue Service. LIHTC are similar to the project-based Section 8 program in that they provide incentives to investors and property developers for constructing low-income housing. However, they are not based on the income of individuals, but rather a set percentage of area median income (AMI) that is considered enough for owners to maintain the property.³³⁶ Under the tax credit program qualified investors in housing developments receive a dollar-for-dollar reduction in their federal income taxes for every dollar spent on the affordable units.³³⁷

Although 1.843 million housing units have been produced between 1987 and 2007 as a result of LIHTC, most of them are not affordable for people with the lowest incomes (30% or less of AMI). This is largely because the calculations used to determine whether a housing development qualifies for a tax credit have often exacerbated, rather than mitigated, the affordable housing problems of those most in need. A development qualifies as a low-income housing project when either (1) 20% or more of the units are rent restricted and occupied by persons earning 50% of the area median income or less or (2) 40% of the units are rent restricted and occupied by persons earning 60% of area median income or less.³³⁸ Developers are free to exceed these minimum requirements and

³³⁰ *Id.* at 36.

³³¹ Housing Rapporteur, *supra* note 38, at para. 34.

³³² *Decade of Neglect*, *supra* note 295, at para. 36.

³³³ Housing Rapporteur, *supra* note 38, at para. 34.

³³⁴ See National Alliance of HUD Tenants, *Expiring Mortgage Crisis*, available at <http://www.saveourhomes.org/crisis.php> (last visited Feb. 27, 2011).

³³⁵ Housing Rapporteur, *supra* note 38, at paras. 90-91.

³³⁶ *Without Housing 2010*, *supra* note 160, at 24.

³³⁷ *Advocates Guide*, *supra* note 310, at 127.

³³⁸ *Id.*

can receive additional tax credits when they do so.³³⁹ At present, the LIHTC subsidy is not enough to build, own, and operate a property given rents at 30% of very low-income tenants' incomes, forcing developers to focus more on the upper-range of eligible tenants.

Because AMI calculations for urban areas often include the more affluent suburbs, AMIs can be artificially inflated for city-dwellers. Moreover, rents are calculated based on the area median income, not the actual income of poor persons in the area, such that those with incomes 30% or below AMI often need additional subsidies in order to afford LIHTC rents.³⁴⁰ In Washington, DC, for example, AMI is \$85,198; 60% of the AMI is \$51,119.³⁴¹ Even at the DC minimum wage of \$7.55/hour (higher than the federal minimum wage), a full-time minimum wage worker would make only \$15,704.³⁴² Thus, an “affordable” apartment under the LIHTC would still be well beyond the means of the average poor renter without additional subsidies. The Housing Rapporteur raised concerns about this phenomenon in her 2009 report and welcomed HUD’s expressed intent to revise the formula.³⁴³

The LIHTC program has been further hampered by the recent economic downturn. Many businesses have experienced an extended period of decreased profitability and owe fewer taxes as a result. Tax credits are therefore selling at lower prices and not bringing in enough money to allow for new affordable housing units to be built.³⁴⁴

4. Public Housing

The country’s public housing is different from the two previous forms of housing assistance in that it provides low-income participants with housing in rental units owned and operated by public housing agencies.³⁴⁵ As with other forms of housing assistance, tenant rent is typically limited to 30 percent of household income. Rental payments collected from public housing residents go directly to the coordinating public housing agency to help meet the operating and maintenance costs of the housing. Any remaining costs not covered by the rent payments should be covered by federal subsidies to the Public Housing Authority (PHA).³⁴⁶

In order to be eligible for public housing, residents must qualify as a “low-income household” at the time they are admitted. (HUD defines such households as those with

³³⁹ *Id.* at 128.

³⁴⁰ *Without Housing 2010*, *supra* note 160, at 24.

³⁴¹ Les Christie, *DC Workers have America’s highest salaries*, CNN Money.com, Sept. 28, 2010, available at http://money.cnn.com/2010/09/28/pf/household_income_report/index.htm.

³⁴² District of Columbia Department of Employment Services, *DC Minimum Wage Scheduled to Increase on July 24, 2008*, July 16, 2008, available at <http://newsroom.dc.gov/show.aspx/agency/does/section/2/release/14317/year/2008/month/7>, (last visited Feb. 27, 2011).

³⁴³ Housing Rapporteur, *supra* note 38, at para. 20.

³⁴⁴ *Without Housing 2010*, *supra* note 160, at 24.

³⁴⁵ *Decade of Neglect*, *supra* note 295, at 35.

³⁴⁶ *Id.*

incomes below 80 percent of the local area median income).³⁴⁷ Moreover, at least 40 percent of newly admitted residents must belong to “extremely low-income households,” that is, those households that have incomes at or below 30 percent of the area median income.³⁴⁸ As of 2008, there were 1.16 million units available through the public housing program.³⁴⁹

As noted in Section III, budget cuts since the 1980s have forced PHAs to operate with inadequate funding to perform basic maintenance and repairs. This has left hundreds of thousands of residences in a dilapidated state, and many have been demolished due to their poor condition. But due to these limited funds, PHAs have rebuilt only a small fraction of the units lost to demolition. As a result, the total number of available public housing units has decreased by 170,000 units over the past decade.³⁵⁰

This problem is exemplified in the implementation of the HOPE VI program. Created in 1992, HOPE VI was intended to demolish, rehabilitate, reconfigure, and replace public housing units with the goal of revitalizing public housing neighborhoods and reducing the concentration of very low-income families.³⁵¹ In pursuit of this goal, lower density, mixed-income housing was built, incorporating public housing, affordable units, and market-rate units in the same developments.³⁵² Although HOPE VI has been successful in removing many deteriorated units from the public housing stock, it has also contributed to the alarming trend of rapidly diminishing affordable housing.³⁵³ Of the 155,000 units demolished under HOPE VI, only 50,000 public housing units are planned as replacements.³⁵⁴ In theory, public housing units that were not rebuilt were replaced by vouchers, but housing authorities have only issued vouchers for approximately 57,000 of the more than 100,000 public housing units lost and not replaced under HOPE VI,³⁵⁵ resulting in a large net loss of affordable housing.

5. National Housing Trust Fund

Because the above housing subsidy programs have been consistently under-funded over the past 30 years, advocates have proposed a National Housing Trust Fund (NHTF) which would provide a dedicated source of funding for affordable housing outside the annual appropriations process. The NHTF was finally enacted in 2008 as part of the Housing and Economic Recovery Act.³⁵⁶ However, while authorized, the NHTF has not yet been funded. NHTF initial funding sources were supposed to be contributions from Freddie Mac and Fannie Mae, which have since been taken over by the government and

³⁴⁷ Center on Budget and Policy Priorities, *Policy Basics Introduction to Public Housing*, December 18, 2008 [hereinafter *Introduction to Public Housing*].

³⁴⁸ *Id.*

³⁴⁹ *Decade of Neglect*, *supra* note 295, at 36.

³⁵⁰ *Id.* at 21, 36.

³⁵¹ Housing Rapporteur, *supra* note 38, at para. 13.

³⁵² *Id.*

³⁵³ *Id.* at 14.

³⁵⁴ *Introduction to Public Housing*, *supra* note 347, at 7.

³⁵⁵ *Id.*; see also Housing Rapporteur, *supra* note 38, at para. 14.

³⁵⁶ Housing and Economic Recovery Act, P.L. 110-289 (July 30, 2008).

had their contributions suspended.³⁵⁷ The President's 2012 budget provides for \$1 billion in capitalization for the NHTF, however, similar requests were included in the 2010 and 2011 budgets, and Congress failed to act on them.³⁵⁸

E. Tenants should be protected against unreasonable rent levels or rent increases.

In some jurisdictions within the United States, rent regulation legislation has been implemented as a means of ensuring tenants are protected from overly burdensome rent increases.³⁵⁹ Through various means, rent regulation typically seeks to protect poor and elderly tenants from substantial increases in rent that would otherwise make their residence unaffordable by limiting the amount the rent can be increased annually or during a change of tenancy.³⁶⁰ Rent regulation has helped millions of tenants across the country maintain affordable apartments and is potentially a means of fulfilling the CESC's recommendation to protect against unreasonable rent increases. However, rent regulation exists in relatively few jurisdictions, and where it does exist, limitations or exceptions can subvert its goals.

New York City is a prime example of both the promise and the vulnerability of rent regulation. Roughly half of New York's multi-unit housing is covered by some form of rent regulation, preserving affordable housing for millions of New Yorkers.³⁶¹ However, amendments in the 1990s created loopholes, which enable landlords to raise rents to market rates.³⁶² This can occur if the unit becomes vacant (allowing a 20% rent increase) and the landlord makes improvements (allowing a rent increase of 2.5% of the cost of the improvements), resulting in rent of over \$2000 per month.³⁶³ It can also happen where an apartment renting for over \$2000 per month is inhabited by tenants making a combined salary of over \$175,000 for two consecutive years, or apartments occupied by tenants who maintain a primary residence elsewhere.³⁶⁴

These loopholes have enabled the loss of over 74,000 rent regulated units between 1994 and 2007.³⁶⁵ In a practice known as "predatory equity," developers would leverage large amounts of private equity to purchase apartment buildings, promising high returns on

³⁵⁷ National Law Income Housing Coalition, *National Housing Trust Fund Frequently Asked Questions*, 2, Feb. 16, 2011.

³⁵⁸ *Ibid.*

³⁵⁹ *Id.* at 44.

³⁶⁰ See, e.g. Andrew Scherer, Residential Landlord-Tenant Law in New York, 109-272 (2009-10).

³⁶¹ Raymond H. Brescia, *Line in the Sand: Progressive Lawyering, Master Communities, and a Battle for Affordable Housing in New York City*, 73 Alb. L. Rev. 715, 719 (2010) [hereinafter *Line in the Sand*].

³⁶² 1997 N.Y. Laws 1814-15, 23.

³⁶³ See *Line in the Sand*, *supra* note 361, at FN. 22, The vacancy increase on an apartment that rents at \$1,400 a month would be 20% of that figure, or \$280. If the landlord makes improvements greater than \$12,840 on that unit, he or she will be able to raise the monthly rent by 2.5% of that figure, or \$321.

Adding those figures together raises the rent to over \$2,001 (\$1,400 + \$280 + \$321 = \$2,001). For a further description of the vacancy decontrol mechanism, see Raymond H. Brescia, *Sheltering Counsel: Towards a Right to a Lawyer in Eviction Proceedings*, 25 Touro L. Rev. 187, 199-201 (2009).

³⁶⁴ *Id.*

³⁶⁵ *Line in the Sand*, *supra* note 361, at 721.

their purchases.³⁶⁶ In order to get these high returns, the new owners attempt to convert as many units as possible to market rate by forcing vacancies, often through filing baseless eviction notices against tenants in rent-regulated units.³⁶⁷ When the developers are unsuccessful, they are unable to make a return on their investment, leading to their financial instability and failure to make necessary repairs, putting the tenants at risk or forcing them out.³⁶⁸

Similar losses of the already too few rent-regulated units are occurring in other cities across the country.³⁶⁹ This contributes to the overall decline in affordable housing cited throughout this section.³⁷⁰ From the federal, to the local level, affirmative government solutions are needed to address this growing crisis.

F. Recommendations

1. Congress and the Social Security Administration should create a federal living wage and increase Supplemental Security Income benefits so that both working and disabled people can afford adequate housing while paying under 30% of their income to housing costs.
2. Congress and HUD should protect and strengthen the McKinney-Vento Title V and Base Realignment and Closure surplus property programs by increasing the number of useful properties made available and easing the application process.
3. Municipalities should implement inclusionary zoning practices and require adequate private construction of affordable housing units.
4. Congress and the Administration should ensure every person can afford adequate housing through a combination of new construction of subsidized units and expanded funding for Section 8 and other subsidies, and funding the National Affordable Housing Trust Fund at a minimum of \$1 billion per year.
5. Congress and the Administration should ensure Project-Based Section 8 tenants have the right of first purchase on all expiring housing contracts.
6. Municipalities should increase rent stabilization measures, close loopholes, which allow for the conversion of rent-regulated units, and protect tenants in existing rent-regulated units.

³⁶⁶ See *Line in the Sand*, *supra*, note 361, at 722-23; Tenants & Neighbors, *Predatory Equity*, at <http://www.tenantsandneighbors.org/predatory.html>, (last visited March 18, 2011).

³⁶⁷ See Association for Neighborhood and Housing Development, *THE NEXT SUB-PRIME LOAN CRISIS: How Predatory Equity Investment is Undermining New York's Affordable Multi-Family Rental Housing*, 2 (2010).

³⁶⁸ *Id.* at 6.

³⁶⁹ See Tenants Together, *Predatory Equity*, available at <http://www.tenantsaltogether.org/section.php?id=135>, (last visited Mar. 18, 2011).

³⁷⁰ See *Line in the Sand*, *supra*, note 361, at 722-23.

V. ACCESSIBILITY

Housing must be accessible to everyone. Often the disadvantaged need proactive protection to make housing truly accessible to them. Housing law and government policy should ensure that the housing needs of vulnerable groups are met and that avenues of recourse are open in the event that discrimination against them occurs. The CESCR defines the element of accessibility as follows:

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups.³⁷¹

A. *Barriers to Accessing Federal Housing Resources*

1. Definition Barriers

A major barrier to many people accessing federal housing resources is the restrictive and sometimes confusing definitions used to define homelessness for the purposes of determining eligibility for federal housing and benefits programs. Federal law includes two contrasting definitions of homelessness. The first is from the U.S. Department of Housing and Urban Development (HUD), which for many years did not include people living in motels or those living doubled-up in the homes of friends or family members due to the loss of their own housing from economic or other circumstances.³⁷² With the recent reauthorization of the McKinney-Vento Homeless Assistance Act as the HEARTH Act, the HUD definition has been expanded somewhat to include these populations, but with additional, complicated time stipulations.³⁷³ The second definition used by the U.S.

³⁷¹ General Comment No. 4, *supra* note 34, at para. 8(d).

³⁷² 42 U.S.C. § 11302(a)(1) an individual or family who lacks a fixed, regular, and adequate nighttime residence; (2) an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; (3) an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);

³⁷³ 42 U.S.C. § 11302(a)(5) an individual or family who--
(A) will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, as evidenced by--
(i) a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;
(ii) the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or

Department of Education (ED) and codified in the McKinney-Vento Education program statute, in identifying homeless children and youth. It includes all those encompassed by the HUD definition, as well as those living in doubled up situations, in motels, and in campgrounds.³⁷⁴ The ED definition also includes children awaiting foster care placement, as well as children living in “substandard housing.” In addition to ED, the following federal programs use the more inclusive ED definition: Head Start, Runaway and Homeless Youth, Individuals with Disabilities in Education, Homeless Veterans Reintegration Program, Violence Against Women, Higher Education and the School Lunch Program.³⁷⁵

Because the more limited HUD definition is more widely known and utilized by housing and homelessness agencies than the ED definition, it contributes to the under-identification of homeless students.³⁷⁶ Moreover, as discussed in more depth in Section VI below, doubled-up families excluded from the HUD definition face housing instability similar to that of other homeless families. The Housing Rapporteur recommended in her 2010 report:

(iii) credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause;

(B) has no subsequent residence identified; and

(C) lacks the resources or support networks needed to obtain other permanent housing; and

(6) unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who--

(A) have experienced a long term period without living independently in permanent housing,

(B) have experienced persistent instability as measured by frequent moves over such period, and

(C) can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.

³⁷⁴ 42 U.S.C. § 11434a(2). ED’s definition says “homeless children and youths”:

means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of [the HUD definition]); and

includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(2)(C) of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;

migratory children. . .who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

³⁷⁵ Head Start Act, 42 U.S.C. 9832 ; Runaway & Homeless Youth Act, 42 U.S.C. 5714; Individuals with Disabilities in Education Act, 20. U.S.C. 1401; Homeless Veterans Reintegration Program, 38 U.S.C. 2002; Violence Against Women Act, 42 U.S.C. 14043e-2; Higher Education Resources and Student Assistance Program, 20 U.S.C. 1087vv; and the School Lunch Program, 42 U.S.C. 1758.

³⁷⁶ See, National Center for Homeless Education, Education for Homeless Children and Youths Program Analysis of Data, 15 (2009).

The Administration and Congress should encourage the expansion of the definition of homelessness to include those living with family or friends due to economic hardship. The Department of Housing and Urban Development (HUD) should ensure that households living with others due to economic hardship are eligible for rental and other assistance, including from the Emergency Shelter Grant programme.³⁷⁷

It should also be noted that other countries have even more inclusive definitions of homelessness. For example, in addition to all those captured in the above definitions, Scotland also includes those who are living in unsafe or overcrowded conditions or are threatened with homelessness in the next two months.³⁷⁸

³⁷⁷ Housing Rapporteur, *supra*, note 38, at para. 96.

³⁷⁸ See Housing (Scotland) Act, 1987, c. 26. Part II, § 24.

- (1) A person is homeless if he has no accommodation in the United Kingdom or elsewhere.
- (2) A person is to be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which the local authority consider it reasonable for that person to reside with him—
 - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
 - (b) has a right or permission, or an implied right or permission to occupy, or in England and Wales has an express or implied license to occupy, or
 - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession.
- (2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
- (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) A person is also homeless if he has accommodation but—
 - (a) he cannot secure entry to it, or
 - (b) it is probable that occupation of it will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14)), or
 - (bb) [it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that accommodation or elsewhere, or
 - (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it; or
 - (d) it is overcrowded within the meaning of section 135 and may endanger the health of the occupants; or
 - (e) it is not permanent accommodation, in circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him.
- (4) A person is threatened with homelessness if it is likely that he will become homeless within 2 months.
- (5) For the purposes of subsection (3)(e), "permanent accommodation" includes accommodation—
 - (a) of which the person is the heritable proprietor,
 - (b) secured by a Scottish secure tenancy,
 - (c) secured by an assured tenancy that is not a short assured tenancy
 - (d) where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) is satisfied in relation to the person, secured by a short Scottish secure tenancy.

2. Identification Barriers

Homeless persons often have difficulties accessing housing and other services due to a lack of basic identification. Photo identification is a necessity in modern daily life. Many homeless persons, however, lack photo identification because of the difficulty of maintaining important documents while homeless.

Homeless persons who attempt to acquire a photo ID frequently experience tremendous obstacles. Many cannot obtain an ID because they cannot prove "residency" in their state due to lack of a physical address. Others simply cannot afford the cost of an ID, which can range from \$5 to \$33.50, a seemingly small cost, but a high barrier to those with very limited income.³⁷⁹ In yet other cases, homeless people who have lost all documentation cannot get a birth certificate without an ID, but cannot get an ID without a birth certificate.

Without a photo ID, homeless persons often find that they cannot successfully move out of homelessness and toward self-sufficiency. They cannot get lawful employment or receive basic social services. They are denied access to clothing closets, shelters, food pantries, and certain public benefits, all of which could help them move out of poverty if they only had ID. Restrictive state laws prevent them from getting an ID, but the very lack of ID exacerbates and perpetuates their homelessness. It is therefore critical that homeless and other low-income people are able to obtain identification.

Federal Laws

The REAL ID Act is a federal law that bars federal agencies from accepting a non-REAL ID compliant driver's license or identification card for an "official purpose," which includes accessing a federal facility or boarding an airplane.³⁸⁰ Therefore, individuals must obtain a driver's license or identification card that complies with the Act's requirements and the regulations from the Department of Homeland Security to engage in any of these activities. The REAL ID Act requires states to collect and verify additional identity documentation before issuing a driver's license or identification card to an individual. This additional documentation includes proof of identity, date of birth, and social security number (or documentation that the person is ineligible for a social security number), as well as proof of address of principal residence and evidence of lawful status in the United States.³⁸¹ The REAL ID regulations permit states to establish a limited written exceptions process for individuals who are unable to present the necessary documentation requirements for proof of identity, date of birth, and lawful status.³⁸²

While the state exceptions process may alleviate some of these concerns, the scope of this

³⁷⁹ DMV Answers, *How much do state ID cards cost?* (2010), available at <http://dmvanswers.com/questions/419/How-much-do-state-ID-cards-cost> (last visited Feb. 27, 2011).

³⁸⁰ REAL ID Act of 2005, Pub.L. 109-13, 119 Stat. 302, enacted May 11, 2005

³⁸¹ *Id.*, at Sec. 202(c).

³⁸² Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Final Rule, 76 Fed. Reg. 12269 (Mar. 7, 2011) (to be codified at 6 C.F.R. pt. 37).

process is ambiguous. For example, homeless individuals may use a letter from a shelter provider for proof of residence if their state allows (see below).³⁸³ Nonetheless, the REAL ID Act regulations can seriously impair the ability of homeless persons to obtain REAL ID compliant driver's licenses and identification cards, thereby limiting their access to federal buildings to access social services. Moreover, undocumented immigrants are clearly barred from obtaining ID. The Department of Homeland Security recently extended the deadline for REAL ID compliance to January 15, 2013, giving states more time to work on alternatives that could meet these concerns.³⁸⁴

Congress has considered passing legislation to expand ID requirements for federal housing programs. A past proposal included requiring U.S. citizens in assisted housing to produce either a passport OR both a social security card and a government-issued photo ID. This could potentially deny or terminate housing assistance to thousands of U.S. citizens who do not have these documents at hand or the financial and other means to obtain them.

State Laws

As noted above, some states are working to create exceptions for ensuring identification access to their residents. Oregon's Administrative Rules allow a person to prove residency through, among other things: enrollment records or other documentation to show the person is attending a public educational institution and is paying resident tuition fees; motel, hotel, campground or recreational park receipts showing the person currently resides in Oregon and has been there for six consecutive months; a statement from a relief agency or shelter that the person receives services in Oregon; or a document showing receipt of public assistance from an agency of the State of Oregon.³⁸⁵ In addition, for proof of a residential address, an applicant who is homeless can use a descriptive address of where the person resides such as "under the west end of Burnside Bridge." The applicant also must provide a mailing address.³⁸⁶ The descriptive address is used on the identification card as the person's address and the mailing address is kept on file at the Department of Motor Vehicles. This flexibility provides homeless persons an opportunity to obtain photo identification and in turn access housing and other social services.

Conversely, some states are using identification barriers to specifically target certain populations. In 2010, Arizona passed SB-1070, a law requiring state and local police to check the identification of anyone suspected of being in the country illegally.³⁸⁷ Due to the disparate racial impact of homelessness, a disproportionate number of homeless persons almost certainly will feel the brunt of enforcement.³⁸⁸ Beyond just denying

³⁸³ National Law Center on Homelessness & Poverty, Fact Sheet: Real ID and Regulations (2008).

³⁸⁴ See Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 76 Fed. Reg. 12268 (Mar. 7, 2011).

³⁸⁵ Or. Admin. R. 735-016-0070 (2010).

³⁸⁶ Or. Admin. R. 735-062-0030 (2010).

³⁸⁷ S.B. 1070, 49th Leg., 2d Reg. Sess. (Az. 2010).

³⁸⁸ See Maria Foscarnis, *Arizona on my mind*, Huffington Post, (May 11, 2010), available at http://www.huffingtonpost.com/maria-foscarnis/arizona-on-my-mind-the-im_b_571945.html (last

access to certain buildings and services, this law gives police a wide mandate to arrest and possibly even deport homeless persons who simply may be unable to produce identification documents, whether because they have lost them during the course of their homelessness or due to the barriers to obtaining them described above. This represents a new danger for homeless persons already pushed to the margins of society.

3. Criminal and Arrest Record Barriers

Access to public housing resources for individuals with criminal and arrest records has been a significant barrier to the full enjoyment of the right to housing.³⁸⁹ Federal law requires public housing authorities to ban individuals convicted of certain sex offenses and drug production, and gives them broad discretion to deny eligibility to almost any person with a criminal background – including those who have been arrested, but never convicted. This contributes to homelessness for an estimated 1 in 11 released prisoners.³⁹⁰ Six percent of shelter residents report coming directly from jail, prison, or juvenile detention.³⁹¹

Many public housing authorities screen applicants for arrest records, purportedly to ensure the safety of their communities. However, such screening is inaccurate and ineffective because it screens out innocent persons who have never been convicted of a crime and are not a threat to public safety. For example, African-Americans and other minorities are subject to higher rates of arrest, but many of the arrests are never even prosecuted.³⁹² Nevertheless, the disparate racial impact of arrests causes these groups to be denied housing at disproportionate rates compared to their white counterparts. The disparate impact also falls on individuals whose interactions with law enforcement were based upon their homeless status – creating a vicious cycle of arrests for being homeless resulting in denied access to housing resources and continued homelessness and risk for future arrest.³⁹³ A number of cities, including New York City, Los Angeles, and Baltimore, have stopped excluding people from public housing based on their criminal records without negative effect, disproving the supposed connection between such denials and public safety.³⁹⁴ Given that there is no demonstrable impact on public safety, the

visited Feb 27, 2011).

³⁸⁹ Chicago Coalition for the Homeless, testimony to United Nations Human Rights Council Civil Society Consultation's Universal Periodic Review, April 13, 2010, *accessible at* <http://www.jmls.edu/fairhousingcenter/Coalition%20for%20the%20Homeless.pdf> (last visited Mar. 11, 2011).

³⁹⁰ Bureau of Justice Statistics, 2009. "Prisoners In 2008", *available at* <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1763> (last visited Jan. 21, 2011).

³⁹¹ U.S. Department of Housing & Urban Development, 2009 Annual Homeless Assessment Report to Congress, 33 (2009).

³⁹² Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics, "Adjudication outcome for felony defendants in the 75 largest counties, by arrest charge, United States, 2004."

³⁹³ *Id.*

³⁹⁴ Legal Action Center, Safe at Home: A Reference Guide for Public Housing Officials on the Federal Housing Laws Regarding Admission and Eviction for People with Criminal Records 15 (2004); National Housing Law Center, An Affordable Home on Reentry: Federally Assisted Housing and Previously Incarcerated Individuals 100 (2008); Human Rights Watch, No Second Chance: People with Criminal Records Denied Access to Public Housing 37 (2004).

over-exclusion of racial minorities from housing in jurisdictions that screen for criminal records implicates the non-discrimination requirements of human rights law.

The city of Chicago provides a concrete example of the problem with barring people with arrest records from housing programs. Chicago's housing authorities may deny housing to individuals who have committed certain types of crimes (violent or drug-related) within five years of applying for housing.³⁹⁵ However, the screening process excludes not only people with convictions, but also those with only arrest records, including individuals who have never been charged with or indicted for a crime.³⁹⁶ At the UPR Civil Society Consultation in April, 2010, the Chicago Coalition for the Homeless testified that the Chicago Housing Authority uses a search protocol that is also overbroad in that it includes individuals who have had any involvement with law enforcement within the past five years, even if that involvement was related to a crime committed much less recently.³⁹⁷ For example, an individual who had been convicted eight years ago but who was out on parole or still serving time within the five year period would be screened out. This process violates the law and creates significant barriers to access to housing resources to vulnerable individuals who need them most. In her 2010 report, the Housing Rapporteur recommended, "that the United States federally prohibit the use of criteria such as drug tests and criminal records, for gaining access to subsidized housing."³⁹⁸

4. Barriers to Voucher Usage in the Private Market

As noted in the previous section, Section 8 vouchers are the largest source of subsidized housing in the U.S. However, merely obtaining a voucher does not necessarily mean the recipient will be able to obtain adequate, affordable housing. Landlords often discriminate against Section 8 voucher recipients either by outright refusal to rent to them or by creating additional, often insurmountable barriers to the recipients in their rental applications.³⁹⁹ A recent study in New Orleans found 82% of landlords discriminated against voucher holders.⁴⁰⁰ Such policies often have a disparate racial and gender impact (in New Orleans, for example, 99% of voucher holders are African American). But disparate racial impact claims have been difficult to bring under federal anti-discrimination laws⁴⁰¹, and source of income discrimination is not prohibited under federal law.⁴⁰² Twelve states and the District of Columbia, and a number of cities, have created source of income protections, but many voucher holders are left without true

³⁹⁵ Chicago Coalition for the Homeless, testimony to United Nations Human Rights Council Civil Society Consultation's Universal Periodic Review, April 13, 2010, *available at* <http://www.jmls.edu/fairhousingcenter/Coalition%20for%20the%20Homeless.pdf> (last visited Jan. 21, 2011).

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ Housing Rapporteur, *supra*, note 38, at para. 104.

³⁹⁹ Greater New Orleans Fair Housing Action Center, "Housing Choice in Crisis: An Audit Report Against Housing Choice Voucher Holders in the Greater New Orleans rental Housing Market," 8 (2009).

⁴⁰⁰ *Id.*

⁴⁰¹ See Section V(A)(6), *infra*,

⁴⁰² *Id.*

access to housing.⁴⁰³

5. Barriers to Post-Disaster Housing

Hurricane Katrina revealed enormous gaps in our country's ability to ensure access to adequate housing after a large-scale natural disaster. In part, this is due to the lack of a rights-based framework for approaching post-disaster relief. Under the Robert T. Stafford Disaster Relief and Emergency Act (Stafford Act), the controlling federal law on national disasters and emergencies, there is no federal right to any specific disaster relief or aid before, during, or after displacement, and most governmental acts are immune from lawsuit with limited exceptions.⁴⁰⁴ The UN-HABITAT Advisory Group on Forced Evictions, which conducted a mission to New Orleans in 2009, noted:

Although the Stafford Act was, in many cases, sufficient in providing basic needs under previous disasters, it allowed various federal, state, and local government agencies to evade accountability for recovery and prevented a rights-based recovery in the Gulf Coast following Hurricanes Katrina and Rita. The Stafford Act contains no right of return, no right to housing or other vital social services and no requirement to consult with those affected by the disaster during their displacement. It also provides no clear authority structure to determine accountability in carrying out disaster relief.⁴⁰⁵

The UN Guiding Principles on Internal Displacement provide a rights-based framework for disaster recovery.⁴⁰⁶ Although the U.S. government promotes these Principles in disaster work abroad, it refuses to recognize them as applicable domestically.⁴⁰⁷ As a result, many homeowners and renters did not receive adequate housing assistance either in the direct aftermath of Hurricane Katrina, or in the following years.⁴⁰⁸ This has led not only to a vastly reduced population of New Orleans, but also to a doubling of its homeless population due to people returning home and finding grossly inadequate housing resources.⁴⁰⁹

6. Barriers to Elimination of Racial Disparate Impact

According to Title VI of the Civil Rights Act of 1964, racial discrimination under any

⁴⁰³ See Poverty and Race Research & Action Council, *State, Local, and Federal Statutes Against Source of Income Discrimination* (2005).

⁴⁰⁴ 42 USC §5170b, 5148).

⁴⁰⁵ AGFE Report, *supra* note 267, at para. 19-20.

⁴⁰⁶ Representative of the Secretary-General, *Report on the Guiding Principles on Internal Displacement, delivered to the Commission on Human Rights*. UN Doc. E/CN.4/1998/53/Add.2 (February 1998).

⁴⁰⁷ USAID Assistance on Internally Displaced Persons Policy, U.S. Agency for International Development, October 2004 (encouraging the use of the Guiding Principles), quoted from Center for Constitutional Rights and the Loyola University New Orleans College of Law, *International Human Rights Obligations and Post-Katrina Housing Policies, Briefing Paper to the Technical Experts for the Advisory Group on Forced Evictions – United States Mission July 26-31, 2009*, 1 (2009).

⁴⁰⁸ AGFE Report, *supra* note 267.

⁴⁰⁹ *Id.*

program receiving federal financial assistance is prohibited.⁴¹⁰ The enforceability of Title VI has been restricted since 2001, however, when the Supreme Court ruled in *Alexander v. Sandoval* that the statute provides no private right of action that would allow citizens to file a lawsuit on disparate impact grounds.⁴¹¹ Following the *Sandoval* ruling, private citizens hoping to use the judicial system as a means of enforcing Title VI must demonstrate proof of discriminatory intent, an almost impossibly high standard of proof.

This distinction between disparate impact and intent is crucial, not only because of the high burden it places on citizens seeking remedies from discrimination, but also for the ramifications it has on the United States' treaty obligations. The Convention on the Elimination of Racial Discrimination, to which the United States is a party, prohibits not only those laws and regulations that reflect intentional racial discrimination, but also any law or regulation that has a discriminatory effect.⁴¹² *Sandoval* has effectively assured the continued existence of structural discrimination in the U.S., and in so doing, leaves the United States in breach of its duties under the Convention. Accordingly, the Committee on the Elimination of Racial Discrimination has recommended that the United States review the definition of discrimination used in court practice in order to ensure that the United States "prohibits racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect."⁴¹³

B. Barriers to Private Housing

In the United States, accessibility to housing in the private market is primarily addressed by the Fair Housing Act.⁴¹⁴ The Act protects people's right to be free from housing discrimination by making it illegal to discriminate on the basis of race, color, religion, sex, familial status, national origin, or disability in all housing transactions, public and private.⁴¹⁵ In addition to prohibiting discrimination, the Act also is intended to promote the residential integration of these protected groups, and requires recipients of CDBG funding to "affirmatively further fair housing to the maximum extent possible."⁴¹⁶

There are two federal fair housing programs that are instrumental in fulfilling these obligations. The Fair Housing Initiatives Program (FHIP) provides funding to private organizations that in turn offer a number of community services including education, investigation of alleged discrimination, and resolution of disputes.⁴¹⁷ Due to a lack of adequate funding, it generates far more applications for funding than it can award. Despite demand, nearly 25% of private fair housing organizations have either significantly reduced staff size or closed in the past decade due to lack of adequate funding.⁴¹⁸ The Fair Housing Assistance Program (FHAP) provides funding to state and

⁴¹⁰ 42 U.S.C. §2000d.

⁴¹¹ *Alexander v. Sandoval*, 532 U.S. 275 (2001).

⁴¹² ICERD, *supra* note 50, at Art. 1(1).

⁴¹³ CERD 2008, *supra* note 36, at para. 10.

⁴¹⁴ 42 U.S.C. § 3601 et seq.

⁴¹⁵ *Id.* at 3604 (a).

⁴¹⁶ *Id.*, at 3608(e)(5).

⁴¹⁷ *Advocates Guide*, *supra* note 310, at 57.

⁴¹⁸ National Fair Housing Alliance, *A Step in the Right Direction 2010 Fair Housing Trends Report* 17,

local government agencies to enforce state or local fair housing laws that are substantially equivalent to the Fair Housing Act.⁴¹⁹ FHAP agencies are reimbursed based on the number of cases they successfully process.⁴²⁰

Despite the broad power of the law as written, enforcement of the Fair Housing Act leaves much to be desired. Housing discrimination claims remained at historically high levels in 2009 with over 30,000 incidents reported to FHIP and FHAP agencies combined.⁴²¹ Although reported complaints are at historic highs, they still only represent a small fraction of the estimated four million fair housing violations that occur each year.⁴²² There are a number of reasons violations go unreported. Frequently, residents do not realize they are the victims of discrimination. In other instances, they are aware of a housing rights violation, but fear recrimination should they report it.

There has been some recent improvement in the enforcement of the Fair Housing Act however, with both HUD and the DOJ showing a commitment to positive policy changes.⁴²³ However, the large gap between violations committed and violations reported reflects a poorly outfitted enforcement apparatus attributable to under funded FHIP agencies and a lack of initiative on the part of HUD to seek out violations and punish parties that discriminate. HUD is required to refer any case with substantially equivalent state law to the local FHIP or FHAP, but it still processes approximately 2,000 – 3,000 cases at the federal level each year. However, of the 2,091 housing discrimination cases HUD processed in FY2009, only 54 resulted in HUD filing charges based on a determination that there was reasonable cause to believe that unlawful discrimination occurred.⁴²⁴ Moreover, 942 of those 2,091 cases were more than 100 days old and still did not have a HUD determination, in violation of HUD's own regulations.⁴²⁵

The Fair Housing Act is also intended to ensure the residential integration of protected class members. As the National Fair Housing Alliance has stated, the United States is far from fulfilling that goal: “Simply put, individual incidents of housing discrimination remain largely unaddressed, large-scale systemic housing discrimination continues to occur, the public remains unaware of its fair housing rights, and large swaths of the population, notably the LGBT community and recipients of government housing assistance, find themselves unprotected by federal law.”⁴²⁶ This violates not only the Fair Housing Act's requirement to “affirmatively further fair housing” but also CERD's requirement to actively remedy the disparate impact of housing policies.⁴²⁷

May 16, 2010 [hereinafter *Step in the Right Direction*].

⁴¹⁹ *Advocates Guide*, *supra* note 310, at 57.

⁴²⁰ *Id.*

⁴²¹ National Fair Housing Alliance, *Levels of Housing Discrimination Remain at Historic High in 2009*, May 16, 2010].

⁴²² *Step in the Right Direction*, *supra* note 418, at 3.

⁴²³ *Id.* at 3.

⁴²⁴ *Advocates Guide*, *supra* note 310, at 59.

⁴²⁵ *Step in the Right Direction*, *supra* note 418, at 26-27.

⁴²⁶ *Id.* at 12.

⁴²⁷ 42 U.S.C. § 3608(e)(5); ICERD, *supra* note 50.

In recent years, HUD has expressed a renewed commitment to ending housing discrimination, and in some instances, has followed up with actions that facilitate the realization of that commitment. In 2009, HUD and the Department of Justice helped facilitate a landmark settlement of a case in Westchester County, NY, where local officials had been falsely certifying that they were affirmatively furthering fair housing despite using funds without regard to segregated housing patterns.⁴²⁸ The settlement requires the local government to devote \$62.5 million to developing affordable housing in predominantly white areas and actively marketing it to minorities in the surrounding area.⁴²⁹ The government should take more steps in this direction, and much work remains before the United States can be said to adequately fulfill the obligations of the Fair Housing Act, the CERD, and the CESCER's stated understanding of accessibility.

C. Recommendations

1. Congress should expand the HUD definition of homelessness to include all those covered by the ED definition, such as doubled-up persons and persons living in motels.
2. States should take steps to reduce barriers to homeless persons obtaining identification, such as providing cost waivers and assisting persons with obtaining necessary documentation, in order to facilitate access to housing and other services.
3. Congress should remove bans on access to public housing resources for former prisoners who have returned to their communities.
4. Public housing authorities should not use arrest records in determining eligibility for public housing resources, and should revoke blanket bans on eligibility for felony convictions.
5. The federal government, state governments and local municipalities should adopt legislation prohibiting source of income discrimination and conduct vigorous outreach campaigns to ensure the law is understood and implemented.
6. Congress should amend the Stafford Act to reflect the UN Guiding Principles on Internal Displacement, and HUD and FEMA should develop regulations and guidance to similarly integrate those principles.
7. HUD should develop a regulation that defines "affirmatively furthering fair housing" as a proactive term and actively investigate grantee compliance and adequate implementation of fair housing policies, with strict and mandatory penalties in order to discourage repeat offenders and promote wide spread compliance.
8. Congress should modify the Fair Housing Act to enable private individuals to

⁴²⁸ See Stipulation and Order of Settlement and Dismissal, United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County, No. 06 Civ. 2860 (DLC), (S.D.N.Y Aug.10, 2009).

⁴²⁹ *Id.*

bring suits to enforce “affirmatively furthering fair housing” obligations.

9. Congress should increase funding for fair housing enforcement.

VI. HABITABILITY

With the advent of housing codes, modern construction techniques, and the implied warranty of habitability,⁴³⁰ the quality of contemporary housing has improved dramatically and the number of substandard dwellings in the United States' housing market has decreased.⁴³¹ Some issues of habitability remain, however, and there are severe health risks for occupants inhabiting those dwellings. Problems range from bed bugs, mold, and lead paint to overcrowding and public housing located in close proximity to industrial pollution.⁴³² Moreover, as noted by numerous international human rights monitors, the risks associated with poor housing conditions are borne disproportionately by racial minority and low-income individuals.⁴³³ Those living below the federal poverty line, for example, are three times more likely to have substandard quality housing than those who are not poor.⁴³⁴

According to the CESCR, adequate housing must be habitable, providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.⁴³⁵

A. Adequate Space

Adequate space is vital in housing not only to promote the quality of life and comfort of inhabitants, but also to ensure that occupants' health is not threatened. Unfortunately, overcrowded living conditions are common among people who are poor.⁴³⁶ Low-income people frequently must resort to shared housing in order to ensure a roof over their heads. These shared housing situations are often referred to as being "doubled-up" and they occur when an individual or family, coping with a shortage of funds or affordable housing, moves into the home of a family member, friend, or other acquaintance, often staying in areas not intended as sleeping quarters.⁴³⁷ The frequency of doubled-up living arrangements has been on the rise for the past several years. From 2005 to 2008, the number of people in families who were sharing the housing of others due to economic hardship increased by 8.5 percent, and this number jumped an additional 12% to 6

⁴³⁰ The implied warranty of habitability is a legal standard developed through years of case law that states landlords have an implied obligation in their leases to maintain basic standards such as heat/cooling, pest control, and safety.

⁴³¹ J. Peter Byrne & Michael Diamond, *Affordable Housing, Land Tenure, and Urban Policy: The Matrix Revealed*, 34 Fordham Urban L. J. 527 (March 2007).

⁴³² Housing Rapporteur, *supra* note 38, at para.11-12.

⁴³³ See Chester Hartman, *A Universal Solution to the Minority Housing Problem*, 71 North Carolina L. Rev. 1557 (June 1993) [hereinafter *Universal Solution*]; AGFE Report, *supra* note 267; at 27; CERD 2008, *supra* note 36, at para.16; Report of the U.N. Independent Expert on Human Rights and Extreme Poverty, paras. 29, 36, 40, E/CN.4/2006/43/Add.1 (2006).

⁴³⁴ *Socioeconomic Status and Health*, *supra* note 262, at 310.

⁴³⁵ General Comment No. 4, *supra* note 34, at para. 8(e).

⁴³⁶ James Krieger, MD, MPH & Donna L. Higgins, PhD, *Housing and Health: Time Again for Public Health Action*, 92 American J. of Pub. Health 758, 760 (May 2002) [hereinafter *Housing and Health*].

⁴³⁷ Joy Moses, Center for American Progress, *The New Housing Normal for Low-Income Families*, (June 15, 2010) [hereinafter *New Housing Normal*].

million people.⁴³⁸ And during the period from 2005 to 2009, there was a 25% increase in the percentage of movers who joined preexisting households.⁴³⁹ Some states have reported huge increases in doubled-up populations since the current recession, with South Dakota's population doubling between 2008 and 2009.⁴⁴⁰ Doubling-up can lead to overcrowded living conditions that facilitate the spread of germs and associated health problems.⁴⁴¹ Moreover, residents in crowded houses are more socially withdrawn and perceive lower levels of social support than individuals living in less crowded housing.⁴⁴² Living in cramped quarters also leads to increased tensions.⁴⁴³ The relationships between family members, especially between parents and their children, are often strained by such stressful living conditions.⁴⁴⁴ Doubled-up parents are less responsive to their children and tend to employ harsher, more punitive parenting styles.⁴⁴⁵

Doubling-up is often a remedy of last resort and meant to be a temporary living situation. As a result, those caught in this situation not only suffer the health consequences associated with overcrowding, but also face the risk of losing housing altogether. In fact, an estimated one in ten doubled-up families will eventually lose all access to housing.⁴⁴⁶ It is not unusual for a doubled-up family to have to move from house to house as the resources of their family and friends are exhausted. Forty-three percent of adult homeless shelter users report living with family or friends prior to entering the shelter system.⁴⁴⁷ The frequent moving only exacerbates the difficulty of finding and maintaining employment and ensuring that affected children receive proper education.⁴⁴⁸ Furthermore, the psychological stress associated with such instability may cause emotional or mental health issues for involved families.⁴⁴⁹

As noted in Section V above, the HUD definition of homelessness does not include doubled up families, making them ineligible for many federal resources that could help improve their access to adequate housing.

B. Adequate Protection from Health Risks

Beyond providing adequate space, housing must be of sufficient quality to ensure the health of the inhabitants. The breadth and severity of health risks experienced by low-

⁴³⁸ *Id.*; M William Sermons, Peter Witte, National Alliance to End Homelessness, *State of Homelessness in America*, 27 (2011) [hereinafter *State of Homelessness*].

⁴³⁹ *Out of Reach*, *supra* note 289, at 3.

⁴⁴⁰ *State of Homelessness*, *supra* note 438, at 2.

⁴⁴¹ Jeffrey Lubell, Rosalyn Crain, & Rebecca Cohen, The Center for Housing Policy, *Framing the Issues – the Positive Impacts of Affordable Housing on Health* 21 (July 2007) [hereinafter *Framing the Issues*]; *New Housing Normal*, *supra* note 437; Sandra J. Newman, The Center for Housing Policy, *Does Housing Matter for Poor Families?* 903, (2008).

⁴⁴² *Socioeconomic Status and Health*, *supra* note 262, at 321.

⁴⁴³ *Universal Solution*, *supra* note 433.

⁴⁴⁴ *Framing the Issues*, *supra* note 441, at para. 20.

⁴⁴⁵ *Socioeconomic Status and Health*, *supra* note 262, at 321.

⁴⁴⁶ *State of Homelessness*, *supra* note 438, at 26.

⁴⁴⁷ *Id.* at 28.

⁴⁴⁸ *New Housing Normal*, *supra* note 437.

⁴⁴⁹ *Framing the Issues*, *supra* note 441, at 6-7.

income households and racial minorities is alarming. These risks are typically associated with poor quality housing, and households below the poverty line are more than three times as likely to have substandard quality housing than households above the poverty line.⁴⁵⁰

Poor families are also more likely than non-poor families to live in housing that lacks basic amenities. Even when amenities are present, they may not be in safe operating condition. Heating sources, for example, may lack adequate filtering.⁴⁵¹ Air quality in low-income housing suffers as a result of such deficiencies. Low-income, inner-city residences, when compared with U.S. averages, have higher levels of toxic indoor air pollutants related to processes such as heating and cooking.⁴⁵² One study in New York state suggests that the higher levels of radon exposure in low-income households is probably related to structural deficiencies in the low-income housing that provide less protection from radon exposure.⁴⁵³

Several researchers also have found that low-income populations have higher levels of exposure to contaminated environments compared to their wealthier counterparts. One study found that 44% of water supplies for migrant farm workers in North Carolina tested positive for coliform and 26% for fecal coliform compared to 0% for both levels in comparable higher-income farm areas in the same region.⁴⁵⁴ Another study in 1992 found that "68% of urban black children in families with incomes below \$6,000 had blood lead levels that exceed safe limits in comparison to 15% of the same population with incomes above \$15,000. For white children, the comparable data were 36% and 12%."⁴⁵⁵ These types of environmental toxins are associated with cancer, respiratory morbidity, brain damage, and various neurotoxicological difficulties, as well as cognitive and behavioral problems, particularly among those exposed in utero.⁴⁵⁶

Inadequate protection from organic substances in their housing also causes higher levels of illness among racial minority and low-income individuals. Low-income households are more likely to be damp, and therefore conducive to dust mites, molds, and fungi, all of which are known to cause respiratory disorders.⁴⁵⁷ Additionally, the rates of exposure to cockroach allergens, which are associated with increased levels and intensity of

⁴⁵⁰ *Socioeconomic Status and Health*, *supra* note 262, at 310.

⁴⁵¹ *Id.* at 307, noting 10% of poor rental households rely primarily on hot air units without ducts, and 4% use unvented gas heaters as their primary heat source (compared to 7% and 1% for ductless hot air heat and unvented gas heaters, respectively, in households with incomes exceeding \$30,000).

⁴⁵² *Id.* at 307; *Housing and Health*, *supra* note 436, at 759 (noting deleterious effects of exposure to nitrogen dioxide and carbon monoxide emitted from poorly functioning combustion appliances and heating systems).

⁴⁵³ *Socioeconomic Status and Health*, *supra* note 262, at 307; *Housing and Health*, *supra* note 436, at 759 (noting link between radon exposure and lung cancer).

⁴⁵⁴ *Socioeconomic Status and Health*, *supra* note 262, at 307-308.

⁴⁵⁵ *Id.* at 305.

⁴⁵⁶ *Id.* at 320; *see also Framing the Issues*, *supra* note 441, at 11-12 (explaining the hazardous effects of lead exposure).

⁴⁵⁷ *Socioeconomic Status and Health*, *supra* note 262, at 307; *see also Framing the Issues*, *supra* note 441, at 13 (discussing of the link between asthma and molds, dust mites, and other moisture induced contaminants); *Housing and Health*, *supra* note 436, at 758.

asthma, are 0%, 26%, and 46% for high-, middle-, and low-income children, respectively.⁴⁵⁸ It has been suggested that increases in asthma, which has reached epidemic levels in inner-city settings, may be partially attributable to elevated ambient pollutants along with exposure to allergens, such as those produced by cockroaches, in the home.⁴⁵⁹

Other health problems associated with inadequate housing are less obvious, but equally worrisome. Low-income individuals are nearly twice as likely to report chronic, bothersome noise at home.⁴⁶⁰ This exposure can lead to hearing loss, and may be linked to elevated rates of heart disease and elevated blood pressure.⁴⁶¹ Low-income children and elderly persons are more likely to accidentally injure themselves due to greater exposure to hazardous characteristics of residential structures and the lack of sufficient resources to repair them.⁴⁶² Low-income neighborhoods also experience the highest rates of fire-related injury, a situation exacerbated by the fact that low-income households are also significantly less likely to be equipped with functioning smoke alarms.⁴⁶³

While the health problems endemic to low-income housing described above are prevalent throughout the U.S., special note should be made of the habitability concerns in the Gulf Coast since Hurricane Katrina. The UN-HABITAT's Advisory Group on Forced Evictions noted in its 2010 report that even years after the hurricane hit, individuals remain squatting in abandoned buildings with no electricity or water, and inadequate protection from the elements.⁴⁶⁴ Additionally, the trailers provided by the federal government to temporarily (and in many cases, permanently) house Katrina victims contained dangerous levels of formaldehyde that led to health problems for the residents.⁴⁶⁵

C. Physical Safety

Physical safety of residents means safety not only from external elements, but also from internal threats, such as domestic violence. As noted above in the Security of Tenure section, violence against women is a leading cause of homelessness nationwide with about 20% of homeless women reporting domestic violence or abuse as a primary reason for their homelessness.⁴⁶⁶ Housing that is unsafe due to domestic violence is inherently inadequate. The re-authorization of the Violence Against Women Act (VAWA) in January

⁴⁵⁸ *Socioeconomic Status and Health*, *supra* note 262, at 307; see also *Framing the Issues*, *supra* note 441, at 13 (noting the increased prevalence of cockroach allergen in low-income households); *Housing and Health*, *supra* note 436, at 758 (noting association between cockroach allergens and asthma in inner-city neighborhoods).

⁴⁵⁹ *Socioeconomic Status and Health*, *supra* note 262, at 321.

⁴⁶⁰ *Id.* at 308.

⁴⁶¹ *Id.* at 320.

⁴⁶² *Housing and Health*, *supra* note 436, at 760; see also *Socioeconomic Status and Health*, *supra* note 262, at 311.

⁴⁶³ *Framing the Issues*, *supra* note 441, at 14.

⁴⁶⁴ AGFE Report, *supra* note 267.

⁴⁶⁵ *Id.* at 25, 36.

⁴⁶⁶ National Law Center on Homelessness and Poverty, *Insult to Injury: Violations of the Violence Against Women Act*, (April 2009).

2006 included important new housing provisions to protect the housing rights of victims of domestic violence. However, as discussed in Section II above, more must be done to ensure survivors' access to adequate housing.

D. Legal Status of Habitability

Although the U.S. Supreme Court ruled in *Lindsey v. Normet* that there is no federal Constitutional right to housing of a particular quality,⁴⁶⁷ common law standards such as the implied warranty of habitability, as well as statutory housing codes, entitle tenants to a certain level of habitability and avenues through which to seek remedies to sub par living conditions. Nevertheless, many tenants find that they cannot avail themselves of their legal rights to habitable living structures despite the existence of laws to protect them.

Housing codes provide a legal basis on which to ensure habitable housing, but the available enforcement measures are inadequate. In terms of enforcement by government agencies, many municipalities have housing inspection units that are severely understaffed, overworked, and in some cases, corrupt.⁴⁶⁸ For example, in Washington, DC, there are only 5 inspectors for a city of over 600,000 and over 139,000 rental units,⁴⁶⁹ the same number as Burlington, VT, with a population of 40,000, and approximately 10,000 rental units.⁴⁷⁰ Some municipalities provide relocation assistance to tenants evicted when their apartments are deemed uninhabitable. In DC, housing providers whose premises are deemed uninhabitable are liable for the moving expenses of their tenants in the amount of \$300 per room plus \$150 for kitchens and storage areas.⁴⁷¹ In Cincinnati, OH, the government provides \$350-500 for security deposits and up to \$150 in moving expenses for tenants evicted due to code enforcement.⁴⁷² However, such programs are frequently inadequate, and in many cases do not exist at all.

The major hurdle to private enforcement of housing code violations is the lack of a right to legal representation in civil cases. Without lawyers, poor tenants are frequently unable to enforce their rights in court, and are often threatened with eviction if they attempt to force their landlords to properly maintain their properties. In acknowledging this problem, the Committee on the Elimination of Racial Discrimination noted the disproportionate impact the United States' lack of a right to counsel in civil proceedings has on indigent persons belonging to racial, ethnic, and national minorities. It recommended that sufficient resources be allocated to ensure legal representation of

⁴⁶⁷ 405 U.S. 56 (1972).

⁴⁶⁸ See, e.g. William K. Rashbaum, *Inspector Says He Faked Data in New York Building Tests*, N.Y. Times, Apr. 26, 2010, available at http://www.nytimes.com/2010/04/27/nyregion/27inspect.html?_r=1&src=mv (last visited Feb. 28, 2011).

⁴⁶⁹ Peter A. Tatian, *Renters and Foreclosure in Washington, DC*, 9 (2010).

⁴⁷⁰ Steven Norman, email to Housing Justice Network list, Feb. 28, 2011, on file with author; Burlington Dept. of Code Enforcement, *Code Enforcement*, available at <http://www.ci.burlington.vt.us/codeenforcement/> (last visited Feb. 28, 2011).

⁴⁷¹ District of Columbia, Ch. 14-44; D.C. Code §42-3507.03 (2006).

⁴⁷² City of Cincinnati, *Normal Code Program Emergency Relocation Assistance Payments* (2008).

indigent persons belonging to racial, ethnic, and national minorities, particularly in cases where basic human needs, such as housing, are at stake.⁴⁷³ Without the right to counsel so critical in enforcing them, current housing rights exist more in theory than in reality, and the outlook for more robust legal protection remains bleak.

E. Recommendations

1. Congress should expand the HUD definition of homelessness to include all those covered by the ED definition, such as doubled-up persons and persons living in motels.
2. Municipalities should increase enforcement of habitability code violations and provide adequate relocation assistance to affected tenants.
3. State and local governments should provide a right to counsel in all civil cases involving the potential loss of housing or inadequate housing conditions, with a significant expansion of funding to legal aid services to facilitate the implementation of this right.

⁴⁷³ CERD 2008, *supra* note 36, at para. 22.

VII. LOCATION

Adequate housing is very much an issue of environment, including not just the cleanliness of the air or water, but also the relationship between the location of a residence and its immediate surroundings. Reasonable proximity to employment, education, and health care is paramount when evaluating the adequacy of housing. According to the CESCR, location includes the following aspects:

Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.⁴⁷⁴

A. Location Near Employment

Proximity to employment opportunities is vital to adequate housing location. However, numerous factors contribute to long commutes for poor people in both rural and urban environments. Lack of affordable housing in the areas with the most job growth, for example, means that low-income families are priced out of the neighborhoods closest to good jobs.⁴⁷⁵ Low levels of education and the accompanying lack of job skills also restrict the types of jobs available to many job seekers. (As will be detailed in Section VII. C. below, inadequate educational facilities are disproportionately represented in low-income communities.) As a result, the longer commute times for poor rural and urban dwellers alike is often a reflection of a spatial mismatch between the locations of new jobs for entry-level and low-skilled workers and the residences of low-income job seekers.⁴⁷⁶

Long commutes are particularly problematic in rural areas where there is little, if any, public transportation and a dearth of job opportunities.⁴⁷⁷ A 2000 study noted that 9% of Appalachian workers commuted to jobs outside of the historically-impooverished region.⁴⁷⁸ Of the 30 counties across the country where more than 10% of workers traveled at least two-and-a-half hours round trip for work, 10 were located in Appalachia.⁴⁷⁹ These extensive commutes can become prohibitively costly, not just financially, but also emotionally. Negative effects include a decrease in the time parents have to spend with children, decreased earning potential for low-income workers, and fractured social and familial bonds for communities with long commute times.⁴⁸⁰

⁴⁷⁴ General Comment No. 4, *supra* note 34, at para. 8(f).

⁴⁷⁵ Mark Mather, Population Reference Bureau, *Housing and Commuting Patterns in Appalachia* 10, (January 2004).

⁴⁷⁶ *Id.* at 18.

⁴⁷⁷ *Id.*, at 14.

⁴⁷⁸ *Id.* at 16.

⁴⁷⁹ *Id.* at 16.

⁴⁸⁰ *Id.* at 27.

Urban inhabitants, particularly poor, minority residents, also experience prohibitively lengthy and costly commutes to and from work. With the shift from a manufacturing industry to a service industry, many potential employees have found that job opportunities moved from urban centers to the suburbs.⁴⁸¹ Given their high concentration in urban centers, this trend has been particularly detrimental to minority residents. As housing discrimination and a lack of affordable housing continue to restrict their residential options to urban centers, poor and minority residents bear a disproportionate burden of the suburbanization of jobs.⁴⁸² In some instances, these increased costs are so great that some workers are forced to leave the labor force.⁴⁸³

The commuting issue is further complicated by discrepancies in modes of transportation. African American workers, for example, are three times more likely than white workers to use public transportation. Since public transportation is a considerably slower mode of transport than private car, African American workers face longer commutes to and from work than their white counterparts.⁴⁸⁴ Additionally, public transportation, which was historically designed to transport workers to the city in the morning and return them to the suburbs in the evenings, is not equipped to accommodate the modern trend of employment suburbanization.⁴⁸⁵ As a result, although public transportation commutes are typically slower than car commutes for all types of trips, the time differences are most acute for workers who commuted from inner-city homes to suburban jobs.⁴⁸⁶

The Gautreaux Assisted Housing Program is a well-studied example of the positive impact of providing affirmative access to affordable housing in mixed-income and mixed-race communities. Resulting from the United States Supreme Court's decision in *Hills v. Gautreaux* in 1976, the program provided Section 8 vouchers and housing counseling to more than 25,000 public housing residents to pay for private rental apartments in over 100 Chicago neighborhoods in which no more than 30 percent of the residents were African American.⁴⁸⁷ The long-term results indicate inter-generational benefits, with Gautreaux families experiencing poverty rates at half those of families in their previous neighborhood or other segregated neighborhoods.⁴⁸⁸

Section 3 of the Housing and Urban Development Act of 1968 requires recipients of

⁴⁸¹ Nicolle Stelle Garnett, *The Road from Welfare to Work: Informal Transportation and the Urban Poor*, 38 Harv. J. on Legislation 177-178, (Winter 2001) [hereinafter *Road from Welfare to Work*].

⁴⁸² Michael A. Stroll, *Search, Discrimination, and the Travel to Work*, in *Prismatic Metropolis* (Lawrence D. Bobo, Melvin L. Oliver, James H. Johnson Jr., & Abel Valenzuela Jr. eds., 2000).

⁴⁸³ *Id.* 418.

⁴⁸⁴ *Road from Welfare to Work*, *supra* note 481, at 182-183

⁴⁸⁵ *Id.* at 184

⁴⁸⁶ *Id.*

⁴⁸⁷ *Hills v. Gautreaux*, 425 U.S. 284 (1976); *Gautreaux v. Landrieu*, 523 F.Supp. 665 (N.D. Ill. June 16, 1981) (HUD consent decree).

⁴⁸⁸ See, Alex Polikoff, *A Vision for the Future: Bringing Gautreaux to Scale*, in *KEEPING THE PROMISE: PRESERVING AND ENHANCING HOUSING MOBILITY IN THE SECTION 8 HOUSING CHOICE RESEARCH PROGRAM* 137, 141, 144 (Philip Tegeler et al. eds., 2005); Greg J. Duncan & Anita Zuberi, *Mobility Lessons from Gautreaux and Moving to Opportunity*, 1 NW J. L. & Soc. Pol'y 110, at <http://www.law.northwestern.edu/journals/njls/v1/n1/5/> (2006).

HUD housing and community development funding to provide job training, employment, and contracting opportunities for low and very low-income residents and Section 3-eligible businesses.⁴⁸⁹ Under the program, recipients of HUD funding are required to allocate resources in a manner that benefits low-income residents, and meets established compliance monitoring standards. For example, low-income individuals should have preferential hiring status for 30% of all new hires created by HUD funding. Furthermore, Section 3 businesses should receive at least 10% of the total dollar amount of all Section 3 contracts for building trades work, and 3% of all other contracts.⁴⁹⁰

If these goals were attained, it would help provide much needed inner-city employment, thereby decreasing the average commuting time for minority workers by creating job opportunities within local neighborhoods. However, HUD (the agency charged with Section 3 enforcement) oversight has been lacking. HUD has not typically tracked local agencies subject to Section 3 requirements, nor has it adequately responded when agencies do not comply with reporting requirements.⁴⁹¹ As a result, Section 3 has not yet been harnessed as an effective tool for urban renewal. Recently, HUD made progress by requiring recipients of applicable funds to file an annual report regarding compliance with Section 3 obligations and notified recipients that sanctions could follow any failure to do so.⁴⁹² In order to realize the goal of proper Section 3 implementation, HUD must continue taking steps in this direction by fulfilling its promise to punish any failure to file a report and dispensing adequate punitive measures when reports indicate noncompliance with Section 3 goals.

B. Location Near Health Care

Access to health care is also important when evaluating the adequacy of housing location. Both rural and urban poor communities encounter disparities in access to health care versus wealthier communities.

Rural communities are relatively isolated from health care resources. In fact, over 80% of rural communities have been designated by the U.S. Department of Health and Human Services as medically underserved areas.⁴⁹³ This shortage is not limited to low-income families; it is often the case that rural residents with health insurance or money to pay for health care also are unable to find a health care provider.⁴⁹⁴ This is largely a problem of medical personnel shortages. 20% of Americans live in rural areas, but only 9% of doctors practice there. These shortages exist across different fields of the medical profession, from physicians and dentists to pharmacists and nurses.⁴⁹⁵ Many rural

⁴⁸⁹ Housing and Urban Development Act of 1968, P.L. 90-448.

⁴⁹⁰ *Advocates Guide*, *supra* note 310, at 183, (noting that “[a] Section 3 business is defined as a business owned by low-income individuals, or which hires a substantial number of low-income individuals, or which contracts at least 25% of the dollars awarded with a Section 3 obligation to Section 3 businesses).

⁴⁹¹ *Id.* at 184.

⁴⁹² *Id.*

⁴⁹³ Sidley D. Watson, *Mending the Fabric of Small Town America: Health Reform & Rural Economies*, 113 W. Vir. L. Rev. 1, 7-8, (Fall 2010).

⁴⁹⁴ *Id.* at 7.

⁴⁹⁵ *Id.* at 8.

hospitals are in an aged state and the threat of closure looms.⁴⁹⁶ Without significant improvement in rural health care facilities, many rural residents must either travel long distances outside of their communities at overwhelming expense, both in lost working time and transportation costs, to obtain adequate health care, or forego care altogether.

In urban areas, access to healthcare remains a significant problem for poor communities of color. A recent study in New York City found, for example, that two-thirds of the hospitals that closed between 1995 and 2005 were located in communities of color that already faced disparately poor access to hospitals.⁴⁹⁷ These closures occurred despite review and oversight by the New York State Board of Health.⁴⁹⁸ The Advisory Group on Forced Evictions found that the failure to re-open Charity Hospital after Hurricane Katrina left many poor residents in New Orleans without effective access to healthcare. It noted that, “more than one in three New Orleans residents postpone needed medical care and one in four report that they had no doctor, clinic, or pharmacy to turn to for needed care.”⁴⁹⁹ These examples are representative of the uneven access to care in cities across the country.⁵⁰⁰

Efforts to resolve these access issues have been paltry at best, as there is no nationally coordinated infrastructure in place to ensure that racially discriminatory actions and outcomes in health care administration are remedied.⁵⁰¹ This is especially problematic when one considers that government spending accounts for the majority of medical expenditures in this country.⁵⁰² The difficulties in enforcing claims of racially disparate impact under the *Sandoval* ruling, discussed in Section VI. A. 6, *supra* are similarly applicable here, as is the critique from the Committee on the Elimination of Racial Discrimination that this violates our treaty obligations.⁵⁰³

C. Location Near Schools

Given the value of education as a means of obtaining or maintaining economic stability, it is no surprise that access to educational facilities would rank as a fundamental element in housing location. But poor Americans who already struggle most for access to housing and economic stability are disproportionately relegated to inferior schools. This is often a

⁴⁹⁶ *Id.*

⁴⁹⁷ Opportunity Agenda, *Dangerous and Unlawful: A Report on why our health care system is failing New York communities and how to fix it* 3, (2007).

⁴⁹⁸ *Id.*

⁴⁹⁹ AGFE Report, *supra* note 267, at 43, citing “Health Challenges for the People of New Orleans: The Kaiser Post-Katrina Baseline Survey”; The Henry J. Kaiser Family Foundation; <http://www.kff.org/kaiserpolls/upload/7659.pdf>.

⁵⁰⁰ See, e.g. M. Sarrazin/M. Campbell/G. Rosenthal, “Racial Differences In Hospital Use After Acute Myocardial Infarction: Does Residential Segregation Play A Role?” in: Health Affairs Vol. 28, 2 (2009); J. Blustein/

W. Borden/M.Valentine, “2010 Hospital Performance, the Local Economy, and the Local Workforce,” in : *PLoS Medicine*, Vol. 7, 6 (2010).

⁵⁰¹ U.S. Human Rights Network, *Universal Periodic Review Joint Reports*, pg. 80 para. 50 (August 2010) [hereinafter *Universal Periodic Review*].

⁵⁰² *Id.* at 74 para. 5.

⁵⁰³ *Alexander v. Sandoval*, 532 U.S. 275 (2001); CERD 2008, *supra* note 36, at para. 10.

result of the positive relationship between the financial resources of a community and school expenditures. Since many school districts rely on local property taxes to obtain funding, schools in affluent communities have access to greater financial resources.⁵⁰⁴

As a result, students from low-income communities disproportionately attend schools with inadequate facilities. One study, which used eligibility for free or subsidized lunch to identify students from low-income families, indicated that instances of inadequate school conditions are greatest in schools with the highest percentage of students with free or subsidized lunch.⁵⁰⁵ Inadequate facilities include the condition of essential features such as plumbing, indoor air quality, and physical security.⁵⁰⁶

Students in low-income communities suffer more than just dilapidated school facilities. Overcrowding is a frequent problem as well. For example, 12% of public schools with more than 70% of their students eligible for free or subsidized school lunches operate at above 125% of building capacity, compared to only 6% of schools with less than 20% of their students eligible for lunch programs.⁵⁰⁷ Physical safety is also linked to student's economic prosperity. Students in poor neighborhoods reported fighting in school or the presence of weapons at school twice as often as their wealthier counterparts.⁵⁰⁸

The quality of teachers is also poorer in schools with the highest percentage of low-income students. The number of secondary teachers with undergraduate majors or minors in the subjects they teach is significantly less than in more affluent schools. In the case of secondary math teachers, for example, only 27% of those teaching in predominately low-income schools majored or minored in mathematics in college. In schools that are not predominately low-income, however, 43% of math teachers majored or minored in mathematics.⁵⁰⁹

U.S. federal and local law has actively facilitated this inequality of access to education based on location. Although the Supreme Court in *Brown v. Board of Education* proclaimed the promise of equal schools, in subsequent rulings, the Court facilitated continuing residential segregation as an effective means of educational segregation by limiting the power of courts and legislatures to impose inter-district remedies. In *Milliken v. Bradley*, the Court prohibited cross-district busing of urban minority students to and from the surrounding, mostly white, suburban school districts without a finding of intentional discrimination, an almost impossible burden.⁵¹⁰

Milliken assured white parents that if they moved to the suburbs, they could keep their children and resources in segregated schools. As these white families fled, they took substantial wealth with them – and central city school districts could no longer depend upon the property taxes generated by a healthy housing stock and commercial

⁵⁰⁴ *Socioeconomic Status and Health*, *supra* note 262, at 313.

⁵⁰⁵ *Id.* at 314.

⁵⁰⁶ *Id.* at 315.

⁵⁰⁷ *Id.* at 313.

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.* at 314.

⁵¹⁰ See *Milliken v. Bradley*, 418 U.S. 717 (1974).

infrastructure to finance an adequate education for the poor children of color left behind in urban public schools. In 1973, the Supreme Court in *San Antonio Independent School District v. Rodriguez* held that so long as there is not an absolute denial of access to education, funding of education should be left to local control and states need not intervene to balance the suburban-urban inequity.⁵¹¹ In *Missouri v. Jenkins (Jenkins I)*, the Court went on to rule that a judge who ordered a property tax increase to improve the schools of Kansas City had abused his discretion (although it did not completely eliminate that remedy).⁵¹² Five years later, the Court revisited the case in *Jenkins II*, ruling that an order to create magnet schools to attract students from outside the district was in effect a forbidden inter-district remedy.⁵¹³ In 2007, the Supreme Court further limited the ability of public school districts to address *de facto* segregation by prohibiting the use of race-conscious measures as a tool to promote integration.⁵¹⁴ However, in the meantime, a number of state courts have begun to find state Constitutional rights to equitable education funding, though their effect remains limited.⁵¹⁵

Today, “white flight” to the suburbs has produced *de facto* segregated schools with racially isolated communities more segregated than they were in the 1960s when segregation was still legal.⁵¹⁶ Overall, residential housing patterns in the United States lead to racial isolation and segregating conditions in schools.⁵¹⁷ Numerous studies have found that segregation by race and ethnicity in K-12 grades produces harmful results for children of color, and conversely, that diversity holds benefits for all students.⁵¹⁸ Numerous international human rights monitors have commented that racial segregation in U.S. schools violates the housing, educational, and non-discrimination rights of racial minorities.⁵¹⁹

As the Convention on the Elimination of Racial Discrimination requires the remedying of not only purposeful discrimination, but any policy resulting in disparate outcomes,⁵²⁰ the Committee on the Elimination of Racial Discrimination recommended in its last review of the U.S. that the government “take all appropriate measures – including the enactment of legislation – to restore the possibility for school districts to voluntarily promote school integration.”⁵²¹ Remedying school segregation will require remedying residential

⁵¹¹ See *San Antonio Indep. School Dist. v. Rodriguez* 411 U.S. 1 (1973).

⁵¹² See *Missouri v. Jenkins*, 495 U.S. 33 (1990).

⁵¹³ See *Jenkins v. Missouri*, 515 U.S. 70 (1995).

⁵¹⁴ *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).

⁵¹⁵ See, e.g. *Campaign for Fiscal Equity, Inc. v State of New York*, 29 AD3d 175 (2006).

⁵¹⁶ Kozol, Jonathan, “The Shame of the Nation: the Restoration of Apartheid Schooling in America,” Crown Publishers (New York 2005), p. 240.

⁵¹⁷ Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society*, in *In Pursuit of a Dream Deferred: Linking Housing and Education Policy* 135 (John A. Powell et al. eds., 2001); see also Erica Frankenberg, *The Impact of School Segregation on Residential Housing Patterns: Mobile, Alabama, and Charlotte, North Carolina*, in *School Resegregation: Must the South Turn Back?* 164, 180 (John Charles Boger & Gary Orfield eds., 2005).

⁵¹⁸ Robert L. Linn and Kevin G. Welner, *Race-Conscious Policies for Assigning Students to Schools: Social Science Research and the Supreme Court Cases* (National Academy of Education, 2007).

⁵¹⁹ See, e.g. Racism Rapporteur, *supra* note 37, at para. 65; CERD 2008, *supra* note 36, at para. 17.

⁵²⁰ ICERD, *supra* note 50, at Art. 1(1).

⁵²¹ CERD 2008, *supra* note 36, at para. 17.

segregation as well.

Beyond segregation, housing instability also presents barriers to access to education as students move between school districts. Research shows homeless children's education and development suffer as a result of frequent school changes.⁵²² The McKinney-Vento Homeless Education Assistance Act (McKinney-Vento), originally passed in 1987 as part of the Stewart B. McKinney Homeless Assistance Act, provides a measure of stability for homeless students. McKinney-Vento requires school districts to keep homeless students in their schools of origin (i.e., the school the students last attended when permanently housed, or the school in which the students were last enrolled) if doing so furthers the students' best interests,⁵²³ and provide transportation for the homeless students to their schools of origin.⁵²⁴ Evidence shows that the McKinney-Vento policies have helped reduce and reverse the effects of homelessness by providing a stable school setting for homeless students to learn, socialize, and grow.⁵²⁵ However, the available data also indicate that the costs to transport homeless students are very high.⁵²⁶ Providing emergency shelter, or preferably, permanent housing, close to a child's school can help reduce the risk of long-distance transportation for homeless students, benefiting both homeless children and school budgets.

The intersection of the McKinney-Vento Act's requirement of access to education for homeless children and youth, and the need for affordable housing for families was explicitly noted in 1992 with the enactment of the Cranston-Gonzales National Affordable Housing Act. The Cranston-Gonzales Act stipulates that "state and local housing agencies are responsible for developing the comprehensive housing affordability strategy . . . to minimize educational disruption for homeless children [by] ensur[ing] that homeless children have access and reasonable proximity to available education."⁵²⁷ The HEARTH Act reaffirms this and requires HUD Continuum of Care applicants to "take the educational needs of children into account when families are placed in emergency or transitional shelter and... to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt children's education."⁵²⁸ HUD should closely track the applications to ensure these standards are being implemented.

D. Location Near Pollution

Location in or near polluted environments is another location-based problem that many

⁵²² See J. Obradovic et al., *Effortful Control and Adaptive Functioning of Homeless Children: Variable-Focused and Person-Focused Analyses*, 31 JOURNAL OF APPLIED DEVELOPMENTAL PSYCHOLOGY 109-117 (2010); J.C. Buckner et al., *Characteristics of Resilient Children Living in Poverty: The Role of Self-Regulatory Processes*, 15 DEVELOPMENT AND PSYCHOPATHOLOGY 139-162 (2003).

⁵²³ 42 U.S.C. § 11432(g)(3)(B).

⁵²⁴ 42 U.S.C. § 11432(g)(1)(J)(iii).

⁵²⁵ Daniel Carson et al., *Homeless Student Transportation Project Evaluation*, Washington State Transportation Center (TRAC), University of Washington (December 2006).

⁵²⁶ *Id.* at vi and 18.

⁵²⁷ *Cranston-Gonzales National Affordable Housing Act*, 42 U.S.C. §12704.

⁵²⁸ HEARTH Act, *supra* note 235, at Sec. 304(b)7.

communities face, particularly low-income and racial minority communities. Race has proven to be a stronger predictor of where hazardous waste facilities are located than income, education, or other socioeconomic indicators.⁵²⁹ In 2005, the Associated Press released a report indicating that African Americans are 79% more likely than whites to live in neighborhoods where industrial pollution is suspected of posing the greatest health threat.⁵³⁰ A study of 19 states found that African Americans are more than twice as likely as whites to live in neighborhoods where air pollution seems to pose the greatest health danger.⁵³¹ Of the more than 9 million people who live within 1.8 miles of the country's 413 commercial hazardous waste facilities, more than 5.1 million are racial minorities.⁵³² In neighborhoods where waste facilities are clustered together, the disparity is far greater with racial minorities representing 69% of the population.⁵³³

Neighborhoods located near hazardous waste facilities are frequently disadvantaged in other ways as well. These communities are typically densely populated, with 2,300 persons per square mile, compared to only 77 persons per square mile in areas that do not host waste facilities. Because of large racial disparities in metropolitan areas, the fact that 83% of hazardous waste facilities are located in metropolitan areas is significant.⁵³⁴ Perhaps not surprisingly, host neighborhoods are commonly characterized by depressed economic conditions.⁵³⁵ Poverty rates in these neighborhoods are 1.5 times greater than non-host areas and the mean annual household incomes and mean owner-occupied housing values in host neighborhoods are 15% lower than non-host areas.⁵³⁶

In the case of polluted areas, the problem is not only the fact that low-income residents and racial minorities are disproportionately represented in communities close to toxic waste sites, but also the way in which the government responds to toxic contamination emergencies in racial minority neighborhoods.⁵³⁷ For minority communities, the government is slower to respond, the cleanup and recovery is less extensive, and the penalties for polluters are less severe.⁵³⁸ The facts presented serve as strong evidence that the current distribution of toxic waste facilities disproportionately affects poor and minority communities and further shows that the environmental protection system is failing the most vulnerable members of American society.

At this time, United States law and policy does not adequately protect minority and low-income residents from the disproportionate impact of environmental pollution. As noted above, enforcement of Title VI has been hampered since the Supreme Court's ruling in

⁵²⁹ *Universal Periodic Review*, *supra* note 501, at para. 179; United Church of Christ, *Toxic Wastes and Race at Twenty* xii, (March 2007).

⁵³⁰ David Pace, *Minorities suffer most from industrial pollution*, MSNBC, (Dec. 14, 2005), available at http://www.msnbc.msn.com/id/10452037/ns/us_news-environment/, (last visited Mar. 31, 2011).

⁵³¹ *Id.* at 3-4.

⁵³² *Id.* at 52.

⁵³³ *Id.* at 54.

⁵³⁴ *Id.* at 52.

⁵³⁵ *Id.*

⁵³⁶ *Id.*

⁵³⁷ *Id.* at vii.

⁵³⁸ *Id.* at 7.

Alexander v. Sandoval. Any attempt by a private citizen to appeal to Title VI as a means of remedying racial discrimination would require proof of discriminatory intent. Victims of actions having a disparate impact on the basis of race can still seek some recourse at the federal level by filing an administrative complaint with the appropriate federal agency, in this case, the Environmental Protection Agency (EPA). This method has proven largely ineffective, however, and a number of studies have found that the EPA consistently fails to investigate Title VI complaints in a timely and thorough manner. For example, an independent report in 2009 found that the EPA processed only 211 Title VI complaints between 1993 and 2008 and 19% of those were still pending. 127 of the closed cases had been rejected for investigation and the other 44 had been dismissed; in other words, no complaint filed over the relevant 15 year period in question resulted in the EPA ordering remedial measures.⁵³⁹

E. Recommendations

1. HUD should improve its oversight of Section 3 to ensure federal funds are used to create jobs for people in public housing and poor communities.
2. To ensure that new public housing is not concentrated in segregated areas, HUD should adopt guidelines to encourage applications for developing or replacing public housing in integrated areas, and reject plans for the redevelopment of public housing that would have the effect of reducing the total number of affordable housing units in integrated areas.
3. HUD should eliminate financial penalties imposed on public housing authorities when families move from one jurisdiction to another, and should abandon rules adopted in 2003 and 2004 that prevent Section 8 recipients from moving into lower-poverty, higher-rent areas. Additionally, HUD should direct public housing authorities in less segregated jurisdictions to absorb into their own voucher programs any voucher recipients seeking to move into such jurisdictions from neighboring areas with higher minority concentrations.
4. States should provide for equitable funding of school districts to ensure children in all neighborhoods have access to a quality education.
5. HUD should closely monitor implementation of the HEARTH Act's requirements for Continuum of Care programs to place homeless students as close to their schools of origin as possible.
6. Municipalities should coordinate emergency and permanent housing placement of homeless families with their children's school needs.
7. Congress should amend Title VI of the Civil Rights Act of 1964 to clarify that its prohibition on racial discrimination in federally funded programs applies to actions

⁵³⁹ *Universal Periodic Review*, *supra* note 501, at paras. 183-184.

that are discriminatory in effect regardless of their intent; and to provide a private right of action to enforce existing federal regulations forbidding recipients of federal funds from taking actions that are discriminatory in effect regardless of their intent.

VIII. CULTURAL ADEQUACY

According to the Committee on Economic, Social, and Cultural Rights, adequate housing must be culturally adequate:

The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

In many ways, America sees itself as a “melting pot” of cultures, and as families move into new housing situations, their cultural practices adapt to their new settings. Although many groups face challenges of maintaining their culture, the case of Native Americans, to whom the U.S. is obligated by treaty to provide adequate housing, provides the clearest example of where the U.S is failing in its duty to ensure this aspect of the right.

A. Native American Housing

By failing to consider the residents' culture or traditions, the federal government's approach to housing problems on Native American reservations has been a primary cause of the tribes' cultural losses. This outcome is especially problematic given the government's special relationship with Native Americans developed over decades of treaties, custom, and law. Conceived as a means of compensating Native Americans for forced removal from their original homelands, the trust relationship creates a legal responsibility on the part of the federal government, which includes meeting the housing needs of Native Americans.⁵⁴⁰ According to this trust relationship, Native Americans are recognized as governmentally independent entities that rely on the support and protection of the United States.

Despite this responsibility, the state of housing in Native American communities is dire. It is estimated that there are over 90,000 homeless or under-housed Native American families.⁵⁴¹ This problem promises to get worse due to a growing Native American population. From 1990 to 2000, there was a 26% increase in the number of people identifying themselves solely as American Indian, while the U.S. population as a whole grew by only 13%.⁵⁴² Housing problems are further exacerbated by the recent influx of tribal members returning to reservations after lengthy absences.⁵⁴³ Unfortunately, the housing stock on reservations is deteriorating even as the demand rises.

⁵⁴⁰ U.S. Commn. on Civ. Rights, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* ix (July 2003) [hereinafter *Quiet Crisis*].

⁵⁴¹ *Id.* at 51.

⁵⁴² Brian L. Pierson, *Developing Affordable Housing in Indian Country*, 19 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 367 (Spring/Summer 2010).

⁵⁴³ National American Indian Housing Council, *Too Few Rooms: Residential Crowding in Native American Communities and Alaska Native Villages* 27 (2001) [hereinafter *Too Few Rooms*].

Enacted in 1996, the Native American Housing Assistance and Self-Determination Act (NAHASDA) was intended to address many of the housing shortcomings and disparities found in Native American communities. The NAHASDA provides affordable housing for low-income families living on reservations and tribal areas, and does so within the context of the trust relationship developed between the federal government and Native Americans.⁵⁴⁴ The law consolidated several preexisting federal programs into a single block grant and allows for greater tribal involvement in allocation of funds. Funding is intended to primarily benefit low-income families and the block grant money can support a number of eligible activities including housing construction and rehabilitation.⁵⁴⁵

NAHASDA is a marked improvement over previous distribution methods, which tended to cede control to tribal housing authorities that had no organic link with the communities served. Although NAHASDA has enabled Native American communities and their tribal governments to exercise more direct control over housing projects, the law has not substantially improved the condition of Native American housing. In 2002, six years after NAHASDA's implementation, 25,000 houses were built or renovated, but there was still an immediate need for an additional 200,000 Native American housing units.⁵⁴⁶

This gap between housing provided and housing needed is indicative of an ongoing funding problem.⁵⁴⁷ Native American housing needs remain disproportionately high compared to the housing grants available, and as a result, efforts to improve Native American housing maintain the status quo rather than making any substantive progress towards improving overall living conditions.⁵⁴⁸ Moreover, existing housing is in poor condition. Approximately 40% of housing on Native American reservations is considered inadequate. The nationwide rate for inadequate housing is only 6%.⁵⁴⁹ One out of five Native American houses lacks complete plumbing and less than 50% of reservation homes are connected to a public sewer system.⁵⁵⁰

Previous attempts to alleviate the housing crisis have frequently eroded the cultural identity of Native Americans. This dilemma is exemplified by the construction of cluster housing on many reservations. Cluster housing is single-unit detached rental housing units placed in very close proximity.⁵⁵¹ First built by HUD in the 1960's, cluster housing was intended to provide modern housing with the convenience of extensive utilities. By placing the units close together, HUD could construct modern housing at a more affordable price. However, such housing bears no resemblance to the traditional housing of Native Americans. Many Native Americans were accustomed to living on their own

⁵⁴⁴ *Advocates Guide*, *supra* note 310, at 147.

⁵⁴⁵ *Id.* at 146-148.

⁵⁴⁶ Roberta Youmans, Federal Housing Finance Board, "Native American Housing Needs and Proposed Recommendations," background paper presented to the Millennial Housing Commission 5 (Apr. 2, 2002).

⁵⁴⁷ *Quiet Crisis*, *supra* note **Error! Bookmark not defined.**, at 55.

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.* at 51.

⁵⁵⁰ *Id.*

⁵⁵¹ The Housing Assistance Council, *Taking Stock: Rural People, Poverty, and Housing at the Turn of the 21st Century*, 99 (2002) [hereinafter *Taking Stock*].

pieces of land, with animals and gardens, and cluster housing robbed them of their cultural norms around housing, privacy, and husbandry.⁵⁵²

Cluster housing also has fostered problems with overcrowding. For example, it has been estimated that over 30% of households on American Indian Reservations are crowded compared to only 4.9% of households in the United States as a whole.⁵⁵³ This despite the fact that Native Americans have expressed a strong preference for houses that are spread out in a manner closer to their traditional mode of living.⁵⁵⁴ As the Housing Rapporteur noted, depriving Native Americans of their cultural norms of housing has led to the creation of destructive social environments.⁵⁵⁵ It comes as no surprise then, that clusters are often referred to as "reservation ghettos" and suffer from high rates of crime and drug use.⁵⁵⁶ Cluster housing has been cited as a cause of the sharp increase in gang activity on reservations and a process of "multiple marginalization" which has weakened the traditional fiber of Native communities.⁵⁵⁷ Such housing is a far cry from fulfilling the government's responsibility to provide culturally sensitive housing for Native Americans.

B. Recommendations

1. Congress and the Administration should appropriate adequate resources to fully meet our treaty obligations to provide housing and other assistance to Indian tribes.
2. Congress and the Administration should revise laws and policies to ensure tribes have increased control over the use and distribution of those resources to ensure they reflect their cultural needs.

⁵⁵² *Id.*

⁵⁵³ *Too Few Rooms*, *supra* note 543, at 3.

⁵⁵⁴ Housing Rapporteur, *supra* note 38, at para. 17.

⁵⁵⁵ *Id.*

⁵⁵⁶ *Taking Stock*, *supra* note 551, at 99.

⁵⁵⁷ U.S. Dep't. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Aline Major, et. al., "Youth Gangs in Indian Country," *Juvenile Justice Bulletin* (March 2004).

IX. CONCLUSION

In the past decade and a half since U.S. advocates and government representatives traveled to Istanbul for the Habitat II conference, there has been an increasingly sophisticated movement to use the human rights framework to address issues of housing and homelessness in the U.S.⁵⁵⁸ This movement has scored important victories through the ICCPR and CERD treaty reporting processes, the visits of numerous UN human rights monitors to the U.S., and most recently with the Universal Periodic Review process, which brought the dialogue about human rights out of the State Department's domain and into the parlance of the domestic policy agencies, including HUD.

This work is important now more than ever. The U.S. is in the midst of the worst housing crisis since the Great Depression, and with the surrounding economic crisis prompting calls for cuts to assistance programs just when the need is greatest, we need a new frame in which to discuss issues of housing and homelessness. A frame that says everyone has a right to housing to ensure their basic human dignity would provide a new baseline for what is acceptable. While adopting an explicit human rights frame in the U.S. would represent a shift, the U.S. has a proud history to which it can point, starting from the days of President Roosevelt that demonstrate the human right to housing is not a foreign, but a domestic value. U.S. housing programs and laws at the federal, state, and local level have helped millions ensure their right to adequate housing. More than 2/3 of Americans believe that housing is a basic human right, and that government should be doing more to ensure the right.⁵⁵⁹ We hope this report is a step in furthering this dialogue and generating the momentum to translate these values into the political will to make the human right to housing real for all.

⁵⁵⁸ See Maria Foscarinis and Eric Tars, *Housing Rights and Wrongs: The U.S. and the Right to Housing*, in *Human Rights At Home*, edited by Cynthia Soohoo, Catherine Albisa and Martha Davis (Praeger Publishers, December 30, 2007).

⁵⁵⁹ Opportunity Agenda, *Human Rights in the U.S.: Opinion Research with Advocates, Journalists, and the General Public*, 19, 22 (2007).

GLOSSARY AND GUIDE TO ABBREVIATIONS

AGFE (UN-HABITAT Advisory Group on Forced Evictions): The Advisory Group on Forced Evictions (AGFE) monitors forced evictions on behalf of the UN-HABITAT agency and identifies and promotes alternatives such as in situ upgrading and negotiated resettlement. The members of the Advisory Group are individuals from civil society organizations, local authorities, central government and professionals in developing and developed countries. AGFE conducted a visit to New Orleans and the Gulf Coast in July 2009.

AMI (Area Median Income): The average household income in a given area. AMI is published by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. It is the most common benchmark to determine eligibility for federal housing programs. Households earning: between 120 and 80 percent AMI are considered "moderate-income"; below 80 percent AMI, "low-income"; below 50 percent AMI, "very low-income"; and below 30 percent AMI, "extremely low-income".

Base Closure Act (Base Closure Community Redevelopment and Homeless Assistance Act of 1994): The Base Closure Act requires that plans to convert closed bases from military to nonmilitary use take into account the needs of homeless persons in the community and establishes a process for homeless service providers to receive base property at no cost.

CDBG (Community Development Block Grant): The CDBG program, started in 1974, provides communities with lump sum funding resources to address a wide range of unique community development needs. These can include loans and grants to developers for housing rehabilitation or construction, help for first-time homebuyers, construction or rehabilitation of emergency shelters, job training, transportation infrastructure, or a number of other community needs. 70% of CDBG funds must benefit low and moderate-income individuals.

CERD (Committee on the Elimination of Racial Discrimination): A body of independent experts that monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (see ICERD). The ratifying States are required to submit reports on how the Convention is being implemented in their nations every four years. The experts then evaluate the States' progress and make recommendations in Concluding Observations. The United States was evaluated in 2001 and again in 2008. The CERD also issues General Comments that interpret broadly the requirements of the treaty (see General Comment).

CESCR (Committee on Economic, Social, and Cultural Rights): A body of independent experts that monitors the implementation of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) by the ratifying States. The U.S. is not a party to this treaty so is not required to submit reports. The CESCR also issues General Comments that interpret broadly the requirements of the treaty (see General Comment).

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Bill): Senator Chris Dodd and Representative Barney Frank co-sponsored this Bill in response to the recession that began with the housing crisis of 2007 and subsequently led to the collapse of several major Wall Street investment banks. The banks', their business practices, and the American financial services industry had been almost entirely unregulated until the Dodd-Frank Bill came into force in July of 2010. The bill imposed regulations upon the financial services industry making practices such as those that led to the frozen credit market, the housing crisis, and the subsequent global economic meltdown. The bill included such reforms as: greater regulation and transparency of financial markets, the consolidation of regulatory agencies, the establishment of an oversight council to assess risk, and measures designed to regulate and standardize accounting practices and credit ranking.

Disparate Impact: When a policy or procedure has a disproportionately negative effect on a protected class of individuals as compared to a non-protected class. A facially neutral policy may still violate obligations under ICERD and the United States Constitution if it has a disparate impact upon a particular minority group.

Due Process Clause: The clause in the Fourteenth Amendment of the United States Constitution that stipulates that no one shall be deprived of life, liberty, or property by any federal, state, or local government without procedural safeguards.

ED (U.S Department of Education): The mission of the Department of Education is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. It engages in four major types of activities: 1) Establishes policies related to federal education funding, administers distribution of funds and monitors their use; 2) Collects data and oversees research on America's schools; 3) Identifies major issues in education and focuses national attention on them; 4) Enforces federal laws prohibiting discrimination in programs that receive federal funds.

EESA (Emergency Economic Stabilization Act of 2008): Also known as the “bailout bill,” this law created the TARP program to purchase up to \$700 billion in mortgages and other troubled assets owned by financial institutions.

Equal Protection Clause: The clause in the Fourteenth Amendment of the United States Constitution that prohibits any state from denying the equal protection of the law to any person within its jurisdiction.

EPA (Environmental Protection Agency): The EPA is a federal agency created in 1970 to protect human health and the environment. The EPA develops and enforces regulations, administers grants, produces studies, and conducts public education.

Federal Strategic Plan to Prevent and End Homelessness: A statement of intent issued by the United States Interagency Council on Homelessness that provides a framework for eliminating and preventing homelessness in the United States. The Plan is the first of its

kind issued by the federal government and calls for inter-agency cooperation toward the goal of eliminating most forms of homelessness in the United States by 2020.

Fourteenth Amendment: The Constitutional amendment that defines and confers, among other things, citizenship, due process, and equal protection of the laws upon individuals within the jurisdiction of the United States and the individual states in which they reside.

GAO (Government Accountability Office): The GAO is known as "the investigative arm of Congress" and "the congressional watchdog." GAO supports the Congress in meeting its constitutional responsibilities and helps improve the performance and accountability of the federal government for the benefit of the American people by preparing non-partisan reports on issues of national concern.

FHEO (Office of Fair Housing and Equal Opportunity): HUD's Office of Fair Housing and Equal Opportunity administers and enforces federal laws and establishes policies in pursuit of equal access for all Americans to the housing of their choice.

FHIP (Fair Housing Initiatives Program): HUD's funding program for private organizations that in turn offer a number of community services including education, investigation of alleged discrimination, and resolution of disputes.

FHAP (Fair Housing Assistance Program): HUD's funding program for state and local government agencies to enforce state or local fair housing laws that are substantially equivalent to the Fair Housing Act.

General Comment: General Comments are definitive interpretations of the broad language of human rights treaties drafted by their oversight Committees. General Comments, much like regulations under U.S. law, offer additional information, perspective, and guidance on how to interpret a clause or article in an international legal treaty.

Habitability: Refers to the standards that a rental unit must meet in order to suffice as a human domicile. Precise habitability requirements for privately owned units may differ in the United States depending upon jurisdiction, but any rental unit receiving HUD funding must meet certain basic requirements with respect to fire safety, security, accessibility for disabled individuals, sanitation, illumination, and electricity.

HANO (Housing Authority of New Orleans): The public housing authority in New Orleans. HANO has been in federal receivership since 2002 when it was taken over by HUD for fraud and waste.

HEARTH Act of 2009 (The Homeless Emergency and Rapid Transition to Housing Act): The HEARTH Act amends the McKinney-Vento Act and includes several significant changes designed to assist an increasing number of homeless individuals and families with making the transition to stable housing. The HEARTH Act expands the

federal definition of “homeless” to include some who are living in motels or who are doubled-up in the homes of friends and family members if they meet certain other criteria. The Act also redirects resources toward homelessness prevention, creates the Rural Housing Stability Program, and streamlines and simplifies HUD bureaucracy.

Housing Rapporteur (Special Rapporteur on the Right to Adequate Housing): An appointee of the United Nations who is specially assigned to raise international awareness of housing conditions in member nations, and to facilitate compliance with the housing mandates of those treaties to which the member states are signatories. The Special Rapporteur works with independent experts, NGOs, states, and other international entities in her mission to advance the right to adequate housing for all individuals. She came to evaluate the United States in 2009.

HRC (Human Rights Council): The Human Rights Council is an inter-governmental body within the United Nations system. The HRC is made up of 47 States that are collectively responsible for strengthening the promotion and protection of human rights around the globe. Its main purpose is to identify human rights violations around the world and make recommendations to address them. The U.S. joined the HRC in 2009.

HUD (Department of Housing and Urban Development): The federal agency created in 1965 to oversee the implementation of legislated housing and homelessness programs, including by providing housing and community development assistance, monitoring fair housing obligations, and developing regulations under housing legislation.

ICCPR (International Covenant on Civil and Political Rights): The ICCPR is an international treaty that requires ratifying States to observe and respect certain civil and political rights. These rights include, but are not limited to, freedom of religion, freedom of speech, the right to vote, and the right to due process and a fair trial. Its implementation is monitored by the Human Rights Committee (a different monitoring body than the Human Rights *Council*). The Committee reviews a report submitted by each ratifying State and makes recommendations on that State's progress every four years. The United States ratified the ICCPR in 1992, and was reviewed in 2000 and again in 2006.

ICERD (International Convention on the Elimination of all forms of Racial Discrimination): This Convention requires countries to condemn all forms of racial discrimination, whether based on race, color, descent, or national or ethnic origin, and to pursue a policy of eliminating racial discrimination. Countries must guarantee their residents' rights to equality before the law, and to various political, civil, economic, social and cultural rights. The legal concept of disparate racial impact is explicitly recognized as a form of racial discrimination and ICERD requires ratifying States to take necessary steps for its elimination. Its implementation is monitored by the Committee on the Elimination of Racial Discrimination. The Committee reviews a report submitted by each ratifying State and makes recommendations on that State's progress every four years. The United States ratified the ICERD in 1994, and was reviewed in 2001 and 2008.

ICESCR (International Covenant on Economic, Social, and Cultural Rights): A multi-lateral treaty adopted by the UN General Assembly that works toward achieving economic, social, and cultural rights to all individual citizens of its signatories. These rights include, but are not limited to, the right to dignity at work, the right to health, the right to education, and the right to an adequate standard of living. The treaty has been in force since 1976. The United States signed this treaty in 1977, but has not yet ratified it. The ICESCR is overseen by the Committee on Economic, Social and Cultural Rights (CESCR).

LIHTC (Low Income Housing Tax Credit): Administered by the Internal Revenue Service, under this program, private equity invested in the development of qualifying low-income housing projects is eligible for a federal income tax reduction. The program was designed to facilitate affordable housing by increasing private investment and decreasing the amount of money that developers would need to borrow. The resulting reduction in development costs is meant to allow for decreases in rent. Because this credit requires investment in low-income housing development, most recipients of this tax credit are corporations.

MAHN (Meeting America's Housing Needs): A collaborative effort organized by U.S. NGOs to help achieve the goals of the Habitat Agenda following the 1996 Habitat II Conference.

McKinney-Vento Homeless Assistance Act: A federal law that provides funding on a conditional basis to state agencies, homeless shelters, and programs designed to assist homeless individuals. It established the Inter-agency Council on Homelessness and has been reauthorized several times since it came into force in 1987. Since 2001, the law includes both housing, shelter, and direct assistance programs and programs to ensure the education of homeless children and youth.

Mortgage Interest Deduction: This regressive tax policy allows homeowners to deduct all interest paid on up to \$1 million in total mortgages from their taxable income. It also allows interest on up to \$100,000 in equity loans to be deducted. This housing subsidy does not necessarily promote low-income homeownership, as high-income taxpayers with large mortgages are its primary beneficiaries.

NAHASDA (Native American Housing Assistance and Self-Determination Act): Enacted in 1991, NAHASDA provides block grant funding for affordable housing for low-income families living on reservations and tribal areas within the context of the trust relationship developed between the federal government and Native Americans.

NGOs (Non-Governmental Organizations): an international term for non-profit organizations advocating particular causes.

Ninth Amendment: States that the rights explicitly enumerated within the Constitution of the United States shall not be construed to deny or disparage other rights retained by the people.

Non-binding declaration: A statement of intent in which signatories express their willingness to recognize the principles therein, and agree to work toward seeing those principles realized in their countries. Signatories may not be legally bound in an international court.

Predatory lending: Aggressive and/or deceptive tactics used by lenders in order to motivate individuals to accept undesirable or suspect terms of credit. Tactics can include failure to disclose future changes and increases in payment or fee structures, failure to disclose penalties, misrepresentation of risks, or other strategies that are designed to mislead an individual into accepting the loan without understanding its terms.

PTFA (Protecting Tenants at Foreclosure Act): The PTFA, passed in 2009 as part of the Helping Families Save Their Homes Act, is a federal law that helps tenants whose landlords have been foreclosed on stay in their apartments. The Act preserves most renters' tenancy through the end of their lease term, thus preventing tenants in good standing from being evicted when their landlord is foreclosed upon. The PTFA mandates that any successor in interest assuming control of the foreclosed rental property must provide existing tenants with a 90-day notice to vacate. Although the PTFA currently provides robust renter protections, it is set to expire in 2014.

PHA (Public Housing Authority): The local authority that receives public housing and community development funding from HUD and runs local public housing projects and facilitates Section 8 voucher distribution.

Racism Rapporteur (Special Rapporteur on Racism): An appointee of the United Nations who is specially assigned to raise international awareness of member States' policies and conditions, which have a racially disparate impact upon their minority populations, and to encourage member States to change, eliminate, or mitigate those policies. The United States was evaluated in 2008.

Ratification: In order for a treaty to become law in the U.S. it must be signed by the President, and ratified by a two-thirds vote of the Senate. Thus, previous presidents have signed many treaties that have not yet been ratified (see, e.g. ICESCR above). Under Article VI of the Constitution, ratified treaties become supreme law of the land, though during the ratification process, the Senate often attaches reservations, declarations, and understandings (RUDs) to human rights treaties, which limit their domestic impact.

Real ID Act of 2005: This Act modified federal law with respect to the authentication, standardization, and issuance of state drivers licenses and identification cards. It requires all such cards to contain a photograph of the individual's face along with the individual's name, date of birth, gender, signature, and address of principal residence. Before any identification is issued, the Real ID Act mandates that an individual must provide an identification card that contains her name and date of birth, documentation of date of birth, documentation of legal status and social security number, and documentation showing name and place of principle address. If an individual cannot provide one of these

forms of identification, she will not be issued a driver's license or identification card.

Section 3: Section 3 of the Housing and Urban Development Act of 1968 requires that recipients of certain HUD financial assistance (usually PHAs), to the greatest extent feasible, provide job training, employment, and contract opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods.

Section 8 (The Housing Choice Voucher Program): Section 8 of the Housing and Urban Development Act of 1968 created a type of housing subsidy provided by HUD to low-income individuals and families. The subsidies are provided in the form of housing vouchers, some of which may be used only in certain housing projects, and some of which are transferable at the tenant's discretion.

Section 202: Established under the Housing Act of 1959, Section 202 provides funding to non-profit developers to build and operate supportive housing for low-income senior citizens.

Section 811: Authorized by the National Affordable Housing Act of 1990, Section 811 provides funding to non-profit developers to build and operate supportive housing for low-income tenants with long-term disabilities.

Security of tenure: The protection given to tenants of a dwelling (house or apartment unit) against arbitrary rent increases, evictions, or uninhabitable conditions.

SSI (Supplemental Security Income): SSI is a federal income supplement program funded by general tax revenues (not Social Security taxes), designed to help aged, blind, and disabled people, who have little or no income by providing cash to meet basic needs for food, clothing, and shelter.

Stafford Act (Robert T. Stafford Federal Disaster Relief and Emergency Act): Robert T. Stafford Disaster Relief and Emergency Assistance Act provides the statutory authority for most federal disaster response activities, especially as they pertain to FEMA.

Sub-prime mortgage: A type of mortgage issued to an individual with a credit score that is so low as to preclude her qualification for a traditional mortgage loan. This includes those individuals who would not be able to qualify for a traditional mortgage because they lack an adequate down payment, income, credit history, or other traditional markers of creditworthiness. Originally conceptualized in order to make home ownership available to individuals who may not otherwise have been able to qualify for a mortgage, an excess of sub-prime mortgages issued through predatory lending practices, including racially discriminatory practices, were a source of the housing crisis that began in 2007 and triggered a global economic recession.

TARP (Troubled Asset Relief Program): Also known as "the Bailout Bill," a federal program that authorized the United States Treasury to purchase assets and equity from financial institutions that were collapsing as a result of the sub-prime mortgage crisis. It

was signed into law by President Bush in October 2008, and was intended to stem the downward spiral of the American financial markets, which was having a cataclysmic effect upon the global financial system.

Title V (Title V of the McKinney-Vento Homeless Assistance Act): Title V requires vacant or underutilized federal property be made available to providers of services to people who are homeless at no cost.

Treaty: An express, international agreement entered into by and between government actors. Ratifying States party to a treaty can be held accountable for non-compliance with its terms under international law.

United Nations Commission on Human Rights (UNCHR): Replaced by the UNHRC in 2006, it was the UN's principle subcommittee in charge of monitoring human rights violations around the world. The General Assembly voted to dissolve the UNCHR in 2006 because it had become discredited by both governments and human rights activists. There were a number of nations on the Commission, including those whose representatives were voted to chair the Commission, who were themselves noted human rights violators. These members were broadly and consistently observed to be obstructing the goals and mission of the General Assembly with respect to human rights.

UDHR (Universal Declaration of Human Rights): A declaration adopted by the UN General Assembly codifying its signatories' commitment to human rights for all individuals. These rights include, but are not limited to, the rights to life, liberty, security of person, freedom from slavery, and equality before the law. All rights declared in the UDHR are expressly recognized without regard to sex, race, or gender.

UPR (Universal Periodic Review): Review of the human rights records of all UN member States. A UPR Report is issued every four years detailing the successes and shortcomings of member States, and issuing recommendations for further progress in the noted areas.

VAWA (Violence Against Women Act): First enacted in 1994, and reauthorized in 2000 and 2005, VAWA provides legal protections for survivors of domestic violence by encouraging victims to seek civil protection orders against their abusers, to summon police in response to domestic violence, or to seek other services, and creates federal rights and assistance in pursuing an end to violence against women. The 2005 amendments include: housing services, confidentiality provisions, planning requirements for VAWA implementation for Public Housing Authorities, and protections against discriminatory denials and evictions in Public and Section 8 housing for victims of domestic violence, dating violence and stalking. In addition, new provisions authorized funding for housing and service programs for survivors and changes were made the way data is collected about survivors.