

Housing as a Human Right

By Eric Tars, Legal Director, National Homelessness Law Center

2021 is the year to make housing a human right in the U.S.

In 2020, we saw the election of a president and vice-president who, for the first time since Franklin Roosevelt, come into office on a platform explicitly affirming housing as a right. Representative Pramila Jayapal (D-WA) introduced “The Housing Is A Human Right Act” into Congress as part of the rights-affirming People’s Housing Platform. At the state level, California introduced a constitutional amendment recognizing housing as a human right, and Connecticut introduced right to housing legislation. And at the local level, groups like Moms4Housing took direct action to claim their human right to housing.

Beyond the promises of the presidential platforms and introduced bills, human rights framing has also made its way into federal policy. Thanks to well-organized advocacy, the U.S. Interagency Council on Homelessness (USICH), the U.S. Department of Justice (DOJ), and Department of Housing and Urban Development have taken enforcement actions and adopted human rights language against the criminalization of homelessness.

Even before the COVID-19 pandemic hit, California polling found 66% of likely California voters, including 54% of people who identify as Republican, would support amending the California constitution to establish a fundamental human right to housing. Since the pandemic, even the Centers for Disease Control recognized the central role of housing in public health, issuing its nationwide eviction moratorium, and calling for individual housing units for people experiencing unsheltered homelessness.

While saying housing is a human right and making it happen in policy are two different things, changing the rhetorical frame is

important to changing the policy. This was demonstrated by the embrace of healthcare as a human right framing that preceded the passage of the “Affordable Care Act.” Faced with the prospect of more cuts to already inadequate housing programs at the federal, state, and local levels, housing advocates can use the human right to housing framework to reframe public debate, craft and support legislative proposals, supplement legal claims in court, advocate in international fora, and support community organizing efforts. Numerous United Nations (U.N.) human rights experts have recently visited the United States or made comments directly bearing on domestic housing issues including housing obligations during the COVID crisis, providing detailed recommendations for federal- and local-level policy reforms. In 2021, advocates must work to consolidate these gains and push for action to accompany the rhetoric.

HISTORY

In his 1944 State of the Union address, Franklin Roosevelt declared that the United States had a Second Bill of Rights, including the right to a decent home. In 1948, the United States signed the Universal Declaration of Human Rights (UDHR), recognizing adequate housing as a component of the human right to an adequate standard of living.

The UDHR is a non-binding declaration, so the right to adequate housing was codified into a binding treaty law by the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966. The United States signed the ICESCR, and thus must uphold the “object and purpose” of the treaty, even though the U.S. has not yet ratified it. The U.S. ratified the International Covenant on Civil and Political Rights in 1992 and the International Convention on the Elimination of All Forms of Racial Discrimination in 1994. Both recognize the right to be free from discrimination, including in housing, on the basis of race, gender, disability, and other status

and emphasize the need for equitable policies to make up for past discrimination. The U.S. also ratified the Convention Against Torture in 1994, protecting individuals from torture and other cruel, inhumane, and degrading treatment, including the criminalization of homelessness.

Recently, the U.S. government supported, in part, a recommendation from the Human Rights Council in 2015 to “guarantee the right by all residents in the country to adequate housing, food, health and education, with the aim of decreasing poverty, which affects 48 million people in the country.” In October 2016, the U.S. signed onto the New Urban Agenda, “commit[ing] to promote national, sub-national, and local housing policies that support the progressive realization of the right to adequate housing for all as a component of the right to an adequate standard of living, that address all forms of discrimination and violence, prevent arbitrary forced evictions, and that focus on the needs of the homeless, persons in vulnerable situations, low-income groups, and persons with disabilities, while enabling participation and engagement of communities and relevant stakeholders in the planning and implementation of these policies including supporting the social production of habitat, according to national legislations and standards.” The Agenda also stated, “we commit to combat homelessness as well as to combat and eliminate its criminalization through dedicated policies and targeted active inclusion strategies, such as comprehensive, inclusive, and sustainable housing first programs.”

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

The U.S. has hosted several official and unofficial visits from top U.N. human rights officers in

recent years that garnered significant press, as well as meetings with high profile elected officials. In 2019, the National Law Center on Homelessness and Poverty and others worked with Senator Cory Booker’s (D-NJ) office to host a packed-room congressional briefing on the U.N.’s special rapporteur on extreme poverty and human rights report on his mission to the U.S. This resulted in follow up contacts with seven of the leading Democratic candidates for President (Senators Booker, Harris (D-CA), Sanders (D-VT), and Warren (D-MA), former HUD Secretary Castro, former Representative O’Rourke, and Tom Steyer). And when Vice-President-Elect Harris joined President-Elect Biden’s ticket, she brought the housing as a right framing into his platform.

ISSUE SUMMARY

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

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

for sheltering themselves in the absence of adequate alternatives. Contrary to the current framework that views housing as a commodity to be determined primarily by the market, the right to housing framework gives advocates a tool for holding each level of government accountable if any of those elements are not satisfied. Human rights also actively embraces “special measures” for historically-marginalized populations, including affirmative action or reparations frameworks, that many have called for in the U.S.

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

FORECAST FOR 2021

Building on the success of 2020 in mainstreaming the human right to housing into the policy conversation, 2021 could be a breakout year for moving the right into practice.

On the positive side, increasing adoption of the language around the human right to housing by presidential candidates and Members of Congress indicates a comfort with this framing and a potential for a mutually reinforcing cultural shift. Ambitious legislative proposals including the “Housing is a Human Right Act”, and other renters tax credits, reparations for decades of racist exclusions from the housing market for racial minorities, and a new commitment

to public housing or universal vouchers show a move toward a rights-based approach, as opposed to one that accepts budget limitations as an excuse to not meet the need.

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

At the state level, Rhode Island, Illinois, and Connecticut have passed Homeless Bills of Rights and advocates in California and Connecticut plan to reintroduce human right to housing legislation for 2021.

TIPS FOR LOCAL SUCCESS

Local groups wishing to build the movement around the human right to housing in the United States can use international standards to promote policy change, from rallying slogans to concrete legislative proposals. Groups like the #Moms4Housing use human rights to take direct action like taking over vacant buildings and to support broader local and statewide legislative advocacy. The UN has created model guidance for implementing the human right to housing, including policies to ensure it during the COVID-19 crisis. Advocates can also hold local governments accountable to human rights standards by creating an annual Human Right to Housing Report Card. Using international

mechanisms can also cast an international spotlight on local issues.

WHAT TO SAY TO LEGISLATORS

It is important for legislators and their staff (as well as other advocates) to hear constituents say that housing is a human right and ask for them to say it too, and call for policies to support it as such. This helps change the normative framework for all of the housing issues that we work on. Tying the concept to the United States' origins and acceptance of these rights in Roosevelt's "Second Bill of Rights," the polling data above, and showing the affirmations of this language by USICH, HUD, and the DOJ and other leading political figures (including now the president) all emphasize that it is a homegrown idea rather than one imposed from abroad. On a somewhat converse point, using the recommendations made by human rights monitors can also reinforce advocates' messages by lending them international legitimacy.

Both the American Bar Association and the International Association of Official Human Rights Agencies (the association of state and local human rights commissions) have passed resolutions endorsing a domestic implementation of the human right to housing, which local groups are using as tools in their advocacy. In reaching out to religiously motivated communities, it may be helpful to reference the numerous endorsements of the U.S. Conference of Catholic Bishops in favor of the human right to housing and to point out that Pope Francis called for the human right to housing to be implemented during his 2015 visit to the U.S. All of these can lead us to a future where housing is enjoyed as a right by all Americans.

FOR MORE INFORMATION

National Homelessness Law Center (formerly the National Law Center on Homelessness & Poverty), 202-638-2535, www.nlchp.org.