

ADVOCATING FOR THE HUMAN RIGHT TO HOUSING: NOTES FROM THE UNITED STATES

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On March 4, 2005, a panel of witnesses appeared before the Inter-American Commission on Human Rights to present testimony on the “situation of the right to adequate housing in the Americas.”¹ The hearing, which was “thematic” rather than adversarial, focused on three countries: Brazil, Canada, and the United States.² For the U.S. groups involved in the hearing, it was both the culmination of a long process and a key step forward in an emerging new strategy: the use of human rights law and documents to advance advocacy in the United States.³ As an event focused on housing rights, the hearing marked a milestone in the human rights effort.

In human rights work, advocating for economic and social rights is especially challenging. In the United States, economic and social rights are also the areas in which human rights approaches may seem most compelling, and most needed. Commentators often describe the U.S. legal framework as consisting of negative rights that protect individuals from government interference, rather than positive rights that require government action for the benefit of individuals.⁴ International human rights law, however, considers all human rights to be interdependent, and delineates a framework that encompasses not only civil and political rights but also economic and social rights.⁵ Indeed,

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1. See Letter from Santiago A. Canton, Executive Secretary, Inter-American Comm’n on Human Rights, to the Poor People’s Econ. Human Rights Campaign (Jan. 31, 2005), <http://www.kwru.org/updates/2005/hearingletterjan31.htm>; Letter from Poor People’s Econ. Human Rights Campaign to Santiago A. Canton, Executive Secretary, Inter-American Comm’n on Human Rights, (Jan. 12, 2004) (on file with author).

2. See Letter from Poor People’s Econ. Human Rights Campaign, *supra* note 1.

3. See generally FORD FOUND., CLOSE TO HOME: CASE STUDIES OF HUMAN RIGHTS WORK IN THE UNITED STATES (2004) (illustrating that a small but growing number of U.S. advocates have begun developing and using both human rights law and strategies to address domestic issues). See also Maria Foscarinis, Brad Paul, Bruce Porter & Andrew Scherer, *The Human Right to Housing: Making the Case in U.S. Advocacy*, 38 CLEARINGHOUSE REV. 97 (2004) [hereinafter *Making the Case*] (showing that international and domestic advocates working on homelessness and housing have focused on the right to housing).

4. See, e.g., Herman Schwartz, *The Wisdom and Enforceability of Welfare Rights as Constitutional Rights*, 8 HUM. RTS. BRIEF 2 (2001); Daniel J. Rearick, *Reaching Out to the Most Insular Minorities: A Proposal for Improving Latino Access to the American Legal System*, 39 HARV. C.R.-C.L. L. REV. 543, 559–60 (2004).

5. E.g., World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and*

human rights law directly addresses many of the issues at the heart of U.S. advocacy on homelessness and poverty. For example, numerous human rights instruments recognize the human right to housing, define its components, and describe the obligations it imposes; these obligations include, increasingly, measures to address the problem of homelessness.⁶ Recent years have seen both important new developments in this body of law internationally, and increased attention to it by U.N. committees and other international bodies.⁷ Advocates in other countries, including countries with legal and economic structures similar to those of the United States, such as Canada, are incorporating human rights strategies into their domestic advocacy on homelessness and housing.⁸

In the United States, a small but growing group of advocates is beginning to explore the use of human rights strategies in domestic advocacy on a range of issues encompassing civil and political, as well as economic and social, rights.⁹

Programme of Action, ¶ 5, U.N. Doc. A/CONF.157/24 (Oct. 13, 1993) (“All human rights are universal, indivisible and interdependent and interrelated.”); International Covenant on Civil and Political Rights pmbl., *opened for signature* Dec. 16, 1966, S. EXEC. DOC. E, 95-2 (1978), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights pmbl., *opened for signature* Dec. 16, 1966, S. EXEC. DOC. D, 95-2 (1978), 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

6. See, e.g., Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, art. 25, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR]; ICESCR, *supra* note 5, art. 11; Comm. on Econ., Soc. and Cultural Rights, *Report on the Sixteenth and Seventeenth Sessions, General Comment No. 7: The Right to Adequate Housing (Article 11, Paragraph 1, of the Covenant): Forced Evictions*, U.N. Doc. E/1998/22, Annex IV (1997), *reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 (2003) [hereinafter *General Comment 7*]; Comm. on Econ., Soc. and Cultural Rights, *Report on the Sixth Session, General Comment No. 4: The Right to Adequate Housing (Article 11, Paragraph 1, of the Covenant)*, U.N. Doc. E/1992/23, Annex III (1991), *reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 (2003) [hereinafter *General Comment 4*]; U.N. Conference on Human Settlements, Istanbul, Turk., June 3–14, 1996, *Report of the U.N. Conference on Human Settlements (Habitat II)*, ch. 1, resolution 1, Annex II, ¶¶ 38, 40(l), 61(b), 61(c)(iv), 71, 97(a), U.N. Doc. A/CONF.165/14 (1996) [hereinafter *Habitat II*].

7. See Office of the High Comm’r for Human Rights, U.N. Housing Rights Programme, *Housing Rights Legislation: Review of International and National Legal Instruments, Report No. 1*, 1–11, U.N. Doc. HS/638/01 E (2002) (describing covenants, declarations, committee general comments, and the creation in 2002 of the housing rights program, a joint program of the U.N. Human Settlements Program and the Office of the High Commissioner on Human Rights). See also *Making the Case*, *supra* note 3, at 100–01 (describing various international governmental bodies’ and advocacy groups’ work to implement a human rights approach to housing concerns).

8. See, e.g., *Making the Case*, *supra* note 3, at 100 (describing efforts in Canada and actions by the South African government to recognize human rights and housing); Bruce Porter, *Homelessness, Human Rights, Litigation and Law Reform: A View from Canada*, 10 AUSTL. J. OF HUM. RTS 133 (2004) (discussing attempts by Canadian advocacy groups to amend human rights legislation to include rights to housing); Diane Otto & Philip Lynch, *Housing, Homelessness and Human Rights*, 10 AUSTL. J. OF HUM. RTS 1 (2004) (discussing the experience of Australian advocates in employing a human rights approach to the right to housing).

9. See *Making the Case*, *supra* note 3, at 97–98 (discussing recent U.S. initiatives to implement human rights strategies); Maria Foscarinis, *Homelessness, Litigation and Law Reform Strategies: A United States Perspective*, 10 AUSTL. J. OF HUM. RTS 105, 122–24 (2004) (describing

A small group of funders is encouraging this effort,¹⁰ providing crucial support as well as legitimacy to this work. In the past few years, numerous initiatives have emerged at the national and local level that incorporate human rights strategies in advocacy on homelessness and poverty, including local organizing and legislative efforts, forums, articles, and reports. Those involved—including grassroots groups, community organizers, and lawyers—are developing strategies that include using human rights law in domestic litigation, legislative advocacy, community mobilizing, and public education. They are also exploring advocacy before regional and international bodies.

This article focuses on the hearing before the Inter-American Commission on Human Rights (IACHR) as one example of how human rights arguments of relevance to U.S. housing and homelessness issues can be framed and developed, how advocacy before an international body can be pursued, and what difference a human rights approach can make as part of an overall advocacy strategy. These approaches are still evolving, and they will take time to develop fully. Yet a review of this emerging strategy can help to refine it. With this in mind, I begin part I with an overview of three things: the growing interest in human rights strategies in the United States, the homelessness and housing crisis in the United States, and how human rights law addresses these issues. In part II, I describe how the IACHR hearing came about and then, drawing on the testimony presented before it regarding the United States, develop an analysis of particular aspects of the homelessness and housing crisis as human rights violations and formulate recommendations to correct those violations. In part III, I conclude with a discussion of the impact of the hearing and an analysis of what its outcome teaches us about the best strategies for advancing the human rights approach to housing and homelessness in the future.

I.

THE GROWING INTEREST IN HUMAN RIGHTS IN CONTEXT

A number of international and domestic developments have converged over the past few years to increase advocates' interest in and use of the human right to housing.¹¹ At the same time, in the United States, the homelessness and housing

recently introduced legislation and an educational forum about human rights strategies); FORD FOUND., *supra* note 3, at 6–11 (discussing timeliness of a human rights approach to the housing problem in the United States).

10. See FORD FOUND., *supra* note 3, at 17–18. See, e.g., Mertz Gilmore Found., *What We Fund*, August 2005, <http://www.mertzgilmore.org/www/default2.asp?section=what> (describing its recently initiated funding program for human rights initiatives in the United States, and listing grants already awarded).

11. Increased attention by international bodies is evidenced by the Habitat I and II conferences in 1987 and 1996, respectively; by the issuance of guidance on the content of the right to housing by the U.N. Committee on Economic, Social, and Cultural Rights; and by the creation in 2002 of the U.N. Housing Rights Program. Domestically, the reports issued by NLCHP, see *infra* notes 29 and 40; the two national forums on the right to housing, see *infra* text accompanying

crisis is growing,¹² and the legal framework defining the human right to housing is becoming increasingly relevant to this crisis. This part begins with an overview of recent initiatives incorporating human rights strategies, focusing particularly on the human right to housing. I then review the growth of homelessness and the shortage of affordable housing in the United States, and summarize the framework of the human right to housing.

A. Recent Initiatives Incorporating Human Rights

In 1987 and again in 1996, the U.N. organized world conferences that included a focus on the right to housing. Habitat II, the second of these conferences, was held in Istanbul with the participation of 182 nations, including the United States.¹³ It was a watershed event for U.S. housing and homelessness advocates interested in using human rights approaches in their domestic advocacy. A small group of advocates¹⁴ participated in the event and in the preparations leading up to it.¹⁵ This involvement began with advocacy aimed at the members of the U.S. delegation, who in preparatory meetings had taken the position that there is no right to housing and sought to eliminate reference to the right from conference documents.¹⁶ The U.S. delegation's effort eventually failed, and the right was included. As a result of this active involvement by U.S. housing and homelessness advocates, the final conference documents—the

notes 28–40; proposed national legislation; and state and local activities in Chicago, Los Angeles, and Pennsylvania are among the indications of growing interest in the right to housing. See also *infra* notes 25, 26, and 32 (describing proposed and enacted federal and state legislation).

12. See, e.g., NAT'L LOW INCOME HOUSING COAL., *OUT OF REACH 2005* (2005), at *Introduction*, available at <http://www.nlihc.org/oor2005/> (illustrating that increasingly many Americans' wages are insufficient to pay for housing) [hereinafter *OUT OF REACH*]; U.S. CONFERENCE OF MAYORS, *HUNGER AND HOMELESSNESS SURVEY: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES 37–76* (2005), available at <http://www.usmayors.org/uscm/hungersurvey/2005/HH2005FINAL.pdf> (providing data regarding the number of families, children, and elderly in several U.S. cities who request food and shelter assistance).

13. See U.N. Conference on Human Settlements (Habitat I), Vancouver, Can., May 13–June 11, 1976, *Vancouver Declaration on Human Settlements and Plan of Action*, reprinted in Preparatory Comm. for the U.N. Conference on Human Settlements (Habitat II), *Draft Statement of Principles and Commitments*, Annex, U.N. Doc. A/CONF.165/PC.1/INF.8 (April 12, 1994); *Habitat II*, *supra* note 6 at 123–26. See also NLCHP, *HOMELESSNESS IN THE UNITED STATES AND THE HUMAN RIGHT TO HOUSING 12–17* (Jan. 14, 2004), <http://www.nlchp.org/content/pubs/report.pdf> (summarizing the events at Habitats I and II).

14. These groups included, among others, NLCHP, the Chicago Coalition for the Homeless, Beyond Shelter (a group based in Los Angeles), and the National Alliance to End Homelessness.

15. See NLCHP, *Habitat II and U.S. Implementation: Background and Overview* (Mar. 1998), <http://nlihc.org/mahn/habitat.htm> (providing an account of the U.S. experience at the Habitat I and II conferences).

16. See *Making the Case*, *supra* note 3, at 101–02; Philip Alston, *The U.S. and the Right to Housing—A Funny Thing Happened on the Way to the Forum*, 1 EUROPEAN HUM. RTS. L. REV. 120, 120–21 (1996); Eyal Press, *Human Rights—The Next Step*, THE NATION, Dec. 25, 2000, at 14–16, available at <http://www.thenation.com/doc/20001225/press>.

Istanbul declaration¹⁷ and the Habitat Agenda¹⁸—also included significant statements directly relevant to homelessness and to the concerns of U.S. advocates.

Following the Habitat II conference, the U.N. committee that oversees the right to housing issued important guidelines elaborating on and interpreting key aspects of the right.¹⁹ In 2002, the U.N. Commission on Human Rights and the U.N. Human Settlements Programme (UN-HABITAT) created a joint program on the right to housing.²⁰ A special rapporteur was appointed to conduct investigations, publish reports, and make recommendations.²¹

Meanwhile, in the late 1990s, U.S. advocates initiated efforts to transfer their experience at Habitat II to the U.S. context, convening meetings with other advocates, conducting research, and publishing reports.²² A central goal of these efforts was to reframe analysis of domestic poverty issues by placing them in the context of human rights.

To that end, advocates aimed to formulate a basis for using human rights law and strategy as an effective legal and policy reform tool. The National Law Center on Homelessness & Poverty (NLCHP) focused on legal research and analysis, producing reports and articles identifying strategies that included litigation, legislative and policy advocacy, community organizing, and engaging international bodies.²³ In 1998, the Kensington Welfare Rights Coalition, a nonprofit group based in Philadelphia, in coalition with others, launched the Poor People's Economic Human Rights Campaign (PPEHRC). The campaign applies human rights principles in the organizing efforts of poor and homeless people and their supporters.²⁴ On the legislative front, Representatives Charles Rangel and Jesse Jackson, Jr. introduced legislation in Congress to amend the U.S. Constitution to recognize a right to adequate housing;²⁵ Representatives Julia Carson and John Conyers included calls for recognition of housing as a human right in the Bringing America Home Act, omnibus legislation aimed at

17. *Habitat II*, *supra* note 6, ch. 1, resolution 1, Annex I, ¶ 4.

18. *Id.* ch. 1, resolution 1, Annex II, ¶¶ 38, 40(l), 61(b), 61(c)(iv), 71, 97(a).

19. *General Comment 7*, *supra* note 6.

20. U.N. Housing Rights Programme, Nairobi, Kenya, 2002, *Report No. 1: Housing Rights Legislation*, 1–11.

21. Alison G. Aggarwal, *U.N. Special Rapporteur on Adequate Housing: Strengthening Gendered Norms for the Right to Adequate Housing*, 10 *AUSTL. J. OF HUM. RTS.* 165, 171 (2004).

22. Cushing N. Dolbeare, *Meeting America's Housing Needs: A Domestic Follow-up to the U.N. Habitat II Conference, Final Project Report* (1999) (unpublished report, on file with author).

23. See Maria Foscarnis, *Homelessness and Human Rights: Toward an Integrated Strategy*, 19 *ST. LOUIS U. PUB. L. REV.* 327, 347–54 (2000) (outlining human rights analysis of homelessness in the United States).

24. See Mormons for Equality and Social Justice, Women's Economic Agenda Project & Kensington Welfare Rights Union, *History of the Poor People's Economic Human Rights Campaign* (June 2003), <http://www.economichumanrights.org/about/history.html>.

25. H.R.J. Res. 47, 108th Cong. (2003).

ending homelessness championed by the National Coalition for the Homeless.²⁶

In 2003, NLCHP collaborated with the recently established U.S. office of an international housing rights organization, the Centre on Housing Rights and Evictions (COHRE), to organize a national forum on the human right to housing. The forum was held in Washington, D.C. Some seventy lawyers and other advocates from a variety of organizations across the United States participated, in order to learn about the human right to housing and to develop strategies for using human rights law in their own advocacy. Specific ideas emerged from the discussion at this first national forum, including: educating judges, lawyers, and the public on human rights law and its implications for homelessness and housing; training tenants and other directly affected persons; identifying cases for litigation where human rights law can serve as an interpretive guide; and advocating for enactment of new local laws.²⁷

A number of activities followed. In Los Angeles, Beyond Shelter organized a “mini-forum” in September 2003²⁸ and began to develop strategies for integrating human rights in its local advocacy. A January 2004 report by NLCHP detailed the homelessness and housing crisis in the United States and its human rights implications.²⁹ The Chicago Coalition for the Homeless and the Chicago-based Coalition to Protect Public Housing advocated successfully for a Cook County resolution recognizing the human right to housing,³⁰ and began to incorporate human rights analysis in their community organizing campaign to stop the displacement of the city’s public housing residents.³¹ PPEHRC continued its organizing efforts, collaborating with the Pennsylvania chapter of the

26. Bringing America Home Act, H.R. 2897, 108th Cong. §§ 101–102 (2003).

27. See *Making the Case*, *supra* note 3, at 98.

28. Cosponsored by NLCHP, the event attracted local activists as well as the Mayor’s point person on homelessness. Publicity flier, NLCHP, Beyond Shelter: The Right to Housing (2003) (on file with author).

29. NLCHP, HOMELESSNESS IN THE UNITED STATES, *supra* note 13.

30. Res. to Support H.B. 4100 (Cook County, Ill. 2004), available at <http://www.cookcyclerk.com/html/032304resdoc.htm>. Similar legislative action was effective in a case brought by the NAACP and others in California. Concerning the related issue of equal access to education, a California court in April 2004 relied on the definition of racial discrimination contained in the Covenant for the Elimination of All Forms of Racial Discrimination, which had been incorporated into state law by the California legislature the previous year. *Avila v. Berkeley Unified Sch. Dist.*, No. RG03-110397, 2004 WL 793295 (Cal. Super. Ct. Apr. 6, 2004). However, a separate, subsequent suit successfully challenged the validity of the state law that incorporated the definition under the California Constitution, arguing that the state law was an improper effort to override the impact of controversial Proposition 209, the initiative adopted by referendum that banned all forms of racial distinction, including preferences intended to overcome the impact of past discrimination. *C & C Const., Inc. v. Sacramento Mun. Util. Dist.*, 18 Cal. Rptr. 3d 715, 726 (Cal. Ct. App. 2004). See also Jim Sanders, *Judge: Law Violates Prop. 209*, SACRAMENTO BEE, May 13, 2005, at A1.

31. See also Rene Heybach & Patricia Nix-Hodes, *Is Housing a Human Right?*, HOMEWARD BOUND, Fall 2003 (policy paper from Chicago Coalition for the Homeless, published in that group’s newsletter).

National Association of Social Workers on a successful organizing campaign, including passage of state legislation to investigate the integration of human rights standards in the state's laws and policies.³² The American Civil Liberties Union organized a conference on using human rights strategies in a range of domestic advocacy endeavors.³³ The July–August 2004 volume of the *Clearinghouse Review*, a leading poverty law and policy journal, featured on its cover an article on the human right to housing, coauthored by myself and three other forum participants.³⁴ A *Congressional Quarterly Researcher* article on homelessness in the United States included a debate on whether housing should be recognized as a human right.³⁵

Then, in June 2004, the U.S. Human Rights Network officially kicked off its operations,³⁶ and the small working group that had formed as a result of the 2003 forum entitled “Legal Strategies to End Homelessness: A Right to Housing” reconstituted itself as the housing caucus within the Network.³⁷ Also in June 2004, the Ford Foundation organized a day-long conference called “Bringing Human Rights Home,” highlighting the domestic use of human rights strategies and encouraging funders to support such efforts.³⁸ Later that summer, the Mertz Gilmore Foundation, a major human rights funder, announced a new program to fund domestic human rights work.³⁹ In May 2005 in Washington, D.C., NLCHP and COHRE—with the support of caucus members including the two Chicago Coalitions, Beyond Shelter, and the Poverty Race Research and Action Center—held another, larger national forum on the right to housing. More than 135 grassroots activists, including low-income people, advocates, and lawyers, participated in this forum. Rep. Barney Frank and U.N. Special Rapporteur on the Right to Adequate Housing Miloon Kothari delivered keynote speeches.⁴⁰

The support provided by a small group of funders now beginning to focus on this work not only helps make the work possible but also lends it legitimacy. Legitimacy is crucial, particularly given the prevailing view in the United States

32. H.R. Res. 144 (Pa. 2003); H.R. Res. 473 (Pa. 2002). See also Mary Bricker-Jenkins, *Organizing to End Poverty: A Story of Strategy and Tactics* (unpublished article, on file with author).

33. American Civil Liberties Union, *Human Rights at Home: International Law in U.S. Courts*, Oct. 9–11, 2005, <http://www.aclu.org/hrc>.

34. *Making the Case*, *supra* note 3.

35. Michael Tanner, *Is Affordable Housing a Human Right?*, 14 CONG. Q. RESEARCHER 541, 557 (June 18, 2004).

36. U.S. Human Rights Network, *About U.S. Human Rights Network*, <http://www.ushrnetwork.org/page1.cfm> (last visited Mar. 27, 2006).

37. U.S. Human Rights Network, *Housing Caucus*, <http://ushrnetwork.org/page175.cfm> (last visited Mar. 27, 2006). See also *Application to Form Housing Caucus (July 2004)* (on file with author).

38. FORD FOUND., *supra* note 3.

39. See Mertz Gilmore Found., *supra* note 10.

40. See NLCHP & COHRE, *Right to Housing Forum (2002)*, <http://www.nlchp.org/FA%5FHumanRights/forum.cfm>.

that rights are “negative” and the concomitant fear that recognition of rights will bestow unwarranted resources on individuals at unreasonable cost to society. This fear finds sustenance in simplified, sometimes ideological portrayals of human rights concepts. For example, Michael Tanner of the Cato Institute claims that recognition of the right to housing would obligate the government to provide a free home to all, resulting in government conscription of property and even labor, until everyone across the globe had a home.⁴¹ Such fears are further bolstered by sentiments that disparage international institutions, law, and practice, particularly in the wake of the September 11, 2001 terrorist attacks.⁴² Nonetheless, recent Supreme Court decisions as well as statements by individual Justices suggest a growing acceptance of a role for international law and practice as part of U.S. law in human rights contexts.⁴³

The increasing urgency of the housing and homelessness crisis in the United States, exacerbated by recent cuts and proposed future cuts to programs meant to support low-income housing, is driving further interest in adding the voice and strategies of human rights to domestic advocacy on these issues. The activities of the past few years suggest a growing momentum for advocacy incorporating human rights approaches. As Special Rapporteur Miloon Kothari wrote in a preface to NLCHP’s report on Homelessness in the United States and the Human Right to Housing: “The homelessness crisis in the United States, amply demonstrated in this report, is marked by a range of violations of internationally recognized human rights, including the human right to adequate housing.”⁴⁴

B. Homelessness and the Housing Crisis in the United States

At least 840,000 people are homeless on any given day within the United States.⁴⁵ As large numbers of people transition in and out of homelessness,

41. *Is Affordable Housing a Human Right?*, *supra* note 35.

42. *See, e.g.*, Dean E. Murphy, *U.N. Party Planners Wonder, Will Bush and Friends Attend?*, N.Y. TIMES, May 29, 2005, at A18 (reporting that no one in President Bush’s administration planned to attend a celebration of the U.N.’s sixtieth anniversary); Neal Becton, *U.S. Loses Seat on U.N. Rights Panel*, WASH. POST, May 9, 2001, at A29 (reporting on how the United States was voted off the U.N. Human Rights Commission).

43. *See Roper v. Simmons*, 543 U.S. 551, 578 (2005) (acknowledging that the “opinion” of the world should be respected). *See also* Justice Stephen Breyer, *The Supreme Court and the New International Law*, Address Before the American Society of International Law 97th Annual Meeting (Apr. 4, 2003), http://www.supremecourtus.gov/publicinfo/speeches/sp_04-04-03.html; Justice Ruth Bader Ginsburg, *Looking Beyond Our Borders: The Value of a Comparative Perspective in Constitutional Adjudication*, Remarks for the Am. Constitution Soc’y (Aug. 2, 2003) (discussing historical and current acceptance of the role of international law in judicial interpretation); Justice Sandra Day O’Connor, *Keynote Address at the 96th Annual Meeting of the Am. Soc’y of Int’l Law*, in 96 AM. SOC’Y OF INT’L L. PROC. 348 (Mar. 16, 2002), available at <http://www.aclu.org/hrc/JudgesPlenary.pdf>.

44. NLCHP, *HOMELESSNESS IN THE UNITED STATES*, *supra* note 13, at 1.

45. MARTHA BURT, LAUDAN Y. ARON, EDGAR LEE & JESSE VALENTE, *HELPING AMERICA’S HOMELESS: EMERGENCY SHELTER OR AFFORDABLE HOUSING?* 50–51 (2001).

some 3.5 million people are affected within a given year, 1.35 million of whom are children.⁴⁶ The annual estimates represent 1.3% of the total U.S. population, and 9.6% of the poor population.⁴⁷ Moreover, it is estimated that twelve million people—6.5% of the population—will experience homelessness at some point in their lives.⁴⁸ Families with children make up 33% of the homeless population.⁴⁹ A federal government survey found that 44% of homeless people report that they work full- or part-time, yet cannot afford housing.⁵⁰

Many homeless people are unable to obtain access to emergency shelter, and are often turned away by overburdened, inadequately funded providers. According to a 2005 survey of twenty-four large U.S. cities by the U.S. Conference of Mayors, 32% of requests by homeless families for emergency shelter were turned down in those cities that year.⁵¹ In 57% of the cities surveyed, families may be required to separate in order to obtain shelter.⁵² In addition, a 2002 review of homelessness in fifty cities found that in virtually every city, the city's official estimated number of homeless people greatly exceeded the number of emergency shelter and transitional housing spaces.⁵³ For those homeless persons unable to obtain emergency shelter, the system's failure can be deadly, particularly during the winter. It can also lead to criminal punishment, with homeless people in urban areas increasingly being targeted by municipal police forces for criminal offenses such as sleeping in public, illegal lodging, or begging.⁵⁴

While millions are affected by homelessness, even more are at risk due to the lack of affordable housing. According to a recent report of the Joint Center for Housing Studies at Harvard University, in 2004 nearly a third of U.S. households paid over 30% of their incomes for housing and 12.5% of them spent 50% or more of their incomes on housing.⁵⁵ These burdens fall most severely on low-income people, with 28 million of the lowest income households

46. *Id.* at 48 tbl.2.9 (listing authors' annual projected figures for homeless client households and homeless services clients plus children, using Feb. 1996 data adjusted for multiple episodes of homelessness).

47. *Id.* at 49–50.

48. Bruce Link, *Lifetime and Five-Year Prevalence of Homelessness in the United States: New Evidence on an Old Debate*, 65 AM. JUR. OF ORTHOPSYCHIATRY 347, 353 (1995).

49. BURT, ARON, LEE & VALENTE, *supra* note 45, at 36.

50. INTERAGENCY COUNCIL ON HOMELESSNESS, HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE, tbl.2.6 (1999), available at http://www.huduser.org/publications/homeless/homelessness/ch_2e.html. The agency was reporting on data collected between October 1995 and November 1996. *Id.* at <http://www.huduser.org/publications/homeless/homelessness/preface.html>.

51. U.S. CONFERENCE OF MAYORS, *supra* note 12, at 59.

52. *Id.* at 54–55.

53. NLCHP & NAT'L COAL. FOR THE HOMELESS, ILLEGAL TO BE HOMELESS: THE CRIMINALIZATION OF HOMELESSNESS IN THE UNITED STATES 256–61 (2002), available at <http://www.nlchp.org/Pubs/index.cfm?FA=4&TAB=2> [hereinafter ILLEGAL TO BE HOMELESS].

54. *Id.* at 36–39.

55. JOINT CTR. FOR HOUS. STUDIES AT HARVARD UNIV., THE STATE OF THE NATION'S HOUSING 3 (2005) [hereinafter JCHSHU].

spending 30% or more of their incomes on housing.⁵⁶ Wage levels, particularly for those working at minimum wage, are woefully insufficient to meet the rising costs of housing.⁵⁷

In fact, in no part of the country can a worker paid the minimum wage in her community afford a one-bedroom apartment in that community, based on the U.S. Department of Housing and Urban Development's (HUD's) Fair Market Rent for that community.⁵⁸ Moreover, in only forty-two communities in the United States can a minimum-wage worker afford a studio or efficiency (zero-bedroom) apartment.⁵⁹ To be affordable, housing costs should consume no more than 30% of a household's income, according to HUD, the federal agency responsible for housing.⁶⁰ Applying this standard, in order to afford the median Fair Market Rent for a two-bedroom apartment, a worker would have to earn \$15.78 per hour.⁶¹ But the current federal minimum wage is \$5.15 per hour,⁶² and the mean hourly wage in the United States is about \$12.22.⁶³

Disabled and elderly poor people whose sole source of income is the federal Supplemental Security Income (SSI) program are virtually priced out of the private housing market. According to recent national estimates, in no part of the country can a person dependent solely on SSI benefits afford even an efficiency apartment.⁶⁴

The impact of the housing crisis—and the resulting growth in homelessness—is severe. For those who are especially vulnerable, such as children, it can be devastating, since the absence of stable housing magnifies the impact of poverty alone. Homeless children's health and nutrition is significantly worse than that of housed poor children, and they suffer from slowed development, emotional problems, and education underachievement and interruption at significantly higher rates than other children. They are more than twice as likely as other children to go hungry.⁶⁵ According to the U.S. Department of Education,

56. *Id.*

57. See JCHSHU, *supra* note 55, at 4 fig.4.

58. OUT OF REACH, *supra* note 12, at *Introduction* *4.

59. *Id.*

60. This figure is used in administering a number of low-income housing programs. See, e.g., 42 U.S.C. § 1437a(a)(1)(A) (2000) (setting rent for federal assisted housing). See also OUT OF REACH, *supra* note 12, at *Where the Numbers Come From* n.2, available at <http://www.nlihc.org/oor2005/wherefrom.htm> (“‘Affordable’ rents represent the generally accepted standard of spending not more than 30% of income on housing costs.”).

61. OUT OF REACH, *supra* note 12, at *Introduction* *3.

62. U.S. DEP'T OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION, GENERAL INFORMATION ON THE FAIR LABOR STANDARDS ACT (FLSA), available at <http://www.dol.gov/esa/regs/compliance/whd/mwposter.htm> (last visited Mar. 28, 2006).

63. OUT OF REACH, *supra* note 12, at *Introduction* *3.

64. *Id.* at *Introduction* *5.

65. NAT'L CTR. ON FAMILY HOMELESSNESS, HOMELESS CHILDREN: AMERICA'S NEW OUTCASTS 2, 4 (2004), http://www.familyhomelessness.org/pdf/fact_outcasts.pdf. Yvonne Rafferty & Marybeth Shinn, *The Impact of Homelessness on Children*, 46 AM. PSYCHOLOGIST 1170, 1170

some 13% of homeless children are not enrolled in school,⁶⁶ and numerous studies document the negative impact of homelessness on their development, academic achievement, and mental health.⁶⁷ As mentioned above, many shelter providers require families to separate as a condition of providing shelter;⁶⁸ in some cases, homelessness can result in the removal of children from their parents by child welfare agencies.⁶⁹

The lack of housing often compounds other social ills and personal crises. Domestic violence often causes women and children to become homeless; among other things, the absence of affordable housing may force women fleeing abuse into shelters or onto the streets.⁷⁰ New legislation excluding many of those leaving the burgeoning ranks of the U.S. prison and jail population from federal housing assistance programs, coupled with the general lack of affordable housing, is creating a rapidly expanding group of persons with nowhere to go upon release.⁷¹ They are joining an already existing population of persons discharged from hospitals and mental institutions onto the streets or into shelters.⁷² Without housing, it is virtually impossible for these fragile populations to receive the health care, substance abuse treatment, and mental health support they need.⁷³

Heightened security measures in the wake of the September 11, 2001 terrorist attacks have further exacerbated the hardship faced by those lacking stable housing. Many states have tightened their requirements for obtaining photo identification, limiting the types of documentation they deem acceptable to prove identity.⁷⁴ In most cases, the types of documents that remain acceptable are

(1991), available at <http://webpage.pace.edu/yrafferty/yvonne/Rafferty1991AmPsychol.pdf>.

66. See U.S. DEP'T OF EDUC., EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM: TITLE VII, SUBTITLE B OF THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT, REPORT TO CONGRESS 9 (2000).

67. See Rafferty & Shinn, *supra* note 65 (reviewing the literature).

68. U.S. CONFERENCE OF MAYORS, *supra* note 12, at 54–55; NLCHP, NO WAY OUT: A REPORT ANALYZING OPTIONS AVAILABLE TO HOMELESS AND POOR FAMILIES IN NINETEEN AMERICAN CITIES 4 (1993) [hereinafter NO WAY OUT].

69. See, e.g., NO WAY OUT, *supra* note 68, at 3.

70. Emily J. Martin & Naomi S. Stern, *Domestic Violence and Public and Subsidized Housing: Addressing the Needs of Battered Tenants Through Local Housing Policy*, 41 CLEARINGHOUSE REV. J. POVERTY L. & POL'Y 551, 552 (2005).

71. See, e.g., Chicago Coalition for the Homeless, Homelessness, Causes and Facts: Prison Release and Homelessness (2005), <http://www.chicagohomeless.org/factsfigures/causesandfacts.htm#prison> (discussing the situation in Illinois).

72. DEP'T OF HEALTH & HUMAN SERVS., OUTCASTS ON MAIN STREET: REPORT OF THE FEDERAL TASK FORCE ON HOMELESSNESS & SEVERE MENTAL ILLNESS 9–10, 15–18, 22 (1992); Martin & Stern, *supra* note 70, at 552; Sidney D. Watson, *Discharges to the Streets: Hospitals and Homelessness*, in REPRESENTING THE POOR AND HOMELESS: INNOVATIONS IN ADVOCACY 124, 126–131 (2001).

73. See, e.g., Nat'l Health Care for the Homeless Council, The Basics of Homelessness, http://www.nhchc.org/Publications/basics_of_homelessness.html (last visited Mar. 28, 2006).

74. NLCHP, PHOTO IDENTIFICATION BARRIERS FACED BY HOMELESS PERSONS: THE IMPACT OF

tied to housing. For example, utility bills, leases, and mortgage stubs are typically accepted as a means of proving identity.⁷⁵ Anyone without stable housing may be simply unable to provide these documents and, therefore, unable to obtain proof of identity. Without proof of identity, homeless persons may be unable to obtain public benefits or even to enter the public buildings where application for such benefits is made.⁷⁶

Thus, without stable housing, low-income people are likely to be impeded in their exercise of a host of other rights, such as access to health care, education, and public benefits,⁷⁷ illustrating a basic principle of international human rights law: the “interdependence” of rights. As Special Rapporteur Miloon Kothari wrote in a preface to a report by NLCHP on the right to housing in the United States:

The right to adequate housing has to be seen as a congruent right along with the right to security of the person, the right to security of the home, the right to participation, the right to privacy, the right to freedom of movement, the right to information, the right to be free from inhumane and degrading treatment and the right not to be arbitrarily detained.⁷⁸

C. *The Human Right to Housing: Framework and Instruments*

Housing is recognized as a human right in numerous international instruments, and a growing body of interpretative guidance, particularly in recent years, has elaborated on its content and the obligations it creates. Much of this development has occurred within U.N. instruments and the U.N. committees and other bodies that interpret and monitor their implementation. The Universal Declaration of Human Rights, part of a collection of documents called “the international bill of rights,”⁷⁹ is the U.N.’s basic human rights document. It was adopted by the U.N. in 1948, with the advocacy of Eleanor Roosevelt, the American member of the U.N. Commission on Human Rights.⁸⁰ The Declaration includes a right to housing as part of its broader assertion that “[e]veryone

SEPTEMBER 11 7 (2004), available at <http://www.nlchp.org/content/pubs/ID%20Barrier%20Report.pdf>.

75. *Id.* at 9.

76. *Id.* at 5, 13–14.

77. *See, e.g., id.*

78. NLCHP, HOMELESSNESS IN THE UNITED STATES, *supra* note 13, at 1.

79. *See* Office of the High Comm’r for Human Rights, *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights* (June 1996), available at <http://www.unhchr.ch/html/menu6/2/fs2.htm>.

80. *See* Franklin and Eleanor Roosevelt Institute web site for the Universal Declaration of Human Rights, Eleanor Roosevelt Biography, <http://www.udhr.org/history/Biographies/bioer.htm> (last visited Apr. 21, 2006) (giving an overview of Eleanor Roosevelt’s role and involvement in developing the Universal Declaration of Human Rights). *But see* CAROL ANDERSON, EYES OFF THE PRIZE 4–6, 133 (2003) (arguing that Eleanor Roosevelt also undermined the Declaration by ensuring that it would not be enforceable by U.N. organs).

has the right to a standard of living adequate for the health and well-being of himself and of 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.”⁸¹ Two subsequently adopted treaties elaborate on the rights outlined in the Declaration: the International Covenant on Economic, Cultural and Social Rights (ICESCR)⁸² and the International Covenant on Civil and Political Rights (ICCPR),⁸³ both of which entered into force in 1976. Of the two, the ICESCR contains the most significant recognition of a right to housing.⁸⁴

The Committee on Economic, Social and Cultural Rights (CESCR), the U.N. body responsible for monitoring and interpreting the ICESCR, has issued several “general comments” that set forth the elements of the right and the resulting state obligations. The ICCPR is also significant to the development and understanding of the right. Several other treaties address specific aspects of the right to housing, including: the Covenant on the Elimination of All Forms of Racial Discrimination (CERD),⁸⁵ which includes a prohibition on discrimination in housing; the Covenant on the Rights of the Child (CRC),⁸⁶ which protects children’s right to housing; and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁸⁷

81. UDHR, *supra* note 6, art. 25; *Making the Case*, *supra* note 3, at 99.

82. ICESCR, *supra* note 5.

83. ICCPR, *supra* note 5.

84. ICESCR, *supra* note 5, art. 11, ¶ 1 (stating that states parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”).

85. International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(iii), *opened for signature* Mar. 7, 1966, S. EXEC. DOC. C, 95-2 (1978), 660 U.N.T.S. 195 [hereinafter CERD] (“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) . . . in particular. . . (iii) the right to housing.”).

86. Convention on the Rights of the Child art. 16(1), *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC] (“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”); *id.* art. 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.”).

87. Convention on the Elimination of All Forms of Discrimination Against Women art. 14(2)(h), *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW] (“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 such women the right . . . (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”). Of these treaties, the ICCPR and the CERD have been

Elaboration of the right to housing, particularly by the CESCR,⁸⁸ is crucial to an understanding of how it can be integrated into U.S. advocacy. A common argument against the right is based on the false assumption that it simply and unequivocally requires government to provide a free house to everyone.⁸⁹ In fact, the right is more complex and the obligation more nuanced. The Committee has specifically stated that the right should not be interpreted narrowly: it is more than shelter or a “roof over one’s head”; rather, it encompasses “the right to live somewhere in security, peace and dignity.”⁹⁰ The Committee thus incorporates into the right the concept of adequacy, and defines the right to adequate housing to include seven components: legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.⁹¹

The treaty obligates each state party “to take steps” “to the maximum of its available resources” to “progressively” achieve “the full realization” of the right, by “all appropriate means, including particularly the adoption of legislative measures.”⁹² As elaborated by the CESCR, the ICESCR includes both obligations of “conduct” and of “result.”⁹³ Because implementation of some of the ICESCR’s provisions requires the expenditure of limited resources, the treaty contemplates “progressive realization” of the right over time.⁹⁴

However, two obligations are effective immediately: the obligation of non-discrimination⁹⁵ and the obligation to “take steps” toward full realization.⁹⁶

both signed and ratified by the United States; the ICESCR has been signed by the United States but has not been ratified. The treaties’ status in the U.S. legal system is discussed *infra* part III.C. All of the treaties, whether signed or not, are relevant to U.S. advocacy. For a fuller discussion, see, e.g., *Making the Case*, *supra* note 3.

88. E.g., *General Comment 7*, *supra* note 6; *General Comment 4*, *supra* note 6; Comm. on Econ., Soc. and Cultural Rights, *Report on the Fifth Session, General Comment No. 3: The Nature of States Parties’ Obligations (art. 2, para. 1 of the Covenant)*, ¶ 10, U.N. Doc. E/1991/23 Annex III (1990), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 14 (2003) [hereinafter *General Comment 3*]. See also Comm. on Econ., Soc. and Cultural Rights, *Report on the Eighteenth and Nineteenth Sessions, General Comment No. 9: The Domestic Application of the Covenant*, 117, U.N. Doc. E/1999/22 Annex IV (1998), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 54 (2003) [hereinafter *General Comment 9*] (discussing at ¶ 1 the “central obligation” of state parties to give effect to the rights recognized within the ICESCR).

89. See, e.g., Ctr. on Hous. Rights & Evictions, *Common Myths About Housing Rights*, <http://www.cohre.org/hrbody6.htm> (2005); Tanner, *supra* note 41, at 557.

90. *General Comment 4*, *supra* note 6, ¶ 7.

91. *Id.* ¶ 8.

92. ICESCR, *supra* note 5, art. 11, ¶ 1. See also *General Comment 3*, *supra* note 88, ¶¶ 8–10; *General Comment 9*, *supra* note 88.

93. *General Comment 3*, *supra* note 88, ¶ 1.

94. ICESCR, *supra* note 5, art. 11, ¶ 1. See also *General Comment 3*, *supra* note 88, at ¶¶ 1, 2, 9.

95. *General Comment 3*, *supra* note 88, ¶ 1.

96. ICESCR, *supra* note 5, art. 11, ¶ 1; *General Comment 3*, *supra* note 88, ¶ 2.

Moreover, the requirement of “progressive realization” is a serious one to which nations may be held accountable; some courts have held it to be a judicially enforceable standard.⁹⁷ Deliberately retrogressive measures—measures that diminish existing housing rights—will constitute violations of the right to housing under international human rights law unless justified in terms of the “full use of the maximum available resources.”⁹⁸

Elaborating on the nature of the obligation “to take steps . . . by all appropriate means,” the CESCR has stated that, in addition to legislative measures, judicial remedies may also constitute “appropriate means” under the treaty.⁹⁹ In the context of the right to housing, the Committee has noted that “appropriate means” will “almost invariably include adoption of a national housing strategy” which “should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.”¹⁰⁰ In addition, states must give “due priority” to disadvantaged groups, so that legislation and policies do not “benefit already advantaged groups at the expense of others.”¹⁰¹ Also essential and immediately effective are the obligations that states abstain from negative actions and commit to facilitating “self-help” by affected groups,¹⁰² and that they undertake effective monitoring, including ascertaining “the full extent of homelessness and inadequate housing within [their] jurisdiction[s].”¹⁰³

Within these general parameters, however, it is up to the individual states to determine how to implement the right: “Measures designed to satisfy a State party’s obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector measures considered appropriate.”¹⁰⁴ The Committee specifically states that the obligation to realize the rights protected by the ICESCR “neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question, provided only that it is democratic and that all human rights are thereby respected.”¹⁰⁵ But whatever particular strategies a nation adopts, “the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to

97. See *Making the Case*, *supra* note 3, at 100–01. See, e.g., *Gov’t of the Republic of South Africa v. Grootboom*, 2001 (1) SA 46 (CC) at 63–66 (S. Afr.).

98. *General Comment 3*, *supra* note 88, ¶ 9.

99. *Id.* at ¶ 5; *General Comment 9*, *supra* note 88, ¶¶ 9, 10.

100. *General Comment 4*, *supra* note 6, ¶ 12. The Committee also notes that it “views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies.” *Id.* ¶ 17. In particular, it notes also that “[I]n some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.” *Id.*

101. *Id.* ¶ 11.

102. *Id.* ¶ 10.

103. *Id.* ¶ 13.

104. *Id.* ¶ 14.

105. See *General Comment 3*, *supra* note 88, ¶ 8.

realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.”¹⁰⁶

In addition to the U.N. instruments and committee guidance, the right to housing is also addressed by regional instruments, including those of the Organization of American States (OAS). The OAS Charter defines as a goal the elimination of “extreme poverty”¹⁰⁷ and includes within this goal the agreement of states parties to devote “utmost efforts” to accomplish the goal of “[a]dequate housing for all sectors of the population.”¹⁰⁸ The American Declaration of the Rights and Duties of Man, adopted on May 2, 1948 and monitored by the Inter-American Commission on Human Rights (IACHR), expressly protects the right to housing¹⁰⁹ and includes language similar to that in the Universal Declaration of Human Rights.¹¹⁰ This similarity of language is significant, because it suggests that the CESCR’s interpretations of the right are directly relevant to the housing provisions of the American Declaration, which have not yet been interpreted by the Inter-American Commission. In fact, the first time the IACHR ever addressed the American Declaration’s housing provisions was in a March 4, 2005 hearing about the legal standards for the right to housing.¹¹¹

II.

THE FIRST HEARING ON THE RIGHT TO HOUSING BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The March 2005 hearing grew out of a 1999 meeting between members of the Kensington Welfare Rights Union (KWURU) and the Center for

106. *General Comment 4*, *supra* note 6, ¶ 14.

107. Charter of the Organization of American States art. 2(g), Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 (entered into force Dec. 13, 1951), as amended by the “Protocol of Buenos Aires” (signed Feb. 27, 1967), the “Protocol of Cartagena de Indias” (approved Dec. 5, 1985), the “Protocol of Washington” (approved Dec. 14, 1992), and the “Protocol of Managua” (adopted June 10, 1993), <http://www.oas.org/juridico/English/charter.html>.

108. *Id.* art. 34(k). The American Convention on Human Rights requires states parties to undertake measures to achieve the full and progressive realization of the “rights implicit” in the economic and social standards set forth in the Charter. American Convention on Human Rights art. 26, Nov. 22, 1969, SEN. EXEC. DOC. F, 95-2 (1978), O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter ACHR].

109. Org. of Am. States, American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, ch. 1, art. XI, (1948), *reprinted in* BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OAS/Ser.L/V/II.4 Rev.9, at 21 (2003), *also reprinted in* 43 AM. J. INT’L L. (Supp.) 133 (1949). [hereinafter ADRDM] (“Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”).

110. *See* UDHR, *supra* note 6, art. 25 (“Everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services . . .”).

111. Oral communication with Mario López Garelli, Professional, Inter-American Commission on Human Rights (Feb. 7, 2005).

Constitutional Rights (CCR),¹¹² and a petition originally filed in October 1999 with the IACHR by the Poor People's Economic Human Rights Campaign (PPEHRC), a coalition launched by KWRU.¹¹³ This petition focused on the impact of welfare reform legislation, first enacted in 1996, which repealed the longstanding entitlement to welfare and replaced it with a discretionary program.¹¹⁴ Procedural changes at the IACHR delayed movement on the petition; it was ultimately withdrawn.¹¹⁵ Then, in August 2004, PPEHRC and a coalition of groups (including NLCHP), requested a hearing before the IACHR on three U.S. issues: the impact of welfare reform, the lack of adequate health care for many, and the lack of affordable housing.¹¹⁶

Later that year, the group received informal communications from Commission staff suggesting that the request be revised to focus only on the issue of housing and that it be expanded beyond the United States to include the Americas more broadly. The group submitted a revised letter on January 12, 2005, requesting a hearing on the issue of adequate housing in the Americas, with a particular focus on Brazil, Canada, and the United States.¹¹⁷ On January 31, 2004, the Commission granted this request and set the hearing date for March 4, stating that it expected the hearing to focus on "the applicable legal framework for the right to adequate housing, as well as specific examples in OAS member states, including those mentioned" in the letter of request.¹¹⁸

While the initial effort was a petition that sought redress for particular individuals who had been negatively affected by government policies, the Commission granted a "thematic" hearing to focus on the issue of housing and government compliance more generally. In accordance with the Commission's request, the coalition organized its testimony to first address the applicable legal framework, leading with testimony by Tara Melish, counsel to PPEHRC and an expert on the issue. Next, the testimony analyzed compliance within this framework. On behalf of NLCHP, I presented an overview of U.S. compliance with the right to housing. Carol Steele, President of the Coalition to Protect Public

112. Poor People's Econ. Human Rights Campaign, PPEHRC Travels to Washington DC for Hearing at IACHR of the OAS, <http://www.economichumanrights.org/updates/oashearing.htm> (last visited Mar. 29, 2006).

113. *Id.*; Ctr. for Econ. and Soc. Rights, Poor People's Economic Human Rights Campaign vs. the United States, <http://cesr.org/node/view/90?PHPSESSID=40e19757d6ca8abcc3d35d9e51c5aba0> (last visited Mar. 29, 2006) (explaining how the petition was originally filed and linking to the original petition).

114. Ctr. for Econ. and Soc. Rights, *supra* note 113.

115. *Id.*

116. Letter from Poor People's Econ. Human Rights Campaign to Santiago A. Cantón, Esq., Exec. Sec'y, Inter-Am. Comm'n on Human Rights (Aug. 26, 2004) (on file with author).

117. Letter from Poor People's Econ. Human Rights Campaign to Santiago A. Cantón, Esq., Exec. Sec'y, Inter-Am. Comm'n on Human Rights (Jan. 12, 2005) (on file with author).

118. Letter from Santiago A. Cantón, Esq., Exec. Sec'y, Inter-Am. Comm'n on Human Rights to Poor People's Econ. Human Rights Campaign (Jan. 31, 2005) (on file with author).

Housing, a Chicago group, focused on a specific example in that city. Bruce Porter, a Canadian advocate, then presented testimony on Canada's compliance. No one was able to attend the hearing on behalf of Brazil; instead, the group submitted a report prepared by COHRE on housing rights in that country. The testimony closed with recommendations from the group to the Commission, presented by Tara Melish, and the hearing then proceeded to questions from the Commission.

A. The Obligation to Ensure and Respect the Right to Housing

The American Declaration of the Rights and Duties of Man and the American Convention on Human Rights require states to respect and to ensure the right to housing, in language that parallels that used to describe state obligations under the ICCPR.¹¹⁹ These obligations are similar to those articulated in the ICESCR, in the U.N. comments and other documents that govern its implementation, and, indeed, in all human rights instruments: the central obligation is to give effect to the rights by all appropriate means, including by recognizing the rights in the domestic legal order, providing legal remedies for aggrieved parties, and ensuring government accountability.¹²⁰

Testifying on the legal standard that the IACHR should apply in evaluating compliance with the right to housing, Tara Melish argued on behalf of the group that the Inter-American instruments contain rights similar in content and in means of application to those for which the U.N. instruments provide.¹²¹ Thus, the jurisprudence of the U.N. committees interpreting the right to housing should apply in the Inter-American system as well. She stated:

With regard to housing rights, the obligations to *respect* and *ensure* entail the obligation to take all necessary and appropriate measures to ensure the right to adequate housing, in its manifold dimensions, to all persons within a State's jurisdiction. That is, the right to adequate housing, like all human rights, includes a wide variety of negative and positive aspects—from negative liberties to be free from interference, to positive entitlements to have access to due process and judicial protection, to affirmative guarantees of legislative and policy protections.¹²²

Framed within the “respect” and “ensure” paradigm, the obligation to respect the

119. ADRDM, *supra* note 109, art. XI; ACHR, *supra* note 108, ch. 1, art. 2; ICCPR, *supra* note 5, art. 2(1). *See also* Tara Melish, Counsel, Poor People's Econ. Human Rights Campaign, Situation of the Right to Adequate Housing in the Americas, Testimony Before the Inter-American Commission on Human Rights 7 (Mar. 4, 2005) (on file with author) [hereinafter Melish Testimony].

120. *See supra* notes 88–106 and accompanying text. *See also* Melish Testimony, *supra* note 119, at 7–8.

121. Melish Testimony, *supra* note 119, at 1–3.

122. *Id.* at 8.

right to housing is primarily a negative obligation of noninterference by the state and, as such, does not generally involve allocation of resources. The obligation to “ensure” the right to housing, however, generally is a positive obligation that does require resource expenditure and may be realized progressively. Nonetheless, the obligation to take steps towards realization of positive rights is immediately effective.¹²³ While States have discretion in determining what “appropriate measures” to adopt to ensure these rights, certain steps are key and must be taken immediately: enacting appropriate legislation, providing effective remedies, and adopting a national housing strategy.¹²⁴

B. The United States’ Failure to Ensure the Right to Housing

The testimony of the U.S. advocates’ coalition before the IACHR focused first on the United States’ failure to ensure the right to housing.¹²⁵ My testimony argued that “the resources, public and private, devoted by the U[nited] S[tates] are not sufficient to ensure the right to housing for all Americans in the shortest amount of time, contrary to its obligations under the Declaration.”¹²⁶ Despite the enactment of the Housing Act of 1949, which declared as a primary goal ensuring “a decent home and a suitable living environment for every American family,”¹²⁷ the United States has not put in place legislative measures, nor adopted a national plan, to actually implement this goal and to meet its obligation. Moreover, the United States has neither allocated public funding nor required the allocation of private funding sufficient to meet this obligation.¹²⁸ Instead, the United States has adopted “retrogressive” measures, retreating from its commitment and cutting the funding allocated to housing for the poor, and now proposes further cuts.¹²⁹ The growth and persistence of homelessness in the past two decades and the inadequacy of the response to the needs of this

123. *General Comment 3*, *supra* note 88, ¶¶ 1–3. See also Melish Testimony, *supra* note 119, at 8–14 (applying this guidance to the right to adequate housing).

124. See *General Comment 3*, *supra* note 88, ¶ 3 (explaining the meaning of “appropriate measures”). See also Melish Testimony, *supra* note 119, at 11–14 (describing how “appropriate measures” might be implemented).

125. Maria Foscarinis, Esq., Exec. Dir., NLCHP, *Situation of the Right to Adequate Housing in the Americas*, Testimony Before the Inter-American Commission on Human Rights 1 (Mar. 4, 2005) (on file with author) [hereinafter Foscarinis Testimony]. This section of the article reproduces in pertinent part my testimony before the IACHR.

126. *Id.* at 1. The Declaration is not a treaty and thus, by its terms, not binding, though some experts argue that it has reached the status of customary law and is thus binding. See SCOTT LECKIE, *FROM HOUSING NEEDS TO HOUSING RIGHTS: AN ANALYSIS OF THE RIGHT TO ADEQUATE HOUSING UNDER INTERNATIONAL HUMAN RIGHTS LAW* 15 (1992). Regardless of its legal status, the Declaration is a very significant document and was signed by the United States. It sets appropriate standards by which the United States’ policies and practices can and should be measured.

127. Housing Act of 1949, 42 U.S.C. § 1441 (2000).

128. Foscarinis Testimony, *supra* note 125, at 2–6.

129. *Id.*

most vulnerable population are a testament to these failures.¹³⁰ Further, while the United States has adopted a goal of adequate housing for all, it has not enshrined that goal in enforceable legislation nor provided judicial or administrative remedies for failure to meet it.¹³¹

The Housing Act of 1949 created a system of federal housing programs to implement its housing goal by directly or indirectly subsidizing the construction of housing affordable to the poor or by granting subsidies to poor people themselves, who could then use them to obtain housing in the private market.¹³² Current federal housing programs include public housing (housing developed by the federal government) and the Section 8 housing voucher programs (subsidies that low-income people use to pay for housing in the private market).¹³³

However, the 1949 goal of a decent home for every American has remained merely aspirational. Housing has not been recognized as a right in the United States, and government spending on housing for the poor is discretionary.¹³⁴ Consequently, while remedies for some particular housing violations are in place,¹³⁵ there is no domestic remedy for the government's failure to meet the larger goal of housing for all,¹³⁶ and thus no remedy for the government's failure to ensure the right to housing. Currently, one out of every eight households receiving federal rent vouchers is in danger of losing this assistance due to changes in how the program is administered.¹³⁷ The gap is so great that many cities have stopped accepting applications for housing assistance programs because waitlists have become so long.¹³⁸ According to a December 2005 twenty-four-city

130. See, e.g., U.S. CONF. OF MAYORS, *supra* note 12, at 37–49 (providing statistics about the scope of the U.S. housing problem).

131. 42 U.S.C. §§ 1441, 1441a–b (2000) (issuing Congressional findings and declarations of purpose, but not establishing an enforceable right to housing). See also Foscarinis Testimony, *supra* note 125, at 4 (describing housing goals as merely aspirational since housing is not a right and governmental spending on housing programs is discretionary).

132. Housing Act of 1949, 42 U.S.C. § 1441 (2000).

133. 42 U.S.C. §§ 1437, 1437f (2000 & Supp. II 2002).

134. In contrast, indirect housing subsidies to more affluent Americans through the mortgage interest tax deduction are by right: that is, anyone eligible for the deduction may claim it, neither the amount nor the availability of the deduction are subject to dollar amount limitations, and funding is not limited by annual appropriations. See Chester Hartman, *The Case for a Right to Housing*, 9 HOUSING POL'Y DEBATE 223, 235 (1998). See also CUSHING N. DOLBEARE, IRENE BASLOE SARAF & SHEILA CROWLEY, NAT'L LOW INCOME HOUS. COAL., CHANGING PRIORITIES: THE FEDERAL BUDGET AND HOUSING ASSISTANCE 1976–2005 A-2 tbl.2 (2004), <http://www.nlihc.org/pubs/index.htm#cp04> [hereinafter CHANGING PRIORITIES] (estimating the cost of mortgage interest deductions in 2005 at almost \$70 billion).

135. These include local housing codes that govern housing standards, limitations on rent increases in some jurisdictions, and protection from discrimination in the purchase or rental of housing. See Hartman, *supra* note 134, at 234–35, for an enumeration of these and other specific rights.

136. See *id.* at 223–24.

137. See JCHSHU, *supra* note 55, at 27 (referencing NLIHC).

138. U.S. CONF. OF MAYORS, *supra* note 12, at 40, 74–76.

survey by the U.S. Conference of Mayors, 86% of the cities surveyed saw an increase in requests for assisted housing, 88% had to turn away homeless families from their emergency shelters, and 79% had to turn away other homeless persons from their shelters.¹³⁹

Far from moving towards realization of the right to housing, U.S. policy decisions have led to an overall decrease in affordable housing units for the poor over the last three decades.¹⁴⁰ The budget authority for HUD has been reduced by some \$52.1 billion in real terms between 1976 and 2004.¹⁴¹ The impact of these funding cuts is severe. In 1976, the federal government funded more than 435,000 additional units through rental subsidies.¹⁴² Since then, the federal government's investment in housing has been dramatically scaled back and for many programs is close to zero.¹⁴³

Retroactive regulatory measures undertaken in 2004 have led to greater cuts. In April 2004, HUD announced that it would limit the amount of 2004 funding for state and local housing agencies to May–July 2003 levels, adjusted only for inflation—not for escalating housing costs. This marked a retroactive change from prior HUD policy.¹⁴⁴ As a result, many state and local housing agencies were thrown into a funding crisis.¹⁴⁵ The change threatened funding for vouchers that helped an estimated 96,000 families across the country obtain housing. In dollar terms, the policy change resulted in the retroactive loss of about \$183 million.¹⁴⁶

The Bush Administration's proposed 2007 budget seeks further cuts to low-income housing programs. The budget proposes \$33.5 billion for all programs within HUD, \$2.8 billion less than 2006.¹⁴⁷ Most of the proposed cuts target

139. *Id.* at 5.

140. There have been periods over the last three decades when the number of federally assisted units has increased, but overall the trend has been downward. See CHANGING PRIORITIES, *supra* note 134, at 1 (“The federal government's high water mark for housing assistance was the mid-1970s and funding has not come near that level in the years since.”).

141. *Id.* at 5.

142. *Id.* at 11.

143. *Id.* at 11–12. Most but not all of the HUD budget is for low-income housing. A portion is for moderate-income housing or for infrastructure development. See NAT'L LOW INCOME HOUS. COAL., 2005 ADVOCATES' GUIDE TO HOUSING AND COMMUNITY DEVELOPMENT POLICY (2005), <http://www.nlihc.org/advocates>, at <http://www.nlihc.org/advocates/hudbudget.htm> [hereinafter ADVOCATES' GUIDE].

144. BARBARA SARD & WILL FISCHER, CTR. ON BUDGET & POLICY PRIORITIES, FURTHER ACTION BY HUD NEEDED TO HALT CUTS IN HOUSING ASSISTANCE FOR LOW INCOME FAMILIES 2–3 (2004), <http://www.cbpp.org/4-26-04hous.pdf>.

145. See, e.g., Jocelyn Y. Stewart, *Tenants Protest Suspension of Section 8 Aid*, L.A. TIMES, Apr. 9, 2004, at B4.

146. SARD & FISCHER, *supra* note 144, at 1–3.

147. Summary of President Bush's Proposed FY2007 Budget (Feb. 9, 2006), Memorandum from Laurel Weir to Interested Parties 1, <http://www.nlchp.org/analysis07budget.pdf>. Fiscal year 2006, however, included an appropriation of \$11.5 billion for housing and community development needs in the Gulf Coast region following Hurricanes Katrina and Rita. Factoring in

programs that fund housing for low- and moderate-income people, especially the Community Development Block Grant (CDBG) program, which would receive approximately \$1.15 billion less than it did in 2006.¹⁴⁸ Even though the Administration proposes a \$207 million increase to funding for shelter and other aid for homeless people,¹⁴⁹ these increases are dwarfed by the proposed housing program cuts, which put more people at risk of homelessness.

These policy decisions are inconsistent with the obligation to take measures “sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.”¹⁵⁰ Indeed, far from doing so, policymakers in the United States have dramatically cut housing programs for low- and moderate-income people since the 1980s.¹⁵¹ While some federal funding is being made available to serve homeless people¹⁵²—arguably giving “due priority to those social groups living in unfavourable conditions,” as the United States’ international obligations require¹⁵³—these resources by and large fund shelter and transitional housing, and do not conform to the requirements for adequate housing.¹⁵⁴ Further, current policy favors homeowners and owners of homes and second homes through mortgage tax deductions, which are granted by right, despite the CESCR’s admonition that “[p]olicies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others.”¹⁵⁵

C. *The United States’ Failure to Respect the Right to Housing*

The coalition also testified that the United States is failing to respect the right to housing under human rights law, by failing to refrain from government interference with the right and failing to protect against private interference.¹⁵⁶ The testimony argued that the United States is not protecting homeless people

that amount, the fiscal year 2007 request is in fact \$14.3 billion below funds actually appropriated by Congress for fiscal year 2006. *Id.*

148. *Id.*

149. *Id.*

150. *General Comment 4*, *supra* note 6, ¶ 14. State, local, or private measures are not making up the gap. In fact, these state and local resources are also being cut, and private resources are nowhere near sufficient. See CTR. ON BUDGET & POLICY PRIORITIES, A BRIEF UPDATE ON STATE FISCAL CONDITIONS AND THE EFFECTS OF FEDERAL POLICIES ON STATE BUDGETS (2004), <http://www.cbpp.org/9-13-04sfj.htm>; U.S. CONF. OF MAYORS, *supra* note 12, at 59–63.

151. See CHANGING PRIORITIES, *supra* note 134, at 1; Foscarinis Testimony, *supra* note 125, at 1, 4–5.

152. ADVOCATES’ GUIDE, *supra* note 143, at <http://www.nlihc.org/advocates/hudbudget.htm>, <http://www.nlihc.org/advocates/hudchart.pdf>.

153. *General Comment 4*, *supra* note 6, ¶ 11.

154. See *supra* part I.C., discussing adequate housing and its seven components, as set forth in *General Comment 4*, *supra* note 6, ¶ 8.

155. *General Comment 4*, *supra* note 6, ¶ 11.

156. Foscarinis Testimony, *supra* note 125, at 1–2, 6–9. Again, this section reproduces in pertinent part my testimony before the IACHR.

from arbitrary and discriminatory actions such as police sweeps and criminal punishment for their status.¹⁵⁷ Moreover, federal policies, including the HOPE VI program (Homeownership and Opportunity for People Everywhere),¹⁵⁸ have required the destruction of existing public housing and forced the displacement of its residents without guaranteeing replacement of an equal number of public housing units.

In particular, the testimony addressed the proliferation across the United States of laws criminalizing homelessness.¹⁵⁹ Usually enacted and enforced at the city level, these laws include prohibitions on sleeping in public, sitting, lying or “loitering” in public places, and begging.¹⁶⁰ Although typically phrased in neutral terms, these laws are generally aimed at removing homeless and other destitute people from public places such as sidewalks, parks, highway median strips, and bridge underpasses.¹⁶¹ Often they address businesses’ concerns that the sight of impoverished people living and begging in public places will disturb or scare off potential customers. In the aftermath of the September 11, 2001 attacks on the World Trade Center and the Pentagon, heightened security concerns have led to increased restrictions.¹⁶²

In a 2002 report surveying more than fifty major U.S. cities, NLCHP found that while no city had sufficient shelter space to meet its own estimated need for shelters, each city, without exception, had at least one law restricting public space use.¹⁶³ One third of the cities surveyed prohibited sitting or lying down in at least some parts of the city (usually in the downtown business district), often with exceptions for nonhomeless public space users, such as persons waiting on lines.¹⁶⁴ Further, 16.3% of the cities surveyed prohibited public sleeping in all areas of the city.¹⁶⁵ Overall, 70% of the cities surveyed showed an increase from our 1999 survey in numbers of laws that “criminalize” homelessness.¹⁶⁶

These laws are often enforced in police “sweeps” of public areas, sometimes undertaken before a major public gathering such as a sporting event, convention,

157. *Id.* at 6–8.

158. Dep’t of Veterans Affairs and Urban Development and Independent Agencies Appropriations Act, Pub. L. No. 102-389, tit. 2, 106 Stat. 1571 (1992) (codified at scattered sections of 42 U.S.C.).

159. Maria Foscarnin, *Downward Spiral: The Criminalization of Homelessness*, 14 YALE L. & POL’Y REV. 1, 16–22 (1996); NLCHP, PUNISHING POVERTY: THE CRIMINALIZATION OF HOMELESSNESS, LITIGATION, AND RECOMMENDATIONS FOR SOLUTIONS ii (2003) [hereinafter PUNISHING POVERTY].

160. *See supra* note 159.

161. *Id.*

162. *See, e.g.*, NLCHP, PHOTO IDENTIFICATION BARRIERS FACED BY HOMELESS PERSONS: THE IMPACT OF SEPTEMBER 11, 7–11 (2004).

163. ILLEGAL TO BE HOMELESS, *supra* note 53, at 241–44, 256–61.

164. *Id.* at 241–43; PUNISHING POVERTY, *supra* note 159, at v–vi (providing examples of selective enforcement of city laws and ordinances).

165. PUNISHING POVERTY, *supra* note 159, at ii.

166. *Id.* at v.

or political event.¹⁶⁷ During sweeps, police remove homeless people, as well as any makeshift “dwellings” they have created and their belongings, without any provision for their relocation and typically without any notice. They are either arrested or threatened with arrest and ordered to move on; their belongings are either confiscated or destroyed.¹⁶⁸ By imposing criminal sanctions on homeless persons for sleeping or eating in public places—when there are no alternative private places, given the shortage of shelter and housing—cities penalize homeless people based on their status.

Some U.S. courts have held that under these circumstances, such laws violate the U.S. Constitution.¹⁶⁹ Other decisions have upheld similar laws and practices.¹⁷⁰ Thus, such practices continue without any reliable, effective judicial remedy. When police remove homeless people from the public places that serve as their residence of last resort—with no notice, and no arrangement for any alternative place to reside—they interfere with their last vestiges of security of tenure, in violation of the right to housing. Laws and practices that criminalize homelessness discriminate because they penalize people based on their status as homeless. By allowing such laws to be enacted and implemented, the United States (including its state and city governments) has failed to respect the right to housing.

The testimony also argued that while cuts in federal housing programs have resulted in fewer units of affordable housing for the poor, another federal program, HOPE VI, not only adds to these losses, but also requires the eviction of poor tenants from existing housing.¹⁷¹ The HOPE VI program is intended to benefit the current residents of severely distressed public housing projects by revitalizing and renovating units and surrounding communities; it also funds the

167. ILLEGAL TO BE HOMELESS, *supra* note 53, at 13.

168. In Little Rock, Arkansas, for example, homeless people have been prohibited from staying in the city’s bus station even when in possession of bus tickets. NLCHP & NAT’L COAL. FOR THE HOMELESS, A DREAM DENIED: THE CRIMINALIZATION OF HOMELESSNESS 10, 27–28 (2006), available at <http://www.nlchp.org/content/pubs/ADreamDenied1-11-06.pdf>. In San Diego, the city issues citations and arrests homeless people living in public places. *Id.* at 71–72. Sarasota, Florida has passed three successive laws imposing criminal penalties upon homeless persons sleeping outside; the first two were struck down as unconstitutional. *Id.* at 10, 25–26, 99–100. Such measures are profoundly unjust given that NLCHP’s 2002 survey of fifty-nine cities discovered that “100% of communities surveyed lack enough shelter beds to meet demand.” ILLEGAL TO BE HOMELESS, *supra* note 53, at 11, 13.

169. *See, e.g.,* Pottinger v. City of Miami, 810 F. Supp. 1551, 1577–83 (S.D. Fla. 1992) (finding Fourth, Fifth, Eighth, and Fourteenth Amendment violations when Miami enforced laws preventing sleeping, standing, or congregating in public spaces); State v. Wicks, Nos. Z711742 & Z711743 (Or. Cir. Ct. Multnomah County Sept. 27, 2000) (finding an anticamping ordinance to be unconstitutional as applied against homeless persons) (on file with author).

170. Joyce v. City & County of San Francisco, 846 F. Supp. 843 (N.D. Cal. 1994) (denying motion for injunction against San Francisco’s enforcement of certain laws targeting homeless people).

171. Foscarinis Testimony, *supra* note 125, at 8; ADVOCATES’ GUIDE, *supra* note 143, at <http://www.nlihc.org/advocates/hopevi.htm> (last viewed Apr. 17, 2006).

rehabilitation of public housing units.¹⁷² The program is supposed to improve families' quality of life by moving them closer to jobs and better schools, and it has accomplished these results for some families; for others, however, it has led to increased housing instability.¹⁷³ While the HOPE VI program requires the relocation of existing tenants before public housing units are demolished, this relocation may be to market rate housing, and some relocated tenants struggle to pay for replacement housing that they cannot afford.¹⁷⁴ Moreover, in 1998, Congress removed the requirement that every affordable housing unit demolished under HOPE VI be replaced.¹⁷⁵ As a result, the demolition and rehabilitation of public housing under HOPE VI is a net loss of public housing units. As of the end of 2003, 94,600 units were planned for HOPE VI development; while 95,100 new replacement units were planned, only 48,800 of that number were slated to be public housing units.¹⁷⁶

Carol Steele, President of the Coalition to Protect Public Housing in Chicago, and herself a resident of the Cabrini-Green public housing project, presented testimony to the IACHR about the impact of this policy in her city. Ms. Steele testified that Chicago is in the midst of a "housing rights crisis":¹⁷⁷

The facts tell a horrible story—16,000 units of public housing demolished, with less than 1,500 replacement units for families built. More than 21,600 public housing residents—more than 90% of whom are African-American, and the vast majority of whom are women and children—have been displaced by what the city calls its "Plan for Transformation," which was approved by the U.S. Department of Housing and Urban Development. . . .

This demolition occurs at a time when the Chicago metropolitan area has a shortage of over 153,000 units of housing for low-income residents. And the wait list for public housing has been closed since

172. 42 U.S.C. § 1437v(a) (2000). See, e.g., *ADVOCATES' GUIDE*, *supra* note 143, at <http://www.nlihc.org/advocates/hopevi.htm> (last viewed Apr. 17, 2006).

173. Foscarnis Testimony, *supra* note 125, at 8; 42 U.S.C. §§ 1347v(a), (d)(1)(G), (d)(1)(I), (d)(1)(L) (2000); NAT'L HOUS. LAW PROJECT, *FALSE HOPE 25* (2002), available at <http://www.nhlp.org/html/pubhsg/FalseHOPE.pdf>.

174. Foscarnis Testimony, *supra* note 125, at 8; *ADVOCATES' GUIDE*, *supra* note 143, at <http://www.nlihc.org/advocates/hopevi.htm>; 42 U.S.C. § 1437p(a)(4) (2000).

175. Foscarnis Testimony, *supra* note 125, at 8; 42 U.S.C. § 1437p (2000). Amendments to this section enacted in 1998 removed the previous "one-for-one replacement" requirement, which had required that any public housing unit demolished be replaced. Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 531(a), 112 Stat. 2461 (1998).

176. SUSAN J. POPKIN, BRUCE KATZ, MARY K. CUNNINGHAM, KAREN D. BROWN, JEREMY GUSTAFSON & MARGERY A. TURNER, *A DECADE OF HOPE VI: RESEARCH FINDINGS AND POLICY CHALLENGES* 30 (2004), available at http://www.urban.org/UploadedPDF/411002_HOPEVI.pdf.

177. Carol Steele, President, Coal. to Protect Public Hous., Testimony Before the Inter-American Commission on Human Rights 2 (Mar. 4, 2005) [hereinafter Steele Testimony].

2000, when there were more than 57,000 people waiting for units. What are poor people to do?

Moreover, this demolition of low-income housing comes at a moment when Chicago is experiencing a high-end real estate boom, and the Cabrini-Green development sits less than a mile from the “Gold Coast,” one of the most expensive residential and commercial areas in the country. Real estate developers have been eyeing this land for years.¹⁷⁸

Ms. Steele also described the organizing effort that the residents were mounting to fight eviction from their homes: “We Cabrini residents are fighting.”¹⁷⁹ She noted that the residents had negotiated a plan whereby they might manage a part of the development, and that they were investing in the rehabilitation of the property. Ms. Steele described the visit made to the residents by the Special Rapporteur Miloon Kothari at the request of the Coalition and other local advocates, and the subsequent “statement of solidarity” he had made on their behalf.¹⁸⁰ She invited the IACHR to visit as well, and to support the efforts of the residents.¹⁸¹

D. Recommendations for Action by the Inter-American Commission on Human Rights

The testimony concluded with joint recommendations from the witnesses for action, including that the IACHR:

1. Request that OAS member states—including the United States and Canada—report to it “the measures they are taking to ensure and respect the right to housing”;
2. Appoint a Special Rapporteur on the Right to Adequate Housing, as the U.N. has done;
3. Ask the recently appointed Special Rapporteur on Racial Discrimination to include a focus on housing discrimination in his work, and ask that other currently existing special rapporteurs begin to monitor housing rights issues in the course of their work;
4. Follow up on individual claims of violations of the right to housing submitted to the Inter-American Commission;
5. Include evaluation of compliance with the right to housing in the Commission’s reports on particular countries;
6. Prepare a report on the right to adequate housing in the Americas, including in the United States and Canada;

178. *Id.*

179. *Id.* at 3.

180. *Id.* at 5–6.

181. *Id.* at 5.

7. Make a site visit to Chicago's Cabrini-Green public housing project and also visit other communities threatened with forced evictions; and
8. Ask the OAS Member States to:
 - a) Stop imposing criminal punishment on homeless people based on their status;
 - b) Stop demolishing affordable or public housing in the absence of adequate and sufficient replacement housing;
 - c) Provide effective domestic remedies for housing rights violations; and
 - d) Increase funding for affordable housing programs and refrain from cutting such funding.¹⁸²

Following the testimony, the Commissioners present—Susana Villaran (Peru), Florentin Melendez (El Salvador) and Sergio Pinheiro (Brazil)—asked questions focusing on the status of housing rights in the U.S. legal system. The commissioners noted the usefulness of all the testimony and expressed particular appreciation for Ms. Steele's appearance. In addition, they suggested that the group consider bringing individual petitions before the IACHR to help develop the law on housing; this may be a step for follow-up advocacy.¹⁸³ It is uncertain what further action may be forthcoming from the IACHR, although it seems possible that it will act on at least some of the recommendations. In any event, it is important to evaluate the impact of the March 2005 hearing to date and the prospects for additional action.

III.

ADVOCATING FOR THE RIGHT TO HOUSING IN THE UNITED STATES: IMPACT AND STRATEGIES

The hearing before the IACHR occurred within the broader context of the emerging efforts of U.S. advocates to apply human rights law domestically. Yet, as noted above, the U.S. government has opposed recognition of the right to housing even as other countries have accepted it and international bodies have worked to elaborate its content and implementation.¹⁸⁴ The Senate has not ratified the ICESCR, the treaty that provides the most important protections of housing rights and which created the CESCR, the body which has issued much of the

182. See Melish Testimony, *supra* note 119; Foscarinis Testimony, *supra* note 125; Steele Testimony, *supra* note 177; Bruce Porter, Dir., Soc. Rights Advocacy Ctr., Testimony Before the Inter-American Commission on Human Rights (Mar. 4, 2005) (reporting on homelessness and housing rights in Canada); Joint Recommendations from the Hearing on the Right to Adequate Housing Before the Inter-American Commission on Human Rights (Mar. 4, 2005) (on file with author).

183. Maria Foscarinis, unpublished notes from the Hearing on the Right to Adequate Housing Before the Inter-American Commission on Human Rights (Mar. 4, 2005) (on file with author).

184. See *supra* part I.A.

recent housing rights jurisprudence.¹⁸⁵ Thus, the significance of the hearing and its potential to further the cause of U.S. housing and homelessness advocates and affected communities may reasonably be questioned. While a human rights strategy may be less straightforward than some other domestic advocacy strategies, however, both its short-term and long-term impact is significant and can be quite direct. Moreover, human rights law is applicable to United States law in several ways.

The IACHR hearing illustrates the potential impact of testimony before international bodies, which is one type of domestic use of human rights laws and processes. As described above, this hearing was long sought by U.S. advocates and was spearheaded by and significantly carried out by representatives of affected communities. Yet while the testimony called for specific action, the IACHR is not itself in a position to order the production or to stop the destruction of a single housing unit in the United States. Why then should advocates pursue this avenue, especially considering the range of domestic strategies that may be available to them, such as lobbying in Congress or bringing suit under U.S. law?

Part of the answer is that the hearing has had an empowering effect on advocates and communities alike. At a time when many low-income Americans are subjected regularly to suspicion, humiliation, and deprivation, human rights law recognizes them as having rights simply because they are human. The human rights framework also provides a system and a process that takes these rights seriously and provides a mechanism for asserting them. Invoking that process can itself be empowering and energizing: immediately following the hearing, dozens of homeless and low-income people and advocates gathered at a reception to celebrate the event and to share their experiences and struggles. Many public housing residents had traveled from Chicago, Philadelphia, and New York simply to stand outside the building while the hearing was conducted; one of their organizers proclaimed the day “historic.”¹⁸⁶ They thanked the advocates who had participated for helping to present their views and complaints to the human rights body—and they thanked the IACHR for listening.

Advocates can and have used human rights law to educate a wider audience about their efforts and the legal arguments that support them.¹⁸⁷ The IACHR

185. See, e.g., *General Comment 4*, *supra* note 6; *General Comment 7*, *supra* note 6.

186. Press Release, Poor People’s Econ. Human Rights Campaign, The Organization of American States to Hold Hearing on the Right to Adequate Housing in the United States, Canada and Brazil at the Request of the Poor People’s Economic Human Rights Campaign (Mar. 1, 2005), <http://www.economichumanrights.org/updates/hearing4mar.htm>.

187. Press attention can lead to immediate policy change and remedy grievances. This was the case with another hearing before the IACHR, held the day before, concerning the situation of the Imokalee migrant workers, who have a longstanding human rights campaign and boycott directed at their employer. The attention generated by the hearing—see, e.g., National Economic and Social Rights Initiative, Legal Project, http://www.nesri.org/nesris_program/legal%20project.htm (last visited Apr. 14, 2006)—helped lead to a favorable settlement.

hearing was promoted to the media by the groups that testified and their supporters, and it garnered some significant coverage. This coverage, in turn, helped bring a different perspective to the issues. While much of the public and policy debate surrounding poverty represents poor persons as passive, often “unworthy” recipients of government largesse, a human rights–based analysis helps to level the playing field by recognizing the worth, dignity, rights, and responsibilities all human beings share, no matter how wealthy they may be. Reframing the story the media tells about poverty is crucial: it lays the groundwork for future public policy reform that has the potential to truly solve problems of poverty.

While reframing public debate is a long-term project, the impact of trying to do so can be immediate. Rather than simply fighting displacement and cuts in funding, activists can draw upon the human rights framework and concepts to formulate a proactive agenda and demand positive measures. They can also use the framework to empower and energize affected communities and others to mobilize and advocate for such measures. For example, the Chicago public housing activists have built a campaign based on the recognition that they and others have a human right to housing. They have incorporated human rights language into their advocacy and articulated their demands in human rights terms; this helped draw media attention. They have also used the human rights framework to articulate a proactive agenda and to organize campaigns focused on a specific legislative goal: increasing rental subsidies for low-income people.¹⁸⁸ Linked to such campaigns, the agenda-setting and organizing impacts of framing advocacy in human rights terms can lead to concrete results.¹⁸⁹

Still, this immediate impact, though powerful and important, might be short-lived, limited, and perhaps ultimately disappointing, were it not for the additional human rights strategies that can be used meaningfully in U.S. advocacy. While domestic legal strategies must continue to be pursued aggressively, human

188. See Haydn Bush, *Plan for Transformation Panned*, CHI. JOURNAL, Mar. 23, 2005, available at <http://www.chicagjournal.com/main.asp?SectionID=1&SubSectionID=1&ArticleID=216&TM=37286.2> (noting that Chicago activists were “hoping to enshrine public housing as a recognized human right”); Noah Leavitt, *International Human Rights Violations Here in the U.S.: A U.N. Visit to Chicago’s Cabrini-Green Housing Project*, FINDLAW’S WRIT, May 6, 2004, <http://writ.news.findlaw.com/leavitt/20040506.html> (reporting on “Chicago public housing project residents’ contention that the conditions in which they are living amount to human right violations”).

189. See e.g., Poor People’s Econ. Human Rights Campaign, Children March to Save Cabrini-Green, <http://www.economichumanrights.org/updates/childrensmarch.htm> (last visited Mar. 30, 2006) (describing a march to save Chicago public housing organized by Chicago school-children, who drew upon human rights law in framing arguments and demands); Press Release, U.S. Human Rights Network, *The MARTA Crisis is a Human Rights Crisis, According to Members of U.S. Human Rights Network* (May 9, 2005), <http://www.ushrnetwork.org/pubs/MARTA%20press%20May%209th%202005.doc> (using human rights law to advocate an Atlanta, Ga. campaign for “affordable, accessible public transportation”).

rights law can be used to strengthen domestic advocacy, both in the short and the long term, in multiple ways. Some of these were outlined in discussions by the small-group participants in the 2003 forum organized by NLCHP and COHRE, some were developed in other events and publications,¹⁹⁰ and others are still emerging. Some of them are outlined below.

A. Testimony Before International and Regional Bodies

As with the IACHR hearing, other opportunities can be sought to present testimony. One such opportunity is regular review of U.S. compliance with the ICCPR by the U.N. Committee on Human Rights, which monitors compliance with that treaty, to which the United States is a party. Advocates can present information to the Committee in the form of “shadow” reports¹⁹¹ (unofficial reports, in contrast to the official report presented by the government). Advocates may also seek permission to present testimony, as Canadian advocates did successfully in 1993.¹⁹² Such reports and testimony may elicit powerful statements from the body that hears them, the impact of which may be magnified if used in conjunction with public education and organizing. For example, in its review of U.S. compliance with the treaty in 1995, the Committee on Human Rights stated:

The Committee notes with concern that . . . disproportionate numbers of Native Americans, African Americans, Hispanics and single parent families headed by women live below the poverty line and that one in four children under six live in poverty. It is concerned that poverty and lack of access to education adversely affect persons belonging to these groups in their ability to enjoy rights under the Covenant on the basis of equality.¹⁹³

B. Legislative Advocacy

Human rights law and practice can also provide content and models for legislative advocacy. Advocates in Chicago successfully lobbied for recognition

190. *E.g.* FORD FOUND., *supra* note 3 (presenting case studies of how human rights advocacy has been done in the United States); Maria Foscarnis, *Homelessness and Human Rights*, *supra* note 23; *Making the Case*, *supra* note 3 (drawing attention to U.S. housing problems through the lens of human rights and outlining needs for judicial, administrative, and legislative reform); American Civil Liberties Union, *supra* note 33 (conference discussing past successes and future strategies for using human rights law to advocate for justice in the United States); NLCHP, HOMELESSNESS IN THE UNITED STATES, *supra* note 13 at 23–54 (outlining recommendations for using human rights law in the domestic context).

191. *See, e.g.*, Ctr. for Reproductive Rights, Shadow Reports, http://www.crlp.org/pub_shadow.html (last visited Mar. 30, 2006) (linking to examples of several “shadow reports”).

192. Porter, *supra* note 8, at 149–53.

193. Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America*, ¶ 291, U.N. Doc. CCPR/C/79/Add.50, A/50/40 (Oct. 3, 1995).

of the right to housing in a county housing resolution, as part of a campaign to increase state housing subsidies.¹⁹⁴ In Pennsylvania, advocates persuaded the state legislature to create a special legislative committee charged with investigating the degree to which Pennsylvania law has incorporated human rights standards.¹⁹⁵ The report issued by this committee is a powerful public education tool for advocates. Human rights principles can play a role in federal legislative advocacy as well: The Bringing America Home Act,¹⁹⁶ omnibus legislation that aims to end homelessness, was introduced in 2003 and was reintroduced in the current congressional session. It includes proposed resolutions calling for the recognition of the right to housing as well as other economic human rights.

International law and standards can also serve as models for domestic legislation, or be adopted wholesale into U.S. law or policy. For example, the Connecticut Department of Corrections adopted the international standard minimum rules for the treatment of prisoners as part of its administrative directive.¹⁹⁷ The California legislature at one point authorized the definition of "racial discrimination" set forth in CERD.¹⁹⁸ To date, at least one city, San Francisco,¹⁹⁹ has adopted CEDAW.

C. Litigation Strategies

Human rights law has domestic legal status in several different ways. Although the ICESCR has not been ratified by the Senate, President Jimmy Carter did sign the treaty in 1976. As a signatory, the United States is obliged under international law to "refrain from acts which would defeat the object and purpose of [the] treaty . . . until it shall have made its intention clear not to become a party[.]"²⁰⁰ In addition, the United States has both signed and ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which includes a guarantee of the equal enjoyment of the right to

194. See *supra* note 30. See also Heybach & Nix-Hodes, *supra* note 31 (example of advocacy); *Making the Case*, *supra* note 3, at 112.

195. H.R. 144, Gen. Assem., 2003 Sess. (Pa. 2003).

196. Bringing America Home Act, H.R. 2897, 108th Cong. (2003). See *supra* notes 25–26 and accompanying text.

197. *Lareau v. Manson*, 507 F. Supp. 1177, 1187 n.9 (D. Conn. 1980) (citing U.N. standards and a U.N. committee), *aff'd in part*, 651 F.2d 96 (2d Cir. 1981). See also *Making the Case*, *supra* note 3, at 112.

198. Cal. Gov. Code § 8315 (repealed). The law was ultimately held unconstitutional because it did not receive the requisite number of votes from the legislature. *C & C Const., Inc. v. Sacramento Mun. Util. Dist.*, 18 Cal. Rptr. 3d 715, 726 (Cal. Ct. App. 2004).

199. San Francisco Admin. Code, ch. 12K, Ord. 128-98 (Apr. 13, 1998), *amended by* Ord. 325-00, (Dec. 28, 2000), *available at* http://www.sfgov.org/site/cosw_page.asp?id=10849.

200. Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 8 I.L.M. 679, 1155 U.N.T.S. 331. Also signed, but not ratified, are the Convention on the Elimination of All Forms of Discrimination Against Women (establishing, in part, equal enjoyment of economic and social rights), CEDAW, *supra* note 87, and the Convention on the Rights of the Child (establishing, in part, the right to housing for children), CRC, *supra* note 86.

housing, as well as the ICCPR, which prohibits discrimination based on, among other things, “property, birth or other status.”²⁰¹

The U.S. Constitution provides that treaties, once signed and ratified, are binding law with the same status as federal statutes.²⁰² Typically, however, the Senate ratifies human rights treaties subject to the reservation that they are not “self-executing” and thus not fully in force unless implemented legislatively by Congress.²⁰³ Nevertheless, treaties thus ratified remain relevant: It is well established that whenever possible, U.S. law (including state and local law) must be interpreted so as not to conflict with ratified treaties, regardless of whether they are self-executing.²⁰⁴ Moreover, customary international law—the general, widespread, consistent practice of nations based on the belief that the practice is required—requires no implementing legislation to be binding in the United States.²⁰⁵ It has the status of federal common law:²⁰⁶ a conflicting federal statutory law will override it, but it will override conflicting state law.²⁰⁷

The practices of other nations can also be relevant and even determinative in some cases. In *Roper v. Simmons*, for example, the Supreme Court looked to international practice in applying “the evolving standards of decency that mark the progress of a maturing society” as part of its Eighth Amendment analysis.²⁰⁸ Other recent Supreme Court cases have referred to international practices, and several justices have noted the importance of international law and practice in public speeches.²⁰⁹

Lower federal courts and state courts have relied on or cited international human rights law and practice as well.²¹⁰ Courts have used international human

201. CERD, *supra* note 85, arts. 2(1), 5(e)(iii); ICCPR, *supra* note 5, art. 26.

202. U.S. CONST. art. VI (Supremacy Clause includes “all Treaties made, or which shall be made, under the Authority of the United States”).

203. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 111(c), (h), (i) (1987).

204. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804).

205. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428 (1964). However, determining when a practice has risen to the level of customary international law can be difficult and controversial. *See, e.g.*, RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 111 (1987), for a summary overview of these concepts and issues.

206. *The Paquete Habana*, 175 U.S. 677, 700 (1900).

207. *Banco Nacional de Cuba*, 376 U.S. at 427–28; RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 111, cmt.d (1987).

208. *Roper v. Simmons*, 543 U.S. 551, 561 (2005) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion)).

209. *E.g.*, *Washington v. Glucksburg*, 521 U.S. 702, 710 (1997) (citing the practices of “western democrac[ies]” in considering the constitutionality of a state law banning assisted suicide); *Thompson v. Oklahoma*, 487 U.S. 815, 830 (1988) (plurality opinion) (referring to the views of other countries in a death penalty case). *See also* Breyer, *supra* note 43; Ginsburg, *supra* note 43; O’Connor, *supra* note 43. *But see* *Stanford v. Kentucky*, 492 U.S. 361, 369 n.1 (1989) (emphasizing that international practice is irrelevant to a death penalty analysis).

210. *See* NLCHP FACT SHEET: U.S. FEDERAL AND STATE CASE LAW ASSERTING ECONOMIC AND SOCIAL RIGHTS AS HUMAN RIGHTS (2004), available at <http://www.nlchp.org/Pubs/index.cfm>

rights law as an interpretive guide for content and specificity where U.S. law is vague, general, or unsettled. For example, they seek guidance from international law when faced with questions of standards of need, due process, and whether a right to intramunicipal travel exists.²¹¹ For example, in *Boehm v. Superior Court*,²¹² a case brought by indigent persons seeking an injunction against a reduction of general assistance benefits, the California state court interpreted the general assistance statute, which provided that “[e]very county . . . shall relieve and support all incompetent, poor, indigent persons” and required each county to adopt standards of aid and care.²¹³ In defining specific content for this general requirement, the court relied on the Universal Declaration of Human Rights (UDHR), as well as on state cases and statutes, to conclude that the standards must be sufficient for survival.²¹⁴ In another California case, *In re White*, the California Court of Appeal considered a challenge to a condition of probation imposed for prostitution that barred the probationer from entering or simply being in certain defined areas of the city.²¹⁵ The court cited the UDHR in support of its conclusion that both the U.S. and California constitutions protect the right to intrastate and intramunicipal travel, an issue which the U.S. Supreme Court has not ruled upon, as well as the right to interstate travel, which the Supreme Court has ruled is protected.²¹⁶

Litigation can also be combined with legislative strategies to yield immediate, concrete results. For example, in *Avila v. Berkeley Unified School District*, state legislation had been passed to incorporate the definition of racial discrimination contained in CERD, requiring its use in interpreting prior state law, and the California court relied on this definition in upholding a plan to integrate local school districts.²¹⁷ Similarly, in *Lareau v. Manson*,²¹⁸ a federal

?startRow=16&FA=3&TAB=0 (summarizing some such cases); Foscarinis, *Homelessness and Human Rights*, *supra* note 23 (discussing the use of human rights principles in legal strategies to address homelessness).

211. See, e.g., *Boehm v. Superior Court*, 223 Cal. Rptr. 716, 721 (Cal. Ct. App. 1986) (citing the Universal Declaration of Human Rights in a challenge to a welfare scheme’s ability to meet the needs of poor people), *abrogated on other grounds*, *Saldana v. Globe-Weis Systems Co.*, 285 Cal.Rptr. 385 (Cal. Ct. App. 1991); *Lareau v. Manson*, 507 F. Supp. 1177, 1187 n.9 (D. Conn. 1980) (Cabranes, J.) (deciding due process concerns regarding prison conditions), *aff’d in relevant part, modified and remanded in part*, 651 F.2d 96 (2d Cir. 1981); *In re White*, 158 Cal. Rptr. 562, 567 n.4 (Cal. Ct. App. 1979) (addressing the question of whether there is a right to intramunicipal travel).

212. 223 Cal. Rptr. 716 (Cal. Ct. App. 1986).

213. *Id.* at 719.

214. *Id.* at 721

215. *In re White*, 158 Cal. Rptr. 562, 563–64 (Ct. App. 1979).

216. *Id.* at 567. For a summary of additional cases citing human rights law in social welfare contexts, see Fact Sheet, NLCHP, U.S. Federal and State Case Law Asserting Economic and Social Rights as Human Rights (May 2005) (on file with author).

217. No. RG03-110397, 2004 WL 793295 at *4 (Cal. Super. Ct. Apr. 6, 2004). The legislation incorporating CERD was later repealed. See *supra* notes 30 and 198.

218. *Lareau v. Manson*, 507 F. Supp. 1177, 1187 n.9 (D. Conn. 1980) *aff’d in part*, 651 F.2d

constitutional challenge to overcrowded and other prison conditions, the court looked to the U.N. Minimum Standards for Treatment of Prisoners in evaluating plaintiffs' claims; these standards had been adopted by the state Department of Corrections in the preamble to its Administrative Directives.²¹⁹ Significantly, however, the court said that apart from this, the standards may be customary international law, and thus applicable without regard to their adoption by the state; moreover, the court stated that even if the rules are not directly applicable, they are an authoritative statement of basic norms of human dignity, and as such are relevant to analysis under the Due Process Clause based on principles of U.S. constitutional law.²²⁰

CONCLUSION: AFTER THE HEARING

The full impact of the hearing remains to be seen, since the responses of advocates and governmental bodies are still evolving. One possible outcome is the elaboration by the IACHR of the right to housing in the Inter-American system, perhaps along lines similar to those already well developed within the U.N. system. This may add further strength and support to those standards, further building the case for their acceptance in contemporary civilized society. It may also provide further support for litigation strategies that rely in part on human rights: For example, challenges to laws criminalizing homelessness may be strengthened by additional human rights precedent on punishment based merely on status and on the right to intramunicipal travel. Both are, however, longer-term efforts. More immediately, an IACHR report, investigation, or visit to a U.S. public housing project, coupled with organizing and public education efforts, could strengthen local and perhaps national advocacy efforts, bolstering support and helping to put in place agreements that protect residents' rights.

Less obvious but at least as significant was the hearing's impact on the poor and homeless people involved in it. At the rally before the hearing, dozens of poor and homeless people gathered, holding a variety of signs: "Housing is a human right"; "Stop the Cuts"; "Save our Homes." Other signs conveyed a different, less predictable, message: "Thank you for listening." The press release of the PPEHRC echoed this message, noting that for years the Campaign had "prayed" that some national or international body would listen—and now, they were heard.²²¹ After the hearing, at an informal reception organized by PPEHRC, the message from the larger number of poor and homeless people—some of whom had traveled from Chicago and Pennsylvania, as well as from Washington, D.C.—was even clearer. Participants declared the day "historic": their claims had been presented to, heard, and taken seriously by an international

96 (2d Cir. 1981) (citing U.N. standards and a U.N. committee).

219. *Id.*

220. *Id.*

221. See Poor People's Econ. Human Rights Campaign, *supra* note 112.

body.²²² The significance of this event was no doubt magnified by the lack of responsiveness—and indeed negative actions by—domestic institutions.

The event was clearly empowering, as PPEHRC's later descriptions of it demonstrate. The participants experienced not just a momentary sense of vindication: for some, at least, this empowerment is being transformed into fuel for further community organizing, as the case of the Cabrini-Green public housing residents in Chicago makes clear. Based on the comments of participants, that empowerment derived at least in part from the presentation of their claims before an authoritative body, established by law to hear testimony such as theirs, and the presentation of that testimony within the framework of a body of law that recognizes such claims as legitimate—international human rights law.

Within this framework, international housing rights law can provide content to ongoing advocacy campaigns, helping to define an agenda for what United States policy on housing and homelessness should be. For example, the concept of unjust forced evictions is helping to shape and support demands for notice, participation, and replacement housing for public housing residents fighting evictions. This potential for using human rights law to provide content was apparent in the recommendations to the IACHR, which brought this body of law to bear in the context of the pressing concerns of U.S. housing and homelessness advocates: to increase funding, to stop demolitions without replacement, and to stop criminalizing homelessness.²²³ Placing these demands in the context of the human right to housing supports not only this body of law but the world and regional institutions that take it seriously and, indeed, are charged with enforcing it.

Advocacy for the human right to housing is proceeding in the context of a larger effort to apply civil, political, social, and economic human rights in the United States. Each advocacy campaign that contributes to this effort has the capacity to reinforce the others, and taken together, all such advocacy can help highlight the interdependence of rights. By integrating human rights strategies, U.S. housing and homelessness advocates have an opportunity to contribute to the development of this body of law, and to help reframe public debate to recognize the inherent rights, as well as responsibilities, of each and every human being.

222. *Id.*

223. *See supra* note 182 and accompanying text.

