

HOMELESSNESS IN AMERICA: A HUMAN RIGHTS CRISIS

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I. INTRODUCTION

Before the foreclosure crisis and recession began in 2007, an estimated 2.5 to 3.5 million people were homeless each year. Since then, things have gotten much worse. In 2011 alone, on average, cities across the country reported that family homelessness increased by sixteen percent.² In many communities, tent cities are going up.

These developments mirror, in their scope and impact, the dramatic growth in homelessness that took place in the early 1980s. That earlier

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2. U.S. DEP'T OF HOUSING & URBAN DEV., THE 2011 POINT-IN-TIME ESTIMATES OF HOMELESSNESS: SUPPLEMENT TO THE ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS 1, 2 (2011) [hereinafter 2011 POINT-IN-TIME ESTIMATES OF HOMELESSNESS], http://www.hudhre.info/documents/PITHIC_SupplementalAHARReport.pdf (reporting the “point-in-time” estimate counts people as homeless who are sleeping in shelter or transitional housing, defined as housing with services where homeless people can stay for up to twenty-four months, or safe havens, defined as long-term, small scale housing for homeless people with severe mental illness, or in parks, on sidewalks, in abandoned buildings, or other places not meant for human habitation).

growth resulted in the emergence of homelessness as a serious national crisis affecting a broad range of the population and the country. Later in that decade, national advocacy led to enactment of the first major federal legislation addressing homelessness, the Stewart B. McKinney Homeless Assistance Act.³ That legislation, the McKinney-Vento Act, marked the transformation of homelessness from a local issue, often viewed as one best addressed by charity, to an issue of national policy.

In this article, I will argue that the time is ripe for another paradigm shift. Beginning with a brief overview of homelessness in America, noting that – measured against international norms – homelessness in the United States is a human rights crisis. I will then discuss the human right to housing and the development of human rights strategies to support advocacy for solutions to homelessness. The article highlights several examples of how such strategies are augmenting and supporting advocacy, drawing from the work of my own organization. I conclude that full recognition of that right may be a long-term project, but movement towards it could constitute the shift necessary to end and prevent homelessness.

II. THE HOMELESSNESS CRISIS

According to the most recent estimates from the U.S. Department of Housing and Urban Development (hereinafter HUD), 636,017 people were homeless on a single night in January 2011.⁴ Of these totals, sixty-three percent were homeless individuals, while thirty-seven percent were homeless persons in families.⁵ Because of the transient nature of homelessness, estimated numbers over the course of a year are several times larger; for example, according to HUD, in 2010, 1.59 million people spent at least one day in emergency shelter or transitional housing. This figure does not account for those who were unsheltered during that time.⁶

HUD's numbers are conservative estimates for several reasons. First, counts of unsheltered people, included in the "point-in-time" figures, are notoriously difficult to execute accurately.⁷ Further, HUD's numbers rely

3. 42 U.S.C. §§ 11431-35 (2012).

4. 2011 POINT-IN-TIME ESTIMATES OF HOMELESSNESS, *supra* note 2, at 1-2.

5. *Id.*, at 3.

6. See MARTHA BURT ET AL., HELPING AMERICA'S HOMELESS: EMERGENCY SHELTER OR AFFORDABLE HOUSING? (2001), http://www.urban.org/UploadedPDF/end_homelessness.pdf (estimating much higher annual numbers of homelessness, and including a national study, published in 1999, which put that figure at 2.5 to 3.5 million).

7. 2011 POINT-IN-TIME ESTIMATES OF HOMELESSNESS, *supra* note 2, at 2-3 (the numbers reported by HUD are based on data collected by 432 "continuums-of-care,"

on a narrow definition of homelessness employed by that agency that excludes those who have no home of their own and may live with others, or double up, due to economic necessity, a number estimated to be over six million.⁸ While HUD does not consider them homeless, other agencies do, notably the U.S. Department of Education.⁹

In any event, even according to HUD's definition and numbers, the disparity between need and resources is disturbingly large. HUD estimates that, on that night in January 2011, sixty-two percent of all homeless people were sheltered and thirty-eight percent were unsheltered.¹⁰ It also reports the total number of shelter and transitional housing beds, on that night, at 427,389.¹¹ Thus, according to these figures, almost a third of those counted and defined as homeless on that night (208,628 people) had no available shelter or transitional housing options.¹²

It is easy to forget that it was not always like this. Widespread homelessness first emerged in the early 1980s in large part as a result of significant cuts in federal housing and other programs designed to help low-income people. Gentrification, which pushed low-income residents out of their homes and communities, also played a significant role.¹³ These changes affected a broad swath of people and places. No longer was it a limited problem affecting a narrow group of people, generally older, single, white males living in urban centers. Instead, families, working men and women, younger people, racial and ethnic minorities, and both suburban and rural areas were affected. Homelessness became a national crisis.

Nevertheless, it was not initially viewed as a national issue by the federal government. Indeed, President Reagan, then in office, and

groups typically consisting of local government and non-profit service providers; while HUD provides guidance, data collection methods and accuracy vary, especially for estimates of unsheltered persons. For example, the unexplained, and less than credible, drop in point-in-time count in 2009 of over 35,000 people).

8. M. WILLIAM SERMONS & PETER WITTE, NAT'L ALLIANCE TO END HOMELESSNESS & HOMELESSNESS RES. INST., STATE OF HOMELESSNESS IN AMERICA: A RESEARCH REPORT ON HOMELESSNESS 5 (2011), http://www.endhomelessness.org/files/3668_file_SOH_report_FINAL_LOW_RES_NOT_embargoed.pdf.

9. 42 U.S.C. § 11434a (2012).

10. 2011 POINT-IN-TIME ESTIMATES OF HOMELESSNESS, *supra* note 2, at 9.

11. *Id.*, at 11.

12. *Id.*, at 2 (this number underestimates the true gap between need and resources, even taking the numbers as a given. This is because shelters and transitional housing facilities often limit the types of clients they will accommodate; for example, some specialize in families, others in people with mental illness).

13. Letter from Maria Foscarinis, Executive Dir. Nat'l Law Ctr. on Homelessness & Poverty, to Barack Obama, U.S. President (Aug. 27, 2009), *available at* http://nationalhomeless.org/advocacy/obama_letter_9_09.html.

members of his administration stated on numerous occasions that it was a “lifestyle” choice and that primary responsibility for responding was on charities or, at most, local government.¹⁴ Members of both parties in Congress did not view homelessness as a national policy concern.¹⁵ Advocacy, too, initially focused on campaigns for local government response. Much of early advocacy was centered on local level demands for a right to shelter.¹⁶

In the mid-1980s, advocacy for a comprehensive federal response was initiated.¹⁷ Following a concerted, multipronged national campaign, advocates won a major victory: passage by Congress of the Stewart B. McKinney Homeless Assistance Act of 1987. Now known as the McKinney-Vento Homeless Assistance Act, the bill was passed by large bi-partisan majorities and reluctantly signed into law by President Reagan.¹⁸ While it represented only part one of advocates’ three-part agenda, it nonetheless was an extremely significant event; it marked the transformation of homelessness into a national policy issue.

Since then, advocates have successfully pushed for an increase in funding and a re-engineered focus away from emergency response and toward permanent solutions. Over the years, the McKinney-Vento Act has expanded, and additional legislation has been enacted. Recently, as part of the 2009 economic stimulus, \$1.5 billion was appropriated by Congress to fund a new Homelessness Prevention and Rapid Re-housing Program, designed to respond to the increases in homelessness resulting from the foreclosure crisis and recession and to prevent further increases.¹⁹ According to HUD, more than 690,000 people have been helped by the program to end homelessness or avoid it.²⁰

By any measure, the foreclosure crisis and economic downturn have led to dramatic increases in housing instability and homelessness.

14. National Law Center on Homelessness & Poverty, *Obama Says Homelessness is Unacceptable: Advocates Applaud Obama’s Statement, Propose Specific Steps* (April 14, 2009), <http://www.nlchp.org/news.cfm?id=90>.

15. *CSPAN Video Library: Homelessness in America* (CSPAN television broadcast Dec. 14, 1994), available at <http://www.c-spanvideo.org/program/62200-1#>.

16. Maria Foscarinis, *Homelessness, Litigation and Law Reform Strategies: A United States Perspective*, 10.2 *AUSTL. J. HUM. RTS.* 105 (2004), available at <http://www.austlii.edu.au/au/journals/AUJHRights/2004/6>.

17. *Id.*

18. See, Robert Pear, *President Signs \$1 Billion Bill to Aid Homeless*, *N. Y. TIMES*, Jul. 24, 1987, at A1.

19. E.g., American Recovery and Reinvestment Act of 2009, Pub. Law. 111-5, 123 Stat. 115, 221-22 (2009).

20. U.S. DEP’T OF HOUSING & URBAN DEV., *THE 2010 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS*, at iv (2011), <http://www.hudhre.info/documents/2010HomelessAssessmentReport.pdf>.

According to HUD, family homelessness increased by 20% from 2007 to 2010.²¹ In some communities, the increases were significantly higher.²² According to a recent report, 1.6 million children were homeless over the course of 2010, a thirty-eight percent increase since 2007.²³ In 2011, more than eighty-seven percent of cities surveyed reported an increase in first time visitors to food pantries,²⁴ as more and more Americans are now seeking assistance. Homelessness on this scale is clearly a humanitarian crisis. And, measured against international norms, it is a human rights crisis.

III. THE HUMAN RIGHT TO HOUSING

There is now broad consensus that access to permanent, affordable housing is essential to ending and preventing homelessness. Other measures are important; work that pays a living wage, for those able to work, income supports for those unable to work; access to affordable healthcare and child-care; education and job training. Housing remains fundamental; indeed some of these other measures (such as wages and income support) are means to pay for it, while others, such as medical care and education, are likely to be compromised by its absence.²⁵

The American legal system is commonly described as one that protects civil and political rights, but not economic or social rights.²⁶ For

21. *Id.*, at iii. *See also id.* at 11 (reporting 576,337 sheltered homeless persons in families in 2010) and U.S. DEP'T OF HOUSING & URBAN DEV., 2007 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS 18 (2008) (473,500 sheltered homeless persons in families in 2007).

22. NAT'L L. CENTER FOR HOMELESSNESS & POVERTY, INDICATORS OF INCREASING HOMELESSNESS DUE TO THE FORECLOSURE AND ECONOMIC CRISES (2010), http://www.nlchp.org/content/pubs/Foreclosure_effects_on_homelessness.pdf.

23. NAT'L CTR. ON FAM. HOMELESSNESS, STATE REPORT CARD ON CHILD HOMELESSNESS: AMERICA'S YOUNGEST OUTCASTS 7 (2011), http://www.homelesschildrenamerica.org/media/NCFH_AmericaOutcast2010_web.pdf. (arguing that, but for the assistance provided through the Homelessness Prevention and Rapid Rehousing Program, these numbers would likely be significantly larger).

24. U.S. CONF. OF MAYORS, HUNGER AND HOMELESSNESS SURVEY: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES, A 29-CITY SURVEY 7 (2011) [hereinafter HUNGER AND HOMELESSNESS SURVEY], <http://usmayors.org/pressreleases/uploads/2011-hhreport.pdf>.

25. *See, e.g.*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, OPENING DOORS: FEDERAL STRATEGIC PLAN TO END AND PREVENT HOMELESSNESS 35 (2010), http://www.ich.gov/PDF/OpeningDoors_2010_FSPPreventEndHomeless.pdf.

26. In theory, the former should ensure a democratic process in which everyone's interests in the latter can be addressed. Nevertheless, whatever the merits of this theory, the current reality is that for some significant number of Americans basic needs are not met, in the most extreme cases resulting in homelessness. Further, homeless Americans are often, and by virtue of their status, excluded from the political process as well. *See*

that reason, the most important elements of solutions, housing, jobs and medical care, are not legally guaranteed.²⁷ There is little or no constitutional basis for protecting or creating access to these necessities; nor are there broad statutory guarantees of access to them. Statutory schemes have been restricted to particular categories of persons in need, limited by funding levels significantly lower than need, or both.²⁸ In some important ways, there is an imperfect fit between the problem and the legal tools available to address it.

International human rights law does recognize and protect economic and social rights. It specifically includes the right to adequate housing, defined to include seven elements. Those rights are habitability, accessibility, affordability, security of tenure, location near jobs, schools and other needed services, availability of infrastructure such as sanitation, and cultural adequacy.²⁹ International standards require governments to realize this right progressively, using the “maximum of their available resources.” Governments are not required to ensure the right for all immediately, but they must show constant progress toward that goal.³⁰

The right to housing does not require government to build a free house for everyone. Rather, government’s obligation is to put policies in place to ensure housing for all. It can do this in any number of ways, including through policies that encourage private developers to create affordable housing. It can fund non-profits to re-house people through the “housing first” model. It can provide rental assistance that helps people stay in their homes and prevents homelessness.

Public opinion research indicates that most Americans support this approach. Indeed, fifty-one percent of Americans believe that housing is a human right, and two-thirds support increased government spending to

Frank v. Walker, No. 2:11-cv-1128 (E.D. Wis. filed Dec. 13, 2011); *see also* Pitts v. Black, 608 F. Supp. 696, 709 (S.D.N.Y. 1984) (holding that the New York City Board of Election’s application of state election law to refuse to allow homeless individuals to register to vote on the ground that they did not inhabit fixed premises violated the Equal Protection clause).

27. MARTHA BURT, *OVER THE EDGE: THE GROWTH OF HOMELESSNESS IN THE 1980s*, at 120-26 (1992); *see also* HUNGER AND HOMELESSNESS SURVEY, *supra* note 24, at 2.

28. *E.g.*, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. §§ 601-19 (2006) (safety nets have been slowly repealed, as welfare benefits for needy families are no longer an entitlement helping families avoid homelessness).

29. U.N. Comm. on Econ., Soc. & Cultural Rts. (CESCR) General Comment 4, The Right to Adequate Housing (Art. 11 (1) of the Covenant), U.N. CESCR, 6th Sess., U.N. Doc. E/1992/23, Annex III, at 114 (Dec. 13, 1991) (reprinted in United Nations, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.7, at 19 (May 12, 2004)).

30. *Id.*

ensure that right.³¹ Moreover, there are signs that American courts are increasingly receptive to human rights principles and law. The most publicized efforts and successes have applied human rights law and utilized international comparison to challenge violations of civil and political rights. For example, the United States Supreme Court abolished the juvenile death penalty, acknowledging, “the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty.”³² More recently, in international policy contexts, the United States has shown increased willingness to embrace economic and social rights, and has followed up to develop tools to apply them domestically.³³

Advocates are leading the way, through international, national and local level advocacy, and that work is starting to bear fruit. Nevertheless, it is unlikely that the human right to housing will be fully realized in the United States anytime soon. Yet, advocates are increasingly working toward that long-term goal. At the same time, they are using the human right to housing in advocacy to achieve more immediate, albeit incremental, results.

One way advocacy groups are doing this is by incorporating the right to housing into their own advocacy agendas. For example, in 2007 the National Law Center on Homelessness & Poverty (hereinafter NLCHP) began working with United States Representative Keith Ellison (D-MN) on the human right to housing. As foreclosures increased, we and our partner organizations worked with him on a bill to protect tenants living in foreclosed properties from being summarily evicted, strengthening their security of tenure, one of the seven elements of the human right to housing. The Protecting Tenants at Foreclosure Act was enacted into law in 2009.³⁴ It was a major victory, and the human right to housing helped achieve it.

IV. INTERNATIONAL VENUES AND PROCESSES

The human rights framework makes available the powerful language of human rights instruments that recognize, define, and protect economic and social rights. It also opens the door to an additional arena for

31. BELDEN, RUSSONELLO & STEWART FOR THE OPPORTUNITY AGENDA, HUMAN RIGHTS IN THE UNITED STATES: FINDINGS FROM A NATIONAL SURVEY 53, 54 (2007), <http://opportunityagenda.org/pdfs/HUMAN%20RIGHTS%20REPORT.PDF>.

32. *See Roper v. Simmons*, 543 U.S. 551, 575 (2005).

33. *See id.*, at 575-76.

34. Protecting Tenants at Foreclosure Act of 2009, Pub. L. No. 111-22, 123 Stat. 1660 (2009) (codified at 12 U.S.C. § 5201 et seq.).

advocacy through United Nations' (hereinafter UN), bodies and review processes.

One such process is the Universal Periodic Review (hereinafter UPR), organized by the UN Human Rights Council,³⁵ under which the United States was reviewed for compliance with all human rights treaties this past November. Preparation for the review included a nationwide consultation by the United States government involving thousands of community participants. NLCHP and other advocates participated and helped organize the process, and scores of people and organizations testified about the foreclosures and evictions, racial steering practices and predatory lending, and the criminalization of homelessness. According to a State Department official leading the consultations, housing was the "number one human rights issue raised."³⁶ However, the official report submitted to the UN barely mentioned the housing and homelessness crisis sweeping the country.

Non-governmental groups are permitted to participate in the process, and NLCHP coordinated housing and homelessness groups to submit a "shadow report" and travel to Geneva, where homeless and low-income people told their stories to the UN. Following this testimony, the Human Rights Council provided a number of recommendations to the United States. At the review, HUD stated: "The Universal Periodic Review process helps to inform and influence our nation's effort to dramatically increase the amount of affordable housing, especially for those struggling to find a place to call home," the first time any domestic agency had affirmed the relevance of an international human rights mechanism to its role in setting domestic policy.³⁷

Advocates followed up, and five months later, again for the first time, the State Department and HUD supported recommendations on affordable housing and protecting the rights of homeless persons, among others, in response to the Review.³⁸ The following week, the State Department

35. See Eric Tars & Déodonné Bhattarai, *Opening the Door to the Human Right to Housing: the Universal Periodic Review and Strategic Federal Advocacy for a Rights-Based Approach to Housing*, 45 CLEARINGHOUSE REV. 197, 197-98 (2011).

36. *Id.*, at n.16 (citing David Sullivan, Office of the Legal Adviser, U.S. State Dep't, at an event called "Human Rights on the Hill," D.C., May 25, 2010).

37. U.S. Dep't of Housing & Urban Dev., Statement on the U.S. Participation in the United Nations' Universal Periodic Review (Nov. 5, 2010).

38. U.N. Human Rights Council, Press Release, Council Adopts Outcome of Universal Periodic Review on the United States, Holds General Debate on the Universal Periodic Review ¶ 21 (Mar. 18, 2011), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10867&LangID=E>.

announced a re-embrace of economic and social rights;³⁹ the agency is now beginning to incorporate those rights into its strategic plan.

The United States is now officially on record before the world community on these issues. In four years, the next UPR will analyze the efforts made toward progressive realization of these goals.

V. LOCAL HUMAN RIGHTS ADVOCACY

Human rights commitments apply not only to the federal government, but also to the state and local levels. Human rights strategies can be used successfully at these levels, as illustrated by these examples. In each case, NLCHP worked with the local groups to support their efforts.

A. Chicago

In Chicago, the Coalition to Protect Public Housing (hereinafter CPPH) lobbied the Cook County Board of Supervisors to pass a resolution endorsing the human right to housing, one of the first of its kind in the country. CPPH and others then used the resolution in their state budget advocacy, winning \$14 million in rental subsidies to create 1,600 new affordable housing units for the residents of Cook County. By linking their lobbying to the county's resolution on the right to housing, advocates created a framework that supported their request for an increase in state funding for subsidized housing and laid the groundwork for future advocacy efforts.⁴⁰

B. Minnesota

In Minneapolis, as in many cities, people without housing are subject to arrest for living in public places.⁴¹ In Minneapolis, between 2003 and 2007, over 100 homeless people living in public places were arrested

39. Michael Posner, Asst. Sec., Bureau of Democracy, Hum. Rts., and Labor, U.S. State Dep't, Address to the American Society of International Law: The Four Freedoms Turns 70 (Mar. 24, 2011) (transcript available at <http://bit.ly/k3Ujx4>).

40. Maria Foscarinis & Eric Tars, *Housing Rights and Wrongs: The United States and the Right to Housing*, in 3 BRINGING HUMAN RIGHTS HOME: PORTRAITS OF THE MOVEMENT 149, 154-55 (2008), http://www.nlchp.org/content/pubs/Housing_Rights_And_Wrongs_20081.pdf.

41. For a national overview of this issue, see NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2011), <http://www.nlchp.org/content/pubs/11.14.11%20Criminalization%20Report%20&%20Advocacy%20Manual,%20FINAL1.pdf>.

under an “anti-lurking” ordinance⁴² – all African American. A local criminal justice advocate, Guy Gambill, joked, “I’d like to talk about the racial disparity, but that requires at least two races being involved.”⁴³ In 2007, a City Council member proposed repealing the lurking law due to concerns that it was being applied discriminatorily.

Local advocates mounted a human rights campaign to support the repeal effort. They distributed flyers saying “You have fundamental human rights under international law: you are a human being. Your human rights cannot be taken away from you by the government.” This helped empower the homeless community to organize, and also galvanized an education campaign to humanize homeless people with the general public. The Minneapolis groups also gave testimony to the UN Special Rapporteur on Racism – an international expert on racial discrimination – during his official visit to the U.S., and let the City Council know about this international interest.⁴⁴

Ultimately, the repeal effort lost by one vote. But following the human rights campaign, enforcement decreased to only four arrests in the months after the vote.⁴⁵

C. Salt Lake City

In May 2010, the Crossroads Urban Center and a small group of advocates in Salt Lake City, Utah, mounted a human rights campaign to fight the city’s anti-camping ordinance. They generated significant press coverage, focusing attention on the human rights of people being penalized for sleeping in public even though they had no private place to do so.⁴⁶ The following day, Bill Tibbits of the Crossroads Urban center sent NLCHP this email:

[t]oday the Chief of Police invited me to a press conference where he thanked me for drawing his attention to this issue,

42. Vanessa Wheeler, *Discrimination Lurking on the Books: Examining the Constitutionality of the Minneapolis Lurking Ordinance*, 26 LAW & INEQ. 467 (2008) (Minneapolis City Code 385.80 states, “[n]o person, in any public or private place, shall lurk, lie in wait or be concealed with intent to commit any crime or unlawful act”).

43. Mosedale, Mike. *What Lurks Beneath? Critics Say a Minneapolis Law Criminalizes Walking While Black*, CITY PAGES, Feb. 28, 2007, <http://www.citypages.com/2007-02-28/news/what-lurks-beneath/>.

44. See Letter from Tulin Ozdeger & Eric Tars, Nat’l Law Ctr. on Homelessness & Poverty, to Council Comm. on Pub. Safety (May 20, 2008) (on file with author).

45. City of Minneapolis, *Lurking Charges 2008-2009* (on file with author).

46. Shara Park, *Advocates Stage ‘Sleep-in’ for Homeless*, KSL.COM, May 6, 2010, <http://www.ksl.com/?nid=148&sid=10669685>.

stated that he intended to halt enforcement of the City's anti-camping ordinance and that he planned to ask the Council to make some revisions to the ordinances. I was not expecting that.⁴⁷

Enforcement of the ordinance remains suspended, and the city is reworking its response to homelessness, and advocates are hopeful for a positive outcome.

D. Sacramento

Human rights law treats rights as interdependent, and advocacy for the right to housing can be helped by related human rights, as demonstrated by this example from Sacramento. In the Sacramento area, each night, 1,194 people must sleep outside due to lack of available shelter beds and affordable housing units.⁴⁸ Safe Ground Sacramento is an informal organization of people living in temporary encampments formed in 2009 in response to the government's dismantling of tent cities and the continual harassment of homeless people.⁴⁹

Safe Ground and Legal Services of Northern California recently participated in an official mission by the UN Independent Expert on the right to water and sanitation. The expert's report describes the conditions in the encampment, without access to clean water or sanitation, as "unacceptable, an affront to human dignity and a violation of human rights that may amount to cruel, inhuman or degrading treatment. An immediate, interim solution is to ensure [homeless persons have] access to restroom facilities in public places, including during the night."⁵⁰ This visit both energized the Safe Ground members and received significant local media coverage, giving the advocates there an additional tool in their ongoing advocacy with the city.

47. Email from Bill Tibbits, Crossroads Urban Ctr., to Eric Tars, Nat'l Law Ctr. on Homelessness & Poverty (May 7, 2010) (on file with author).

48. SACRAMENTO CNTY. DEP'T OF HUM. ASSISTANCE HOMELESS PROGRAM, HOMELESSNESS IN SACRAMENTO COUNTY: 2009 HOMELESS COUNT SUMMARY REPORT 1 (2009), <http://dhaweb.saccounty.net/homeless/documents/2009%20Count%20Summary%20Final.pdf>.

49. See Jesse McKinley, *Residents of Sacramento's Tent City to Move to Fairground*, N.Y. TIMES, Mar. 25, 2009, <http://www.nytimes.com/2009/03/26/us/26sacramento.html>.

50. Catarina de Albuquerque, U.N. Indep. Expert on the Right to Water and Sanitation, Statement from Press Conference on Mission to the United States of America from Feb. 22 to Mar. 4 2011 (Mar. 4, 2011) (transcript available at <http://www.ushrnetwork.org/content/pressrelease/catarina-de-albuquerque-un-independent-expert-right-water-and-sanitation-missio>).

VI. INTERNATIONAL MODELS

Advocates also point to international models such as Scotland and South Africa.

A. Scotland

In 2001 and 2003, Scotland passed the Housing and Homelessness Acts, which includes the right for all homeless persons to be immediately housed and the right to long-term housing as long as is needed for priority groups, a category that will be progressively abolished by 2012 at which point the right will extend to all.⁵¹ Crucially, this includes an individual right to sue to enforce the law.⁵² Other legal provisions compliment this law; including the right to purchase public housing units, the ability for homeowners to sell their house to the government to avoid foreclosure and rent it back, the individual stays in the residence through financial difficulty with the opportunity to later repurchase the home.⁵³ As the 2012 date approaches, implementation of the law has varied, but some localities have already achieved 100% housing for all homeless applicants.⁵⁴

B. Republic of South Africa

South Africa explicitly guarantees a right to adequate housing, to be read in accordance with international human rights standards, as well as a ban on unjustified evictions, in its 1996 Constitution.⁵⁵ While battling

51. Homelessness etc. (Scotland) Act, 2003, (A.S.P. 10); Housing (Scotland) Act, 2001, (A.S.P. 10); see Eric Tars & Caitlin Egleson, *Great Scot! The Scottish Plan to End Homelessness and Lessons for the Housing Rights Movement in the United States*, 16 GEO. J. POVERTY L. & POL'Y 187 (2009).

52. See Housing (Scotland) Act, 1987, 35A.

53. See TARS, *supra* note 51, at 201 n.78.

54. SHELTER SCOT, A SHELTER SCOT. REP.: PROGRESS AND DRIFT: A REVIEW OF THE HOMELESSNESS TASK FORCE RECOMMENDATIONS, 15-16 (2011), http://scotland.shelter.org.uk/_data/assets/pdf_file/0008/332990/HTF_FINAL_Report_Feb_2011.pdf.

55. S. AFR. CONST., 1996.

26 Housing (1) Everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation [sic] of this right. (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions. . . . 39 Interpretation of Bill of Rights (1) When interpreting the Bill of Rights, a court, tribunal or forum- (a) must promote the values that underlie an open and democratic society based on

ongoing resource distribution problems, South Africa has developed some of the most progressive case law in protecting the right to housing. This has included orders to municipalities to find housing for squatters *before* they can be evicted, and orders to the police to rebuild the shacks of those living in the slums that they had destroyed, despite the tenants not having formal title to the land.⁵⁶

VII. CONCLUSION

A paradigm shift is possible. The human right to housing can help advance solutions to the homelessness and housing crisis. Ultimately, it can help us shift from a paradigm that treats housing as a discretionary privilege to one that treats it as a priority and a right.

Making this shift will not be easy. In the early 1980s, when homelessness was first becoming a national crisis, it was considered an issue for the private sector, faith communities, and charities; it was not viewed as an issue for national policy. Advocates lobbied, organized, persisted—and eventually succeeded, when what is now known as the McKinney-Vento act was passed. Now, no one would dispute that homelessness is an issue for the federal government; indeed, just last year the Obama administration released a federal plan to end homelessness.⁵⁷

Accomplishing a shift towards recognition of the human right to housing, and economic and social rights more generally, will take time. As the long trajectory of the advocacy campaign against the juvenile death penalty shows, such long-term strategies can be successful. Incorporating human rights strategies in advocacy is a first step towards that goal.

To *end* homelessness, and the affordable housing crisis that drives it, we still have a long way to go. The human right to housing can help us get there.

human dignity, equality and freedom; (b) must consider international law; and (c) may consider foreign law.

56. KATE TISSINGTON, SOCIO-ECON. RTS. INST. OF S. AFR., A RESOURCE GUIDE TO HOUSING IN SOUTH AFRICA 1994-2010: LEGISLATION, POLICY, PROGRAMMES AND PRACTICE 31-32, 42-43, n.154 (2011), http://www.escr-net.org/usr_doc/SERI_A_Resource_Guide_to_Housing_in_South_Africa_Feb11.pdf.

57. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *supra* note 25, at 2.

