

Clearinghouse REVIEW

September–October 2011
Volume 45, Numbers 5–6

Journal of
Poverty Law
and Policy

HUMAN RIGHTS

A NEW (AND OLD) WAY TO SECURE JUSTICE

Homelessness

Advocacy Framework

Clean Water

Public Housing Litigation

Universal Periodic Review: Housing

Health Care

“Right to Live”

Corporate Responsibility

Advocacy in State Courts

A Judge’s Perspective

Anti-Sharia and Antitransnational Laws

Civil Rights

Healthy Environment

United Nations Mechanisms

Advancing Human Rights

The Australian Experience



**SHRIVER
CENTER**

Sargent Shriver National Center on Poverty Law



Opening the Door to the Human Right to Housing

The Universal Periodic Review and
Strategic Federal Advocacy for a
Rights-Based Approach to Housing

By Eric S. Tars and Déodonné Bhattarai

The U.N.'s Universal Periodic Review process helps to inform and influence our nation's effort to dramatically increase the amount of affordable housing, especially for those struggling to find a place to call home.

—U.S. Department of Housing and Urban Development, November 5, 2010

Eric S. Tars

*Human Rights Program Director
Children and Youth Staff Attorney*

Déodonné P. Bhattarai

*Program on Human Rights and the
Global Economy Fellow, National
Law Center on Homelessness and
Poverty*

*J.D./M.P.H. Candidate,
Northeastern University School
of Law/Tufts University School
of Medicine*

National Law Center on
Homelessness and Poverty
1411 K St. NW Suite 1400
Washington, DC 20005

202.638.2535
etars@nlchp.org

207.266.7774
deodonne@gmail.com

Over the course of 2010 and early 2011 an extraordinary series of events opened the door to discussion about housing as a human right in the United States. The Universal Periodic Review began with a nationwide consultation involving thousands of community participants and culminated in an international review of human rights in the United States in Geneva in November. At this review the U.S. Department of Housing and Urban Development (HUD) affirmed for the first time the relevance of an international human rights mechanism to its role in setting domestic housing policy. Five months later, again for the first time, the U.S. Department of State, in consultation with HUD, supported recommendations on affordable housing and protecting the rights of homeless persons, among others, in response to the Universal Periodic Review. The following week the State Department announced a reembrace of economic and social rights, including the right to housing, after seventy years of treating them as second-class rights.

While the reality for the millions of Americans facing foreclosure, eviction, or homelessness remains grim, these policy statements are more than rhetorical changes. They reflect a recognition that the right to housing, based on the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights, is relevant to domestic issues ranging from our response to the foreclosure crisis to the criminalization of homelessness.¹ A growing movement for the human right to housing made up of lawyers and grassroots advocates worked for this recognition as the groundwork for a new kind of housing policy, one based on our obligations to realize housing as a fundamental human right.

¹Universal Declaration of Human Rights, art. 25(1), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, art. 11(1), 993 U.N.T.S. 3, 5 (entered into force Jan. 3, 1976). Pres. Jimmy Carter signed the covenant on October 5, 1977, but the covenant has yet to be submitted to the full U.S. Senate for ratification. Under the Vienna Convention on the Law of Treaties, states are obligated not to defeat the object or purpose of treaties to which they are signatories (see Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force January 27, 1980)).

Here we look at the successes for the right to housing in our nation's first-ever Universal Periodic Review in the context of this growing movement. We first briefly discuss the steps of the review and then detail the way housing and human rights groups strategically used each step for our advocacy. We also discuss the outcomes of the review and analyze the government's involvement. We conclude by presenting opportunities for future advocacy to move us closer to realizing the human right to housing in the United States.

The U.S. Universal Periodic Review 2010

In November 2010 the United Nations Human Rights Council, the primary intergovernmental body tasked with monitoring the status of human rights around the world, reviewed the U.S. human rights record and its adherence to its human rights obligations. This review, our country's first since the advent of the council in 2006, began with a nationwide consultation. The consultation resulted in a collective effort, by hundreds of nongovernmental organizations (NGOs) and human rights advocates, to conduct a yearlong assessment of the status of human rights around the country. Reports of these coordinated findings were given to the U.S. government and to the council. Following its review of both the official government report and accompanying shadow reports by NGOs, the council's member states conducted an oral review of the United States and recommended to the United States how to improve its human rights record.² The council highlighted specific human rights abuses in the United States and the need for a clear commitment from the

U.S. government to ensure economic, social, and cultural rights, such as the right to housing. On March 18, 2011, the Obama administration responded positively, though remaining strategically uncommitted to any right it was not yet fulfilling. Advocates are now working to implement what the council recommended. (See Timeline on page 199.)

Overview of the Universal Periodic Review. The history of the Universal Periodic Review is tightly connected to the history of the U.N. Human Rights Council itself. In 2006 the council replaced the U.N. Commission on Human Rights following criticism that the commission allowed membership to some of the world's worst human rights abusers.³ Citing continuing concerns about the credibility of the body's membership, the United States initially opted not to join the new council. However, in May 2009, reflecting the Obama administration's goal of reestablishing U.S. leadership on human rights, the United States joined the forty-six other U.N. member states serving on the council.⁴

In response to concerns that the human rights records of certain member states had been shielded from scrutiny, the Human Rights Council uses the Universal Periodic Review to examine the human rights record of all 192 U.N. member states every four years.⁵ The council reviews each nation's compliance with the U.N. Charter, the Universal Declaration of Human Rights, human rights treaties ratified by the country, a government's voluntary commitments, any comments by U.N. human rights monitors during the previous four years, and other applicable international law.⁶ To assist the council in assessing compliance, each government submits a twenty-page self-

²For more information about shadow reporting, see Eric Tars, *Who Knows What Lurks in the Hearts of Human Rights Violators? The Shadow (Reporter) Knows—Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice*, 42 CLEARINGHOUSE REVIEW 475 (Jan.–Feb. 2009).

³Press Release, General Assembly, General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, with 3 Abstentions, U.N. Press Release GA/10449 (March 15, 2006), <http://bit.ly/jN9eFy>.

⁴Colum Lynch, *U.S. to Join Human Rights Council, Reversing Bush Policy*, WASHINGTON POST, May 31, 2009, <http://wapo.st/kLWEK7>.

⁵For more information on the Universal Periodic Review, see Universal Periodic Review, Welcome to UPR Info's Website (2011), <http://upr-info.org>.

⁶U.N. Charter, <http://bit.ly/pstTSj>; Universal Declaration of Human Rights, *supra* note 1.

Timeline of the 2010 U.S. Universal Periodic Review

Consultations	January–April 2010
Shadow reporting	March–April 2010
U.S. report	August 2010
Country advocacy and briefing	Fall 2010
Review	November 5, 2010
Adoption of final report	March 18, 2011

report. This government report is augmented by NGO shadow reports, which are condensed by the U.N. Secretariat into a single ten-page report. Comments by other U.N. human rights monitors are also summarized into a ten-page report. The government then participates in a three-hour oral review in Geneva. The record of this exchange is formally adopted, together with the government's response to any recommendations, at the following council session as the "final outcome report." The Universal Periodic Review is applied to all member states in identical form and measure, ensuring that the review does not offer leniency based on political might. Because of its comprehensive nature, the review presents an opportunity to measure how a nation is meeting its human rights obligations and to pressure the government to live up to those obligations.

The National Law Center on Homelessness and Poverty, for which we work, has a long history of advocating the human right to housing as one of many economic, social, and cultural rights. Our organization was a member of the delegation

to the U.N. Habitat II conference in 1996 and has since been working to ensure the human right to housing in the United States.⁷ Our organization and other U.S. housing rights organizations welcomed the Universal Periodic Review for strategic reasons. The United States has ratified treaties on civil and political rights, including the right to nondiscrimination in housing, but none that recognizes the full scope of the right to housing.⁸ Because the Universal Declaration of Human Rights includes the right to housing and serves as the basis of the Universal Periodic Review, U.S. advocates for the first time could directly expound the right to housing at the international level.⁹

Equally important, the standard of review includes any comments made by U.N. human rights monitors on the country during the four-year review period. In October and November 2009 U.S. housing advocates hosted the U.N. Special Rapporteur on the Right to Adequate Housing for the first time on an official country mission. The National Law Center on Homelessness and Poverty helped facilitate her visit, with site

⁷See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, "SIMPLY UNACCEPTABLE": HOMELESSNESS AND THE HUMAN RIGHT TO HOUSING IN THE UNITED STATES 2011 (June 2011), <http://bit.ly/IL4Gub>; Maria Foscarinis & Eric Tars, *Housing Rights and Wrongs: The U.S. and the Right to Housing*, in 3 BRINGING HUMAN RIGHTS HOME 149 (Cynthia Soohoo et al. eds., 2007); Maria Foscarinis et al., *The Human Right to Housing: Making the Case in U.S. Advocacy*, 38 CLEARINGHOUSE REVIEW 97 (July–Aug. 2004).

⁸See, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976); International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) (Article 5 states: "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: ... (iii) The right to housing....").

⁹Universal Declaration of Human Rights, *supra* note 1.

visits in Washington, D.C., and a national town hall meeting where advocates from across the country testified.¹⁰ In March 2010 she issued her final report, with an extensive critique of U.S. housing policy and six pages of specific recommendations in areas ranging from homelessness to public housing to foreclosures.¹¹ With the Universal Periodic Review coming almost exactly one year after the mission, advocates could hold the government accountable to these recommendations in a timely manner.

Under the banner of the U.S. Human Rights Network, the National Law Center on Homelessness and Poverty helped form the Universal Periodic Review Planning Committee to help coordinate NGOs participating in the review. The committee worked to maximize access to the review for NGOs and to elevate discourse around economic and social rights by coordinating priorities and streamlining efforts across issue areas.¹² The network created a website for broader coordination, and our organization created a similar page for the housing cluster group, where all the information, documents, and media coverage that we cite here are stored.¹³

Consultations. One of the most important aspects of the Universal Periodic Review for domestic NGOs was its requirement that the government “ensure the participation of all relevant stakeholders, including non-governmental organizations” in preparing its report.¹⁴ While government consultation with NGOs and other civil society stakeholders may occur through a variety of formal or informal mechanisms, the Universal Periodic Review Planning Committee expressed two

core demands to the State Department: (1) the consultations had to involve not just policy experts in Washington but directly affected victims of rights violations across the country and (2) the consultations must include representatives from relevant domestic agencies alongside State Department officials.

In response to these demands, the State Department proposed a series of consultations, each with its own thematic focus to ensure in-depth discussion on all priority issues. More than a thousand community members participated in ten consultations that took place in major cities across the country—New Orleans, New York City, Washington, Chicago, El Paso, Albuquerque, Detroit, Birmingham, and San Francisco among them.¹⁵ For each consultation, the government partnered with local host organizations to design the agenda and conduct outreach. However, in some cases it gave local advocates less than two weeks’ notification of the date and venue, hindering them and the committee from creating a truly inclusive consultation.

The consultation phase of the Universal Periodic Review presented the National Law Center on Homelessness and Poverty and its local partners with the opportunity to elevate the concerns of those affected by the housing crisis in America, and the government’s inadequate response, as human rights violations. Equally important, the consultation phase compelled the government to identify individuals who were in relevant agencies, such as HUD, the U.S. Department of Justice, and the U.S. Department of Health and Human Services, who would hear about these violations and

¹⁰NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, COMPILATION OF WRITTEN TESTIMONY TO SUPPLEMENT ORAL PRESENTATIONS BEFORE THE U.N. SPECIAL RAPPORTEUR ON ADEQUATE HOUSING (Nov. 8, 2009), <http://bit.ly/mlgohN>.

¹¹U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and on the Right to Non-Discrimination in This Context*, Raquel Rolnik, U.N. Doc. A/HRC/13/20/Add4 (Feb. 12, 2010), <http://bit.ly/mM0dOu>.

¹²For an in-depth discussion of the Universal Periodic Review, see Sarah H. Paoletti, *Using the Universal Periodic Review to Advance Human Rights: What Happens in Geneva Must Not Stay in Geneva*, in this issue.

¹³National Law Center on Homelessness and Poverty, *Advocacy Manual: Universal Periodic Review 2010* (n.d.), <http://bit.ly/mRJJ6W>; U.S. Human Rights Network, *Universal Periodic Review (UPR) Project* (n.d.), <http://bit.ly/ksw9bH>.

¹⁴Human Rights Council Res. 5/1, *Institution-Building of the United Nations Human Rights Council*, U.N. Doc. A/HRC/RES/5.1 (June 18, 2007), <http://bit.ly/iA7Kop>.

¹⁵See U.S. Department of State, *Summaries of UPR Civil Society Consultations* (n.d.), <http://1.usa.gov/inlk4j>.

their solutions within a human rights framework, and with whom advocates could later conduct follow-up advocacy.

Chosen for consultations were four of the cities where groups had hosted the Special Rapporteur on the Right to Adequate Housing during her U.S. mission: New Orleans, New York City, Chicago, and Washington, D.C. Because of their experience with the Special Rapporteur, advocates in these cities were well prepared to discuss housing and human rights issues. The National Law Center on Homelessness and Poverty prepared sample talking points for groups in each city to integrate into their own testimonies and coordinated groups so that the local issues reflected national trends around the criminalization of homelessness, public housing, the foreclosure crisis, and affordable housing policy. All consistently pressed for the government to recognize housing as a human right as well. As a result of this concerted advocacy, when asked what human rights issue was highlighted most in the consultations, David Sullivan, attorney-adviser at the State Department, said, “Housing. We have heard more about housing than you would believe in these sessions. If I had to pick the number one issue brought to the U.S., it would be housing.”¹⁶

At the consultations, State Department representatives asked advocates what steps the different agencies could take to demonstrate their responsiveness to civil society’s demands. This has already spurred some action. For example, after testifying in both New York City and Chicago on the criminalization of homelessness to Julie Fernandes, deputy assistant attorney general for civil rights, the National Law Center on Homelessness and Poverty corresponded with her on a potential area for immediate action. The Los Angeles Community Action Network had filed a complaint with the federal Justice Department against the criminalization of homelessness in Los Angeles’ skid row more than a year before, but the Justice Department had not responded.

After the hearings, Fernandes assigned the case to an attorney, and the case is pending an investigation.

Shadow Reports and Lobbying Governments. During the consultations, advocates were already working on the next phase of the Universal Periodic Review—drafting shadow reports. The Human Rights Council allows NGOs to submit five-page reports (or joint ten-page reports) informing it of civil society’s views on the status of human rights compliance. Once submitted, the shadow reports are summarized into a single ten-page report. Because the review covers the full range of human rights violations, from housing to workers’ rights, from Guantanamo Bay to skid row, coordinating competing priorities among organizations was crucial.

In order to facilitate shadow reporting, the Universal Periodic Review Planning Committee helped consolidate groups to produce twenty-four issue-area shadow reports that were submitted to the Human Rights Council in April 2010. The compiled report, which also has appendices on the recent U.S. treaty compliance record, is more than four hundred pages long and was endorsed by hundreds of organizations.¹⁷

The National Law Center on Homelessness and Poverty coordinated a group of about forty individuals, representing grassroots, policy, and legal organizations, to produce the shadow report on housing issues. Because this joint report was limited to ten pages, and because even that would be further summarized in the U.N. Secretariat’s report, our organization prioritized the key issues that we believed could be moved by the international and domestic attention they would receive through the Universal Periodic Review. Because education and participation were part of our goal, we encouraged other organizations to draft pieces of the report, which we then compiled and edited to ensure grounding in international standards for integration

¹⁶David Sullivan, Office of the Legal Adviser, U.S. Department of State, at an event called “Human Rights on the Hill,” Washington, D.C., May 25, 2010.

¹⁷See UNIVERSAL PERIODIC REVIEW JOINT REPORTS (U.S. Human Rights Network ed., 2010), <http://bit.ly/kqiV9J>.

into the U.N. summary. The report was publicized to different organizations and received more than eighty organizational and individual endorsements.¹⁸

Because only foreign government delegates may make direct interventions on the floor during the official Universal Periodic Review in Geneva, the Universal Periodic Review Planning Committee coordinated several trips to Geneva to meet in person with delegates and briefed representatives from a number of embassies at American University in Washington, D.C. The National Law Center on Homelessness and Poverty also reached out to a number of specific embassies after researching which countries had made housing recommendations in previous reviews of other countries. These meetings laid the groundwork for additional lobbying in Geneva in the week leading up to the review.

U.S. Government Report. In August, after gathering input from stakeholders, the United States submitted its twenty-page report to the Human Rights Council. The government also summarized each of the consultations, although the summaries did not form part of the official U.N. record of review. The report took up the full range of civil, political, economic, social, and cultural rights, not to mention the right to housing; the inclusion of housing as a right was itself a significant victory. However, the report sidestepped any obligation to implement any economic and social rights:

The paradigm elucidated in Franklin Roosevelt's 1941 "Four Freedoms" speech became a reference point for many in the international human rights movement. On subjects such as "freedom from want," the United States has focused on democratic

solutions and civil society initiatives while the U.S. courts have defined our federal constitutional obligations narrowly and primarily by focusing on procedural rights to due process and equal protection of the law.¹⁹

In other words, while celebrating our historic leadership in the area of economic rights, the government disavowed any notion of rights-based obligations.

In regard to housing rights, the report briefly mentioned the foreclosure crisis and its disparate impact on communities of color.²⁰ The report noted that the issue of housing was frequently raised in the consultations (although it does not say how) but buried our chronic shortfall in affordable housing: "Although we are fortunate to have a high-quality housing stock and a high percentage of homeownership, meeting our nation's housing needs will require continued effort, particularly in expanding the availability of affordable housing in all communities as our population grows."²¹ The report then detailed the support given to housing and homelessness programs but failed to discuss their programmatic shortcomings and this fact: millions of people are homeless, and millions more are at risk of homelessness, here in the wealthiest nation in the world.²²

This lack of candor was disappointing, especially given the heart-wrenching stories that victims shared with government representatives at the consultations. Helping educate many more people about the Universal Periodic Review and the right to housing in the United States, the National Law Center on Homelessness and Poverty issued a press release and conducted a twenty-minute interview on KPFFK in Los Angeles.

¹⁸See Beyond Shelter et al., A Report to the U.N. Human Rights Council on the Right to Adequate Housing in the United States of America (April 19, 2010), <http://bit.ly/lu7lwF>.

¹⁹United States of America, National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1, ¶ 67, U.N. Doc. A/HRC/WG.6/9/USA/1 (Aug. 23, 2010), <http://bit.ly/oy88ht>. See also Franklin D. Roosevelt, Annual Message to Congress on the State of the Union (Jan. 6, 1941), <http://bit.ly/mUFxoX>.

²⁰United States of America, *supra* note 19, ¶ 46.

²¹*Id.* ¶ 74.

²²*Id.* ¶¶ 75–76.

Universal Periodic Review. The formal Universal Periodic Review of the U.S. government took place in Geneva on November 5, 2010. The State Department, with representatives from a dozen domestic agencies, presented the government's official report and answered questions from U.N. member states. Although civil society organizations were not allowed to ask questions on the floor, many of the remarks made by member states were influenced by information from the shadow reports and our advocacy in Geneva. At the end of the session, the Human Rights Council presented to the United States the council's draft outcomes report, a compilation of the remarks and specific recommendations for ways to improve our government's commitment to human rights.

In the weeks before the Universal Periodic Review, the government hosted a briefing for NGOs in the United States to discuss expectations. At this event the National Law Center on Homelessness and Poverty learned that HUD would not be a part of the thirteen-agency delegation attending the Geneva hearings. To mitigate HUD's absence, our organization requested that HUD issue a media statement affirming the importance of the Universal Periodic Review, that HUD participate by videoconference in the postreview town hall meeting being planned by the State Department, and that HUD commit to a follow-up meeting with advocates, all of which HUD agreed to do. HUD's resulting press statement was the only one issued by any domestic agency on the review. In the press statement is the epigraph above, acknowledging the review's informing our domestic housing policy.²³ This marks a critical shift in consciousness at the agency, and one we hope will form the groundwork for future advocacy.

While the lobbying of other governments and education of the media began long before the actual Universal Periodic Review in November, the review itself presented a concrete organizing point on which advocates could focus their efforts. The Universal Periodic Review Planning Committee led a delegation of more than seventy advocates to Geneva for a full week of individual and joint lobbying leading up to the review.

While in Geneva, the National Law Center on Homelessness and Poverty hosted a "side event," or briefing, entitled "Housing Rights in the Housing Crisis: the State of the Right to Housing in the U.S.," for U.N. delegates and the media.²⁴ This event featured the testimony of a formerly homeless individual, a film on forced evictions in New York City, and analysis from our organization and the Centre on Housing Rights and Evictions. Based on our research of previous questions and recommendations, we approached specific country delegates to advocate the inclusion of our issues.

The United States received 228 recommendations, the most ever for a Universal Periodic Review.²⁵ As a result of the robust civil society advocacy efforts detailed above, many recommendations touched on issues of and relating to housing:

- Norway recommended "that further measures be taken in the areas of economic and social rights for women and minorities, including providing equal access to decent work and reducing the number of homeless people";
- Morocco recommended "reinforc[ing] the broad range of safeguards in favor of the most vulnerable groups such as persons with disabilities and the homeless to allow them the full enjoyment of their rights and dignity";

²³U.S. Department of Housing and Urban Development Statement on the U.S. Participation in the United Nations' Universal Periodic Review (Nov. 5, 2010), <http://1.usa.gov/kbuUQT>.

²⁴U.S. Human Rights Network, *Housing Rights in the Housing Crisis, Part 1.mp4*, YouTube (Nov. 4, 2010), <http://bit.ly/oguxQQ>; *id.*, *Housing Rights in the Housing Crisis, Part 2.mp4*, YouTube (Nov. 4, 2010), <http://bit.ly/p9VAQt>; *id.*, *Housing Rights in the Housing Crisis, Part 3.mp4*, YouTube (Nov. 4, 2010), <http://bit.ly/pEhfvL>; *id.*, *Housing Rights in the Housing Crisis, Part 4.mp4*, YouTube (Nov. 4, 2010), <http://bit.ly/pckiG2>; *id.*, *Housing Rights in the Housing Crisis, Part 5.mp4*, YouTube (Nov. 5, 2010), <http://bit.ly/qRjhUL>; *id.*, *Housing Rights in the Housing Struggle, Part 6.mp4*, YouTube (Nov. 5, 2010), <http://bit.ly/oLQC8g>; *id.*, *Housing Rights in the Housing Struggle, Part 7.mp4*, YouTube (Nov. 5, 2010), <http://bit.ly/nvVvMX>.

²⁵Report of the Working Group on the Universal Periodic Review: United States of America, U.N. Doc. A/HRC/16/11 (Jan. 4, 2011), <http://bit.ly/nwbG2O>.

- Seven countries dealt with the need to resolve racial and gender disparities in housing and poverty;
- Four countries cited the need to create and protect adequate economic, housing, and health care opportunities;
- Twenty-one countries stressed the need to reduce racial disparities in law enforcement (such racial disparities often falling harder on homeless minority communities);
- Nineteen countries directly recommended the ratification of the International Covenant on Economic, Social, and Cultural Rights (the covenant includes the right to housing), and five countries recommended the ratification of all treaties to which the United States is not yet a party; and
- Egypt recommended complementing ratification by recognizing the justiciability of economic and social rights in the domestic legal system.²⁶

Advocates gained extensive media coverage of the Universal Periodic Review—articles in the *New York Times* and *Washington Post* and segments on CBS and Fox News, for example.²⁷ The National Law Center on Homelessness and Poverty produced daily reports on YouTube in order to connect with advocates who could not travel to Geneva; the videos received hundreds of views.²⁸

Adoption of Final Outcome Report. After receiving the preliminary outcome report from the Human Rights Council, the United States had until the following council session in March to decide whether to accept or reject the report's recommendations. During this time NGOs lobbied officials to accept rec-

ommendations or maintain language supporting domestic human rights. The Universal Periodic Review Planning Committee facilitated several joint meetings with the State Department and other relevant agencies. Advocates encouraged the United States to accept the full range of recommendations and to commit to specific, measurable benchmarks to demonstrate its progress.

The National Law Center on Homelessness and Poverty held HUD to its promise to host a follow-up meeting. A dozen advocates from national policy and grassroots organizations met with as many HUD officials, as well as with representatives from the State Department and the Justice Department. Again, our organization coordinated the advocacy to ensure that the demands were concise and consistent with previous advocacy. HUD representatives discussed in detail the recognition of the right to housing domestically and what it would mean, as well as specific policy points on fair housing, homelessness, foreclosures, and vacant properties. Our organization summarized the meeting and the demands in a letter to HUD and the State Department.²⁹

On March 18, 2011, the Universal Periodic Review Planning Council formally adopted the U.S. outcome report. The U.S. government had twenty minutes to present its responses, and NGOs had twenty minutes to ask questions and raise issues that they felt were not sufficiently hashed over during the review. The United States accepted most of the recommendations, such as those relating to housing.³⁰ That the government acknowledged that homelessness and housing policy in the United States implicates its human rights obligations was a notable first. However,

²⁶For more information about the U.N. recommendations, see National Law Center on Homelessness and Poverty, UPR: Recommendations to the United States Re Housing and Homelessness Domestic Policies (n.d.), <http://bit.ly/iP63XU>.

²⁷See *Follow Media Coverage of the Universal Periodic Review!*, NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY (Dec. 8, 2010), <http://bit.ly/jSwlGi>.

²⁸See NLCHP's Channel, *UPR Congressional Briefing*, YouTube (April 4, 2011), <http://bit.ly/q18Bcq>.

²⁹Letter from Maria Foscarinis, Executive Director, National Law Center on Homelessness and Poverty, et al., to Assistant Secretary John Trasviña and Deputy Assistant Secretary Ana Marie Argilagos, U.S. Department of Housing and Urban Development (Feb. 7, 2010) (on file with authors).

³⁰United States of America, Addendum to the Report of the Working Group on the Universal Periodic Review ¶¶ 6, 19, U.N. Doc. A/HRC/16/11/Add.1 (March 8, 2011), <http://bit.ly/17d02B>.

the government did so without setting benchmarks for implementation and without establishing clearly how to follow up promoting, or even monitoring, implementation. Nor did the government clearly state that it would recognize housing or other economic and social rights as rights.

However, the following week, Michael Posner, assistant secretary for democracy, human rights, and labor, spoke to the American Society of International Law on “The Four Freedoms Turn 70.” He discussed Pres. Franklin Roosevelt’s famous Four Freedoms speech and focused on the “freedom from want.”³¹ Posner detailed the government’s long separation from recognizing economic, social, and cultural rights as rights but then said:

It is time to move forward. The Obama administration takes a holistic approach to human rights, democracy and development.... As Martin Luther King once noted, an integrated lunch counter doesn’t help the person who can’t afford to eat there. Therefore, we will work ... to adopt ... resolutions at the U.N. that speak to the issues of economic, social and cultural rights and are consistent with our own laws and policies.³²

He also stated, “While the United States is not a party to the [International Covenant on Economic, Social, and Cultural Rights], as a signatory, we are committed to not defeating the object and purpose of the treaty.”³³ As an example of the implementation of these rights, he noted, “[i]n the wake of the housing crisis, last year the federal government committed almost \$4 billion to target homelessness.”³⁴

These statements reflect a huge step forward in accepting economic, social, and cultural rights as equivalent and interdependent with civil and political rights. However, Posner denied taking on any new obligations for these rights:

Some have also been concerned that using the language of human rights could create new domestic legal obligations that would be enforceable though [sic] the courts and tie the hands of Congress and the states. But we have been careful to ensure that any international agreements we endorse protect the prerogatives of the federal government, as well as those of our states and localities.³⁵

Although Posner’s statement indicates that we are still a long way from an enforceable, justiciable right to housing in the United States, the changing rhetoric is a first, necessary step toward that goal.

To publicize the successes of the Universal Periodic Review, the National Law Center on Homelessness and Poverty coordinated a congressional briefing sponsored by Sen. Richard Durbin’s office on the review and Congress’ role in implementing our human rights obligations. Speakers from our organization and other national advocacy organizations each considered a different aspect of the Universal Periodic Review Planning Council’s recommendations and the government’s responses to those recommendations and then crucially connected these recommendations to the role of Congress in ensuring that human rights are enjoyed to the fullest here at home.³⁶ We are holding follow-up meetings with Senate staffers to discuss next steps that they can take to help further our policy priorities.

³¹Roosevelt, *supra* note 19.

³²Assistant Secretary Michael H. Posner: *The Four Freedoms Turns 70*, HUMANRIGHTS.GOV (March 24, 2011), <http://bit.ly/k3Ujx4>.

³³*Id.*

³⁴*Id.*

³⁵*Id.*

³⁶For a video of the briefing, see NLCHP’s Channel, *supra* note 28.

Next Steps in Advocacy

Although the formal phases of the 2010 Universal Periodic Review cycle have concluded, much remains to be done. Most important, our government's responses to the recommendations must not be allowed to remain paper promises. We as housing rights advocates now have our government's written commitment to "take further measures ... to reduce the number of homeless people" and to "reinforce the broad range of safeguards in favor of ... the homeless to allow them the full enjoyment of their rights and dignity," as well as Posner's remarks cited above. Yet, since these commitments, Congress and the President have already passed a budget that hinders, rather than helps, the implementation of the right to housing. As advocates, we must constantly remind government officials that we hold them accountable to their commitments and will monitor their progress accordingly.

For example, at the National Law Center on Homelessness and Poverty we are integrating these commitments into all of our policy demands—not as the sole basis but as a complement to our other statistical data, legal arguments, and policy considerations. As stated in our recent report on the human right to housing and homelessness in the United States,

[a]ssessing housing policy from a rights-based framework would fundamentally change the dialogue about our resource allocation and regulatory policies to ensure people's basic rights are at the highest priority, not a side-note to the best workings of the market. In 2008, our government gave hundreds of billions of our tax dollars to bail out banks overwhelmed by the foreclosure crisis. A rights-based policy would have, at a minimum, demanded that the

banks renegotiate mortgages to allow families to remain in their homes in exchange for this unprecedented rescue. Instead, the banks got their bail out [sic] and quickly returned to profitability, all while continuing to force American families—who paid for their bailout with their taxes—out of their homes. Now, millions of foreclosed homes stand empty while families are homeless on the streets. Recognition of the human right to housing would demand a remedy to this gross human rights violation.³⁷

This human rights advocacy may already be showing its effects. On June 17, 2011, HUD Secretary Shaun Donovan sent to public housing authorities a letter reminding them that they have discretion to allow ex-offenders to live in public housing or receive vouchers.³⁸ Removing barriers to public housing resources for those with criminal records was one of our major demands in the Universal Periodic Review and begins to implement the recommendations that the United States accepted on reducing the number of homeless people and reforming laws to ensure nondiscrimination based on race in housing. While not creating any new policy or explicitly referring to the Universal Periodic Review, the letter concludes with helping ex-offenders "become productive citizens and caring parents ... [by] helping ex-offenders gain access to one of the most fundamental building blocks of a stable life—a place to live.... [J]oin us in welcoming these deserving citizens back to their communities."³⁹ This language humanizes ex-offenders and affirms their basic dignity and rights consistent with a human rights approach to housing. Early indications show that applicants are already benefiting from HUD's affirmative step in distributing this letter.

³⁷NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *supra* note 7, at 14–15.

³⁸Letter from Shaun Donovan, Secretary of Housing and Urban Development, and Sandra B. Henriquez, Assistant Secretary of Public and Indian Housing, to Public Housing Authority Executive Directors (June 17, 2011), <http://scr.bi/o52ex9>.

³⁹*Id.* at 2.

Advocates can take two steps now to make the next round of the Universal Periodic Review in 2014 even more successful. First, ongoing work to educate the grassroots and legal community about human rights standards is essential to their being able to use future consultation and shadow reporting to highlight issues of concern. The National Law Center on Homelessness and Poverty is happy to work with organizations to host local forums and webinar training.

Second, because the basis of review for the Universal Periodic Review includes all of the commentary by U.N. human rights monitors during the four-year review cycle, advocates can use the upcoming treaty reviews under the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, and the International Convention on the Elimination of All Forms of Racial Dis-

crimination to help lay the groundwork for a strong representation of housing rights issues at the Universal Periodic Review.⁴⁰ Interested participants should contact the National Law Center on Homelessness and Poverty or the U.S. Human Rights Network to learn how to get involved.

In short, the Universal Periodic Review, through the engagement of grassroots advocates, the education of government officials, and the creation of concrete standards, has pushed open the door for advocacy for housing as a basic human right in the United States. We need many more advocates to speak of “the human right to housing” to usher more Americans, in particular our governmental representatives and the courts, through this door. If enough advocates cross the threshold to human rights advocacy, the day will come when all Americans are able to walk through their own front doors to a place they can call home.

⁴⁰See Tars, *supra* note 2; see generally Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Oct. 12, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987); International Covenant on Civil and Political Rights, *supra* note 8; International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 8.



Subscribe to CLEARINGHOUSE REVIEW!

CLEARINGHOUSE REVIEW: JOURNAL OF POVERTY LAW AND POLICY is the advocate's premier resource for analysis of legal developments, innovative strategies, and best practices in representing low-income clients. Each issue of the REVIEW features in-depth, analytical articles, written by experts in their fields, on topics of interest to poor people's and public interest lawyers. The REVIEW covers such substantive areas as civil rights, family law, disability, domestic violence, housing, elder law, health, and welfare reform.

Subscribe today!

We offer two ways to subscribe to CLEARINGHOUSE REVIEW.

A **site license package** includes printed copies of each issue of CLEARINGHOUSE REVIEW and online access to our archive of articles published since 1967. With a site license your organization's entire staff will enjoy fully searchable access to a wealth of poverty law resources, without having to remember a username or password.

Annual site license package prices vary with your organization size and number of printed copies.

- Legal Services Corporation-funded programs: \$170 and up
- Nonprofit organizations: \$250 and up
- Law school libraries: \$500

A **print subscription** includes one copy of each of six issues, published bimonthly. Annual rates for the print-only subscription package are as follows:

- Legal Services Corporation-funded programs: \$105
- Nonprofit organizations: \$250
- Individuals: \$400

A print subscription for Legal Services Corporation-funded programs and nonprofit organizations does not include access to the online archive at www.povertylaw.org.

Please fill out the following form to receive more information about subscribing to CLEARINGHOUSE REVIEW.

Name _____

Organization _____

Street address _____ Floor, suite, or unit _____

City _____ State _____ Zip _____

E-mail _____

My organization is

- Funded by the Legal Services Corporation
- A nonprofit
- A law school library
- None of the above

What is the size of your organization?

- 100+ staff members
- 51-99 staff members
- 26-50 staff members
- 1-25 staff members
- Not applicable

Please e-mail this form to subscriptions@povertylaw.org.

Or fax this form to Ilze Hirsh at 312.263.3846.

Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602

CUT HERE