

HUMAN RIGHT TO HOUSING REPORT CARD

Student: United States of America

CATEGORY	2011	2012	2013	2014
Security of Tenure				
Renters	<i>B-</i>	<i>C-</i>	<i>C</i>	<i>F</i>
Homeowners	<i>D+</i>	<i>D</i>	<i>D</i>	<i>D</i>
Access to Counsel	<i>D</i>	<i>F</i>	<i>D-</i>	<i>D-</i>
Emergency & Dire Circumstances				
Criminalization of Homelessness	<i>F</i>	<i>D-</i>	<i>D</i>	<i>D+</i>
Domestic Violence	<i>B-</i>	<i>C</i>	<i>A-</i>	<i>B</i>
Availability of Services, Materials & Infrastructure	<i>D</i>	<i>D</i>	<i>D</i>	<i>D</i>
Affordability	<i>D</i>	<i>D</i>	<i>F</i>	<i>F</i>
Accessibility	<i>C-</i>	<i>C-</i>	<i>C-</i>	<i>C</i>
Habitability	<i>C-</i>	<i>C-</i>	<i>D</i>	<i>D-</i>
Location	<i>D</i>	<i>D</i>	<i>D</i>	<i>D</i>
Cultural Adequacy	<i>D</i>	<i>D</i>	<i>D</i>	<i>D</i>
Overall	<i>D+</i>	<i>D</i>	<i>D+</i>	<i>D</i>

CRITERIA

Grades were assigned to the federal government's activities as of November 26, 2014, based on the following criteria:

- 1) Was a law passed or policy adopted that protects the human right to housing?
- 2) Are laws that are in place to protect the human right to housing being implemented and enforced?
- 3) Have laws been enacted or are laws being enforced that undermine the human right to housing?
- 4) Have resources to further the human right to housing been added or are they being taken away?

We do not grade specific states or localities, but activity at the state or local level, and the federal government's response or lack thereof, does impact the grades given. Starting with a "neutral" C grade, points were added or taken away based on these criteria, with + or - used to reflect nuance such as the significance of a law or the magnitude of harm.

ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

The National Law Center on Homelessness & Poverty (NLCHP) is a 501(c) 3 organization based in Washington, D.C. and founded in 1989 as the legal arm of the national movement to end and prevent homelessness. Through policy advocacy, public education, and impact litigation, NLCHP addresses the root causes of homelessness and seeks to meet both the immediate and long-term needs of homeless and poor people. Through training and support, NLCHP also enhances the capacity of local groups. We are the only national organization dedicated solely to using the power of the law to prevent and end homelessness in America.

For more information about the Law Center and to access publications such as this report, please visit our website at www.nlchp.org.

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This report card is an annual evaluation based on our 2011 report "Simply Unacceptable: Homelessness & the Human Right to Housing in the United States." That report and this update were drafted by Eric S. Tars. Ruth Harper, Reut Cohen, and Samuel Goldsmith provided assistance in researching and updating this edition, and Janelle Fernandez, Jeremy Rosen and Maria Foscarinis provided expert editorial guidance.

Parts of this report are drawn from the 2014 report *Housing and Homelessness in the United States of America: Submission to the United Nations Universal Periodic Review of the United States of America*, coordinated by the Law Center, which had sections drafted by Toussaint Losier, Chicago Anti-Eviction Campaign; Michael Stoops, National Coalition for the Homeless; Jorge Soto, National Fair Housing Alliance; Sham Manglik and Linda Couch, National Low Income Housing Coalition; and Anne Holcomb, Unity Parenting and Counseling, Inc. We thank our partners for their contributions!

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CURRENT CONTEXT

In 2014, the United States continues to face an affordable housing crisis. Homelessness was already a national crisis prior to the foreclosure crisis and economic recession. An estimated 2.5 to 3.5 million men, women, and children were experiencing homelessness each year, including a total of 1.35 million children, and over a million people working full or part-time but unable to pay for housing.¹

Since then, the crisis has deepened:

- While based on a count on a single night in January, 2014, the Department of Housing and Urban Development reported an overall decrease of 5.2% in homelessness nationally,² this count is based on a severely limited and flawed method that almost certainly misses large numbers of homeless people.³
- The number of people who have lost their homes and are living doubled up with family or friends due to economic necessity remained at 7.4 million people in 2012 (the last year for which data is available), consistent with 2011, but some states saw as much as an 80% increase.⁴
- Over 1.2 million school children were homeless during the 2012-2013 school year—and almost 2.5 million children overall were homeless in 2013. The school numbers represent an 8% increase since the previous year, and an 85% increase since the beginning of the economic crisis in 2007.⁵
- A 2014 survey in the Law Center's report *Welcome Home: The Rise of Tent Cities in the United States* showed media reports of tent cities in 46 states across the country.⁶
- According to a June 2014 report by the Joint Center for Housing Studies at Harvard University, there is now a crisis in affordable rental housing.⁷ One out of every four renters, or 20.6 million renters, pay an excessive portion of their incomes on housing. The number of cost burdened renters has increased each year since 2007.⁸
- The safety net has failed to support needy families in this atmosphere of dire housing need. Only one in four of those poor enough to qualify for low-income housing assistance receive it.⁹

Moreover, many communities have responded to the growth of homelessness not with more housing, but by increasing enforcement of laws criminalizing homelessness. A July 2014 Law Center report, *No Safe Place*, surveyed 187 cities across the country and documented a 60% increase in city-wide bans on camping, 43% increase in city-wide bans on sitting or lying down, and a 119% increase in bans on sleeping in vehicles since 2011.¹⁰

THE HUMAN RIGHT TO HOUSING

In 1948, the U.S. was an international leader in promoting the human right to housing. It led the world in shaping the Universal Declaration of Human Rights, which provides, among other things, that "everyone has the right to an adequate standard of living. . . including the right to housing."¹¹ However, the following year, the 1949 Federal Housing Act stated a *goal* of "a decent home and suitable

living arrangement for every American family,” but that goal was never enshrined as a *right* for every American.¹²

More recently, the U.S. has hinted at signs of its possible interest in revitalizing the human right to housing. In 2010, President Obama stated that it is “simply unacceptable for individuals, children, families and our nation’s veterans to be faced with homelessness in this country.”¹³ In March 2011, the U.S. acknowledged for the first time that rising homelessness implicates its human rights obligations and made commitments to the United Nations (U.N.) Human Rights Council to “reduce homelessness,” “reinforce safeguards to protect the rights” of homeless people, and continue efforts to ensure access to affordable housing for all.¹⁴

The past year has brought some exciting developments regarding the human right to housing:

- Internationally, the U.S. engaged in reviews by the three treaty bodies to which it reports. Each inquired about criminalization of homelessness in the U.S. and made strong recommendations to “abolish” the practice, calling it “cruel, inhuman, and degrading treatment.”¹⁵ Sir Nigel Rodley, the Chair of the UN Human Rights Committee, and former U.N. Special Rapporteur on Torture, drew special attention to the issue in his closing statement on U.S. review, stating “I’m just simply baffled by the idea that people can be without shelter in a country, and then be treated as criminals for being without shelter. The idea of criminalizing people who don’t have shelter is something that I think many of my colleagues might find as difficult as I do to even begin to comprehend.”¹⁶ Each treaty body recommended federal agencies “offer incentives to decriminalize homelessness. Such incentives included providing financial support to local authorities that implement alternatives to criminalization and withdrawing funding from local authorities that criminalize homelessness.”¹⁷ While HUD has indicated interest in including such incentives, it has not finalized a commitment.
- The U.S. Interagency Council on Homelessness (USICH) has taken some positive steps in integrating human rights into its anti-criminalization advocacy. Starting on Human Rights Day (December 10) in 2013, it inaugurated the blog series “I Believe in Human Rights,” bringing together perspectives from multiple agencies and around the globe on housing and human rights. In addition, it created an entire resource page dedicated to human rights and alternatives to criminalization of homelessness.¹⁸ These practices have been used as models of human rights integration by the Department of Justice in conducting their own trainings within the agency and with other agency partners.

In spite of the positive statements from the USICH, our national survey of criminalization ordinances showed steep increases in criminalization across the country.¹⁹ Congress has failed to pass the Permanently Protecting Tenants at Foreclosure Act, meaning crucial federal protections for renters remain at risk of expiring at the end of this year.²⁰ Moreover, ongoing budget cuts to the Department of Housing and Urban Development (HUD) and other federal agencies have threatened the basic safety net for many people living in poverty. These cuts demonstrate the opposite of a human rights-based approach to housing. The rights-based approach would ask, “What is the need, and how can we progressively meet it, through a combination of spending, regulation, or other tools?” Instead, we are faced with retrogressive cuts to already inadequate resources, with no proposed compensatory changes to other laws or regulations, that will certainly lead us further from full enjoyment of the right to housing.

THIS REPORT CARD: HOLDING THE U.S. ACCOUNTABLE

This report card assesses the current level of U.S. compliance with the human right to housing in the context of American homelessness. In doing so, we primarily consider the steps the federal government has taken to end and prevent homelessness, with reference to state and local practices where relevant. It is not, and is not intended to be, a comprehensive review and assessment of implementation of all aspects of the right to housing, which is interconnected and interdependent with the enjoyment of many other civil, political, economic, social, and cultural rights. Our much more comprehensive 2011 report, *Simply Unacceptable: Homelessness & the Human Right to Housing in the U.S.*, goes into more depth in its analysis.²¹

The 2014 Report Card is also adapted from our submission to the U.N. Human Rights Council for the U.S. government's second Universal Periodic Review, which the Law Center coordinated and submitted together with the Chicago Anti-Eviction Campaign, National Coalition for the Homeless, National Fair Housing Alliance, National Low Income Housing Coalition, and Unity Parenting and Counseling, Inc. and was endorsed by a further forty-six organizations and individuals.²² The report charges that the U.S. has failed to uphold its obligations to protect the human right to adequate housing, under international law and under its specifically accepted recommendations to promote the right to housing and protection of homeless persons from its first review in 2010.

According to international standards, the human right to housing consists of seven elements: (1) security of tenure, (2) availability of services, materials, and infrastructure (3) affordability, (4) accessibility, (5) habitability, (6) location, and (7) cultural adequacy.²³ Human rights law requires that countries take progressive steps to respect, protect, and fulfill the right, to the maximum of the country's available resources, in a non-discriminatory manner.²⁴ The government can use a wide variety of measures, from market regulation to subsidies, public-private partnerships to tax policy, to help ensure the right. Implementing the human right to housing would *not* require the government to immediately build a home for each person in America or to provide housing for all, free of charge. But it does require much more than the U.S. is doing now, and more than a mere provision of emergency shelter—it requires affirmative steps to be taken to ensure fully adequate housing, based on all the criteria outlined above.

While this report card is based on a qualitative, rather than a quantitative, assessment, it makes some efforts to assess the nation's performance based on quantitative data. The Economic and Social Rights Fulfillment (ESRF) Index assesses how well countries perform in meeting economic and social rights, such as the right to housing, in light of their available resources.²⁵ In 2012, the last year for which housing data is available, out of the 22 high-income countries analyzed, the U.S. received one of the worst scores, fulfilling only 78.72% of their obligations, a slight decrease from 79.09% in 2011.²⁶ The fulfillment of obligations differed significantly between states and across racial groups.²⁷ In a state-by-state assessment, Wyoming fulfilled 79.12% of its obligations in regard to adequate housing, while California fulfilled only 11.68% of its obligations.²⁸ The fifty states, on average, fulfilled just over 45% of their adequate housing obligations.²⁹

Consistent with these findings, our report card shows there is much work to do to realize the right to housing. We have given a letter-grade ranking for the current status of each aspect of the right. Grades were assigned based on the following criteria:

- 1) Was a law passed or policy adopted that protects the right to housing?
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We recognize that for many Americans, the overall enjoyment of housing rights is better in the U.S. than it would be in some developing nations, but the human right to housing is one that is progressively realized based on the resources available to the country. Given that the U.S. is still the wealthiest nation in the world, with a well-developed democratic and judicial system, we need to hold ourselves to a higher standard. Our failure to meet those standards is reflected in the grades assigned below:

A. SECURITY OF TENURE:

According to international standards, all persons—whether renters, homeowners or occupants of emergency housing or informal settlements—should possess legal protection against forced eviction and harassment. In the U.S. today, these protections are often lacking:

RENTERS: *F*

There is a 7 million unit shortage of rental housing that is affordable and available to extremely low income households (households with incomes at or below 30% of area median income).³⁰ Without assistance, these households find themselves spending more than half their income on rent, leaving very little money for other expenses, and leading to unstable housing situations and homelessness.³¹

Rental properties constitute 20% of all foreclosures, and of families facing eviction due to foreclosure, approximately 40% are renters.³² The number of renters affected by the foreclosure crisis have tripled between 2010 and 2013.³³ Prior to the landmark Protecting Tenants at Foreclosure Act (PTFA), many of these renters were completely unaware that their building owners had received foreclosure notices until a new owner evicted them. "I came home from work last night and the locks were changed," reported one tenant, who had paid his rent on time and was unaware of any pending foreclosure.³⁴ The PTFA provides some crucial federal protections for renters in foreclosure; some states have enacted stronger protections.³⁵

However, the PTFA is scheduled to expire in 2014; bills aiming to make it permanent have been introduced in the House and Senate, but they have yet to pass. Moreover, implementation and enforcement are lacking. To date, no federal agency has taken responsibility for monitoring compliance. Consequently, many renters, who are disproportionately low income and people of color, continue to lose their homes—and face homelessness—due to their landlords' foreclosures.³⁶

Due to the desperate crisis in rental affordability and failure to take action on the PTFA, the U.S. receives an “F”.

HOMEOWNERS: **D**

From 2008 until May 2014, there were over 5 million foreclosures, representing 10% of all homes with a mortgage.³⁷ In just May of 2014, foreclosure notices were filed against one in every 1199 housing units³⁸—in Florida, this rate is as high as one in every 469 units.³⁹

Many of these foreclosures were preceded by predatory lending practices, which target primarily poor and minority borrowers (who may have no other options) with agreements that incorporated *insecure* tenure by their terms, due to payment conditions borrowers could not sustain.⁴⁰

During the foreclosure crisis, many banks received billions in public dollars to maintain their financial stability, with no corresponding commitment to keeping victims of foreclosure in their homes, thereby spending the nation’s “available resources,” but not in a way that progressively realizes the human right to housing.⁴¹

Although federal and state governments reached a National Mortgage Settlement in February 2012 to bring \$26 billion in relief to nearly two million current and former homeowners, this settlement did not address the targeting of minority borrowers. Moreover, this settlement excluded government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac, thereby leaving out half of the mortgages in the U.S.⁴² By exempting the majority of mortgages, this settlement failed to address the dire housing concerns of millions of families who have suffered from illegal lending practices and face potential homelessness, even though the federal government could easily intervene in the foreclosure process through the Federal Housing Finance Agency.⁴³

While the number of foreclosures is slowing, the federal government’s ongoing failure to take adequate steps to help keep people in their homes results in a “D” grade.

ACCESS TO COUNSEL: **D-**

To date, no court or legislature anywhere in the U.S. has recognized a right to counsel in housing matters such as evictions and foreclosures. Lack of access to counsel leads to insecure tenure and wrongful evictions for many tenants in the U.S.⁴⁴

- In some areas of the country more than 90% of foreclosure and eviction defendants are unrepresented, while landlords and mortgage holders are represented 90% of the time.⁴⁵
- In May 2014, the San Francisco Right to Civil Counsel Pilot Program released a report that showed 11% of families living in emergency shelter in San Francisco cited evictions (legal and illegal) as the immediate source of their homelessness.⁴⁶ However, the report estimated that of 752 tenants provided with representation in their pilot project, 609, or 81% were more likely to avoid homelessness, saving the city \$1,096,200 in homelessness services, given that the average shelter stay for individuals in San Francisco is estimated to be 60 days at \$30/night.⁴⁷

- In another study, represented tenants fared twice as well as pro se tenants in terms of retaining possession of their homes, and five times as well in terms of having rent waived and obtaining monetary damages.⁴⁸

Still, the vast majority of litigants in housing cases remain unrepresented. The World Justice Project's Rule of Law Index, which measures experience of the rule of law through 100,000 individual and 2,400 expert surveys in 99 countries around the globe, routinely ranks the U.S. at or near the bottom of industrialized countries for accessibility and affordability of the civil justice system, leading to homelessness and housing rights violations.⁴⁹

Pilot projects focused on improving access to counsel, particularly in cases of housing need, keep the U.S. at a "D-" rather than an "F", but just barely.

EMERGENCY AND DIRE CIRCUMSTANCES:

CRIMINALIZATION OF HOMELESSNESS: *D+*

Despite a dire lack of adequate shelter and affordable housing, homeless persons are increasingly criminalized for engaging in necessary, life-sustaining activities—like sleeping and sitting—that they often have no choice but to perform in public spaces.⁵⁰ Following the government's acceptance of recommendations to "protect the rights of homeless persons" during the Universal Periodic Review in 2010, advocates called on the federal government to increase its opposition to criminalization at the local level and create funding incentives to prevent criminalization. Following a 2009 congressional mandate that it address the issue, the U.S. Interagency Council on Homelessness (USICH) issued a report, *Searching Out Solutions*,⁵¹ and has referred to criminalization of homelessness as a human rights violation.⁵²

However, HUD and the Department of Justice have yet to implement funding incentives, and since 2011, criminalization has been on the rise:

- City-wide bans on camping in public have increased by 60%
- City-wide bans on begging in public have increased by 25%
- City-wide bans on loitering, loafing, and vagrancy have increased by 35%
- City-wide bans on sitting or lying down in particular public places have increased by 43%
- Bans on sleeping in vehicles have increased by 119%.⁵³

Moreover, communities routinely engage in forced evictions or "sweeps" of homeless encampments with little notice and no provision of alternative housing, often destroying important documents, medicines, and what little shelter the victims have.⁵⁴ Not only does criminalization fail to address the root causes of homelessness, it is actually counterproductive. It saddles homeless individuals with criminal records, making it more difficult for them to secure or maintain employment, housing, and benefits; burdens the criminal justice system; and violates homeless individuals' civil and human rights.⁵⁵ Three states have passed homeless bills of rights in response to discrimination against homeless persons, but

coverage is limited and enforcement is uncertain.⁵⁶

In 2014, the U.N. Human Rights Committee, Committee on Racial Discrimination, and Committee Against Torture condemned criminalization of homelessness and called for immediate steps to be taken toward its abolition in their reviews of the U.S. These committees echoed advocates' recommendations to reduce the impact of criminalization through funding incentives and other measures.⁵⁷

One of many heart-rending stories of criminalization is that of Jerome Murdough, a homeless African-American veteran living in New York City. He baked to death this year in a jail cell heated to more than 100 degrees, after being arrested for trespassing in a public housing stairwell where he sought shelter from sub-freezing temperatures.⁵⁸ He was incarcerated solely because he had no safe place to sleep, and he paid for it with his life.

Moreover, the degrading and dehumanizing climate produced by criminalization ordinances promotes hate crimes and violence against people experiencing homelessness by private individuals. From 1999-2013, housed individuals perpetrated 1,437 acts of violence against homeless individuals in 47 states, Puerto Rico, and the District of Columbia, resulting in 375 deaths, though many more may go unreported.⁵⁹ The federal government does not currently recognize homelessness as a protected class under its hate crimes statute, but several states have done so, for sentencing and/or tracking purposes.⁶⁰ These crimes, including an array of atrocities from murder to beatings, rapes, and even mutilation, are believed to have been motivated by the perpetrators' biases against homeless individuals or by their ability to target homeless people with relative ease. The most crimes occur in states with the highest rates of criminalization,⁶¹ including Florida, which produced four of eighteen lethal crimes against homeless persons in 2013. Among these was Frank Rudolph, a 54-year-old homeless man beaten to death with sticks and punches by three teenagers in New Port Richey, FL.⁶²

Lack of access to housing and services for homeless youth also places them at higher risk for violence. A survey of unaccompanied homeless youth in Illinois found 61% reported being victims of violent crimes, including theft, burglary, and physical or sexual assault, during the past 12 months.⁶³

USICH's affirmative adoption of human rights language improves the grade here over previous years, but without federal funding incentives in place, criminalization continues to grow at the local level. The federal government can be doing more, so a "D+" is warranted.

DOMESTIC VIOLENCE: *B*

Domestic violence is a leading cause of homelessness, particularly for women. More than 90% of homeless women report having experienced severe physical or sexual abuse, and many victims of abuse become homeless after escaping violence because adequate housing is not available.⁶⁴

The Violence Against Women Act (VAWA) of 2006 created new housing rights for survivors in some federally subsidized housing. The 2013 reauthorization of the law expanded these protections to nearly all federally-funded housing. As important as these federal protections are, they only cover the 4.9 million federally-funded rental households—just 12% of the estimated 41 million rental households in the United States.⁶⁵ Nearly every state has enacted some protections that expand housing protections for survivors, but only thirteen have expanded VAWA's non-discrimination provisions to private landlords, leaving many households without protection.⁶⁶

On August 6, 2013, HUD released an initial notice regarding the applicability of VAWA 2013 to its housing assistance programs.⁶⁷ Although the notice was an important first step in implementing the reauthorized housing protections for survivors of domestic violence, HUD has not yet issued more instructive guidance and regulations to ensure the proper implementation of the housing safeguards that protect survivors from being denied or evicted from their housing due to the violence perpetrated against them. Moreover, neither the Treasury Department nor Department of Agriculture have promulgated regulations for their responsibilities toward VAWA implementation.

The passage of the new VAWA law and initial steps toward implementation remain positive, but lack of finalized guidance and further resources result in a slip to a “B” grade here.

B. AVAILABILITY OF SERVICES, MATERIALS, AND INFRASTRUCTURE: D-

Existing infrastructure in the U.S. inextricably links housing or other facilities with access to water, sanitation, and other basic services. For homeless individuals, lack of shelter often means lack of these basic resources, cited by the Water Rapporteur in her 2012 report on the U.S.⁶⁸ Two ways in which this lack of infrastructure plays out are (1) a lack of shelter and (2) a lack of water.

The federal government has failed in its statutory duty to use its existing resources to improve the availability of services and infrastructure to homeless individuals. Title V of the McKinney-Vento Act requires government agencies to make available vacant federal properties to homeless service agencies to provide housing and other services. In March 2013, following litigation, a court found that many government agencies have not been complying with the law and mandated additional steps for compliance.⁶⁹ While additional properties have been placed on the register of vacant properties, the application process remains overly burdensome and has failed to convey an adequate number of properties, leaving homeless persons under-served.

For poor persons, water disconnections often happen when people have to choose between paying for water or rent, resulting in a violation of both the right to adequate housing and the right to water.⁷⁰ In June 2014, the Special Rapporteurs on Housing, Extreme Poverty, and Water called widespread water disconnections to households unable to pay water bills in Detroit “a violation of the human right to water and other international human rights,” and called attention to the disproportionate impact of disconnections on African American communities.⁷¹ In October 2014, the Rapporteurs on Water and Housing visited Detroit, hearing testimonies and further stating “Every effort should be made by all levels of government to ensure that the most vulnerable are not evicted from or lose their housing as a result of water shut-offs or water bill arrears. Where an individual or family is rendered homeless due to water shut-offs, the city of Detroit must have in place emergency services to ensure alternate accommodation with running water is available.”⁷² Nonetheless, court rulings have stated access to water is not a right, in clear contradiction to international standards.⁷³

The government’s failure to make vacant properties fully accessible and the fact that the government has allowed a significant number of people in one of its major cities to fall into a Third-World situation where they lack running water for drinking and sanitation are reflected in the slide to a “D-” this year.

C. AFFORDABILITY: F

Over half of all American renters pay more than 30% of their income for housing.⁷⁴ For extremely low-

income (ELI) households, the percentage paying more than half of their income in rent jumps to 76%.⁷⁵ This problem is caused in part by the lack of available, affordable housing for low-income renters. Average rents increased by an estimated 4.6% in 2013 across the nation, and are expected to increase by at least 4% per year through 2015.⁷⁶

On top of the existing gap in availability of affordable units, the supply of low-cost rental units has declined since 2007.⁷⁷ While ELI renter households may qualify for federal and local subsidy programs, demand for these programs far exceeds the supply: *there is only enough funding for one in four eligible renters to receive assistance.*⁷⁸ The remaining three-fourths of eligible ELI households desperately in need of housing find themselves on multi-year waiting lists, or find that waiting lists for affordable housing in their area are closed altogether.⁷⁹ While the affordable housing stock declines each year and more families and individuals are unstably housed, the rental market for higher-income households continues to grow, foreclosed homes stand vacant, and abandoned government-owned properties remain empty.⁸⁰

Lack of affordable housing is a primary cause of homelessness, and the ongoing crisis has led to an increase in the numbers of homeless persons. While HUD's point-in-time count of homeless persons living in shelters and public places has decreased over the past four years,⁸¹ this number is almost certainly a significant undercount of homelessness.⁸² It does not include people living doubled up with family or friends; this number increased by 9.4%, to 7.4 million people in 2011, and remained stable during 2012.⁸³ Moreover, over 1.2 million school children were homeless during the 2012-2013 school year— an 85% increase since the beginning of the economic crisis in 2007—and almost 2.5 million children overall were homeless in 2013.⁸⁴

The HUD budget has decreased by more than 56% since its high point in 1978, leading to the loss of approximately 10,000 units of federally-subsidized low income housing each year.⁸⁵ The National Housing Trust Fund was designed to be a permanent, dedicated funding source to increase and preserve the supply of rental units and increase homeownership for the lowest income households, funded by contributions from government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac. However, the Trust Fund lacks any resources; following the takeover of the GSEs by the Federal Housing Finance Administration in 2008, their contributions to the Trust Fund were suspended (before they had even begun) and no new funding has been provided.⁸⁶ Proposals have been made to provide funding either through reform of the mortgage interest tax deduction or resuming payments from the once-again profitable GSEs. Unfortunately, no government action has been taken, despite a lawsuit seeking to force the GSEs to resume payment.⁸⁷

The ongoing failure to fund federal housing safety net programs at adequate levels, and in particular the failure to open the funding streams to the National Housing Trust Fund, keep this grade at an "F".

D. ACCESSIBILITY: C

Many Americans experience significant difficulties in accessing adequate housing. First, HUD's definition of homelessness is overly narrow, blocking some homeless persons from government aid. Furthermore, housing applicants experience discrimination based on criminal history, race, disability, sex, source of income, and other statuses. Although the GSEs are designed to mitigate some of the racial disparity in access to housing, it has implemented some policies that have produced the opposite effect.

HUD's overly restrictive definition of homelessness excludes persons living in doubled-up situations or low-cost motels with no other place to go.⁸⁸ This eliminates the eligibility of many in need of resources to receive aid, despite other government agencies recognizing these populations as homeless.⁸⁹

Both private landlords and public housing authorities frequently deny people with criminal convictions or even arrest records access to housing, leading 1 in 11 released prisoners into homelessness.⁹⁰ In 2011, following years of advocacy, including the 2010 UPR recommendations to increase affordable housing access, HUD issued a letter to public housing authorities encouraging them to reduce these restrictions.⁹¹ However, HUD has not taken significant further action to ensure that ex-offenders are housed; the agency has not even collected data to see if any authorities' policies improved.

Even where needy applicants are able to access affordable housing or obtain housing assistance, they face discrimination in the private housing market on the basis of race, disability, gender, source of income, or other status, despite some strong de jure protections. There were 27,352 complaints of discrimination registered in 2013 with fair housing agencies, an increase of 262 since 2011.⁹² HUD estimates this is only 1% of all housing instances of discrimination that happen annually.⁹³ It is clear more work needs to be done to ensure equal access to housing resources.

Continued residential segregation and the history of excluding racial minorities from access to sustainable mortgage credit created model conditions for predatory lending to poor households in communities of color.⁹⁴ This has led to the loss of wealth built over generations in neighborhoods of color, representing over half of the total cost of the foreclosure crisis in the United States.⁹⁵ Government policies contributed to the decline of wealth in communities of color and are currently exacerbating the devastation of the crisis for racial minorities.

The GSEs, Fannie Mae and Freddie Mac, were created by Congress to improve the flow of mortgage credit by providing a stable source of funding for low-interest rate loans which banks and other lenders use to provide individuals with home loans. Although the GSEs have a duty to serve underserved borrowers, some of their policies have raised the cost of home loans, creating barriers to access to home loan credit for racial minorities.⁹⁶ Without quality and affordable access to credit, borrowers of color will remain devastated by the foreclosure crisis in the United States.

While HUD has many positive efforts with regard to accessibility, its failure to recognize the full scope of homelessness, take adequate steps for ex-offenders, and fully address the disparate impact of housing and lending policies keeps this grade at a "C".

E. HABITABILITY: D

While much of the U.S. enjoys high quality housing stock, many poor families experience dangerous or unhealthy conditions. Between 2007 and 2012, the number of shared households increased by 13.2%, totaling 22.3 million households in 2012.⁹⁷ Doubled-up living situations are often unstable, overcrowded, and potentially unsafe if families or youth living on their own are forced to move into inadequate or abusive households to avoid living on the streets.

Beyond doubling up, low-income housing units are often poorly maintained—in violation of housing codes that lack adequate enforcement mechanisms. Many violations go unpunished and un-remedied, leading to health problems for residents—particularly low-income youth, who experience double the

rate of asthma of their moderate-income peers.⁹⁸ Most cities do not have universal access to shelter, meaning more people are forced to live on the streets or in unsafe places.⁹⁹

In addition, behavioral health needs of homeless persons for adequate housing are not being met. The expansion of healthcare access under the Affordable Care Act offers promise, but 24 states have not yet expanded Medicaid, the government subsidized healthcare program for low-income individuals, leaving 5 million Americans in a “coverage gap.”¹⁰⁰ This will mean that some states will be left behind in treating homeless and poor persons with mentally illness and addiction.

Further exacerbating the problem, federal banking regulators are failing to guard against the discriminatory treatment of minority communities in the aftermath of the housing crisis. Real Estate Owned (REO) properties are homes that have gone through foreclosure and are now owned by banks, investors, the GSEs, FHA, or the U.S. Department of Veterans Affairs. A nationwide investigation into the maintenance and marketing practices of REO properties found that major banks maintain and market REO homes in white communities significantly better than in communities with higher concentrations of racial minorities, where these properties are left to deteriorate.¹⁰¹

Unmaintained properties undermine the viability of these communities by posing health risks to neighboring families, bringing down neighboring home values, and serving as a base for criminal activity, ultimately triggering a domino effect that spurs further foreclosure and homelessness. In the Greater Chicago area, for instance, there are an estimated 62,000 vacant and abandoned properties, many of them concentrated in Chicago’s overwhelmingly Black and Latino South and West sides—where four or five abandoned homes can often be found on one residential block.¹⁰²

These properties also serve as a haven for criminal activity; three times as many crimes occurred in abandoned buildings in 2012 than in 2005, with an average of 7 crimes occurring in abandoned buildings or vacant lots per day in 2012.¹⁰³ No uniform regulatory structure exists for how banks must maintain and market REO properties, and the federal government has failed to conduct effective oversight of REO maintenance and marketing practices by financial institutions they regulate. All efforts to counteract REO discrimination have been taken by non-governmental agencies,¹⁰⁴ and investigations into property preservation practices have resulted in lawsuits against companies contracted to maintain REOs owned by GSEs.

The failure to address the disparate maintenance of foreclosed properties in communities of color and lack of other measures to ensure habitable housing keep this grade at a “D” this year.

F. LOCATION: *D*

Adequate housing requires more than four walls and a roof; it also must be in a location that makes it possible to access necessary resources. For poor families, location can be a major disadvantage to education, employment, and access to services. For example, poor families who live in metro areas and take public transportation face, at minimum, 70% longer commutes to work than their neighbors with other transportation options.¹⁰⁵ Children who are homeless or whose housing is unstable face frequent disruptions in education, which can negatively impact cognitive development.¹⁰⁶ Although Title VII of the McKinney-Vento Homeless Assistance Act requires schools to keep homeless students enrolled in the last school where they were permanently housed, if that is in the child’s best interest, lack of available shelter or housing within the district often forces students to face long transit rides

at high costs to the district, or even transfer to new schools—where educational progress can be interrupted.¹⁰⁷

HUD historically has had a very limited enforcement program for ensuring state and local compliance with the Affirmatively Furthering Fair Housing (AFFH) obligation of the Fair Housing Act, which is intended to eliminate entrenched patterns of segregation by requiring recipients of federal housing and community development funding to administer them in an equitable manner and identify impediments to fair housing. Civil society and the Government Accountability Office have both discovered failures in compliance with the AFFH mandate by federal funding recipients and enforcement of the AFFH requirements by HUD. HUD has increased its enforcement of the AFFH mandate, and proposed a regulation concerning AFFH compliance and enforcement in July 2013. Still, structural reforms are needed to sustain progress in desegregation, including the final release of HUD's AFFH regulation with meaningful standards and oversight mechanisms.

On November 3, 2014, the U.S. District Court for the District of Columbia vacated HUD's disparate impact rule that it has used for years, approved by all other Circuit Courts, which allows it sue municipalities for violations of the Fair Housing Act even when it can not prove discriminatory intent.¹⁰⁸ Equally concerning, the Supreme Court granted certiorari on this question in October.¹⁰⁹ This will be the third time the issue is before the court in recent years; both previous cases settled before a decision was issued, but it is apparent the Court is reaching out for these cases.¹¹⁰

The federal government could be doing significantly more to help communities plan for the affordable housing needs of all their residents, warranting a "D" grade.

G. CULTURAL ADEQUACY: D

The poor state of housing for Native Americans violates not only human rights, but also tribal treaty obligations. Inadequate housing for Native Americans creates negative impacts on cultural and social practices—through overcrowding, lack of maintenance, and destruction of historical cultural connections to land and traditional settlement patterns. Congress has reduced funding for the Indian Housing Block Grant (IHBG) program by more than 10% (\$50 million) over the past few years, despite the IHBG's existing lack of adequate resources.¹¹¹ HUD is developing a report, expected to be released in December 2014, on the housing needs of Native Americans, Alaska Natives, and Native Hawaiians, which could bring much-needed attention to this ongoing issue.¹¹²

The federal government has taken limited steps to ensure culturally adequate housing for Native Americans, but much more can be done, necessitating a "D" grade.

RECOMMENDATIONS

The U.S. must take affirmative steps to improve Americans' access to affordable housing. Our country's economic struggles are not a reason to defer taking action to realize this vital goal. Rather, it is precisely now that the need to do so is most acute, and a rights-based approach to budgeting decisions would help generate the will to protect people's basic human dignity first, rather than relegating it to the status of an optional policy.

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

Because the human right to housing framework itself is so broad, the list of remedies to present violations is similarly broad. We have highlighted the ten most critical—and most relevant—first steps to ending and preventing homelessness:

INCREASE HOUSING FUNDING AND ACCESS TO RESOURCES

1. Congress and HUD should allocate at least \$1 billion in new money per year to homelessness prevention programs, and expand HUD's definition of homelessness to include those living in doubled-up situations or in motels due to loss of housing or economic hardship—as other federal agencies have done.
2. Congress and HUD should ensure every person can afford adequate housing through a combination of new construction of subsidized units, expanded funding for Section 8 and other subsidies, and funding the National Housing Trust Fund at a minimum of \$1 billion per year.
3. Congress and HUD should protect and strengthen Title V of the McKinney-Vento Act, which requires vacant or underutilized federal property to be made available to homeless service providers at no cost, by increasing the number of useful properties made available and easing the application process.
4. Federal, state, and local governments must work together to ensure no person loses access to water or sanitation due to inability to pay.

STRENGTHEN RIGHTS

5. Congress and the Administration should make permanent the Protecting Tenants at Foreclosure Act (PTFA), with the addition of a private right of action to enable better enforcement of the law, and vest authority in the Consumer Protection Financial Bureau to regulate and enforce compliance with the PTFA.

6. Congress and states should provide a right to counsel in all civil cases involving the potential loss of housing or inadequate housing conditions, and significantly expand funding for legal aid services to facilitate the implementation of this right.
7. HUD and DOJ should take concrete steps to limit local criminalization efforts by providing incentives for constructive alternative approaches and decriminalization, and by discontinuing its own funding of local law enforcement practices that criminalize homelessness. States should support and enact Homeless Bills of Rights; local governments should stop enforcing laws that criminalize homelessness in the absence of shelter or housing, and provide adequate notice and adequate alternative housing before evicting homeless persons living in encampments.
8. HUD, the Department of Agriculture, and Treasury should fully implement the Violence Against Women Act's new housing protections through regulation and other guidance and encourage states and municipalities to expand the Act's protections to housing that has no federal subsidy.
9. In order to facilitate access to housing, voting, and other services, states should take steps to reduce barriers to homeless persons obtaining identification, such as providing cost waivers and assisting persons with obtaining necessary documentation.

IMPROVE ECONOMIC JUSTICE AND FAIRNESS

10. Congress should increase the minimum wage and Supplemental Security Income benefits, so that both working and low-income disabled people can afford adequate housing as well as meet other basic needs while paying no more than 30 percent of their income for housing.

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- ¹⁶ See National Law Center on Homelessness & Poverty, US ICCPR REVIEW 2014: CRUEL, INHUMAN, AND DEGRADING (2014), <http://youtu.be/V3hm25LE75M?list=UUDJRWWjmVSQjFgsujA8-ITA>.
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