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Bringing Human Rights Home: The DC Right to Housing Campaign

by Meetal Jain*

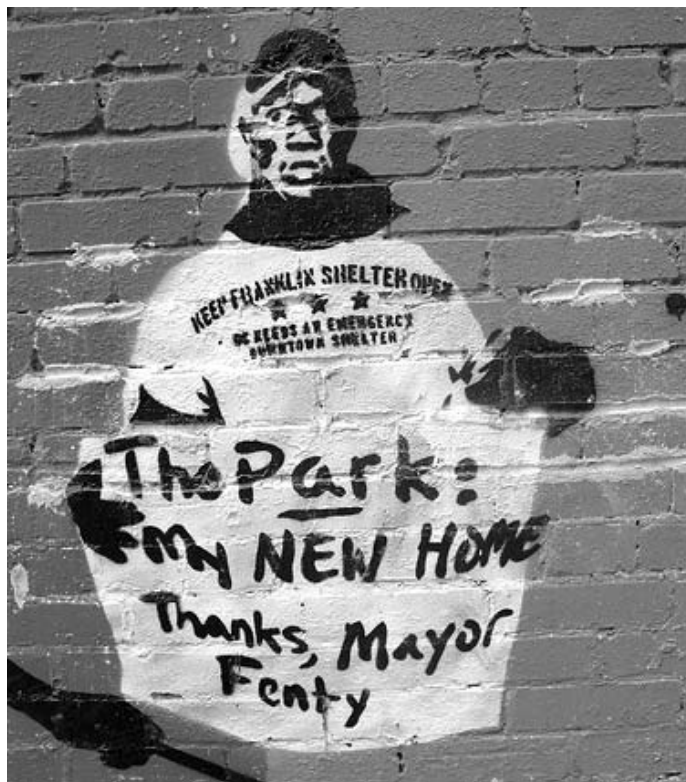
Housing is not simply about bricks and mortar; nor is it simply a financial asset. Housing includes a sense of community, trust and bonds built between neighborhoods over time; the schools which educate the child; and the businesses which the local economy and provide needed goods and services.

— Raquel Rolnik, UN Special Rapporteur on adequate housing¹

The United Nations Centre for Human Settlements estimates that globally over one billion people live in inadequate housing, with an excess of 100 million people living in conditions classified as homelessness. Here in the District of Columbia, a city with the widest income gap between rich and poor of any city in the country, we do not need to look further than our backyard to bear witness to the truth of these statistics.²

Washington, D.C. has the seventh highest rate of poverty in the United States, but is the second least affordable jurisdiction in the country with respect to housing prices.³ Homelessness remains an acute concern in the District. There are in any given year, 17,800 homeless people in D.C.⁴ Forty-seven percent are chronically homeless, meaning they have been homeless for more than a year.⁵ Significantly, families constitute 30.4 percent of the homeless population and continue to grow in number, with a twenty percent increase from 2008 to 2009.⁶ More than 22 percent of children under the age of eighteen live at or below the poverty line.⁷ On March 4 of this year, 200 families, including 400 children, were taking up residence at D.C. General Hospital, a facility with a maximum capacity of 135 families, while in November 2009, during hypothermia season, there were more than 400 families on the waiting list for emergency family shelter⁸.

Relatedly, there is a growing affordable housing crisis for low- and moderate-income households in D.C. Most of the District's lowest-income households spend half or more of their income on housing.⁹ According to U.S. Department of Housing and Urban Development standards, housing is considered unaffordable if it consumes more than thirty percent of a household's income.¹⁰ By these standards, nearly 100,000 D.C. households face unaffordable housing expenses.¹¹ Moreover, funding for all of the District's major housing programs has been drastically cut in recent years: for example, the budget for core housing programs in Fiscal Year (FY) 2010 is U.S. \$64 million, a nearly fifty percent cut from 2008, and the Housing Production Trust Fund will receive only U.S. \$18 million in FY 2010, compared to U.S. \$62 million in 2008. Additionally, D.C. has been unable to expand its rent subsidy program since 2008, despite a waiting list of more than 25,000 households.¹²



By Michael Loadenthal (flickr.com/photos/michaelimage/).

A stencil on the side of Franklin Shelter in Washington, D.C.

For years, a range of fantastic non-profit organizations have been advocating tirelessly on these issues — Empower DC,¹³ OneDC,¹⁴ Washington Legal Clinic for the Homeless,¹⁵ SOME,¹⁶ and the National Law Center for Homelessness and Poverty¹⁷ are just a few. These organizations engage in varied advocacy and direct services, from preserving, protecting, and creating affordable housing for low-income D.C. residents to educating tenants about their housing rights and supporting a resident-led campaign to stop the sale of public property for private profit. Much positive housing legislation has been introduced in the D.C. City Council, including the Omnibus Rental Housing Amendment Act of 2009;¹⁸ the Tenant Protection Act of 2009;¹⁹ and the District Facilities Plan, Bill 18-592,²⁰ which would heighten protection for renters in the District and give D.C. residents an opportunity to provide input into the equitable placement of the facilities and amenities they need, such as recreation, senior services, literacy programs, and youth services, given the availability of public property that could be used for these purposes. Despite the commitment of so many advocates to these issues, grim statistics endure as does a growing frustration with the homelessness and housing crisis in the District, coupled with the limited avenues for advocacy in the existing legal and political systems. It was from these circumstances that the DC Right to Housing Campaign emerged in July 2009, with over eighty individuals present at the first meeting.

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Despite the ratification of certain of these treaties and their incorporation into domestic law, and despite the government's political commitment to "a human right related to housing," there is currently no national right to any sort of housing or shelter in the United States.

THE BIRTH OF THE DC RIGHT TO HOUSING CAMPAIGN

The Campaign, a diverse coalition of homeless individuals, advocates, and providers, did not come into existence overnight. Indeed, it was borne from the momentum generated by other recent and more established community initiatives for the poor. In April 2009, a number of individuals joined together to establish the Homelessness Emergency Response Workgroup (HERW) to address urgent concerns being voiced by homeless persons and service providers regarding the lack of shelter capacity in the District.²¹ In fact, in September 2008, soon before the onset of hypothermia season, the City decided to close Franklin Shelter, the only homeless shelter for men in the downtown area.²² In the face of the District's policy goal to transition from relying primarily on emergency shelter for the homeless to creating stable permanent housing, HERW felt it necessary to focus on the maintenance of adequate emergency shelter capacity. Thus, the idea of a collective to advocate on behalf of the homeless in the District had already taken root. Additionally, the Fair Budget Coalition,²³ a broad coalition of groups, individuals, advocates, faith organizations, and providers, continued its work fighting for a just and transparent budget for the District. Much of the culture of inclusive community organizing in the District can be attributed to the Coalition's successful organizing techniques in bringing together constituencies with diverse and often conflicting interests. Finally, in December 2008, yet another collective of organizations and individuals, spearheaded by the American Friends Service Committee (AFSC),²⁴ successfully presented to the D.C. City Council a Human Rights City Resolution, which passed unanimously.²⁵ The Resolution noted the importance of "on-going discussions and creative exchanges of ideas" between residents and local authorities to use human rights to "assist in identifying the issues and [informs] the actions in our [D.C.] communities, for meaningful, positive economic and social change."²⁶ Armed with this Resolution, this collective led by AFSC started to brainstorm how to give teeth to the city's recognition of the human rights framework.

The DC Right to Housing Campaign thus seeks to draw from these multiple strategies: to create a diverse, inclusive, and representative membership; to form a multi-pronged strategy that includes policy, media, and community outreach; and to rely on the human rights framework to establish a holistic advocacy plan to address the homelessness and affordable housing crisis in the District.

USING THE HUMAN RIGHTS FRAMEWORK IN D.C.

Utilizing human rights in advocating local issues is rare but not new to the D.C. community. In fact, as it moves forward, the Campaign will need to consider the history of one such attempt made in 1984, when the Community for Creative Non-Violence (CCNV), the largest homeless shelter in the nation, proposed a ballot initiative giving individuals a right to emergency shelter in D.C.²⁷ Entitled "The D.C. Right to Overnight Shelter Act of 1984," the CCNV initiative stated: "All persons in the District of Columbia shall have the right to adequate shelter. Adequate shelter is that which to a reasonable degree maintains, protects, and supports human health, is accessible, safe, and sanitary, and has an atmosphere of reasonable dignity."²⁸ The initiative passed by 72 percent of D.C. voters on the November 1984 presidential ballot.²⁹

The next four years saw important gains for homeless individuals and advocates in the District. First, the D.C. Bar Foundation gave a grant to fund legal services for the homeless in the District. Also, the D.C. City Council passed a law requiring that homeless families be sheltered in an apartment-style setting rather than run-down motels.³⁰ In 1987, the D.C. City Council enacted the Emergency Shelter Services for Families Reform Amendment Act (Family Shelter Act), authorizing the creation of a temporary shelter program for eligible homeless families.³¹ In 1988, a lawsuit, *Atchison v. Barry*,³² was brought on behalf of homeless men and women against the District for failing to comply with the Right to Overnight Shelter Act. In 1989, Superior Court Judge Harriet Taylor ruled that D.C. was in fact in violation of the Act, calling its shelters "horrendous" and "virtual hell-holes."³³ After several similar lawsuits against the city for "failing to properly administer its emergency shelter programs produced huge contempt fines," however, the City Council, citing "an explosion" in costs associated with shelter programs, moved in to limit the scope of the Right to Overnight Shelter Act.³⁴

In light of the burden of these "extra" costs, the City Council amended both the Right to Overnight Shelter Act and the Family Shelter Act in 1990, virtually eliminating health and safety standards for all pre-existing shelters and stating that nothing in either act should be construed to create an entitlement to overnight shelter for any homeless person or family.³⁵ The 1990 amendments also eliminated the provision for transportation to and from shelters,³⁶ thereby making it difficult, if not impossible, for homeless children to register for or attend school. It

thus compounded countless obstacles, making it more difficult for individuals not only to enter shelters, but also to live under adequate conditions if they managed to get in. The rest of the 1990s and the first decade after 2000 have witnessed a number of advocacy initiatives to increase the resources available for homelessness programs, but fluctuations in the political will to address these issues.

INTERNATIONAL AND DOMESTIC LAW ON THE RIGHTS OF THE HOMELESS AND LOW-INCOME TENANTS

As one commentator has noted, progressive government programs cannot alone end homelessness without also addressing skyrocketing housing costs.³⁷ In order to end homelessness, therefore, the severe lack of housing affordable to low-income people must be addressed and remedied. International human rights law provides a useful framework to make these connections and support the principle that housing is a human right. The United States adopted the Universal Declaration of Human Rights (UDHR) in 1948,³⁸ signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1977,³⁹ though it has not yet ratified the ICESCR, and signed the Habitat II Declaration⁴⁰ in 1996.⁴¹ These agreements specifically protect the right to adequate housing but are not necessarily binding on the United States. Additionally, the United States is a party to the International Convention on Civil and Political Rights (ICCPR)⁴² as well as the Convention on the Elimination of all forms of Racial Discrimination (ICERD),⁴³ which, while binding, both protect only the right to non-discrimination with regards to housing.

Despite the ratification of certain of these treaties and their incorporation into domestic law, and despite the government's political commitment to "a human right related to housing,"⁴⁴ there is currently no national right to any sort of housing or shelter in the United States. The important broader context is that the U.S. Constitution does not recognize economic and social rights;⁴⁵ indeed, their enjoyment is primarily determined by legislative fiat. Perhaps more troubling, though, is that the concept of these rights has not taken firm root in popular discourse in the country, making it possible for social protections to be easy casualties of legislative assaults. Although the recent victory in healthcare reform was exceptional, it remains to be seen whether that legislative achievement will help or hinder the growth of a domestic human rights movement. Housing is not protected as a right in the Constitution or by legislation, though legislation including the 1949 Housing Act,⁴⁶ the 1968 Fair Housing Act,⁴⁷ and the 1987 McKinney-Vento Homeless Assistance Act⁴⁸ has improved access to housing for some. Legislative programs include funding for subsidized housing, protections for the tenure of residents, housing codes, housing discrimination enforcement bodies, and assistance programs for the homeless, but since they are framed as mere entitlements, not rights, these programs can be stripped at any time.

For these reasons, legal advocates in the United States have by necessity pursued creative due process arguments to protect the rights of homeless individuals and tenants. The U.S. Constitution requires due process of law through its Fifth⁴⁹ and Fourteenth⁵⁰ Amendments. Due process guarantees are triggered when a government entity infringes upon a property or liberty interest. In the 1970 *Goldberg v. Kelly* decision, the Supreme Court expanded the scope of "property" interests under the

due process clause to include welfare payments.⁵¹ Because a government benefit provides an eligible recipient with "the very means by which to live," the Court held that the government could not arbitrarily impair that recipient's interest and had to provide a hearing prior to terminating the recipient's benefits.⁵² In the years following this decision, lower courts extended the *Goldberg* hearing requirement to the public housing context.⁵³ In *Williams v. Barry*, the D.C. District Court joined the ranks of lower courts in applying the *Goldberg*⁵⁴ holding to the housing context, holding that the City had to satisfy procedural protections before cutting off funds to support shelters for homeless men based on the plaintiffs' showing in the instant case.⁵⁵ The Court noted that the homeless plaintiffs could have a valid property interest in continued occupancy and use of the shelter because the city had undertaken "a course of deliberate, consistent action that solidified and expanded the homeless person program."⁵⁶ The city was temporarily enjoined from cutting those services until procedural safeguards had been provided.⁵⁷

While courts are much more comfortable with ordering procedural protections for tenants and the homeless, they have been less inclined to find a constitutional right to shelter or housing because, in part, of their perception that such holdings would create costly government obligations. To be sure, some state courts have demonstrated their willingness and capacity to fashion creative remedies in the housing context. Through a trilogy of cases, the New York Supreme Court found a constitutional right of homeless men, homeless single women, and homeless families with children to emergency shelter.⁵⁸ The New Jersey Supreme Court, over eight years, recognized and established creative remedies to implement a right to shelter based on "general welfare" provisions of the state constitution and state and local statutes.⁵⁹ D.C. courts, however, have not been willing to go so far. In 1997, the D.C. Circuit Court of Appeals held that there was no constitutionally protected right to emergency shelter.⁶⁰ Since the shelter office was therefore not required to provide services to everyone eligible, homeless families lacked the legitimate claim of a right to emergency shelter.⁶¹



By dbking.

A homeless woman sits on a monument in Washington, D.C.

Despite being non-binding on the U.S. government, the international human rights framework can still be useful to D.C. advocates in providing a language of obligations for the D.C. City Council and as a model for developing local laws and policies.

OPPORTUNITIES MOVING FORWARD

Though local litigation strategies may hold limited promise in the homelessness and affordable housing realms,⁶² there are nevertheless multiple opportunities for engaging in meaningful advocacy. Recent polling indicates that over fifty percent of Americans strongly believe that adequate housing is a human right, and two thirds believe that government programs may need to be expanded to ensure this human right.⁶³ The Campaign should also look to existing progressive D.C. legal frameworks in the context of housing. For example, the D.C. Human Rights Act, enacted in 1977, is a good vehicle to protect against discrimination in housing, as it prohibits discrimination on the basis of a number of protected grounds, including familial status and source of income.⁶⁴ Also, the Campaign can draw from the successful efforts of the Washington Legal Clinic for the Homeless to use a human rights framework throughout the process of advocating to pass the Disability Rights Protection Act, which in turn created an Office of Disability Rights in the District.⁶⁵ Mostly, though, the Campaign needs to continue to generate wide-ranging community and government support for its objective of shifting the paradigm toward thinking about housing as a human right.

The Campaign is still in a nascent stage of its development and has embarked upon a three-year timeline for proposing and passing different pieces of legislation, culminating in a comprehensive Right to Housing Act for the District. It has formed a steering committee and three working groups devoted to policy/lobbying, outreach, and media/messaging.⁶⁶ It also faces the usual pitfalls of bringing together such a diverse and wide coalition — finding a mutually convenient time to meet, achieving consensus on strategy and language, etc. Thus far, though, the Campaign has been successful in drawing from the international human right-to-housing framework and adopted a Statement of Principles, as follows:

Housing is a basic human right, and the District of Columbia has declared itself a “Human Rights City.” Housing is fundamental to ensuring a just and inclusive community in the nation’s capital. A safe, secure, and affordable home is necessary for all people to have equal access to health, employment, education and nutrition and for family preservation.

The Right to Housing means that:

- each person has the right to live in adequate housing that is:
 - (1) affordable to that individual or family;
 - (2) accessible if a family member has a disability which requires it;
 - (3) safe and habitable for everyone regardless of their gender, race, age, sexual orientation or health conditions;
 - (4) located in an area that has appropriate infrastructure for a residential neighborhood and where the full cultural expression of the individual, family, and neighborhood are protected;
- each person who is homeless has immediate access to temporary housing and timely access to permanent housing;
- each person has the right to services and legal protections necessary to attain and retain adequate housing;

Finally, to fully implement the Right to Housing, the District must ensure that whenever possible, homelessness is prevented and affordable housing is preserved and developed.⁶⁷

The Campaign has drafted a Right to Housing Resolution that it intends to have introduced in the D.C. City Council in the next couple of months. Instead of pushing the resolution through as fast as possible, the Campaign plans to build its coalition and to educate Council members in the short-run by asking the City Council to hold a roundtable on the Right to Housing in D.C. The Campaign hopes to reach out to community members and other organizations until then and encourage members to testify at the hearing. The Campaign is also in the final stages of drafting accountability legislation that would require the City to monitor the status of each of its housing and homelessness programs and to disseminate publicly available data (including demonstrated need) on those programs as well as hold hearings to track the District’s progress on each of those programs. The Campaign hopes to introduce the accountability legislation later in 2010. Finally, the Campaign will strive to reach its goal of passing comprehensive legislation implementing the right to housing in D.C. within three years.⁶⁸ Hopefully, this gradual approach to realizing the right to housing in D.C. will be met with less political opposition than was true in the 1980s.

Although this effort to realize the right to housing at long last in the District is underway, it must be approached cautiously, prudently, and strategically, learning from best practices and pitfalls in its own history and elsewhere. Despite being non-binding on the U.S. government, the international human rights framework can still be useful to D.C. advocates in providing a language of obligations for the D.C. City Council and as a model for developing local laws and policies. Also, D.C. advocates should draw from the interpretation given to international norms by international human rights bodies on the right to housing. Local advocates should also continue to liaise with their counterparts in cities across the United States, and indeed globally, who are similarly pursuing creative strategies to secure and give meaning to the right to housing. The national fora on housing as a human right convened by the National Law Center

for Homelessness and Poverty,⁶⁹ among other organizations, provide a good opportunity for this information exchange, building solidarity and brainstorming new strategies.⁷⁰

Of course, waiting three years for legislation to pass is not realistic for many D.C. residents, whose needs must be satisfied much more immediately. Therefore, the Campaign supports the continuing and creative efforts of so many of its member organizations to preserve, protect, and create shelter and affordable housing for poor D.C. residents. And what is true for D.C. rings true globally: above all, there must be a paradigm shift in our collective mentality to “decommodify” housing, so that housing will finally be seen and treated as a necessity afforded to everyone as a critical part of a dignified life and not as merchandise which goes to the highest bidder. *A luta continua!* **HRB**

ENDNOTES: Bringing Human Rights Home: The DC Right to Housing Campaign

¹ U.N. High Comm’r for Human Rights, *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, on her mission to the United States of America (22 October – 8 November 2009)*, ¶ 81, U.N. Doc. A/HRC/13/20/Add4 (Feb. 12, 2010).

² The poorest fifth of D.C. residents earn an average of U.S. \$6,126 a year, while the richest fifth earn an average of 31 times that much, U.S. \$186,830. Ed Lazere, *DC’s Two Economies: Many Residents Are Falling behind Despite the City’s Revitalization*, DC FISCAL POL’Y INST., Oct. 24, 2007.

³ The Washington Legal Clinic for the Homeless [WLCH], Homelessness and Poverty Statistics for Washington, D.C., <http://www.legalclinic.org/about/facts.asp> (last visited Apr. 9, 2010).

⁴ *Id.*

⁵ *Id.*

⁶ Chris L. Jenkins, *Families Fuel Increase in Area Homelessness*, WASH. POST, Apr. 9, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/08/AR2009040802988.html>; DARRYL FEARS, *D.C. to Get \$7.4 Million in Aid*, WASH. POST, JULY 11, 2009.

⁷ WLCH, *supra* note 2.

⁸ Jason Cherkis, *Fenty’s Gifts To Homeless Families: Mold, Peeling Paint, Rib Patties, And Overcrowding*, WASH. CITY PAPER, Mar. 10, 2010, available at <http://www.washingtoncitypaper.com/blogs/citydesk/2010/03/10/fentys-gifts-to-homeless-families-mold-peeling-paint-rib-patties-and-overcrowding/>; HOMELESSNESS EMERGENCY RESPONSE WORKGROUP [HERW], ASSESSMENT OF UNMET FAMILY SHELTER NEED IN WASHINGTON, D.C., <http://docs.google.com/fileview?id=0BxIoJ5OAn8YZTkyY2EyNDItNGNiMC00MjA3LW15YjQtNTE1OTVhMDc5Yzlh&hl=en> (last visited APR. 14, 2010).

⁹ Ed Lazere, *Residents Are Left with Fewer Affordable Housing Options*, DC FISCAL POL’Y INST., Feb. 5, 2010, available at <http://www.dcfpi.org/nowhere-to-go-as-dc-housing-costs-rise-residents-are-left-with-fewer-affordable-housing-options>.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 2.

¹² *Id.* at 3.

¹³ For more information, see Empower DC, Home Page, <http://www.empowerdc.org/> (last visited Apr. 15, 2010).

¹⁴ For more information, see OneDC, One Right to Housing, http://www.onedconline.org/index.php?option=com_content&view=category&layout=blog&id=63&Itemid=141 (last visited Apr. 15, 2010).

¹⁵ For more information, see WLCH, <http://www.legalclinic.org/> (last visited Apr. 15, 2010).

¹⁶ For more information, see SOME (So Others Might Eat), <http://www.some.org/> (last visited Apr. 15, 2010).

¹⁷ For more information, see National Law Center on Homelessness and Poverty, <http://www.nlchp.org/> (last visited Apr. 15, 2010).

¹⁸ Omnibus Rental Housing Amendment Act of 2009, Bill 18-92 (D.C. 2009) available at <http://www.dccouncil.washington.dc.us/images/00001/20090126163800.pdf>.

¹⁹ Tenant Protection Act of 2009, Bill 18-42 (D.C. 2009).

²⁰ District Facilities Plan, Bill 18-592 (D.C. 2009).

²¹ HERW, *supra* note 8.

²² For more information, see Re-open Franklin Shelter, www.franklinshelter.org (last visited Apr. 10, 2010).

²³ For more information, see Fair Budget Coalition, <http://www.fairbudget.org/> (last visited Apr. 15, 2010).

²⁴ For more information, see American Friends Service Committee [AFSC], <http://www.afsc.org/> (last visited Apr. 15, 2010).

²⁵ AFSC, Human Rights City Resolution, afsc.org/resource/washington-dc-human-rights-city-resolution (last visited Apr. 14, 2010).

²⁶ *Id.*

²⁷ Community for Creative Non-Violence, History, <http://www.theccnv.org/history.htm> (last visited Apr. 15, 2010); see also, WLCH, *supra* note 2.

²⁸ Chester Hartman, *The Case for a Right to Housing*, 9:2 HOUSING POLICY DEBATE 223, 236 (1998), available at <http://ppc.uiowa.edu/uploaded/Hartman%20—%20Case%20for%20a%20Right%20to%20Housing.pdf> (quoting the D.C. Right to Overnight Shelter Act of 1984).

²⁹ *Id.*

³⁰ Timeline of WLCH and Homelessness, available at <http://www.legalclinic.org/about/history.asp>.