This workshop was held at the 2017 Equal Justice Conference in Pittsburgh, Pennsylvania

Title:

Collaborate to Advocate: How Lawyers and Communities Can Work to End Poverty

Presenters:

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This session will highlight model programs and strategies from the ABA Commission on Homelessness and Poverty’s initiative to identify, promote, and implement best practices for eliminating legal and justice system-related policies, practices, and procedures that unfairly perpetuate or worsen the harmful effects of poverty on low-income people and communities. Presenters will reflect the intersection of race and poverty as well as the disparate treatment and impact of the law and justice systems on communities of color and populations that face other barriers and obstacles to justice such as disability, limited English proficiency, immigrant status, and other factors.
ADOPTED

RESOLUTION

RESOLVED, That the American Bar Association urges governments to promote the human right to adequate food and nutrition for all through increased funding, development and implementation of strategies to prevent infringement of that right.

FURTHER RESOLVED, That the American Bar Association urges the United States government to make the realization of a human right to adequate food a principal objective of U.S. domestic policy.
Background:
Nearly 50 million Americans now live below the federal poverty line. Recent societal, economic and political events (economic meltdown, mortgage foreclosure epidemic, Trayvon Martin, Hurricane Katrina, Ferguson, Missouri, Michelle Alexander’s “The New Jim Crow,” 9/11, the “school to prison pipeline,” unaccompanied minors coming across the border, etc.) have given rise to unprecedented public awareness of income inequality in America, the number of children living in poverty and the disparate treatment and impacts of the law and justice systems on communities of color and populations that face other barriers and obstacles to justice, such as disability, limited English proficiency, immigrant status and other factors.

Initiative Goal:
Identify, promote and implement best practices for eliminating legal and justice system-related policies, practices and procedures, including those tainted by structural racialization and other forms of bias, that perpetuate or worsen the harmful effects of poverty and discrimination on individuals, families and households, including barriers to individual and community well-being, personal and physical safety, food security, health care, education, employment at a living wage, safe, stable and affordable housing, meaningful political participation and access to justice.

Working Definition of Poverty:
Poverty is a state or lived experience caused and perpetuated by various, often compounded, factors such as:
- Inadequate economic resources and opportunity to build assets, including employment, adequate income and assets to meet basic human needs such as food, housing, clothing, etc.;
- Insufficient access to social resources such as healthcare, justice and education;
- Weak political standing and limited opportunity for meaningful association and engagement;
- Isolation and lack of cultural identity support;
- Inability to hold institutions and individuals accountable for fair and equitable behavior;
- Disparate treatment based on poverty compounded by other forms of structural unfairness and disparity based on race, ethnicity, gender identity, disability, age, religion, sexual orientation, indigenous identity, national origin, etc.
Manifestations of Poverty:
1. Substandard and unaffordable housing and homelessness;
2. Disproportionate involvement in criminal and civil justice systems;
3. Food inadequacy;
4. Inadequate healthcare and poor health outcomes;
5. Inadequate education outcomes;
6. Lack of opportunity for full employment at a living wage;
7. Living through an unending and continuous cycle of crises;
8. Lack of personal and physical safety;
9. Stigma and lack of personal dignity; and
10. Isolation from community and political infrastructure.

Implementation: Anti-Poverty Roundtables, Toolkit for Communities Seeking to Develop and Operationalize Local Anti-Poverty Agendas, and the ABA Online Quilt of Community Anti-Poverty Discussions
The goal of each roundtable is to bring together 10-15 community stakeholders who are interested in identifying, promoting and implementing best practices for eliminating policies, practices and procedures that unfairly perpetuate or worsen the harmful effects of poverty on low-income people in that particular local community. To connect other communities with the national anti-poverty discussion, the Commission will encourage the designation of at least one panelist in each community who is willing to develop an edited summary of the ideas exchanged and proposed new programming for posting to a Commission-moderated online blog entitled, “Operationalizing A New Anti-Poverty Agenda: An Online Quilt of Community Discussions.” This online blog would allow each roundtable to share its diverse perspective on the most pressing manifestations of poverty within their community as well as its proposed solutions. With the addition of notes from each roundtable, the Commission would add a patch to the national Online Quilt in order to bring together diverse patterns of anti-poverty ideas. These shared ideas could be implemented by other communities who in turn share their own strategies for combatting poverty, creating a resource for all communities to use in removing the practices, policies and procedures that worsen or perpetuate poverty. Additionally, in furtherance of its goal of educating the bar and the general public about homelessness and poverty and the ways the legal community can collaborate with other stakeholders to assist those in need, the Commission developed a resource entitled: “Toolkit for Communities Seeking to Develop and Operationalize Local Anti-Poverty Agendas,” in which the Commission compiled a wealth of ABA policy and programming knowledge into a series of “blueprints for action” that are cross-disciplinary and specifically address each of the identified Manifestation of Poverty areas.
Disproportionate involvement in criminal and civil justice systems

A recent report entitled The Poor Get Prison by Karen Dolan noted that “Poor people, especially people of color, face a greater risk of being fined, arrested, and even incarcerated for minor offenses than other Americans. A broken taillight, an unpaid parking ticket, a minor drug offense, sitting on a sidewalk, or sleeping in a park can result in jail time.” In other word, poverty is often treated as a criminal offense.

A tragic real life example of this reality is the recent death of Walter Scott in North Charleston, South Carolina. By all accounts Walter Scott was a devoted father of four. Still, he could not pay his mandated child support. One of his brothers told the local newspaper that Scott probably ran away from a routine traffic stop because he owed child support. Scott spent months incarcerated years ago for missed child support payments and had told his family he was not going back to jail. In South Carolina up to 16% of the total jail population are serving time for missing child support payments, 67% of inmates serving time for missed child support payments are African-American, and over 75% of those held in contempt in Family Court for failure to pay testified that they were previously unemployed or having difficulty finding work. As Walter Scott ran he was shot and killed by the police officer who made the traffic stop.

Over the years, the ABA has taken policy positions and sponsored position papers focused on the various issues involved with this topic. These policies and positions are based on the knowledge and intellectual work product of lawyers who could be in a unique position to strengthen community-based efforts to address the disproportionate involvement of the poor in the criminal justice system. Lawyers can work shoulder-to-shoulder with stakeholders including community-based entities, providers/advocates, academic communities, foundations/funders, politicians, program users/beneficiaries, and the general public.

The ABA Commission on Homelessness & Poverty has complied for informational purposes only—and without any intended endorsement—the following issues and potential strategies for consideration as each community develops its own unique local plan of action for eliminating legal and justice system related policies, practices, and procedures that unfairly perpetuate or worsen the harmful effects of poverty, particularly those that entrap the poor in the criminal justice system. The Commission is equipped to offer technical assistance in identifying and convening community stakeholders for roundtable discussion to develop strategic plans for local community action.
ISSUE: FINING OR JAILING THOSE WHO CANNOT PAY FEES OR FINES

People making less than $10,000 a year or with no reported income account for 70% of the total child support debt owed. These parents are unlikely to ever pay off their obligation. The overhanging debt spawns obstacles for those trying to find work including loss of their driver’s license and incarceration for nonpayment resulting in loss of a job and accumulation of more debt.

STRATEGIES:

• Encourage representatives at the local, county, and state levels to reduce or eliminate fees, fines, and lengthy incarcerations assessed against criminal defendants who are poor or homeless.

• Work with state and local governments to stop the inequitable practice of imprisoning the poor for offenses that those with money who commit the same offense are allowed to post bail and go free.

• Update child support enforcement strategies acknowledging that the majority of unpaid child support is owed by the very poor, not “deadbeat dads.”

• Urge the enforcement of Bearden v. Georgia (“Debtors can be incarcerated only if the act of not paying their debt (including child support) or restitution was willful.”

• Support debt forgiveness as an incentive to pay child support (child support debt will be significantly reduced if an individual starts making on-time payments).

• Oppose the arresting of the poor for criminal justice debt before a debt hearing can take place to determine one’s ability to pay.

• Work with legislature and judges to reduce criminal court fees.

• Hold probation companies to high standards regarding supervision fee schedule, interest, revenue received, etc.

The ABA is collaborating with the Department of Veterans Affairs and the Department of Health and Human Services through its Office of Child Support Enforcement to resolve child support issues for Veterans who are homeless or at risk of being homeless. Outstanding child support obligations serve as barriers to benefits, employment, and housing. The Veterans Child Support Initiative addresses the child support issues of veterans in a matter that will allow the veteran to stay connected to ongoing rehabilitation and support services, while at the same time taking steps to meet their child support obligations. (See the ABA’s Commission on Homelessness and Poverty’s Homeless Veterans Justice Initiative).
• Encourage government to end the practice of child support arrearage accumulating while a parent is incarcerated for not being able to pay child support.

**ISSUE: FINING PEOPLE WHO ARE HOMELESS FOR BEING HOMELESS**

Criminalizing homelessness is costly, ineffective, and infringes on human rights. The revolving door of arrest, court hearings, incarceration and release with a return to the streets frustrates not only people who are homeless, but police, judges, and the business community as well. Penalizing people experiencing homelessness tends only to exacerbate mental and physical health problems, create or increase criminal records (thus creating barriers to benefits, employment, housing, treatment and services), and may result in the loss of key personal documents that can make it even harder for people to access the services they need to exit homelessness.

**STRATEGIES:**

• Develop legal strategies to combat criminalization using Constitutional claims and human rights theories.

• Advocate against passage of or for the repeal of local ordinances that result in criminalization of “quality of life” activities (begging, lying, sleeping, feeding).

• Work with local and state legislatures to pass a homeless bill of rights (such as the Rhode Island Homeless Bill of Rights).

• Create Homeless Courts that replace traditional court sanctions and such as fees, fines, and incarceration with voluntary participation in treatment and services aimed at addressing the root cause of homelessness.

**ISSUE: TAKING POOR PEOPLE’S PROPERTY THROUGH ASSET FORFEITURE SEIZURES**

A report from the ACLU indicates that asset forfeiture is often done through racial profiling, disproportionately affects low-income individuals, and is a threat to both civil liberties and property rights.

The ABA strongly supports the repeal of laws and policies that punish people who are homeless for living a non-criminal life or sustaining practices or acts in public places, such as eating, sitting, sleeping, or camping when no alternative private spaces are available. The decriminalization of homelessness can be successful if local bar associations work in cooperation with courts, lawmakers, law enforcement, advocates and service providers to revise laws and recognize the problems faced by individuals who are homeless. (See the ABA policy on Decriminalization of Homelessness-February 2007).
STRATEGIES:

• Urge local courts and legislatures to end civil asset forfeiture by law enforcement agencies in all states.

• Lobby for passage of the Fifth Amendment Integrity Restoration Act (FAIR Act) that would amend the federal criminal code to require the government to show a substantial connection between seized property and the offense in a forfeiture proceeding and to prove its case with “clear and convincing evidence” before seizing property.

ISSUE: SCHOOL-TO-PRISON PIPELINE

The damaging effects of the school-to-prison pipeline include: 2 million children sent to juvenile detention every year, 70% of the students are Black or Latino, 75% are jailed for non-violent offenses, and 66% of those detained never return to school. Reform of K-12 education policies is critical to reverse the school-to-prison pipeline. Reconsider the use of local police officers as school security to handle incidents like disrupting class that were formerly handled by school administrators.

STRATEGIES:

• Adjust the “zero tolerance” policies in schools, which combined with local police security has a greater negative impact on poor students.

• Develop guidelines to ensure school discipline policies are in line with federal civil rights laws.

• Utilize local pro bono programs to represent youth being pushed out of school.

• Partner with local mental health centers to provide counseling for students and their families.

ISSUE: HYPER CRIMINALIZATION OF PETTY INFRACTIONS

Criminal records—even a minor criminal record or an arrest without conviction—can serve as an absolute obstacle to housing, despite the fact that an array of studies finds that criminal history is not predictive of successful tenancy. A criminal record also serves as a barrier to Governments are urged to increase funding and amend their current laws and policies for programs under the Runaway and Homeless Youth Act in order to effectively intervene and end homelessness for those ages 12-24. Assisting local communities in establishing plans to end youth homelessness should include an increase in coordination among HUD, HHS, and the Justice system. The ABA suggests a spectrum of community based services including: outreach as a gateway to shelter, housing, prevention and early intervention to divert youth from deepening family conflict, crisis intervention, and youth housing models. (See the ABA policy on Runaway and Homeless Youth Act-February 2010).
employment. Having an arrest during one’s lifetime decreases employment opportunities more than any other employment-related stigma, such as long-term unemployment, receipt of public assistance, or having a GED instead of a high school diploma.

**STRATEGIES:**

- Work with businesses to “ban the box” (remove the arrest/conviction question from employment applications to aid in re-entry) and to follow Title VII of the Civil Rights Act that bars employer practices that have a racially disparate impact, unless those practices are job related and justified as a business necessity.

- Encourage housing authorities to reform overly restrictive eligibility policies and grant admission to people with criminal records when appropriate so that no housing applicant will be automatically barred from receiving housing assistance because of his or her criminal background.

- Coordinate with staff in jails and prisons to develop workable transition planning including plans for re-entry housing and re-entry employment.

- Allow job applicants and housing applicants to explain their prior arrests.

- Create a collaboration and cross-training between law enforcement and social service providers resulting in tailored police intervention through a police outreach program.

- Educate law enforcement to be sensitive to the needs of people experiencing homelessness and to collaboratively develop procedures with service providers/outreach staff to follow during contacts with people who are homeless in a way that affirms that homelessness is not a crime.

- Consider making petty crimes (open container, urinating in public) civil instead of criminal offenses.

- Work with state legislature to expand offenses eligible for expungements.

- Work with local police departments to implement juvenile justice reform by creating diversion programs that do

The Homeless Court was created to counteract the effect of criminal cases pushing homeless defendants further outside society. The ABA has laid out specific principles to follow in the implementation of these courts including the active participation of community-based service providers. Homeless Courts combine a progressive plea bargain system, alternative sentencing structure, assurance of “no custody” and proof of program activities, to address a full range of misdemeanor offenses. The Courts recognize participants’ voluntary efforts to improve their lives and move from the streets toward self-sufficiency. (See the ABA policy on Principles for Homeless Courts-August 2006).
not criminalize juvenile status offenses such as truancy and curfew violations.

**ISSUE: BROADER CROSS-DISCIPLINARY COLLABORATIONS AND PUBLIC AWARENESS**

Policies that criminalize the poor are costly and consume substantial community resources. To create new policies that are effective and efficient requires not only alternative strategies, such as problem solving courts that focus on the underlying causes of criminal activity, but also both a response from all providers that addresses both the legal and the non-legal obstacles that impede an individual’s ability to break free from the criminal justice system and an increased community awareness of services that are available.

- Implement alternative justice system strategies through problem-solving courts such as homeless court, mental health court, drug court, veterans treatment court, and child support initiatives.
- Develop a partnership between legal service providers and social service providers to reach individuals with legal needs and insure the provision of holistic services.
- Develop media campaigns to create awareness among low income individuals who lack knowledge about their legal rights and the availability of legal services.
- Work with the state judiciary to establish an Access to Justice Commission or become an active member of an Access to Justice Commission.
- Develop valid, persuasive date and analysis in order to document the inequities in the criminal defense system, the impact of holistic defense, and to monitor criminal defense organization and performance.
- Champion efforts to improve public safety by aligning the juvenile justice system with the latest research in youth development and by addressing racial and ethnic disparities within the juvenile justice system.

The ABA is an advocate for the development of a new set of court proceedings for veterans with service-related injuries as well as mental health and substance abuse disorders. These Veterans Treatment Courts focus on treatment-oriented proceedings in lieu of imprisonment for criminal offenses. This alternative system would counteract the effects of the current court system that pushes veterans further outside society. It applies principles of therapeutic, collaborative, and restorative justice in which community-based treatment options are used to achieve the goals of true rehabilitation, recovery, and reintegration into the community. (See the ABA policy on Principles for Veterans Treatment Courts—February 2010).
Lawyers Working to End Poverty

Nearly 50 million Americans now live below the federal poverty line. Recent societal, economic and political events have given rise to unprecedented public awareness of historic levels of income inequality, numbers of children living in poverty and disparate treatment and impacts of the law and justice systems on communities of color and populations that face other barriers and obstacles to justice, such as disability, limited English proficiency, immigrant status and other factors. Through this initiative, the Commission is identifying, promoting and implementing best practices for eliminating legal and justice system-related policies, practices and procedures, including those tainted by structural racialization and other forms of bias, that perpetuate or worsen the harmful effects of poverty and discrimination on individuals, families and households, including barriers to individual and community well-being, personal and physical safety, food security, health care, education, employment at a living wage, safe, stable and affordable housing, meaningful political participation and access to justice.

Homeless Children and Youth Initiative

With at least one million youth in America on the streets and in shelters, the Commission is equipping lawyers with the tools needed to address their special legal needs. Some of the most popular tools include the publications: Educating Children Without Housing and Runaway and Homeless Youth and the Law: Model State Statutes. The Commission is also the proud continuation sponsor of Project Street Youth, which was previously led by the Young Lawyers Division as a special initiative to facilitate clinics to provide basic legal assistance to homeless youth. In June 2015, the Commission hosted the first ever International Conference on the Legal Needs of Street Youth in London. The conference served as a kick-off for an ongoing initiative that will foster greater collaboration and information sharing internationally about model laws and policies that affect street youth.

Homeless Veterans Justice Initiative

Nearly 60,000 veterans experience homelessness on any given night, and roughly 1.4 million other veterans are considered at risk of homelessness. In support of the U.S. Department of Veterans Affairs’ Five Year Plan to End Homelessness among Veterans, the Commission is fostering the development of Veterans Treatment Courts and pro bono legal services programs aimed at removing barriers to benefits, employment, housing, treatment and services for veterans. Through this initiative, the Commission provides free technical assistance to judges, lawyers and providers across the country on how to launch a Veterans Treatment Court and other model programs, including a national pilot program launched in collaboration with the VA and HHS on child support issues for non-custodial homeless veterans.

Homeless Court Program

Typically set within homeless shelters, the Homeless Court Program provides a non-threatening environment for participants to resolve outstanding warrants and criminal charges that serve as barriers to treatment, housing, and employment. Instead of facing fines or incarceration, homeless individuals voluntarily participate in treatment and job training prior to appearing in court. The Commission has helped develop over 50 Homeless Court Programs nationwide, providing a desperately needed mechanism for homeless individuals to receive the legal services needed to reconnect with the community. The Commission provides free technical assistance to communities interested in launching a Homeless Court.

Curtin Justice Fund Legal Internship Program

An endowed fund maintained within the ABA Fund for Justice and Education, the Program provides $2,500 stipends annually to three law students in support of their summer internships at legal services organizations assisting homeless clients. Named in honor of former ABA President John J. Curtin, Jr., the Program aims to foster careers in public interest law.

Get Involved!

Support the Commission by reaching out to judges and lawyers in your community to promote model programs and best practices and connect the legal community to the Commission for technical assistance.

Support the Commission

The Commission on Homelessness & Poverty receives funding through the ABA Fund for Justice and Education (FJE). Support the ABA Commission on Homelessness & Poverty by making your gift online today! https://donate.americanbar.org/homelessness

As a 501(c)(3) charitable fund, all contributions to the FJE are tax deductible to the full extent allowed by law.
RESOLVED, That the American Bar Association urges governments to promote the human right to adequate housing for all through increased funding, development and implementation of affordable housing strategies and to prevent infringement of that right.
One of the four goals listed alongside the ABA’s mission statement is to Advance the Rule of Law, which includes objectives to hold governments accountable and work for just laws and human rights. The Universal Declaration of Human Rights lists the right to adequate housing as a necessary component of the right to a standard of living that supports one’s health and well-being.

Coming out of the Depression, and heading into World War II, President Franklin Roosevelt set out four freedoms essential for world peace in his 1941 State of the Union address: freedom of speech, freedom of religion, freedom from want, and freedom from fear. In his 1944 State of the Union address, President Roosevelt took another bold step, declaring that the United States had accepted a “second Bill of Rights,” including the right of every American to a decent home. The U.S. then led the U.N. in drafting and adopting the Universal Declaration on Human Rights, placing civil, political, economic, social, and cultural rights, including the right to adequate housing, on equal footing. The U.S. signed the International Covenant on Economic, Social & Cultural Rights in 1977, which codifies the right to housing. Indeed, the ABA endorsed its ratification in 1979, making the human right to housing part of ABA policy for the past 34 years.

In responding to a U.N. report on the right to housing in the U.S., the State Department in 2010 emphasized that the U.S., has made a “political commitment to a human right related to housing in the Universal Declaration on Human Rights.”

The Right to Housing Should be Progressively Realized

Despite recognition of the human right to housing, implementation has not yet occurred. This resolution, as a whole, provides a framework for progressive realization of that right. As such, 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 overnight. However, it does require more than some provision for emergency shelter, piecemeal implementation of housing affordability programs, and intermittent enforcement of non-discrimination laws, all of which exist in some form in all local U.S. communities and have failed as a whole to eliminate homelessness or poverty. It requires an affirmative commitment to progressively realize the right to fully adequate housing,

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3 Franklin D. Roosevelt, State of the Union Message to Congress (January 6, 1941).
4 Franklin D. Roosevelt, State of the Union Message to Congress (January 11, 1944).
7 Interactive Dialogue following the 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, A/HRC/13/20/Add 4 and A/HRC/13/20.
whether through public funding, market regulation, private enforcement, or a combination of all of the above.\(^8\)

This resolution calls on the U.S. government at all levels to more fully implement the right to housing as a legal commitment. Asserting housing as a human right will create a common goal and a clear framework to:

- Help government agencies set priorities to implement the right to housing
- Provide support for advocacy groups
- Create pressure to end policies which fail to guarantee human rights
- Allow us to focus on how to solve the problem rather than worrying about whether the U.S. government has a duty to solve the problem

**U.S. Policy Supports the Implementation of the Human Right to Housing Domestically**

Our nation was founded on the principles of the self-evident, unalienable rights to life, liberty and the pursuit of happiness.\(^9\) Yet today, lack of shelter and affordable housing has forced members of our society to live their daily lives in ways that threaten their dignity and sense of worth as a human being as well as their health and safety, contrary to those founding principles.

The U.S. commitment to the human right to housing was reaffirmed in its signature to the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1977. The ICESCR was submitted to the Senate for ratification in late 1978, with an ABA resolution endorsing ratification in early 1979.\(^10\) The ICESCR codifies the right to housing in Article 11, which states, “[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing... The States Parties will take appropriate steps to ensure the realization of this right.”\(^11\) Although the Senate has yet to ratify the treaty, law professor David Weissbrodt notes signing a covenant indicates that “the United States accepts the responsibility to refrain from acts calculated to frustrate the objects of the treaty.”\(^12\) The U.S. has also already ratified the International Covenant on Civil and Political Rights and the International Covenant on the Elimination of All Forms of Racial Discrimination (both with endorsement from the ABA), both of which recognize the right to be free from discrimination, including in housing.\(^13\)

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8 Simply Unacceptable, supra note 5, at 8.
9 The Declaration of Independence, para. 1 (U.S. 1776).
On the 70th Anniversary of President Roosevelt’s “Four Freedoms” speech, in a presentation to the American Society of International Law, Assistant Secretary of State for Democracy, Human Rights, and Labor Michael Posner stated, “there are many ways to think about what should or should not count as a human right. Perhaps the simplest and most compelling is that human rights reflect what a person needs in order to live a meaningful and dignified existence.”

Posner’s speech reflects the increasing importance the Obama Administration has placed on economic and social human rights such as the right to adequate housing. 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 to continue efforts to ensure access to affordable housing for all. In May 2012, the Department of Justice and U.S. Interagency Council on Homelessness issued a joint report recognizing that criminalization of homelessness may not only violate our Constitution, but also the U.S.’s treaty obligations under the International Covenant on Civil & Political Rights, and the Convention Against Torture. The Administration has frequently welcomed both the international community’s input and its obligation to lead by example. The U.S. seems more willing than ever to hold itself to high international standards, and even acknowledge that it may sometimes fall short.

Moreover, the international community has increasingly taken note of America’s failure to uphold the right to housing. In 2006, the U.N. Human Rights Committee expressed concern about the disparate racial impact of homelessness in the U.S. and called for “adequate and adequately implemented policies, to ensure the cessation of this form of racial discrimination.” In 2008, the U.N. Committee on the Elimination of Racial Discrimination again recognized racial disparities in housing and ongoing segregation in the U.S. Since then, numerous U.N. experts, on official missions to the U.S., have addressed U.S. violations of the human right to housing and related rights.


14 The Four Freedoms turn 70, Michael H. Posner, Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, Address to the American Society of International Law, March 24, 2011.


16 Interagency Council on Homelessness, Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness 8 (2012) (USICH and the Access to Justice Initiative of the U.S. Dept of Justice, with support from the Department of Housing and Urban Development, convened a summit to gather information for this report).


19 See Simply Unacceptable, supra note 5, at 24-5.
The Legal Community has an Important Role to Play in Implementing the Human Right to Housing

Despite the nation’s commitment to human rights ideals, its practices have often fallen short. Families continue to face foreclosures, many as a result of predatory lending practices, but even as homes without families multiply, families without homes cannot access them. Many tenants pay more than 50% of their income toward rent, putting them one paycheck away from homelessness. Without a right to counsel in housing cases, renters must often choose between pushing for basic repairs or facing unjust eviction. When widespread poverty goes unattended, despite the sufficiency of a country’s resources, “respect for legal institutions will ultimately be undermined.” The legal community has a duty to provide these families with justice, yet we can only do so much in the nation’s current legal environment. In this instance, access to justice requires us to advocate for change. That advocacy comes in the form of this resolution, calling upon our government at all levels to implement the human right to housing as a necessary component of ensuring the basic human dignity of every individual.

Implementing the human right to adequate housing

In implementing the human right to adequate housing, the American Bar Association calls upon federal, state, local, tribal, and territorial governments to

1. Implement policies promoting the human right to adequate housing for all including veterans, people with disabilities, older persons, families, single individuals, and unaccompanied youth, which, at minimum, includes:
   a. Affordability, habitability, and accessibility;
   b. Provision of security of tenure, access to services, materials, facilities, and infrastructure;
   c. Location proximate to employment, health care, schools, and other social facilities;
   d. Provision of housing in areas that do not threaten occupants’ health; and
   e. Protection of cultural identity or diversity

The Committee on Economic, Social and Cultural Rights (CESCR), which oversees implementation of the ICESCR, lists seven elements required for housing to be considered adequate including legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location near employment options, healthcare facilities, schools, child care centers, and other social facilities; and cultural adequacy in housing design. This framework recognizes that each of these elements is interdependent with each other. A dequate housing requires more than four walls and a roof; it requires adequate community resources, supportive

20 ABA Annual meeting, 1986 at 789.
legal and policy frameworks, effective access to justice, and a participatory and transparent democratic system to maintain all aspects of the right. It also recognizes that enjoyment of the right to housing is a standard relative to the availability of resources in a given country; here in the U.S., in what remains the wealthiest country in the world, we can and must do more.22

In 2010, there were over 10 million very low-income renters and only 4.5 million affordable rental units, 40% of which were occupied by higher-income renters.23 This lack of availability forced approximately 22 percent of the 36.9 million rental households in the United States to spend more than half of their income on housing.24 Not only is affordable housing in short supply, but affordable units are often inadequate in other ways based on the CESCR definition. Underfunding for public housing leaves many affordable units in disrepair and lack of meaningful enforcement – including lack of access to legal counsel – has rendered housing codes ineffective, making these units uninhabitable.25 In urban areas, poor, minority areas have poorer access to basic services, including hospitals.26 In rural, impoverished areas, access to infrastructure allowing for basic water and sanitation is limited or unavailable.27 In suburbs and ex-urban communities, zoning restrictions have prevented construction of (and in some cases, removed) affordable housing.28 In all areas, the high cost of housing often forces individuals to endure these housing inadequacies, live in overcrowded spaces, and live in areas with failing schools, high crime rates, and increased exposure to environmental pollutants.29

Even where needy applicants are able to obtain housing assistance or access affordable housing, they face discrimination in the private housing market on the basis of race, disability, gender, sexual orientation, source of income, criminal background, or other status. Despite some strong de jure protections: over 27,000 complaints were registered in 2011 with housing protection agencies, and many more go unreported.30 Although this number has decreased slightly since 2009, more work needs to be done to ensure equal access to housing resources. This includes ensuring availability of various types of home and community based support services that enable individuals and families to live independently as long as possible. Additionally, as was seen following Hurricanes Katrina and Sandy, many traditionally marginalized groups feel a disparate impact during

23 John Griffith, Julia Gordon & David Sanchez, Center for American Progress, It’s Time to Talk About Housing 7 (August 15, 2012).
24 Id.
25 Simply Unacceptable, supra note 5, at 9, 74-79.
26 Id.
27 Id.
29 Simply Unacceptable, supra note 5, 51-61
natural disasters, and the right to adequate housing must be ensured appropriately in the post-disaster context as well.\textsuperscript{31}

The U.S. has a strong tradition of promoting affordable, accessible housing, but programs have been under-funded and under-implemented. Moreover, while the human rights framework demands progressive implementation of the right to housing, and prohibits retrogressive policies, over the past 30 years there has been a significant disinvestment in public and subsidized housing at the federal level.\textsuperscript{32} Recent years have seen innovations such as the Rental Assistance Demonstration and Choice Neighborhoods Initiative, which attempt to “do more with less” while preserving important rights and protections for low-income residents, but these programs still fail to meet the need in communities.\textsuperscript{33} Furthermore, many long-term contracts for affordable housing built under the Section 8 program during the 1960’s are now coming to term, threatening a further loss of affordable units.\textsuperscript{34}

The contours of the human right to adequate housing continue to be developed at the international level by the CESCR and other U.N. experts, and at the regional level by regional human rights bodies, in response to ever-changing conditions. The U.S. should always seek to be a leader in applying these developing standards to its policies.

\textbf{(2) Take immediate steps to respect, protect, and fulfill the right to adequate housing and other human rights through measures guaranteeing the availability of affordable, accessible housing to all who require it;} 

Progressively realizing the right to adequate housing requires resolutions, recognition, and legislation, but also requires action. In our federal system, states and local communities are often best situated to act quickly to remedy human rights violations in a way that is effective for their area. State and local governments should not wait for the United States to act on the right to adequate housing but should immediately take steps to create local solutions to housing rights violations. Recent positive steps include resolutions recognizing and pledging to implement the human right to housing in Madison and Dane County, WI, and the introduction of a homeless bill of rights referencing human rights standards in California.\textsuperscript{35}


(3) Recognize that homelessness is a prima facie violation of the right to housing, and to examine the fiscal benefits of implementation of the right to housing as compared to the costly perpetuation of homelessness;

Homelessness is an ongoing and increasingly prevalent violation of the most basic essence of the human right to housing in the United States and requires an immediate remedy. In 2011, cities across the country noted an average 16% increase in the number of homeless families. From the 2009-10 school year to the 2010-11 school year, the number of homeless school children increased by 13% to over one million children. Among other factors contributing to this growth, recent studies have shown that: one out of four homeless women is homeless as a result of domestic violence; 1 in 11 released prisoners end up homeless - with a disparate impact on racial minorities and those who have been criminalized because of their homeless status; and over 1.6 million unaccompanied homeless youth are forced out of home due to physical or sexual abuse, aging out of foster care, or as a result of disagreements with parents or caretakers over sexual orientation. Temporary shelter should only be seen as an interim, emergency response to homelessness. The right to housing demands permanent housing arrangements, with whatever supports are needed to maintain stability, in as short a time as possible.

In a 2007 resolution, equally applicable today, the ABA opposed the enactment of laws criminalizing individuals for “carrying out otherwise non-criminal life-sustaining practices or acts in public spaces, such as eating, sitting, sleeping, or camping, when no alternative private spaces are available.” Instead of providing adequate alternatives, more communities are increasingly turning to these criminalization policies. Criminalization of homelessness, and homelessness itself, injures the dignity and self-worth of the individual, as well as potentially interfering with their health and safety, where individuals are forced into unsafe situations or must face the elements without shelter. Lack of proper identification or generation of a criminal record caused by homelessness may also prevent homeless persons from accessing government support or

40 Simply Unacceptable, supra note 5, at 61-73.
43 National Law Center on Homelessness and Poverty, Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities 9-10 (2011) (among the 188 cities reviewed between 2009 and 2011, the report identifies a 7 percent increase in prohibitions on begging or panhandling; a 7 percent increase in prohibitions on camping in particular public places; and a 10 percent increase in prohibitions on loitering in particular public places).
finding a job. Low-income youth facing inadequate housing conditions or lack of housing have poorer educational outcomes due to high mobility, hunger, and health problems, creating a cycle of poverty and homelessness.

Housing is a critical component of overall health, and homeless persons have an average life span of 42-52 years, compared to 78 years for the general population. Indeed, New York City has established a right to housing for those suffering from AIDS, recognizing their “acute needs for safe, clean housing to keep them healthy.”

In 2010, 113 attacks, 24 of which led to the death of the victim, were deemed acts of “bias motivated violence” against homeless individuals. The National Coalition for the Homeless documented hate crimes against homeless persons for twelve years (1999-2010) and noted that fatal attacks on homeless individuals were twice as high each year as fatal attacks on all currently protected classes combined. Although low-income families in affordable housing do not face the “bias motivated violence” perpetrated against those living on the streets, low-income neighborhoods tend to have higher rates of violence than other areas. Students in poor neighborhoods reported fighting in school or the presence of weapons at school twice as often as their wealthier counterparts.

In addition to viewing housing expenditures as obligatory, legislators must also consider the fiscal benefits of adequately meeting low-income housing needs. In a 2004 study by the Lewin Group on the costs of serving homeless individuals in nine cities across the U.S., several cities found supportive housing to be cheaper than housing homeless individuals in shelters. That same year, the Congressional Budget Office estimated the cost of a Section 8 Housing Certificate to be $7,028, approximately $8,000 less than the cost of an emergency shelter bed funded by HUD’s Emergency Shelter Grants program. A collaborative effort of service and medical providers in San Diego, Project 25, has documented a $7 million dollar savings to tax payers through reduced emergency care and jail costs by providing permanent housing to 35 homeless individuals, a 70% reduction.

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44 Simply Unacceptable, supra note 5, at 61-73.
45 New Housing Normal; Simply Unacceptable, supra note 5, at 74-79.
50 Id.
52 Ibid.
Scotland, France, and South Africa all show that the progressive implementation of the right to housing through legislation and case law is possible where the political will exists. Scotland’s Homeless Act of 2003 progressively expanded the right to be immediately housed and the right to long-term, supportive housing for as long as it is needed, starting with target populations, but available to all in need as of 2012. The law also includes a private right of action and requires jurisdictions to plan for development of adequate affordable housing supplies.54 France created similar legislation in 2007 in response to public pressure and a decision of the European Committee on Social Rights under the European Social Charter.55 South Africa’s constitutional right to housing protects even those squatting in informal settlements, requiring the provision of adequate alternative housing before families and individuals can be evicted.56 This law has been enforced in local communities to even require rebuilding housing that has been torn down.57 While not yet perfect, these countries are proving that progressively implementing the right to housing is both economically feasible and judicially manageable.

Further, the American Bar Association urges the federal government to lead by example through increased efforts to support and develop the right to housing domestically and at the international level. These efforts include:

a. Prioritizing funding for housing when making federal budgetary decisions;
b. Assessing the impact new federal legislation and regulatory decisions will have on the right to housing;
c. Urging every state, locality, and territory to develop comprehensive affordable housing strategies;
d. Developing mandates or incentives for housing developers and financial institutions to ensure the right to housing as a priority;
e. Prohibiting state and local governments, territories, government-owned entities, and substantially government-related entities from violating the right to adequate housing;
f. Requiring governments and organizations to prevent or mitigate any infringement upon the right to adequate housing;

57 See Tswelopele Non-Profit Organisation v. City of Tshwane metropolitan Municipality [2007] SCA 70 (RSA), stating “to be hounded unheralded from the privacy and shelter of one’s home, even in the most reduced circumstances, is a painful and humiliating indignity... Placing them on the list for emergency [housing] assistance will not attain the simultaneously constitutional and individual objectives that reconstruction of their shelters will achieve. The respondents should, jointly and severally, be ordered to reconstruct them. And, since the materials belonging to the occupiers have been destroyed, they should be replaced with materials that afford habitable shelters.”
g. Leading a shift in discussion of housing services from providing charity to supporting victims of human rights violations;

h. Reviewing policies that govern the cost of housing to ensure costs do not interfere with a person’s ability to enjoy other human rights such as the right to adequate food or health; and

i. Supporting the adoption of resolutions, treaties, and other international principles further establishing and promoting the right to housing at the international and regional level and committing to their implementation domestically.

Federal housing assistance provides several million units of housing nationwide but continues to fall far short of adequately addressing the country’s low-income housing needs. Under current funding levels, federal assistance is only available for approximately one out of every four eligible low-income families. Framing these expenditures as part of our government’s basic obligations to its citizens, the same as its duty to ensure constitutional rights, allows us to establish a new baseline in budgetary debates and planning.

To take some of the burden to support the homeless and low-income populations off the government, the government must include the right to adequate housing in its policy decisions. At the start of the economic downturn in 2007 and 2008, for example, the government provided bailout money to failing banks without requiring protections to help those facing foreclosure remain in their homes. Had protections been included, the government and banks could have worked to keep homeowners in their homes to prevent a massive influx in the number of families requiring affordable housing or homelessness services.

As a leader in the international community, the United States should be on the forefront of the realization of a right to adequate housing. This requires acknowledging housing

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58 See Simply Unacceptable, supra note 5, at 51-61.
59 Id., at 26.
60 Id., at 11.
62 Preventing foreclosure is far more cost-effective for all stakeholders - banks, individuals, and governments - than incurring losses and government having to provide additional services once a family becomes homeless. See, e.g. Diana Savino, NYS Foreclosure Prevention Services Campaign, Feb. 1, 2012, http://www.nysenate.gov/press-release/nys-foreclosure-prevention-services-program-campaign-0 (estimating $1 of investment in foreclosure prevention generates a $68 return); see also, Roberto G. Quercia, Spencer M. Cowan & Ana M. Moreno, The Cost-Effectiveness of Community-Based Foreclosure Prevention, 2005; Ana M. Moreno, Cost Effectiveness of Mortgage Foreclosure Prevention, 1995.
(Working Paper Version of Economic and Social Rights Fulfillment Index, an assessment that
as a priority in terms of funding, regulation, and enforcement. This also requires a paradigm shift in our society. Provision of housing can no longer been seen as an optional government entitlement program but must be seen as an essential protection of human rights. Overall, we must realize as a country that protecting human rights is not optional and that the violation of one individual’s human rights weakens an entire community.

Conclusion

The U.S. is in the midst of the worst housing crisis since the Great Depression. We need a new framework in which to discuss issues of housing and homelessness; a framework that says everyone has a right to adequate housing. While adopting an explicit human rights framework in the U.S, would represent a shift, the U.S. has a proud history to which it can point, starting from the days of President Roosevelt that demonstrate the human right to housing is not a foreign, but a domestic value.\textsuperscript{64} Our current struggle with budget deficits is not a reason to defer actions to improve Americans’ access to adequate housing; rather, it is precisely in this time of economic crisis that the need to do so is most acute. Given that the U.S. is still the wealthiest nation in the world, with a well-developed democratic and judicial system, the ABA calls upon all levels of government to hold itself to a high standard, one that recognizes the full dignity of every human being cannot be guaranteed without enjoying, among all other rights, the human right to adequate housing.

Respectfully submitted,

Antonia Fasanelli, Chair
Commission on Homelessness & Poverty

August 2013

determines how well countries perform in meeting economic and social rights, such as the right to housing, in light of their available resources, places the U.S. 24th out of 24 high-income countries analyzed.); See The Constitution of the Republic of South Africa, Act 100 of 1996, §§ 26-28, (The Constitution of the Republic of South Africa includes the right of all to access of affordable housing.)\textsuperscript{64} See Simply Unacceptable, supra note 5, at 93.
1. **Summary of Resolution(s).**

   This resolution calls upon local, state, tribal, and federal government to progressively implement policies promoting the human right to adequate housing for all including veterans, people with disabilities, older persons, families, single individuals, and unaccompanied youth, and urges the federal government to lead by example through increased efforts to support and develop the right to housing domestically and at the international level.

   This resolution, as a whole, provides a framework for progressive realization of that right. As such, 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 overnight. However, it does require more than some provision for emergency shelter, piecemeal implementation of housing affordability programs, and intermittent enforcement of non-discrimination laws, all of which exist in some form in all local U.S. communities and have failed as a whole to eliminate homelessness or poverty. It requires an affirmative commitment to progressively realize the right to fully adequate housing, whether through public funding, market regulation, private enforcement, or a combination of all of the above.

2. **Approval by Submitting Entity.**

   The Commission approved this policy resolution on May 4, 2013.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

   No. Please see response to #4 below.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   In 1979, the ABA endorsed the U.S. ratification of the International Covenant on Economic, Social & Cultural Rights which codifies the right to housing. (See ABA House Report 690 MY 1979.) Adoption of this policy would build on the ABA’s 34 year history of advocacy in the human rights arena.

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**

   N/A
6. **Status of Legislation.** (If applicable)

None at this time.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

The United States government has supported the human right to housing in a number of international treaties and other documents, and is increasingly discussing housing and homelessness in terms of human rights. Lawyers across the country are using human rights framing at the federal, state, and local levels as an additional tool in litigation and legislative advocacy to end homelessness and promote the right to adequate housing for all.

8. **Cost to the Association.** (Both direct and indirect costs)

None. Existing Commission and Governmental Affairs staff will undertake the Association’s advocacy on behalf of these recommendations, as is the case with other Association policies.

9. **Disclosure of Interest.** (If applicable)

There are no known conflicts of interest with this resolution.

10. **Referrals.**

   Administrative Law  
   Business Law  
   Criminal Law  
   Government and Public Sector Lawyers  
   Individual Rights and Responsibilities  
   International Law  
   Law Student Division  
   Litigation  
   Real Property  
   Senior Lawyers  
   Solo, Small Firm and General Practice  
   State and Local Government  
   Young Lawyers Division  
   Forum on Affordable Housing and Community Development  
   Delivery of Legal Services  
   Disaster Response and Preparedness  
   Legal Aid and Indigent Defendants  
   Pro Bono and Public Service  
   Center for Human Rights
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

   Antonia Fasanelli, Chair  
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12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

   Antonia Fasanelli, Chair  
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1. Summary of the Resolution

This resolution calls upon federal, state, local, territorial, and tribal governments to progressively implement policies promoting the human right to adequate housing for all including veterans, people with disabilities, older persons, families, single individuals, and unaccompanied youth, and urges the federal government to lead by example through increased efforts to support and develop the right to housing domestically and at the international level.

This resolution, as a whole, provides a framework for progressive realization of that right. As such, 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 overnight. However, it does require more than some provision for emergency shelter, piecemeal implementation of housing affordability programs, and intermittent enforcement of non-discrimination laws, all of which exist in some form in all local U.S. communities and have failed as a whole to eliminate homelessness or poverty. It requires an affirmative commitment to progressively realize the right to fully adequate housing, whether through public funding, market regulation, private enforcement, or a combination of all of the above.

2. Summary of the Issue that the Resolution Addresses

Despite the nation’s commitment to human rights ideals, its practices have often fallen short. The U.S. has a strong tradition of promoting affordable, accessible housing, but programs have been under-funded and under-implemented. Furthermore, over the past 30 years there has been a significant disinvestment in public and subsidized housing at the federal level. Families continue to face foreclosures, many as a result of predatory lending practices, but even as homes without families multiply, families without homes cannot access them. Many tenants pay more than 50% of their income toward rent, putting them one paycheck away from homelessness. Homelessness is an ongoing and increasingly prevalent violation of the most basic essence of the human right to housing in the United States and requires an immediate remedy. In 2011, cities across the country noted an average 16% increase in the number of homeless families. From the 2009-10 school year to the 2010-11 school year, the number of homeless school children increased by 13% to over one million children.

3. Please Explain How the Proposed Policy Position will address the issue

This resolution calls on the U.S. government at all levels to more fully implement the right to housing as a legal commitment. Asserting housing as a human right will create a common goal and a clear framework to:
a. Help government agencies set priorities to implement the right to housing
b. Provide support for advocacy groups
c. Create pressure to end policies which fail to guarantee human rights
d. Allow us to focus on how to solve the problem rather than worrying about whether the U.S. government has a duty to solve the problem

4. Summary of Minority Views

None to date.