

The Champagne of Housing Rights: France's Enforceable Right to Housing and Lessons for U.S. Advocates

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I. Introduction

The United States faces a homelessness crisis of record proportions. Each year, between 1.6 and 3.5 million people experience homelessness, including 1.35 million children.¹ Amid the recent economic downturn and foreclosure crisis, homelessness rates have risen dramatically. In 2010, family homelessness increased by 9%.² Social programs provide little help: only 6% percent of renters—two million low-income families or individuals³—receive some form of housing assistance from the United States' largest housing assistance pro-

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1 NAT'L ALLIANCE TO END HOMELESSNESS, HOMELESSNESS LOOMS AS POTENTIAL OUTCOME OF RECESSION 5 (2009), available at <http://www.endhomelessness.org/content/general/detail/2161>; NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, 2007 ANNUAL REPORT 5 (2007), available at http://www.nlchp.org/content/pubs/2007_Annual_Report2.pdf.

2 U.S. CONFERENCE OF MAYORS, HUNGER AND HOMELESSNESS SURVEY: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES 17 (2010).

3 Two million families or individuals receive assistance under the Housing Choice Voucher Program. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, "SIMPLY UNACCEPTABLE": HOMELESSNESS AND THE HUMAN RIGHT TO HOUSING IN THE UNITED STATES 56 (2011) [hereinafter NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, "SIMPLY UNACCEPTABLE"].

gram.⁴ Furthermore, the waitlists to receive housing assistance are closed in many cities due to a lack of funding and affordable rental homes.⁵ A dearth of affordable rental housing coupled with a broken housing assistance system means that millions of families do not have a set place to sleep at night.

The minimal assistance given to low-income people does not result entirely from a lack of federal resources, but rather is partially due to a skewed priority system that disproportionately benefits middle- and upper-income homeowners. As one example, the Internal Revenue Code includes a Mortgage Interest Deduction (MID) that provides homeowners with tax deductions increasing in step with the amount of mortgage interest paid on an owner's first two properties.⁶ The MID effectively provides these homeowners with a subsidy that costs the United States more than \$79 billion annually.⁷ In contrast, the U.S. budget for all low-income housing programs is only \$41 billion.⁸

Despite the lack of housing assistance for those who need it most, the United States has international obligations to safeguard the basic human rights of all its citizens. In 1948, the United States took a leading role in drafting the Universal Declaration of Human Rights, which states that, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . housing."⁹ The United States has also signed and ratified the International Convention on the Elimination of All Forms

4 There were approximately 35,378,000 total renter-occupied units in the United States in 2009. U.S. CENSUS BUREAU, AMERICAN HOUSING SURVEY FOR THE UNITED STATES 71 (2009), available at <http://www.census.gov/prod/2011pubs/h150-09.pdf> [hereinafter U.S. CENSUS BUREAU, AMERICAN HOUSING SURVEY].

5 See, e.g., HOUSING AUTHORITY OF THE CITY OF AUSTIN, <http://www.hacanet.org/> (last visited Oct. 24, 2011); *Family Wait List Lottery FAQs*, CHI. HOUSING AUTHORITY, http://www.thecha.org/pages/family_wait_list_lottery_faqs/76.php (last visited Oct. 24, 2011).

6 See 26 U.S.C. § 163(h) (2011).

7 Danilo Pelletiere, *Mortgage Interest Deduction*, in 2011 ADVOCATES' GUIDE TO HOUSING & COMMUNITY DEVELOPMENT POLICY 147 (Nat'l Low Income Hous. Coal., 2011) [hereinafter Pelletiere, *Mortgage Interest Deduction*].

8 *Id.*

9 Universal Declaration of Human Rights, art. 25(1), G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810, at 71 (Dec. 10, 1948) [hereinafter UDHR]; see also Hope Lewis, "New" Human Rights: U.S. Ambivalence Toward the International Economic and Social Rights Framework, in BRINGING HUMAN RIGHTS HOME, VOL. I: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 110-14

of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR), which prohibit discrimination in housing and other areas on the basis of race, sex, religion, and other status.¹⁰ The United States has signed, but not ratified, the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides that all States Parties must “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing[,] and housing,” and that States will “take appropriate steps to ensure the realization of this right.”¹¹

Under the Obama Administration, the United States has demonstrated a renewed awareness of its human rights commitments in relation to housing. In March 2011, in a response to the UN Human Rights Council’s report regarding human rights in the United States, the United States admitted that the needs of homeless individuals trigger U.S. human rights obligations.¹² Furthermore, a few weeks later, Assistant Secretary of State for Democracy, Human Rights, and Labor Michael Posner stated that the United States would be renewing its commitment to uphold economic, social, and cultural rights.¹³ He also emphasized the United States’ commitment to recognizing the human right to housing.¹⁴ Perhaps most significantly, the U.S.

(Cynthia Soohoo, Catherine Albisa & Martha Davis eds., 2008) [hereinafter Lewis].

- 10 International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e), *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD]; International Covenant on Civil and Political Rights, art. 2(1), *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].
- 11 International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, art. 11(1), 993 U.N.T.S. 3 [hereinafter ICESCR]; *see also* Lewis, *supra* note 9, at 122–24.
- 12 Report of the Working Group on the Universal Periodic Review, United States of America, Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review, paras. 5, 19, U.N. Doc. A/HRC/16/11/Add.1 (Mar. 8, 2011) (stating that the United States supports recommendations 113 and 198, which pertain, respectively, to reduction of homelessness among women and minorities and reinforcement of safeguards to allow the homeless to enjoy full rights and dignity); *see also* Working Grp. on the Universal Periodic Review, Draft Report of the Working Group on the Universal Periodic Review: United States of America, paras. 92.113, 92.198, U.N. Doc. A/HRC/WG.6/9/L.9 (Nov. 10, 2010).
- 13 *See* Michael H. Posner, Assistant Sec’y of State for Democracy, Human Rights & Labor, Address to the American Society of International Law: The Four Freedoms Turn 70 (Mar. 24, 2011), *available at* <http://www.state.gov/j/drl/rls/rm/2011/159195.htm>.
- 14 *Id.*

Interagency Council on Homelessness acknowledged in an April 2012 report that, “In addition to violating domestic law, criminalization [of homelessness] may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights.”¹⁵ To the authors’ knowledge, this admission represents the first time a domestic agency report has ever specifically recognized U.S. practices as potentially violating human rights law.

Recognizing that the United States is bound by human rights obligations is a necessary first step in securing basic economic, social, and cultural rights for U.S. residents. In order to achieve these rights, however, the United States should look to countries that are successfully implementing the human right to housing for guidance. France is one country that has successfully implemented a rights-based approach to housing. In its program, France addresses the seven internationally accepted elements that are needed to realize the right to housing. These seven elements, as codified by the UN, are:

1. Legal security of tenure;
2. Availability of services, materials, facilities, and infrastructure;
3. Affordability;
4. Habitability;
5. Accessibility;
6. Location; and
7. Cultural adequacy.¹⁶

15 U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS* 8 (2012).

16 UN Comm. on Econ., Soc. & Cultural Rights, General Comment No. 4, *The Right to Adequate Housing* (Art. 11(1)), para. 8, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter UN Comm. on Econ., Soc. & Cultural Rights, General Comment No. 4]. The elements are defined as follows:

- a. Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure

In a human rights framework, every right creates a correspond-

- upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;
- b. Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;
 - c. Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;
 - d. Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to comprehensively apply the Health Principles of Housing prepared by WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. [,] inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;
 - e. Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to

ing duty on the part of the government to respect, protect, and fulfill that right.¹⁷ Fulfilling the human right to housing does not mean that the government must provide free homes for all its residents. Rather, the government may fulfill this right by encouraging the development of low-cost rental housing, developing housing voucher programs for its low-income residents, creating legal protections for tenants facing eviction, requiring and enforcing the habitability of rental homes, or pursuing myriad other strategies.

Passage of the Enforceable Right to Housing Act (*le Droit au Logement Opposable*, or “DALO”), which was largely the result of a successful grassroots movement in France, strengthened progressive housing measures already in existence while creating the foundation for a holistic housing law framework.¹⁸ One of DALO’s most impor-

a secure place to live in peace and dignity, including access to land as an entitlement;

- f. Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;
- g. Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.

17 UN Office of the High Comm’r for Human Rights, Fact Sheet No. 21: The Human Right to Adequate Housing, (June 1994), available at <http://www.unhcr.org/refworld/docid/479477400.html>.

18 Loi 2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale [Law 2007-290 of March 5, 2007 Establishing the Enforceable Right to Housing and Various Measures in Favor of Social Cohesion], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 6, 2007, p. 4 [hereinafter DALO]. Notable amendments to DALO occurred in 2009 and 2010. See Loi 2010-1657 du 29 décembre 2010 de finances pour 2011 [Law 2010-1657 of December 29, 2010 on Finances for 2011], J.O., Dec. 30, 2010, p. 23033; Loi 2009-323 du 25 mars 2009 de mobilisation pour le logement et la lutte contre l’exclusion [Law 2009-323 of March 25, 2009 on Mobilization for Housing and the Fight Against Exclusion], J.O., Mar. 27, 2009, p. 5408 [hereinafter Mobilization for Housing Act].

tant provisions is the creation of a legal cause of action for individuals who have been denied the right to housing.¹⁹ In addition, DALO and subsequent legislation encourage the development of affordable rental homes and public housing through municipal funding and taxation, while prioritizing the involvement of community housing organizations.²⁰

The French model of housing law is particularly compelling to U.S. housing advocates because of the structural parallels between French and U.S. policies and legal systems. While French housing law at first may appear dramatically different from U.S. housing law, a deeper look demonstrates that several elements of France's successful housing policy are feasible in the United States. Moreover, the movement that produced DALO bears a striking resemblance to the Occupy encampments set up across the country at the time of this article's conception in late 2011, lending credence to the belief that we could generate the political will for such laws in the United States.

This article seeks to draw parallels between U.S. and French housing law and to illuminate the areas of French housing law that U.S. housing advocates may find informative. Part I provides a brief introduction to the structure of French government and the underpinnings of French housing law. Part II examines the movement that led to the creation of a judicially enforceable right to housing in France and attempts to highlight the key features that made the movement such a success. Part III explores DALO's procedures for protecting the right to housing. Part IV examines the successes and struggles related to DALO's implementation. Finally, Part V compares U.S. housing law with French housing law and recommends potential strategies for housing rights advocates in the United States.

II. French Foundations for the Creation of an Enforceable Right to Housing

Any discussion of French housing law must begin with a brief overview of the French system of government and how housing law is situated within that system. In addition, this section provides context to French housing law by highlighting the tension between its two coexisting frameworks: a free-market scheme focused on individ-

19 See *infra* Part III.A.

20 See *infra* Parts III.B, E.

ual property rights and a rights-based scheme focused on providing adequate housing to all French residents.

A. Basic Structure of French Government and Housing Law

Despite the substantive differences between French and U.S. law, the structure of French government is similar to that of U.S. federalism. France is divided into several regions (communes) with broad legal authority. There are approximately 36,860 of these communes in France.²¹ Each commune is headed by a mayor, elected by members of the local council, who bears responsibility for implementing council decisions and possesses authority to take certain actions on behalf of the commune that have been delegated by the council.²²

Because each commune possesses its own set of regulations governing social housing, French housing law is complex.²³ In fact, the trend in recent years has been an expansion of municipal housing authority. From the 1980s to the present, local authorities have consistently received more power and responsibility in regulating housing.²⁴ As a result, dramatic variances have developed in housing policy from commune to commune. Scholar Alan Mallach argues that it is difficult to make any sort of generalization about French housing law because there are literally as many different housing policies as there are communes.²⁵

21 Alan Mallach, *Social Inclusion, Fair Share Goals, and Inclusionary Housing*, in *INCLUSIONARY HOUSING IN INTERNATIONAL PERSPECTIVE* 203, 204 (Nico Calavita & Alan Mallach eds., 2010).

22 *CODE GÉNÉRAL DES COLLECTIVITÉS TERRITORIALES [GENERAL CODE OF LOCAL AUTHORITIES]* art. L. 2122-1, art. L. 2122-4, art. L. 2122-21, art. L. 2122-22.

23 See Jean-Pierre Schaefer, *Financing Social Housing in France*, *HOUSING FIN. INT'L*, June 2003, at 27, 27 (stating that, "The decentralisation process initiated in the last twenty years in France is gradually increasing the powers of local authorities in the field of housing, with a finer tuning of regulations and level of subsidies to local markets.").

24 See *id.*

25 Mallach, *supra* note 21.

B. Free Housing Market, with Safety Net

In addition to a quasi-federalist system, France is also similar to the United States in that it historically has prioritized a free housing market,²⁶ with an emphasis on promoting urban development rather than providing social housing to all who need it.²⁷ Following World War II, France devoted itself to urban development, and from the end of the 1950s until the late 1970s, about 2.3 million new housing units were built.²⁸

The French government's focus on increasing individual homeownership provides further evidence of France's commitment to a free-market housing model. Specifically, a policy was developed in the mid-2000s that gave generous mortgage assistance to potential homeowners.²⁹ The program was largely successful. From 2000 to 2010, approximately 90,000 French buyers bought property each year,³⁰ and homeownership rates increased from 41% in 1960 to 56% by 2007.³¹ Unfortunately, although opportunities abounded for middle- and upper-income homeowners, the stratification of the housing market meant that quality affordable rental housing remained out of reach for large segments of the French population.³²

In terms of assistance for tenants, France's housing assistance program historically was structured around providing individual subsidies to renters.³³ That subsidized housing assistance model remains largely in place today, though on a much larger scale than the United States' housing assistance program—about 50% of all French ten-

26 See Schaefer, *supra* note 23 (noting that “the general framework of [French] housing markets is mainly free, thus offering freedom of choice of tenure, type of housing and location.”).

27 Marie Loison-Leruste & Deborah Quilgars, *Increasing Access to Housing: Implementing the Right to Housing in England and France*, 3 EUR. J. OF HOMELESSNESS 75, 81 (2009).

28 Mallach, *supra* note 21, at 207.

29 *Id.* at 208.

30 *Id.*

31 *Id.* at 209.

32 See Corinne Nativel, *The Politics of Housing Under France's New Right*, in *WHERE THE OTHER HALF LIVES: LOWER INCOME HOUSING IN A NEOLIBERAL WORLD* 152, 153–54, 57 (Sarah Glynn ed., 2009); see FONDATION ABBÉ PIERRE [ABBÉ PIERRE FOUND.], *L'ÉTAT DU MAL-LOGEMENT EN FRANCE: 17È RAPPORT ANNUEL* [THE STATE OF INADEQUATE HOUSING IN FRANCE: 17TH ANNUAL REPORT] 33, 66 (2012), available at http://www.fondation-abbe-pierre.fr/_pdf/rml-17.pdf.

33 Schaefer, *supra* note 23, at 31.

ants receive some sort of individualized rent subsidy,³⁴ compared to only 6% of renters in the United States.³⁵ In 2003, the French government supplied more than 10 billion euros in housing subsidies to 5.4 million tenants, averaging approximately 165 euros per month per tenant.³⁶

Despite the generous individual rental subsidies, the lack of available units poses a significant problem in France. Particularly in Paris, the rental process is highly competitive, due to a huge demand for a small supply of rental properties.³⁷ The process by which some landlords choose their tenants illustrates this competition: landlords will invite all potential tenants to see the property at the same time, resulting in hundreds of potential tenants descending on the property at once and competing to rent that particular unit.³⁸ As scholar Corinne Nativel states, “Like cattle queuing to be slaughtered, prospective tenants are all invited at the same time, bringing their credentials (salary slips, employers’ references, parental financial guarantee, four months’ deposit, and so on), into a tense competitive atmosphere.”³⁹

Notwithstanding these challenges, France has prevented homelessness more effectively than the United States and ensured that those who do experience homelessness are able to access housing more quickly. For example, the French government provides a significant amount of temporary housing to homeless individuals; approximately 40% of hostel rooms in Paris are rented by the government as subsidized housing for poor and homeless people.⁴⁰ In addition, legal protections are granted to individuals after just five days of squatting, and the only method of evicting these squatters from the property is through the judicial system.⁴¹ From 2005 to 2010, approximately 133,000 or 0.22% of French residents experienced homelessness.⁴² By contrast, approximately 1.6 million to 3.5

34 Mallach, *supra* note 21, at 207.

35 NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, “SIMPLY UNACCEPTABLE,” *supra* note 3.

36 Schaefer, *supra* note 23, at 31.

37 Nativel, *supra* note 32, at 164–65.

38 *Id.* at 165.

39 *Id.*

40 *Id.* at 157.

41 *Id.* at 165.

42 *Être sans domicile, avoir des conditions de logement difficiles* [Without a Domicile, with Difficult Housing Conditions], INSTITUT NATIONAL DE LA STATISTIQUE ET DES ÉTUDES ÉCONOMIQUES [NAT’L INST. OF STATISTICS & ECON. STUDIES], http://www.insee.fr/fr/themes/document.asp?ref_id=ip1330 (last visited Nov.

million people (0.5% to 1.1% of the population) experience homelessness *each year* in the United States.⁴³

C. Housing as a Human Right

While the dominant framework for housing policy consists of support for the free market as described above, France has consistently stated its commitment to housing as a human right in its legislation, constitution, and judicial decisions. The differences in the free market and housing rights paradigms have created tension in French housing law. This section will describe where the rights-based framework is reflected in international and domestic French law, as well as how France's constitutional court has handled the conflicting frameworks.

1. *International Human Rights Basis for the Right to Housing*

Like the United States, France is obligated to respect and protect the right to housing vis-à-vis international declarations it has approved and treaties it has ratified.⁴⁴ In 1948, France played an instrumental role in the UDHR's adoption.⁴⁵ The UDHR states that all persons have the right to an adequate standard of living, including housing.⁴⁶ France also signed and ratified the ICESCR, which came into force in 1973 and recognizes the right to an adequate standard

3, 2011) [hereinafter *Without a Domicile*, NAT'L INST. OF STATISTICS & ECON. STUDIES].

43 See NAT'L ALLIANCE TO END HOMELESSNESS, *supra* note 1. The U.S. population at the time of drafting is estimated to be 314,015,800 persons. *U.S. & World Population Clocks*, U.S. CENSUS BUREAU, <http://www.census.gov/main/www/popclock.html> (last visited July 24, 2012) [hereinafter *U.S. & World Population Clocks*, U.S. CENSUS BUREAU].

44 Given that France is a monist state, ratified international treaties trump French domestic laws. See 1958 CONST. art. 55.

45 See *France's Role at the UN*, PERMANENT MISSION OF FRANCE TO THE UNITED NATIONS (June 2009), <http://www.franceonu.org/france-at-the-united-nations/The-United-Nations/France-s-role-at-the-UN/france-at-the-united-nations/The-United-Nations/France-s-role-at-the-UN/article/france-s-role-at-the-un>.

46 See UDHR, *supra* note 9, art. 25(1) (providing that, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.").

of living, including housing.⁴⁷ Other relevant treaties by which France is bound include the ICCPR⁴⁸ and the ICERD.⁴⁹

France's regional treaty obligations also encompass the human right to housing. The European Union's Revised Social Charter of 1996⁵⁰ devotes a complete article to the right to housing, requiring parties to undertake measures that promote access to housing of an adequate standard, prevent homelessness, and ensure that housing is affordable for low-income individuals.⁵¹ In addition, the Charter of Fundamental Rights of the European Union,⁵² which was passed

47 See ICESCR, *supra* note 11, art. 11(1) (stating that, "The 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, and to the continuous improvement of living conditions.").

48 See ICCPR, *supra* note 10, art. 2(1) (providing that, "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.").

49 See ICERD, *supra* note 10, art. 5 (stating that, "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: . . . (e) Economic, social and cultural rights, in particular: . . . (iii) The right to housing . . .").

50 France ratified the Revised Social Charter of 1996 in 1999. See *Member States of the Council of Europe and the European Social Charter*, COUNCIL OF EUR., http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp (last visited July 2, 2012). The Charter includes a complaint procedure against states that do not respect the rights protected by the Charter. European Social Charter, art. D, *opened for signature* May 3, 1996, E.T.S. No. 163 [hereinafter ESC].

51 ESC, *supra* note 50, art. 31 (providing that, "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: 1. to promote access to housing of an adequate standard; 2. to prevent and reduce homelessness with a view to its gradual elimination; [and] 3. to make the price of housing accessible to those without adequate resources.").

52 Charter of Fundamental Rights of the European Union, art. 34(3), 2000 O.J. (C 364) 1, 16 [hereinafter Charter of Fundamental Rights]. The Charter of Fundamental Rights is a document containing human rights provisions adopted by the European Parliament, the European Council, and the European Commission on December 7, 2000. *The Charter of Fundamental Rights of the European Union*, EUR. PARLIAMENT, http://www.europarl.europa.eu/charter/default_en.htm (last visited July 24, 2012). This document offers an additional source of protection upon which European citizens can rely in litigation to enforce rights against their national governments. *Introduction*, EU CHARTER OF FUN-

in 2000, reaffirms the human right to housing.⁵³ As detailed below, a complaint filed pursuant to the Charter of Fundamental Rights was instrumental in securing the enforceable right to housing in France.

2. Domestic Legislative Basis for the Right to Housing

In addition to its international agreements, France has indicated a commitment to housing as a human right domestically. Several housing laws enacted prior to DALO stated that a right to housing existed, including the Quilliot Act of June 22, 1982⁵⁴; the Mermaz Act of July 6, 1989⁵⁵; and the Besson Act of May 31, 1990.⁵⁶ The right to housing embodied in these acts, however, was often criticized for lack of enforceability.⁵⁷

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- DAMENTAL RIGHTS, http://www.eucharter.org/home.php?page_id=66 (last visited July 24, 2012).
- 53 See Charter of Fundamental Rights, *supra* note 52 (stating that, “In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.”).
- 54 See Loi 82-526 du 22 juin 1982 relative aux droits et obligations des locataires et des bailleurs [Law 82-526 of June 22, 1982 on the Rights and Obligations of Landlords and Tenants], J.O., June 23, 1982, p. 1967. This law is commonly known as the *Loi Quilliot* (“Quilliot Act”) after Roger Quilliot, the Minister of Housing and Urban Development who proposed the law to the French Parliament. See Violette Trudaine, *Loi Quilliot: Les Locataires Sont Contents . . . Les “Proprios” Pas Tellement!* [Quilliot Act: Tenants Are Happy . . . the “Proprios” Not So Much!], L’UNITÉ, Nov. 6, 1981, available at http://bases.ourouk.fr/unite/u-result_frame.php?catalogueID=13941&NumeroJournal=442.
- 55 See Loi 89-462 du 6 juillet 1989 tendant à améliorer les rapports locatifs et portant modification de la loi 86-1290 du 23 décembre 1986 [Law 89-462 of July 6, 1989 to Improve Rental Conditions and Amending the Law 86-1290 of December 23, 1986], J.O., July 8, 1989, p. 8541. Louis Mermaz was Minister of Transportation in 1988 and presented this law to Parliament; accordingly, the law became known as the *Loi Mermaz* (“Mermaz Act”). See Louis Mermaz, ASSEMBLÉE NATIONALE [NAT’L ASSEMBLY], http://www.assemblee-nationale.fr/histoire/presidents/louis_mermaz.asp (last visited Sept. 4, 2012).
- 56 See Loi 90-449 du 31 mai 1990 visant à la mise en oeuvre du droit au logement [Law 90-449 of May 31, 1990 for the Implementation of Housing Rights], J.O., June 2, 1990, p. 1967. This law became known as the *Loi Besson* (“Besson Act”), taking its name from Louis Besson, the Minister of Housing in 1990 who presented the law to Parliament. 2 ENCYCLOPEDIA OF HOMELESSNESS 172 (David Levinson ed., 2004).
- 57 See Kyra Olds, *The Role of Courts in Making the Right to Housing a Reality Throughout Europe: Lessons from France and the Netherlands*, 28 WIS. INT’L L.J. 170, 188–89

The actual mechanisms for obtaining social housing assistance are through France's social housing network and various subsidized rent programs. France's social housing system largely consists of the *habitations à loyer modéré* ("HLM").⁵⁸ The HLM is a government-regulated network of more than 300 local government offices and 340 private housing companies that develop and administer social housing.⁵⁹ The rental cost of each unit is controlled by the national government, and the units are only available to households whose income falls below a set limit.⁶⁰ Each year, HLM members manage more than four million French properties and build approximately 40,000 new properties.⁶¹ In total, HLM landlords own 17% of all French housing and 40% of the rental housing.⁶² Roughly half of these units are owned by private nonprofit social housing companies, while the other half are owned by public agencies.⁶³ Additionally, a limited number of private owners, independent of the HLM, have contracted with the government to provide their units for public housing.⁶⁴ In exchange for renting to the government, owners receive government assistance in developing their properties.⁶⁵ This scheme will be discussed further in Part III.

Finally, as mentioned above, France has a subsidy program in place for tenants who need assistance with rent. While the structure of the program is not perfect because of the shortage of rental properties, it is significant that nearly half of all French tenants receive some form of individualized rent subsidy.⁶⁶

3. *Constitutional and Jurisprudential Basis for the Right to Housing*

The conflict between free-market ideals and the right to housing is perhaps most clearly illuminated by decisions of the *Conseil constitutionnel* ("Constitutional Council"). The Constitutional Council is

(2010).

58 See Schaefer, *supra* note 23, at 29.

59 *Id.*

60 *Id.*

61 *Id.*

62 Mallach, *supra* note 21, at 207.

63 *Id.*

64 See Loison-Leruste & Quilgars, *supra* note 27, at 80–81.

65 *Id.*

66 Mallach, *supra* note 21, at 207.

a quasi-judicial body that reviews proposed legislation about which there is a question of conformity with the Constitution to ensure its constitutionality prior to implementation.⁶⁷ Decisions by the Constitutional Council are binding and cannot be appealed.⁶⁸

The constitutional law principle most relevant to the right to housing is the distinction between rights granting a freedom to act and rights giving access to basic social benefits.⁶⁹ The former are *droits-libertés*, or rights requiring no affirmative act by the government (such as the individual right to property).⁷⁰ The latter, *droits-créances*, are social principles that require the government to act (such as the individual right to housing).⁷¹ Historically, as a doctrinal matter, *droits-libertés* trumped *droits-créances*, which essentially meant that if legislation fulfilled social principles but infringed upon *droits-libertés*, the Constitutional Council would find the legislation unconstitutional.⁷²

In 1971, the Constitutional Council held that all rights found in the French Constitution, including both *droits-libertés* and *droits-créances*, should have equal constitutional value.⁷³ This decision allowed Parliament to pass legislation that addressed social principles even if the legislation limited a *droit-liberté*.⁷⁴ For example, in 1998, a statute was presented to the Constitutional Council that, in part, allowed the government to request and temporarily seize private property that had been vacant for more than eighteen months.⁷⁵ The taking of private property contemplated by that section of the statute was justified

67 MARTIN WESTON, AN ENGLISH READER'S GUIDE TO THE FRENCH LEGAL SYSTEM 99 (1991).

68 *Id.* at 100.

69 Laurent Pech, *France: Rethinking "Droits-Créances,"* in SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW 267, 268 (Malcolm Langford ed., 2008).

70 *Id.*

71 *Id.*

72 *See id.* at 270.

73 *See id.* at 269–70; *see also* Conseil constitutionnel [CC] [Constitutional Court] decision No. 71-44DC, July 16, 1971, J.O. 7114.

74 *See* Pech, *supra* note 69, at 271 (noting that Parliament can pass legislation to vindicate social rights even if it has the effect of restricting the exercise of competing fundamental rights, but that “the Constitutional Council does not allow for these limitations to *substantially* affect [the latter’s] exercise.”).

75 Conseil constitutionnel [CC] [Constitutional Court] decision No. 98-403DC, July 29, 1998, J.O. 11710 [hereinafter Constitutional Court decision No. 98-403DC].

as necessary based on the public interest in relieving the housing crisis.⁷⁶ The Constitutional Council upheld the statute, holding that the *droit-créance* of adequate housing constitutionally limited the *droit-liberté* of the right to property.⁷⁷

In its 1998 decision, the Constitutional Council arguably eliminated the idea of absolute *droits-libertés* in favor of a balancing test similar to rational basis, intermediate scrutiny, or strict scrutiny under U.S. constitutional law. The French decision can be seen as symbolic of the balance between the importance of free-market individualism and the realization of social rights. It is important to note, however, that these decisions by the Constitutional Council did not *create* a justiciable right to social and economic rights as embodied in France's Constitution. Rather, the decision simply *allows* the legislature to pass socially progressive laws that in some cases infringe on individual liberty rights. As a result, legislation is still needed to create a cause of action for violations of specific social rights under domestic French law.

The above-described combination of international, statutory, and constitutional obligations and programs laid the groundwork for a right to housing, but came far from achieving it. Despite the progressive decision by the Constitutional Council in 1971, the trajectory of French housing law prior to 2007 seemed to be trending toward an individualistic, free-market approach to housing. Parliament's decision in 2005 to flatly reject a law extremely similar to DALO that would have created an enforceable right to housing provides evidence of the lack of commitment at that time to housing as a human right.⁷⁸ This is arguably where we stand today in the United States—various policies are in place, but they are inadequately funded, unsuccessfully implemented, and devoid of a legal basis for compelling action. The following section details how these conditions were changed in France, a process that can provide guidance for U.S. housing advocates seeking similar gains.

76 *Id.* A 1995 decision by the Constitutional Council was the first to hold that the right to decent housing is an objective rising to constitutional significance. See Conseil constitutionnel [CC] [Constitutional Court] decision No. 94-359DC, Jan. 19, 1995, J.O. 1166. That decision rested upon two constitutional bases: the principle of human dignity and the state's duty to ensure the conditions for a decent existence. *Id.*

77 See Constitutional Court decision No. 98-403DC, *supra* note 75.

78 See Marie Loison, *The Implementation of an Enforceable Right to Housing in France*, 1 EUR. J. HOMELESSNESS 185, 187 (2007).

III. The Grassroots Movement Toward DALO

Advocates' ability to turn a 2005 defeat into a 2007 victory (i.e., the passage of DALO) was the direct result of a brilliantly organized grassroots movement that took over the French media for most of 2006–07, complemented by a successful international legal strategy.⁷⁹ The grassroots movement, which consisted of homeless individuals, housing advocacy organizations, celebrities, students, and other French residents, forced housing issues and homelessness into the national spotlight and succeeded in completely overhauling French housing policy.

A. Grassroots Advocacy and Les Enfants de Don Quichotte

There were two catalyzing events that sparked the 2005–07 grassroots housing movement in France. The first event occurred on August 26, 2005, when a converted six-floor temporary housing building in Paris caught fire, killing seventeen people and injuring thirty.⁸⁰ Then, in August 2006, 700 people were brutally evicted by police from an abandoned building that they had occupied since 2003.⁸¹ The media extensively covered both events, and the public was outraged and started to mobilize.⁸² Celebrities, activists, and other individuals came together in solidarity with homeless persons, leading demonstrations and hunger strikes in protest of their situation.⁸³

Following these two events, activist Augustin Legrand founded *Les Enfants de Don Quichotte* (“the Children of Don Quixote”), which began to coordinate the activists and structure a cohesive campaign for an enforceable right to housing.⁸⁴ The Children of Don Quixote

79 See *id.* at 188–89.

80 See *id.* at 187 & n.3.

81 Nativel, *supra* note 32, at 162.

82 See *id.*; Loison, *supra* note 78, at 188.

83 Nativel, *supra* note 32, at 162.

84 *Les Enfants de Don Quichotte en bref* [*The Children of Don Quixote in Brief*], LES ENFANTS DE DON QUICHOTTE [THE CHILDREN OF DON QUIXOTE], <http://lesenfantsdedonquichotte.com/content/les-enfants-de-don-quichotte-en-bref> (last visited Nov. 3, 2011) [hereinafter *The Children of Don Quixote in Brief*, THE CHILDREN OF DON QUIXOTE]; see also Loison, *supra* note 78, at 188; *Le sang chaud des Don Quichotte* [*The Warm-Blooded Children of Don Quixote*], LIBÉRATION NEXT (Oct. 22, 2008), <http://next.liberation.fr/cinema/0101163965-le-sang-chaud-des-don-quichotte>.

focused primarily on raising homelessness issues in the media and mobilizing large groups of individuals for protests.⁸⁵

The Children of Don Quixote began its biggest and most visible campaign in the winter of 2006–07.⁸⁶ In a telling preview of the strategies later employed by the Occupy movement in the United States, the group set up nearly 200 red tents along the popular Canal Saint Martin in Paris both to provide protection for homeless persons from the winter weather and to draw attention to homelessness in Paris.⁸⁷ The media extensively covered the event, and the campaign's visibility instantly skyrocketed.⁸⁸ Within days, the public joined the demonstrations and began sleeping outside in solidarity with homeless individuals.⁸⁹ The movement quickly spread to other towns and cities in France, including Marseilles, Bordeaux, Lyons, Toulouse, Strasbourg, and Nice.⁹⁰

In October 2006, with media attention surrounding housing issues growing, the *Jeudi Noir* ("Black Thursday") also began mobilizing young professionals and students around the lack of rental housing in France.⁹¹ Their slogan, "fight with confetti for a regulation of the property market," reflected their organizing tactics.⁹² As mentioned above, many Parisian landlords would require prospective tenants to go through an intensely competitive process in order to acquire a rental spot. Black Thursday took over these gatherings,

85 *The Children of Don Quixote in Brief*, THE CHILDREN OF DON QUIXOTE, *supra* note 84.

86 *Id.*

87 Loison, *supra* note 78, at 188; *The Children of Don Quixote in Brief*, THE CHILDREN OF DON QUIXOTE, *supra* note 84; see generally HOW TO OCCUPY, <http://howtooccupy.org/> (last visited Dec. 20, 2011).

88 See, e.g., *Cinq grévistes de la faim avec les SDF* [Five Hunger Strikers with the Homeless], L'EXPRESS (Dec. 26, 2006), http://www.lexpress.fr/actualite/politique/cinq-grévistes-de-la-faim-avec-les-sdf_461982.html; *Les Enfants de Don Quichotte parviennent à de nouveaux accords avec le gouvernement* [The Children of Don Quixote Reach New Agreements with the Government], LE MONDE (Jan. 25, 2007, 8:58 AM), http://www.lemonde.fr/societe/article/2007/01/24/les-enfants-de-don-quichotte-obtiennent-trois-engagements-du-gouvernement_859351_3224.html.

89 Loison, *supra* note 78, at 188; see also *The Children of Don Quixote in Brief*, THE CHILDREN OF DON QUIXOTE, *supra* note 84.

90 Loison, *supra* note 78, at 189; see also *Des "Don Quichotte" en Province* [Of "Don Quixote" in Province], L'EXPRESS (Dec. 29, 2006, 1:52 PM), http://www.lexpress.fr/actualite/societe/des-don-quichotte-en-province_462046.html.

91 See Nativel, *supra* note 32, at 164–65.

92 *Id.* at 164.

bringing champagne, DJs, and cameras to video record the landlord's reaction to their protest.⁹³

Additionally, the Black Thursday began to organize squatting takeovers.⁹⁴ Under French law, legal protections for squatters attach after five days of squatting, so the Black Thursday organized groups to discretely occupy buildings for five days.⁹⁵ Many individuals were unsuccessful at avoiding detection and were summarily evicted; yet for those squatters who were successful, the owners of the buildings were forced to go through the court system in order to evict them, which often took months.⁹⁶ These protests added to the momentum of the housing campaign and helped to ensure another continued source of media coverage.

B. International Legal Advocacy for the Right to Housing

The pressure on the government further intensified in November 2006, when *la Fédération Européenne d'Associations Nationales Travaillant avec les Sans-Abri* ("FEANTSA," or the European Federation of National Organizations Working with the Homeless) filed a complaint with the European Committee of Social Rights, asking it to find that France had violated Article 31, the right to housing, under the Revised Social Charter.⁹⁷ FEANTSA alleged that, despite progressive housing laws, France had not adequately worked to reduce its homeless population, that the construction of social housing was not adequate for the number of individuals who needed it, and that France had no coordinated mechanism for allocating social housing or preventing discrimination in access to housing.⁹⁸ FEANTSA also contended that a significant number of individuals did not have access to sanitary housing and faced serious health risks due to these conditions.⁹⁹

In response, the French government argued that Article 31 of the Charter only required France to "take measures" to provide the

93 *Id.* at 165.

94 *Id.*

95 *Id.*

96 *Id.*

97 European Fed'n of Nat'l Orgs. Working with the Homeless v. France, Complaint No. 39/2006, para. 17 (Eur. Comm. of Soc. Rights, Dec. 5, 2007), available at http://www.escr-net.org/sites/default/files/FEANTSA_v_France_decision_on_the_merits_0.pdf [hereinafter *FEANTSA*].

98 *Id.*

99 *Id.* paras. 68–69.

right to housing, but not necessarily to achieve “results.”¹⁰⁰ The government argued that the policies in place under French law in 2006 were adequate to protect the right to housing.¹⁰¹ The Committee disagreed with the government, finding that France failed to uphold Article 31 of the Charter and noting the dysfunction in local control of French housing regulation.¹⁰² The Committee found that more than one million people lived in substandard conditions and identified a serious lack of national commitment to protecting the right to housing.¹⁰³ Furthermore, the Committee observed that the local methods of dealing with housing varied tremendously, and that those methods failed to consistently meet adequate standards.¹⁰⁴ The Committee also highlighted that, in 2006, there was a significant lack of legal redress for tenants who were living in substandard conditions, because often tenants were not aware of their rights or were too intimidated to file suit against their landlord.¹⁰⁵

Ultimately, the simultaneous Children of Don Quixote and Black Thursday campaigns, the FEANTSA complaint, and the impending 2007 French presidential election put so much pressure on the French government that it could no longer ignore the issue. In December 2006, the French government engaged directly with the Children of Don Quixote to develop legislation enshrining an enforceable right to housing.¹⁰⁶ Discussions began between the organization and the government, and approximately two weeks later, the government announced the introduction of DALO, which created a judicial-

100 *Id.* para. 18.

101 *See id.*

102 *Id.* para. 79. Impressively, DALO was passed before the Committee came out with a decision on the complaint. However, the filing of the complaint, and the results, were vitally important in that they created government impetus to move forward and adopt DALO. *See* Council of Eur. Comm. of Ministers, Resolution on Collective Complaint No. 39/2006 by the European Federation of National Organisations Working with the Homeless (FEANTSA) Against France, CM/ResChS(2008)8 (2008), available at <https://wcd.coe.int/ViewDoc.jsp?id=1318085&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

103 FEANTSA, *supra* note 97, para. 78.

104 *Id.* para. 79.

105 *Id.* para. 80.

106 *See* Loison, *supra* note 78, at 189.

ly enforceable right to housing.¹⁰⁷ The bill passed unanimously on March 6, 2007.¹⁰⁸

IV. DALO's Structure and its Implementation

DALO is patterned after similar legislation in Scotland providing for a fundamental right to housing.¹⁰⁹ While building upon the array of French housing policies already in place, DALO marked a shift to a holistic, enforceable model intended to ensure universal enjoyment of the human right to housing, including emergency shelter.¹¹⁰ DALO—along with its subsequent amendments and the above-described housing laws enacted prior to 2007—addresses all seven elements that the UN Committee on Economic, Social and Cultural Rights identifies as necessary for realizing the human right to housing: security of tenure; availability of services, materials, facilities, and infrastructure; affordability; accessibility; habitability; location; and cultural adequacy.¹¹¹ Most importantly, DALO creates a legal cause of action for individuals who have been denied the right to housing, thereby helping to ensure security of tenure and accessibility.¹¹² DALO also contains measures that buttress preexisting programs encouraging the local creation of public housing, which improves

107 *Id.*

108 DALO, *supra* note 18.

109 Olds, *supra* note 57, at 190; *see also* Eric S. Tars & Caitlin Egleson, *Great Scot!: The Scottish Plan to End Homelessness and Lessons for the Housing Rights Movement in the United States*, 16 GEO. J. ON POVERTY L. & POL'Y 187 (2009).

110 *See* DALO, *supra* note 18, art. 2. Article 2 of DALO imposed heightened obligations on municipalities with respect to the provision of emergency accommodations. *Id.* Notably, Article 2 amended a French law already mandating that emergency accommodations be rendered under circumstances that respect human dignity. *See* Loi 94-624 du 21 juillet 1994 relative à l'habitat [Law 94-624 of July 21, 1994 on the Habitat], art. 21, J.O., July 24, 1994, p. 10685. The impact of this measure, however, was restricted by Article 69 of the Mobilization for Housing Act. *See* HAUT COMITÉ POUR LE LOGEMENT DES PERSONNES DÉFAVORISÉES [HIGH COMM. ON HOUS. FOR DISADVANTAGED PEOPLE], HÉBERGEMENT DES PERSONNES EN DIFFICULTÉ: SORTIR DE LA GESTION DE CRISE: 15È RAPPORT ANNUEL [ACCOMMODATION FOR PERSONS IN DIFFICULTY: OUT OF CRISIS MANAGEMENT: 15TH ANNUAL REPORT] 24 (2009) [hereinafter HIGH COMM. ON HOUS. FOR DISADVANTAGED PEOPLE, 15TH ANNUAL REPORT].

111 UN Comm. on Econ., Soc. & Cultural Rights, General Comment No. 4, *supra* note 16.

112 *See* DALO, *supra* note 18, art. 1, art. 9.

affordability, habitability, and location.¹¹³ Housing legislation subsequently enacted to expand and amend parts of DALO, including the 2009 Act on Mobilization for Housing and the Fight Against Exclusion, further strives to achieve these elements.¹¹⁴

Because DALO and successive French legislation are so expansive, an analysis of French housing law in full is beyond the scope of this article. Instead, the remainder of this section will demonstrate how French law helps to satisfy a few of the elements of the right to housing—primarily legal security of tenure, accessibility, and affordability—while highlighting the major features of the law that can be referenced by housing advocates in the United States. In particular, the following subsections examine the creation of a legal cause of action, the holistic approach embodied by DALO and its progeny, the support contemplated for municipalities in achieving their social housing objectives, and the prioritization of housing advocacy organizations in implementing the right to housing.

A. A Legal Cause of Action

Arguably the most important element of DALO is its creation of a legal cause of action for a broad range of individuals. Unlike the narrow group of American residents who are eligible (but not entitled) to receive housing assistance under U.S. law,¹¹⁵ French law extends eligibility both to people who are homeless and to those living in uninhabitable locations, and then provides legal entitlement to benefits, addressing issues of legal security of tenure, accessibility, habitability, and affordability. Qualifying individuals include:

- People with priority housing needs, defined as those who, in good faith:
 - Are without housing or shelter;
 - Are threatened with eviction and have no other housing access;
 - Are housed temporarily in a facility or transitional housing;

113 See *id.* art. 11, art. 20, art. 21, art. 22.

114 See Mobilization for Housing Act, *supra* note 18. This law was further amended by the Law 2010-1657 of December 29, 2010 on Finances for 2011. See *supra* note 18 and accompanying text.

115 See 42 U.S.C. § 11302(a) (2011) (defining who qualifies as “homeless” for purposes of the McKinney-Vento Homeless Assistance Act).

- Are housed in premises unfit for habitation or otherwise unhealthy or dangerous;
 - Are housed in overcrowded or clearly substandard facilities;
 - Have a disability;
 - Are the guardian of at least one minor child; or
 - Have at least one dependent with a disability.¹¹⁶
- Starting January 1, 2012, people who have applied for social housing, have been waiting for an “abnormally long” amount of time, and have not been offered housing.¹¹⁷

If the above qualifications are met, an individual may file a petition with a local housing mediation committee.¹¹⁸ The mediation committee evaluates petitions to determine whether a particular individual has priority status and whether he or she qualifies for emergency housing.¹¹⁹ There are no statutory criteria for determining whether an individual has an emergency housing need; each determination is made on a case-by-case basis.

If the mediation committee decides that the applicant qualifies for emergency housing, his or her case is referred to the department’s prefect.¹²⁰ The prefect must find suitable social housing for the applicant within a time period determined by the mediation committee, generally between three and six months.¹²¹ The prefect may choose from designated HLM properties or privately owned government-

116 DALO, *supra* note 18, art. 7.

117 Loison, *supra* note 78, at 190; Loison-Leruste & Quilgars, *supra* note 27, at 85; *see also* DALO, *supra* note 18, art. 9.

118 In each French commune, there is a mediation committee. DALO, *supra* note 18, art. 7. The committee is composed of state representatives, county and municipal representatives, representatives of social housing organizations, and people from tenants’ rights organizations. *Id.* The committee is similar to an administrative tribunal in the U.S. legal system and may be aided by a housing assistance organization. *See id.*; Mobilization for Housing Act, *supra* note 18, art. 75.

119 DALO, *supra* note 18, art. 7.

120 Loison-Leruste & Quilgars, *supra* note 27, at 85–86. The prefect is a locally situated representative of the national government. Noémie Houard, *The French Homelessness Strategy: Reforming Temporary Accommodation, and Access to Housing to Deliver “Housing First”: Continuum or Clean Break?*, 5 EUR. J. HOMELESSNESS 83, 87 (2011).

121 *See* Loison-Leruste & Quilgars, *supra* note 27, at 85–86.

contracted properties.¹²² If the applicant refuses offered housing, he or she automatically gives up his or her right to housing.¹²³

If a person with an emergency housing need does not receive it within the time period determined by the mediation committee, the individual may appeal to an administrative court.¹²⁴ Before January 1, 2012, the only appealable cases were those that were initially deemed “priority” by the mediation committee.¹²⁵ Starting January 1, 2012, however, any petitioner may appeal the mediation committee’s decision.¹²⁶ Remedies at the administrative level include requiring the prefect to house the petitioner in a certain location or imposing a fine on the government, which is paid to a regional urban development fund.¹²⁷

B. Encouragement of Social Housing Development

The channeling of penalty monies into urban development funds is only one example of how DALO promotes improvement of urban and social housing. In combination with the housing laws that pre- and post-dated it, DALO aims to boost housing in both the public and private spheres in several additional ways. These measures have been instrumental in increasing housing accessibility for low-income tenants.

The main method of encouraging social housing development is through municipal funding and taxation. Importantly, laws in place prior to DALO provide federal funding for municipalities that create social housing, with an emphasis on the use of funds to help people facing “particular social difficulties.”¹²⁸ Under DALO, however, municipalities that fail to meet social and emergency housing quotas must pay a special levy.¹²⁹ For most municipalities, DALO requires that 20% of all primary residential properties be social housing.¹³⁰ Emergency housing quotas vary based on the population of the city. In cities with more than 50,000 inhabitants, there must be at least

122 *See id.* at 86.

123 *Id.*

124 *Id.*

125 *Id.*

126 *Id.*

127 DALO, *supra* note 18, art. 9.

128 CODE DE LA CONSTRUCTION ET DE L’HABITATION [BUILDING AND HOUSING CODE] art. L. 301-2.

129 DALO, *supra* note 18, art. 2, art. 11.

130 *See id.* art. 11.

one emergency accommodation for every 2,000 people.¹³¹ Municipalities with more than 100,000 inhabitants must have one emergency accommodation for every 1,000 people.¹³² A penalty tax is imposed on municipalities that do not comply with these requirements.¹³³ In addition to addressing affordability issues, these policies address location and availability of services, materials, and infrastructure by ensuring affordable housing is available in every jurisdiction.

The ability to achieve DALO's affordable housing goals is also strengthened by a preexisting program that encourages private owners to contribute to the social housing pool.¹³⁴ Under this mechanism, the government leases a piece of property from a particular owner, and the lease agreement stipulates the maximum rent that may be charged for the unit in order to ensure affordability for potential tenants.¹³⁵ If the owner chooses to lease his or her property to the government for nine years or longer, the government will help defray the cost of improvements to the property, thereby increasing its habitability.¹³⁶

C. A Holistic Approach to Housing Policy

The legal framework for French housing policy created by DALO and its progeny addresses other elements of the human right to housing that are often not covered by U.S. housing policy, including availability of services, location, and cultural adequacy. For example, a provision adopted as part of the Mobilization for Housing Act requires that specific social services be provided inside emergency shelters to physically or mentally ill homeless people.¹³⁷ In addition to basic shelter, the government must provide an immediate medical and psychological evaluation, food, and allowances for personal hygiene.¹³⁸

131 *Id.* art. 2.

132 *Id.*

133 *Id.* Importantly, Article 69 of the Mobilization for Housing Act subsequently limited the scope of a municipality's obligations surrounding emergency housing quotas. *See* HIGH COMM. ON HOUS. FOR DISADVANTAGED PEOPLE, 15TH ANNUAL REPORT, *supra* note 110.

134 *See* CODE DE LA CONSTRUCTION ET DE L'HABITATION [BUILDING AND HOUSING CODE] art. L. 321-4.

135 *Id.*

136 *See id.*

137 Mobilization for Housing Act, *supra* note 18, art. 73.

138 *Id.*

DALO and its subsequent amendments also focus on improving housing location by ensuring that low-income tenants live in neighborhoods that are not isolated.¹³⁹ Toward that end, the Mobilization for Housing Act created a neighborhood revitalization program that targets areas with large percentages of substandard housing.¹⁴⁰ The program works to improve homes, increase social services in the community, and encourage economic growth and commercial activity.¹⁴¹ By requiring both the improvement of homes and the expansion of social services, the program helps to ensure that new tenants and individuals receiving social housing will have adequate access to state services.¹⁴² Between 2009 and 2016, the program will create 60,000 new private properties and 25,000 new social housing units.¹⁴³ A report of the program's progress is reviewed annually by Parliament.¹⁴⁴

Notably, certain housing provisions in place prior to DALO complement the latter's goals by seeking to increase neighborhood diversification, which also results in improved housing locations. Every three years, each municipality must prepare a report for the national government detailing the levels of social diversity within its neighborhoods.¹⁴⁵ These reports are made public, and Parliament reviews a summary report of municipalities' compliance with diversity and other social housing objectives on a three-year basis.¹⁴⁶

D. Support for Municipalities that Fail to Meet DALO's Standards

While DALO imposes demanding standards upon local governments, French housing law in place prior to DALO is structured to provide assistance to cities that are unable to meet social housing requirements. For each municipality that has failed to meet its social housing quotas over a given three-year period, a committee is created to review the challenges that the municipality encountered.¹⁴⁷ That committee is comprised of a representative from the national govern-

139 *Id.* art. 25.

140 *Id.*

141 *Id.*

142 *See id.*

143 *Id.*

144 *Id.*

145 CODE DE LA CONSTRUCTION ET DE L'HABITATION [BUILDING AND HOUSING CODE] art. L. 302-9.

146 *Id.*

147 *Id.* art. L. 302-9-1-1.

ment, the mayor of the municipality, social housing representatives, and members from organizations focused on housing for disadvantaged persons.¹⁴⁸ The committee bears responsibility for developing a report that explains the reasons for the municipality's failure to achieve its social housing objectives, proposes relevant solutions, and identifies potential opportunities for increasing social housing.¹⁴⁹

Furthermore, amendments to DALO recognize that the rigid structure of the required programs may not suit every region in France. For example, a provision contained in the Mobilization for Housing Act allows cities to modify or tailor their own social housing programs, as long as they fulfill the basic legal requirements.¹⁵⁰

E. Participation of Grassroots Organizations and Housing Nonprofits

Finally, one of the most unique aspects of DALO is its utilization of community organizations in nearly every aspect of the law. Some examples include:

- The mediation committee, which includes representatives from social housing organizations and tenants' rights groups;¹⁵¹
- The Monitoring Committee, which oversees DALO's implementation and includes a vast number of representatives from community and housing organizations;¹⁵²
- The committees tasked with reviewing municipalities that fail to meet social housing requirements, which include members of local housing advocacy organizations,¹⁵³ and

148 *Id.*

149 *Id.*

150 See Mobilization for Housing Act, *supra* note 18, art. 28.

151 DALO, *supra* note 18, art. 7.

152 *Id.* art. 13. The Monitoring Committee will be discussed in greater depth in Part IV.A.

153 CODE DE LA CONSTRUCTION ET DE L'HABITATION [BUILDING AND HOUSING CODE] art. L. 302-9-1-1. As discussed in Part III.D, the law providing for these review committees preceded DALO; however, the role and importance of these committees arguably is heightened in light of the new requirements imposed by DALO.

- The ability for homeless people to receive assistance from government-approved housing organizations during the petitioning process.¹⁵⁴

Allowing nonprofits and other advocacy groups to play a significant role has the dual benefit of increasing the likelihood that housing policy will be tailored to community needs and taking pressure off the government when it comes to developing housing policy.

V. DALO's Implementation and Its Challenges

As described above, DALO and its subsequent amendments were intended to create a justiciable right to housing while also improving social housing and social services. Of course, the implementation of any legislation that requires sweeping nationwide change is likely to face practical obstacles.

Fortunately, DALO's drafters expected that the law would be difficult to implement and established a Monitoring Committee to evaluate the execution of and progress under the new law. This section will examine DALO's monitoring mechanisms and some of the practical difficulties that DALO has faced during its implementation, including a shortage of social housing and a complicated petition process.

A. DALO's Monitoring Committee and Report Results

The idea for the creation of a Monitoring Committee was advanced by *Le Haut Comité pour le Logement des Personnes Défavorisées* (the "High Committee on Housing for Disadvantaged People").¹⁵⁵ The High Committee on Housing for Disadvantaged People suggested that DALO include a Monitoring Committee to evaluate DALO's implementation and offer proposals for any necessary changes.¹⁵⁶ The Monitoring Committee was indeed created and remains the major body overseeing DALO's implementation.

The Monitoring Committee's mission is to propose additional measures that implement the right to housing.¹⁵⁷ The committee

154 DALO, *supra* note 18, art. 7, art. 9.

155 *See id.* art. 13.

156 Loison-Leruste & Quilgars, *supra* note 27, at 86.

157 *Le comité de suivi [The Monitoring Committee]*, HAUT COMITÉ POUR LE LOGEMENT DES PERSONNES DÉFAVORISÉES [HIGH COMM. ON HOUS. FOR

is headed by the president of the High Committee on Housing for Disadvantaged People and consists of a diverse group of members, including national agency representatives, local authorities, social and private landlords, nonprofit housing organizations, and homeless advocacy groups.¹⁵⁸ It prepares a yearly report for the President, the Prime Minister, and Parliament.¹⁵⁹

In its 2008 report to the government (one year after DALO's passage), the Monitoring Committee found that DALO was somewhat slow in its implementation. The number of petitions expected to be filed ranged from 80,000 to 100,000, but only 50,600 petitions were actually filed.¹⁶⁰ Of those petitions, 3,374 complainants were granted housing.¹⁶¹ Additionally, the Monitoring Committee found a significant regional difference in the rates of housing requests filed. The Ile-de-France region, including Paris and its suburbs, accounted for the majority of housing applications, and Paris alone accounted for approximately one quarter of all applications.¹⁶² In other areas, however, there were very low numbers of applications submitted; in more than half the regions, fewer than sixty applications were submitted.¹⁶³

By the end of December 2010, the Monitoring Committee reported that 179,884 petitions had been filed in France.¹⁶⁴ Of these, 57,651 petitions were granted,¹⁶⁵ with 29,543 applicants actually offered housing. Ultimately, 22,420 applicants were successfully permanently housed.¹⁶⁶ In 2010, there were still significant geographic

DISADVANTAGED PEOPLE], <http://www.hclpd.gouv.fr/le-comite-de-suivi-a39.html> (last visited July 1, 2012).

158 *Id.*

159 *Id.*

160 Loison-Leruste & Quilgars, *supra* note 27, at 91; Olds, *supra* note 57, at 191.

161 *France: Implementation of DALO Reaches Next Step*, EUR. FED'N OF NAT'L ORGS. WORKING WITH THE HOMELESS (Dec. 19, 2008), http://www.feantsa.org/code/en/pg.asp?Page=7&pk_id_news=2442 (last visited Nov. 3, 2011). It is unknown whether the remaining complainants were denied by the state or if they were simply ineligible for the program.

162 Bernard Lacharme, *Progress Report on the Right to Housing in France*, HOMELESS IN EUR., Autumn 2008, at 23, 24.

163 *Id.*

164 *Les chiffres du Dalo a fin décembre 2010 [The DALO Numbers at the End of December 2010]*, HAUT COMITÉ POUR LE LOGEMENT DES PERSONNES DÉFAVORISÉES [HIGH COMM. ON HOUS. FOR DISADVANTAGED PEOPLE], <http://www.hclpd.gouv.fr/les-chiffres-du-dalo-a-fin-a45.html> (last visited July 1, 2012).

165 *Id.*

166 *Id.*

differences, with some regions receiving no petitions and Paris receiving approximately 1,000 petitions per month.¹⁶⁷

While these numbers demonstrate that a significant amount of housing has been provided to people in need, DALO still has large strides to make. In a 2009 report, the Monitoring Committee pointed out that the number of persons eligible for housing was approximately 600,000.¹⁶⁸

B. Challenges to Implementation

1. *Limited Housing Supply*

The biggest challenge to the successful implementation of DALO (and a parallel challenge for any proposed U.S. policy) is the limited availability of social housing units. The drafters of DALO realized that housing supply would pose a problem and included provisions for encouraging the development of social housing, as discussed above. Unfortunately, however, constructing more affordable rental homes and public housing is an expensive and long-term task. The Monitoring Committee has found that the housing budget must increase substantially in order to have enough properties to satisfy DALO's requirements.¹⁶⁹ Based on current predictions, an estimated 500,000 new housing units must be built each year in order to ensure the right to housing to all who petition and qualify.¹⁷⁰

2. *Lack of Knowledge about DALO*

Another problem with DALO's implementation is the relatively low number of petitions that have been submitted.¹⁷¹ One reason for these low numbers is likely individual lack of knowledge about DALO.¹⁷² DALO contains no specific requirements for advertising of

167 *Id.*

168 See COMITÉ DE SUIVI DE LA MISE EN ŒUVRE DU DROIT AU LOGEMENT OPPOSABLE [COMM. TO MONITOR THE IMPLEMENTATION OF THE RIGHT TO HOUS.], L'AN II DU DALO: PRIORITÉ À LA BATAILLE DE L'OFFRE [YEAR II OF DALO: FOCUS ON THE BATTLE OF THE OFFER] 21 (2009), available at <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/094000525/0000.pdf>.

169 Loison-Leruste & Quilgars, *supra* note 27, at 86.

170 Thomas Byrne & Dennis P. Culhane, *The Right to Housing: An Effective Means for Addressing Homelessness?*, 14 U. PA. J.L. & SOC. CHANGE 379, 385 (2011).

171 Loison-Leruste & Quilgars, *supra* note 27, at 91.

172 *Id.*

the law, and thus the information-spreading process has been limited.¹⁷³ Furthermore, not all government agencies were briefed on the law, and there was little outreach to housing advocacy and other nonprofit organizations.¹⁷⁴ The nonprofit group *Fondation Abbé Pierre* (“Abbé Pierre Foundation”) partnered with *Secours Catholique* (“Catholic Rescue”) and attempted public outreach independently, sponsoring a bus that traveled throughout France to supply information about DALO.¹⁷⁵

Additionally, the petition process is procedurally complex. Although the central government is in charge of DALO’s implementation, requirements for housing petitions vary locally.¹⁷⁶ Moreover, DALO allows only pre-approved nonprofit organizations to assist individuals with filing petitions.¹⁷⁷ The government has taken few measures to encourage organizations to become approved, and as a result, few have.¹⁷⁸ This lack of local assistance combined with a complex procedure has not encouraged petition filing.

3. *Broad Structural Challenges*

A nearly inevitable obstacle in carrying out national legislation is the disparity between national requirements and local community need. As discussed, the obligation to safeguard the right to housing under DALO lies with the central government.¹⁷⁹ The implementation of DALO, however, largely depends on local entities and small, low-rent housing operators.¹⁸⁰ Under this scheme, the local entities actually responsible for providing housing are not under a court-enforced mandate to do so.¹⁸¹ On the other hand, while the central government is bound by housing obligations, it simply does not have

173 *Id.* at 92.

174 *Id.*

175 *Id.*

176 *See id.*

177 DALO, *supra* note 18, art. 7, art. 9.

178 *See* Loison-Leruste & Quilgars, *supra* note 27, at 92.

179 *Id.* at 93.

180 *Id.*

181 *See id.* (citing FONDATION ABBÉ PIERRE [ABBÉ PIERRE FOUND.], RAPPORT ANNUEL SUR LE MAL-LOGEMENT EN FRANCE [ANNUAL REPORT ON INADEQUATE HOUSING IN FRANCE] (2009)).

the power to guarantee that housing is provided to all who require it.¹⁸²

This disparity between obligation and execution has created several obstacles to DALO's implementation.¹⁸³ In response to these difficulties, however, amendments to DALO have attempted to prioritize local need. As discussed above, a 2009 amendment was passed to allow cities more flexibility in their social housing programs.¹⁸⁴ Additionally, the incorporation of community voices helps to address local needs.¹⁸⁵

VI. Lessons for U.S. Advocates

France's success in creating and implementing a comprehensive, enforceable right-to-housing scheme serves as an inspiration to housing advocates here in the United States. Although the United States may be years away from that ultimate goal, several useful elements of French law can guide housing advocates in moving toward an enforceable right to housing. This section attempts to draw parallels between French and U.S. housing law and identify areas where U.S. law could be expanded to come closer to ensuring that all persons enjoy the human right to housing. It first gives a brief overview of a few relevant basic similarities and differences between French and U.S. policy. Secondly, it examines mechanisms in the United States that parallel France's legal cause of action. Thirdly, this section evaluates current affordable renting policies in the United States and identifies methods of expanding the affordable rental housing market in an effort to secure the human right to housing for all. This section concludes with lessons from the grassroots movements in France that helped create the political will for DALO, as well as a discussion of promising counterparts in the United States.

A priority of this section is to encourage advocates to use human rights language and frameworks when pushing for U.S. housing reform. As discussed above, the success of DALO's passage was

182 *Id.* (citing FONDATION ABBÉ PIERRE [ABBÉ PIERRE FOUND.], RAPPORT ANNUEL SUR LE MAL-LOGEMENT EN FRANCE [ANNUAL REPORT ON INADEQUATE HOUSING IN FRANCE] (2009)).

183 *See id.* (citing FONDATION ABBÉ PIERRE [ABBÉ PIERRE FOUND.], RAPPORT ANNUEL SUR LE MAL-LOGEMENT EN FRANCE [ANNUAL REPORT ON INADEQUATE HOUSING IN FRANCE] (2009)).

184 *See* Mobilization for Housing Act, *supra* note 18, art. 28.

185 *See supra* Part III.E.

helped by France's longstanding and explicit commitment to housing as a human right in its constitution and its legislation. Historically, the United States rarely has referenced human rights treaties and principles in its legislation, though recent statements from the Department of Housing & Urban Development (HUD) are promising.¹⁸⁶ Therefore, for purposes of current and future advocacy in the United States, using a human rights framework in pushing for reforms of housing policy will be particularly important.

A. Basic Comparison Between U.S. and French Housing Policy

Before delving into substantive U.S. law, some basic similarities and differences between U.S. and French policy should be drawn. First, like in France, the United States aspires to two oft-competing goals: encouraging economic growth and ensuring that decent, affordable housing is available to all. For the past eighty years, U.S. housing policy has made strides in both areas, but increasingly has prioritized the promotion of homeownership over ensuring the availability of affordable rental accommodations.¹⁸⁷ Again, a primary example is the \$79 billion spent annually on the MID, which disproportionately benefits upper- and middle-income individuals, while only \$41 billion is spent annually on housing assistance programs for low-income individuals—the latter amount not even half its historical high in 1978 before the Reagan Administration.¹⁸⁸

Secondly, the United States is structurally similar to France. Like in France, the U.S. government enacts sweeping housing policies that quasi-independent states and municipalities are responsible for car-

186 For example, the 1949 federal Housing Act stated a *goal* of suitable housing arrangements for all Americans, but the goal was never transferred into a right. Housing Act of 1949, Pub. L. No. 81-171, § 2, 63 Stat. 413 (1949). For recent developments in U.S. approaches to housing as a human right, see NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, "SIMPLY UNACCEPTABLE," *supra* note 3.

187 See Danilo Pelletiere, *Balanced Housing Policy: Owning and Renting in U.S. Housing Policy*, in 2011 ADVOCATES' GUIDE TO HOUSING & COMMUNITY DEVELOPMENT POLICY, *supra* note 7, at 21 [hereinafter Pelletiere, *Balanced Housing Policy*].

188 Pelletiere, *Mortgage Interest Deduction*, *supra* note 7, at 147; see also W. REG'L ADVOCACY PROJECT, WITHOUT HOUSING: DECADES OF FEDERAL HOUSING CUTBACKS, MASSIVE HOMELESSNESS, AND POLICY FAILURES 39 (2010), available at http://www.wraphome.org/pages/index.php?option=com_content&id=376.

rying out. The major difference between these two schemes is that under French law the central government can actually be held responsible for failing to carry out the law.¹⁸⁹ In the United States, there is often no recourse for individuals who receive no help from the government, even though they qualify for housing assistance under U.S. law.

There are also several differences relative to housing law between the United States and France. First, France and the European Union have demonstrated a commitment to human rights—including a rights-based approach to essential social services—that the United States has not. Even before the legal right to housing was enshrined in France, approximately 50% of French tenants received some level of government housing subsidy.¹⁹⁰ By comparison, the United States gives rental subsidies to only 6% of tenants.¹⁹¹ While the United States has a rhetorical commitment to affordability, its policies often work counter to that goal in a way that would be prevented if housing were viewed as a basic right.

Finally, in terms of demographics, France has a much smaller and more homogenous population than the United States. As of January 1, 2011, France had slightly more than 63 million inhabitants.¹⁹² In France, it is illegal to collect data on race or ethnicity, but it is estimated that approximately 8% of French residents are not ethnically French.¹⁹³ By comparison, the United States has more than 300 million inhabitants, over 35% of which are people of color.¹⁹⁴ Given the United States' historical denial of housing rights to many minori-

189 See Loison-Leruste & Quilgars, *supra* note 27, at 93.

190 Mallach, *supra* note 21, at 207.

191 Two million tenants receive assistance under the Housing Choice Voucher Program. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, "SIMPLY UNACCEPTABLE," *supra* note 3. There were approximately 35,378,000 total renter-occupied units in the United States in 2009. U.S. CENSUS BUREAU, AMERICAN HOUSING SURVEY, *supra* note 4.

192 *Population totale par sexe et âge au 1er janvier 2011, France métropolitaine* [Total Population by Sex and Age on January 1, 2011, Metropolitan France], INSTITUT NATIONAL DE LA STATISTIQUE ET DES ÉTUDES ÉCONOMIQUES [NAT'L INST. OF STATISTICS & ECON. STUDIES], http://www.insee.fr/fr/themes/detail.asp?ref_id=bilan-demo&page=donnees-detaillees/bilan-demo/pop_age2.htm

(last visited Nov. 4, 2011).

193 *Id.*

194 *State and County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/00000.html> (last visited Aug. 21, 2012).

ties—including a pattern of legal residential segregation within living memory and the effective segregation and continuing disadvantage that minorities face in the housing market today—the impact of these demographic realities cannot be overlooked.¹⁹⁵

B. The Legal Cause of Action: Public Housing Assistance Programs

Keeping these similarities and differences in mind, the following sections identify areas where U.S. housing policy could benefit from lessons in French housing policy, and the ways in which the latter could be used in economically viable ways to help realize the human right to housing for all persons in the United States.

The most similar mechanism to a legal cause of action for lack of housing in the United States is through public housing assistance programs. While creating no affirmative right to public housing, statutory language and judicial decisions have established certain due process rights for those receiving federally subsidized housing. Some due process protections adhere in the private market, including the eviction process for renters and the foreclosure process for homeowners. However, the lack of an affirmative, enforceable right to housing continues to enable a chronic shortfall in the availability of affordable units. While these housing assistance programs are a good first step in providing the human right to housing, there are significant shortcomings with the U.S. system, including limited eli-

195 See MICHAEL B. DE LEEUW ET AL., *RESIDENTIAL SEGREGATION AND HOUSING DISCRIMINATION IN THE UNITED STATES: VIOLATIONS OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION* (2007), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN27.pdf>; MONIQUE HARDEN, NATHALIE WALKER & KALI AKUNO, *RACIAL DISCRIMINATION AND ETHNIC CLEANSING IN THE UNITED STATES IN THE AFTERMATH OF HURRICANE KATRINA* (2007), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN23.doc>; U.S. HUMAN RIGHTS NETWORK HOUS. CAUCUS, *HOMELESSNESS AND AFFORDABLE HOUSING: RESPONSE TO THE PERIODIC REPORT OF THE UNITED STATES TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION* (2008), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN28.doc>; Written Submission of the Center on Housing Rights and Evictions (COHRE) to the Committee on the Elimination of Racial Discrimination (CERD) at its 72nd Session (2008), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/COHRE.pdf> (last visited Jan. 21, 2011).

gibility for housing assistance, limited recourse for individuals who qualify but do not receive housing assistance, and a demand for housing assistance that far exceeds the supply. This section explores these shortcomings, along with French principles that could be incorporated into existing public housing schemes to address them.

1. *Broaden Housing Assistance Qualifications*

One step toward expanding the human right to housing would be for the United States to adopt France's policy of allowing a broad range of individuals to qualify for housing assistance. Under U.S. law, two different definitions of homelessness currently exist. The first is a historically very narrow statutory definition used by HUD and other federal agencies, which used to require individuals to essentially be residing in a shelter or on the streets in order to receive housing assistance.¹⁹⁶ This definition was expanded with the 2009 reauthorization of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act) to include, under some circumstances, individuals living doubled up or in motels.¹⁹⁷ The second definition is used by the Department of Education (DOE) for youth, and it more broadly includes individuals who are sleeping doubled up or in motels due to a lack of other accommodations.¹⁹⁸

Promisingly, in December 2011, HUD issued final regulations that expand the definition of homelessness and allow more individuals to be eligible for housing assistance through HUD programs.¹⁹⁹ The regulations retain parts of the statutory definition but now include some doubled up individuals, individuals in hotels and motels, and individuals in temporary housing.²⁰⁰ Additionally, the definition now encompasses individuals if they face imminent eviction from their primary nighttime residence within fourteen days of applying for temporary housing and have no alternative housing, children covered under the DOE definition of homelessness, and some individuals fleeing from domestic violence.²⁰¹

196 42 U.S.C. § 11302 (2009).

197 See 42 U.S.C. § 11302 (2011).

198 *Id.* § 11434a(2).

199 Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Homeless," 76 Fed. Reg. 75,994 (Dec. 5, 2011) (codified at 24 C.F.R. Parts 91, 582, 583).

200 24 C.F.R. § 91.5 (2012).

201 *Id.*

While these developments are certainly on the right track, they still fall short of the French definition of homelessness in several respects. First, unlike French law, HUD's definition does not address one major element that the UN Committee on Economic, Social and Cultural Rights has identified as necessary for the right to housing: habitability.²⁰² The regulation fails to mention a minimum standard of housing for individuals, thus giving virtually no remedy for individuals living in dilapidated or dangerous homes. Secondly, HUD's definition does not include individuals who have qualified for permanent or temporary housing but have not received such housing for an extended period of time, nor does it offer them any means of redress. Including a mechanism for these individuals to obtain relief is particularly important due to the extensive waiting lists for housing applicants, as discussed below. Finally, even with the 2009 amendments to the McKinney-Vento Act and the 2011 HUD regulations, the definition is complex and piecemeal insofar as it denies benefits to several categories of needy individuals, including those who are facing eviction and might otherwise be permitted to stay in existing housing.

2. *Mechanisms for Obtaining Housing Assistance*

In the United States, the mechanisms for obtaining housing assistance vary greatly depending on geography and individual qualifications. There are, however, several federal programs in place that provide relatively uniform methods for obtaining housing assistance.

The Housing Choice Voucher Program (also known as Section 8 tenant-based assistance) is the federal government's largest housing assistance program for low-income individuals.²⁰³ In addition to the Housing Choice Voucher Program, numerous other rental subsidy programs exist, including public housing; project-based Section 8 assistance; and smaller, targeted programs for the disabled, elderly, and rural populations.²⁰⁴ These initiatives provide an essential safety net for many people, but all face the same problems as the Hous-

202 See UN Comm. on Econ., Soc. & Cultural Rights, General Comment No. 4, *supra* note 16.

203 NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, "SIMPLY UNACCEPTABLE," *supra* note 3.

204 See NAT'L COAL. FOR THE HOMELESS, FEDERAL HOUSING ASSISTANCE PROGRAMS (2007), available at <http://www.nationalhomeless.org/publications/facts/Federal.pdf>.

ing Choice Voucher Program: insufficient support and inadequate funding. Because France's model focuses on rental assistance in the private market as its main method of promoting affordability for renters, this article does as well.

While the basic structure of the Housing Choice Voucher Program has some elements in common with the French system, housing aid provided in France dwarfs that provided in the U.S. Nearly 44% of French tenants, or about 5.05 million people, received some sort of housing assistance in 2010.²⁰⁵ In the United States, only 6% of renters, or two million low-income families, obtain assistance from the Housing Choice Voucher Program.²⁰⁶ The first lesson we should learn from the French is that by committing adequate funding to large-scale measures that address affordable housing needs, the United States could reduce its homelessness rate from the one percent it is today to the less than one percent experienced in France.²⁰⁷

Schematically, the Housing Choice Voucher Program is administered by local housing assistance providers that receive federal funding.²⁰⁸ The Housing Choice Voucher Program is similar to France's rental subsidy program in that it gives vouchers to individuals who meet specific qualifications. In general, U.S. program recipients must use 30% of their income for housing costs, with the remaining housing costs paid by the voucher.²⁰⁹ Individuals must submit a written application to their local housing authority that contains information such as household income; employer and bank information; and supporting documentation, including birth certificates and tax returns, if

205 INSTITUT NATIONAL DE LA STATISTIQUE ET DES ÉTUDES ÉCONOMIQUES [NAT'L INST. OF STATISTICS & ECON. STUDIES], TABLEAUX DE L'ÉCONOMIE FRANÇAISE [SNAPSHOTS OF THE FRENCH ECONOMY] 87 (2010), available at <http://www.insee.fr/fr/ffc/tef/tef2010/tef2010.pdf>. *But see* Mallach, *supra* note 21, at 207 (estimating that nearly 50% of French tenants receive individualized housing assistance).

206 *See* NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, "SIMPLY UNACCEPTABLE," *supra* note 3; U.S. CENSUS BUREAU, AMERICAN HOUSING SURVEY, *supra* note 4.

207 *See* NAT'L ALLIANCE TO END HOMELESSNESS, *supra* note 1; *U.S. & World Population Clocks*, U.S. CENSUS BUREAU, *supra* note 43; *Without a Domicile*, NAT'L INST. OF STATISTICS & ECON. STUDIES, *supra* note 42.

208 NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, "SIMPLY UNACCEPTABLE," *supra* note 3.

209 *Id.*

required by the local housing authority.²¹⁰ After receiving and evaluating an individual's application, the housing authority must provide written notification as to whether that applicant qualifies for housing assistance or not.²¹¹ If the individual qualifies, he or she will be placed on a waiting list, which is often exorbitantly long.²¹² If the individual does not qualify, he or she must be notified in writing and may request an informal hearing.²¹³ Like with the French system, if the individual is offered housing, he or she must accept the offer or forgo receiving assistance at all.²¹⁴

One major problem with the voucher program is that the demand for housing assistance far exceeds the supply. In an effort to target families with the greatest housing need, HUD guidelines state that some individuals may be prioritized on that basis.²¹⁵ Unlike DALO's clear definition of which individuals should be classified as priority, under the Quality Housing and Work Responsibility Act of 1998, local authorities are tasked with setting guidelines establishing which individuals qualify as having a priority need for public housing.²¹⁶ As a result, priority guidelines vary greatly from state to state. In California, for example, veterans and active duty service members automatically receive priority at every step of the housing assistance process, whereas in New York City they receive no such preference.²¹⁷

210 *HUD's Public Housing Program*, U.S. DEP'T OF HOUSING & URBAN DEV., http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog (last visited Oct. 7, 2011) [hereinafter *HUD's Public Housing Program*, U.S. DEP'T OF HOUSING & URBAN DEV.].

211 *Id.*

212 NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, "SIMPLY UNACCEPTABLE," *supra* note 3.

213 *HUD's Public Housing Program*, U.S. DEP'T OF HOUSING & URBAN DEV., *supra* note 210.

214 *Id.* Housing Choice Vouchers expire if not used within the initial time period specified by the housing authority, which may not be less than sixty calendar days, plus any extensions granted to a particular applicant. See 24 C.F.R. § 982.303(a)–(b).

215 *HUD's Public Housing Program*, U.S. DEP'T OF HOUSING & URBAN DEV., *supra* note 210.

216 Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, § 514(a), 112 Stat. 2461, 2547 (1998) (codified at 42 U.S.C. § 1437d(c)(5) (2012)); see also 24 C.F.R. § 91.215 (2012).

217 See *How to Apply*, HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, <http://www.harivco.org/Program/HowtoApply/tabid/69/Default.aspx> (last visited Aug. 20, 2012) [hereinafter *How to Apply*, HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE]; *Section 8 Priority Codes*, N.Y. CITY HOUSING

Unfortunately, many states and counties have closed off all waitlists for housing *unless* an individual satisfies their criteria for “priority,” and even those households must wait multiple years to receive any sort of help. For example, in the county of Riverside, California, veterans and individuals who are over seventy-five years of age are the only groups that may be placed on the waitlist for the Housing Choice Voucher Program.²¹⁸ Furthermore, even if an individual qualifies as priority and is placed on the waitlist, there are approximately 40,000 families already on the waitlist, with a wait time of more than one year.²¹⁹ Thus, in Riverside, the lack of social housing available makes any “priority” label virtually meaningless.

Unlike under French law, U.S. residents who qualify for housing assistance but do not receive it have no recourse against the government. While it is unlikely that in the near future the United States will create or recognize a legal cause of action for failure to provide housing assistance, the French experience shows that such a mechanism can exist without radically undermining the broader free-market system. Moreover, the United States could take several alternative steps to ensure that more people with priority housing needs receive assistance. Such measures might include increasing the number of low-income housing units by revitalizing surplus property for use as affordable or transitional housing, reforming the structure of the MID, and incorporating community voices and housing advocates into the housing assistance process. The following subsections discuss these potential reforms.

3. *Expansion and Creation of Social Housing: Vacant Properties and Title V of the McKinney-Vento Act*

As has been discussed, a shortage of social housing exists in both France and the United States. In order to create more public housing, including shelters, temporary housing units, and social housing units, U.S. advocates should encourage streamlining of the process set forth

AUTHORITY, <http://www.nyc.gov/html/nycha/html/section8/section8-prioritycodes.shtml> (last visited July 31, 2012).

218 *How to Apply*, HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, *supra* note 217.

219 *Affordable Units*, HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, <http://www.harivco.org/Program/AffordableUnits/tabid/74/Default.aspx> (last visited Nov. 10, 2011).

under Title V of the McKinney-Vento Act (Title V).²²⁰ Like the 1998 French law discussed above, which allows the government to identify abandoned property for development into social housing, Title V requires federal agencies to identify any unused, excess, or surplus property that could be converted into housing for homeless individuals.²²¹ The availability of unused federal property must be announced by HUD in the Federal Register on a quarterly basis.²²² Interested groups, including states, municipalities, and homeless organizations, have sixty days to submit a notice of interest in the property.²²³ After their initial notification, the organizations have ninety days to fill out an extensive application to be filed with the Department of Health and Human Services that explains their proposed use of the land.²²⁴ If the application is approved, the General Services Administration works with the organization to close the deal.²²⁵ The properties must be given to the applicants “promptly.”²²⁶ The buildings must be dedicated to assisting homeless persons, although they can be used to provide a range of services, including shelter, meals, counseling, and job training.²²⁷

Title V largely has been a success. Since 1989, approximately 500 pieces of federal property have been transferred to homeless service providers, and 2.4 million homeless people receive some sort of benefit from the program *every year*.²²⁸ Furthermore, like France’s commitment to involving local and non-governmental organizations (NGOs) in its national housing policy, Title V is one example of the United States prioritizing local and community needs in working to end homelessness.

The program, however, is not perfect. Several reforms could be made in order to streamline the process and ensure that homeless

220 McKinney-Vento Homeless Assistance Act § 501, 42 U.S.C. § 11411 (2011).

221 *Id.* § 11411(a).

222 *Id.* § 11411(c)(1)(A)–(B).

223 *See id.* § 11411(d)(1)–(2).

224 *See id.* § 11411(e)(2).

225 *See* NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, TITLE V FACT SHEET 1 (2011), available at http://nlchp.org/content/pubs/Title%20V%20fact%20sheet_FINAL_July%202011PDF.pdf.

226 *See* 42 U.S.C. § 11411(f)(1).

227 45 C.F.R. § 12a.9(e)(2)(i).

228 *Disposal of Federal Real Property: Legislative Proposals: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. 48 (2011) (statement of Maria Foscarinis, Executive Dir., Nat’l Law Ctr. on Homelessness & Poverty) [hereinafter Foscarinis Statement].

service providers who need property are able to access it. First, as mentioned, homeless service providers have ninety days after submitting a notice of interest in the property to apply for that property. The application requires that the organization—generally a nonprofit with limited resources—explain in great detail the proposed program, including sources of funding, modifications to be made to the property, environmental impact, land use compliance, and historic preservation information.²²⁹ In many cases, nonprofits do not have the resources available to develop a detailed project proposal in just ninety days. Furthermore, the application process is cumbersome and confusing, which may lead to applications being rejected due to incompleteness or incorrect submission.²³⁰

Secondly, at present *all* federal property must go through the Title V process, including properties that would clearly not be suitable for homeless service providers. Examples include properties that are inaccessible due to national security, contaminated properties, and property inside military facilities.²³¹ Requiring these properties to go through the Title V process is cumbersome, expensive, and unnecessary. The United States should reform this element of Title V so that only potentially suitable properties are required to go through the Title V process.

In addition to using vacant federal properties under Title V, advocates should encourage state and local vacant property disposition. The Neighborhood Stabilization Program (NSP) is one initiative in place that provides funding for states and municipal governments to use in the rehabilitation of vacant, foreclosed, and abandoned property.²³² The program was authorized and funded by the Housing and Economic Recovery Act, which was passed on July 30, 2008.²³³ The NSP has gone through three separate funding rounds and has distributed a total of nearly \$7 billion to states and municipalities.²³⁴

229 45 C.F.R. § 12a.9(b). Demonstration of local zoning compliance is not mandated, at least where an applicant seeks a lease or permit for a given property. *Id.* § 12a.9(b)(10).

230 See Interview with Geraldine Doetzer, Hous. Attorney, Nat'l Law Ctr. on Homelessness & Poverty, in Wash., D.C. (Oct. 13, 2011).

231 Foscarinis Statement, *supra* note 228, at 70.

232 Amanda Sheldon Roberts, *Neighborhood Stabilization Program*, in 2011 ADVOCATES' GUIDE TO HOUSING & COMMUNITY DEVELOPMENT POLICY, *supra* note 7, at 156.

233 *Id.*

234 *Id.*

This funding can be used for purchasing and rehabilitating foreclosed homes, demolishing damaged structures, or redeveloping demolished or vacant properties.²³⁵ At least 25% of the funds must be used to assist households with an area median income of 50% or less.²³⁶

While the NSP is an excellent start to alleviating the housing crisis, the program must be expanded and improved to maximize its effectiveness. Like France, the United States should encourage or require nonprofits to be involved. Fortunately, HUD has officially partnered with a nonprofit organization, the National Community Stabilization Trust, to help communities reclaim their neighborhoods by providing tools for local housing providers to turn foreclosed properties into properties that can be used as affordable rental and purchased homes for families.²³⁷ Advocates should insist on being part of the NSP process and should encourage its growth and development.

Lastly, on the topic of vacant properties, a vast new stock of foreclosed real estate owned (REO) properties now threatens to blight many neighborhoods across the country. Even as the number of homeless families skyrockets, the number of family-less homes does too. The federal government (through Fannie Mae and Freddie Mac) owns 92,000 of these properties and should use them creatively to meet affordable housing needs.²³⁸ As of this writing, the Obama Administration is debating what to do with these properties.²³⁹ A human rights approach would dictate that, in making these decisions:

- A significant percentage, if not all, of the properties should be made affordable to extremely low-income individuals and families, including homeless persons;

235 *Id.*

236 *Id.* at 156–57.

237 *About*, NAT'L COMMUNITY STABILIZATION TRUST, <http://www.stabilizationtrust.com/about> (last visited Nov. 10, 2011).

238 *See* Nat'l Hous. Law Project, Nat'l Law Ctr. on Homelessness & Poverty & Nat'l Low Income Hous. Coal., Comments on Enterprise/FHA REO Asset Disposition (Sept. 15, 2011), available at <http://www.nlchp.org/content/pubs/NLCHPFinalJointREOComments.pdf> [hereinafter REO Comments].

239 *See* Press Release, Fed. Hous. Fin. Agency, U.S. Dep't of Hous. & Urban Dev. & U.S. Dep't of the Treasury, FHFA, Treasury, HUD Seek Input on Disposition of Real Estate Owned Properties (Aug. 10, 2011), available at <http://www.fhfa.gov/Default.aspx?Page=360>.

- The disposition of these properties should preserve existing tenancies and prevent displacement of those currently living in REO rental properties;
- The program must ensure that new property owners have the resources necessary to rehabilitate, maintain, and operate the housing, through initiatives like France's that offer government funding in exchange for a commitment to participate in low-income rental programs; and
- The program should be participatory and work with existing community groups and resources.²⁴⁰

C. Basic Structural Reforms to Existing Policies Using a Human Rights Framework: The MID

Another potential area for reform is through the MID. As mentioned above, the MID offers significant tax deductions to middle- and high-income homeowners, costing the United States more than \$79 billion annually.²⁴¹ The MID gives homeowners tax deductions equal to the amount of interest they pay for mortgages on their homes.²⁴² If owners have enough income and deductions, their taxable income and taxes owed can be greatly reduced. Currently, interest on up to \$1 million in mortgages on first and second homes may be deducted, plus up to \$100,000 in home equity loans.²⁴³ Because of this structure, the MID provides the biggest rewards for the wealthiest individuals.²⁴⁴ In 2009, approximately thirty-five million taxpayers benefitted from the MID—a number representing approximately 68% of all mortgaged homeowners, but only 22% of taxpayers.²⁴⁵

The MID is framed as encouraging homeownership for all, but it arguably gives meaningful benefits only to middle- and upper-income individuals.²⁴⁶ Increasing homeownership is an important goal in the United States, but it should be done in a way that proportionately

240 See REO Comments, *supra* note 238, at 4–7.

241 Pelletiere, *Mortgage Interest Deduction*, *supra* note 7, at 147. By contrast, the United States spends in total approximately \$41 billion on all housing programs for low-income renters. *Id.*

242 *Id.* at 145.

243 *Id.*

244 *Id.*

245 *Id.* at 146.

246 *Id.* at 145.

benefits low-income individuals. The MID could be restructured so as to ensure that low-income individuals have the ability to secure homes, without requiring the government to increase spending. Specifically, the MID should be reformed to limit the qualifying mortgage interest amount to less than \$1 million.²⁴⁷ The Obama Administration has also suggested capping the deductions of the households with the highest incomes.²⁴⁸ The savings from both these reforms should then be redirected to Housing Choice Vouchers or other methods to ensure that families who most need housing assistance are able to obtain it.

Another cost-saving reform that would encourage homeownership among lower-income groups is the use of tax credits instead of tax deductions. Researcher Danilo Pelletiere of the National Low Income Housing Coalition suggests that the MID should be converted into a 20% tax credit that would be given to the first \$500,000 borrowed for a mortgage on a principal residence.²⁴⁹ Using such tax credits instead of tax deductions would lead to an annual \$31.6 billion increase in U.S. revenue, while also lowering taxes for most households with incomes below \$75,000.²⁵⁰ That additional revenue could also be redirected toward expanding Housing Choice Voucher Program subsidies or public housing accommodations.

D. A Holistic Approach to Housing Policy

France has established a highly participatory housing policy model, enabling those with the most involvement in implementing DALO to be part of the decision-making process. From the Monitoring Committee to the local mediation committees ruling on assistance cases, NGOs play a significant role in overseeing DALO's implementation and developing strategies to address shortcomings.²⁵¹ In a similar vein, the Continuum of Care (CoC) is a HUD planning process for homelessness assistance grants that was codified in the

247 See *id.* Pelletiere notes that, “[O]ne expert panel after the next, from the Obama administration’s President’s National Commission on Fiscal Responsibility and Reform to the George W. Bush administration’s President’s Advisory Panel on Federal Tax Reform to the nonpartisan Congressional Budget Office, have recommended reforming the policy to reduce the amount of the mortgage and the rate of the deduction.” *Id.* at 147.

248 *Id.* at 145.

249 *Id.* at 147.

250 *Id.*

251 See *supra* Part III.E.

Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009.²⁵² The CoC paradigm bears some resemblance to the participatory nature of the French model, and it offers a potential outlet for creating change.

The CoC model was conceived in 1994 at the administrative level, and it required community stakeholders to develop a uniform planning process in order to receive HUD funding.²⁵³ Currently, CoCs must create yearly plans for addressing homelessness in their communities.²⁵⁴ Generally, local government agencies or large nonprofits organize CoCs.²⁵⁵ The organizers must do a full analysis of homelessness in their community, which involves determining how many people lack adequate housing, what services are available to homeless individuals, what services are missing, and the priority needs of the community.²⁵⁶ The CoC must submit the proposal to HUD, and McKinney-Vento funding is awarded to a select number of CoCs.²⁵⁷ Recently, CoCs have been required to coordinate with other local organizations and advocates in developing ten-year plans to end homelessness in their communities.²⁵⁸ These plans are intended to identify and link the ways in which the community will use McKinney-Vento funding, as well as other HUD-provided financial support (e.g., Section 8 funding, Community Development Block Grant funding, etc.).²⁵⁹

The CoC paradigm incorporates several positive elements that reflect human rights law. First, it is an example of a U.S. program on homelessness operating with the explicit objective of ending homelessness. This goal is useful because it requires states and localities to create realistic programs that, if effective, would end homelessness in that community in a given number of years. The CoC is one illustration of a U.S. program that has shifted from operating strictly within a free-market framework into a more holistic, human rights-based framework.

252 See Jeremy Rosen, *Continuum of Care Planning Process*, in 2011 ADVOCATES' GUIDE TO HOUSING & COMMUNITY DEVELOPMENT POLICY, *supra* note 7, at 42.

253 *Id.*

254 *Id.*

255 *Id.*

256 *Id.*

257 See *id.*

258 *Id.*

259 *Id.*

Secondly, the CoC is one of the only government programs where local housing advocates are in leadership positions and can make a difference in increasing federal funding specifically for housing and services for homeless individuals.²⁶⁰ This key CoC feature is similar to France's practice of encouraging community organizations to be deeply involved in the shaping and implementation of housing policy. Advocates should encourage expansion of the CoC initiative to involve nonprofit and NGO constituents in leadership positions and at higher decision-making levels, as is the case with the participatory local and national committees overseeing DALO.

E. Increase Affordable Rental Housing

Because social housing programs generally are not profitable ventures, securing and expanding such initiatives continues to be a long-term struggle. While pushing for expansion is important, another method of ensuring access to housing for low-income individuals is by improving the affordable rental market. Unlike public housing assistance, investing in affordable housing units can ultimately be profitable for private investors and states. In this section, we will identify strategies to increase affordable rental housing in the United States, including encouraging for- and nonprofit companies to invest in affordable housing, prompting states and municipalities to develop inclusionary zoning laws, and obtaining funding for the National Housing Trust Fund (NHTF).

1. *Solicit Support from Private Funders*

Like the French scheme, which offers tax benefits to companies that invest in social housing, the Low Income Housing Tax Credit (LIHTC) program provides tax credits for the construction, rehabilitation, and preservation of affordable rental housing as a means of incentivizing private investment for that purpose.²⁶¹ Housing tax credits are given to qualifying housing developers, who sell the tax credits to investors.²⁶² In return for their purchase of tax credits, investors receive an equity stake in the development and lowered tax liability over a ten-year period, beginning when the units become

260 *See id.*

261 Peter Lawrence, *Low Income Housing Tax Credit*, in 2011 ADVOCATES' GUIDE TO HOUSING & COMMUNITY DEVELOPMENT POLICY, *supra* note 7, at 133.

262 *Id.*

occupied.²⁶³ Developers receive money for the tax credit purchases, thereby reducing their borrowing obligations.²⁶⁴ As a result of lower debt, developers can rent the property at a lower rate.²⁶⁵

LIHTCs are distributed to states, which allocate the credits on a competitive basis.²⁶⁶ Each state agency must develop a plan that explains how the tax credits will be used.²⁶⁷ Priority is given to projects that assist the lowest-income families and that are designed to keep the housing affordable for the longest period of time.²⁶⁸ LIHTCs can be used for a range of housing projects, including construction, rehabilitation, special needs housing, and multifamily or single-family housing.²⁶⁹ The credits are open to both nonprofit and for-profit developers, but at least 10% of the credits must go toward nonprofits.²⁷⁰

Some states have had great success encouraging private companies to invest in building affordable rental units through the LIHTC program. Massachusetts, for example, has successfully enticed several large corporations to invest in affordable rental housing units. Despite the economic recession, Massachusetts doubled its rental housing lending from \$218 million in Fiscal Year (FY) 2010 to \$445.5 million in FY 2011 through several different programs that encourage the development of rental housing.²⁷¹

Investors in Massachusetts include Google, Inc., Sherwin-Williams, Berkshire Hathaway, and Apple.²⁷² Google recently invested

263 *Id.*; *How Do Housing Tax Credits Work?*, U.S. DEPT OF HOUSING & URBAN DEV., <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/basics/work.cfm> (last visited July 3, 2012) [hereinafter *How Do Housing Tax Credits Work?*, U.S. DEPT OF HOUSING & URBAN DEV.].

264 *How Do Housing Tax Credits Work?*, U.S. DEPT OF HOUSING & URBAN DEV., *supra* note 263.

265 Lawrence, *supra* note 261.

266 *Allocating Housing Tax Credits*, U.S. DEPT OF HOUSING & URBAN DEV., <http://www.hud.gov/offices/cpd/affordablehousing/training/web/lihtc/basics/allocating.cfm> (last visited Nov. 10, 2011).

267 *Id.*

268 *Id.*

269 Lawrence, *supra* note 261.

270 *Id.*

271 MASS. HOUS. FIN. AGENCY, ANNUAL FINANCIAL REPORT 1 (2011), available at https://www.masshousing.com/portal/server.pt/gateway/PTARGS_0_2_10976_0_0_18/FY11_AnnualReport.pdf.

272 Don Reisinger, *Google Invests \$28 Million in Affordable Housing*, CNET NEWS (Sept. 29, 2011, 7:05 AM), [http://news.cnet.com/8301-13506_3-20113286-17/google-invests-\\$28-million-in-affordable-housing](http://news.cnet.com/8301-13506_3-20113286-17/google-invests-$28-million-in-affordable-housing).

\$28 million in affordable housing in Allston, Massachusetts.²⁷³ While obviously not a housing developer, Google has been enticed to invest by low-income tax credits. Greg Vasil, CEO of the Greater Boston Real Estate Board, states that the tax credit system is a “win-win” for companies and communities, with companies at times receiving one dollar of tax credit for \$0.77 of investment.²⁷⁴ Vasil also argues that affordable rental housing could never be available without the tax credits, because the cost of building the property would simply be too high to charge lower rent.²⁷⁵

2. *Secure Funding for the Housing Trust Funds*

Another strategy for increasing affordable rental housing is through housing trust funds such as the NHTF, which was established in 2008.²⁷⁶ The purpose of the NHTF is to “increase and preserve the supply of rental housing for extremely low and very low income families, including homeless families, and to increase homeownership for extremely low and very low income families.”²⁷⁷ Within ten years, the NHTF seeks to accomplish this goal by providing grants for the construction or maintenance of 1.5 million rental properties that are affordable for very low-income households.²⁷⁸ The size of the block grant provided to a particular state depends on the number of low-income households and the number of available low-cost rental properties.²⁷⁹ The minimum grant size is \$3 million.²⁸⁰

Currently, the program receives no funding. The bill establishing the NHTF called for the initiative to be funded by Fannie Mae and Freddie Mac, but contributions were suspended when Fannie Mae and Freddie Mac were nationalized by the government.²⁸¹ Despite urging from advocates, President Obama’s September 2011 jobs cre-

273 *Id.*

274 *Google Searches for Investments, Finds Allston* (WBUR radio broadcast Sept. 29, 2011), available at <http://radioboston.wbur.org/2011/09/29/google-housing>.

275 *Id.*

276 Ed Gramlich & Linda Couch, *National Housing Trust Fund*, in 2011 ADVOCATES’ GUIDE TO HOUSING & COMMUNITY DEVELOPMENT POLICY, *supra* note 7, at 6.

277 *Id.*

278 *Id.*

279 *Id.* at 7.

280 *Id.*

281 *Id.* at 6.

ation plan did not include funding for the NHTF.²⁸² At present, the NHTF lacks a clear funding source.

Apart from the NHTF, there are also forty state housing trust funds, as well as more than 625 municipal or county housing trust funds, that dedicate nearly \$1 billion collectively to addressing low-income housing needs.²⁸³ In general, housing trust funds reflect the beginnings of a rights-based approach by “systemically shift[ing] affordable housing funding from annual budget allocations to the commitment of dedicated public revenue.”²⁸⁴ However, until these dedicated funding streams are adequate to meet the need, they still fall short of fulfilling the right to housing.

A long-term goal for advocates should follow along the lines of France’s enforcement system for achieving social housing objectives.²⁸⁵ At both the federal and local levels, periodic assessments should determine if the funds devoted to affordable housing are adequate to meet the needs of the community. Where needs are not being met, penalties should be imposed and the additional revenue directed to the trust funds.

3. *Increasing Neighborhood Diversification*

U.S. housing policy should also address affordable housing location by encouraging neighborhood diversification. France uses two strategies for increasing diversity within communities. First, France has adopted extensive zoning laws that require specific areas to have minimum numbers of affordable rental or social housing.²⁸⁶ Secondly, French communes must prepare reports for Parliament on social diversity within neighborhoods.²⁸⁷

Local governments in the United States already have had success in implementing zoning laws that require developers to create minimum numbers of affordable rental housing units. For example, a Santa Fe, New Mexico ordinance requires that any major development project (i.e., one involving twenty-five or more parcels for

282 *See Fact Sheet and Overview*, THE WHITE HOUSE (Sept. 8, 2011), <http://www.whitehouse.gov/the-press-office/2011/09/08/fact-sheet-and-overview>.

283 *Housing Trust Fund*, CENTER FOR COMMUNITY CHANGE, <http://www.communitychange.org/page/housing-trust-fund> (last visited Dec. 20, 2011).

284 *Id.*

285 *See supra* Parts III.B, D.

286 *See* Mallach, *supra* note 21, at 206.

287 *See* Loison, *supra* note 78, at 196.

sale) consist of at least 30% affordable rental housing.²⁸⁸ When such a housing unit is sold in ten years, the developer and the county will split the difference between the price paid by the developer and the resale price.²⁸⁹ Developers may pay a fee to the county if they wish to waive the ordinance.²⁹⁰

That Santa Fe zoning ordinance was recently challenged in court. On appeal, the Tenth Circuit found that a facial challenge to the ordinance was not ripe under the Takings Clause, and that the ordinance's property restrictions did not amount to physical per se takings.²⁹¹ The Supreme Court denied certiorari on October 3, 2011.²⁹² In light of the favorable decision by the Tenth Circuit, advocates should encourage localities to develop inclusionary zoning laws in an effort to foster neighborhood diversification.

F. Grassroots Organizing for Change

A final important lesson that U.S. advocates should learn from the French path to creating an enforceable right to housing is that change must be spurred along by grassroots organizing. Without the commitment of a dedicated movement, French housing law likely would still operate under a model similar to that in the United States. As the recent Occupy and Take Back the Land (TBTL) movements have shown, committed advocates entrenching themselves in highly visible public areas, taking over public spaces and vacant properties much as the Children of Don Quixote and Black Thursday did in France, can concentrate public attention on issues of income and housing inequality.

Beginning as a protest against government and corporate corruption, the U.S. Occupy movement has generated much attention regarding issues of economic and social inequalities.²⁹³ Each particular Occupy movement has taken on various themes, and some protests have been focused on inadequate housing, homelessness,

288 Santa Fe, N.M., Ordinance 2006-2, §§ 3(Q), 4(A) (Feb. 14, 2006).

289 *Alto Eldorado P'ship v. Cnty. of Santa Fe*, 634 F.3d 1170, 1172 (10th Cir.), *cert. denied*, 132 S. Ct. 246 (2011).

290 Santa Fe, N.M., Ordinance 2006-2, § 16(A)(2).

291 *Alto Eldorado P'ship*, 634 F.3d at 1175, 1178.

292 *Id.* at 1172.

293 See, e.g., Verena Dobnik, *Wall Street Protesters: We're in for the Long Haul*, BUSINESSWEEK (Oct. 2, 2011, 4:39 PM), <http://www.businessweek.com/ap/financialnews/D9Q4CNR81.htm>.

and extreme poverty. In Eugene, Oregon, for example, protestors have been quite successful in generating both media and political attention surrounding the issue of homelessness.

Occupy Eugene began as a broad protest, but as homeless individuals joined the camp, and city officials began to threaten eviction actions similar to those usually directed at those experiencing homelessness, the movement adopted a specific focus on the issue of inadequate housing and shelter space.²⁹⁴ In campaigning to keep the camp open for themselves, the Occupy Eugene protesters also successfully linked their own orderly departure to a long-term solution to homelessness in Eugene, compelling the city council to address both.²⁹⁵ While extending the camping ban exemption for the Occupiers, the city also devoted more than \$300,000 of new funding to provide basic services for homeless people.²⁹⁶ Additionally, the Eugene City Council unanimously passed amendments to the city code granting the Eugene Human Rights Commission a mandate to support and promote the full range of human rights within the UDHR and approved the Commission's work plan with an objective targeted toward addressing homelessness.²⁹⁷ Following the dissolution of the camp in early 2012, the city convened the Opportunity Eugene Task Force, which developed a series of recommendations, including the recognition of housing as a basic human right.²⁹⁸ These develop-

294 See Edward Russo, *Council Extends Occupy Deadline*, REG.-GUARD, Dec. 15, 2011, at A1; Edward Russo, *Occupy Eugene Costs Mount*, REG.-GUARD, Dec. 3, 2011, at A1; *Occupy Eugene Vision Statement*, OCCUPY EUGENE (Dec. 9, 2011), <http://occupyeugenemedia.org/2011/12/09/occupy-eugene-vision-statement/>.

295 Press Release, Occupy Eugene, *Occupy Eugene Celebrates Milestone, Will Continue Protest* (Dec. 15, 2011), available at <http://occupyeugenemedia.org/2011/12/15/occupy-eugene-celebrates-milestone-will-continue-protest/>; *City Manager Proposes Way to Dismantle Occupy Eugene Camp*, KVAL NEWS (Dec. 12, 2011, 4:40 PM), <http://www.kval.com/news/local/City-manager-proposes-way-to-dismantle-Occupy-Eugene-camp-135474883.html>; *Split Vote Sends Road, Park Money to Dismantle Occupy Eugene*, KVAL NEWS (Dec. 14, 2011), <http://www.kval.com/news/local/Split-vote-sends-road-park-money-to-dismantle-Occupy-Eugene-135615173.html?tab=video&c=y>.

296 Press Release, Occupy Eugene, *supra* note 295.

297 See CITY OF EUGENE HUMAN RIGHTS COMM'N, FY 12/13 WORK PLAN (2011), available at www.eugene-or.gov/DocumentCenter/Home/View/2710; History, HUMAN RIGHTS CITY PROJECT, <http://www.humanrightscity.com/history.html>.

298 OPPORTUNITY EUGENE TASK FORCE, OPPORTUNITY EUGENE: A COMMUNITY TASK FORCE ON HOMELESSNESS FINAL REPORT AND RECOMMENDATIONS 7 (2012), available at <http://or-eugene.civicplus.com/>

ments will enable Eugene's future efforts around homelessness to be conducted fully within the human rights context.

For years the TBTL movement in the United States has been organizing visible takeovers of public spaces and eviction defenses, as well as private takeovers of housing for use by individual families.²⁹⁹ TBTL's first organizing principle is that housing is a human right, and local action groups work to implement that principle through direct action-oriented campaigns.³⁰⁰ Like the Black Thursday in France, TBTL has escalated its public actions, and in conjunction with the Occupy movement, it has generated a large amount of national and local media coverage. On December 6, 2011, TBTL organized a coordinated series of takeovers and defenses across the country, resulting in individual victories for foreclosed families and broader media attention.³⁰¹ While TBTL has some legal and policy advocates working with the movement, more are needed to create the sort of squatters-rights laws and long-term policy change necessary.

As with the red tents in Paris and Black Thursday's individual takeovers, the collective demonstrations exhibited through the Occupy and Take Back the Land movements have secured both short- and long-term victories for the right to housing in the United States. By coordinating these public efforts with legal and policy advocacy for a new approach to housing as a human right in the United States, we can help push our country to follow in France's footsteps toward an enforceable right to housing.

VII. Conclusion: Using France's Model and Human Rights Frameworks for Future Advocacy

People may look around today and say that we are decades away from an enforceable right to housing in the United States, and that may be true. In the 1920s, we were a long way from integrated hous-

DocumentCenter/Home/View/4817; see also Jack Moran, *City Urged to Set up Spot for Homeless*, REG.-GUARD, Apr. 12, 2012, at A1.

299 See generally MAX RAMEAU, TAKE BACK THE LAND: LAND, GENTRIFICATION AND THE UMOJA VILLAGE SHANTYTOWN (2008); *About the Take Back the Land – Movement*, TAKE BACK THE LAND, <http://www.takebacktheland.org/index.php?page=about-the-take-back-the-land--movement> (last visited Dec. 20, 2011).

300 *About the Take Back the Land – Movement*, TAKE BACK THE LAND, *supra* note 299.

301 See D6: *Day of Action*, TAKE BACK THE LAND, <http://www.takebacktheland.org/index.php?page=Dec-6-2011-Day-of-Action> (last visited July 2, 2012).

ing and education. However, people had already begun organizing, on streets, in the courtrooms, and in the legislatures. It took twenty years to get them to *Brown v. Board of Education*, another twenty to get the Civil Rights Acts, and we are still working through implementation. But a cultural shift in consciousness occurred, and the majority of Americans now see the days of slavery and Jim Crow as an unfortunate chapter in America's history.

Moving from an individualistic housing system that overlooks low-income people toward a housing system that guarantees an enforceable human right to housing for all is a challenging and long-term task. Yet we see seeds of a cultural shift being sown in the Occupy protests and the TBTL takeovers. These are the sit-ins and the marches of the new right-to-housing movement. And we see the beginnings of the political response in HUD's acknowledgement that housing is a human rights obligation, as well as the Eugene City Council's commitment of additional funding and direction of its Human Rights Commission to examine long-term solutions to homelessness.

With countries like France providing a model for what can be done, government officials cannot claim that creating an enforceable right to housing in the United States is impracticable. And with the public attention generated by the Occupy and TBTL movements, the broader consciousness of a human rights approach to housing is growing. By looking to France for guidance on what is possible and how to make it happen, advocates can advance the cause for housing as a human right here in the United States so that one day the idea that we would allow our fellow citizens to be homeless will be as unthinkable as segregation is today.