

GENTRIFICATION AND THE RIGHT TO HOUSING: HOW HIP BECOMES A HUMAN RIGHTS VIOLATION

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I. INTRODUCTION

“I looked up the new tenant on Facebook. She’s subletting two of the rooms in her apartment for \$1700 each. Why isn’t she the one getting evicted?” She¹ sat in my office, fear visible in her eyes, as she told me how she felt harassed daily by her landlord and other tenants in her Harlem building, where she lives with her mother and son in a rent stabilized apartment for \$470 per month. Her mom—a first generation Ethiopian immigrant—has lived in the apartment for forty-nine years. Everything was fine until last year, when a new manage-

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1. “She” is not a real person. She is many real individuals rolled into one, and her story represents pieces of the lives that the author has encountered as a tenant’s attorney in Harlem, New York City, and exemplifies the types of cases that the author sees on a daily basis.

ment company took over the building; slowly, many of the long-standing tenants caved to signing stipulations agreeing to move out after baseless allegations of nuisance brought them into housing court. She is scared—if she moves out, how could she afford to live anywhere else? Taking care of her ailing mother and her son, who has muscular dystrophy, is a full-time job; she barely scrapes by on Social Security. With the market-rate for her two-bedroom apartment hovering around \$4,000 per month, keeping her rent stabilized tenancy is an absolute must.

At the same time, she does not feel safe in her apartment anymore. Despite the fact that the City has issued multiple health code violations against her landlord, the mold problem continues to worsen. With her son's already compromised health, he cannot continue to be exposed to such mold. But the mold is just a symptom of a bigger problem—water is constantly leaking from the building's ancient pipes; it fills the bowls of the light fixtures on her ceiling, which she empties every day. The wood floors are buckling, and she thinks, "I'm going to fall through this floor someday."

When a notice to vacate came, telling her that she was going to be evicted for throwing loud parties and threatening her neighbors, she was stunned. "How could they say we would do something like this? We have lived in this apartment peacefully for fifty years! We are the victims here."

Her story is—sadly—not unique in New York City, neither across the United States, nor the globe. As a tenants' attorney in the rapidly gentrifying neighborhood of Harlem in New York City, I am endlessly amazed by the tactics landlords will use to push "undesirable" and low-income tenants out of their rent stabilized apartment in order to cash in on the urban "revitalization" occurring there. Security cameras are set up outside of my clients' apartments to try and catch them doing anything that could amount to a breach of their lease, landlords refuse to provide heat and electricity, rat infestations go unabated—the list goes on.² When my clients have had enough, when they feel sure they can fight their case but are simply too tired to keep fighting, they move out. But the options for moving out are limited in New York City, so they often leave the state, or move into a relative's already crowded apartment, hoping they will win a housing lottery for another affordable unit.

2. Adam Hudson, *Tenants in San Francisco Fight Back Against Nuisance Evictions*, TRUTHOUT (Aug. 11, 2015), <http://www.truth-out.org/news/item/32301-tenants-in-san-francisco-fight-back-against-nuisance-evictions>.

This is gentrification. It is a process that on its surface appears to be beautifying and revitalizing an impoverished urban core, but in reality, it only embraces the wants and needs of the privileged, while displacing low-income families of color.³ These families are often left without comparable alternative housing options, or without any options at all.⁴ When gentrification proceeds without proper consideration of those being displaced, it is inhumane and, as this article argues, possibly a violation of the human right to housing. It is a crisis that must be addressed, and those responsible for gentrification must be held accountable in order to ensure that every person—regardless of class, race, or privilege—is afforded every opportunity to dwell in adequate urban housing.

This article will explore the ways that gentrification threatens the international human right to housing. To do so, it will first define gentrification, including its roots, theories of origin, major players, and effects. Then, it will proceed to outline the international human right to housing and conduct a deeper analysis of the aspects of that right, which is compromised by modern gentrification. Finally, it will make recommendations for advocates who hope to employ rights-based arguments against this displacement caused by gentrification.

II. WHAT IS GENTRIFICATION?

The term “gentrification” was first used in academic literature in 1964 by British sociologist Ruth Glass.⁵ In *London: Aspects of Change*, she describes the process of the English middle class transforming traditionally working class neighborhoods in urban settings:

One by one, many of the working class quarters of London have been invaded by the middle classes—upper and lower. Shabby, modest mews and cottages—two rooms up and two down—have been taken over, when their leases have expired, and have become elegant, expensive residences. Larger Victorian houses, downgraded in an earlier or recent period—which were used as lodging houses or were otherwise in multiple occupation—have been upgraded once again. . . . Once this process of ‘gentrification’ starts in a district, it goes on rapidly until all or most of the original working class

3. Vivian Yee, *Priced Out, and Moving On*, N.Y. TIMES, Nov. 29, 2015, at MB1 (stating that longtime African American and West Indian tenants have been muscled out by surging rents).

4. *Id.* (stating that many families have entered homeless shelters as a result of recently gentrified neighborhoods in Brooklyn).

5. *Gentrification*, THE DICTIONARY OF HUMAN GEOGRAPHY 274 (Derek Gregory et al., eds., 5th ed. 2009).

occupiers are displaced, and the whole social character of the district is changed.⁶

This definition highlights some of the fundamental characteristics of gentrification: invasion, class divisions, beautification, and displacement.⁷

Since Glass first described the phenomenon of gentrification, countless definitions and theories have arisen and the process of gentrification has been studied at length. The most basic definition does not stray far from Glass's original description: the Dictionary of Human Geography defines gentrification as "middle-class settlement in renovated or redeveloped properties in older, inner-city districts formerly occupied by a lower-income population."⁸ On a more complex level, gentrification involves an interweaving of State influence, private development, a consumerist middle class, and a vulnerable low-income population adversely affected by racial discrimination, over-policing, unemployment, and mental illness.⁹ As Berg, Kaminer, Schoonderbeek, and Zonneveld state:

Gentrification, to put it bluntly and simply, involves both the exploitation of the economic value of real estate and the treatment of local residents as objects rather than the subject of upgrading. Even though population movement is a common feature of cities, gentrification is specifically the replacement of a less affluent group by a wealthier social group—a definition which relates gentrification to class. Whether a result of city council policies or real estate pressures, gentrification stands in contrast to earlier attempts to improve deprived neighborhoods by addressing the built environment, the central objective of urban renewal up until the 1970s. More recently, the betterment of deprived neighborhoods has taken a completely different form as the improvement of living conditions is no longer considered the task of the state ('to enlighten the masses'), but rather a side effect of the development and emancipation of the higher and middle classes. The state seems to have acknowledged its inability to influence the welfare of its residents directly and has left that task to the workings of the supposedly objective agency of the market. Gentrification has become a means of solving social mal-

6. Ruth Glass et. al, *London: Aspects of Change* xviii (Ctr. for Urban Studies, Rep. No. 3 1964).

7. Hannah Weinstein, *Fighting for a Place Called Home: Litigation Strategies for Challenging Gentrification*, 62 UCLA L. Rev. 794, 805 (2015) (discussing how "gentrification displaces lower-income residents" and exemplifies "class conquest").

8. THE DICTIONARY OF HUMAN GEOGRAPHY, *supra* note 5, at 273-74.

9. HUIZEN IN TRANSFORMATIE/HOUSES IN TRANSFORMATION 6 (JaapJan Berg et al., eds., 2009) (discussing gentrification and how it encompasses exploitation of real estates and the treatment of local residents as objects rather than subjects of urban upgrading).

aise, not by providing solutions to unemployment, poverty, or broken homes, but by transferring the problems elsewhere, out of sight, and consequently also geographically marginalizing the urban poor and ensuring their economic location and political irrelevance.¹⁰

As this critical understanding of gentrification illuminates, many political, economic, and social factors influence the process of gentrification mainly to the detriment of poor and minority populations,¹¹ who are displaced from their homes and often have no comparable alternative.¹² It is an understanding couched within the “neoliberal[ism]” that pervades global policy wherein development and free-market prevail over “social welfare.”¹³ This complex definition is the one I will use to frame this article.

Scholars have theorized extensively on the reasons why gentrification occurs. As Lees, Slater, and Wily recognize, the theory of gentrification can be understood as both a production-side and consumption-side phenomenon that “thrives because it has become profitable for developers, investors, government agencies, and others to produce spaces and places that become attractive options for consumer gentrifiers to choose in their pursuit of aesthetic sophistication and cultural authenticity.”¹⁴ After a “white flight” to the suburbs in the middle of the last century, there has been a steady return to the cities as more affluent people seek inexpensive real estate¹⁵ and homes closer to white-collar jobs.¹⁶ The resultant picture of gentrification is sometimes comically hip—a London cereal café with 120 kinds of cereal and 30 kinds of milk, priced at \$4.50 a bowl,¹⁷ or a hot sauce

10. *Id.*

11. See generally Weinstein, *supra* note 7, at 807 (noting, “[u]sually in gentrifying neighborhoods, higher-income white residents displace lower-income resident of color”).

12. See Yee, *supra* note 3 (discussing the effects of the gentrification of Brooklyn on long-time residents, many of whom can no longer call Brooklyn, “home,” and in some cases, who have needed to leave the state of New York altogether).

13. Justyna Goworowska, *Gentrification, Displacement and the Ethnic Neighborhood of Greenpoint, Brooklyn* (June 2008) (unpublished M.A. thesis, University of Oregon).

14. THE GENTRIFICATION READER 83 (Loretta Lees et al., eds., 2010).

15. See ROLF GOETZE, UNDERSTANDING NEIGHBORHOOD CHANGE: THE ROLE OF URBAN REVITALIZATION 100 (1979).

16. Lydia DePillis, *This Could Be The Biggest Force Driving Gentrification*, WASH. POST (Nov. 19, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/11/19/this-could-be-the-biggest-force-driving-gentrification/> (discussing how the centralization of higher skilled jobs and the desire to be closer to work has fueled the growth of high-end development that pushes out lower-income people).

17. Jill Lawless, *In Divided London, Trendy Cereal Café Targeted by Protestors*, AP: THE BIG STORY (Oct. 1, 2015, 10:53 AM), <http://bigstory.ap.org/article/5b9db599d94d4c29a06fa025dec2563b/divided-london-trendy-cereal-cafe-targeted-protesters>.

tasting room complete with a “hot sauce sommelier” in Williamsburg, Brooklyn.¹⁸

But gentrification goes beyond simple consumer preference and profiteering. It is a complex process controlled heavily by State funding and other incentives. Indeed, one of the most prevailing theories on the reason behind modern gentrification is the idea that neoliberalism threatens cities with loss of capital, “forc[ing cities] to lure investment and development” through unprecedented means.¹⁹ “Twenty-first Century neoliberalism” involves the restructuring of “federal and state government control” through the “privatization of state [] functions” and a “decrease in social spending.”²⁰ Neil Smith posits that gentrification is a global urban strategy adopted by cities worldwide in an effort to “attract[] capital,” and, as such, the State has a profound incentive to encourage the revitalization of dilapidated areas that are traditionally seen as crime-ridden and undesirable.²¹

The State plays a substantial role in the gentrification process through direct and indirect means. The State may directly influence and encourage gentrification through strategically planning for parks, public transportation, and other public services in dilapidated neighborhoods.²² The State will also indirectly—though strategically—influence gentrification through rezoning and creating tax incentives for development in particular neighborhoods, as well as through selectively cracking down on low-level crimes and selectively enforcing codes in low-income areas to make neighborhoods more attractive to wealthy in-movers.²³

Through the lens of crime-reduction and beautification, gentrification is often branded as revitalization or regeneration—bringing new life to old, dilapidated neighborhoods that are crime-ridden food

18. Nell Casey, *A Hot Sauce Sommelier Is Coming to Brooklyn*, *GOTHAMIST* (Feb. 25, 2015, 3:14 PM), http://gothamist.com/2015/02/25/hot_sauce_sommelier.php.

19. Goworowska, *supra* note 13, at 35.

20. *Id.* at 34.

21. *See id.* at 50 (discussing a 1971 plan to attract investment into a rusty, contaminated, and unappealing neighborhood).

22. CAAAV, FIERCE, FUREE, & URBAN JUSTICE CENTER, *NEW YORK CITY ANTI-GENTRIFICATION NETWORK: SUMMATION OF CONVENINGS 4* (2007), https://cdp.urbanjustice.org/sites/default/files/NYC_anti_gentrification.pdf (stating, “in order to develop luxury waterfront housing profitability, developers need to be able to offer buyers a complete package that includes green spaces and adequate infrastructure, such as convenient transportation”).

23. Weinstein, *supra* note 7, at 803; *see also* Miriam Zuk et al., *Gentrification, Displacement and the Role of Public Investment: A Literature Review* (Cmty. Dev. Inv. Ctr., Working Paper No. 2015-05, 2015), <http://frbsf.org/community-development/files/wp2015-05.pdf>.

deserts and generally lacking economic prosperity.²⁴ In this way, gentrification is seen as a positive social good.

Indeed, not all scholars even accept that gentrification actually causes the displacement that has long agitated advocates, as there is little hard and fast data that captures displacement as a direct result of gentrification.²⁵ Rather, some theorists point to data that suggests fewer low-income residents are displaced in gentrifying areas than non-gentrifying neighborhoods to argue that forces other than gentrification push low-income tenants out of their homes.²⁶ But other scholars also acknowledge that it is difficult for data to capture the true displacement pressures brought on by gentrification.²⁷ Despite unresolved analytical data surrounding in-moving and out-moving in gentrifying neighborhoods, the clear pattern of gentrification shows that in-movers are consistently whiter and more affluent than the original neighborhood base and out-movers are more consistently less affluent people of color.²⁸ Indeed, as Newman and Wyly demonstrated through their comparison of anecdotal data to analytical data, gentrification causes enormous displacement pressures and results in overcrowding, homelessness, and relocating to other neighborhoods or even out of the city itself.²⁹

As discussed above, gentrification, as this author defines it, also necessitates the displacement of low-income individuals, and that displacement often occurs in inhumane ways that results in a lack of alternatives and even homelessness for lower income tenants.³⁰ Almost daily, stories of “harass[ment]” and displacement appear in the media

24. See Kathe Newman & Elvin K. Wyly, *Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 *URB. STUD.* 23 (2006). Newman and Wyly describe an advertisement-essay published in the *New York Times* by the Real Estate Board of New York, Inc., which explains that gentrification causes “neighborhoods and lives to blossom.” *Id.* Newman and Wyly distinguish the process of redevelopment, renewal, revitalization, regeneration and reinvestment from gentrification, which involves “conflict-ridden” displacement. See generally *id.*

25. *Id.* at 27-28.

26. *Id.* at 28.

27. *Id.* at 28-29 (Newman and Wyly note that the NYCHVS data showed between 6-10% of all moves in New York City from 1989 to 2002 were the result of displacement, but interviews with informants painted a picture of significant pressure that resulted in homelessness, overcrowding, and moving out of gentrifying neighborhoods and the city altogether. The authors note that these dynamics could not be captured in NYCHVS studies).

28. Zuk et al., *supra* note 23, at 33.

29. Newman & Wyly, *supra* note 24, at 29-33.

30. See Yee, *supra* note 3, at MB1.

that paint the reality of gentrification in a way data could never express.³¹

It is a pattern seen over and over again in my work as a tenants' attorney in New York City. When landlords and developers are positioned to earn far more from gentrifiers than from long-standing lower-income tenants,³² they often resort to extreme measures to force those tenants out.³³ Landlords neglect to make repairs, cut off access to heat and electricity, and allow perpetual rat and bedbug infestations.³⁴ They make persistent buy-out offers which, to a low-income family may seem substantial, but in reality will not go nearly far enough in cities where the affordable housing continues to shrink.³⁵ They make "improvements" in an attempt to legally justify charging higher rents in stabilized units, making a previously affordable unit out of reach for long-time tenants.³⁶ And when long-time tenants have finally had enough, they move on—but to where? To neighborhoods further outside the city center or sometimes out of the city itself, while the face of their old neighborhood becomes whiter, hipper, and financially far out of their reach.³⁷

These practices—and the resultant displacement—should concern tenants and human rights advocates alike. The following section looks deeper into these realities and how they directly implicate the international human right to housing.

31. *Id.*

32. *New Laws Prevent Landlords from Pressuring Tenants Out*, CRAIN'S N.Y. BUS. (Sept. 13, 2015), http://www.craainsnewyork.com/article/20150903/REAL_ESTATE/150909956/new-laws-prevent-landlords-from-pressuring-tenants-out. To put this incentive in perspective, in New York, a vacant rent stabilized unit might be renovated and let for triple the price—\$5,200 a month for a Manhattan two-bedroom apartment instead of \$1,700 per month. Indeed, because units can become deregulated when their legal regulated rent surpasses a set figure, 266,000 apartments in New York have been deregulated since 1994—a testament to this reality. *Id.*

33. Nikita Stewart, *Task Force to Combat Tenant Harassment*, N.Y. TIMES, Feb. 20, 2015, at A23.

34. *Id.*

35. Yee, *supra* note 3, at MB1 (stating moving expenses and taxes swallow large chunks of tenant payouts).

36. Emma Whitford, *Sunset Park Tenants Are Living without Gas as Gentrification Closes In*, GOTHAMIST (Jan. 22, 2016, 9:47 AM), http://gothamist.com/2016/01/22/sunset_park_tenant_struggle.php.

37. Yee, *supra* note 3 (discussing how people arriving in Crown Heights were fleeing high rents in Manhattan and people leaving Crown Heights were in search of affordable homes in East Flatbush, Canarsie and East New York; some residents opt to return to their home countries in the Caribbean or move south in search of more affordable living).

III. GENTRIFICATION AND THE RIGHT TO HOUSING

When gentrification is conflated with “revitalization” of cities, it is easy to ignore the effects on those who are displaced. That is not to say that gentrification has not been met with resistance by the displaced and other stakeholders.³⁸ But as long as U.S. housing policy bows to—indeed, even participates in—the free-market economy of housing, gentrification will persist.³⁹ For this reason, it is important to explore what the State’s obligations are with respect to housing in the wake of gentrification. The common thread for those who are displaced by gentrification is the loss of and/or inability to access housing.⁴⁰ As such, the right to housing as it relates to gentrification is worth exploring.

The right to housing is a well-recognized, fundamental human right.⁴¹ It was first enumerated in the Universal Declaration of Human Rights in 1948,⁴² and has since been expounded upon in numerous human rights treaties including most fully in Article 11 of the International Convention on Social, Economic and Cultural Rights (“ICESCR”)⁴³ and also in the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”),⁴⁴ Convention on the Rights of the Child (“CRC”),⁴⁵ and the Convention on the Elimination of Racial Discrimination (“CERD”).⁴⁶

Notably, the U.S. generally declines to recognize economic, social, and cultural (“ESC”) rights and has signed, but not ratified, the ICESCR.⁴⁷ The U.S. is one of only six U.N.-member states that has failed to ratify the convention, which attests to both the sweeping in-

38. Hamil Pearsall, *Superfund Me: A Study of Resistance to Gentrification in New York City*, 50 URB. STUD. 2293, 2295 (2013).

39. Zuk et al., *supra* note 23, at 12.

40. *Id.* at 23.

41. G.A. Res. 217 (III) A, art. 25, Universal Declaration of Human Rights (Dec. 10, 1948).

42. *Id.*

43. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

44. Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

45. Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3.

46. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195.

47. See Multilateral Treaties Deposited with Secretary-General, Status of Treaties, International Covenant on Economic, Social and Cultural Rights, UNITED NATIONS TREATY COLLECTION (Feb. 26, 2016, 5:00 AM), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en [hereinafter Status of ICESCR]; see also Maria Foscari-anis, *Homelessness in America: A Human Rights Crisis*, 13 J.L. SOC'Y 515, 519 (2012) (“The American legal system is commonly described as one that protects civil and political rights, but not economic or social rights.”).

ternational recognition of the rights contained in the ICESCR and the U.S.'s abysmal failure to fully acknowledge ESC rights.⁴⁸ Indeed, the U.S. frames adequate housing for all as a "goal" rather than a right.⁴⁹ The Housing Act of 1949, the fundamental source of U.S. housing policy, laid out the noble goal of "the realization as soon as feasible of a decent home and suitable living environment for every American family."⁵⁰

Despite the U.S.'s failure to recognize a right to housing, pointing to the international obligations imposed by this right will highlight how gentrification threatens this right in the U.S. and across the globe, which should encourage immediate action. Moreover, some scholars suggest that the right to housing is so fundamental that it is a "freedom right"—one that is a "moral right," and is therefore not dependent on institutional guarantees.⁵¹ As such, even if the U.S. does not officially acknowledge a right to housing, this right cannot be viewed as anything less than innate regardless of official U.S. policy. With that, international human right to housing will provide a universal framework for which to understand the basic tenets of shelter and human dignity in the midst of gentrification.

What follows is a brief overview of the right to housing as well as a State's obligation to respect, protect, and fulfill that right as outlined in the ICESCR. Then I will engage in a deeper analysis of the fundamental aspects of the right to housing as they relate to gentrification.

A. *The Right to Housing*

The right to housing is encompassed in the ICESCR's recognition of "the right of everyone to an adequate standard of living. . . including food, clothing, and housing."⁵² As such, housing is deemed absolutely fundamental for the enjoyment of all "economic, social and cultural rights."⁵³

As a fundamental tenet of said economic, social, and cultural rights, the right to housing is expansive. It encompasses more than just

48. Status of ICESCR, *supra* note 47, at 1-3.

49. 42 U.S.C. § 1441a (2012).

50. Housing Act of 1949 § 2; 42 U.S.C. § 1441 (2012).

51. See generally Peter King, *Housing as a Freedom Right*, 18 HOUSING STUD. 661, 662-71 (2003).

52. ICESCR, *supra* note 43, art. 11.

53. *Id.* at 49.

a “roof over one’s head.”⁵⁴ Rather, to meet the standards under the ICESCR, housing must be “adequate.”⁵⁵ The Committee on Economic, Social, and Cultural Rights (“CESCR”) enumerates seven factors to take into account when determining whether shelter can be considered “adequate” housing, including: “legal security of tenure,” “availability of services [and] facilities,” “affordability,” “habitability,” “accessibility,” “location,” and “cultural adequacy.”⁵⁶

It is important to note that the right to housing does not require the provision of adequate housing for every single person.⁵⁷ But it still imposes substantial obligations on the State.⁵⁸ The right to housing requires States’ parties to fulfill housing deficits through the construction of public housing as well as through subsidies, rent control regulations, and public-private “enabling strategies” that encourage private housing development specifically for disadvantaged populations.⁵⁹ Furthermore, States are called upon to develop a national housing “strategy” that encompasses “coordination [with] regional and local authorities” in order to fully realize the right to housing.⁶⁰

These obligations and the expansive right to housing raise serious questions as to the State’s obligation to curtail the effects of gentrification on the urban poor. At least five of the seven housing adequacy factors are significantly impacted by gentrification and call for a deeper analysis.

1. Legal Security of Tenure

When we are talking about the displacement associated with gentrification, the scope of the right to stay in one’s home—security of tenure—is of utmost interest and importance. Legal security of tenure is the “guarantee of legal protection from forced eviction[s and] harassment.”⁶¹ This guarantee applies to all dwellers, whether homeowners or renters.⁶² There has been much discourse among international

54. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 4: The Right to Adequate Housing, ¶ 7, U.N. Doc. E/C.12/1991/4 (Dec. 13, 1991) [hereinafter General Comment No. 4].

55. *Id.* ¶¶ 7-8.

56. *Id.* ¶ 8.

57. *See id.* ¶ 6.

58. *See id.* ¶ 14.

59. *Id.* ¶¶ 11, 14.

60. *Id.* ¶ 12.

61. *Id.* ¶ 8.

62. *Id.*

human rights bodies regarding forced evictions in particular,⁶³ which sheds light on the parameters of legal security of tenure as it relates to gentrification.

Forced evictions are “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection,” including evictions carried out in the name of development such as urban renewal, housing renovation, and city beautification.⁶⁴

It is noteworthy, however, that the evictions are not considered “forced” when they are “carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.”⁶⁵ In that sense, evictions on their face are, obviously, not a violation of human rights. It is only when they are carried out without adherence to the guidelines established in international human rights norms that evictions become problematic.⁶⁶

The CESCR’s General Comment No. 7 provides extensive guidelines on sanctioned evictions.⁶⁷ First, under international human rights law, evictions must be justified like, for example, in the instance of the non-payment of rent or where a tenant intentionally destroys a landlord’s property.⁶⁸ But even within these justifications, there are significant “procedural protections” surrounding eviction.⁶⁹ For example, even justified evictions must not be carried out in a discriminatory manner (i.e. disproportionately affecting particular minority groups).⁷⁰ And furthermore, they must be carried out with regard to an individual’s due process rights, including:

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be

63. Special Rapporteur on Adequate Housing, *Implementation of General Assembly Resolution 60/251 of 15 March 2006, Entitled “Human Rights Council,”* U.N. Doc. A/HRC/4/18 (Feb. 5, 2007) (by Miloon Kothari).

64. Comm. on Econ., Soc. and Cultural Rights, General Comment No. 7: The Right to Adequate Housing: Forced Evictions, ¶ ¶ 3-7, U.N. Doc. E/C.12/1997/4 (May 20, 1997) [hereinafter General Comment No. 7].

65. *Id.* ¶ 3.

66. *Id.*

67. See generally General Comment No. 7, *supra* note 64.

68. *Id.* ¶ 11.

69. *Id.* ¶ ¶ 14-15.

70. *Id.* ¶ 10; ICESCR, *supra* note 43, arts. 2-3.

used, to be made available in reasonable time to all those affected;

(d) especially where groups of people are involved, government officials and their representatives to be present during an eviction;

(e) all persons carrying out the eviction to be properly identified;

(f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;

(g) provision of legal remedies; and

(h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.⁷¹

States are implored to take immediate measures to guarantee security of tenure for those currently lacking protection, in “genuine consultation” with those groups.⁷² However, as the data above suggests, evictions occurring in gentrifying areas are often conducted without meaningful legal protection or consultation.⁷³ Indeed, gentrification threatens legal security of tenure in numerous ways.

Although General Comment No. 7, the CESCR’s comment on forced evictions, does not specifically address whether market-based gentrification constitutes a forced eviction, some scholars posit that government intervention in “property market forces,” when done at the “expense of [low-income] residents,” can be characterized as a forced eviction.⁷⁴ It is clear that even if poorer residents were forced out of homes due to purely market forces, many aspects of gentrification-based eviction threatens the right to legal security of tenure.⁷⁵ This is particularly so when evictions are unjustified and discriminatory and tenants are not given adequate opportunity to effectively assert their rights.⁷⁶

As discussed above, many landlords in gentrifying neighborhoods have a strong financial motivation to deregulate stabilized apartments to increase rent or may seek to remove “undesirable” tenants so that wealthy, white families will feel comfortable moving in.⁷⁷ Thus, they

71. General Comment No. 7, *supra* note 64, ¶ 15.

72. *Id.* ¶¶ 15-16.

73. *See id.* ¶ 10.

74. Malcolm Langford & Jean du Plessis, *Dignity in the Rubble? Forced Evictions and Human Rights Law* 4 (Ctr. on Hous. Rights & Evictions 2006), <https://www.jus.uio.no/smr/english/people/aca/malcolml/dignity-in-the-rubble—human-rights-law-and-forced-evictions.pdf>.

75. Kothari, *supra* note 63, ¶ 7.

76. *Id.* ¶ 71.

77. Donald C. Bryant Jr. & Henry W. McGee Jr., *Gentrification and the Law: Combatting Urban Displacement*, 25 WASH. U. J. URB. & CONTEMP. L. 43, 53 (1983).

resort to harassment and baseless evictions, directed primarily at tenants of color.⁷⁸ These acts clearly conflict with the guarantee of legal security of tenure and violate the right to adequate housing.⁷⁹ Evictions in these cases may be justified or unjustified, but they can threaten legal security of tenure, regardless.

Baseless evictions are clearly in violation of the guarantee of legal security of tenure.⁸⁰ In my experience as a tenants' attorney, I can attest that "baseless evictions" occur with regularity.⁸¹ Many landlords frequently bring baseless eviction proceedings under the guise of justification, when there is actually no legal basis to substantiate their case.⁸² But due to many tenants' lack of representation, discussed more thoroughly below, landlords are successful in baselessly evicting low-income tenants.⁸³ Furthermore, some landlords will attempt to circumvent any illusion of process altogether and illegally evict tenants—a clear violation of the legal security of tenure.⁸⁴

On the other side of the spectrum, where an eviction might be justified based on a lease violation or non-payment of rent, gentrification may incentivize discriminatory evictions.⁸⁵ For example, a low-income, rent-stabilized tenant who causes excessive noise in her apartment is readily taken to court, while a non-stabilized tenant paying market rent is allowed to carry on with the same activity because their tenancy is financially beneficial to the landlord.⁸⁶ As a pattern, these situations can amount to discrimination based on income and, often, race.⁸⁷

78. MATHEW DESMOND, *POOR BLACK WOMEN ARE EVICTED AT ALARMING RATES, SETTING OFF A CHAIN OF HARDSHIP 2* (2014), https://www.macfound.org/media/files/HHM_Research_Brief_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf.

79. See General Comment No. 4, *supra* note 54, ¶ 9.

80. Langford & du Plessis, *supra* note 74, at 9.

81. Shekar Krishnan, *Advocacy for Tenant and Community Empowerment: Reflections on my First Year in Practice*, 14 CUNY L. REV. 215, 218 (2011) (discussing the hardships experienced by indigent tenants in rent-stabilized buildings in North Brooklyn).

82. DW Gibson, *How to Dump Tenants and Make a Fortune*, NATION (June 11, 2015), <http://www.thenation.com/article/how-to-dump-tenants-and-make-a-fortune-2>.

83. Krishnan, *supra* note 81, at 235.

84. Mireya Navarro, *As New York Landlords Push Buyouts, Renters Resist*, N.Y. TIMES, July 9, 2014, at A1.

85. Manny Fernandez, *Judge Upholds City Ban on Section 8 Rent Bias*, N.Y. TIMES, Feb. 19, 2009, at A24.

86. Naureen Khan, *Black Tenants Say Greed, Discrimination at Play in Mass LA Eviction*, ALJAZEERA AMERICA (June 9, 2015), <http://america.aljazeera.com/articles/2015/6/9/elderly-african-american-tenants-allege-discrimination-in-mass-la-eviction.html>.

87. See Matthew Desmond, *Eviction and the Reproduction of the Urban Poor*, 118 AJS 88, 89 (2012) (discussing how African-Americans are disproportionately represented in eviction sta-

Actions taken to force out low-income tenants are compounded by inadequacy of access to the civil justice system. Although the U.S. Constitution guarantees a right to counsel in criminal proceedings, there is no similar guarantee to civil counsel when a person cannot afford a lawyer.⁸⁸ This creates a serious inequality when low-income tenants find themselves in eviction proceedings against wealthy landlords.⁸⁹ In New York City, for example, each borough has a dedicated Housing Court and endless legal provisions that govern exactly how and when a tenant may be evicted from any regulated or subsidized housing program.⁹⁰ However, justice often seems hollow when, as in New York City, ninety percent of tenants act *pro se*, while attorneys represent about ninety percent of landlords.⁹¹ This has resulted in unrepresented tenants prevailing roughly thirty percent of the time but, when represented by counsel, tenants succeed roughly sixty percent of the time.⁹² The situation may be even worse in other states. Studies have found that in some states, unrepresented tenants never prevail in claims against their landlords.⁹³

Even when a landlord does not resort to baseless or selectively justified evictions, harassment may force out low-income tenants threatening legal security of tenure.⁹⁴ Harassment takes on numerous forms.⁹⁵ In New York City, landlords have an enumerated duty not to harass, defined as “any act by the landlord that cause or is intended to cause the tenant to vacate or surrender any rights in relation to occu-

istics, signifying the group’s over-representation among the urban poor and concentration in segregated and disadvantaged neighborhoods).

88. Rachel Kleinman, *Housing Gideon: The Right to Counsel in Eviction Cases*, 31 *FORDHAM URB. L.J.* 1507, 1507-08 (2004).

89. *See id.* at 1528-29.

90. Dennis Hevesi, *What a Landlord May and May Not Do to Evict a Tenant*, *N.Y. TIMES* (Jan. 16, 2000), <http://www.nytimes.com/2000/01/16/realestate/what-a-landlord-may-and-may-not-do-to-evict-a-tenant.html?pagewanted=all>; *New York City Housing Court*, *NYCOURTS.GOV*, <https://www.nycourts.gov/COURTS/nyc/housing/general.shtml> (last visited Mar. 5, 2016).

91. *See* Eleanor J. Bader, *New York City Activists Mobilize for Right to Counsel in Eviction*, *TRUTH-OUT.ORG*, (Jan. 5, 2015, 12:33 PM), <http://www.truth-out.org/news/item/28318-new-york-activists-mobilize-for-right-to-counsel-in-eviction>; OFFICE OF THE DEP. CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, *SELF REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES* 1 (2005).

92. Matthew Desmond, *Tipping the Scales in Housing Court*, *N.Y. TIMES*, (Nov. 29, 2012), http://www.nytimes.com/2012/11/30/opinion/tipping-the-scales-in-housing-court.html?_r=0.

COMM. TRAINING & RESOURCE CENTER & CITY-WIDE TASK FORCE ON HOUSING COURT, INC., *HOUSING COURT, EVICTIONS AND HOMELESSNESS: THE COSTS AND BENEFITS OF ESTABLISHING A RIGHT TO COUNSEL*, ii (1993).

93. *See* Alan Housman, *Civil Legal Aid in the United States: An Update for 2007*, *CENTER ON LAW & SOCIAL POLICY*, Aug. 22, 2007, at 9-11.

94. Hevesi, *supra* note 90.

95. *Id.*

pancy,” including: “(1) violence, threats, and illegal eviction; (2) repeated interruptions or discontinuances of essential services or failing to correct conditions underlying a vacate order; and (3) commencing repeated baseless or frivolous court proceedings.”⁹⁶ When there is not sufficient deterrent and landlords have sufficient incentive to force out lower paying tenants in order to reap higher rents, gentrification lends itself to these prohibited practices.⁹⁷

Some particularly egregious examples of harassment have garnered significant penalties. In 2015, two landlord brothers in Brooklyn, New York, were arrested and face up to 15 years in prison for the tactics they allegedly used to force out rent regulated tenants, including intentionally destroying apartments by removing entire portions of kitchens and bathrooms, making them unusable for a 17-month period.⁹⁸ But outside of such egregious cases, there is little deterrent available for the milder—though still stress-inducing and despicable—forms of harassment experienced by many low-income tenants in gentrifying neighborhoods.⁹⁹

Harassment and eviction without justification and without access to legal counsel deprives market-based evictions of legitimacy under human rights law, which moves gentrification-fueled evictions into the category of “forced evictions” and poses a serious threat to legal security of tenure.¹⁰⁰

In order to fulfill the right to legal security of tenure, the State must ensure adequate access to legal remedies—both in name and function. Even where tenant protections and access to the courts exists on the books, legal security of tenure cannot be fully recognized without the provision of legal aid to tenants who cannot afford a lawyer.¹⁰¹ Provision of legal counsel can help effectuate due process,

96. ANDREW SCHERER, *RESIDENTIAL LANDLORD-TENANT LAW IN N.Y.* § 19:55 (2015); N.Y.C. Admin. Code § 27-2004.

97. Ray Telles, *Forgotten Voices: Gentrification and Its Victims Look: A look into the Redev. of El Paso*, 3 ST. MARY'S L. REV. ON MINORITY ISSUES 119, 134 (2000).

98. See Mireya Navarro, *Two Brooklyn Landlords, Accused of Making Units Unavailable, Charged With Fraud*, N.Y. TIMES, Apr. 16, 2015, at A27.

99. See Daniel Geiger, *Developer Pays Two Tenants \$25 million To Vacate Their Apartments*, CRAINS NY BUSINESS (Oct. 5, 2015), http://www.crainsnewyork.com/article/20151005/REAL_ESTATE/151009954/developer-pays-two-tenants-25-million-to-vacate-their-apartments (discussing that in New York, for example, landlords can be fined up to \$10,000 per unit for a finding of harassment—a drop in the bucket for developers like Tishman Speyer, who paid two Manhattan tenants \$25 million to move out of their run-down building to make way for new development).

100. See U.N. Office of the High Comm. for Human Rights, *FORCED EVICTIONS 5-10* (2014), <http://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>.

101. See Kleinman, *supra* note 88, at 1529.

while also helping to vet baseless evictions in a way that overburdened judges cannot.¹⁰² Moreover, measures should be taken to discourage harassment and baseless evictions by imposing significant fines or pulling subsidies and tax credits from landlords and developers who engage in harassment or who consistently bring cases that are dismissed as baseless. Above all, it is essential that tenants are aware of their rights and remedies and thus the national housing strategy should prioritize the dissemination of information to tenants, through housing court help centers and phone lines, and facilitating tenant associations. In this way, process can become meaningful and the urban poor may be able to possess some degree of security of tenure in the face of gentrification.

2. Affordability

The displacement and harassment threats associated with gentrification are exacerbated by the current affordability crisis in the U.S., and continued gentrification will only further shrink the already limited stock of affordable housing in U.S. cities in a way that threatens the right to adequate housing.¹⁰³

Housing is considered affordable when its cost does not compromise the attainment and satisfaction of other basic needs.¹⁰⁴ HUD considers rent to be affordable when it represents no more than 30 percent of a household's total income.¹⁰⁵ While States are not required to build and provide physical housing, they are directed to ensure that housing-related costs are commensurate with income levels, establish subsidies and other types of affordable housing, and stave off unreasonable rent increases.¹⁰⁶ The European Court of Human Rights has suggested also that this obligation may require states to regulate markets in order to ensure housing is affordable.¹⁰⁷ But federal, state, and local government participation in gentrification in the U.S. appears to be doing the opposite.¹⁰⁸

Indeed, the movement back to the city of wealthy single people and families has resulted in a shrinking stock of available units and

102. *Id.* at 1529-30.

103. See Telles, *supra* note 97, at 127.

104. General Comment No. 4, *supra* note 54, §8(c).

105. See *Affordable Housing*, U.S. DEPT. H.U.D., [http:// portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/) (last visited Mar. 5, 2016).

106. General Comment No. 4, *supra* note 54, §8(c); see also Foscarinis, *supra* note 47, at 520.

107. See *James and Others v. U.K.*, 98 Eur. Ct. H.R. (Ser. A) (1986); *Mellacher and Others v. Austria*, 169 Eur. Ct. H.R. (Ser. A) (1989).

108. Newman & Wyly, *supra* note 24, at 27.

soaring rent prices.¹⁰⁹ This has substantially burdened low-income renters and, some would say, even created “exclusionary displacement”—where neighborhoods “become [essentially] off-limits” due to cost restrictiveness, and low-income families are “forced [] to look [for] lower-cost neighborhoods.”¹¹⁰ While cities pour funding into “revitalization” and collaborate with private developers, localities and the federal government are decreasing funding to subsidize low-income renters and to create truly affordable housing options.¹¹¹ This has resulted in a significant loss of affordable housing units.¹¹² Since 2001, over 650,000 federally subsidized low-cost housing units have been lost.¹¹³ The number is continuing to shrink rapidly, with 10,000 public housing units lost each year.¹¹⁴ In addition, city-initiated zoning programs that require a percentage of new housing stock to be “affordable” do little to provide options to most low-income and very low-income renters.¹¹⁵

On the other side of the spectrum, both new development and the upgrading of old units in gentrifying neighborhoods is most often geared toward high-income renters.¹¹⁶ To put the un-affordability of housing into perspective, the National Low Income Housing Coalition (“NLIHC”) estimates that “in no state can a full-time minimum wage worker afford a one-bedroom or a two-bedroom rental unit at Fair Market Rent.”¹¹⁷ Indeed, the NLIHC calculates an annual “Housing Wage,” which is a determination of the hourly wage a full-time worker

109. NAT’L LAW CENTER ON HOMELESSNESS & POVERTY, *SIMPLY UNACCEPTABLE: HOMELESSNESS AND THE HUMAN RIGHT TO HOUSING IN THE UNITED STATES* 51 (2011), http://www.nlchp.org/Simply_Unacceptable.

110. Newman & Wyly, *supra* note 24, at 27.

111. JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, *THE STATE OF THE NATION’S HOUSING* 2015 5-6 (2015), <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-sonhr-2015-full.pdf>.

112. *Id.*

113. ALTHEA ARNOLD ET AL., NATIONAL LOW INCOME HOUSING COALITION, *OUT OF REACH* 2014 4 (2014), <http://nlihc.org/sites/default/files/oor/2014OOR.pdf> (\$29,000-90,000 range).

114. *Id.*

115. REAL AFFORDABILITY FOR ALL, *REAL AFFORDABLE COMMUNITIES: MAYOR BILL DE BLASIO AND THE FUTURE OF NEW YORK CITY* (2015), <http://www.alignny.org/wp-content/uploads/2015/09/Real-Affordable-Communities-Final-Report-for-September-21-2015-1.pdf> (last visited Mar. 5, 2016); see also Samuel Stein, *De Blasio’s Doomed Housing Plan*, 15-16 JACOBIN, (2014) <https://www.jacobinmag.com/2014/10/de-blasios-doomed-housing-plan/>.

116. ARNOLD ET AL., *supra* note 113; see also NAT’L LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 109, at 52-55 (the NLCHP reports, for example, that “in 2007, Los Angeles built 14,000 new housing units” and, of those, “12,000 were priced for households making \$90,000 or more per year.” Only 1,300 were designed “for those making between \$29,000 and \$90,000[,] despite the city knowing at least 8,000 units were needed”).

117. ARNOLD ET AL., *supra* note 113.

would have to make “to afford a decent two-bedroom rental” at fair-market value, “spending no more than thirty percent of income” on rent.¹¹⁸ In 2014, the National Housing Wage¹¹⁹ was \$18.92—“two and one half times the federal minimum wage.”¹²⁰

But the U.S. failure to respond to the affordability crisis is not limited to government intermingling with private developers.¹²¹ The federal government is directly responsible for the decrease in available affordable housing through its curtailing of federal subsidy programs and closing of public housing projects across the U.S.¹²² These state actions—or lack thereof—are directly related to the forces driving gentrification and the neoliberal mentality that has taken hold of U.S. policy.¹²³ Some scholars even suggest that public housing itself is being gentrified—low-income units are removed from public housing projects in favor of new development with “mixed affordability” that fails to replace units available to the lowest income tenants displaced from the old projects.¹²⁴ The gentrification of public housing is the result of dilapidated buildings and the fear that public housing complexes create a hotbed for crime and poverty, and the belief that decentralizing low-income families will decentralize crime and make those areas more desirable.¹²⁵

Even where the federal government does provide assistance in the form of housing vouchers that low-income tenants can use to subsidize private market-rate apartments, landlords sometimes refuse to accept such vouchers because of the stigma associated with low-income tenants, and the fear that this may make their building look less

118. *Id.*

119. *Id.* (the Housing Wage is a determination of the hourly wage a full-time worker would have to make to afford a two-bedroom rental at fair-market value, spending no more than thirty percent of income of rent).

120. *Id.*

121. Zuk et al., *supra* note 23, at 16.

122. Robert M. Buckley & Alex F. Schwartz, *Housing Policy in the U.S.: The Evolving Sub-national Role* 6 (Int'l Affairs at The New School, Working Paper 2011-06).

123. Sarah E. Evers, *Altering the Urban Frontier: Gentrification and Public Parks in New York City* 8-9 (2013) (unpublished B.A. Envtl. Analysis Open Access Senior Thesis, Pitzer College) http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1027&context=pitzer_theses.

124. Danielle Pelfrey Duryea, *Gendering the Gentrification of Public Housing: HOPE VI's Disparate Impact on Lowest-Income African American Women*, 13 *GEO. J. ON POVERTY L. & POL'Y* 567, 569 (2006) (Duryea points to criticism that HUD's HOPE VI program “slash[ed] the stock of affordable housing in half or to a third in some areas . . . while improving the bricks-and-mortar neighborhoods at the expense of ‘original’ neighborhood residents”).

125. *Id.* at 567-68.

desirable to wealthy, in-moving tenants in gentrifying neighborhoods.¹²⁶

In this way, gentrification creates a perfect storm of unwieldy increases in market-rate rents and the further deterioration of the nation's already limited affordable housing stock, leaving displaced low-income tenants with few alternative options and corroding the right to affordable housing.¹²⁷ One of the primary ways the State can avoid this corrosion is by protecting tenants from unreasonable rent increases through "rent regulation."¹²⁸ Furthermore, the U.S. should increase funding for direct subsidies and public housing programs to provide options for tenants displaced as a result of gentrification, rather than participating in the gentrification of public housing and providing too few units for very low-income tenants. Additionally, when direct subsidies are provided, measures should be taken to prohibit income discrimination and enforce that prohibition. Finally, when municipalities encourage development through zoning that provides for affordable units,¹²⁹ those units should be made affordable for very low-income and middle low-income earners alike and contain some degree of protection from rent increases. Otherwise, gentrification will continue to heighten the affordability crisis and leave the urban poor without viable alternatives to adequate and affordable housing.

3. Location

In addition to being affordable, adequate housing "must be in a location which allows access to employment options, health-care services, schools, childcare centers and other social facilities. . . not in immediate proximity to pollution sources that threaten the right to health of the inhabitants."¹³⁰ Many low-income neighborhoods are already located in a "desert" of services—from groceries, to schools, to jobs.¹³¹ Low-income urban neighborhoods are often located further

126. SUSAN J. POPKIN & MARY K. CUNNINGHAM, THE URBAN INSTITUTE, SEARCHING FOR RENTAL HOUSING WITH SECTION 8 IN THE CHICAGO REGION, THE URBAN INSTITUTE (2000), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/410314-Searching-for-Rental-Housing-with-Section-in-Chicago-Region.pdf>.

127. See *id.* at ii.

128. NAT'L LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 109, at 60 (discussing the success and vitality of New York City's rent stabilization program).

129. *Id.* at 53.

130. General Comment No. 4, *supra* note 54, ¶ 8(f).

131. See BRUCE KATZ ET AL., THE BROOKINGS INST. CENTER ON URBAN AND METROPOLITAN POLICY & THE URBAN INST. RETHINKING LOCAL AFFORDABLE HOUSING STRATEGIES:

from police and fire stations than wealthy neighborhoods.¹³² These neighborhoods are situated in worse school districts and lack access to grocery stores, pharmacies, and other businesses and jobs.¹³³

Gentrifying and gentrified neighborhoods, on the other hand, often provide a wealth of services in terms of commercial options, health services, and proximity to public transportation and employment.¹³⁴ As areas gentrify, new commercial establishments also tend to move into the neighborhoods, offering new goods and services not previously available.¹³⁵ Municipalities also increase spending on major services and schools as they target areas for redevelopment.¹³⁶ However, those who are displaced by gentrification are not the ones who reap the benefit of these new services.¹³⁷

When gentrification displaces low-income families in particular, it is highly unlikely that those families will be able find a comparably located unit, especially if they have been pushed out of a rent stabilized or other subsidized apartment.¹³⁸ As the discussion above suggests, it is most likely that these families will be forced even further outside of city centers to find affordable housing, if they find alternative housing at all.¹³⁹ Displacement out of core city neighborhoods has been shown to cause negative financial, mental, academic and health effects for low-income displaced individuals.¹⁴⁰

Although many low-income neighborhoods already suffer these deficits in terms of location and proximity to services, gentrification still implicates these aspects of the right to housing by perpetuating

LESSONS FROM 70 YEARS OF POLICY AND PRACTICE 100 (2003), <http://www.brookings.edu/es/urban/knight/housingreview.pdf>.

132. NAT'L LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 109, at 47.

133. Zuk et al., *supra* note 23, at 5 (the working paper discusses studies finding patterns of urban development in the United States has created "uneven geographies of opportunity" where low-income and families of color have limited access to affordable housing, high quality schools, and good-paying jobs).

134. NAT'L LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 109, at 80-83.

135. See Karen Chapple & Rick Jacobus, *Retail Trade as a Route to Neighborhood Revitalization*, in 2 URBAN AND REGIONAL POLICY AND ITS EFFECTS 19, 22 (Nancy Pindus et al., eds., 2009) (discussing commercial development as both an instigator and a consequence of residential demographic change); see, e.g., Newman & Wyly, *supra* note 24.

136. Zuk et al., *supra* note 23, at 20-21.

137. Chapple & Jacobus, *supra* note 135, at 25.

138. INST. FOR CHILDREN & POVERTY, PUSHED OUT: THE HIDDEN COSTS OF GENTRIFICATION: DISPLACEMENT AND HOMELESSNESS (2009), http://www.icphusa.org/PDF/reports/ICP%20Report_Pushed%20Out.pdf.

139. Richard Florida, *This is What Happens after a Neighborhood Gets Gentrified*, ATLANTIC (Sept. 16, 2015), <http://www.theatlantic.com/politics/archive/2015/09/this-is-what-happens-after-a-neighborhood-gets-gentrified/432813/>.

140. Weinstein, *supra* note 7, at 810.

this standard.¹⁴¹ Rather than encouraging the true revitalization of these low-income areas by providing services for the families living there, gentrification provides services for the affluent in-movers while encouraging the displacement of low-income families still far from the services required to fulfill their right to adequate housing.¹⁴²

The right to adequately located housing can be protected from the negative effects of gentrification by ensuring that displaced tenants are not pushed further from city centers, jobs, and services. This can be done by avoiding displacement in the first place by implementing stringent tenant protections in gentrifying neighborhoods, but also by providing and subsidizing services and creating jobs within low-income, gentrifying, and gentrified communities to end this disparity. Moreover, federal, state, and local actors must be cognizant of the placement of housing projects and implementation of mixed-affordability zoning so as to provide adequately located housing for low-income tenants. Otherwise, the market force of gentrification will leave displaced tenants with no option but to relocate to areas without access to necessary jobs and services in a way that violates the right to adequate housing.

4. Habitability and Availability of Services

Adequate housing must also be habitable and contain adequate services such as heating, electricity, and plumbing.¹⁴³ Under the international standard, habitable housing is that which protects inhabitants from “cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.”¹⁴⁴ The U.S. has generally done an adequate job of at least legally recognizing that housing must be habitable.¹⁴⁵ U.S. common law recognizes a warranty of habitability implied in a lease, such that premises must be fit for human habitation and that a tenant not be subjected to conditions that are dangerous to their life, health or safety.¹⁴⁶

141. NAT'L LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 109, at 80-85.

142. Chapple & Jacobus, *supra* note 135, 22-23.

143. General Comment No. 4, *supra* note 54, ¶¶ 8(b), 8(d).

144. *Id.* ¶ 8(d).

145. *Park W. Mgmt. Corp. v. Mitchell*, 391 N.E.2d 1288, 1294-95 (N.Y. 1979).

146. See generally David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389 (2011). In addition, many states codify this right. See, e.g., N.Y. Real Prop. Law §235-b (McKinney 2006).

But gentrification too often threatens habitability under international and U.S. standards alike.¹⁴⁷ As the discussion regarding harassment above describes, gentrification provides financial incentive to landlords to force low-income tenants out of buildings through neglecting to make necessary repairs or, more maliciously, actively destroying apartments and cutting off access to service—clear and egregious violations of the right to habitability and access to services.¹⁴⁸ Federally run public housing is also guilty of neglecting old, dilapidated units in a way that compromises habitability—choosing to demolish deteriorated units rather than conduct necessary repairs.¹⁴⁹ In addition, as discussed above, the lack of affordable housing options, often exacerbated by gentrification, can result in overcrowding, which threatens the health and safety of residents as much as disrepair.¹⁵⁰

Although tenants who are subject to living in deplorable conditions as a result of gentrification may have redress in the courts or through other agencies, this is often not enough. All too often there is no real enforcement mechanism to ensure a landlord complies with the warranty of habitability.¹⁵¹ The courts are often powerless to actually compel a landlord to repair deteriorating conditions outside of applying rent abatements—a small fine to landlords who seek to gain much more from potential in-movers.¹⁵² And even if these remedies exist, many low-income tenants in gentrifying areas will not resort to them out of fear of retaliation, eviction, and loss of an affordable home.¹⁵³

In this way, gentrification leaves the door open for significant breaches of the right to habitable dwellings. In order to ensure that gentrification does not impact the habitability of housing, there are numerous measures that must be taken. First and foremost, each State should adopt a statutory recognition of the warranty of habitability. Then, there must be adequate enforcement mechanisms to ensure housing meets those standards. The enforcement mechanism should include access to third-party arbitrators and courts to hear complaints

147. Miloon Kothari & Shivani Chaudhry, *Housing, Land, and Sustainable Development*, in SOCIAL WATCH REPORT 2012: SUSTAINABLE DEVELOPMENT: THE RIGHT TO A FUTURE 38, 40 (2012), http://www.socialwatch.org/sites/default/files/Housing2012_eng.pdf.

148. See Newman & Wyly, *supra* note 24, at 47-48.

149. Duryea, *supra* note 124, at 567, 572-73 (HUD originally budgeted for initial development but found that low rent revenues could not keep up with cost for repairs, resulting in severe deterioration).

150. Newman & Wyly, *supra* note 24, at 48-49.

151. Super, *supra* note 146, at 458-59.

152. See generally Geiger, *supra* note 99.

153. Newman & Wyly, *supra* note 24, at 49.

about breaches of the warranty of habitability, hefty financial penalties and other disincentives such as loss of tax credits when violations are found, and measures to discourage retaliation. Moreover, tenants should be adequately apprised of these rights and protections so as to encourage the reporting of violations, rather than the fear of retaliation. Without adequate protections and meaningful remedies, gentrification will continue to result in overcrowding and dilapidated living conditions for many urban poor.

IV. CONCLUSION

Revitalizing cities and responding to the plight of dilapidated urban neighborhoods is a lofty goal. But gentrification is not the means of accomplishing this goal; it merely caters to the affluent, and lines the pockets of large developers, while dispersing low-income families to neighborhoods far removed from the city center and even outside of the city itself. With curtailed federal funding and the new, neoliberal environment of cities, municipalities engage in gentrification in order to attract revenue and stay afloat.¹⁵⁴ These practices directly impact the internationally recognized right to housing through threatening legal security of tenure, decreasing affordable housing options, pushing the urban poor further from services and city centers, and compromising habitability.¹⁵⁵

Although the U.S. does not officially recognize the right to housing, it should be guided by this important international standard when responding to gentrification. In light of the current affordability crisis and a staggeringly large homeless population,¹⁵⁶ the U.S. must take action through increased funding for public housing, subsidies, enforcement of legal process, and provision of legal services counsel to low-income tenants. Instead of encouraging gentrification, the national housing policy should aim to revitalize dilapidated communities through providing adequate housing for the urban poor, meaningful employment opportunities, and the access to schools, transportation, grocery stores, hospitals, and other services.

Fulfilling the right to housing and protecting vulnerable tenants in the midst of gentrification must happen through large-scale policy

154. Zuk et al., *supra* note 23, at 16.

155. See generally NAT'L LAW CENTER ON HOMELESSNESS & POVERTY, *supra* note 109, at 7-16.

156. See Nikita Stewart, *Homelessness Rises in City, Resisting a U.S. Trend*, N.Y. TIMES, Nov. 20, 2015, at A26 (although the homeless population decreased slightly through 2015, this was not so in every major city; in New York City, for example, the homeless population increased to roughly 75,323 people in January 2015).

reform. But steps can also be taken on a daily basis in urban communities. Those living in gentrifying urban neighborhoods can choose to sustain neighborhoods by purchasing goods from local businesses or refusing to rent from developers with track records of harassment. Law students can participate in housing clinics to help expand access to civil counsel and apprise tenants of their rights. Any resident can join a neighborhood or tenants' association to amplify the voice of those affected by gentrification and work toward greater tenant protection. In this way, each urban dweller is a guardian of the human right to housing and can work to ensure that gentrification does not violate this most fundamental right.