Heading for Home

Churchill Report 2006

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1. **Executive Summary**

‘The right to housing goes further than the right not to be subjected to arbitrary or forced eviction. It also involves a duty on the State to take effective action to enable its people to meet their need for a safe and secure home where they can live with dignity. That is not achieved easily or overnight, but…it is now internationally recognised that States must take appropriate action to ensure the realisation of this right.’

Nelson Mandela, Former President of South Africa

In 2005, during the Victorian Government’s consultation in relation to the introduction of a Charter of Rights and Responsibilities, over 100 homeless Victorians were asked about how they considered that their human rights were currently being protected and which rights required increased protection. Perhaps unsurprisingly given the traditional relegation of economic, social and cultural rights to ‘second tier’ rights and the resultant lack of awareness, the majority of homeless respondents did not name the right to adequate housing as the most important right. Rather, over 80% of those surveyed stated that the most important right was the right to be treated with dignity and respect. According to those surveyed this was also the right that was most often breached.

The explanations and stories that accompanied the survey findings revealed however, that the denial or forfeiture of adequate housing was intimately connected with the right to live with dignity and respect.

These consultations underscored in elegant simplicity the interconnectedness and indivisibility of human rights. Access to adequate housing directly affects the realisation of other human rights: without it, employment is difficult to secure and maintain, health is threatened, education is impeded, violence is more easily perpetrated, privacy is infringed and relationships of any type are strained. Lack of affordable housing places vulnerable groups in the impossible position of having to choose between the most basic of human necessities, between housing and food, between housing and health care and the list goes on.

Despite the evidence however, and the evidence is global – you see it in the parks of Washington DC that are filled with homeless men and women who have slept rough for decades, in the cardboard settlements billowing on the periphery of every South African city and in the long queues for emergency accommodation in the UK – the importance of economic, social and cultural rights which includes the right to housing have long been muted by shriller calls for civil and political rights.

For the last two years I have worked as the Principal Solicitor of the PILCH Homeless Persons’ Legal Clinic in Melbourne, Victoria. I have advocated for people who are homeless or at risk of homelessness, seeking to protect their rights by enforcing laws that may protect their tenancy or their social security benefits and agitating for change where laws and policies impact disproportionately on people who are homeless, isolated and poor. My work showed consistently that unless people had access to safe and secure housing it was very difficult to exercise other human rights such as the right to adequate health care, the right to be from discrimination, the right to meaningfully participate in public debate and policy and the right to be treated with dignity and respect.
The aim of my Churchill fellowship was to draw on the human rights framework to investigate ways in which to promote the legal right to adequate housing in Australia. I examined the acceptance, or lack thereof, of the right to housing in a number of countries and how that acceptance or recognition had been translated into better laws, policies and services that seek to protect the rights of homeless and inadequately housed people.

My fellowship and research was motivated by four key questions:

1) What can international human rights law do to help remedy the problem of inadequate housing at a local level?

2) How do we ensure that our governments understand that adequate housing is essential to proper access to health, education, income, justice and social inclusion?

3) What measures must governments take to protect people against housing rights violations and what can NGOs and civil society do to ensure these protections are met and that government is held accountable?

4) In addition to progressive law and policy, what needs to happen to ensure that good law and policy manifests in improved living conditions and greater equality?

In attempting to respond to these questions I investigated strategies for greater and more effective NGO participation in the United Nations Human Rights system (Geneva); I examined the introduction of progressive new legislation that provides for a legal right to housing (Scotland); I observed the impact of constitutional protection of the right to access adequate housing (South Africa); and I learnt from a raft of innovative lobbying and advocacy strategies used by housing rights lawyers to bring about change (United States America).

My learnings suggest that better enabling our NGOs to advocate on an international level may have very concrete outcomes for the promotion and protection of housing rights. My case studies of Scotland and South Africa demonstrate that despite our current government’s myopia and intransigence when it comes to naming housing as a human right, the introduction of a legal right to adequate housing is neither fanciful nor extravagant.

Perhaps most importantly, the connections made with advocates all around the world reinforced the vital role that lawyers and advocates can play in using both domestic and international laws to protect housing rights and our obligation to call governments to account when these rights are breached or ignored.

The report makes a number of recommendations that it is hoped will provide some momentum in going forward. Several recommendations are already being progressed including the establishment of a Victorian practice focussed law journal for lawyers working with financially and socially disadvantaged people and the establishment of a specialised poverty law practice group of barristers at the Victorian bar to provide free representation to those who are homeless or at risk of homelessness.

As Cathy Albisa, of the National Economic and Social Rights Initiative in New York comments ‘the single greatest value of employing human rights in social justice work is its vision of rights as intrinsic to the status of being human. Human rights are the expression of what is required to be fully human.’ While these rights are not dependent on recognition by an external authority such as governments or international treaty bodies, it is axiomatic that unless there is recognition and protection human rights will be meaningless for those that are most vulnerable to rights violations. That is why these obligations must be translated into domestic
law, whether it is in a welfare act, a legal right to housing act, a tenancy act or an anti-discrimination act and advocates must use not just the language but employ different strategies and tactics to put pressure on law and policy makers and public actors to make sure they comply.
2. Recommendations

This report makes the following recommendations:

1. Establishment of a national legal policy and advocacy centre for homelessness and poverty issues to coordinate the common aims and objectives of housing lawyers and advocates predicated on the model of the Washington based National Law Centre for Homelessness and Poverty

2) Introduction of new Victorian legislation based on the Scottish Homelessness Act which provides for a legal right to housing and specifies that by 2012 every homeless individual will have access to emergency accommodation as of right

2) Establishment of an Economic, Social and Cultural Rights Project based on a similar project at the Community Law Centre at the University of Cape Town. Over the next 3 years the project will be focus on lobbying for the inclusion of economic, social and cultural rights in the Victorian Charter of Rights and Responsibilities. The project will also work with other organizations to lobby the Australian government to support the adoption of an Optional Protocol to the International Covenant of Economic, Social and Cultural Rights

3) Establishment of a pro bono practice group of the Victorian Bar to encourage the development of expertise among barristers in representing clients in housing and poverty law matters

4) Lobby for the establishment of a National Housing Minister

5) Establishment of a speaker’s bureau whereby homeless or formerly homeless individuals are provided with leadership and public speaking training and are encouraged to speak to community, government and business groups about the impact of homelessness

6) Development of a regular specialised poverty and housing law publication for community, legal aid and pro bono practitioners to share legal information, case summaries and practise tips based on the UK publication Legal Action

7) Investigate the adoption at council and city level of a charters that promote and protect the human right to adequate housing

8) With relevant stakeholders work towards the development of a 10-year plan to end homelessness that may inform the legislative and policy activities of housing advocates. For example, the National Coalition for the Homeless (US) and the National Law Centre for Homelessness and Poverty (US) drafted a comprehensive bill designed to end and prevent homelessness in the US. The Bill includes targeted and extensive provisions in relation to housing, income, health care and civil rights.

9) Introduction of legislation based on the GSE Bill (US) that would establish a national trust fund for affordable housing partly funded by private mortgagee companies and lending institutions
10) Provide skilled training for pro bono and community lawyers to conduct more effective strategic and test case litigation particularly in relation to challenging laws that criminalize homelessness such as begging and other public space offences

11) Develop a publication - ‘Human Rights in Action’ - that examines and promotes that various activities of NGOs that are using the human rights framework in their advocacy

12) Work with housing rights advocates and consumers to push for the implementation of recommendations contained in the 2007 Report of the UN Special Rapporteur on the Right to Adequate Housing
3. Introduction

3.1 The Right to Adequate Housing

Pursuant to art 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), all people have the right to adequate housing, which includes a right to live somewhere in security, peace and dignity. Australia signed and ratified the ICESCR in 1976.

Under art 2(1) of the ICESCR, realisation of the right to adequate housing requires that federal, state and territory governments devote the maximum of available resources to progressively ensuring that all people have access to adequate housing. This requires ‘concrete’, ‘targeted’, ‘expeditious’ and ‘effective’ steps, including budgetary prioritisation. In his 2005 Annual Report, the UN Special Rapporteur on Adequate Housing Miloon Kothari, called on governments to ‘explore the range of policy options available to them in financing “strong social housing programmes”, including the reallocation of existing budgetary resources’.

According to the United Nations Committee on Economic, Social and Cultural Rights (CESCR), at a minimum, housing must be affordable, accessible to disadvantaged groups, habitable, culturally appropriate, provide occupants with security of tenure and afford access to appropriate services, materials, facilities and infrastructure, including employment, health care, schools and other social facilities.

Despite clear law and the commitments of State parties to protect and promote the right to adequate housing, gross inequalities exist in even the richest of countries. In the midst of plenty, many still have inadequate access to a decent income, proper health services and safe and secure housing. In the countries that I visited, South Africa, England, Scotland and the United States of America - and indeed the country that I come from - this is not the result of lack of resources, rather poverty, discrimination and homelessness are more often characterised by unwillingness, negligence, discrimination and a failure to apprehend that adequate housing is a human right.

3.2 The Australian Context

According to the Australian Bureau of Statistics, over 100,000 people experience homelessness across Australia on any given night. This includes over 14,000 people sleeping rough or in squats, more than 14,000 in crisis accommodation or refuges, almost 23,000 in boarding houses, and nearly 49,000 people staying with friends or relatives. A further 23,000 people across Australia live temporarily in caravan parks.

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2 CESCR, General Comment 4: The Right to Adequate Housing, UN Doc HRI/GEN/1/Rev.5 (2001) 22.
5 CESCR, General Comment 4: The Right to Adequate Housing, UN Doc HRI/GEN/1/Rev.5 (2001) 22.
The causes of homelessness in Australia are complex and varied. However, they are generally acknowledged to include:

- poverty, severe financial hardship and lack of access to adequate income support;
- unemployment;
- lack of affordable housing;
- domestic and family violence;
- mental illness and lack of access to health care;
- drug and alcohol disorders and lack of access to drug treatment services;
- problem gambling;
- discrimination;
- disability; and
- evictions.\(^8\)

In many cases of homelessness, these causes are intersectional and inter-related. In addition to those experiencing homelessness, it is estimated that up to 35% of low income Australians experience ‘housing stress’ meaning that their housing costs are so great relative to their income so as to jeopardise their ability to meet other basic needs. Further, almost 10% of low income people experience ‘extreme housing stress’ meaning that they are required to spend more than 50% of their income on rent to avoid homelessness.\(^9\)

In spite of these statistics Australia does not have a national housing strategy or a national homelessness action plan that addresses both the provision of homelessness services and the issue of housing affordability. In the absence of government leadership, the not-for-profit and community sector has been forced to fill the gap.

Despite interrelated problems, relatively few housing advocacy organizations within Australia have attempted to address these issues using the human rights framework. While there is some domestic legislation that serves to protect people against certain abuses within the housing rights sphere, the legislation is piecemeal and rarely used creatively.

In part, this report looks at the role that lawyers and advocates can play in promoting the status of the right to adequate housing as a domestic legal right that should have a place in domestic legislation. In section 4 below, the report also examines the utility of engaging in the international human rights framework to further bolster, clarify and enforce domestic obligations.

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4. Engaging with UN Human Rights Mechanisms to Promote the Right to Housing

4.1 Introduction

My Churchill fellowship began and ended in Geneva. I had intended to be in Geneva for the handing down of a new report by the United Nations Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, (Special Rapporteur) that investigated how Australia was complying with its obligations under international human rights law to progressively realise the right to adequate housing. The report was based on the Special Rapporteur’s official Australian visit in August 2006. For 16 days the Special Rapporteur toured the country examining the situation on the ground in relation to housing. I had been actively involved with the organization of the trip and had made various submissions to the Rapporteur around issues of homelessness.

Originally, the report was to be handed down at the 4th session of the Human Rights Council (Council) in Geneva in March 2006. Unfortunately, the report was rescheduled. However with travel plans already locked in, I proceeded to Geneva and attended the sitting of the Council as a representative of the Australian National Association of Community Legal Centres.

During my first week in Geneva I learnt a tremendous amount about the practical operation of UN human rights mechanisms. Time spent at the Council observing the work of international and local NGOs and their participation in the UN system also reinforced the importance of direct and practical exposure to UN mechanisms for individuals and organizations to UN mechanisms involved in human rights work.

4.2 Building capacity amongst NGOs to engage in the UN Human Rights System

The International Service for Human Rights (ISHR) has established itself as one of the leading NGOs in Geneva. The organisation’s main focus is to build capacity and expertise amongst the NGO sector to engage with treaty bodies, special procedures and to use complaints mechanisms under the human rights law system. To this end, it runs extensive 2-week training programs during which human rights practitioners, in addition to learning about various human rights mechanisms, attend a session of the Human Rights Council, meet with the special procedures and assist with the organization of parallel and informal sessions.

As a part of the training, participants are encouraged to develop a project that engages one of the mechanisms. This may include the submission of a request for urgent action, the submission of an individual communication or direct lobbying with one of the treaty bodies or special procedures. Participants are also encouraged to conduct training based on their learnings for their own stakeholders enlisting a ‘train the trainer’ type model.

ISHR does not advocate around country issues but rather advocates around the failure of State parties to engage meaningfully with UN processes. ISHR has also been actively involved with the reform of the Human Rights Council and has helped NGOs understand the shift from the former Human Rights Commission to the Human Rights Council.

Chris Sidoti is the Executive Director of ISHR. From his office in Geneva I asked him about the engagement of Australian NGO’s in council and treaty body processes. Sidoti explained
that while there is a reasonable level of engagement by Australian NGOs it tends to come from the same handful of players. He also noted that this engagement tends to be largely reactive and under resourced.

For example, Sidoti noted with some concern that the individual complaints mechanism under the Covenant for the Elimination of Racial Discrimination (CERD) is vastly under utilised particularly in light of the enduring human rights issues for indigenous Australians. He urged human rights defenders working in this area to explore the possibilities for individual complaints. Sidoti noted that the low level of engagement around CERD might emanate from the perceived futility of the process given the current Australian government’s obstinate failure to take their responsibilities under human rights law seriously. However he also reflected that is may also arise from a lack of institutional support for NGOs to engage effectively with international human rights mechanisms.

ISHR attempts to build and strengthen NGO capacity to engage with UN human rights bodies in a coordinated, strategic and adequately resourced way. Clearly, however, it is difficult for most Australian NGOs to take advantage of the training offered by ISHR which is predominantly Geneva based. Australian NGOs would undoubtedly benefit from local specialist assistance to develop their capacity to engage with UN human rights bodies. This would help to:

- ensure that the international human rights work of NGOs and civil society is performed in an adequately resourced, effective and coordinated way;
- build the human rights capacity of NGOs through the collation and provision of timely, accessible and targeted information and training; and
- contribute to the development of Australia’s domestic law and practices with respect to human rights and Australia’s international obligations.

4.3 Development of an Optional Protocol for ICESCR

Greater assistance, training and capacity would enable Australian NGOs to lobby around particular human rights issues including for example the adoption of an Optional Protocol to the ICESCR. An important focus of my work in Geneva was to make contact with organizations and individuals who are a part of international efforts to establish this new complaints mechanism.

The question of adopting an Optional Protocol to the ICESCR, providing for a system of individual and group complaints, has been under consideration by the international community for some years. The Committee on Economic, Social and Cultural Rights initiated discussions on the adoption of an Optional Protocol in 1990. However, from the outset opposition - including opposition from the Australian government - has been strong. Finally, in 2006 a mandate was granted to the “Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights” (OEWG) to draft the Optional Protocol.

An optional protocol is a treaty that complements and adds to an existing human rights treaty. Most optional protocols establish grievance procedures by which individuals and groups of individuals can file formal complaints in cases where States have violated rights recognized in
a human rights treaty. In this way, when an optional protocol creates one or more enforcement mechanisms, the monitoring body established by the parent treaty administers these instruments. Through complaints and inquiry procedures, the international bodies in charge of supervising the implementation of a human rights treaty can elaborate on the meaning of the rights contained in this treaty and contribute to the development of international jurisprudence.

The Optional Protocol to the ICESCR (OP-ICESCR) would be a separate treaty open for signature and ratification by States that are already parties to the ICESCR. As currently envisaged, the OP-ICESCR would not create any new substantive rights. It would erect a mechanism that would make it possible for individuals or groups to submit a complaint in regard to violations of their economic, social and cultural rights by a State party. For example, a community that was wrongfully evicted by the local authorities without being able to benefit from any remedies provided by national courts would be able to file a complaint directly to the CESCR on economic, cultural and social rights.

On the back of meetings with members of the OP-ICECSR working group and Erik Halsten of the UN Economic Social Rights Unit, my organisation, the Homeless Persons’ Legal Clinic, has joined the working group and will begin to lobby the Australian government to support the introduction of the Optional Protocol. We will also coordinate support from other local groups. It is clear that as the process continues, more participation from local and national level NGOs will be needed.
5. The Legal Right to Housing - Case Study – United Kingdom

5.1 Housing Law in the UK

From Geneva I travelled to the United Kingdom to examine the adoption of progressive domestic legislation around the legal right to housing.

The United Kingdom has a similar constitutional and legal history to that of Australia. Like Australia, treaties such as the ICESCR are not self-executing in the UK meaning they must be implemented through the creation of domestic law.

As in Australia, the rate of homelessness in the UK is incompatible with international human rights obligations. The UN Committee on Economic, Social and Cultural Rights drew attention to the failure of successive UK governments to remedy homelessness 10 years ago in its 1997 report. Since that report the UK Labour government has taken legislative measures to reduce the number of rough sleepers and since 1997 has had a strategy in place to legislate for a homelessness preventative strategy instead of simply responding in crisis mode.

Part of this response is contained in the *Homelessness Act 2002* which requires local authorities (similar to our local councils) to implement five yearly action plans to tackle homelessness, to conduct annual censuses of rough sleeping and to give temporary accommodation to ‘unintentionally homeless’ people in priority need until they can be provided with more permanent housing. The Act also insists on new safeguards to prevent homeless families with children and vulnerable homeless people being housed in inappropriate accommodation.\(^{11}\)

Under the Act, the government also added new vulnerable groups to those already recognised as being in ‘priority need.’ A person will be in priority need if they:

- Are pregnant
- Have dependent children
- Are vulnerable because of old age, mental illness or physical disability
- Are homeless as a result of a disaster such as flood or fire
- Are vulnerable as a result of violence

One weakness of the legislation, however, is that local authorities have discretionary powers to refuse accommodation to someone in priority need if that person has made herself intentionally homeless.

For the purposes of the legislation, an individual may be regarded as intentionally homeless where they have fallen into rental arrears or they have committed an act of anti-social behaviour\(^{12}\). The Act also makes it possible to exclude or suspend people from tenancies for quite arbitrary reasons.

\(^{10}\) Dan Nicholson, *The Human Right to Housing* (COHRE) p 23

\(^{11}\) Iain Byrne and Andrew Blick, ‘Home Truths’ in Stuart Weir (ed) *Unequal Britain: Human Rights as a Route to Social Justice* p 200
Applicants have the right to appeal the decision of a local authority internally and then to the County Court on a question of law.

Although the Act provides protection to a small group of the most vulnerable, the most ‘needy’ and the most ‘blameless’ it falls a long way short of realising the right to adequate housing. However, even these limited protections reflect badly on the far more limited protections and remedies that are available in Australia.

Shelter UK, is one of the largest housing and homelessness organizations in the UK. In addition to conducting policy reform, advocacy, training, direct services and referral information, Shelter also administers the housing legal services division comprising of a team of over 8 lawyers in the London office alone who undertake casework in housing matters arising under the Housing and Homelessness Acts. The majority of legal matters concern disposessions, unlawful evictions and homelessness allocations. Other legal issues such as consumer law, credit and debt law, social security law and summary criminal matters are not undertaken by Shelter which further enforces the importance of housing law as a distinct legal practice.

Lawyers from UK Shelter contend that while there have been some improvements to the legislation as described above, the real changes have come through the interpretation of the legislation. As lawyers have continued to push boundaries and advocate for positive obligations on local authorities to provide housing, the government has responded by varying the type of housing that can be provided. For example, not so long ago, an offer of accommodation was required to be in the form of a secure tenancy for life with low rent. Local authorities are now permitted to offer short term assured tenancies for periods of 6 months. Further since 2004 local authorities have not been permitted to place homeless families with children in bed and breakfast accommodation for longer than 6 weeks. The proactive advocacy of housing lawyers has forced government and local authorities to re-examine their duties under the legislation and how to best execute those duties.

The existence of this housing legislation has given rise not only to a preponderance of case law and jurisprudence but also to a large group housing lawyers. Most housing matters are funded by the Legal Services Commission, the UK equivalent of Legal Aid, which increases the number of lawyers practising in this area. This contrasts with the relatively few housing rights lawyers in Australia who either take matters on a pro bono basis or are community lawyers working in the community legal sector. This is mostly as a result of limited legal aid funding for civil and administrative matters.

Housing law, social security law and other types of ‘poverty’ law are very much regarded as distinct legal practices and there exists a great deal of information to assist and advise lawyers working in this area. Shelter lawyers pointed to the existence of the Legal Action Group (LAG), a publication group that publishes a monthly practice journal, Legal Action. The journal is practice focussed on poverty law and provides an excellent opportunity for practitioners to share and develop knowledge. For a small organization – only 10 staff members – LAG has built a sizeable reputation among the legal sector. This is largely attributable to their production of quality legal publications including definitive and comprehensive case materials on housing law, employment law and social security law. The writing of the publications is generally outsourced to experts working in the field and LAG oversees the editing, publication, marketing and promotion. Regular training also accompanies the release of various publications.
5.2 Human Rights and Housing in the UK

Despite being one of the savviest and most vociferous housing rights advocates in the UK, the language of housing rights is noticeably absent from Shelter’s numerous campaigns. There are, for example, no references to the international rights framework in their publications or campaigns, nor does there seem to be appreciation of the benchmarks or guidance that invoking the right to adequate housing can provide.

In 2005, Victoria passed the Charter of Rights and Responsibilities. Most of the provisions of the Act will come into effect on January 1 2008. The Charter is closely modelled on the UK Human Rights Act, which seeks to protect a number of civil and political rights. While neither Act includes the right to housing, it is hoped that there may be room under the Victorian Charter to promote this right under the right to privacy, the right to life and the right to be free from inhuman or degrading treatment.

London based ESR activist, Iain Byrne, has pursued a number of housing rights claims through the European Court of Human Rights. Comparing the European court to the UK court’s treatment of the Human Rights Act, Byrne notes that the latter has tended towards conservative interpretations of the rights contained in the Act. In the seven years since the Act has been in force, he contends that the UK courts have done little more than follow interpretations of the European court and have not been particularly progressive in their approach. Byrne contends that the greatest accomplishment of the Act has been its influence at the level of policy drafting and legislation and the increased acknowledgement of local government authorities to act within the spirit of the Act.

The most significant defect of the Act has been the gaping absence of a National Human Rights Institution (NHRI) which Byrne argues should have provided meaningful human rights education at all levels and across all communities to promote a human rights respecting culture. While there are now definite plans to establish a NHRI, myths and misconceptions about the purview and powers under the Act have abounded in its absence. Byrne speculates that lack of leadership and education may be one of the reasons why rights language and advocacy has not been widely adopted across the UK NGO sector despite the introduction of the Act.

5.3 The Legal Right to Housing – Scotland

One part of the UK that does seem to have adopted the norm of the progressive realisation of the right to adequate housing is Scotland. In 2003 the Scottish Executive was awarded the Housing Rights Protector Award by the Centre of Housing Rights and Evictions for its Homelessness Act 2003. The Act was described as the most progressive in Europe. The legislation, largely developed from the work of a task force, effectively guarantees the right of access to adequate housing for every individual and household within 10 years.

Anna Donald, Policy Advisor for the Homelessness Team of the Scottish Executive, recalls the period during which the legislation was taking shape as a time of political optimism and political naivety. Scotland had just convened an independent government and the inaugural Scottish Executive was infected with a ‘can do’ attitude and spurred on by an absence of political conservatism.

13 Ibid, 202
Donald explains that it was a priority for the new government that it could be seen to be making a difference. The issue of housing and homelessness was clearly within its remit and very early in the life of the Scottish Executive, homelessness and particularly the very visible issue of rough sleeping, was an issue that the Scottish Executive committed itself to.

In 2000, the Scottish Executive established the Homelessness Task Force comprising of a range of stakeholders and chaired by a Minister of the Scottish Parliament. It is clear that the involvement of such a senior political figure invested the Task Force with a considerable deal of authority and strength. It sent an irrefutable message to the government and the public that the Executive were committed to understanding and relieving the causes and consequences of homelessness. The Task Force conducted a number of different research projects to better understand the particular nature, causes and consequences of homelessness in Scotland and the associated forms of social exclusions and deprivation that attach to homelessness and poor housing.

Towards the end of their mandate the Task Force produced a lengthy report detailing recommendations to be implemented by the Scottish Executive. The authority of the Task Force and the Executive’s enthusiasm for action ensured that most of the recommendations within the report were swiftly acted upon.

One of the Task Force’s primary recommendations was the introduction of a legal right to shelter. When the Act was first passed it was hailed as the most progressive homelessness law in Europe. The Act sets itself a ten year target (to be reached by 2012) by which time every homeless individual in Scotland will have the right to a home.

Under the Act local authorities have both corporate duties to the Scottish Executive to develop their own homelessness strategy and ongoing monitoring and evaluation strategies as well as duties to homeless individuals. The extent of this duty is contingent upon how a person is assessed under the Act. In essence, under the legislation there is a duty on local authorities to consider your case and if you are homeless then find you accommodation.

The Act’s ten year target is to be achieved by gradually expanding the categories of people defined as being in ‘priority housing need’ and giving households classified as ‘intentionally homeless’, accommodation with greater social support. For example, the categories of priority need will be gradually broadened until in ten years time there is no distinction drawn between any homeless person who is categorised as unintentionally homeless. The Act also gives ministers the powers to make regulations banning the use of unsuitable accommodation, such as bed and breakfasts, and requires local councils to accommodate homeless people who apply for rehousing in their area rather than shuffling them off, as many local authorities do, to other areas where they have a local connection.

A discerning feature of both UK Acts is the central role played by local authorities. Archie Stoddart, Executive Director of Shelter Scotland, says that the responsibilities and duties placed by the legislation on local authorities reflect a historical trend. Stoddart comments that traditionally it was the local authorities that controlled all housing stock so they were responsible for allocating it. He notes, that is there is also a strong traditional of localism in the UK and that support for the legislation and its implementation was much easier to harness where there was some discretion given to the local authorities.

Stoddart also notes that as radical as the legislation is, it is built on the findings from the UK 30 years ago – findings that it has taken a long time to see any action around. Reflecting on
the political environment that saw the passing of the Homelessness Act 2002 Stoddart admits that he is unsure if this approach would be adopted now. 'I think that Parliament was a bit immature and was very, very keen to be open. There was a sense that there were boundaries being tested and no one dared to say ‘no’ to anything. It does not make it wrong. I just don’t think it would it happen again.’

He explains that while the legislation is based on tradition it is still bold in its challenging of some ‘sacred cows’. One sacred cow is ‘priority need.’ Stoddart says, ‘if you are homeless then you are homeless and why should it matter what priority need category you fit into? Intentionality is another thing. It can link into actions that are your own fault.’ But as Stoddart recognises fault can mean a lot of things. ‘Fault can mean I didn’t pay my mortgage or I graffitied every social housing unit in the town or I was grossly unsocial.’ While Stoddart clarifies that very few applicants are knocked back on the intentionally question he worries about the disparity in the way local authorities apply the intentionally test. While local authorities must apply the law and refer to the guidelines each local authority is responsible for its own homelessness strategy and there is a reluctance emanating from the tradition of locality to impinge on that discretion.

Asked how Shelter sees this legislation as fitting within the international human rights framework, Stoddart is non-committal. ‘There is an important philosophical difference between rights based work and outcomes based work. Sure you may say that your job is to find people’s rights and enforce them. But if you don’t have any rights then that’s a pretty tough place to start from.’

Shelter works on an outcomes based approach. Within this approach the human rights framework has a place but as Stoddart concludes if you get nowhere with the rights approach then you need to look elsewhere, employ different tactics and different language.

It is difficult to properly assess the impact of the Act, particularly given that not all outcomes will be measurable before 2012. For Archie Stoddart, one of the single greatest innovations and strengths of the legislation is its commitment to a time frame. This is incredibly powerful when it comes to arguing for funding and resources. In fact, 2012 is the only named target in any piece of Scottish legislation. As Stoddart notes, ‘it is all very well to have progressive legislation. But it is only half the story. You must have sufficient resources to implement the legislation and this is what the government, through the introduction of this time frame has committed itself to.’
6. A Constitutional Right to Access to Adequate Housing – Case Study - South Africa

6.1 Constitutional Protection

During the third leg of my Churchill, I accompanied the UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, on his official mission to South Africa. For 14 days our small UN delegation spent time in urban and rural areas in and around Kimberly (Northern Cape), Pietersburg (Limpopo Mining regions), Johannesburg, Durban (KwaZulu Natal) Cape Town (Western Cape).

We met with high-level representatives at State, Provincial and Municipal Level, including judges from the South African Constitutional Court and also with civil society members, NGOs, social action groups, academics and women’s groups.

South Africa is one of the few countries that has made a legislative and constitutional commitment to the recognition and protection of socio-economic rights including the right to access adequate housing as contained in section 26 of the 1996 South African Constitution. Section 26 states that:

1. “Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”

Since 1996, the South African Constitutional Court has been called upon to interpret this right in a number of landmark decisions. One of the most common myths peddled about the right to housing is the notion that housing rights are non-justiciable. Critics submit that unlike civil and political rights, economic, social and cultural rights are too vague and too cost-intensive (requiring government action rather than inaction) to be litigated and can be implemented only on the basis of policy, not on law and justice.

Decisions of the South African Constitutional Court have undermined this position and reinforced the justiciability not just of housing rights, but a number of socio-economic rights. In particular, the Court’s decision in Government of the RSA and Others v Grootboom and Others 14 (Grootboom) that the state is constitutionally required to directly assist people living in crisis and emergency conditions has done much to promote the right to housing and the justiciability of economic, social and cultural rights, not just in South Africa, but around the world.

South Africa has also been active at the international level in supporting mechanisms that seek to enhance the protection of economic, social and cultural rights including support for the development of an Optional Protocol to the ICECSR.

14 2001 (1) SA 46
6.2 Towards the fulfilment of socio-economic rights in South Africa

During my time in South Africa, the country celebrated Freedom Day, marking 14 years since the end of apartheid and the holding of the first democratic elections. In one sense progress toward democratisation and the protection of human rights in South African cannot be overstated. Nor can the promise and commitment to genuine equality embodied in the South African Constitution the cornerstone of which is an indivisibility of rights approach protecting both civil and political and socio-economic rights. But spend any time in the mushrooming informal settlements skirting the periphery of every urban centre in South Africa or speak to the residents that have been without electricity and sanitation for over 2 years in one of Johannesburg’s ‘bad buildings’, and the yawning gap between law, policy and implementation becomes painfully apparent.

The legacy of apartheid is perhaps no more obvious than in the desperate conditions in which many South Africans still live. A fundamental feature of the apartheid regime was a system of influx control that sought to exclude Africans from urban areas. In spite of the policy Africans continued to camp on the edge of cities in search of employment. In the absence of formal housing, millions of people created ‘informal settlements’ that were characterised by abject poverty and frequent forced removals. More than a decade after the dismantling of apartheid and despite the construction of over 1.4 million houses in that time, the number and size of informal settlements has grown and almost half of the population continue to live in housing that is hopelessly inadequate.

6.3 Early Promise – Recalling Grootboom

For the last twelve days I have been travelling with the UN Special Rapporteur on the Right to Adequate Housing on his official mission to South Africa. One wintry Cape Town morning we head out on the main arterial to visit one of the sprawling settlements. It has rained the night before and the ground underfoot is wet and soggy. Women appear at the doorways of their shacks with buckets used to catch water from leaking roofs. There are few street signs here in the settlement known as Wallacedene but our guide, well known South African human rights and housing lawyer, Steve Kahanowitz, navigates easily through the dirt streets. As we round a corner, Steve points to a small plaque on the edge of the street – Grootboom.

It is a name that resonates with human rights lawyers and activists the world over. As mentioned above, the case, which came to be known as the Grootboom decision, marked a high point in the debate over the justiciability of socio-economic rights. Steve Kahanowitz’ firm the Legal Resources Centre made amicus submissions in the matter. Reflecting on the decision he comments, ‘by the very fact of their inclusion in the Constitution we knew that socio-economic rights had been deemed justiciable under South African law.’ Even so, he says, the Court’s decision in Grootboom was revelatory. By finding the State in breach of its constitutional obligations under the right to access to adequate housing, content and substance were given to the right. Kahanowitz notes ‘it gave us tremendous faith in the Constitution and the courts. The decision had a very profound impact on how housing law developed after that point and did much for the recognition and promotion of socio-economic rights more generally.’
For several years Irene Grootboom and over 900 others had been living in Wallacedene in appalling shack conditions. They had no water, sanitation, garbage removal services and no electricity. The area was often waterlogged and was perilously close to a major thoroughfare. Many had been waiting for subsidised low cost housing for over 7 years. Faced with the prospect of remaining in intolerable conditions indefinitely, the respondents began to move out and built new shacks on vacant land. The owner of the land succeeded in getting an eviction order to remove the people despite them having nowhere else to go. Their former shacks had been quickly occupied by others in similarly desperate situations.

One chilly winter morning, Irene Grootboom and 900 others, half of whom were children, were forcibly evicted. Their homes were bulldozed and burnt and their few possessions destroyed. It was, as Justice Yacoob observes in his judgement, ‘reminiscent of apartheid-style evictions.’ The Grootboom community first brought an application to the High Court seeking an order that the State provide “adequate basic temporary shelter to them and their children” while they waited for permanent accommodation. The High Court found in the favour of the community and the State promptly appealed to the Constitutional Court. On appeal, the Court confirmed the justiciability of the right to access to adequate housing as provided for in section 26 of the Constitution and spoke of the necessity of legislation to promote and protect that right. In addition to legislative measures, the Court found that the State must develop ‘reasonable’ programs to protect the right. It held that by failing to develop a ‘reasonable’ policy that assisted people in urgent need of emergency accommodation the State had failed to meet its constitutional obligations.

Subsequent cases have further enunciated these rights and have led to the amending and passing of legislation that reflect the State’s obligations including the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 1998 (PIE) which makes it a criminal offence to evict someone without a court order. According to the Act an order should only be granted where the court is satisfied that it is just and equitable that an eviction take place. In reaching their decision the court must also consider whether suitable alternative accommodation is available. Court decisions have also led to changes to the National Housing Act which sets out policies for the provision of emergency accommodation. Further the introduction to the Extension of Security of Tenure Act 1997 covers people occupying land in rural and semi-rural areas with the permission of the owner. The act seeks to protect occupiers from eviction except under certain circumstances. As Kahanowitz notes, ‘by protecting those facing eviction the Constitutional Court has granted millions of South Africans still living under insecure tenure significant and increased judicial protection against eviction.’

6.4 Crisis of Implementation

And yet, as the Court was quick to recognise ‘mere legislation is not enough.’ Nor are the well-intentioned policies, of which each level of government, national, provincial and municipal, now appears to have in spades. One of the major obstacles facing the fulfilment of socio-economic rights in South Africa lies in the effective implementation of ‘reasonable’ laws and policies and the meaningful relief that can be afforded to the poor and vulnerable where laws and policies reflecting the rights in the Constitution are breached.

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15 Government of the Republic of South Africa v Grootboom and Others 2000(11) BCLR 1169 (CC) (‘Grootboom’)
16 Grootboom at para 42.
It took over four years to develop the emergency housing policy that the Court found lacking in *Grootboom* and over one year for the different levels of government to decide whose responsibility it was. For the Grootboom community it has taken even longer to feel the positive impact of the court’s decision. Many are still waiting.

It is just one example of what appears to be a crisis in implementation that extends beyond housing delivery to health, education and basic civic services. Some say that the problem lies with a government that lacks the experience to deliver on an overly ambitious agenda while still navigating the administrative and economic minefield left by apartheid. Others claim that in the rush to get the numbers on the board, little planning has gone into housing policy and delivery. Critics point to the communities who, to use the official language, have been ‘decanted’ from shacks into formal houses and note that many of these houses have been hastily built with substandard materials. In some cases only months after construction walls have fallen down and electricity has still not been connected. Another point of contention is the lack of consultation with local communities. One example of where community consultation has fundamentally progressed the right to safe and adequate housing comes from a women’s community group who managed to get involved in the design of their state subsidised homes. The women demanded that their new houses be fitted with two doors, a front door and a back door, instead of the usual single front entrance. The back door meant that women could escape from their abusive husbands or flee from potential rapists, something that was impossible under the former model.

Others critics point to a system of government that is fragmented. While laws and policies are developed at a national level under the Constitution it is the responsibilities of the provinces and municipalities to ensure compliance and accountability. In this regard many are failing miserably. Just recently it was revealed that the province of the Western Cape, home to the *Grootboom* residents, failed to spend their allocated housing budget – this despite the fact that in 2004 over 1.5 million households had no access to formal shelter.

### 6.5 Further steps towards transformation

The difficulty of implementation goes to the very heart of ‘transformation’ – the term used to describe the reshaping of South Africa society. To breathe life into the powerful rights embodied in the Constitution requires a constant monitoring of the impact of court judgements and a focus on relief and remedy where breaches of rights occur. One of the criticisms that came after the *Grootboom* decision was that the Court’s declatory order did not actually compel the State to take steps to ensure that the program comply with Constitutional requirements. As a result long periods of inaction followed.

Sibonile Khoza from the Economic and Social Rights Project at the Community Law Centre at the University of the Western Cape notes that the Centre’s litigious strategies have changed since the *Grootboom* decision. ‘In the beginning,’ he explains, ‘we worked towards getting the courts to recognise core minimum obligations of socio-economic rights.’ In *Grootboom*, however the court found the question of minimum core obligations problematic and instead developed their ‘reasonableness’ test to inquire as to whether the State is meeting its constitutional obligations. In light of this, Khoza continues, ‘we now focus on remedies and relief and urge the courts where they do find a breach of obligations, to impose supervisory orders or structural interdicts. This puts the onus on the State to show the Court that they are

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developing and implementing laws and policies that are reasonable and that where violations have occurred timely progress to remedy them is being made.’

6.6 The struggle beyond symbolism

In his chambers of the Constitutional Court in Johannesburg, an extraordinarily beautiful building that has been converted from a former prison, Justice Albie Sachs remains optimistic and deeply committed to a legal framework that is rooted in human rights. Reflecting on the significance of the Grootboom decision, Sachs J says that perhaps the greatest value of Grootboom was its symbolism in that it marked a different philosophy - a philosophy that was less individualistic. ‘It provoked South Africans to ask questions like what kind of country do we live in and what kind of country do we want to live in? It prompted us to ask what are our values?’ Considering the many challenges South Africa still faces, Sachs cautions, ‘we (the court) are only twelve years old. We can’t right all the wrongs that have been done over 300 years.’

There is much wisdom in these words. But as brutal evictions and displacements continue with regularity in South Africa, particularly in downtown Johannesburg where the city has won the right in the Supreme Court of Appeal to proceed with the evictions of over 100,000 of its urban poor in a frenzied attempt to become a world class city before the 2010 World Cup, more than symbolism and good law is required. The ‘Inner-City’ case is now on appeal to the Constitutional Court. But even a decision that prevents the evictions or one which orders the State to provide a certain form of emergency accommodation will not be enough. As the former president of the Constitutional Court, Chaskalson P noted:

“We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring.”

In light of this, many lawyers and advocates are now urging the courts to impose supervisory orders or structural interdicts in the event of a breach. Such orders can place the onus on the State to show the Court that where constitutional violations have occurred, timely progress to remedy them is being made.

While supervisory orders and structural interdicts have been imposed in the lower courts there is an extreme caution within the Constitutional Court not to venture to closely into ‘parliament’s domain: budget prioritising, agenda setting and timelines.’ But as large scale evictions and displacements continue to occur throughout South Africa it is clear that the rights contained in the Constitution must be emboldened with strategies, both legal and non-legal to ensure the effective implementation of court judgements.

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18 Soobramoney v Minister of Health, KwaZulu Natal 1998 (1) SA 765(CC); 1997 (12) BCLR 1696 (CC) at para 8.
7. Innovative Advocacy – Case Study - The United States

7.1 Homelessness in the United States

A precise count of homeless people in the United States is elusive. The population is transient, turns over rapidly, and is difficult to locate. Reliable assessments converge on estimates of three to four million people experiencing homelessness annually including 1.35 million children. Principal causes of homelessness in the US include a dramatic decline in public investment in the creation of affordable housing, escalating housing costs in the face of stagnant or declining incomes, a rise in female-headed families living in poverty and drastic reductions in public and private safety-net services that protect against homelessness.

My time in the US elicited mixed responses. On the one hand I was deeply troubled by the sheer enormity of the problem evidenced in both the number of visibly homeless people and the many millions of others that struggle on an indecently low minimum wage and are at daily risk of homelessness. I was similarly disturbed by the introduction of draconian laws such as food distribution laws which have been introduced by a number of states to prevent the distribution of food by community organizations to homeless people in public spaces and the insidious rise of hate crimes against homeless people. Conversely, I was buoyed by the impressive work being done by committed and creative housing lawyers and activists many of whom have achieved remarkable individual and collective results through the use of strategic litigation, political lobbying, campaigning and through meaningful engagement with the homeless community.

The following section examines some of the legal instruments available to protect the right to shelter and housing in the US and also reports on the innovative services, networks and collaborations that may serve as useful models for service and project implementation in Australia.

7.2 A National Voice - National Law Centre on Homelessness and Poverty

There are many organisations throughout the US that have as their mandate the protection and promotion of housing rights and related economic and social rights. One of the most progressive and successful is the National Law Centre on Homelessness and Poverty (NLCHP) based in Washington DC. The NLCHP was established 17 years ago as way to coordinate the common aims and objectives of housing lawyers and activists throughout the country. The NLCHP’s mandate is to use the law to promote the rights of homeless people, facilitate their access to services, hold government to account and promote new policies and programs to end homelessness. To achieve this mission, NLCHP pursues three main strategies: impact litigation, policy advocacy and public education.

Over 3 days I met with all staff members from the NLCHP and discussed the similarities and differences between the complexion of their work and constituents.
7.3 Advocacy Strategies

My visit coincided with a legislative victory for the NLCHP. For a number of years the organization has been working in collaboration with the Low Income Housing Coalition to lobby for the introduction of national legislation that would establish an affordable housing fund.

By way of background, the main social housing program in Washington DC is the Section 8 housing program which provides a rental subsidy to people on low incomes. To be eligible for the Section 8 program a household must contribute 30% of their income towards rent. The deficit will then be met by money from the Section 8 housing fund.

Each year the US Congress conducts an appropriation for Section 8 housing. There is a limited amount of funding and even those who qualify for Section 8 housing may not receive it. The system is comparable to the public housing system in Australia. There are similar tales of ridiculously long lists to receive section 8 housing. In Los Angeles, for example, the Section 8 housing list is so long that it has been closed for the last 10 years.

In response to this need the NLCHP has been advocating for the creation of a federal trust that is funded by private mortgage companies. This initiative was drafted as a legislative instrument and the Bill which came to be known as the GSE Bill received the support of Congress on 23 May 2007. The Bill establishes a trust fund for affordable housing that is funded from two private mortgagee companies, Fannie Mae and Freddy Mac. While these lending companies are for most the part privately owned they have historically received a great deal of government support and in light of that have additional corporate responsibilities. Under the Bill a percentage of Fannie Mae and Freddie Mac's profit will be siphoned off into the housing affordability fund.

It is estimated that this market intervention will generate a total of $600 million towards housing affordability. The legislation also makes it clear that in the distribution of this money, priority should be given to people who are homeless or at risk of homelessness.

This victory recalls earlier success in which the NCLHP successfully lobbied for legislation, known as the Federal Surplus Building legislation, which provided that any federally owned building that had not been in use for a specific period had to be advertised to shelter organisations who could apply to use or acquire the building free of charge to provide shelter to people experiencing homelessness.

These examples are useful in demonstrating the strength and skill that many US advocates have in campaigning and lobbying. Laurel Weir from NCHLP who headed the GSE campaign described their strategies in the following way:

1) Identify congress people, both Republicans and Democrats, who are interested in supporting the idea. Put together figures from the congress person’s district showing the extent of homelessness and establishing how development of the fund would benefit people in the district.

2) Introduce members to those affected by homelessness and inadequate housing and take constituents on tours of positive housing projects. Facilitate a personal connection to the issue.

3) Generate media interest and attention around the issue including editorials in support of the project in local and national papers.
Indeed, Laurel Weir explained that one of the real lessons and victories of the campaign was that it demonstrated that even those who may be typically hostile to the aims and activities of a campaign can be turned around on a particular issue.

7.4 NLCHP’s Civil Rights Project

Some years ago NLCHP established the Civil Rights Project which has 3 primary areas of focus: the criminalisation of homelessness, voting rights and identification issues. These projects resonate with the work being done by a number of Australian housing advocates.

Voting Rights

The main thrust of this work centres on voter education and encouraging homeless people to register to vote. NLCHP developed a comprehensive manual to encourage welfare organisations to get people to register in the lead up to congress election in 2006 and capped off the campaign with a ‘Voter Registration Day for Low Income and Homeless People.’ Over 100 organisations participated in the day.

The campaign also developed a ‘Know Your Rights Card’ which has been very popular among service users.

While there was little practical congressional support around the voting campaign, as a result of the campaign some congress members have now taken an interest in poverty issues and two congressmen are currently trying to live off food stamps to demonstrate how difficult it is to live off public benefits. There has been other innovative involvement of political candidates. In one state by-election, mobile polling booths were set up at homeless shelters and candidates were taking on a guided tour of the shelter accompanied by the media. This sort of attention was great for profiling the issue.

Criminalisation of Homelessness and Food Distribution Laws

The criminalisation of homelessness in the US takes many forms including:

- Legislation that makes it illegal to sleep, sit or store personal belongings in cities where people are forced to live in public spaces;
- Selective enforcement of more neutral laws such as loitering or ‘open container’ laws against homeless people;
- Sweeps of city areas where homeless people are living to drive them out of the area, frequently resulting in the destruction of those persons’ personal property; and
- Laws that punish people for begging or panhandling or that allow for the ‘moving on’ of poor or homeless persons.

A 2006 report by NLCHP and the National Coalition for the Homeless maintains that the criminalisation of homeless people is increasing citing a 12% increase in laws that prohibit begging in certain places and an 14% increase in laws that prohibit sitting or lying in public places.

A particularly disturbing new trend has been the development of regulations in the state of Orlando that prohibit the sharing of food with 25 people or less in public parks. This law specifically targets mobile soup kitchens run by charity organizations which hand out food to
homeless people. Las Vegas have followed suit and have also made it illegal for anyone to share food with ‘indigent’ people in public places.

The NLCHP are currently looking at ways in which to claim that the laws are a constitutional violation of the 8th amendment to be treated with equality before the law.

I asked what has provoked these vicious new laws. Tulin Ozdeger, a civil rights lawyer, says the numbers of the homeless people are increasing in most US cities. The response to the problem is to introduce punitive new laws that target homeless people and try to move them out of public places. According to Ozdeger, the overwhelming evidence is that these laws do not work. But instead of expending energy in positively and proactively dealing with homelessness ‘the City spends its time racking its brain to come up with new measures to deter them. The food laws are the new frontier in this war.’

There are one or two positive examples. In the mid 90’s Philadelphia passed an ordinance that made it unlawful to sit on a sidewalk. The laws went through but with important qualifications that were a result of targeted and well-organised opposition. With the passing of the law, the City made a commitment to spend more money on rehabilitating old homeless shelters and constructing new ones. The law also stated that if all shelters were full, sitting on the sidewalk would not be an offence. Consultation over the laws helped to forge new and constructive relationships between police offices and outreach workers. Since this proactive approach, Philadelphia has seen a 50% decrease of people living on the streets.

7.5 A Voice for the Homeless – the National Coalition for the Homeless

The National Coalition for the Homeless (NCH) is a national network of advocates, service providers and homeless persons who aim to prevent and end homelessness through law reform work, public policy advocacy and public education. The NCH has been particularly successful in providing public education about causes of, and solutions to, homelessness as well as educating government and public policy makers about the economic costs of homelessness (eg, comparison of costs of criminalising, prosecuting and incarcerating with costs of housing, feeding and training homeless persons).

The Coalition works closely with other advocacy bodies including grass roots organizations with the NLCHP. Recent projects have concentrated on the criminalisation of homelessness and the disturbing increase in the number of hate crimes against homeless people. According to NCH there were 142 homeless-directed hate crimes in 2006. Since NCH began monitoring attacks on the homeless in 1999 there have been 614 reported attacks, a number which in actuality is much higher due to the low number of attacks reported to police by homeless persons.

As a result of this increase the NCH have been lobbying politicians and early this year two bills were introduced in the US House of Representatives to combat violence against homeless persons. The first, The Hate Crimes against the Homeless Enforcement Act of 2007 amends the Hate Crimes Enforcement Act of 1994, to include homeless persons as a protected class. The bill would classify any violent act against a homeless person due to their status as a homeless person as a hate crime. The second bill requires the FBI and police officials to track violent attacks against homeless persons.

The Coalition has also been active in establishing opportunities for homeless people to be directly involved in public education and awareness. Some years ago they established the
‘Faces of Homelessness Speakers Bureau’. The Speakers’ Bureau is a program that is comprised of people who are or have been homeless and works to educate the public about homelessness and what can be done to end it.

The unique approach establishes a significant platform for those whom homelessness affects directly to talk personally about their experiences. Additionally, the Speakers’ Bureau creates opportunities for members to advocate for themselves and others. All of the speakers have experienced homelessness and now travel the country holding forums at schools, universities and community and business seminars. Last year the Bureau spoke to over 280 groups, 43 states and nearly 17,000 people. The success of the Speaker’s Bureau has been twofold – it has empowered a group of otherwise disempowered people and through the articulate and passionate telling of stories has helped to break down public stereotypes of people experiencing homelessness.

7.6 Washington Legal Clinic for the Homeless

Since its establishment in 1986, the Washington Legal Clinic for the Homeless (Legal Clinic) has become a principal force in protecting the rights of homeless and other low-income people in the District of Columbia, through a unique combination of direct representation, class action litigation, policy and budget advocacy, as well as community outreach, education and organizing.

The Legal Clinic works on issues such as wrongful evictions and shelter terminations, applications for public assistance and subsidized housing, credit and consumer matters, veterans' benefits, discrimination, probate, health and mental health, impounded property and family law concerns. These cases are handled by a network of nearly 200 lawyers and paralegals who volunteer at one of ten intake sites at soup kitchen, day programs and dining programs in the District.

In addition to serving individual clients, the Legal Clinic has been involved in broad litigation seeking to improve conditions in DC’s family shelters, its food stamp program, and its mental health system. On the policy front, the Legal Clinic has also played a key role in the crafting of local welfare reform legislation, worked to achieve a continuum of services for people who are homeless, and have taken a lead in the re-writing of the District’s shelter laws. They have successfully advocated for the re-establishment of a locally funded disability program for people who cannot work, and for the re-focusing of major housing legislation to meet the needs of the city’s lowest income residents.

The Legal Clinic has also been a place of convening the Fair Budget Coalition and the Welfare Advocates Group, and brought together an extraordinary alliance of concerned community members who successfully advocated against the displacement of hundreds of low-income Latino and Southeast Asian immigrants.

One of the greatest successes of the Clinic was the creation of the legal right to shelter in DC in the 80s which led to a revamping of shelters. The Clinic has continued to work to improving this legislation and in 2006, amendments and regulations were passed that create minimum standards for shelters, including for example a requirement for storage space so that people can store their belongings. The Act also requires that users of shelters are treated with
respect and dignity and while there has been little litigation to test the parameters of this right in one matter the Court did order a shelter to replace all mattresses in a shelter after a matter was bought that concerned bed bugs.

7.7 Using the Human Rights Framework

Over the last couple of years, the NLCHP and other organisations have begun to engage more formally with the human rights framework with a focus on the right to adequate housing. Forums are now held across the country on a regular basis to encourage workers to consider their work as human rights work. In the past 3 years alone NLCHP have conducted over 200 training sessions both in the US and internationally. These sessions have included domestic law topics such as homeless children’s right to education; housing, domestic violence, social security, civil rights, the justiciability of housing rights, the enforcement of housing rights at international, domestic and regional level.

Cathy Albisa from the National Economic and Social Rights Initiative comments that despite the excellent work of organizations like NLCHP and NCH there is profound resistance in the US to the language of positive obligations that human rights invokes. She is also says that despite the fact that housing affects everyone there is very little political interest in it. She laments the housing affordability crisis, which parallels eerily with Australia’s and comments that there has been no positive comprehensive intervention by government to affordable housing ‘there is no real plan and no commitment.’

This is where, Albisa believes, that the human rights framework can be most effective. It is not an immediate, crisis framework. It is an enduring responsibility that to be properly executed requires commitment, planning and the capacity for recourse where the system fails.

Earlier this year with funding from the Ford Foundation the National and Economic Social Rights Initiative sponsored a publication, Close to Home: Case Studies of Human Rights Work in the United States. The publication showcases the innovative human rights advocacy that is being done by many social justice groups and organisations in the US.

Such a publication would be of enormous benefit to Australian NGOs who have made an effort to effectively engage with and use the human rights framework in their advocacy. It would also provide inspiration to other NGOs to do likewise.
8. The Report of the Special Rapporteur

8.1 The UN Special Rapporteur on the Right to Adequate Housing - Australia

After visits with organisations in Washington, New York and Atlanta, I had intended to head for San Francisco. My plans changed when I was invited to return to Geneva to support the handing down of the Special Rapporteur’s report on his visit to Australia to the Human Rights Council which had been rescheduled from March to June.

In part this report came about when in 2005 the PILCH Homeless Persons’ Legal Clinic was alerted to the Commonwealth government’s intention to cut funding to emergency accommodation services despite an already critical funding shortage.

The HPLC lobbied State and Commonwealth agencies to desist from making the cuts and sent a request for urgent action to the Special Rapporteur arguing that the cuts were in violation of Australia’s obligations under arts 2 & 11 of the ICESCR which provides that states must use all available resources to progressively realize the right to adequate housing. We argued in accordance with international law that except in exceptional circumstances retrogressive measures such as cuts to public housing may constitute a violation of Australia’s obligations. We argued that given Australia’s current economic surplus of over $10 billion, it was hard to argue that exceptional circumstances existed.

As a result of our organisations and others’ efforts to bring the issue to the attention of the Special Rapporteur, a communication was sent to the Australian government seeking clarification of the situation. Fortunately the proposed cuts didn’t go ahead and the Australian government granted the Special Rapporteur’s request to conduct an official mission to the country.

For 15 days in August 2006, the Special Rapporteur toured the country on his official visit spending time in Alice Springs, Canberra, Sydney, Melbourne, Bendigo and places small and large in between. In his preliminary findings, he described what he saw as a ‘serious hidden national housing crisis in Australia’, ‘a humanitarian tragedy’ that is having a critical impact on the most vulnerable groups of the population and is also affecting low-income households.

In particular, he raised serious concerns about the housing conditions for indigenous people, for women, particularly those who fleeing situations of family violence, and for the large urban, rural and regional homeless populations.

The Rapporteur also remarked that when the government fails to act and recognize the housing needs of these groups society as a whole suffers.

In addition to receiving those preliminary findings, the visit was important in a number of ways. Firstly, it effectively mobilised NGO’s working in the housing and homelessness sector as well as individuals themselves who have been affected by inadequate housing towards a common articulated goal – provision and protection of the right to adequate housing. Secondly, it was a crucial educational opportunity to encourage people to think about the
sorts of injustices, shortages and deprivations that they see in their daily work as human
rights issues and to start to conceive of their advocacy as advocacy within a human rights
framework for which there are universal indicators, benchmarks and obligations. Thirdly,
when the preliminary observations from the visit and then the report were released, as well as
documenting the problem as a national issue for which commonwealth, state and territory
governments have obligations, they provided a series of practical recommendations for
reform around which organizations could lobby.

The report was finally released at the 5th session of the UN Human Rights Council in Geneva
on the 11th June 2007 and as mentioned I was there for the handing down of the report and
made a statement in support.

The report concludes that Australia has failed to meet its obligations to ensure the right to
adequate housing in Australia. It refers to a national housing crisis evidenced by the large
number of people facing housing stress, finds unacceptable the large homeless population
throughout the country and draws particular attention to the distressing living conditions and
precarious land rights of many indigenous people. The report then goes on to make a number
of practical recommendations including;

1. the establishment of a national ministry dedicated to housing and homelessness
   which works collaboratively with civil society to devise and implement a national
   affordable housing plan informed by human rights principles;
2. amendment of laws which criminalize homelessness, such as public space offences;
3. increased spending on public and community housing and rent assistance;
4. amendment of punitive social security legislation and expresses grave concern
   around the 8 week breach provision in the Welfare to Work legislation;
5. amendment of commonwealth, state and territory equal opportunity and anti-
   discrimination legislation to make it unlawful to discriminate against people on the
   basis of their social status; and
6. greater consultation with those affected by inadequate housing.

After the Special Rapporteur read the report the Australian delegation exercised their right of
reply. And while few expected the Australian government to agree with the criticism, the
dismissiveness and audaciousness with which they responded to the report surprised and
concerned many who were present.

Interestingly the Australian delegation has been very supportive of the special procedures,
which include the activities of Special Rapporteurs, but their response in this instance was
that the limited resources of the special procedures had been wasted by this visit and that the
Special Rapporteur should be focusing on countries where there are serious human rights
issues and situations. They referred to the report as unbalanced and misleading and accused
the Special Rapporteur of pandering to ‘special interest groups’ and extrapolating on claims
that are exaggerated and wrong.

So, what does this mean going forward?
At the time the report has generated a fair amount of media interest. Both major political parties are now campaigning of affordable housing and the Federal Opposition have come forward and said that if elected they will establish a national housing ministry.

The findings and recommendations of the report provide concrete issues to advocate around and adds a gravitas and objectivity local advocacy to be able to draw on an independent, expert report that supports those objectives. The Rapporteur has encouraged Australian advocates working in this area to continue to send requests for urgent action to keep the pressure on. A proposal for a follow-up to monitor the implementation of recommendations made in his report is currently being considered.
9. Fellowship Programme

During the fellowship trip, I interviewed the following people:

**Geneva**

Chris Sidoti, Director, **International Service for Human Rights**
Dr Tony Morris, Principal Trainer, **International Service for Human Rights**
Claude Cahn, Head of Advocacy Unit, **Centre on Housing Rights and Evictions**
Irene Petras, Programme Coordinator, **Zimbabwe Lawyers for Human Rights**
Robyn Mudie, Australian Representative, **Permanent Mission to the United Nations**
Erik Halsten, Lawyer, **UN Economic and Social Rights Programme**
Christian Courtis, Legal Officer, **ESC Rights International Law and Protection Program, International Commission of Jurists**
Graciela Dede, Human Rights Officer, **OHCHR**
Miloon Kothari, **Special Rapporteur on the Right to Adequate Housing**

**United Kingdom**

Alison Hannah, Director, **Legal Action Group**
Iain Byrne, Senior Lawyer, **Interrights**
Duncan Wilson, Director of Economic and Social Rights Program, **Amnesty International**
Andrew Ramsay, Director, **Shelter (England)**
Anna Donald, Policy Advisor Homelessness Team, **Scottish Executive**
Archie Stoddart, Director, **Shelter (Scotland)**
Mary-Claire Kelly, Solicitor, **Shelter**

**South Africa**

Phethuvuyo Gagi, Head of Research and Documentation, **South African Human Rights Commission**
Uhuru Nene, Executive Director of Housing, **City of Johannesburg**
Mongezi Mnyani, COO, Department of Housing, **Gauteng Provincial Government**
Neville Chaine, Executive Director of Housing, **Ekurhuleni Municipality**
Justice Puis Langa, Chief Justice, **South African Constitutional Court**
Justice Albie Sachs, Judge, **South African Constitutional Court**
Marie Huchzermeyer, Associate Professor School of Planning, **Witts University**
Moray Hathorn, Partner, **Webber Wentzel Bowens**
Christopher Mbazira, Socio-Economic Rights Project, **Community Law Centre, University of the Western Cape**
Sibonile Khoze, Socio-Economic Rights Project, **Community Law Centre, University of the Western Cape**
Jean du Plesis, Deputy Director, **Centre on Housing Rights and Evictions**
Lisa Blass, Solicitor, **Pro Bono Org**
Durjke Gilfillan, Attorney, **Legal Resource Centre**
Steve Kahnowitz, Attorney, **Legal Resource Centre**
United States of America

Washington
Maria Foscarinis, Executive Director, NLCHP
Tulin Ozdeger, Civil Rights Attorney, NLCHP
Laurel Weir, Policy Director, NLCHP
Eric Tars, Human Rights Attorney, NLCHP
Michael Stoops, Acting Executive Director, National Coalition for the Homeless
Patty Fugere, Executive Director, Washington Legal Clinic for the Homeless

New York
Alice Morey, Managing Attorney, City Bar Justice Center
Felip Lecaros, Network Coordinator, New York City Bar,
Ellen Chapnick, Dean for Social Justice Initiatives, Columbia Law School
Justice Alex Calabrese, Presiding Judge, Red Hook Community Justice Center
James Broderick, Project Director, Red Hook Community Justice Center
Michael Rothenberg, Executive Director, New York Lawyers for the Public Interest
Vincent Villano, Project Coordinator, City-Wide Task Force on Housing Court
Leslie Annexstein, Attorney, Urban Justice Centre

Atlanta
Frank Alexander, Professor of Law, Emory University
Gerry Weber, Legal Director, American Civil Liberties Union,
Anita Beaty, Director, Metro Atlanta Task force
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