

## Evictions: The Hidden Housing Problem

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### *Abstract*

Although evictions are a major housing problem that disproportionately affects lower-income and minority tenants, no systematic data about evictions are collected on a local or national level. This article presents the scattered available data on the magnitude and impact of the problem, along with existing model efforts to reduce its incidence and impact.

Creating a national database on evictions—how many, where, who, why, and what happens to evictees—would be an important first step in focusing attention on this neglected issue. Definitional questions must be resolved as an initial step. In an effort to launch such a project, suggestions are offered on how to begin creating such a database.

**Keywords:** Evictions; Housing policy; Rental housing

### **Introduction**

Each year, an untold number of Americans are evicted or otherwise forced to leave their homes<sup>1</sup> involuntarily. The number is likely in the many millions, but we have no way of gauging even a modestly precise figure for renters, because such data are simply not collected on a national basis or in any systematic way in most localities where evictions take place. (By contrast, reliable data on the number of mortgage foreclosures, which presage the eviction of homeowners—although little beyond sheer numbers—are systematically collected and published by the Mortgage Bankers Association of America.) The problem's lack of visibility, as well as the lack of attention given to solutions, especially compared with the attention paid to homeowners' problems, can be partially understood by the lesser favor shown toward renters as opposed to homeowners in American culture and policy. Having good data on this vast, hidden housing problem would seem an essential ingredient for developing housing policies and programs that might decrease the incidence and negative impact of what, for most of those affected, must be a profoundly traumatic experience, both as it occurs and in its later

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<sup>1</sup> Commercial evictions, which in some ways can be linked to residential evictions, are beyond the scope of this article. Also outside its scope are departures due to natural causes, such as flooding and hurricanes, rather than human agency.

consequences.<sup>2</sup> Beyond gross numbers, it is critical to know the demographic characteristics of those being evicted, the reasons for the evictions, and what happens to those who are evicted after forced displacement. (Homeowners experiencing mortgage foreclosure are, as noted, essentially evicted. While we make occasional passing reference to homeowners, their problems and characteristics are somewhat different from those of tenants. A separate article dealing with their issues, another inadequately recognized housing problem, would be a useful complement to our treatment of the tenant displacement problem.)<sup>3</sup>

The purpose of this article is to present the limited data we were able to locate on evictions and the eviction process, to describe the range of extant tools used in various parts of the country to deal with the eviction problem, and to put forth a set of ameliorative recommendations. Our hope is that the article will serve to focus the attention of housing researchers, policy makers, and officials, as well as activists, on this hidden housing problem.<sup>4</sup>

## Definitional issues

While a key first step is to derive some reliable estimates of the size of the problem, any such attempt must confront key definitional issues that greatly affect the numbers. In the narrowest sense, a tenant is evicted when, following a process initiated by a property owner in the courts, a person empowered by a court executes an order to remove the tenant from the premises. Among the common grounds for eviction

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<sup>2</sup> While this article is confined to the issue of those experiencing eviction, one should note that in some instances, the landlords who evict experience severe disturbances—over and above any financial and timing concerns—as well. A friend of one of the co-authors, a district court judge in Massachusetts, describes the wrenching scenes he is called on to adjudicate every week; these often involve resident landlords who out of sheer financial necessity feel they must evict friends, tenant neighbors, who, because of sickness or unemployment, cannot pay the rent, thereby threatening the landlord with foreclosure; or immigrant landlords attempting to oust tenants so they can bring relatives into their apartments.

<sup>3</sup> A recently reported phenomenon is the increase in homeowners taking in tenants in renovated garage spaces, “granny flats,” and modified space within the home, to create rental space that produces income needed to pay the mortgage and property taxes on increasingly high-priced single-family housing. Such trends, expanding the landlord class, are bound to create eviction issues for more and more homeowners. (See Rich 2003b.)

<sup>4</sup> Notably, the comments on our draft submission by two anonymous journal referees began almost identically: “This paper highlights an issue that is almost entirely absent from the housing policy literature—evictions” and “This paper addresses an important topic that is essentially ignored in the housing literature.”

(usually included in just-cause eviction ordinances, see page 488) are failing to pay the rent, substantially violating the lease, damaging the premises, using the unit for illegal purposes, denying the landlord reasonable access to the property, or refusing to renew a lease (Gerchick 1994). But such a narrow definition obscures the realities of housing market dynamics and landlord/tenant relationships. A realistic perspective on the issue must encompass the full range of other ways in which a tenant household is in effect forced out, even though no court process takes place or the tenant moves out before that process is completed.

In the actual legal process, tenants may move out and give up the battle at many different stages. Tenants move out when the legal process is preceded by a “termination of tenancy” notice from the landlord; when the summons or petition beginning the proceeding is served; at any stage when the process itself is felt to be too intimidating or too expensive to pursue or when the tenant decides there is little likelihood of prevailing; or when the court decides against the tenant, but the marshal or sheriff has not yet come to the door to carry out the eviction. In all of these instances, although the tenant is forced to move, the outcome may not be counted as an eviction since the marshal/sheriff does not actually come to the door. Thus, depending on what stage of the process is being tabulated, the numbers can be wildly discrepant: In New York City, “The marshals complete about 25,000 evictions each year, about one for every five eviction warrants issued by housing court judges. That is because most tenants facing immediate eviction vacate their home before the marshal arrives” (Webber 2001, 4).

A simple notice of an unaffordable or undesired rent increase may trigger a move; a letter from a landlord or managing agent regarding alleged violations of the lease or the law (pets, unauthorized additional tenants, behavioral infractions, etc.) may produce similar results; the landlord may refuse to renew the lease; threatening letters from the property owner or a lawyer representing the owner are often used; or tenants may be forced to leave as a result of uninhabitable conditions in poorly maintained housing. In fact, few lower-income tenants have leases, and if there is no lease, in almost all parts of the country a landlord can evict without stating a reason, with only 30 days’ notice—disrupting lives and relationships that might be years and decades in the making. And even if there is a lease, most are for no longer than a year, and landlords are not obligated to renew.

Legal tactics with a threatening impact may give way to harassment that is beyond what the law allows, in which a landlord may cut off services or threaten tenants to get them to leave “voluntarily,” or carry out what is in most jurisdictions an illegal “self-help” eviction—personally removing possessions, changing locks, or sometimes even

hiring “helpers” to finalize the ejection.<sup>5</sup> (One study [San Francisco Tenants Union 1989] reported that 30 percent of those surveyed in San Francisco cited “harassment” as their reason for moving.) A recent phenomenon is the rise and impact of private eviction aid services (and, relatedly, resident-screening services)—companies with names like Pro Eviction Services, American Tenant Service, Inc., Tenant Tracker, and Reliable References, used especially by large property owners.<sup>6</sup> Industry consolidation under way makes these even more powerful tools in landlords’ hands (see Kimura 2003). Public as well as private landlords use these services. According to a Legal Services attorney, “Happy Software” is sold to local public housing authorities (PHAs) for their public housing and Section 8 programs. “They encourage their registered PHAs to share information with each other regarding tenants who should be excluded from eligibility based on their prior tenant and criminal history. They list 1,496 ‘Registered Agencies’; 75,463 ‘Tenants Listed’; and 5,767 ‘Referrals Provided’ since February 1999” (Michael Hanley, e-mail to the Housing Justice Network, April 22, 2003).

Those who live in SRO hotels may face a special form of instability. The so-called “musical rooms” gambit, as practiced in San Francisco, goes like this: Owners/managers do not allow

residents to stay more than twenty-eight days in the same room so as to avoid City and state laws stipulating that after a continuous

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<sup>5</sup> A not atypical account of such harassment and intimidation comes from San Francisco’s Tenderloin District, where owners routinely convert SRO residences to tourist use:

“They don’t do nothing,” says tenant Sarge Flanagan. “They don’t sweep, they don’t vacuum, they don’t put out toilet paper, they don’t even have a sponge. They stopped the pest control after August—the roaches loved it, the mice loved it. There’s probably not a person here who has not had a mouse run across his face while sleeping. When a window breaks, it stays broke, when a bathtub backs up, it stays backed up. They don’t offer no service and they don’t intend to....”

“They brought in these two goons,” says Wayne Parkhouse, a six-year tenant. “They were pretty rough talkers, intimidating. They said I had to be out in one month and they told me they could go up to my room right away and move my things out. I was speechless. I didn’t know what to say. They didn’t give any notices but they said they were going to completely remodel and renovate the place....”

The tenants say...the harassment took such forms as making people change rooms, sending out streams of rent increase and eviction notices, cutting off linen service, refusing to let residential tenants linger—much less sit—in the lobby (From the March 1983 *Tenderloin Times*, in Hartman 2002a, 367).

<sup>6</sup> One such firm, First American Registry, provides software that allows access to court decisions against tardy rent-payers anywhere in the country; this database contains information from the three major credit bureaus plus information involving rent-paying

stay of thirty days under state law, thirty-two days under City law, a tenant is entitled to the same rights as an apartment dweller, including protection under San Francisco's rent control and eviction control ordinances. Hotel residents were evicted after twenty-eight days, then re-registered. Eviction for the purpose of preventing tenancy is a violation of both City and state law....[The] practice is widespread throughout the Tenderloin, Mission, and South of Market neighborhoods....The impact of residential insecurity on the vulnerable citizens who live in these SROs—primarily poor, disabled, elderly, and mentally ill persons—can justly be called criminal. (Hartman 2002a, 369–70)

Another often overlooked population consists of owners of mobile homes living in mobile home parks. A *New York Times* account (Leland 2003) about Florida—which, according to the 2000 census, has 849,000 mobile homes (12 percent of the state's housing units), almost all in the state's 2,600 parks rather than on the homeowner's land—notes that urban sprawl has led many park owners to evict residents (who are disproportionately elderly and of modest income) so the land can be more profitably developed. (For discussion of attempts to create new law protecting elderly tenants from eviction by employing a legal argument challenging such acts as housing discrimination based on age or perceived disabilities, see footnote 25.) The condition and cost of the units generally make them practically immobile, so there is economic loss in addition to the other losses eviction produces. The account notes,

When owners decide to sell or redevelop a mobile home park, tenants have few legal protections. If they have formed a homeowners' association and registered with the state, they have the right to match the highest offer from a prospective buyer. Owners often prefer to sell to a well-financed developer. If tenants cannot buy the property, they may be eligible for a relocation payment of \$6,000, depending on the size of their trailers and whether they can be moved. After an eviction notice, residents have six months to move. [But]...[u]nder present law, homeowners and buyers often have no way of knowing whether a park might come up for sale or redevelopment....Changes in state regulations have made it easier and cheaper for owners to evict tenants and redevelop trailer parks. (Leland 2003, 21) (See also Polgreen 2003; Sheehan and Colton 1994.)

Changes in land use, such as rehabilitation, co-op/condo conversion that prices the housing beyond what the tenant can or wants to afford, and conversion to nonresidential uses, can also trigger demands to

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cases and other complaints (regardless of outcome) from millions of court records (Lelen 1996; Powell 1999). Although some states regulate these services, there is far too little official oversight, and hence there are many abuses, including blacklisting (see Richman 2002).

move, in some cases from private owners, in others from government agencies. The gentrification process sometimes finds private market forces working in tandem with government agencies to produce evictions: In New York City's Chinatown, for example, close to trendy areas like SoHo and TriBeCa, landlords have been calling in fire and building code inspectors to evict tenants living in partitioned spaces—"remodeling" overlooked (and even created) by landlords for years until the bondtraders with deep pockets came looking for hip quarters and in the process producing rents four times the level of rent-controlled and rent-stabilized units (Zhao 2002). (For material on the full range of such activities in one city, including urban renewal projects, housing code enforcement, removal of the homeless, reuse of SRO hotels, attempts to circumvent the city's rent control and condo conversion laws, and so on, see Hartman 2002a.)

Another largely unrecognized trigger for home loss, in which the landlord plays no role, is utility shutoffs due to a tenant's failure to pay electricity, gas, or oil bills; the unit thus becomes uninhabitable in cold weather. This is a serious problem for most low-income renters at a time of rising rates for electricity, natural gas, and oil. A Community Service Society of New York study of the more than 600,000 New Yorkers who earn between \$5.15 an hour and \$10 an hour found that 27 percent had fallen behind in their rent payments during the past year and 18 percent had their utilities shut off (Newfield 2003). "A recent report by the National Energy Assistance Directors' Association (NEADA) found that at least 4.3 million low-income households—in just 19 surveyed states plus the District of Columbia—are at risk of having their power cut off because they can't afford to pay" (National Fuel Funds Network et al. 2001, iv). "[I]n Snohomish County [Washington], which has the highest energy rates in the state, more than 14,000 customers have had their electricity shut off for lack of payment this year—a 44 percent increase over 2001" (Egan 2002, 24). John Howat, senior energy policy analyst at the National Consumer Law Center in Washington, said that only a "handful of states" compiled data on utility terminations for nonpayment and how long a customer's gas service had been shut off, making it difficult to measure the extent of the problem (Fountain 2002, A24).

So any honest treatment of this issue must take into account all the ways tenants leave their homes involuntarily, an approach that of course enormously complicates the data-gathering problem. The narrowest definition of eviction would cover only those that take place as the culmination of a legal proceeding with a marshal or sheriff coming to the tenant's door. A less stringent definition—any involuntary move that is a consequence of a landlord-generated change or threat of change in the conditions of occupancy of a housing unit—will produce a

far larger set of numbers. Expanding our view of what constitutes an involuntary move to take into account other factors, such as government actions and moves caused by the precariousness of many renters' legal hold on their tenancy, will produce an even larger set of numbers.

## What is known about involuntary moves

Recognizing that we lack sufficient data, we can nonetheless put forward some generalizations with confidence:

First, renters, who have far less security of tenure than homeowners, are disproportionately represented among involuntary movers.<sup>7</sup> And since, compared with homeowners, renters tend to be disproportionately minority and to have lower incomes, the problem of involuntary moves disproportionately affects the more vulnerable households in our society.

Numerous studies have shown that those who are evicted are typically poor, women, and minorities.

1. In New York City, a 1993 study found that close to half of the tenants facing eviction in Housing Court had incomes below \$10,000; 86 percent were African American or Latino (Community Training and Resource Center et al. 1993).
2. In Chicago, 72 percent of those appearing in court were African American, 62 percent were women (Chadha 1996).
3. A study of rent court in Baltimore found that the vast majority of tenants facing eviction were "poor black women" and in "marginal economic circumstances" (Bezdek 1992, 535 and 558).
4. In Philadelphia, a researcher found that 83 percent of the tenants facing eviction were nonwhite and that 70 percent were nonwhite women (Eldridge 2001).
5. A Los Angeles study concluded:

The analysis [of unlawful detainer cases filed in the Municipal Court of the City of Los Angeles in the first six months of 1991]...

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<sup>7</sup> Mortgage delinquency and subsequent foreclosure, much of it attributable to the rise in imprudent home equity borrowing, appears to be increasing the prominence of homeowners among the displaced and even adding to the homeless population. (See Atlas 2003.)

points to one overwhelming finding: the higher [the] percentage of African American persons and children (persons under 18 years of age) belonging to female headed households, the higher the eviction rate....Self-help, extra-legal evictions where the landlord forces the tenant out, may be more common in immigrant communities where new arrivals are less aware of their rights and more susceptible to intimidation. Therefore, the results may understate the eviction rate for immigrant groups. (Heskin and Davidson 1993, i)

6. In Oakland, “[F]our out of five ‘30-day No Cause’ evictions (78%) are minority households” (East Bay Housing Organizations 2002).
7. Another New York City study (Rubel 2001) found that a disproportionate number of evictions take place in the Bronx, the city’s poorest borough, which has the highest proportion of low-income tenants.

The various market forces that produce evictions are more likely to impact these subpopulations as well.

Second, the economic, social, and psychological impact of forced displacement can be severe. Studies such as those examining Boston’s West End document how being uprooted from a tight-knit community can produce severe mental health impacts (Fried 1963). A litany of studies (Hartman 1964, 1971, 1979; San Francisco Tenants Union 1989) document the poor relocation housing, higher housing costs, and high levels of dissatisfaction that result from involuntary loss of home and neighborhood. And since most of these studies are of displacement by public bodies that have some legal responsibilities both to provide adequate relocation housing and to maintain records of their work, it is virtually certain that evictions deriving from private sector units—which comprise over 90 percent of the nation’s housing stock—have far worse results. And to the extent that those evicted are the most vulnerable elements of the population, such persons will also have the most difficulty locating suitable housing.

Third, forced displacement frequently results in outright homelessness. Martha Burt (2001), drawing on a representative national sample of homeless people who use homeless assistance programs, listed as among the top reasons (among 31 possible reasons offered, plus an “other” option) people cited for becoming homeless: “Couldn’t pay rent” (15 percent for all clients, considerably higher for clients with children); “lost job or job ended” (14 percent); “landlord made client leave” (6 percent); and “displaced because building was condemned, destroyed, or urban renewal, fire” (3 percent) (750–51). Together, these reasons mean that nearly two out of five homeless persons who use homeless assistance



programs came to be homeless via involuntary displacement. Data (April 1, 2000, to March 31, 2001) from providers of emergency shelter in Columbus, OH, show that 35.4 percent of families reported eviction as the primary or secondary reason for their plight; among single adults, 11.4 percent said eviction was a contributing factor to their homelessness, while 31.5 percent gave loss of income (which obviously leads to inability to afford the rent and thus a likely departure in advance of formal eviction proceedings) as the main reason they became homeless (Matt White, Associate Director, Community Shelter Board, Columbus, OH, e-mail, November 12, 2001). A New York City report concluded, "About 17 percent of families utilizing the city's resources for the homeless arrive straight from their eviction, according to studies of the city's homeless population. Untold others end up in shelters when crowded post-eviction accommodations become unlivable" (Webber 2001, 4). In Santa Cruz, CA, the United Way found that 25 percent of homeless persons became that way as a result of eviction (Merokee 2001, cited in Centre on Human Rights and Evictions 2002).

Fourth, displacement can trigger negative changes in related elements of the lives of those displaced. Depending on where an evicted household finds replacement housing, it may not be possible for members to retain employment,<sup>8</sup> and such moves often force children to switch schools, frequently in midyear, with the consequent deleterious impact on their education (Hartman 2002b; Hartman and Franke 2003; San Francisco Tenants Union 1989). Where displacement results from being evicted for failure to pay rent (in New York City, for example, approximately 90 percent of evictions are for nonpayment of rent, according to Webber 2001), it can also rob people of the ability to obtain credit, which in turn limits their ability to rehouse themselves satisfactorily. As noted earlier, this problem is exacerbated by the increasing use and availability of electronic financial records.

Fifth, various costs are imposed on society as a result of forced displacement, including court and marshal/sheriff services, help for the newly homeless (not only shelters and social services, but, increasingly, hospitals),<sup>9</sup> storage of tenants' property, and, on occasion, emergency foster care. A study advocating the funding of legal services programs to represent tenants facing eviction estimated the funds spent on the multifaceted services for homeless people, ranging from provision of shelter to day care and employment programs, in New York City: The total

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<sup>8</sup> A San Francisco study showed that nearly one out of five displaced households left the city (San Francisco Tenants Union 1989).

<sup>9</sup> Stoll (2002) reports that on an average night, more than a quarter of all available beds at San Francisco General Hospital are filled by homeless persons.

came to more than \$500 million in 1992 (Community Training and Resource Center et al. 1993).

Sixth, on occasion, the eviction process can lead to violence—on both sides. In a widely publicized incident, a 60-year-old woman was shot to death in her New York City public housing apartment by a police officer who was attempting to restrain her while Housing Authority officials evicted her for nonpayment of rent (Bratt, Hartman, and Meyerson 1986). In August 2001, an enraged tenant killed and set on fire a marshal attempting to carry out an eviction in Brooklyn, NY (Chivers and Flynn 2001). Eviction triggered a suicide in New York City (Herman 2003) And in a recent Washington, DC, incident a man about to be evicted set fire to his apartment (Cauvin 2003). Even when no physical violence is involved, the trauma of forced eviction—often accompanied by forced entry and immediate placement of the apartment furnishings and all of the occupants' possessions on the sidewalk, where they are quickly stolen or otherwise trashed—is difficult to imagine, especially by those who have never had the experience. One description, in this case from the press secretary to former Senator Bob Dole, is as follows: “By the time I was 17, my family and I had been evicted 34 times....[W]orst of all, imagine hearing the knock on the door when the officers come to throw you out of your home and pile all your worldly possessions on the sidewalk for passersby to see. Now imagine the shame and pain that come with that experience” (MacKinnon 2002).<sup>10</sup>

It is worth quoting this account, by a journalist, to grasp the full human impact of the problem we are describing, particularly in the worst-case scenario where officials executing an eviction come face-to-face with those being evicted:

Two U.S. marshals approached a two-story brick garden apartment building erected 50 years ago for Washington [DC]-based military personnel. Nearby a dozen movers sweated in the summer heat and milled around....

One [of the marshals] rapped on a door and shouted his presence. His partner fingered the gun at his hip....A young woman talking

<sup>10</sup> While such sidewalk scenes are all too common, in at least one jurisdiction (the Village of Hempstead, Long Island), town officials obtained a ruling from the New York State Supreme Court ending the Nassau County Sheriff's Department policy of placing tenants' belongings on the curbside (“Hempstead Ends Curbside Evictions” 2001; *Tenants & Neighbors* 2001). New York City's policy is to place all belongings in a warehouse. Massachusetts allows landlords to place evicted tenants' property in storage and sell it after six months to recover fees. But there is no requirement that tenants be notified of plans to sell their property; storage fees are not regulated (\$250 is a typical minimum fee, even if the property is stored for only one night; and storage companies are not required to inventory the property, making it difficult for tenants to sue over missing or damaged items (Gardner 2002).

on a cell phone opened the door, and a small boy peered out through her legs. The marshal briefly explained why he was there, entered the apartment, came out moments later and signaled the moving crew it was safe to proceed. The woman [said] she was a friend of the mother of the three pajama-clad children who trailed her outdoors....[The] movers carried out clothing stuffed into green plastic trash bags, then kitchen chairs....

The younger of two boys stared without comprehension at the slowly accumulating mound near the sidewalk. Finally, I heard him ask, "What they doin'?" as a footlocker with a Washington Redskins logo came out....With a mixture of disbelief and dispassion, as if observing an event no odder than a sunrise, he said, "My clothes are in there." His sister stood next to him and pointed at her toys tied up in a bedsheet, carried away in a reverse Christmas morning where Santa takes the gifts back up the chimney. She began to cry and hugged the woman's legs. The oldest boy, perhaps five or six, rubbed sleep from his eyes. Once his eyes were open, his lips pinched and his jaw tightened and his face filled with rage and helplessness, as he experienced something hurtful beyond his control. (Herlihy 1998)

Given the trauma that many of those evicted undergo and the associated points listed earlier, it is clearly in the interest of society to reduce the volume of forced displacement and to ameliorate its negative impacts where it cannot be avoided. Creating good data-collection systems is an essential step in grasping the extent and nature of this underrecognized social problem.

## Some data

As noted, the data on evictions are limited and uneven. But some estimate of the magnitude is available from the few studies we were able to locate:

1. A Massachusetts study estimated that in the 1990s, 50,000 renter households (5 percent of all renters in the state) were evicted annually because of inability to pay rent. By contrast, the number of mortgage foreclosures fluctuated between 10,000 and 20,000 (Center for Social Policy 2000). The data were derived solely from court records and thus excluded the various other methods by which tenants are forced to leave.
2. In 2001, the Bureau of City Marshals in New York City carried out 23,647 residential evictions, legal possessions, and ejections (the legal distinctions are not significant for our purposes); the number

has varied between 20,283 and 26,665 from 1983 through 2001.<sup>11</sup> This means that 1.2 percent of the city's renter households were evicted by the marshals in 2001, but, again, adding in involuntary moves as more broadly defined would likely increase that figure severalfold.

3. In San Jose (CA), one account is that “somewhere around 2,000 [families] a month [get 30-day notices—a more realistic representation of both court and noncourt notification]—and given the lack of protections tenants have, most will ultimately have to leave their homes” (Thompson 2001). San Jose had 276,598 households in 2000, meaning that close to 10 percent of that city's residents are likely to be forced to move each year.
4. In Oakland (CA), “in the last 24 months over 1,910 ‘30-day No Cause’ evictions have been *reported*...to three nonprofit agencies [of the six that provide services to tenants facing eviction]. According to experts, more than 3 times that amount goes *unreported*” (East Bay Housing Organizations 2002, emphasis in the original).
5. In Boston, evictions rose from 4,937 in 1992 to 7,120 in 1997, following the elimination of rent control (*Tenants & Neighbors* 2003).

It is important to note that our attempt to elicit available data, via listservs and collegial contacts, revealed serious obstacles. Some advocates informed us that statistics are simply not maintained in their jurisdictions. Elsewhere, the data did not provide significant information. In Florida, for example, the state court system tracks filings and dispositions of cases, but has no uniform standard for what counts as “disposition.” One advocate informed us that she maintained personal records of evictions, since no official records were kept, but threw the records away at the end of each year, because there seemed to be no use for them. As another example, the studies of the homeless population mentioned earlier, while useful in providing a causal link between eviction and homelessness, did not give total numbers of those evicted, since some of them find new homes for themselves or double-up with others.

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<sup>11</sup> The Office of Court of Administration, the New York state agency responsible for administering New York City's Housing Court, keeps track of the filings of cases of various types, including proceedings for eviction based on nonpayment of rent and what are known as holdover proceedings (proceedings based on violations of the lease or the law or based on the tenant's having continued to live in the apartment after the expiration of the lease with no legal right to remain). However, the court does not have a record of when an eviction is actually carried out. Those are separate statistics kept by the New York City Department of Investigation responsible for the supervision of city marshals.

Clearly, if we are to generate and obtain good data, systems must be put into place.

### **Portrait of one city: Baltimore**

A recent report by the Abell Foundation (2003), headed “A System in Collapse: Baltimore City suffers from an overwhelmingly high caseload of tenant evictions. Hurt in the process are tenants, landlords, the City of Baltimore and its neighborhoods,” provides a useful look at the situation in that city.

Compared with other cities studied, Baltimore has a very high incidence of evictions. In a city of 128,127 renter households, 155,870 court complaints for eviction were filed in 2002 (the total has remained in six digits for years). According to 2000 data, compared with Cleveland; Washington, DC; Detroit; New York City; and Philadelphia, Baltimore had an astounding 1.2 complaints per renter household, whereas the rate for the five comparison cities ranged from 1 complaint per 2.8 renter households to 1 complaint per 9 renter households.

What accounts in part for this vast disparity is Maryland’s law (in contrast to most jurisdictions) requiring that the first notice of overdue payment come from the court, rather than the landlord. Most cities and states allow a landlord to go to court only after making a demand for unpaid rent from the tenant and the tenant failing to comply after a legally determined period. “Maryland uses its court system as the collection agency of first resort,” observes the report (Abell Foundation 2003, 4).

Actual evictions per 100 renters in 2000 totaled 5.81 in Baltimore (7,442 evictions), higher than any of the comparison cities; New York (1.26 per 100 renters) and Cleveland (1.46 per 100 renters) had far lower eviction rates. This system clearly overburdens the court, which averages 3,000 landlord filings a week. To control the docket, the number of cases is limited to 1,050 a day; “On a day with a full docket, assuming an eight-hour day for the presiding judge [the District Court assigns only one judge a day to Rent Court], the average case receives less than 30 seconds of judicial review” (Abell Foundation 2003, 2).

From the date a landlord files a complaint with the court to the date the tenant is evicted can be as little as 30 days; by comparison, in Chicago the entire eviction process can last up to several months. The system not only taxes court resources enormously and thus produces little semblance of justice (“Rent court in Baltimore, remarks one

attorney, is essentially a collection agency that operates for the convenience of landlords” [Abell Foundation 2003, 5]), but also results in a public record that can damage the tenant’s credit record and thus the ability to be approved for a subsequent rental unit or mortgage loan.

Beyond the human toll on the evicted household, the report goes on to say,

When the tenant belongings are left behind, the eviction becomes a burden on the rest of the neighborhood as well....While the tenant’s possessions may initially be neatly stacked, they are often picked through by vandals and scattered along the street and sidewalk. Baltimore’s littering laws, designed to prevent dumping and littering in the public right-of-way, are not applied to tenant evictions.... Belongings in disarray on the street signal neighborhood distress to existing and potential residents, visitors and investors....In Baltimore City, the City government picks up the tab for items left on the street. (Abell Foundation 2003, 6)

The report stresses the need for a database to file, track, and query case status, something lacking in the District Court system. “Each of the 155,870 complaints is processed and filed manually....In the absence of an automated system, the potential for mistakes is great, the retrieval of basic case information difficult, and the ability to research patterns and trends extremely limited” (Abell Foundation 2003, 6). The report suggests that Baltimore “invest in a computer system to create a database of all eviction cases filed” (Abell Foundation 2003, 7).

## Legal background

The Universal Declaration of Human Rights (Article 25 (1), 1948) establishes a fundamental right to housing, among other basic needs:

Everyone has the right to a standard of living adequate to the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

However, in marked contrast to the U.N. resolution and to the constitutions of many other countries, the United States does not recognize a basic right to housing and even at the U.N.’s 1996 Habitat II Conference, “[made] clear for the record that the U.S. does not recognize the international human right to housing” (Hartman 2003, 146). The U.S.

Supreme Court, interpreting the Constitution in *Lindsey v. Normet* (405 U.S. 56 [1972]), upheld the summary process of an Oregon court in providing a speedy trial for a tenant facing eviction and limiting the defenses the tenant could raise. The Court held that the “Constitution has not federalized the substantive law of landlord-tenant relations” (Gerchick 1994, 75).

The absence of a right to housing, in addition to allowing for a shortened legal process, also results in tenants who face eviction having no right to representation by a lawyer (Scherer 1988) and the absence of an obligation on the part of the government to provide alternative housing to those facing homelessness as a result of eviction.<sup>12</sup>

Despite this lack of a fundamental right to housing, state constitutions and statutes, as well as case law, have expanded tenants’ rights in a number of ways. Peaceful “self-help,” the right of a landlord, without a judicial process, to remove a tenant with a relative minimum of physical force, has been replaced in most of the country by summary eviction proceedings.<sup>13</sup> As the term “summary” implies, landlord-tenant proceedings generally move much more quickly than other legal proceedings. There is an attempt to balance the landlord’s interest in rapid recovery of the property with some sensitivity on the part of the courts to due process for tenants (Gerchick 1994). But as several studies cited later indicate, the process is still not a fair one for tenants.

The gradual evolution of tenant rights varies from jurisdiction to jurisdiction. These rights include rent and tenure protections (including limiting evictions only to specified causes); protections against discrimination based on race, gender, ethnicity, sexual orientation, and the presence of children in the household; co-op and condominium conversion

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<sup>12</sup> “In the United States of America, many evictions occur in the private sector as a result of landlords bringing Unlawful Detainer actions [court actions to recover property from a tenant whose legal right to possession is being challenged in the proceeding] against the tenant. Unlawful Detainer actions do provide tenants with some degree of due process and therefore are not considered *per se* forced evictions as defined in international law. Notwithstanding the protections against arbitrary evictions that Unlawful Detainer actions provide, however, any eviction, even those otherwise deemed legitimate, contravene international law if it renders the evictee homeless” (Centre on Human Rights and Evictions 2002, 86).

<sup>13</sup> Self-help in some form continues to exist in six states: Alaska, Arkansas, Indiana, New York (though not in New York City), Vermont, and Wyoming (Gerchick 1994). Under the city’s Illegal Eviction Law, any lawful occupant of a New York City residence can be removed from his or her home only as the result of a process that takes place in a court of law. Landlords who violate this law are guilty of a crime. People who are unlawfully evicted can go to the police or to the city’s Housing Court to get back into their homes (Scherer 2002).

protections (Gerchick 1994); and protections against eviction in retaliation for making complaints to government agencies that regulate housing (Scherer 2002). Many states have passed warranty of habitability statutes (Gerchick 1994; Scherer 2002; Jennifer O'Loughlin, personal communication, July 27, 2001), which in effect condition the payment of rent on the provision of services to tenants. Tenants in public and federally subsidized housing have special rights (see Scherer 2002), such as limitations on paying more than a fixed percentage of their income for rent,<sup>14</sup> eviction limited to specified causes<sup>15</sup> and only with due process, and succession rights for household members remaining after the death or departure of the tenant named on the lease, that can serve as a model for ensuring stable and affordable housing for all tenants.

But all too many tenants have few legal protections, even in jurisdictions in which some tenants' housing is protected against unlimited rent increases and eviction without just cause. For example, in New York City, which has some of the strongest tenant protection laws in the nation, tenants living in units that are neither protected by the state's rent regulation laws nor owned or subsidized by the government may be evicted at the end of their lease, without cause (Scherer 2002). Tenants in these buildings are especially vulnerable to displacement from market pressures, since landlords may choose to rent their apartments to higher-paying tenants when that becomes possible (McCarthy 2001). Extending the tenure protections associated with rent regulation, such as the right to renew the existing lease and limiting eviction except for cause (which are discussed later), would go a long way toward reducing the number of evictions of these tenants.

## The court system

Key to understanding evictions is grasping the legal process involved. Tenants are usually evicted through general civil courts, special housing courts, or small claims courts (Eldridge 2001; Gerchick 1994). The vast majority of tenants are unrepresented by counsel, face a landlord's attorney, and consequently are unsuccessful in court. Landlord-tenant law is highly complex and difficult to navigate.

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<sup>14</sup> President Bush's Fiscal Year 2004 budget plan abandons this historic feature of public housing rent-setting by mandating a minimum rent. "Thousands of families now paying an average of 30 percent of their income in rent would face the danger of evictions, and local housing authorities who try at all costs to avoid an increase in homelessness could do nothing to help" ("Shelter, as Distinct from Tax Shelter" 2003).

<sup>15</sup> These protections also extend to housing built with the use of federal low-income housing tax credits, perhaps the major source of new low-income housing (National Housing Law Project 2003).



Throughout the development of the common law, the relationship between landlord and tenant has become increasingly more complex, with rights and responsibilities governed by a wide range of legal constraints....In the last several decades, a vast array of remedial legislation has been enacted at federal, state and local levels to enable tenants to obtain decent housing and to avoid arbitrary treatment by the administrative and judicial system....Mastery of, or at least familiarity with, the relevant legislation, is a prerequisite to effective defense of an eviction proceeding. (Scherer 1988, 569–70)

The complexity of law and procedure exacerbates the inequity created by the frequency with which tenants appear in court without the assistance of counsel. This is in marked contrast to European countries, in which a right to counsel in eviction cases is generally required: “A basic assumption of the legal systems of England, France, Switzerland and other European countries is that, for the poor to have meaningful access to the courts, they must have a right to representation by counsel” (Scherer 1988, 560).

1. Numerous studies demonstrate that most tenants do not have lawyers, while most landlords do, and that tenants who have representation fare much better in court than those who do not (Scherer 1988). For New York City, 11.9 percent of tenants, as opposed to 97.6 percent of landlords, were represented in eviction proceedings (Community Training and Resource Center et al. 1993). A more recent account of New York City’s Housing Court (Chen 2003) observed that “while about 90 percent of the landlords have lawyers, perhaps only 15 percent of tenants do” (A23).
2. In Los Angeles, 4 percent of tenants, as opposed to the “vast majority of landlords,” were represented, and virtually no tenants without lawyers won habitability-based defense cases (Blue Ribbon Citizens’ Committee on Slum Housing 1997, 3).
3. In Chicago, 5 percent of tenants were represented, as opposed to 69 percent of landlords, and represented tenants were six times more likely than unrepresented ones to win in court (Chadha 1996).
4. In Berkeley (CA), 20.4 percent of tenants, as opposed to 83.4 percent of landlords, were represented, with represented tenants 10 times more likely than unrepresented ones to win (Hall 1991).
5. In Hartford (CT), the respective numbers were 16 percent and 85 percent, with represented tenants obtaining stipulations of

settlement more favorable to their interests (Eldridge 2001; Podolsky and O'Brien 1995).

6. In another New York City study, Seron et al. (2001) found that “only 22% of represented tenants had final judgments against them, compared with 51% of tenants without legal representation” (419).

The disparity of representation and the demographic make-up of litigants in housing courts have serious consequences. Studies of housing courts around the country describe a one-sided, factory-like process in favor of landlords. “One judge who spent time observing housing courts around the country concluded that if ‘fairness, effectiveness and sensitivity are equated with justice, then injustice is the norm’” (Scherer 1988, 573). Tenants often fail to appear in court and therefore default.<sup>16</sup> They are unaware of defenses they might have, so meritorious defenses are not asserted (Community Training and Resource Center et al. 1993; Hall 1991). In Washington, DC, “[M]ost tenant attorneys view the Landlord and Tenant Branch of the DC Superior Court as a standing wave [sic] of due process violations” (Cunningham 2000, 37).

A staff attorney for the Legal Aid Society of the District of Columbia had this to report about her experience with Landlord and Tenant Court, where more than 55,000 eviction cases were filed in 2001:

Most cases involve nonpayment of rent, but that doesn't mean the court should operate as a collection agency for landlords. A tenant's legal duty to pay rent depends on the landlord's duty to maintain the dwelling within a basic standard of habitability. Withholding rent often is the only way for tenants to force landlords to remedy such conditions as lack of heat and hot water or the infestation of mice and roaches. Yet in most cases, landlords respond not by making repairs, but by suing for eviction.

A tenant's trip to this court is a degrading experience. It begins with a roll call at 9 a.m., even though the judge does not take the bench until 10:30 or 11 a.m....

Once a tenant reaches the front of a line, he or she is handed a form that grants judgment to the landlord, with the promise that the landlord will not evict as long as the tenant meets a repayment schedule. By signing the judgment, a tenant waives the right to

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<sup>16</sup> According to Gerchick (1994), nearly half the tenants in California courts default. Other numbers are similar: 31 percent in Massachusetts courts (Massachusetts Law Reform Institute 1999), 35 percent in Hartford, CT (Podolsky and O'Brien 1995), and 42 percent in Chicago (Chadha 1996).

defend his or her case in court, including the right to present evidence of dismal housing conditions or to challenge false claims by the landlord. In this way, the court disposes of most of its eviction cases without ever passing them before a judge....

[F]ewer than 1 percent of tenants in landlord-tenant court are represented by counsel, while 84 percent of landlords have lawyers. The court encourages the lopsided consent judgment process by instructing tenants to speak to their landlords' attorney and, often, by sending parties who do make it before the judge outside to work out their differences.

Settlement, in theory, almost always is preferable to litigation, but what happens in landlord-tenant court is not true settlement. With little information and even less bargaining power, many tenants sign away their rights, and the court does little or nothing to protect them. (Becker 2002)

Widespread criticism of the injustice found in these courts is capsulized in the names of some of the studies of housing courts around the United States: *Justice Evicted: An Inquiry into Housing Court Problems* (American Civil Liberties Union 1987); *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process* (Bezdek 1992); *Time to Move: The Denial of Tenants' Rights in Chicago's Eviction Court* (Chadha 1996); *5-Minute Justice* (City-Wide Task Force on Housing Court, Inc. 1986)<sup>17</sup>; *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help* (Gerchick 1994); *The Philadelphia Housing Court, 1988: Efficiency over Equity: Justice Denied* (Housing Association of Delaware Valley 1988); and *Judgment Landlord: A Study of Eviction Court in Chicago* (Mansfield n.d.).

Studies of the various courts have shown that the failure to apply the law is rampant. Los Angeles courts misapply the warranty of habitability law (Blue Ribbon Citizens' Committee on Slum Housing 1997). In Chicago, tenant defenses are not recognized; cases are processed in three minutes. The Chicago study also found that contrary to the law, landlords are not required to bear the burden of proof; defaulting landlords receive favorable treatment; special federal protections for tenants living in public housing or receiving Section 8 subsidies are not recognized; settlements are coerced from tenants; and materials intended to help unrepresented litigants are provided to landlords only (Chadha 1996). In the Maryland rent court, Bezdek (1992) describes a one-sided process characterized by a culture of powerlessness in a court

<sup>17</sup> A 2003 follow-up monitoring project to the Chicago study reports that the average time for hearing each case actually declined from 3 minutes in 1995 to 1 minute and 44 seconds in 2002 (Lawyers' Committee for Better Housing 2002).

in which poor people have no voice and rarely prevail; defenses are not recognized; and the culture of the court results in judgments awarded to landlords. In Philadelphia's housing court, according to another academic observer, tenant defenses based on poor conditions are not recognized by judges, court staff express antitenant prejudices, and judges routinely ignore the law (Eldridge 2001). In New York City, hallway negotiations between landlords' attorneys and unrepresented tenants result in settlements unfavorable to tenants; in order to avoid eviction at least temporarily, tenants are intimidated into waiving defenses (Eldridge 2001, citing Engler 1997).

Job loss among the previously nonpoor, soaring property taxes that translate into rent increases, and other recent trends have somewhat altered the dramatis personae appearing in New York City's Housing Court. A *New York Times* account (Chen 2003) describes a growing class of defendants: "a former dental-office manager who was making \$52,000 a year plus bonuses before the office closed a few months ago," "a former Bloomingdale's executive who once made \$175,000 a year... [but] lost her job two years ago, bled through her retirement savings and ended up in Manhattan's housing court...because she was three months behind on her \$1,580-a-month rent" (A23).

The upscaling of clientele has not produced a corresponding upgrading in the physical environment: The account refers to "courtrooms so wretched that even judges have described them as black holes of Calcutta" (Chen 2003, A23). Nor is the judicial process any less hectic due to the added presence of middle-class tenants: "The hearings, before some of the most overworked judges in the system, are usually brief, so litigants often have but a few minutes to recount their emotional slide into debt" (Chen 2003, A23). An additional factor in creating "boom times in housing court" is that "numerous small landlords, unable to collect from chronically late or troublesome tenants, are reeling, too, because of rising fuel costs, insurance rates, property taxes and other factors," according to officials of the Rent Stabilization Association, New York City's largest landlord organization (Chen 2003, A23). As the economy stays weak and housing shortages continue, the increased activity in housing courts is doubtless spreading beyond New York.

## **Weakening of tenant protections**

Federal courts have found that, because of government involvement, good cause is required for eviction in housing where the government is involved (Jennifer O'Loughlin, personal communication, July 27, 2001). However, in recent years, this general rule has been limited. PHAs and

landlords participating in the Section 8 rental subsidy program have added freedom to evict as a result of the Supreme Court's March 2002 decision upholding the "one strike (and you're out)" policy allowing tenants to be evicted for drug offenses committed by those presumed to be under their control, regardless of whether they were aware of the offense.<sup>18</sup> Up to 1.2 million households living in public housing around the country and millions more tenants receiving Section 8 rental subsidies are now subject to this no-fault policy and the insecurity that it engenders. Of no little concern is the potential for abuse: that housing authorities may target "problem tenants," not of the criminal variety, but activist tenant leaders who embarrass or cause problems for the agency.<sup>19</sup> What perhaps gives even more cause for concern is that the Supreme Court views such "no-fault" evictions as a common incident of the landlord-tenant relationship (*HUD v. Rucker* 2002 at 1235). U.S. Department of Housing and Urban Development (HUD) Secretary Mel Martinez, in an unpublished April 16, 2002, letter to PHA directors, urged administrators "to be guided by compassion and common sense in responding to cases involving the use of illegal drugs," and also said that "[e]viction should be the last option explored, after all others have been exhausted." However, that letter does nothing to weaken the legal authority of the *Rucker* decision, and it remains a powerful and intimidating weapon in the hands of housing authorities and landlords participating in federally subsidized housing programs, one that makes tenants vulnerable to eviction for activities over which they have no knowledge or control.<sup>20</sup>

<sup>18</sup> *Department of Housing and Urban Development v. Rucker* (535 U.S. 125 [2002]). See Lane 2002 and Greenhouse 2002. For a critique of the *Rucker* decision and of the "one-strike" policy, see Nieves 2002 and Johnson 2001. The fact situations for the four tenants involved give cause for serious concern as to the targeting of especially vulnerable households that are held responsible for the acts of family or household members or guests they do not actually control—two grandmothers whose live-in teenage grandsons were caught smoking marijuana in the project parking lot; the mentally disabled daughter of a great-grandmother who was found with cocaine three blocks from the apartment; and a disabled 75-year-old whose caretaker had been found with a crack pipe.

<sup>19</sup> See "Public Housing Leader Evicted" 2001. The long-time president of the Barry Farms Resident Council in Washington, DC, was asked to leave the project after a police raid found drugs in her home, although she was neither arrested nor charged; the woman's granddaughter was charged with drug possession (charges that were dropped the next day).

<sup>20</sup> Some states have "innocent tenant" statutes or case law supporting an "innocent tenant" defense, which may protect tenants in those states from "no-fault" evictions. (The issue of whether the no-fault language in public housing leases preempts state law to the contrary has not yet been decided by the courts.) According to e-mail responses to an inquiry initiated on the Housing Justice Network listserv, such states include at least Arizona, Connecticut, Massachusetts, and Tennessee.

Moreover, displacement may be increasing as a result of other changes in the Section 8 existing housing program. As of 1996, Section 8 landlords, after the first year of the lease, are no longer required to have “good cause” to evict a tenant receiving a rent subsidy, nor are they required to continue their participation in the program after the expiration of the initial lease (Scherer 2002).

Tenants in private housing have also seen setbacks in recent years. In New York state, landlord groups won major concessions in the state legislature as part of compromises involved in extending the state’s rent regulation laws in 1993 and 1997. In addition to provisions allowing step rent increases upon vacancy and weakening the enforcement system against rent overcharges, the changed law prevents tenants from obtaining emergency stays of eviction in order to obtain back rent from social services agencies. All of these changes make tenants more vulnerable to evictions (*Tenant/Inquilino* 2002). Finally, in a recent decision, New York state’s highest court made it easier for cooperatives to evict shareholder-tenants by severely limiting the authority of a reviewing court to question the business judgment of the cooperative’s board of directors (Caher 2003).<sup>21</sup>

The New York court decision on evictions from cooperatives is one example of a larger and more disturbing phenomenon: the privatization of what have been governmental functions in the eviction context and the resultant lessening of due process for tenants and homeowners. Rich (2003a) describes the transfer of authority for regulating and enforcing standards for property maintenance from local governments to homeowner associations throughout the country. People then lose their homes without a full opportunity to be heard in a public forum.

## **Existing remedies and recommendations for action**

Efforts to limit the incidence of evictions include community organizing aimed at immediately forestalling imminent mass evictions; eviction prevention programs, which include efforts by not-for-profit organizations to provide social and legal services to vulnerable

<sup>21</sup> Another increasingly significant source of displacement of residents who traditionally have been in effect homeowners are homeowner associations, with power (used frequently and often capriciously or vindictively) to evict homeowners via the foreclosure process, often without due process. Some 20 million homes—nearly one-fifth of the nation’s total stock of owned homes—are governed by such associations, and the proportion is growing. In Houston alone, more than 15,500 foreclosure filings—for behavior infractions (many totally trivial) or failure to pay dues—were recorded between 1985 and 2001 (not all led to foreclosure). In 2001, in four counties around San Francisco, homeowner associations initiated 15 percent of foreclosures (Rich 2003a).

tenants; government rental subsidy and emergency assistance programs that enable low-income renters to afford to stay in their homes both on a short-term and a long-term basis; government regulation of rents, which helps ensure long-term affordability; and just-cause eviction laws, which limit evictions to causes specified in the law. We support the expansion of each of these remedies and propose adding a mechanism to collect data on evictions, so that the extent and impact of the problem can be more fully recognized and understood.

### *Community organizing efforts*

On occasion, evictions are fought through community organizing efforts, although this usually occurs when a large number of tenants are being evicted. Yates (forthcoming) describes the widespread collective antieviction activities during the 1930s and subsequent decades. (See also Axel-Lute 2002; Lawson 1980; and Hartman, Keating, and LeGates 1982.) Among the more muscular and fabled, albeit eventually unsuccessful, attempts to prevent a mass eviction through mass protest was the effort around San Francisco's International Hotel in the late 1970s. After years of controversy and demonstrations, the eviction was finally carried out in a midnight drama involving 400 police and sheriff's deputies and some 2,000 defenders. San Francisco Sheriff Richard Hongisto at first refused to carry out the court-ordered eviction and wound up with a five-day jail sentence (Hartman 2002a).<sup>22</sup> A recent event was the partially successful attempt to head off a mass eviction of 420 middle-class residents in Citrus Heights, a Sacramento (CA) suburb; community organizing efforts by ACORN (the Association of Community Organizations for Reform Now) resulted in an extension of the action and possible rescission ("Affordable Housing" 2002; Sterngold 2002).

"Eviction-free zones" (essentially antidisplacement projects) have been established in several localities: Cambridge, MA; the Jamaica Plain section of Boston; the Park Slope area of Brooklyn, NY; Oakland, CA; Los Angeles; and a few other areas. Tools and approaches vary, but the overall goal is to collect data and reduce evictions (battling individual instances, relying partially on legal advocacy, which mostly buys time to exert community moral and political pressure on landlords to forestall

<sup>22</sup> Another sheriff who refused to evict and later received a jail sentence (although for entirely different reasons) is ex-Congressman Jim Traficant, whose political career began in Youngstown, OH, where he won the sheriff's race and later "became a local hero when he refused to perform evictions on unemployed steelworkers who could no longer make their mortgage payments" (Carlson 2002).

“no-defense” evictions). There is in fact no realized “eviction-free zone”: Rather, it is a statement of intent and a goal.<sup>23</sup>

Such efforts are useful quivers in the antidisplacement armamentarium, and even when evictions are ultimately still carried out, they serve to dramatically publicize housing problems and injustices, stressing the property rights vs. housing rights theme.

### *Eviction prevention programs*

A number of local eviction prevention projects exist in various parts of the country, primarily for legal advice and representation, but in some instances providing social services, as well as cash, that can prevent the loss of one’s home. Some are government-run, and some are operated by nonprofits (which sometimes receive government funds).<sup>24</sup> The East Bay Community Law Center in Berkeley, CA, operates tenant workshops and provides legal advocacy on homelessness prevention and eviction defense, as does the Oakland (CA) Eviction Defense Center. The San Francisco Tenants Union provides similar services, and the Eviction Defense Collaborative, which makes emergency loans (and has received city funding, support that was later cut under pressure on city hall from landlord groups) also functions in that city (“Fund Eviction Defense” 2000). The Washington State Tenants Union focuses on federally funded at-risk projects, providing advice to tenants so as to avoid displacement in prepayment situations (where a landlord who developed housing with federally subsidized loans is allowed to prepay the mortgage and be freed of obligations to keep rents at levels affordable by low- and moderate-income households). In New York City, several citywide and community-based organizations, including the Community Food and Resource Center and Northern Manhattan Improvement Corporation, are provided with government funding to offer eviction prevention services such as advocacy with public assistance centers and other sources of emergency funding.

A new American Association of Retired Persons venture (Alternatives to Landlord/Tenant Court for the Elderly Project) deals with the special

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<sup>23</sup> Contact information for each of the named cities is, respectively, efz@flashmail.com; <<http://www.clvu.org>>; <<http://www.fifthave.org>>; victory@justcauseoakland.org; <<http://www.saje.net>>.

<sup>24</sup> See Ruben 2003 for a description of Washington, DC–area programs and the growing need for their services: “With the economy faltering and the jobless rate rising, [Shirley] Marshall [Executive Director of Good Shepherd Housing and Family Services] said she is seeing more requests for help.... ‘We’re seeing more requests for mortgage assistance,’ [Barbara] Geiger [eviction counselor at Bethesda Cares] said” (F10).



issues that impact this population, often the target of displacement efforts in gentrifying areas: the confusion of the court scene, behavioral issues (housekeeping, hoarding that can create a fire hazard, Alzheimer's disease), and the need for power-of-attorney arrangements. The group provides direct legal assistance and also runs training sessions for housing managers so they can better understand and deal with the problems of their elderly tenants (Ruben 2001). At present, the group operates the project only in the District of Columbia, but it is about to issue a manual so that other areas can replicate the work and is holding training sessions in other cities.<sup>25</sup>

For subsidized tenants, various advocacy organizations—the National Alliance of HUD Tenants for those in privately owned developments (Ceraso 1997), the Center for Community Change's ENPHRONT (Everywhere and Now Public Housing Residents Organizing Nationally Together) for public housing projects—can be of some assistance. (For a recent example of ENPHRONT organizing assistance to protest displacement of public housing tenants in Detroit under the HOPE VI program, see Pierre 2003.) Every locality should have tenant assistance groups of this type, which rely heavily on volunteer labor but need financial support from local government, foundations, and other sources.

### *Legal services/legal aid programs*

Legal services/legal aid programs are another important element. As noted earlier, tenants represented by counsel are far less likely to be evicted. While such programs exist in most urban areas and some rural areas in all 50 states and the U.S. territories, hostility from powerful private interests and elected officials at different levels of government,

<sup>25</sup> AARP and the Senior Law Project of Legal Services of Northern California recently filed a lawsuit in federal court on behalf of a group of tenants who are elderly and have disabilities and whose lease prohibits them from using in-home care services or community-based help with cleaning, personal needs, meals, or health care. The defendant is the CBM Group, which owns or manages 3,500 apartments that are part of the U.S. Department of Agriculture's Rural Development Multifamily Housing Program in California. CBM's standard lease requires all tenants to be "capable of self-care." The suit, *Clearlake Housing Now et al. v. the CBM Group, Inc. et al.* (N.D. Cal. 3:03-cv-3000-WHA), alleges that this clause violates the Federal Fair Housing Act as well as other federal and state laws. The Bazelon Center for Mental Health Law and AARP filed a similar suit in Florida, *Symons v. City of Sanibel et al.* (M.D. FL 2:03-cv-441-FtM-29PC), on behalf of an active 82-year-old man who was being evicted because the manager believed that he could no longer live independently. (See "AARP Joins Lawsuit" 2003; Hoyem 2003.) The latter suit was recently settled, allowing the tenant to remain with a renewed lease and agreement that any reference to "inability to live independently" as a criterion for tenancy will be deleted from future lease agreements (Silverstein 2003).

as well as a chronic shortage of funding, severely limit the work of these organizations. In a recent 5 to 4 decision, the U.S. Supreme Court rejected a legal challenge brought by a right-wing legal foundation to use of Interest on Lawyers Trust Account (IOLTA) funds to pay for legal services programs; if successful, this challenge would have further depleted funding for eviction prevention work (Greenhouse 2003). As it stands now, most of these organizations are able to represent only a small percentage of low-income tenants threatened with eviction. Increasing the availability of lawyers for tenants would go a long way toward leveling the playing field and reducing the number of evictions. Ultimately, the right to legal representation for every tenant facing eviction would drastically reduce the incidence of eviction and unnecessary homelessness. (See Scherer 1988 for a full exposition of the constitutional arguments for such a right to counsel.)

Further, the realities of landlord-tenant court proceedings, as described earlier, are in drastic need of improvement, and legal services/legal aid lawyers should play a role in demanding such changes. As Becker (2002) writes:

A legal community that is committed to the fair administration of justice should take steps to improve the resources available to tenants, from increasing representation to providing an advice service at the courthouse to educate tenants about their rights. The court could address the power imbalance between represented and unrepresented parties by providing a true mediation service, with the goal of reaching an evenhanded settlement. It also could mitigate the demeaning aspect of the process by reducing wait times, summoning tenants at the time the judge will take the bench, providing rooms for private consultations and creating a dedicated space for tenants' advocates as well for landlords'. It could also work to reduce the cattle-call atmosphere that overwhelms litigants and robs them of their dignity.

Improving landlord-tenant court will not solve the District's [Washington, DC's] affordable housing crisis. But enabling more tenants to protect themselves will reduce the number of new families joining the homeless population. Reforming the court process would signal a respect for the time, rights and lives of tenants that is lacking in the current court. For that reason alone, it is worth the effort.

In sum, persons in danger of losing their homes should have early access to advice, financial assistance, social services, and legal representation, both to avoid the trauma of eviction where possible, and to minimize the consequent disruptions when eviction is unavoidable (Chadha 1996; Community Training and Resource Center et al. 1993; Hall 1991). One might look to the scope and range of existing mortgage

foreclosure assistance programs for specific ideas as well as a vision of what ought to be done for tenants.<sup>26</sup>

### *Related government efforts*

Less systematic forms of government assistance, often in response to specific situations or emergencies, are provided. Some examples are as follows:

1. Congress, in the 1940 Soldiers and Sailors Civil Relief Act—amended and expanded in 1991 during the Persian Gulf war—provided various housing protections, primarily for reservists and National Guard members called to active duty, as well as those who enlist in response to a national emergency such as September 11. With some court-mandated exceptions, eviction of those who are tenants (and their families) and who pay less than \$1,200 a month is prohibited during the period of military service and for three months thereafter.<sup>27</sup>
2. Following the September 11 attacks, some ad hoc financial relief for those who lost their jobs was put into place, enabling some tenants to maintain their housing or, as necessary, relocate (Greenhouse 2001). Here too, homeowners were catered to far more readily. “The

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<sup>26</sup> Far greater assistance is offered to homeowners facing the possibility of forced displacement. For example, there are all manner of programs and forms of assistance to help homeowners avoid losing their homes. HUD’s Web site has a three-page “How to Avoid Foreclosure” set of questions and answers, but nothing along those lines for tenants. The department’s Office of Policy Development and Research produces studies with such titles as *Assessing Problems of Default in Local Mortgage Markets* and *Neighborhood Effects in Mortgage Default Risk*, but hardly anything parallel on the eviction issue. A telephone inquiry one of our research assistants undertook to a sample of HUD Housing Counseling Offices in Oregon, Illinois, and Massachusetts revealed many types of assistance for homeowners, but in most cases none or almost none for renters. Serious, effective mortgage foreclosure prevention programs exist in many parts of the county: Examples include the Pennsylvania Homeowners Emergency Mortgage Assistance Program, which lends money (average loan: \$9,000) to assist with temporary crises and is the model for a national program that has been introduced in Congress; the seven-state program of the Northwest Area Foundation; the Massachusetts Foreclosure Prevention Project of the National Consumer Law Project; and the 10 neighborhood offices of Neighborhood Housing Services in New York City.

<sup>27</sup> Homeowners, predictably, get a better deal: Mortgage interest rates by Federal Housing Administration–approved lenders can be no higher than 6 percent and thus must, upon request, be lowered for those paying higher rates; lenders are also forbidden to initiate foreclosure proceedings, also for three months after active service ends, again with provision for some court-mandated exceptions (HUD 2001a; National Housing Law Project 2001).

Department of Housing and Urban Development, Fannie Mae and Freddie Mac...yesterday announced a series of measures their lenders should adopt to help borrowers affected by Tuesday's terrorist attacks," reported the September 14, 2001, *Washington Post* (Deane 2001, E3). "They include temporary suspension of foreclosures, reduction of interest rates and a possible suspension of mortgage payments for affected families" (Deane 2001, E3).

### *Legislative reforms to enhance security of tenure*

Rent controls, hotly debated and coming and going in various jurisdictions (although currently covering only a small proportion of tenants in the United States) would do a great deal to avoid evictions and create residential and community stability. This is a matter for legislators (and in some instances, the courts), voters, and community organizers. How stringent the law is determines how much stability it offers tenants. The major distinction is between ordinances that do or do not have vacancy decontrol provisions. Those that have such provisions protect sitting tenants but allow landlords complete freedom to set new rents for subsequent tenants. This of course creates an enormous incentive to push sitting tenants out, often by use (and more often abuse) of the law, such as owner move-in clauses (see Hartman 2002a). In the case of New York City and neighboring jurisdictions with rent protections, similar incentives were provided by revisions to the rent regulations mentioned earlier allowing for large rent increases for vacant units and deregulation of vacant units if the allowed monthly rent is \$2,000 or more.

Related to rent controls, but sometimes independently enacted, are "just (or good) cause" eviction ordinances, which allow eviction only for stipulated reasons. Recently, both Oakland, CA (by voter initiative), and San Jose, CA (by legislative enactment), passed such laws (Lando 2002; Derecka Mehrens, San Jose ACORN, e-mail, March 19, 2003). The State of New Jersey also has a Good Cause for Eviction Law (N.J.S.A.2A: 18-61.1 et seq.) In addition, condominium conversion protections and right-of-first-refusal provisions are other forms that such protections can take. (For a detailed description of these measures, see Hartman, Keating, and LeGates 1982 and Hartman 1984.) Another useful reform would be wider enactment of "clean hands" legislation, already in place in some jurisdictions, which would prevent landlords of properties in serious violation of local housing maintenance codes from proceeding with eviction actions for the properties in question. Linking up-to-date housing inspection records with court proceedings is, of course, an essential component. Such legislation, in addition to limiting

the number of evictions, creates an important incentive for landlords to make needed repairs on deteriorating housing.

There is also a need for additional local, state, and possibly federal protective legislation that increases personal and community stability, legislation building on the models that already exist in some localities, as well as in some government programs. Legislation recently passed in California doubles the notice requirement from 30 to 60 days (with some exceptions) for landlords who want to evict tenants, thereby increasing the chance of resisting or devising alternative plans that will avoid displacement (Salladay 2002). In the special case of mobile home owners being displaced when the park's owner wants to sell the acreage for more lucrative development, additional time is needed. Maryland law requires park owners to give a minimum of 12 months' notice before eviction and also requires them to produce a relocation plan (although the law is poorly defined and thus variably enforced, according to Shiau 2002a, 2002b).

### **Toward the creation of a national database on evictions**

Given the definitional issues we have outlined, there clearly are severe data-collection limitations, but that fact should not impede efforts to generate and disseminate whatever data exist or can be easily collected and to facilitate the creation of new sources. The existence of numerical information in itself permits and encourages the media, policy makers, public officials, researchers, and the general public to pay attention to a problem that is now well beneath the surface. The following could serve as the initial building blocks for such a database:

#### *Court administrations and other government agencies*

The courts themselves are a critical element in this process (primarily for evictions defined more narrowly as the outcome of formal legal proceedings). Our limited investigations reveal that states and localities vary widely in the structure of the court system with respect to handling housing matters and the legal terminologies and categorizations used, as well as how (and whether) they record and make available information on evictions. A highly useful starter project would be to survey all 50 state court systems (and the District of Columbia), as well as courts in selected cities and nonurban jurisdictions, to ascertain what each system does and does not do. Where data are maintained by city and state agencies other than the courts, those agencies should be surveyed as well. Following that, an effort should be undertaken to

encourage standardization of collection and reporting, to the degree feasible.

*Legal services offices that represent tenants in eviction proceedings*

Legal services/legal aid offices should systematically collect detailed information on tenant clients with housing problems, their demographic characteristics, the nature of the problem, and outcomes. Since such offices are usually shorthanded, and data collection requires resources, major funders of such organizations such as the Legal Services Corporation should provide extra money for this work. Hopefully, the existence and presentation of these data would draw attention to the important eviction-prevention work Legal Services offices provide and encourage government and private foundations to allocate additional funding. Similarly, the various local tenant assistance organizations around the country, of the type noted earlier, should be encouraged to collect and provide such information, in standardized fashion, to a central source.

*Organizations and government agencies that assist homeless people*

Evictions as a cause of homelessness can be tracked more clearly. Groups, official and private, that deal with homelessness and work with local shelters and feeding programs (such as the National Coalition for the Homeless, the National Resource Center on Homelessness, the National Law Center on Homelessness and Poverty, the National Alliance to End Homelessness) should be encouraged to generate data on the prior housing conditions of those they serve and the reasons for homelessness, since a very large portion of this problem can be attributed to the workings of the housing market. HUD's new Client-Level Annual Performance Review Reporting and Homeless Management Information System, once in place, will be a most helpful source of data (HUD 2001b).

*Public and federally subsidized housing programs*

Various government programs that directly or indirectly cause displacement should be required to keep and report detailed data on who is being displaced, why, and what happens to them. One clear example is the HOPE VI public housing redevelopment program, which has displaced and continues to displace tens of thousands of families nationally

(National Housing Law Project et al. 2002). Evidence from Chicago, which has made extensive use of HOPE VI, suggests that the Chicago Housing Authority is in fact “using evictions ‘as a displacement tool’” to reduce the number of public housing tenants in projects slated for HOPE VI treatment for whom the agency must provide replacement housing (Rogal 1998).<sup>28</sup> There may be reason to establish independent systems of data collection, since a conflict of interest may arise between legal obligations of the displacing agencies and accurate, honest reporting.<sup>29</sup>

Apart from HOPE VI, local public housing agencies should be collecting and making data on all their evictions available, especially given the added freedom they now have as a result of the Supreme Court’s *Rucker* decision. The requirement to maintain detailed records on evictions and issue reports should extend to all government-aided housing programs, including Section 8 (where there are serious eviction issues—see, for example, Lupo 2001), as well as the expiring-use projects, rural housing programs, HOME-funded projects, and the Low-Income Housing Tax Credit program.

Also, other government programs that affect housing conditions and evictions, even indirectly, should be mandated to keep track of the magnitude, characteristics, and results of such activities as well. Most notable is the large-scale welfare reform effort. A recent comprehensive review of postwelfare reform studies concluded: “State studies suggest that welfare reform has increased the rates of family mobility, evictions, and the likelihood of shared housing” (Nichols and Gault 2003, 104). The finding of extensive doubling-up in order to retain a roof over the family’s heads points to the need for tracking to be long term: Such living situations are inherently unstable and frequently lead to eviction. Increased evictions are likely to continue under welfare reform, requiring not only stringent record-keeping, but also action to minimize this deleterious outcome. Any economic downturn will, of course, exacerbate housing difficulties: Harking back to the Great Depression, Webber reports that “[d]uring 1932, [New York] city courts issued dispossession notices at two and three times pre-Depression levels” (2001, 4).

And should Temporary Assistance for Needy Families (TANF), the name given to 1996 welfare reform, be replicated in the federal public housing system as Housing Assistance for Needy Families—the Bush

<sup>28</sup> Rogal (1998) is quoting housing attorney William P. Wilen, who has successfully sued the Chicago Housing Authority to protect tenant rights.

<sup>29</sup> For a discussion of similar conflicts with regard to urban renewal agencies, see the postscript to Hartman 1964.

administration's proposed block grants of Section 8 voucher assistance to the states, with time limits analogous to those for TANF—there will certainly be massive additional evictions and hence the need for accurate reporting (National Low Income Housing Coalition 2003).

*Surveys to obtain estimates of involuntary loss of homes where no court-ordered eviction has been carried out*

A key methodological issue is, of course, how to derive data on involuntary loss of residence due to pressures and forces that do not eventuate in formal legal proceedings. Here we would suggest a series of sample interview studies in representative areas, urban and rural, to ascertain the reasons for the forced change, the characteristics of those affected, and what happens to them, in the short and long run. We should also explore ways in which existing surveys such as the decennial census, the new American Community Survey, and the University of Michigan's Panel Study of Income Dynamics might incorporate useful questions to add to our knowledge base. The quantitative ratio between the two forms of forced departure—formal/legal and informal—derived from a representative sample could be used to create a reasonably reliable total figure by applying that ratio to the actual data collected on formal, legal evictions. We then would have at least a rough estimate of the magnitude of the problem, both nationally and in subareas.

While there may be duplication of data here (some of these sources will count the same people displaced), those maintaining the database can take this into consideration and make the necessary adjustments. The model we offer is to build on local data sources and collectors as the stepping stones for constructing a national database on evictions and related forms of displacement. The Bureau of the Census and/or HUD might be the most appropriate federal agencies to receive, analyze, and disseminate these data, as well as to take steps to ensure uniformity of definitions and categories, or the task might be contracted out to an academic institution or an appropriate nonprofit.

## **Conclusion**

We stress the need for data as the building block for policy, as well as public and political concern, to bring about change. An important piece of ancillary data consists of estimates of the costs to society of continuing present policies and patterns on evictions and other types of involuntary moves. For example, Galowitz (1999, cited in Eldridge 2001) found that 90 percent of low-income tenants who were vulnerable to



eviction and homelessness and were represented by lawyers in an Emergency Assistance Funds program were saved from eviction. Another study (New York City Human Resources Administration 1990) found that every dollar spent on homelessness prevention services saved \$4 in services for homeless people, thus demonstrating the cost-effectiveness of payment to prevent evictions, rather than payment for the consequences in homeless services. An experienced legal services lawyer observed:

In most cases, homelessness follows an eviction for nonpayment of rent. Since the 1970s, government policy makers have concluded that it is cheaper to spend thousands of dollars to pay rent arrears than tens of thousands to pay for the care of families in shelters. As a result, the city carried out several rental assistance programs, but barriers to their use were erected during the Giuliani administration. (Bacigalupi 2002)<sup>30</sup>

It is sound, important public policy, for fiscal as well as humanitarian reasons, that such programs be restored where they have been eliminated or curtailed, and introduced where they do not exist.

Once a good estimate of the full scope of the eviction problem is derived, the next step is to craft remedies, since it cannot be good social policy to allow this phenomenon to continue without some attempt to abate it. A combination of programs and laws of the type described earlier can go a long way toward preventing and limiting the number of evictions that occur each year and minimizing the damaging effects of involuntary moves.

The most effective way to avoid forced evictions (at least those linked to rent- and utility-paying problems, which almost certainly are responsible for the vast majority of such actions) would be to increase the supply of decent, modestly priced units and/or to increase tenants' incomes through social policies such as a higher minimum wage, so-called "living wage ordinances," and increased employment opportunities. Expansion of rent subsidy programs, an increase in state-determined public

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<sup>30</sup> An advertisement titled "Which Would You Invest In?" placed in the May 28, 1995, *New York Times* by the New York City advocacy group Almost Home and signed by several dozen senior executives of corporations and financial institutions, such as Lehman Brothers, Lazard Freres, Merrill Lynch, Goldman Sachs, and Bankers Trust, and well-known individuals (including Cyrus Vance, Vernon Jordan, and Felix Rohatyn), cited the comparative annual costs in New York City of a psychiatric hospital bed (\$113,000), a prison cell (\$60,000), a shelter cot (\$20,000), and a permanent home with supportive services (\$12,500). Holloway (1996) reports that annual shelter bed costs are between \$18,000 and \$23,000 in New York City; by comparison, per unit HUD subsidies for public housing and Section 8 certificates/vouchers are in the \$6,000–\$8,000 range.

assistance shelter allowances, and greater availability of emergency rent grants are also essential to increase tenants' ability to remain in their homes. In New York City, a successful lawsuit, *Jiggetts v. Grinker* (75 N.Y. 2d 411, 553 N.E. 2d 570, 554 N.Y.S. 2d 92), has resulted in a court-ordered system for providing an ongoing increase (up to more than double the state-provided amount in some cases) in the shelter allowance for families on public assistance who have children and face eviction. "Currently, 14,452 city families in the five boroughs receive Jiggetts payments, up to \$700 a month for a family of four" (Khatkate 2003). Providing an adequate rent allowance for tenants receiving public assistance would make such litigation unnecessary.

To conclude, we reiterate that eviction is a massive, albeit largely hidden, housing problem and that it is in need of serious recognition and study by housing officials and policy makers (housing activists for the most part are all too aware of it).<sup>31</sup> And while we have stressed the need for more and better data, at the same time we must guard against the position that nothing can or should be done until we have such information: What we already know and can demonstrate should be sufficient to generate at least some remedial steps without delay. It is our fervent hope that this article will trigger responses that will both bring the eviction problem more into the light of day and lead to steps to minimize a social problem of epidemic proportions that causes great personal grief and is deeply disruptive of community life.

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<sup>31</sup> Although this article speaks only to the situation in the United States, some recognition of the international dimension is warranted. The United Nations (1993) treats forced evictions as a human rights issue.

Every year at least 10 million people are forcibly evicted, over and above the dramatically high numbers of people moved from their places of origin as a consequence of internal displacement, ethnic cleansing, refugee flows or other manifestations of population movements. Forced evictions are not confined to rural areas where the construction of reservoirs and building projects associated with dams or other infrastructure works are taking place, or where farmers or indigenous peoples are evicted from the lands they have traditionally owned and managed. Urban areas, too, are increasingly the scene for very large-scale forced evictions. In some cities, evictions of hundreds of thousands of people in a single day have been registered. In one large west African city, in 1990, 300,000 people were deprived of their homes and possessions within a matter of hours, receiving no warning, compensation, resettlement or legal redress.

The most useful source of information on these issues is the Centre on Human Rights and Evictions; see <<http://www.cohre.org>> and Centre on Human Rights and Evictions (2002). See also *Civis: Learning from Cities* (2002) for a broader discussion of the goal of seeking secure tenure for the world's 837 million slum dwellers.

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