

# Clearinghouse REVIEW

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## HUMAN RIGHTS

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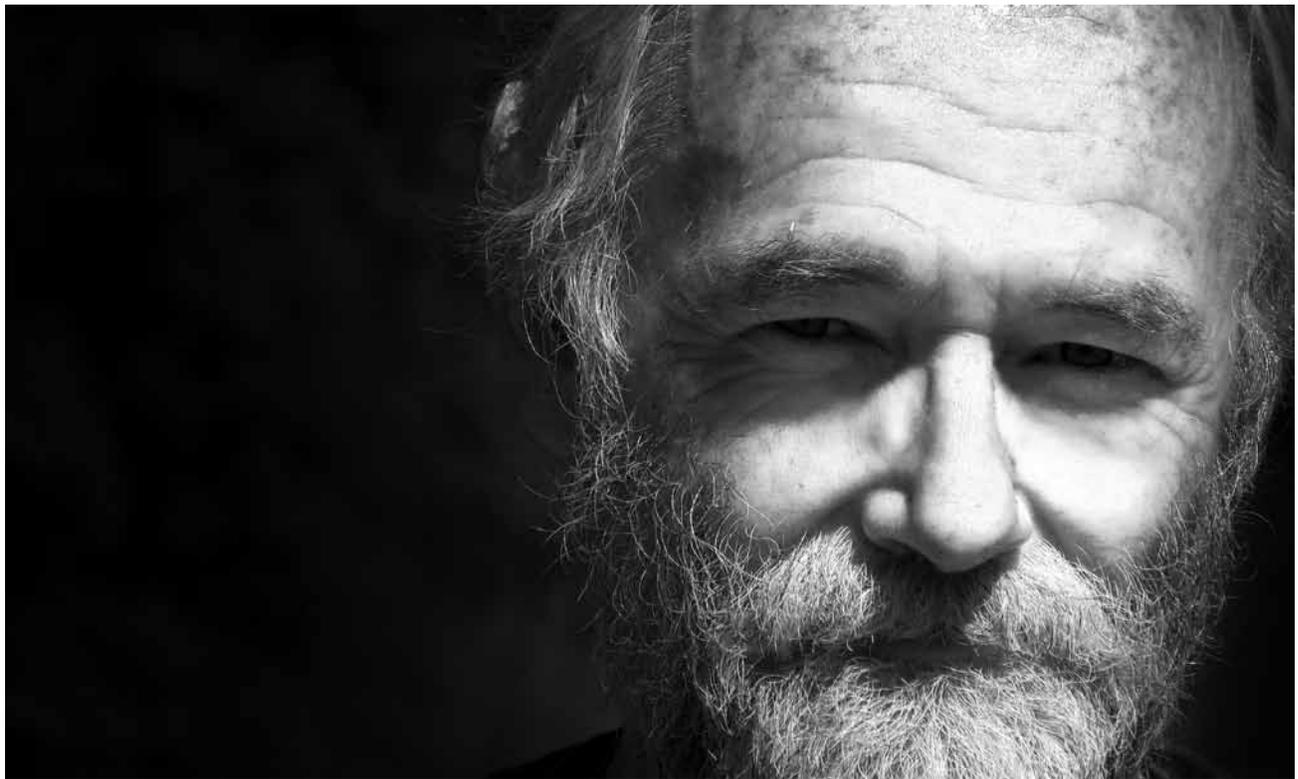
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Colin Bailey

Tim Buckley, who is homeless in Sacramento, California.

# Toward a Human Rights Framework in HOMELESSNESS ADVOCACY Bringing Clients Face-to-Face with the UNITED NATIONS

By Mona Tawatao  
and Colin Bailey

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I haul between 130 and 230 pounds of human waste from SafeGround each week. My record is four bags. I bicycle about one and a half to two miles, bring it to the men's room, wait for a big john to be available and dispatch it on its way and then pack all those bags with the residue that is left over put them all in one bag, tie it all in one bag, put it in the rubbish, after which I wash my hands, scrub them and lemonize them .... The first few times it was horrible. It's a difficult job but someone's got to do it and is it worthwhile, absolutely. The men can rough it if they have to, but women ... gees whiz, if my ma was out there, I would want her to have it. The women really appreciate it. We all do because it makes us feel rehumanized, because we're not just thrown aside.

—Tim Buckley, SafeGround Elder and Self-Described “Sanitation Technician,” Testimony Submitted to the United Nations Independent Expert on the Human Right to Water and Sanitation, February 28, 2011

The modern human rights framework seeks to ensure that all people are treated with dignity and that their most basic human needs are met.<sup>1</sup> In Sacramento, California, homeless people are forced to live in tent camps along the American River Parkway. Despite the demands and protestations of the homeless community and their supporters, however, the city has failed to provide access to clean water and adequate sanitation facilities. It has also obstructed homeless persons' access to existing infrastructure and forbidden private charities from providing additional infrastructure to the camps in the form of portable toilets and potable water tanks.

As part of a broader campaign for a safe ground for people transitioning from homelessness, Legal Services of Northern California submitted to the United Nations a complaint in June 2011 against human rights abuses on behalf of our homeless clients whose access to clean water and sanitation is blocked by both government action and inaction. This effort is greatly aided by the U.N. General Assembly's adoption on July 28, 2010, of a resolution recognizing access to clean water and sanitation as a human right and the Legal Services of Northern California's recent success in facilitating a face-to-face meeting with our homeless clients and the U.N. Special Rapporteur on access to water and sanitation.<sup>2</sup>

Human rights advocates in the United States have fought for many decades to enforce human rights norms in this country or to at least leverage such norms' moral force to create positive change in our communities. As a nationwide network

that serves this nation's most vulnerable individuals, legal services attorneys are a necessary part of the struggle to make human rights real in America and part of multiforum legal services advocacy strategy to fight poverty and homelessness.

What follows is the story of how the human rights abuses suffered by our homeless clients were laid bare before the community of nations and how we aim to use this exposure to empower our clients to achieve dignity in their daily lives and lasting improvements in their access to water and sanitation and other basic human needs.

### The Birth of SafeGround: Advocating Human Rights for Homeless People

The homeless situation in Sacramento is typical of many medium-sized cities in the western United States.<sup>3</sup> However, Sacramento's homeless population is unique in at least one way. Immediately adjacent to downtown Sacramento sits the American River Parkway, a largely undeveloped stretch of oak and cottonwood forest, which extends over fifty miles and thousands of acres and is connected by some parks and narrow bike and pedestrian trails. A significant and growing percentage of Sacramento's homeless population has been forced to live along the river's banks in tent camps, a phenomenon that sparked a national debate just two years ago.

On June 19, 2009, the Oprah Winfrey television show focused on Sacramento's infamous "tent city," as it was called. Tent city comprised 250 homeless people, some recently homeless and others who

<sup>1</sup>See Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948), at Preamble, Articles 1, 22, 23, <http://bit.ly/U4ZZR>; Human Rights Council Res. 15/9, at 2, 15th sess., U.N. Doc. A/HRC/RES/15/9 (Oct. 6, 2010).

<sup>2</sup>See G.A. Res. 64/292, U.N. Doc. A/RES/64/292 (July 28, 2010); see also Press Release, General Assembly, General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation as Human Right, by Recorded Vote of 122 in Favour, None Against, 41 Abstentions, U.N. Press Release GA/10967 (July 28, 2010), <http://bit.ly/kwwF1k>; *US Discriminates on Right to Safe Water and Sanitation*, Says U.N. Expert, UNITED NATIONS DAILY NEWS, March 4, 2011, at 8, <http://bit.ly/firBafD>.

<sup>3</sup>On any given night at least 2,300 people in Sacramento sleep outside due to the unavailability of shelter beds, transitional and permanent affordable housing units, and mental health and other vital services (see Sacramento County, Sacramento Countywide Homeless Street Count 2011 (n.d.), <http://bit.ly/poGVqy>). Sacramento County's own study, conducted in 2011, estimates that nearly 4,000 people will be homeless in the county during the year (*id.*). The impact of the current economic and housing crisis on the Sacramento region has only exacerbated the problem. While this trend may only now be waning, there was over a 14 percent increase in homeless families with dependent children in Sacramento between 2007 and 2009 (see Sacramento County, Homelessness in Sacramento County: 2009 Homeless Count Summary Report 2 (n.d.), <http://bit.ly/ngHdl7>).

were longtimers.<sup>4</sup> The episode educated the nation about Sacramento's housing problems in particular and the nation's homeless problem in general, as illustrated by similar tent cities across the country. The story, clearly intended by the reporter Lisa Ling (a Sacramento native) to have a positive impact, did in fact force local officials into action.

The outcome, however, was mixed. On the one hand, the TV show spurred some local officials and staff to partner with homeless leaders and others to obtain funding from federal and other sources for more shelter beds and housing units for homeless people. On the other hand, shortly after the show aired, Sacramento-area political leaders and law enforcement, knowing many of the tent city residents had nowhere to go, chose to crack down and enforce local anticamping ordinances, abruptly dismantling the tent city and forcibly moving its residents out.<sup>5</sup>

The national exposure from the airing of Ling's report exposed the callousness of local policies; this raised political concerns for local leaders. Several leaders, homeless and housed, emerged from the tent city struggle to change local policies on homelessness. The name of the organization these leaders formed is called Safe Ground Sacramento, or SafeGround), which is eponymous with the group's primary goal to create a "safe ground" area in Sacramento. The area envisioned will be a transitional housing community of sixty sleeping cabins and a community facilities building, all of which are free of drugs, alcohol, and violence. The area will assist residents in getting permanent housing and link residents to jobs and health care. Here

unsheltered homeless persons would be able to live safely, in peace and with dignity, without disturbance from law enforcement.

SafeGround advocates share the belief of other homeless and housing advocates and many public officials that the best response to homelessness is to create, as quickly as possible, enough decent affordable homes as needed to house homeless people and those at risk of becoming homeless. SafeGround also acknowledges that emergency and temporary shelters can play a limited role in meeting the Sacramento area's vast unmet housing need. In this vein SafeGround promotes a safe ground area as part of a continuum that alleviates, rather than criminalizes, homelessness. Consistent with human rights principles, SafeGround calls for a moratorium on the enforcement of Sacramento's anticamping laws and other laws that treat homeless people as criminals on the basis of their homeless status.

Legal Services of Northern California has a long history of pursuing multiforum impact advocacy on behalf of homeless persons and service providers and each year provides direct services through clinics and targeted outreach to hundreds of individual homeless persons.<sup>6</sup> However, the work with SafeGround marked the first time the organization used a human rights framework explicitly in its homeless advocacy.<sup>7</sup>

In the days and months surrounding the dismantling of tent city, Legal Services of Northern California and others worked as SafeGround's general counsel to build a litigation strategy to enjoin on constitutional or other or both grounds the city and other entities from enforcing lo-

<sup>4</sup>See *Inside a Tent City: A Lisa Ling Special Report* (The Oprah Winfrey Show June 19, 2009), <http://bit.ly/lB7U16>.

<sup>5</sup>See SACRAMENTO, CAL., MUNICIPAL CODE §§ 12.52 *et seq.* (1995); CAL. PENAL CODE § 647 (c), (e)-(i) (1961); see also Arthur Delaney, *Sacramento Tent City to Be Shut Down*, HUFFINGTON POST, March 20, 2009, <http://huff.to/nfCN5k>.

<sup>6</sup>Legal Services of Northern California has represented Loaves and Fishes for more than twenty years. That organization acts as an incubator for projects on the needs of the homeless. The "spin-off" projects which Legal Services of Northern California helped develop and launch are Sacramento Cottage Housing; Clean and Sober; Quinn Cottages (transitional housing); and Serna Village (permanent housing geared toward homeless people). On Serna Village, see Mona Tawatao, *The Affordable Housing Complex that Could: How Community Economic Development Advocacy Secured 100 Units of Permanent Housing for Formerly Homeless Persons on Former Military Base*, 37 CLEARINGHOUSE REVIEW 189-201 (July-Aug. 2003); since 2007, Legal Services of Northern California has staffed the Tommy Clinkenbeard Legal Clinic, which is sited at Loaves and Fishes and focuses on the individual legal needs of homeless people.

<sup>7</sup>We would like to recognize the leadership of the Maryland Legal Aid Bureau in placing issues of poverty in the international human rights frame.

cal anticamping laws.<sup>8</sup> Legal Services of Northern California contacted the National Law Center on Homelessness and Poverty, among others, and sought feedback and technical assistance in pursuing the best strategy.

The National Law Center on Homelessness and Poverty introduced Legal Services of Northern California advocates to the idea of using a human rights approach to homelessness advocacy and shared helpful information on which Legal Services of Northern California might not have otherwise focused. One piece of information is that the City of Sacramento had already resolved that housing is a basic human right.<sup>9</sup> With input from Legal Services of Northern California and SafeGround representatives, the National Law Center on Homelessness and Poverty also issued a statement in support of SafeGround's goals. The statement, read by a homeless rights advocate at a rally organized by SafeGround at the California State Capitol, linked human rights standards to the homeless groups' goals:

Housing is a basic element of survival, and therefore a basic human right .... [T]he U.S. ratified the International Covenant on Civil and Political Rights, which has been interpreted as requiring the government to take basic measures to protect homeless persons from exposure to the elements to uphold their right to life.... [A]t the end of March [2009] the [Sacramento] City Council agreed with over three quarters of the American population when they declared, "housing is a basic human right." ... Ignoring the

plight of over 1,200 unsheltered individuals and enforcing laws that criminalize homelessness is a direct violation of the legal obligations tied to the human right to housing...." In a similar situation, the Supreme Court of British Columbia in Canada ... found that prohibiting homeless individuals from sleeping in public places when the number of available shelter beds was insufficient was a violation of their right to life.<sup>10</sup>

The National Law Center on Homelessness and Poverty called upon authorities to designate a safe ground area and "plac[e] a moratorium on police enforcement of laws that criminalize homelessness at least until adequate shelter and housing is available to all homeless individuals in the community."<sup>11</sup>

The collaboration with the National Law Center on Homelessness and Poverty and SafeGround on this letter was Legal Services of Northern California's first step toward incorporating human rights advocacy into its work.

### Sacramento's Homelessness Story in Film to the United Nations

Through their newly established relationship, the National Law Center on Homelessness and Poverty informed Legal Services of Northern California that the United Nations Special Rapporteur on Housing, Rachel Rolnik, was coming to the United States in November 2009 to gather public testimony about the state of housing and homelessness in America. The National Law Center on Homeless-

<sup>8</sup>We should mention that in 2007 Sacramento civil rights attorney Mark Merin filed a class action on constitutional grounds against Sacramento and other entities on behalf of homeless individuals to challenge the localities' practice of confiscating and destroying homeless persons' personal property and penalizing homeless people for sleeping and "camping" outside. The plaintiffs did not prevail on their Eighth Amendment (cruel and unusual punishment) claims; however, they recently received a jury verdict that included a finding that the city had violated plaintiffs' rights on notification of confiscated property and implementation of property storage policies (see *Lehr v. City of Sacramento*, 624 F. Supp. 2d 1218 (E.D. Cal. 2009)); Cynthia Hubert, *Jury Renders Mixed Verdict in Sacramento Homeless Camping Trial*, SACRAMENTO BEE, May 24, 2011, <http://bit.ly/1YSVe7>.

<sup>9</sup>Sacramento, Cal., Resolution (March 24, 2009) (Approval of Funding and Strategy to Improve and Expand Homeless Program Options) (on file with Colin Bailey).

<sup>10</sup>National Law Center on Homelessness and Poverty, Statement to Sacramento Right to Housing Rally (April 21, 2009) (on file with Mona Tawatao).

<sup>11</sup>*Id.*

ness and Poverty invited Legal Services of Northern California and SafeGround to testify about homelessness and their advocacy at a meeting with the Special Rapporteur in Washington, D.C.

At the time SafeGround members were focused on advancing the strategy of camping on civil rights attorney Mark Merin's private property to push Sacramento to change its criminalization policies and establish a safe ground. These members determined that sending even one member to Washington, D.C., was time- and cost-prohibitive. SafeGround, however, recognized the opportunity to tell its story in its own words and submitted testimony, in a film, to the Special Rapporteur.

A professional filmmaker, documentarian, and SafeGround supporter, Costa Mantis, had been filming and blogging the tent city and SafeGround saga for some months and agreed to help SafeGround and Legal Services of Northern California with the project. Legal Services of Northern California, Sacramento Loaves and Fishes (a homeless services provider and key SafeGround supporter), and members of SafeGround served as producers and editors in order to frame the story in the context of their advocacy.<sup>12</sup> In the short film, entitled *Listen*, homeless people tell their stories about how they became homeless, whether due to job loss, domestic violence, or other causes. They also describe their everyday struggles to keep their families and themselves fed and clothed, to find or hold jobs, to find community and support, and to stay focused on transitioning out of homelessness. Many expressed their desire to be treated not as criminals, but with dignity and respect, as every human deserves.<sup>13</sup>

Legal Services of Northern California and SafeGround submitted the film to the Special Rapporteur. The film appears to have had an impact because her final report recommended that “[t]he [U.S.] Inter-agency Council on Homelessness should develop constructive alternatives to the criminalization of homelessness in full consultation with members of civil society. When shelter is not available in the locality, homeless persons should be allowed to shelter themselves in public areas.”<sup>14</sup>

### The United Nations in Sacramento

Since its formation, SafeGround has received a great deal of support from many sectors. Following an overnight stay with SafeGround campers in August 2009, Mayor Kevin Johnson pledged his support for establishing a transitional safe ground area as a humane and empowering way to solve a persistent part of the homeless problem in Sacramento. In an interview on CNN, he described his SafeGround hosts, who had treated him to a warm supper purchased with their food stamps, as “hav[ing] more of a sense of community than most American families” in that they “make sure that they look after each other, that their grounds are governed properly [and] that they’re cleaned and sanitized.”<sup>15</sup>

SafeGround has also positioned itself well with regard to Sacramento Steps Forward, the nonprofit entity that, through a public-private partnership, is taking over the administration of the bulk of the Sacramento region’s homeless services and programs since Sacramento County recently abdicated this responsibility.<sup>16</sup> Local churches have created a network to house and feed homeless campers during extreme weather.<sup>17</sup> And, most re-

<sup>12</sup>Legal Services of Northern California attorneys are trained and expected regularly to engage in this form of community-oriented, client-centric advocacy (see Tammi Wong, *Race-Conscious Community Lawyering: Practicing Outside the Box*, 42 CLEARINGHOUSE REVIEW 165–172 (July–Aug. 2008)).

<sup>13</sup>Costa Mantis, *Listen*, YouTube (Dec. 24, 2009), <http://bit.ly/8ju2m2>.

<sup>14</sup>Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, at 31, U.N. Doc. A/HRC/13/20/Add 4 (Feb. 12, 2010) (by Raquel Rolnik), <http://bit.ly/oeM53v>.

<sup>15</sup>*Mayor Meets with Homeless* (CNN television broadcast Aug. 14, 2009), <http://bit.ly/jHJGKu>.

<sup>16</sup>See Sacramento Steps Forward, <http://bit.ly/iRemMt>.

<sup>17</sup>Cynthia Hubert, *Sacramento-Area Churches Find Rewards—and Glitches—in Homeless Shelter Program*, SACRAMENTO BEE, March 13, 2011, <http://bit.ly/nMTO8Y>.

cently, in a class action filed in 2007 by homeless people represented by Mark Merin, a jury determined that the City of Sacramento violated plaintiffs' Fourth Amendment rights against illegal seizures in the course of dismantling homeless encampments.<sup>18</sup>

However, the road over the last two years has also been very difficult. Two of SafeGround's founding members passed away in 2010.<sup>19</sup> The Sacramento region, unlike many other parts of the country, remains deeply mired in the recession.<sup>20</sup> Funding for local public homeless shelters is gone; this necessitated the creation of Sacramento Steps Forward. The already bare-bones budget for services for poor people is being further slashed at the state and local levels due to low tax revenues and the drive to balance budgets. These dynamics have forced more people to live homeless on the streets of Sacramento and to camp "illegally" along the American River Parkway during what has been a period of unseasonably cold and wet weather. Although SafeGround has made significant strides, the regular disruption of homeless encampments by law enforcement continues.

Against this backdrop, the National Law Center on Homelessness and Poverty facilitated another opportunity for SafeGround and Legal Services of Northern California to bring Sacramento's homeless issue to light by connecting them with Catarina de Albuquerque, the United Nations' Special Rapporteur on Access to Water and Sanitation. De Albuquerque was slated to spend part of her U.S. fact-finding mission in Northern California in late February 2011 and to take testimony at the California state capitol from groups who lacked adequate access to water and sanitation. The initial plan was for SafeGround members to travel to the capitol to give a few minutes of testimony, but the leaders decided that inviting de Albuquerque to meet directly and privately with them would have more impact. SafeGround enlisted Legal

Services of Northern California to help implement its plan. De Albuquerque accepted SafeGround's invitation enthusiastically.

In preparation for de Albuquerque's visit, Legal Services of Northern California interviewed SafeGround members and other homeless people and compiled the information in a report to de Albuquerque. The stories were compelling. Homeless people described their constant thirst and belief that the public officials cut off water spigots near their campsites along the American River deliberately to keep homeless people from using them. Women described being fearful about having to find a place distant from camp to relieve themselves in the middle of the night. Others with diabetes and other illnesses that caused frequent urination said they often felt panicked and trapped because they had no access to restroom facilities. One SafeGround member testified that a law enforcement officer threatened to charge him with indecent exposure, which is a sex offense under California law, when he was urinating near an alley dumpster after being turned away from or locked out of all other nearby facilities. De Albuquerque heard these stories in a two-hour interview session and dialogue held with the SafeGround members on February 28, 2011.

Perhaps most moving was the testimony of Tim Buckley, the self-described SafeGround "sanitation technician," who created the SafeGround privy and made it his job to haul away its contents every day for his fellow campers. De Albuquerque remarked on Buckley's and everyone's generosity and industriousness (SafeGround members systematically kept their campsites as clean as possible) but reminded them all that the conditions under which they were being forced to live were unsanitary and unacceptable under human rights norms. The empowering effect of this validation from a human rights monitor who had investigated water and sanitation conditions in Afri-

<sup>18</sup>See Report of the Special Rapporteur on Adequate Housing, *supra* note 14.

<sup>19</sup>See Cynthia Hubert, *Greg Bunker, Francis House Leader, Suffers Fatal Heart Attack*, SACRAMENTO BEE, Dec. 29, 2010, at <http://bit.ly/iMDh4K>; Costa Mantis, *Safe Journeys, Cowboy Bill*.mov, YouTube (June 14, 2010), <http://bit.ly/j9BJxO>.

<sup>20</sup>See Report: *Sacramento Lags in Economic Recovery*, SACRAMENTO BUSINESS JOURNAL, April 19, 2011, <http://bit.ly/kePFzf>.

ca, India, and other parts of the developing world was palpable.

At the close of the meeting, de Albuquerque expressed support for SafeGround's demands for local officials to install temporary or permanent toilet and hand-washing facilities close to the present campsites and for SafeGround's ultimate goal to establish a safe and sanitary self-governing transitional housing community. De Albuquerque's preliminary findings describe the water and sanitation conditions in Sacramento as "unacceptable, an affront to human dignity, and a violation of human rights that may amount to cruel, inhuman or degrading treatment."<sup>21</sup> She concludes that, while more permanent solutions are sought, "[a]n immediate, interim solution is to ensure [that homeless persons have] access to restrooms facilities in public places, including during the night."<sup>22</sup> Her final report will be released soon.

### Submitting a Formal Human Rights Complaint

Encouraged by de Albuquerque's findings, Legal Services of Northern California submitted a formal human rights complaint to the United Nations on behalf of SafeGround about Sacramento's barring access to proper water and sanitation facilities for homeless persons. The thrust of the complaint is that until sufficient permanent and transitional housing is there for all people in Sacramento as well as a safe ground area, as a matter of human rights and basic decency, local officials must ensure that all people in the area have access to proper toilet facilities and potable water.

The complaint relies on a human rights normative framework that begins with the premise of the 1948 Universal Declaration of Human Rights that "[a]ll human

beings are born free and equal in dignity and rights."<sup>23</sup> The complaint also relies on the United States' present acknowledgment, as a member of the United Nations' Human Rights Council, that the right to water derives from the right to an adequate standard of living.<sup>24</sup> The complaint cites various international instruments and resolutions establishing the human right to water and sanitation for populations, such as women and people with disabilities, that the United Nations identifies as having special needs for access to water and proper sanitation. The complaint asserts that the United States is bound by the obligations contained in the foregoing international human rights authorities because President Bill Clinton signed, in 1998, Executive Order 13107 confirming that the United States would adhere to the norms set forth in international human rights treaties and conventions, whether or not Congress ratified those treaties.<sup>25</sup>

SafeGround's hope is that the complaint will result in human rights abuse findings directed to local officials in Sacramento and move these officials to make good on their promised support for a safe ground community.

### Observations and Lessons: A Long Hill to Climb but Worth It

With the help of dedicated SafeGround members and supporters, the National Law Center on Homelessness and Poverty, and others throughout the ongoing struggle toward establishing a safe ground community, Legal Services of Northern California has seen the benefits of using a human rights framework in homeless advocacy. This has been particularly true with respect to the empowering and validating nature of such a framework as, by definition and opera-

<sup>21</sup>U.N. Office of the High Commissioner for Human Rights, Catarina de Albuquerque, U.N. Independent Expert on the Right to Water and Sanitation: Mission to the United States of America from 22 February to 4 March 2011 (March 4, 2011) (press statement), <http://bit.ly/fh3MB>.

<sup>22</sup>*Id.*

<sup>23</sup>Universal Declaration of Human Rights, *supra* note 1, art. 1.

<sup>24</sup>See International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2000A (XXI) (Dec. 16, 1966), art. 11(1), <http://bit.ly/GBlll>; see also Human Rights Council Res. 15/9, *supra* note 1.

<sup>25</sup>See Exec. Order No. 13107, 3 C.F.R. § 13107 (1999).

tion, it enables our homeless clients to feel that there are others, people in power among them, who share their vision of a world in which everyone, regardless of housing or other status, is treated with dignity and basic human decency.

In all candor, concerning the direct impact and effectiveness of a human rights approach to homeless advocacy, there seems still much work to be done. Can a human rights abuse finding by the United Nations persuade municipalities and law enforcement agencies to stop criminalizing homelessness? If international

human rights conventions and norms can be used successfully to challenge the constitutionality of permitting the imposition of the death penalty on juveniles, can they also be used to challenge the continual rousting of homeless campers who have nowhere else to live and sleep or might using international human rights conventions and norms even spur a community to establish a safe ground area?<sup>26</sup> For the sake of groups such as SafeGround and people such as Tim Buckley, Legal Services of Northern California is committed to working toward an affirmative answer to both questions.

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<sup>26</sup>See *Roper v. Simmons* 543 U.S. 551 (2005), in which a majority of the U.S. Supreme Court referred to international norms in interpreting the meaning of "cruel and unusual punishment" under the Eighth Amendment to find the execution of persons under 18 to be unconstitutional.



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