

**Testimony of National Coalition for the Civil Right to Counsel (NCCRC)
to UN Special Rapporteur on Adequate Housing
Official U.S. Mission
Response to Draft Guidelines
October 2013**

I. Introduction of the National Coalition for the Civil Right to Counsel

The NCCRC is an association formed in 2003 of roughly 240 individuals and organizations from 35 states, with participants from legal services organizations, the private bar, public interest law firms, academia, bar associations, and access to justice organizations. In order to ensure meaningful access to the courts for all, the NCCRC's participants are committed to establishing a right to counsel for indigent litigants in civil cases where basic human needs are at stake, one of which is shelter. The NCCRC's participants strategize, share information, and engage in planning related to research, public education, legislation, and litigation. The NCCRC also works to carefully plan the implementation of any new rights to counsel.

II. Response to Draft Guidelines

In April 2013, the NCCRC submitted testimony in support of the development of guidelines related to security of tenure. Our testimony related to providing a right to counsel in any administrative and judicial proceedings involving security of tenure. In your "Draft for Consultation" released on September 30, 2013, you stated the following in Paragraph 96:

The urban poor face significant barriers in accessing effective remedy. Political influence and corruption in courts and administrative bodies prevent access to justice for the urban poor. The costs of accessing courts and tribunals and obtaining legal representation are often prohibitive. Legal information is often not available. The lack of legal recognition faced by persons without official identity documentation, including a registered address, poses a further obstacle. States should take all necessary measures to remove these barriers to justice and ensure that the urban poor are able to avail themselves of a range of judicial and administrative mechanisms to access effective remedy. States should ensure that legal information relevant to tenure status is disseminated in accessible forms and languages to the urban poor. States should establish, support and enable legal aid for urban poor communities, ensuring in particular that marginalized groups can access these services.

The NCCRC greatly appreciates the recognition that legal representation is out of reach for many indigent litigants, as well as the recommendation to establish, support, and enable legal aid. However, the experience in the United States has been that when such legal assistance is not a right, it falls victim to the whims and fluctuations of federal and state funding decisions. Such a lack of a right in housing cases has contributed to the

situation where 80% of legal needs of the poor go unmet.¹ This is a situation that is unlikely to change as long as the government is not legally obligated to act, particularly in light of the existing constitutional jurisprudence around the right to counsel in housing cases.² While the existence of a right to counsel does not guarantee adequate funding, it helps strengthen the claims for such funding.

If the goal is to provide an “effective remedy” as stated in Operational Guidance Nine, the most effective remedy is the provision of legal assistance as a matter of right. As the Special Rapporteur on the Independence of Judges and Lawyers noted in her March 2013 report to the General Assembly, “legal aid is an essential component of a fair and efficient justice system founded on the rule of law... it is also a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights,” such as the right to an effective remedy. Special Rapporteur on the Independence of Judges and Lawyers, Report of the Special Rapporteur on the Independence of Judges and Lawyers, Human Rights Council, ¶¶ 20, 28, U.N. Doc. A/HRC/23/43 (Mar. 15, 2013) (by Gabriela Knaul).

III. Recommendation for Amendment to Draft Guidelines

In light of the points mentioned above, the NCCRC would respectfully suggest the following amendments to Paragraph 96:

The urban poor face significant barriers in accessing effective remedy. Political influence and corruption in courts and administrative bodies prevent access to justice for the urban poor. The costs of accessing courts and tribunals and obtaining legal representation are often prohibitive. Legal information is often not available. The lack of legal recognition faced by persons without official identity documentation, including a registered address, poses a further obstacle. States should take all necessary measures to remove these barriers to justice and ensure that the urban poor are able to avail themselves of a range of judicial and administrative mechanisms to access effective remedy. States should ensure that legal information relevant to tenure status is disseminated in accessible forms and languages to the urban poor. Moreover, it has been demonstrated that the presence of counsel has a significant impact on the outcome of the case. In

¹ Legal Services Corporation, Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans (Sept. 2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

² Under the U.S. Constitution, there is a presumption against the appointment of counsel except in situations where the litigant may lose their physical liberty, and the Supreme Court clarified in 2011 that even if physical liberty is at risk, there is no presumption in favor of appointment of counsel. *Turner v. Rogers*, 131 S.Ct. 2507 (2011). This test applies no matter how meritorious the litigant’s defense to the eviction or foreclosure might be, and does not consider whether the litigant is elderly or infirm. Additionally, multiple Supreme Court rulings have suggested that housing is not a fundamental constitutional right. See *Lindsey v. Normet*, 405 U.S. 56 (1972) and *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). Consequently, a litigant in a housing case has an especially difficult burden to meet before obtaining a right to appointed counsel.

recognition of this, States should establish, fund, support and enable a right to legal aid for those in urban poor communities who are at risk of losing their security of tenure, ensuring in particular that marginalized groups are made aware of and can access these services.