

Preventing Unjust Displacement and Culture Destruction: Harlem and Nigeria's Ogoni

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Introduction

Gentrification and urbanization displaces people and destroys communities. However, they are two different occurrences. Gentrification allows for the infiltration of more affluent people into low-income and working-class areas.¹ Urbanization is the development of a city, or the radical transformation of a rural area into a city.² In Harlem, gentrification has led to the displacement of residents and the slow displacement of the community. In Nigeria, urbanization triggered by the oil industry has pushed the Ogoni people out of the delta region and destroying their community. This essay examines human-rights based protections against such displacement. In addition, legal and policy remedies to protect communities like Harlem in the United States against displacement will be explored to set an example for resistant governments like Nigeria.

In his essay "Two Cheers for Gentrification," Professor Byrne limits the effects of gentrification to only the lack of affordable housing.³ However, this is not the case. People who are politically underrepresented and powerless, notably ethnic and racial minorities and low-income peoples, tend to benefit least from gentrification.⁴ As cities continue to expand and develop new business centers, many are left powerless and voiceless to combat the ill effects of gentrification on their neighborhoods.⁵ Displacement can happen in a number of ways: building demolition, eviction, landlord harassment, property transfers, and increased housing and neighborhood costs.⁶ For those who can afford to benefit from the improvements brought by gentrification, often find their "critical community networks and culture are displaced."⁷ Displacement has the direct effect of physically separating cultural communities in disregard to their unique interdependencies. Currently, there are no institutions or publications dedicated to tracking overall displacement, either at global or national levels.⁸ Urbanization can have the same destructive effects on cultures and community networks.

Gentrification has caused displacement of people and parts of the community in my home neighborhood of Harlem. Since slavery, Harlem has been a center for black culture, history, and community. Harlem has changed in the last few years with the influence of such major events such as President Bill Clinton locating his office there and the expansion of Columbia University. While many may argue that these events have greatly benefited the residents of Harlem, disadvantages also abound. The disadvantages include displacement of Harlem residents and the dilution of Harlem's rich culture. Gentrification can cause "the intentional and unintentional displacement of low income residents who cannot afford rising housing costs, dilution of an area's cultural heritage, and removal of cultural

¹J.Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405, 406 (2003).

²AKIN L. MABOGUNJE, *URBANIZATION IN NIGERIA*, 34 (1968) (urbanization can be thought of as the congregation of people to one area).

³BYRNE, *supra* note 1.

⁴William Patrick Nicholson, *Just another Day in the Neighborhood? The Shaping of Legal (And Social) Consciousness in Harlem*, 64 U.MIAMI LREV. 267, 269 (2009).

⁵*Id.* at 282.

⁶Kathe Newman and Elvin K. Wyly, *The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 URBAN STUDIES 23, 27(2006).

⁷*Id.*

⁸John Stanley, *Development-induced Displacement and Resettlement*, FORCED MIGRATION ONLINE, (January 2004), <http://www.forcedmigration.org/guides/fmo022/>

artifacts.”⁹ A study by David Maurasse of Columbia University’s School of International Affairs noted that 58.2% of Harlem residents know someone who was forced to move because of excessive rents.¹⁰ These displaced people often end up in low income housing in areas of neighboring boroughs that are also “unstable, declining, and economically isolated from the opportunities of high performing schools, employment growth, and strong municipal tax base”¹¹and that lack the cultural heritage of Harlem. Although displacement has not been accurately measured in Harlem, it has degraded the cultural fabric of the neighborhood. For example 125th Street, used to be filled with many street vendors who sold their own original crafts, but they have been moved to 116th Street, where there is less foot traffic.¹² Maurasse predicts “if the economic and demographic changes do not embrace the culture, Harlem will lose not only its culture but also a competitive advantage.”¹³

Unlike Harlem’s gentrification, Nigeria has experienced urbanization of its delta region. My family hails from the Nigerian Delta where the urbanizing effects of the oil industry have caused a parallel set of problems to those experienced by residents of Harlem. The Ogoni have a distinct culture, language, and history, and have traditional religious and political systems lead by a chief.¹⁴ The Ogoni occupy roughly 1000 square kilometers of ancestral lands in which they own and control property.¹⁵ Through a process called ethno-cultural fragmentation or “tribalism” of the Nigerian political body there has been “zero sum political and economic policies and systems that are manifest in the institutionalized domination and exploitation of ethnic minorities such as the Ogoni.”¹⁶ Since 1958, Brunei Shell Petroleum (Shell) and the Nigerian government have forged an oil exportation relationship.¹⁷ A decree vested in the Nigerian government both ownership of the land and rights to subsurface resources.¹⁸ The Ogoni indigenous to the region have suffered the ill effects of this industry. Oil spills have disrupted the agricultural lifestyle of the Ogoni.¹⁹ Many Ogoni have had to migrate to neighboring Gabon and Cameroon to find work. The migratory displacement of families has fragmented their traditional culture.²⁰ The Ogoni have not had any real recourse or compensation with the government or Shell for the loss of home, livelihood, and culture. Many of them signed compensation forms with Shell, not being able to read or write, and not understanding the implications of these agreements.²¹

The Harlem residents and the Ogoni people parallel experiences raises complex legal and societal questions about how we conceive of and value property. Specifically, gentrification for Harlem and urbanization for the Ogoni has unearthed a situation where both property owners (Ogoni) and non-

⁹ Keith H. Hirokawa, Patricia Salkin, *Can Urban University Expansion and Sustainable Development Co-Exist?: A Case Study in Progress on Columbia University*, 37 FORDHAM URB. L.J. 637, 690 (2010).

¹⁰ DAVID J. MAURASSE, LISTENING TO HARLEM: GENTRIFICATION, COMMUNITY, AND BUSINESS 81 (2006).

¹¹ John A. Powell, Marguerite L. Spencer, *Giving them the Old “One-Two”*: Gentrification and the K.O. of Impoverished Urban Dwellers of Color, 46 HOW.L.J. 433, 442 (2003).

¹² MAURASSE, *supra* note 10, at 118-119 (well known brands have moved to Harlem such as H&M).

¹³ *Id.* at 118 (Maurasse believes that no neighborhood ever becomes frozen in time. Harlem has been a center of identity and pride of African Americans for almost a century. He believes that “approaching the business side without adequately addressing the cultural aspect creates tension and resentment”).

¹⁴ Chinedu Reginald Eztah, *International Law of Self-Determination and the Ogoni Question: Mirroring Africa’s Post-Colonial Dilemma*, 19 LOY. L.A. INT’L & COMP. L. REV. 811, 817 (1997).

¹⁵ *Id.* at 814.

¹⁶ *Id.* at 813.

¹⁷ Charles Marecic, *How Many Wrongs Does It Take to Make Human Right?*, 22 VT. L. REV. 201, 204 (1997).

¹⁸ Eztah, *supra* note 14, at 819 (through the Land Use Decree of 1978, the government collects all accrued rents and royalties. They then allocate the revenue through a specialized system. However, this scheme does not protect particular communities).

¹⁹ *Id.* at 206.

²⁰ *Id.* at 207.

²¹ *Id.* (Nigerian law enabled Shell to compensate the Ogoni people for the loss of annual crops and not the land).

property owners (Harlem residents) have no recourse against their upheaval and displacement. Here in the United States, the law as it currently stands only provides protections for property owners.²² In Nigeria, unrecognized property rights have left the Ogoni at the whim of urbanization. Are there any rights guaranteed to the Harlem residents and the Ogoni to protect them from unjust displacement and cultural destruction? What policies can be implemented to affect the negative consequences of urbanization and gentrification that would alleviate the conditions of these people? Part I of this essay explores some of the civil rights and Human Rights that may protect against the negative effects of displacement. Part II enumerates some law and policy solutions that can substantiate these rights and fortify against displacement and cultural destruction; also, discussed are incentives for the US to provide human rights that protect non-property owners.

THE RIGHTS AVAILABLE TO HARLEM RESIDENTS AND THE Ogoni PEOPLE ARE VERY LIMITED.

The rights available to Harlem residents and the Ogoni people of Nigeria are limited and may not offer the type of protections they need to survive displacement by urbanization or gentrification. There are two levels of rights available to both sets of people. First, each country has civil rights that are enumerated in the constitutions and laws of the country. Second, there are human rights, rights and freedoms to which all humans, no matter what country or ethnic affiliation, should be entitled to. Harlem residents are afforded some civil rights and protections under the Uniform Relocation Act and Real Property Acquisition Act,²³ as well as state statutes,²⁴ which offer protections against displacement. However, there is nothing in these acts or in the United States Constitution itself that protects against their displacement or the destruction of their culture, or that even protects tenants from being at the whim of their landlords in certain situations. In Nigeria, the Ogoni people have struggled to protect their lands and people from the expansions of the oil industry, and the Nigerian government recognizes neither traditional property nor the newly created Ogoni Bill of Rights.²⁵ In both situations, human rights law may offer some property protections, but neither government interprets them in a culture protecting way.

In the United States Constitution, there are no rights that protect people who do not own property from losing their dwellings. The Fourteenth Amendment's equal protection clause provides, "[n]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."²⁶ The Fifth Amendment's takings clause states, "[n]or shall private property be taken for public use, without just compensation."²⁷ Traditionally, people rely on these provisions to challenge loss of their property in our system of laws. However, these claims require "property" ownership. In the case of Harlem residents, the majority are tenants and thus, can lay no claim. In *Lindsey v. Normet*, the Supreme Court has underscored that point holding, "we do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill."²⁸ United States housing has traditionally been left to

²² See eg. U.S. CONST.

²³ 42 U.S.C. § 4624 (1987).

²⁴ See Evictions in The Rent Stabilization Code of New York: N.Y. COMP. CODES R. & REGS. TIT. 9, § 2520, for provisions on eviction of residents living in rent-stabilized apartments.

²⁵ Ezzah, *supra* note 14, at 817.

²⁶ U.S. CONST. amend. XIV, § 1.

²⁷ U.S. CONST. amend. V.

²⁸ *Lindsey v. Normet*, 405 U.S. 56, 73-74 (1972).

the private marketplace with some government limited support in the form of housing subsidies and public housing.

The federal and state legislatures have tried to extend rights where the Constitution has fallen short. In response to the Great Depression in the 1930s, the Federal Housing Administration helped to increase the number of homebuyers.²⁹ However, the program benefits were largely extended to suburban white residents.³⁰ The federal legislature also created the Uniform Relocation Assistance and Real Property Acquisition Act.³¹ Enacted in 1971, the act extends to any displacement created by federally funded programs, or by any state or local agencies receiving federal funding. The act compensated, at the discretion of the displacing agency, a tenant's relocation to a comparable replacement dwelling.³² In addition, at the state level, New York has specific provisions for rent-stabilized tenants. The Rent Stabilization Code provides in § (2)(b)(1), that the owner must either relocate the tenant to a suitable housing accommodation, or provide moving expenses and a stipend if he or she cannot relocate the tenant.³³ However, this provision is limited to owners who have been approved for demolition by the Division of Housing and Community Renewal, and only rent-stabilized tenants are afforded this protection. Where the owner sells his property privately or the tenant is not the occupant of a rent-stabilized apartment, there are no protections provided by the Uniform Relocation Assistance and Real Property Acquisitions Act does.³⁴ Nor is there any recognition of cultural losses caused by incremental displacements. Therefore, legislatures have not provided comprehensive rights where the United States Constitution falls short.

The Ogoni people of the Nigerian delta also have had limited civil rights afforded to protect them from the effects of oil industry exploitation. Unlike the people in the United States, who are afforded basic rights outlined in the Bill of Rights, the Nigerian government has denied the Ogoni constitutional protections such as due process and freedom of assembly. The Ogoni have had to balance a turbulent relationship between the Nigerian government and the oil companies in the area. In 1990, the Ogoni developed a bill of rights, which in pertinent part demanded, "the right to control and use a fair proportion of Ogoni economic resources for Ogoni development, the use and development of Ogoni culture, religion, and language in Ogoni territory and adequate and direct representation as of right in all Nigerian national institutions."³⁵ This Bill of Rights was sent to the Nigerian government. Instead of accepting its terms, the Nigerian government responded with violent rejections.³⁶ It issued decrees that denied constitutional relief to the Ogoni who sought judicial review.³⁷ The Nigerian government also sent armed forces into

²⁹ Jorge O. Elorza, *Absentee Landlords, Rent Control and Healthy Gentrification: A Policy Proposal to Deconcentrate the Poor in Urban America*, 17 CORNELL J. L. & PUB. POL'Y 1, 9 (2007) (Blacks who tried to obtain loans under this FHA program found it difficult to secure loans with terms that were extended to their white counterparts or even denied loans. Past housing policies such as these have had an effect in inner cities creating a situation where many inner city residents are not property owners. In addition this program preserved racial segregation housing practices).

³⁰*Id.* at 10.

³¹42 U.S.C. §4624 (popular name Uniform Relocation Assistance and Real Property Acquisition Act).

³²42 U.S.C. § 4624 (1987) (replacement housing for tenants and certain others).

³³N.Y. COMP. CODES R. & REGS. TIT. 9, §2524.5 (2000) (provides terms and conditions that landlord must adhere to protect the interests of tenants).

³⁴42 U.S.C. § 4601 (2011) (defines the term "displaced persons as any person who moves from property of personal property as the result of actions by the federal government).

³⁵Eztah, *supra* note 14.

³⁶*Id.* at 818 (amended in 1992, one of the provisions demanded that protect the use of Ogoni culture).

³⁷*Id.* at 820 (the decrees were passed in succession of each other. The decrees suspended the constitution by authorizing military dictatorship, they were anti-succession, they expanded the government's control of mineral resources, they expanded government

Ogoni land to suppress the protests by the Ogoni and the Movement for the Survival of the Ogoni People (MOSOP).³⁸ Therefore, like the Harlem residents, for the Ogoni, civil rights have not protected against the effects of urbanization.

Human rights have not been used to protect the residents of Harlem here or the Ogoni in Nigeria. Due to American exceptionalism,³⁹ the United States has not really adopted human rights protections for use in the states. Michael Ignatieff observes, “[s]ince 1945 America has displayed exceptional leadership in promoting international human rights but it has also resisted complying with human rights standards at home or aligning its foreign policy with these standard abroad.”⁴⁰ It is no wonder that nowhere in the United States Bill of Rights does it extend to social and economic protections. Franklin Roosevelt and Eleanor Roosevelt were instrumental in starting the United Nations and drafting the Universal Declaration of Human Rights.⁴¹ Under Article 25, Section 1 it states, “[e]veryone has the right to a standard of living adequate for health and well-being of himself and of his family,” and housing is included in the enumerated rights.⁴² Additionally, Article 27 Section 1 states, “[e]veryone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,” which can be extended to protect the involuntary displacement of cultures and communities.⁴³ Although ratified by the United States, it is a non-binding.⁴⁴ The United States has not really supported implementation of International Human Rights state-side.⁴⁵

Nigeria, as to the Ogoni, has actively rejected potential Human Rights protections. In addition to the Universal Declaration of Human Rights, the United Nations Commission of Human Rights has adopted the Declaration on the Rights of Person Belonging to National, Ethnic, Religious, and Linguistic Minorities, which would apply to the Ogoni.⁴⁶ This declaration has a requirement that minority groups be extended participation in all affairs or matters related to their lives and territories.⁴⁷ Although this declaration and the universal declaration are present, Nigeria has ignored them.⁴⁸ They have not afforded the Ogoni people human rights under these declarations and have continued to reject human rights charters. Nigeria has signed on to various human rights declarations; however, the world court cannot act unless another signatory makes a complaint against Nigeria on the Ogoni’s behalf.⁴⁹

control of land, they prevented judicial recourse against any decree, and the decrees do not allow inquiry of the decrees against human rights violations).

³⁸Marecic, *supra* note 17, at 208.

³⁹IGNATIEFF, *supra* note 36, at 113 (“American exceptionalism” is defined as the ways in which the United States actually exempts itself from certain international law rules and agreements, even ones that it may have a critical role in framing”).

⁴⁰MICHAEL IGNATIEFF, *AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS*, 1 (Michael Ignatieff, 2005).

⁴¹*Id.*

⁴²The Universal Declaration of Human Rights, UNITED NATIONS, Article 25 §1 (February 24, 2011), <http://www.un.org/en/documents/udhr/index.shtml>.

⁴³The Universal Declaration of Human Rights, UNITED NATIONS, Article 27 §1 (February 24, 2011), <http://www.un.org/en/documents/udhr/index.shtml>

⁴⁴George Andreopoulos, *Universal Declaration of Human Rights*, BRITANNICA ACADEMIC EDITION, (Mar. 18, 2011), <http://www.britannica.com/EBchecked/topic/618067/Universal-Declaration-of-Human-Rights-UDHR>

⁴⁵Bradley S. Klapper, *U.N. Panel Takes U.S. to Task Over Katrina*, ASSOCIATED PRESS, July 29, 2006 (the Hurricane Katrina disaster was one of the first times America was internationally scorned for human rights violations for the treatment of people post-disaster).

⁴⁶Eztah, *supra* note 14, at 836.

⁴⁷*Id.*

⁴⁸Marecic, *supra* note 17, at 218 (in the late 1990’s when the Ogoni conflict was at its highest level, the Nigerian government performed executions of Ogoni activists and supporters of the pro-Ogoni rights movements. Amnesty International stated, “the unfair trial and executions of the nine Ogoni activists is a manifestation of more widespread and systematic violations of human rights in Nigeria).

⁴⁹*Id.* at 219.

THE UNITED STATES, VIA THE COMMUNITY OF HARLEM, NEEDS A MULTI-FACETED APPROACH TO ENSURING PROTECTION FROM DISPLACEMENT OF PEOPLE AND DESTRUCTION OF CULTURE CAUSED BY GENTRIFICATION.

There are many gaps in the laws that the United States has not filled when it comes to displacement of non-property owners and destruction of rich uniquely American cultures. In addition, what little legal recourse exists does not account for the benefits of living in a cultural community. The United States will need a multi-faceted approach to recognize and account for these issues. First, there are some legal doctrines that may help to mitigate the effects of gentrification on communities like Harlem. Second, the time has come for America to join the international community in putting human rights into practice and setting an example for resistant governments like Nigeria's.

A Multi-Faceted Approach to Counteracting Displacement by Gentrification and Destruction of Culture

A multi-faceted approach to counteracting gentrification is needed to address the displacement of people and the destruction of culture. The approach will address issues such as the loss of affordable housing in gentrified neighborhoods, the eviction of tenants not currently living in rent-stabilized apartments, and lack of investment in the neighborhood assets such as local business, schools, and health centers by developers. First, basic support of the availability of affordable housing needs to be supported and strengthened. Second, the residents need to use existing legal doctrines creatively to enable them to counteract and challenge some of the effects of gentrification. Finally, victims of displacement and gentrification need to use other existing legal doctrines as permanent legal protections in their respective communities.

Affordable housing availability should be extended and increased through the use of the Low-Income Housing Tax Credit program. Congress implemented the program in 1986 under Section 42 of the Internal Revenue Service Code to provide tax incentives for the creation, rehabilitation, and acquisition of low-income housing.⁵⁰ Most importantly, it has created a mandatory set-aside program, which required specific tests for anyone utilizing the tax incentive.⁵¹ Specifically, the code provides that in New York City, a 25/60 test be used.⁵² New York State has adopted the Code.⁵³ Currently New York City has the 80/20 program which is a tax incentive for developers who receive low-cost financing as long as the new building has 20% of the units set-aside for low-income residents.⁵⁴ Two solutions can potentially protect much of Harlem's cultural interests from displacement and dilution by keeping the majority of people in the neighborhood. First, since displacement because of lack of affordable housing comes in the wake of gentrification, an increase in the number of set-asides will prove counteractive. Additionally, there needs to be more incentives for current owners to stop or reduce tenant eviction like tax incentives given to developers who utilize the set-aside program. Homeowners who continue to live in the community have direct consumption interests in the community fortunes because there is no risk that their properties will

⁵⁰ Myron Orfield, *Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit*, 58 VAND. L. REV. 1747, 1777 (2005).

⁵¹ 26 U.S.C. § 42(g)(1).

⁵² 26 U.S.C. § 142 (25/50 test- 25% of the units must be rent restricted and occupied by families with incomes 60% or less of the area median gross income, adjusted for family size to account it being a high cost living area).

⁵³ NYCRR T. 9, SUBT. S, CH. VI, SUBCH. B, PT. 2040.

⁵⁴ NYC HOUSING PRESERVATION DEPARTMENT, <http://www.nyc.gov/html/hpd/html/apartment/faqs-for-apt-seekers.shtml#Whatisthe80/20Program> (last visited Mar. 17, 2011).

be devalued.⁵⁵ Since property owners will have stake in the community, they will be reluctant to evict tenants and therefore preserve affordable housing in their private buildings.

Set-aside programs only apply to developers who utilize the tax incentive. To reach developers who choose to build in neighborhoods in Harlem without trying to improve the quality of life of residents, linkage programs may offer a solution. Linkage programs can address these issues and also provide a “viable way for a locality to increase the availability of adequate housing to its economically diverse citizenry.”⁵⁶ There are a number of considerations any area must analyze to determine if a linkage program will work for them. The locality must balance whether the new influx population would be sufficient to make the new development worthwhile despite the cost of linkage.⁵⁷ Additionally, policymakers must consider the rationale for the program, its effectiveness, the availability of alternatives; the effect linkage will have on the overall planning process for land use in the community, and the equity of imposing the cost on developers.⁵⁸ A linkage program designated for Harlem could easily require a fee high enough to help subsidize increased rents in new developments to make the apartments units affordable. The fee, in this case, could be the difference between the market value of the rent and 30% of the income of the prospective renter. A linkage program could, thus, dissuade developers from creating expensive housing without affordable housing units.

Eviction Free Zones could help residents to prevent evictions and therefore displacement. Eviction Free Zones use the legal doctrine of the implied warranty of habitability as way to delay possible evictions⁵⁹, and it involves the collaboration of community groups and legal services.⁶⁰ The implied warranty of habitability requires that landlords maintain residential housing units in “habitable” condition and the breach of the warranty gives tenants a defense against eviction.⁶¹ Landlords in many low-income areas tend to not keep their buildings up to code, and therefore many tenants have the legal defense of this warranty against eviction.⁶² By using this doctrine as a defense against eviction, it can potentially increase the costs of eviction and this reduces eviction efforts,⁶³ preventing landlords from selling off their property. This solution is beneficial because it is a doctrine mostly utilized by tenants to plug one of the holes in the law against displacement. If the warranty were enforced, a landlord, would be required to make improvements to apartments and buildings preventing the eventual decline of the dwellings.⁶⁴ This effect could also be far reaching, in deterring other landlord property owners from trying eviction tactics.

Moreover, there are innumerable condominium units that are vacant in Harlem that could be used for affordable rental housing. The non-profit organization, Right to the City, created a report in which it

⁵⁵ Lee Anne Fennell and Julie A. Roin, *Reassessing the State and Local Government Toolkit: Controlling Residential Stakes*, 77 U. CHI. L. REV. 143, 162 (2010) (suggestion that homeowners care about their property values and that the risk of the decrease in value is what drives them out of the neighborhood).

⁵⁶ Jane E. Schukoske, *Housing Linkage: Regulating Development Impact on Housing Costs*, 76 IOWA L. REV. 1011, 1022 (1991).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Ray Telles, *Forgotten Voices: gentrification and Its Victims*, 3 SCHOLAR 115, 148 (2000) (proposition to counteract gentrification through grass-root solutions. It is a recommendation that can be utilized when there aren't official legal protections against displacement by gentrification).

⁶⁰ Lawrence K. Kolodney, *Eviction Free Zones: The Economics of Legal Bricolage in the Fight Against Displacement*, 18 FORDHAM URB. L.J. 507, 514 (1991).

⁶¹ *Id.*

⁶² *Id.* at 515.

⁶³ *Id.*

⁶⁴ *Id.*

compiled data on condominiums around the city.⁶⁵ The study found that there are a total of 1,009 vacant units in Harlem alone. It proposed two options for New York City to gain access to these buildings. The second option seems to be the most viable. The city could exercise its power of eminent domain to acquire these buildings for economic development.⁶⁶ In *Kelo v. City of New London*, the United States Supreme court broadened the powers of eminent domain by ruling that governments may seize private property for economic development purposes, arguing such development constitutes a public good by creating jobs and economic growth.⁶⁷ New York, through its power of eminent domain, could use these condominiums to create affordable housing and more jobs like maintenance for the buildings. This action could be construed as a public good. These buildings, the city acquires, can be given to community land trusts. Community land trusts are operated by non-profit organizations that can help develop the buildings into mixed income dwellings. This would help to create and keep more people in the communities.

Inclusionary zoning may also help ensure the protection of Harlem's unique cultural and community assets. Inclusionary zoning, usually adopted by municipalities, provides developers with incentives for keeping a number of their residential units at the affordable rates provided by the government.⁶⁸ Additionally, inclusionary zoning policies apply only to developments of certain sizes, typically those involving at least five to ten units.⁶⁹ The ordinance usually requires that developers agree to restrictive covenants against the property which will ensure the rental units remain affordable for a number of years.⁷⁰ Covenants can be beneficial because they run with the land and they are binding on successors.⁷¹ Additionally, the restrictive covenants can require investments into the community social welfare by either creating jobs in the new building, investing in schools to give neighborhood residents access to better schools, or even investing in cleaning and the maintenance of the neighborhood to increase the value of the community. Covenants would serve as a permanent legal mechanism to ensure community regulation of gentrification of the neighborhood instead of regulations by the market.

Historical preservation helps to keep historical buildings from being altered. The use of neighborhood preservation ordinances⁷² can help to protect the feel and look of Harlem as a cultural center. Currently the neighborhood preservation ordinances are defined by the state of New York,⁷³ and have not been applied to Harlem. Since the power is given to non-profits whose mission is preservation,⁷⁴ there is an opening for any non-profit based in Harlem to utilize funds to counteract the destruction of culture by revitalizing and actively preserving buildings in Harlem. If Harlem becomes a historical district, theoretically it would be very difficult for developers to propose certain buildings ideas in the neighborhood. For instance, the ordinance could protect the appearance of buildings, street vendors, and black-owned boutiques that line 125th street. The ordinance would serve more as a legal hurdle to

⁶⁵*People Without Homes and Homes Without People*, RIGHT TO CITY ALLIANCE, (May 11, 2010), <http://www.righttothecity.org/a-count-of-vacant-condos-in-select-nyc-neighborhoods.html>

⁶⁶*Id.* at 51-53.

⁶⁷*Kelo v. City of New London*, 545 U.S. 469, 484(2005).

⁶⁸ Laura H. Nirider, *In Search of "Refinement Without Exclusiveness": Inclusionary Zoning in Highland Park, Illinois*, 102 Nw. U. L. REV. 1919, 1922 (2008) (incentives can include waivers of government-imposed building and demolition fees, exemptions from local zoning laws, and other tactics designed to ensure that builders can still profit from their developments).

⁶⁹*Id.*

⁷⁰*Id.* at 1932.

⁷¹20 Am. Jur. 2d Covenants. § 149 (2010).

⁷²NYCRR T. 9, SUBT. S, CH. X, PT. 2600 (supports the efforts of not-for-profit community-based organizations engaged in neighborhood preservation, by providing funding for administrative and planning costs necessary for continuation of specified neighborhood preservation activities, and to foster the most effective use of public and private resources for these purposes).

⁷³*Id.*

⁷⁴NYCRR T. 9, SUBT. S, CH. X, PT. 2600.1.

developers. The developers would have to obtain approval from a board before they would be able to build or renovate current Harlem buildings. This would also apply to new commercial merchants on 125th street; they would have to confine their large stores to the look and feel of the other stores surrounding them. If the ordinance is well developed, the culture of Harlem should remain untouched in the look and feel of the neighborhood.

In conclusion, a multi-faceted approach, employing both federal laws and creatively using existing legal doctrines maybe the best solution for residents in the United States in protecting against the ill effects of gentrification, displacement and destruction of culture.

It's Time for the United States to Join the International Community in Putting Human Rights into Practice

The United States needs to stop being the exception to implementing human rights and setting an example for resistant countries like Nigeria. Many of the issues that Harlem residents and others who suffer from housing disruption and deprivation in our wealthy country could be resolved if America implemented standards set by international human rights law. The need for adequate housing has been addressed through human rights legislation and provides standards towards which the United States should work.⁷⁵ Housing has a special character, not only because it consumes so large a portion of the household budget, especially for low-income families, but because it is the central setting for so much of one's personal and family life as well as the locus of mobility opportunities, access to community resources, and societal status.⁷⁶ This is central to the concern for displacement of people and destruction of culture. These issues cannot be entirely addressed without solidifying the importance of housing as a right. Currently, as discussed above, there are some housing rights, but they are limited.⁷⁷

How would the United States go about implementing or at least following current human rights doctrine? First, to counter the idea that this is a capitalistic society in which everyone should work hard to secure the right to housing, current human rights law does not require the state to provide housing, nor does it require the state to provide housing free of charge.⁷⁸ All it requires is: that the state ensures everyone has access to housing resources adequate for health, well-being and security, consistent with other human rights; that citizens have a recourse to make those demands; and that the state through its laws ensure these protections.⁷⁹ Ensuring these basic requirements would alleviate problems for victims of displacement who do not benefit from gentrification because they are transferred to the similar inadequate housing that lacks the cultural value of their former dwellings. Some displacement is inherent because society is forever changing, but at the minimum certain housing basics should be extended to alleviate the problem of cultural degradation and dislocation to inadequate housing.

Many have proposed how housing rights can be implemented in the United States. Hartman suggests that a national affordability standard should be set, which should take into account household size, household income, and the cost of non-shelter basics, as opposed to a fixed percentage income.⁸⁰ In addition, he believes provisions should be made for changes in land use and owners' business reasons for

⁷⁵See source *supra*, notes 38-39.

⁷⁶CHESTER HARTMAN, NATIONAL PERSPECTIVES ON HOUSING RIGHTS 147 (Scott Leckie 2003).

⁷⁷*Id.* at 151.

⁷⁸U.N. Housing Rights Programme, Housing Rights Legislation: Rep. of the UN-Habitat and OHCHR, Report No. 1, HS/ 638/ 01 E.

⁷⁹*Id.*

⁸⁰HARTMAN *supra* note 69, at 154.

eviction of residents.⁸¹ Overfelt and Brunsma do not necessarily set forth specific methods to implement a right to housing, but instead they suggest how it can be demanded. They propose organizing and writing reports to the United Nations on the United States regarding the status of housing to garner the attention of United States Officials that there is demands for human rights here.⁸²In addition, they recommend that the Constitution be amended to include basic rights, including housing.⁸³

In conclusion, America must move forward in trying to set an example in the world for the implementation of human rights. There is no reason that one of the wealthiest nations in the world suffers from the same problems that undeveloped countries face. Ensuring housing rights will help mitigate the effects of a changing society and ensuring that people maintain some consistency in their lives. This consistency overall will ensure a more efficient society where people can truly enjoy other facets of life and liberty.

⁸¹Id.

⁸²DAVID OVERFELT AND DAVID L. BRUNSMAN, *THE LEADING ROGUE STATE: THE U.S. AND HUMAN RIGHTS* 23 (Judith Blau et al. 2008)

⁸³Id. (Other countries have incorporated human rights into their constitutions and America would have to do same in order to endure the right. Politicians Charles Rangel (D-NY) and Jesse Jackson Jr. (D-IL) have introduced legislation to amend the U.S. Constitution to establish a right to housing).