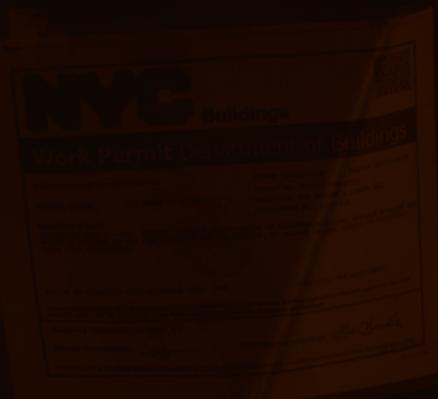




HUMAN
RIGHTS
WATCH

“The Tenant Never Wins”

Private Takeover of Public Housing Puts Rights at Risk in New York City





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- Summary 1**
 - What is RAD?4
 - Insufficient Oversight and Loss of Specific Protections5
 - Evictions 6
 - Housing Conditions 8
 - The Process of Conversion and Affordability..... 8
 - Fulfilling the Right to Adequate Housing..... 9
- Recommendations.....11**
 - To the Federal Government 11
 - To New York City and State Governments 11
 - To the New York City Housing Authority 12
- Methodology.....14**
- I. Background..... 16**
 - The Effects of Funding Cuts on NYCHA..... 19
 - Public Housing: A Refuge of Affordability23
 - The Rental Assistance Demonstration Program (RAD)27
 - A Tale of Unaffordable Housing.....30
- II. What is RAD?..... 32**
 - PACT: Public Money to Private Hands?..... 34
- III: Insufficient Oversight and Loss of Key Protections 38**
 - Federal Monitor Agreement.....38
 - Fields* Settlement..... 40
 - NYCHA Has Disclaimed Responsibility for Repairs42
- IV. Evictions and Renter Protection Fears under PACT..... 45**
 - New York City Eviction Law Falls Short of Human Rights Standards50
 - The Need for Increased Transparency..... 51
 - Private Management of NYCHA Housing Prior to PACT..... 53

Eviction Risks in PACT Developments	55
The Ocean Bay Conversion	55
Permanent Evictions	56
Eviction Filings	61
Executed Eviction Judgments	63
Evictions at Other PACT Sites	64
V. Other Concerns with RAD Conversions	69
Ongoing Concerns over Repairs	69
Pre-Conversion and the Lack of Maintenance by NYCHA.....	70
Post-Conversion Issues	71
Process of Conversion	81
“This Is Not [NYCHA] Anymore” — Difficulties Accessing Services and Registering Complaints with City Authorities	85
Problems Reporting Unsafe Conditions and Accessing Social Services.....	85
Difficulties Transferring to Other Developments	87
VI. International Human Rights Standards on Housing.....	90
Habitability, Accessibility and Availability of Services	91
Forced Evictions and Affordability	92
Racial Discrimination.....	95
Lack of Redress	96
Threats to the Right to Housing Under PACT.....	96
Acknowledgments.....	98
Annex: Excerpt from NYCHA Response Email to Human Rights Watch, August 10, 2021, Concerning Eviction Rates in PACT Housing	99

Summary

[331] is like, “no, you’re NYCHA,” but then when you call NYCHA, they’re like, “No, you’re that Reliant [the property management company].” So you’re falling in between and you’re in this grey area where it’s like, “where am I?”

– Jessica Devalle, Resident at Independence Towers, a building which transitioned to private management under NYCHA’s PACT program...

Around 2 million people in the United States call public housing home. Owned and typically operated by government entities, it is a crucial source of deeply affordable and stable housing for low-income individuals, and particularly for people of color, single mothers, people with disabilities, and older people. Yet over the last 20 years, the federal government has dramatically slashed annual funding for repairs and everyday operations.

In 2021, the overall budget of the US Department of Housing and Urban Development (HUD) was \$69.3 billion, of which \$2.9 billion was allocated for major repairs to public housing. Adjusted for inflation, this amount is around 35 percent lower than the capital funding allocation in 2000, which in 2021 dollars would be worth \$4.5 billion

These cuts have severely impacted both the availability and the habitability of housing. It has forced residents to live with heating system and plumbing failures, water leaks, pest infestations, peeling lead paint, and harmful mold. Years of deferred maintenance has caused the cost of repairing these homes to skyrocket. Each year, between 8,000 and 15,000 units of public housing in the US are lost to deterioration.

Rather than urgently invest in saving these homes, Congress has continued to steadily divest from public housing while increasing funding for housing programs that rely on the private sector. This shift is expressed in the 1998 Quality Housing and Work Responsibility Act (QHWRA), which introduced sweeping reforms, including doing away with a requirement to replace each public housing unit demolished with a new one. The QHWRA also amended the original preamble to the 1937 US Housing Act, which largely started the United States’ modern public housing program, and which declared the policy of the US to be “to assist the several States and their political subdivisions to . . . remedy the unsafe

and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income.” The QHWRA, by contrast, proclaimed that the role of government would be to “promote and protect the independent and collective actions of private citizens to develop housing.”

However, many very low-income families continue to rely on public housing. For example, New York City Housing Authority (NYCHA) accounts for over half of all homes affordable to those in New York City with incomes at or below 30 percent of the area’s median income, whom HUD classifies as “extremely low income.” To maintain the habitability of their homes, local housing authorities have been forced to turn to alternative financing strategies. One of these strategies is a federal program called the Rental Assistance Demonstration (RAD), that allows housing authorities to convert their public housing to more stable subsidy programs that are typically used to finance private-sector affordable housing, allowing them greater access to private financing.

This report documents the implementation of this program by NYCHA, which has by far the largest public housing stock in the country. Under the program, rebranded as Permanent Affordability Commitment Together (PACT), NYCHA has privatized the management of a portion of its housing developments and leased those buildings to private developers, giving them a direct stake in the revenue public housing generates.

Examining this program is of particular importance at this moment, as the Covid-19 pandemic has shone a light on the extent of financial precarity and housing insecurity in the United States. Millions of tenants across the country have fallen behind on rent as a result of the pandemic’s economic impacts, and the populations served by public housing have been hit especially hard. In August 2021, the US Supreme Court deemed the federal government’s eviction moratorium unconstitutional while New York state has sought to maintain protections for tenants with an eviction moratorium that extended until January 15, 2022.

Rents in US public housing are federally capped at 30 percent of a household’s income, but this can still place a significant burden on residents with very low incomes. Many still fall behind on rent, putting them at risk of being displaced once eviction protections expire. As of October 2020, NYCHA reports that nearly 40 percent of NYCHA households are in arrears.

Based on research conducted between October 2020 and October 2021, this report finds that PACT has negatively impacted the right to housing of low-income residents by leading to a reduction in oversight and crucial protections for tenants' rights, including the loss of a federal monitor overseeing a previous settlement with NYCHA. Inadequate government oversight and avenues for redress may render tenants more vulnerable to other violations of their rights, such as increased evictions leading to a loss of housing or ongoing habitability issues.

With NYCHA converting its first building under PACT in late 2016, PACT is a relatively new program, and various factors make it difficult to draw clear conclusions about the long-term impacts of PACT on evictions and habitability. Many PACT conversions occurred while a moratorium on evictions was in place due to the Covid-19 pandemic, and as such, the impact of these conversion on evictions is unknown. PACT has led to buildings receiving sorely needed upgrades and repairs, alleviating maintenance issues that plagued the buildings when managed by the cash strapped NYCHA. However, the ability of new private managers to adequately maintain the buildings will become most clear as PACT buildings age and their now-new systems themselves require upgrades or replacement.

Despite the difficulties of drawing clear long-term conclusions about the impacts of PACT on tenants, the report documents apparently significant increases in evictions in two developments which together house 6,500 people. In addition, tenants Human Rights Watch interviewed described various concerns in PACT developments, such as feeling pressured into signing leases without fully understanding them, ongoing habitability issues and potentially dangerous construction practices, a lack of access to services, and difficulties in obtaining redress in several developments. PACT developers generally disputed these claims, but they underscore the importance of effective oversight and redress mechanisms.

Most conversions took place just prior to or while the eviction moratorium has been in effect. The increase in evictions in two developments, combined with the reduction in oversight and protections for tenants under PACT, raises concerns about the possibility of a new wave of evictions following the end of the moratorium.

What is RAD?

RAD was a program developed by HUD in response to consistently inadequate congressional appropriations and was authorized by Congress in 2012. Conventional public housing is funded by annual grants under Section 9 of the US Housing Act, but RAD allows PHAs to “convert” housing from Section 9 to subsidies under Section 8 of the Housing Act. Section 8 is typically used to subsidize private sector low-income housing and provides for both “tenant-based” and “project-based” rental assistance. For tenant-based assistance, tenants receive vouchers that they can use to find housing on the private market. For project-based assistance, HUD enters into long-term contracts with owners of specific housing complexes, providing a subsidy that covers the gap between what a tenant can afford and the “market rent” of that housing. RAD utilizes project-based Section 8 subsidies.

While both Section 8 and Section 9 are subject to annual congressional appropriations, Congress has, especially since 2000, chosen to increase appropriations to subsidize private housing under Section 8 while at the same time reducing public housing funding under Section 9. Switching to Section 8 also allows PHAs to better access private financing, as well as other public subsidies which are typically reserved for the private sector. While this enables PHAs to access financing for long-underfunded housing, in some cases, it has led to significant private-sector involvement in the operation and financing of public housing. Some PHAs have used RAD to transfer ownership and management of their housing to private entities, which in turn profit from the rents and federal subsidies.

NYCHA utilizes RAD in a program called Permanent Affordability Commitment Together, or PACT. Under PACT, NYCHA leases some of its public housing to private developers for 99 years and outsources the management of these developments to private companies.

Despite the concerns of various housing advocacy organizations that there has been insufficient oversight of RAD’s impacts on tenants, Congress has chosen to expand the program rather than sufficiently fund public housing directly. Congress originally capped the total number of homes eligible for RAD at 60,000 nationally, but has repeatedly increased this limit, which now stands at 455,000, or about 40 percent of all public housing apartments in the US. Beginning in 2016, NYCHA has utilized RAD to privatize the

management of around 9,500 apartments, and ultimately plans to “convert” one-third of its public housing — home to as many as 136,000 people — under PACT.

Despite being promoted as a way to attract private dollars to repair public housing, public money is crucial to financing RAD deals. HUD has, previously, touted leverage ratios (i.e., how many dollars of external financing is raised for each dollar of RAD subsidy) as high as 19:1. However, after the Government Accountability Office (GAO) criticized their methodology, HUD’s reevaluation found that for every \$1 of publicly held or subsidized funding, just \$0.29 of in private, unsubsidized financing was raised.

Insufficient Oversight and Loss of Specific Protections

The conversion of properties to PACT has been accompanied by insufficient oversight and has resulted in the loss of several specific protections that apply to NYCHA housing

Following a lawsuit brought by the federal government concerning the dire conditions in NYCHA housing and NYCHA’s systematic underreporting of those conditions, NYCHA agreed to a settlement that instituted a federal monitor to oversee the authority’s compliance with federal law. The settlement agreement set out a number of reporting and compliance requirements regarding mold remediation, lead paint abatement, elevator and heat outages, and pest infestations. The monitor has enforcement powers and can order remedial directives in the event that NYCHA fails to comply with its obligations under the agreement. But PACT properties are largely exempt from the obligations of this monitor agreement.

In addition, following a lawsuit brought by tenants alleging that NYCHA had a pattern or practice of miscalculating residents’ household income and overcharging them for rent, NYCHA entered into a settlement agreement which will institute various eviction protections starting in January of 2022 and lasting for three years. In particular, NYCHA will be prohibited from starting an eviction proceeding either while a resident’s request that NYCHA adjust its rent calculation due to a loss in income is pending or while a resident has an open grievance concerning NYCHA’s rent calculation. This settlement does not apply to PACT properties.

Tenants' legal recourse in PACT properties is insufficient. PACT tenants can bring cases under New York's landlord-tenant law and have enforceable rights under PACT leases which provide procedural protections from eviction and which prohibit eviction unless there is "good cause." However, tenants cannot enforce the NYCHA and PACT developers' obligations under the contracts underlying PACT transactions. These contracts contain a number of key provisions concerning resident rights as well as obligations on PACT partners to make needed repairs to tenants' apartments. When residents sue to obtain repairs, NYCHA has tried to disclaim its responsibility for ensuring that maintenance is carried out in PACT developments.

Evictions

Many NYCHA residents are concerned about how involving private companies in the operation and financing of public housing will impact them. "Monopoly is being played with our lives," said Cesar Yoc, a NYCHA resident in the Bronx, referencing the multi-player economics-themed board game. "That's what the fight is, to protect us from investors who don't give an 'F' about us." On paper, aside from the NYCHA-specific protections discussed above, tenants in RAD housing nationally have essentially the same rights as those in public housing. But in practice, property managers have significant discretion over evictions and other decisions that may have far-reaching impacts on tenants' lives. Many tenants worry that PACT managers will be more likely to evict them if they fall behind on rent, which could lead to homelessness or a loss of adequate housing. "This is much different than NYCHA, private management means they can boot you when they want," Donovan Richards, Queens Borough President, warned NYCHA residents during a presentation on RAD.

NYCHA does consistently and publicly disclose comprehensive eviction data, either for its own buildings or in PACT housing. In response to a request from Human Rights Watch, NYCHA provided data indicating that two of the six PACT conversions — which together account for nearly half of the apartments converted before February 2020, one month before New York enacted a moratorium on evictions — saw substantial increases in evictions after conversion.

The other four PACT conversions were not associated with higher evictions, and it is not possible based on the existing data to draw conclusions about whether PACT conversions

are generally likely to lead to more evictions. Nonetheless, these cases offer a cautionary tale about ways in which the process of conversion could lead to negative impacts on housing rights if adequate safeguards and oversight aren't built into the program.

At Ocean Bay (Bayside), which is home to over 3,700 people and comprises around 15 percent of all PACT converted homes, multiple residents told Human Rights Watch that the new private management was more aggressive concerning eviction. They “put you out faster,” one resident said. Eviction data from NYCHA and the PACT developer for Ocean Bay indicate that eviction rates increased in the years following conversion, and that eviction rates for both for non-payment and other reasons are significantly higher than the NYCHA average. Data for one other large conversion, Betances in the Bronx, indicate that evictions increased post-conversion.

RDC Development LLC, the PACT developer for Betances and Ocean Bay (Bayside), told Human Rights Watch that, before a household is evicted, they work with residents on a case-by-case basis to “set up payment plans and refer residents to programs that can provide assistance for rent or other expenses.”

It is hard to evaluate the full effect of PACT, given the number of sites and the variety of entities involved, and because nearly half of all apartments converted either immediately before or during the Covid-19 pandemic, when an eviction moratorium was in place. But the elevated eviction rates in two developments raise concerns as to whether there are adequate safeguards to mitigate the risk of increased evictions that result in homelessness or are otherwise inconsistent with international human rights standards

The economic recovery from the Covid-19 pandemic has been unequal, with low-income people still severely affected by the downturn. Residents in PACT developments could be especially vulnerable to losing their homes following the expiration of the moratorium on January 15, 2022. The lack of more affordable housing options means that many tenants face homelessness if they are evicted.

Housing Conditions

The purpose of RAD is to reverse public housing's slide into dilapidation due to chronic underfunding. NYCHA has faced mounting problems with peeling lead paint, failing heat systems, and harmful mold, which can exacerbate respiratory health conditions such as asthma. In some PACT developments, residents told Human Rights Watch that their living conditions improved. However, others reported that serious issues persist.

Some residents told Human Rights Watch that they are still dealing with failing heat. Others described repairs being carried out in an unsafe manner, potentially exposing residents to lead paint or asbestos. Others said that renovations were done cheaply and worry that their homes will soon fall into disrepair. "I don't know if their issue is also money? Somehow, they are still being frugal, I guess," Sonyi Lopez, a PACT resident in the Bronx, said. PACT developers generally disputed these claims in response to questions by Human Rights Watch.

It is not possible based on the findings of this report to draw conclusions about the overall effect of PACT conversion on housing conditions, but tenants' expression of concerns underscores the importance of ensuring effective oversight and accountability mechanisms to address them.

The Process of Conversion and Affordability

Several tenants described the PACT conversion process as rife with confusion. Some of the residents Human Rights Watch interviewed said they did not understand their lease terms and were not provided with either translated drafts of leases or a copy of what they signed, though each PACT developer that Human Rights Watch questioned about translations stated that draft leases were provided in multiple languages.

After conversion, PACT tenants no longer have access to the same NYCHA resources or federal oversight mechanisms, leaving many residents struggling to make complaints, request repairs, or obtain emergency transfers due to crime or abuse. Many PACT tenants stated that they either lost their social service providers or that such providers were either nonexistent or had little presence at their development. "I called my social worker [at NYCHA] and she told me that she had nothing to do anymore with this building," one PACT

resident in Manhattan said. All PACT developers told Human Rights Watch that residents at PACT developments had access to social service providers.

Fulfilling the Right to Adequate Housing

Adequate housing is a human right guaranteed by the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The United States has signed, but not ratified, the ICESCR, meaning that the US government is obligated to refrain from actions that undermine its object and purpose.

US policy has persistently undermined the right to housing by reducing funding to both public housing in particular and to all forms of housing assistance generally. People with low incomes in the US face persistent shortages of affordable housing, as the federal budget authority for all low-income subsidized housing programs is lower today than it was in 1978. As a result, the US needs millions more affordable homes to meet the needs of low-income households. Nationally, applicants spend an average of 21 months on a PHA's waitlist before being accepted into public housing, but steep cuts have resulted in homes that are unsafe or unfit for those lucky enough to receive assistance.

Under the ICESCR, governments should take steps to fully realize the right to housing, and “retrogressive measures,” such as funding cuts to housing programs, need to be fully justified. Especially given the increasing need for affordable housing in the US and the federal government's failure to provide sufficient subsidized housing in any form, the inadequate funding of public housing is an unlawful, retrogressive measure under international human rights law.

Public housing is a critical resource for those with low incomes, who, in the US, disproportionately consist of Black and brown people, as well as people with disabilities. Public housing is also crucially important for older adults, who are especially likely to face high rental cost burdens on the private market.

The vast majority of NYCHA residents are Black or Latinx, many of whom entered public housing following a history of displacement. The disinvestment in public housing, and failure to create adequate alternatives, threatens a crucial source of stability for these

households, deepening the structural discrimination they already experience and exacerbating existing disparities.

Regardless of whether it is public or private, under international human rights law, housing needs to be adequate. As explained in the authoritative general comments of the Committee on Economic Social and Cultural Rights — the expert body charged with interpreting and monitoring state compliance with the ICESCR — this means that it should be affordable and protect occupants from cold, heat, rain, and other threats to health. Residents should have sufficient legal protection from forced evictions. Evictions should not leave a resident vulnerable to homelessness or other violations of human rights. An eviction order should only be granted if an independent authority determines that the legitimate grounds the eviction outweighs the potential consequences for the tenant.

The United States needs to urgently address the lack of adequate housing for those with low incomes. Sufficiently funding the public housing program would largely obviate the need for measures such as RAD and, with adequate oversight, can ensure that public housing residents have homes that are habitable as well as stable and affordable. To the extent RAD continues to be a major focus of housing policy in New York City, it is critical that policymakers significantly improve oversight and introduce effective mechanisms for holding PACT developers accountable and protecting the right to housing.

Recommendations

To the Federal Government

- Sufficiently fund Section 9 of the US Housing Act to enable PHAs to repair and effectively maintain their buildings.
- Do not lift the cap on the number of authorized conversions of public housing to Section 8 under the Rental Assistance Demonstration (RAD) until there has been a thorough, independent review of the program's impacts on tenants, especially concerning evictions.
- Improve HUD's oversight of PHAs by monitoring and publicly disclosing comprehensive information concerning eviction rates, housing conditions, and management responsiveness. Ensure that the process of RAD conversion respects the rights of people with disabilities.
- Allow PHAs to forgive the rental arrears of tenants in public housing, which accrued during the pandemic, and reimburse PHAs to make up for the lost revenue.
- Conduct a review of the requirement that public housing and Section 8 households pay 30 percent of their incomes in rent, to determine whether this is affordable for the lowest-income tenants and whether they must sacrifice paying for other basic needs to meet their rental obligations.
- Review the effectiveness of choice mobility vouchers and consider changes to voucher payment standards to enable residents greater ability to move to different housing if they desire.
- Ratify the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Optional Protocol to the ICESCR. Enact any implementing legislation necessary to allow individuals to enforce their rights under ICESCR in domestic courts

To New York City and State Governments

- Increase funding for the New York City Housing Authority (NYCHA), both to make up for federal shortfalls and to ensure that NYCHA has sufficient oversight capacity.
- Ensure that, even after the Covid-19 pandemic ends, eviction prevention relief programs no longer require a court index number of eviction filing. Ensure that all

applications for rental assistance, regardless of whether a tenant has a pending eviction proceeding, are timely processed, so that an eviction filing does not become a de facto requirement.

- Review whether an extension of the eviction moratorium is warranted, based on the extent of the Covid-19 pandemic, economic conditions, and the extent to which rent relief money has been disbursed. Ensure that rent relief is sufficient to cover tenants' arrears.
- Establish a legal framework regulating the eviction of people from their homes that incorporates a requirement for the judicial authorities to conduct an analysis of the proportionality of eviction relative to its consequences for the persons evicted, and of its compatibility with the human right to housing under the International Covenant on Economic and Social and Cultural Rights, in all cases, including in cases of nonpayment of rent and in cases of occupation without legal entitlement.

To the New York City Housing Authority

- Ensure that PACT development partners have an eviction prevention plan for residents who do not sign new PACT leases.
- Extend the protections of the *Fields* settlement, including those preventing eviction filings being brought while an interim rent adjustment or grievance is pending, to PACT developments. Make permanent the provisions of the *Fields* settlement.
- Monitor whether tenants who are evicted from NYCHA or PACT housing become homeless and publicly disclose to extent to which homelessness follows eviction from NYCHA or PACT housing.
- Publicly disclose and regularly update data concerning evictions in all NYCHA and PACT developments. Such data should be comprehensive, and include *all* stages of the eviction process, from eviction filing to permanent eviction. Such data should also be disaggregated both by reason of eviction and by whether it occurred through housing court or through an administrative procedure.
- Publicly disclose all transactional documents underlying PACT deals.
- Encourage future PACT partners to forgive any existing arrears that tenants accrued prior to conversion, while NYCHA was managing the property, to minimize the risk of evictions that undermine rights.
- Provide residents with a private right of action to enforce the obligations of NYCHA and PACT development teams in PACT transactions.

- Extend protections of federal monitor to PACT developments or appoint another independent body to oversee work at PACT converted sites.
- Improve oversight of PACT developments and consider creating an independent oversight entity to oversee PACT sites which includes meaningful roles for resident leaders at converted developments and which provides mechanisms for PACT residents to raise concerns about their housing.
- Ensure that repairs are completed leading up to PACT conversions and accept responsibility for guaranteeing that PACT partners carry out any new needed repairs.
- Provide clear and accessible avenues for remedies to tenants, such as clear phone, online, or in-person mechanisms to file complaints or register concerns about housing issues beyond the “311” system.

Methodology

This report examines the impacts of the Rental Assistance Demonstration (RAD) on New York City residents of public housing owned by the New York City Housing Authority (NYCHA). RAD is a federal program that has led to the greater involvement of for-profit companies in managing public housing developments.

In researching this report, Human Rights Watch reviewed data and reports from the US Census Bureau, the US Department of Housing and Urban Development (HUD), NYCHA, and various housing policy organizations. These sources detail funding allocations for various housing programs, demographic information on public housing residents, eviction rates, and the impacts of funding reductions on living standards.

Human Rights Watch interviewed 40 people for this report, between January and June 2021, including 17 residents across five NYCHA housing developments that had recently undergone RAD conversions. Human Rights Watch also interviewed 10 current and former residents across nine different non-RAD NYCHA housing developments, one of whom was also interviewed for her expertise as a lawyer working on housing. Most residents we spoke with were women of color. Over 90 percent of NYCHA residents are Black or Latinx, and over 75 percent of NYCHA households are headed by women.¹

In addition, Human Rights Watch interviewed 15 housing policy specialists, lawyers, and activists, as well as one private developer managing a NYCHA development.

Most interviews were conducted by videoconferencing. Some interviews were conducted in person. Research for this report was conducted during the Covid-19 pandemic, with staff taking precautions to minimize the risk of transmission. Most in-person interviews were kept brief and narrowly focused, to minimize exposure.

All interviewees freely consented to the interviews. Human Rights Watch explained to them the purpose of the interview and did not offer any remuneration.

¹ NYCHA, Resident Data Summary 2021, <https://www1.nyc.gov/assets/nycha/downloads/pdf/Resident-Data-Book-Summary-2021.pdf> (accessed July 2, 2021) p. 3.

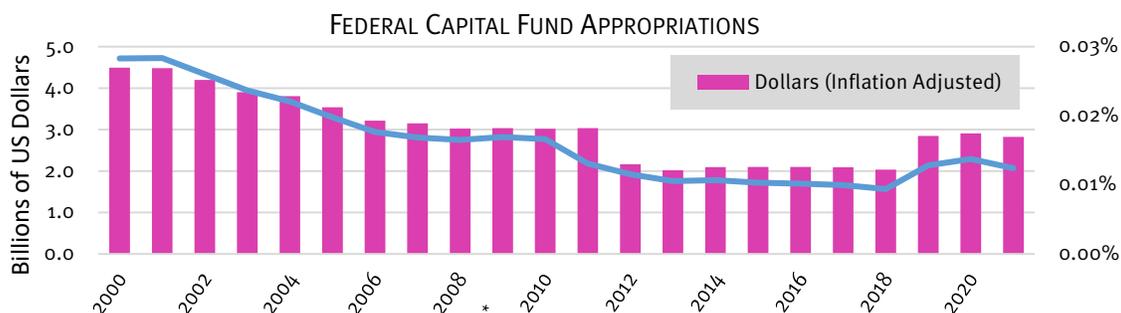
Human Rights Watch spoke with Greg Russ, Chairman and CEO of NYCHA and Johnathan Gouveia, NYCHA's Executive Vice President of Real Estate Development, and Vicki Been, Deputy Mayor for Housing and Economic Development for New York City. We also wrote letters to the companies which develop and manage various PACT developments across New York City, outlining concerns and providing an opportunity to respond.

I. Background

The US Congress has subjected public housing — housing that is owned and typically operated by a city or county government agency called a public housing authority (PHA) — to devastating funding cuts over the last two decades.

Because public housing serves a low-income population and rents in public housing are capped at 30 percent of household income, rental income alone is insufficient to finance ongoing maintenance and major repairs. PHAs thus rely on subsidies. The primary sources of funding for PHAs are two congressionally authorized funds: the capital fund, used for large repairs, and the operating fund, used for routine maintenance and operations.² Both have been drastically cut since 2000, risking the rights to adequate housing of the around 2 million people living in the over 950,000 public housing apartments nationwide.³

In 2021, the overall budget of the US Department of Housing and Urban Development (HUD) was \$69.3 billion, of which \$2.9 billion was allocated to the public housing capital fund.⁴ Adjusted for inflation, this amount is around 35 percent lower than the capital funding allocation in 2000, which in 2021 dollars would be worth \$4.5 billion. These cuts to the capital fund did not begin in 2021 but have largely persisted since 2000.⁵



Source: HRW analysis. HUD budget justifications, 2015-2022; CRS, Introduction to Public Housing; Bureau of Economic Analysis data tables. Inflation adjusted to constant 2021 dollars using Bureau of Labor Statistics data.

Note: Funding for 2009 excludes funding provided in the American Recovery and Reinvestment Act

² Congressional Research Service (CRS), Introduction to Public Housing, February 13, 2014, p. 34, https://www.everycrsreport.com/files/20140213_R41654_ea33861d88be714fd141d7381f838624f1f5b859.pdf (accessed August 9, 2021).

³ HUDUser, Picture of Subsidized Households, <https://www.huduser.gov/portal/datasets/assthsg.html> (accessed October 8, 2021).

⁴ HUD, Budget Authority by Program: Comparative Summary, 2020-2022, https://www.hud.gov/sites/dfiles/CFO/documents/2_2022CJ_FY22BATable.pdf (accessed July 18, 2021).

⁵ Human Rights Watch analysis of HUD budget justifications, FY2013-2022; CRS, Introduction to Public Housing, table 8.

These cuts reflected a turn away from public housing in favor of programs which subsidize the private sector, a turn encapsulated by the 1998 Quality Housing and Work Responsibility Act (QHWRA). The QHWRA proclaimed that the policy of the US is that the “Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens.” Rather, the role of government would be to “promote and protect the independent and collective actions of private citizens to develop housing.”

The QHWRA made it easier for PHAs to demolish public housing by allowing PHAs to use capital funding to tear down their developments and by formally repealing the requirement that for each unit demolished a new unit must be built.⁶ The act also contained the Faircloth Amendment, which barred PHAs from using federal funds to construct new public housing if it would result in the PHA having more public housing units than it did in October 1999.⁷ While the Faircloth Amendment did not itself cut funding, it gave formal legal expression to the federal government’s abandonment of public housing. “The Faircloth Amendment is the Magna Carta of federal disinvestment,” Victor Bach, Senior Housing Policy Analyst at the Community Service Society in New York City, a nonprofit organization advocating for policies that benefit those with low incomes, explained to Human Rights Watch. “It really shows Congress’ attitude toward public housing . . . the idea was to reduce the number of public housing units nationwide.”⁸

Faced with few resources to fix or upgrade apartments or crucial building systems such as plumbing, heating, and elevators, the deterioration of the public housing stock has spiraled out of control. Nationally, between 8,000 and 15,000 public housing apartments have been closed or demolished each year because they are no longer habitable.⁹ The number of public housing apartments peaked in 1994 at around 1.4 million and fell to

⁶ HUD had suspended this rule previously in 1995. See Schwartz, *Housing Policy in the United States*, p. 191; CRS, Introduction to Public Housing, p. 26.

⁷ See generally HUD, Faircloth Limit FAQs, June 2020, <https://www.hud.gov/sites/dfiles/PIH/documents/Faircloth%20FAQ%20.pdf> (accessed May 12, 2021).

⁸ Human Rights Interview with Victor Bach, February 24, 2021.

⁹ Council on Large Public Housing Authorities (CLPHA), CLPHA’s Executive Director tells Affordable Housing Finance How RAD Can Be a Turning Point for Public Housing, April 26, 2019, <https://clpha.org/news/2019/clphas-executive-director-tells-affordable-housing-finance-how-rad-can-be-turning-point> (accessed May 18, 2021); National Low Income Housing Coalition (NLIHC), Priorities for the American Jobs Plan, March 15, 2021, https://nlihc.org/sites/default/files/American_Recovery_Plan.pdf (accessed May 27, 2021).

around 1.3 million by 2000.¹⁰ Since then, this number has fallen by around 310,000,¹¹ but years of deferred maintenance — where major repairs are postponed — have increased the cost to repair the over 950,000 homes that remain. According to the National Association of Housing and Redevelopment Officials, at least \$70 billion is now required to meet the accumulated repair needs of the public housing stock and ensure safe, habitable homes for residents.¹²

Congress has also consistently failed to adequately fund the public housing operating fund, which finances daily operations and maintenance. HUD determines each PHA's operating subsidy using a formula, which identifies the amount of operating support each PHA needs to cover the gap between its rental income and operating costs.¹³ However, between 2000 and 2019, in only 3 years (2002, 2010, and 2011) did Congress provide sufficient funding to allow HUD to provide PHAs the full amount for which they were eligible under HUD's formula and which was necessary to cover this gap.¹⁴ In absolute terms, the operating fund has been increased in recent years. Congress allocated \$4.8 billion to the operating fund in 2021, about equal, when adjusted for inflation, to what Congress allocated in 2000.¹⁵ Even this amount, though, is around 4 percent less than what PHAs need under HUD's formula,¹⁶ and fails to make up for the cumulative losses caused by repeatedly inadequate appropriations.

¹⁰ Alex F. Schwartz, *Housing Policy in the United States* (Third Edition, New York: Routledge, 2015), p. 164, table 6.1.

¹¹ HUDUser, Picture of Subsidized Households, <https://www.huduser.gov/portal/datasets/assths.html> (accessed August 9, 2021). HUDUser is a HUD database containing statistics concerning various HUD programs.

¹² CLPHA, How RAD Can Be a Turning Point for Public Housing; NLIHC, Priorities for the American Jobs Plan; National Association of Housing and Redevelopment Officials (NAHRO), Capital Fund Backlog, https://www.nahro.org/wp-content/uploads/2020/04/CAPITAL_FUND_BACKLOG_One-Pager.pdf (accessed July 15, 2021). Such repair needs include apartment renovations as well as upgrades to major building systems such as heating, ventilation, air conditioning, plumbing, and electrical systems. See e.g., NYCHA, Final Report: Physical Needs Assessment 2017, <https://www1.nyc.gov/assets/nycha/downloads/pdf/PNA%202017.pdf> (accessed August 4, 2021).

¹³ CRS, Public Housing: The Operating Fund Formula, January 7, 2011, https://www.everycrsreport.com/files/20110107_RS22557_b6ef9702759b088589051cf924f193d73b6e4da8.pdf (accessed May 17, 2021), pp. 2-3, 6, Table 6.

¹⁴ Center on Budget and Policy Priorities, Congress Prioritizes Housing Programs in 2018 Funding Bill, Rejects Trump Administration Proposals, July 19, 2018, <https://www.cbpp.org/sites/default/files/atoms/files/7-19-18hous.pdf> (accessed July 14, 2021), pp. 6-7, HUD, Explanation of 2019 Holdback Obligations, <https://www.hud.gov/sites/dfiles/PIH/documents/ExplanationErrorholdback.pdf> (accessed July 14, 2021).

¹⁵ Human Rights Watch Analysis. HUD, Budget Authority by Program: Comparative Summary, Fiscal Years 2020-2022; CRS, Introduction to Public Housing, table 8, p. 38.

¹⁶ See, e.g., HUD, Public Housing Operating Fund Explanation of Calendar Year (CY) 2021 Obligations August and September, July 16, 2021, <https://www.hud.gov/sites/dfiles/PIH/documents/ExplanOblPOS10.pdf> (accessed August 2, 2021).

Funding for public housing, historically, has been almost exclusively provided by the federal government.¹⁷ In some cases, states and localities have provided additional funding for repairing and operating public housing,¹⁸ though these have not made up for the cuts in federal funding to PHAs, as capital needs continue to grow.¹⁹

These cuts have occurred despite the immense need for housing assistance for low-income people. The number of extremely or very low-income households — those with incomes below 50 percent of their metropolitan area’s median income — stands today at nearly 18 million, around 3 million more than in 1999.²⁰ Nearly 80 percent of such households are cost-burdened, spending more than 30 percent of their income on rent and utilities.²¹

The Effects of Funding Cuts on NYCHA

The federal and state cuts devastated the New York City Housing Authority (NYCHA), which, like other PHAs, receives most of its public housing funding from the federal government and relies on such subsidies to cover the gap between resident rents – which are capped at 30 percent of household income – and their operating and maintenance costs.

Had federal capital funding remained at 2001 levels (\$619 million in 2020 dollars), NYCHA would have had an inflation-adjusted cumulative total of \$2.87 billion in additional capital funding between 2001 and 2017.²² Like other PHAs, NYCHA has faced consistent federal operating funding shortfalls since 2000, where the operating subsidy NYCHA received was less than they were eligible for under HUD’s formula and insufficient to cover the costs of

¹⁷ Some states, such as New York and Massachusetts, built public housing using state funds, outside of the federal Section 9 program. As discussed below, such projects are not eligible for federal subsidies. Some states, such as New York, have provided some funding for public housing repairs for public housing which is under the federal Section 9 program.

¹⁸ See, e.g., Victor Bach and Tom Waters, Community Service Society (CSS), *Strengthening New York City’s Public Housing: Directions for Change*, July 2014, https://smhttp-ssl58547.nexcesscdn.net/nycss/images/uploads/pubs/CSS_NYCHA_FinalWeb.pdf (accessed May 14, 2021), pp. 10-16.

¹⁹ NAHRO, *Capital Fund Backlog*.

²⁰ Human Rights Watch analysis. National Low Income Housing Coalition, “The Gap: A Shortage of Affordable Homes,” March, 2021, https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf (accessed July 19, 2021), p. 6, figure 3; from HUD, “Trends in Worst Case Needs for Housing, 1978–1999,” December 2003, <https://www.huduser.gov/portal/Publications/PDF/trends.pdf> (accessed June 9, 2021), p. A-8, Table A-4.

²¹ Human Rights Watch analysis. HUD, *Worst Case Housing Needs: 2019 Report to Congress*, 2020, <https://www.huduser.gov/portal/sites/default/files/pdf/worst-case-housing-needs-2020.pdf>, p. 40-41, Table A-4. (accessed July 19, 2021).

²² Human Rights Watch Analysis of NYCHA Comprehensive Annual Financial Reports, Fiscal Years 2010, 2017.

basic operations. These shortfalls forced NYCHA to run deficits, reduce staffing, and forgo necessary maintenance.²³

New York City funding for public housing has been stagnant, whereas state funding has dropped precipitously. Between 2002 and 2017, the city government’s capital support for NYCHA’s public housing totaled around \$586 million, a small fraction of the amount the city spent on private-sector affordable housing initiatives often aimed at those with higher-incomes than public housing residents.²⁴ In addition, unlike most other PHAs, some of NYCHA’s public housing was constructed using state funds, and as such, it was ineligible for federal support under Section 9 and relied on ongoing support from the state. However, in 1998, at the urging of then-Governor George Pataki, the state government terminated operating support for the units constructed using state funds. This lack of state support forced NYCHA to use its already stretched federal resources to maintain now-unfunded state units.²⁵ In addition, New York state provided no capital funding between 2002 and 2014 for either state-built developments or for NYCHA housing that was built under the federal Section 9 program.²⁶

As a result of consistently inadequate funding, NYCHA has been unable to make needed repairs and upgrades to its aging housing stock and basic operations have been imperiled. Multiple NYCHA residents told Human Rights Watch that their living conditions have steadily deteriorated over the last two decades. They described being forced to endure

²³ Victor Bach and Tom Waters, Community Service Society (CSS), *Strengthening New York City’s Public Housing: Directions for Change*, July 2014, https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/CSS_NYCHA_FinalWeb.pdf (accessed May 14, 2021), pp. 14-16.

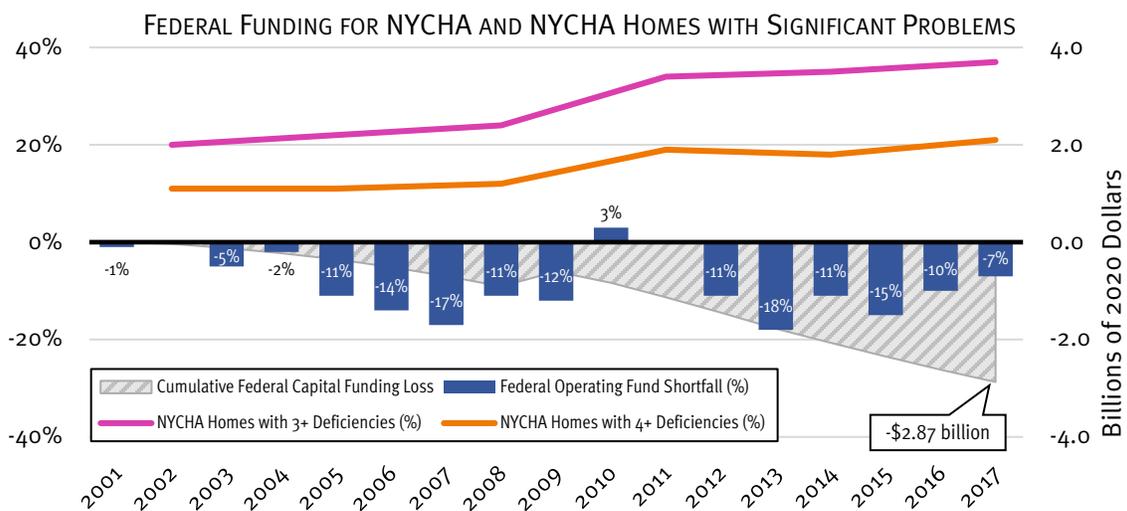
²⁴ See generally Samuel Stein, CSS, *Assessing De Blasio’s Housing Legacy: Why Hasn’t the “Most Ambitious Affordable Housing Program” Produced a More Affordable City?*, February 2021, https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Deblasio_Housing_V41.pdf (accessed August 19, 2021), pp. 5, 7, 16. The amount New York City spent on NYCHA’s capital needs between 2002 and 2017 amounted to just 10 percent of the total capital support the city provided to public and private affordable housing programs during that time. Human Rights Watch Analysis of figures compiled by Citizen’s Budget Commission and New York City. Citizen’s Budget Commission, *Stabilizing the Foundation: Transforming NYCHA to Address Its Capital Needs*, July 3, 2018, <https://cbcny.org/research/stabilizing-foundation> (accessed July 15, 2021).

²⁵ NYCHA made a deal with HUD in 2010 that allowed it to receive federal funding most of these state-and-city-built developments. Others such developments, however, remain unfunded, and have been prioritized for PACT conversion. See, NYCHA, *PACT Unfunded Units: Frequently Asked Questions*, <https://www1.nyc.gov/assets/nycha/downloads/pdf/PACT-Unfunded-Units-FAQs-19.pdf> (accessed August 2, 2021); Victor Bach and Tom Waters, *Strengthening New York City’s Public Housing: Directions for Change*, pp. 10, 14.

²⁶ Citizen’s Budget Commission, *Stabilizing the Foundation*; Victor Bach and Tom Waters, *Community Service Society (CSS), Strengthening New York City’s Public Housing*, pp. 5-6, 10-12

unsafe conditions, including leaks, harmful mold, infestations, failing heat, and peeling lead paint.²⁷ Often, they wait weeks or even years for repairs.

As the chart below illustrates, like other PHAs over the last two decades, NYCHA has consistently faced federal operating fund shortfalls and declining federal capital support. These cuts coincided with an increase in NYCHA households reporting major deficiencies such as water leaks, failing heat, peeling paint, and the presence of rodents. Between 2005 and 2017, NYCHA homes went from having comparable or lower deficiency rates than private-sector low-income housing to having rates over twice as high.²⁸ “Public housing that worked became public housing that was dysfunctional,” Bach told Human Rights Watch.²⁹



Source: HRW analysis. Funding data from NYCHA and HUD. Inflation adjustments made using Bureau of Labor Statistics CPI-U inflation calculator. Deficiency data from Community Service Society analysis of US Census Bureau data.

²⁷ Human Rights Watch interviewed 8 current and 2 former NYCHA residents across 9 different developments between March and June 2021; *United States v. New York City Housing Authority*, 1:18-cv-05213-WHP, (S.D.N.Y., 2018), complaint, <https://www.clearinghouse.net/chDocs/public/PH-NY-0005-0001.pdf> (accessed May 19, 2021), pp. 4, 17-20, 44-45. NYCHA admitted to the allegations regarding mold, pests, lead paint, deficient heat, and unreliable elevators.

²⁸ Samuel Stein, *Assessing De Blasio’s Housing Legacy*, figure 11, p. 23. Deficiency rates based on the New York City Housing and Vacancy Survey, conducted by the US Census Bureau every three years. Because of delays caused by the Covid-19 pandemic, the 2017 is the latest data available.

²⁹ Human Rights Interview with Victor Bach, February 24, 2021.

Greg Russ, Chair and CEO of NYCHA, provided Human Rights Watch an example of how the lack of capital funding has forced the authority to defer needed upgrades, which in turn drives up the cost of routine maintenance. “In a unit that has been well-maintained — which includes capital — I can send a mechanic to fix a leak,” Russ said. However, to fix a leak in a NYCHA building, multiple workers from different trades are needed, leading to higher costs and longer delays. Moreover, lacking the money to replace major building systems, NYCHA must have parts specially manufactured since the systems are so old the parts for it are no longer produced. “For NYCHA, the lack of capital is not only increasing the deterioration of buildings,” Russ said. “It is driving the cost of everything up, so that it’s also impacting the operating budget in a negative way.”³⁰

As part of an agreement, discussed below, following a lawsuit between the federal government and NYCHA concerning deteriorating conditions, New York City has committed to providing \$2.2 billion in funding for NYCHA between 2019 and 2028.³¹ This is a substantial increase from previous funding levels, which totaled just \$462 million over the previous ten years.³² The state has also committed \$450 million in funding since 2019.³³ Yet given decades of deferred maintenance, much more funding is now needed to halt the decline in living conditions caused by the worsening state of its housing. NYCHA estimates that over \$40 billion is required to fully address the repair needs of its public housing, and this figure could grow to nearly \$70 billion by 2028.³⁴ Unless sufficient funding is found, there is a significant risk that NYCHA’s buildings will continue to deteriorate, and many of its residents will continue to live in conditions that NYCHA has recognized are uninhabitable.

³⁰ Human Rights Watch Interview with Greg Russ, May 5, 2021.

³¹ *United States v. New York City Housing Authority*, 1:18-cv-05213-WHP, (S.D.N.Y., 2019), Notice of Dismissal Without Prejudice Pursuant to Rule 41(a)(1)(A)(i), Agreement (Hereafter NYCHA Monitor Agreement), <https://www.clearinghouse.net/chDocs/public/PH-NY-0005-0005.pdf> (accessed May 26, 2021), p. 16.

³² Human Rights Watch Analysis of NYC Comptroller, Comprehensive Annual Financial Reports, fiscal years 2008-2011; Citizens Budget Commission, NYCHA’s 2020 Operating Budget, March 12, 2020, <https://cbcny.org/research/nychas-2020-operating-budget> (accessed August 3, 2021).

³³ See The Council of the City of New York, Report of the Finance Division Report of the Finance Division on the Fiscal 2022 Preliminary Plan, Fiscal 2022 Preliminary Capital Budget, Fiscal 2022, Preliminary Capital Commitment Plan, 2021-2025 Adopted Operating Budget, 2021-2025, Adopted Capital Plan, and the Fiscal 2021 Preliminary Mayor’s Management Report for the New York City Housing Authority, March 12, 2021, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2021/03/NYCHA.pdf> (accessed August 19, 2021), p. 15. While the funding was approved in 2017, it was not released to NYCHA until 2019.

³⁴ The Council of the City of New York, Finance Division Briefing Paper: New York City Housing Authority, March 12, 2021, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2021/03/NYCHA.pdf> (July 15, 2021), pp. 17-18; NYCHA 2021 Fact Sheet, March 2021, https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet_2021.pdf (accessed Aug. 12, 2021), p. 1.

Public Housing: A Refuge of Affordability

In public housing, tenant rents are capped at 30 percent of household income. As such, in a city with a high cost of living,³⁵ NYCHA is a refuge for the lowest income residents of New York, who are finding ever fewer alternative housing options they can afford. While it only comprises 9 percent of New York City’s occupied rental housing stock, NYCHA housing accounts for 57 percent of the units affordable to those with incomes below 30 percent of the area median, and 29 percent of homes affordable to those with incomes at or below 50 percent or less of the area median.³⁶ According to New York University’s Furman Center, measured in constant 2017 dollars, NYCHA public housing accounts for 64 percent of all homes in New York City with monthly rents under \$500, up from 36 percent in 2002.³⁷

Officially, over 350,000 people live in NYCHA’s public housing.³⁸ However, the true number could be upwards of 550,000, as many NYCHA households have “off-lease” members who have not been authorized to live in a NYCHA apartment.³⁹ The affordability of public housing makes it a critical lifeline for low-income households across New York City. Most NYCHA residents between the ages of 18 and 61 are employed, but their median household income is just \$18,473, compared to \$61,297 in all other types of housing in the city.⁴⁰ Around 92 percent of NYCHA residents are Black or Latinx, and as many as 34 percent have a disability.⁴¹

³⁵ According to the New York University (NYU) Furman Center, between 2009 and 2019, median rents increased faster than median incomes. Among extremely low-income renters, nearly 70 percent pay more than 50 percent of their incomes in rent. NYU Furman Center, *State of the City 2020: The State of Renters and Their Homes*, <https://furmancenter.org/stateofthecity/view/state-of-renters-and-their-homes> (August 3, 2021). According to the latest New York City Housing Vacancy Survey, conducted in 2017, between 2014 and 2017 the city lost over 12% of its units with rents under \$1500 (in constant 2017 dollars). By contrast, it experienced a 24% increase in apartments with rents at or over \$2500. Human Rights Watch analysis of data compiled in Alex Schwartz, “New York City’s Affordable Housing Plans and the Limits of Local Initiative,” *Cityscape* 21 (2019):359, exhibit 3, accessed August 3, 2021, <https://www.jstor.org/stable/26820664>

³⁶ NYU Furman Center, *NYCHA’s Outsized Role in Housing New York’s Poorest Households*, December 2018, https://furmancenter.org/files/NYCHA_Brief_12-17-18.pdf (accessed May 7, 2021), p.4.

³⁷ *Ibid.* p.5, figure 7.

³⁸ NYCHA, 2021 Fact Sheet, p.1.

³⁹ Jake Blumgart, “The Ghost Tenants of New York City,” *Slate*, March 3, 2016, <https://slate.com/business/2016/03/new-york-city-public-housing-could-have-more-than-100000-ghost-tenants-living-off-the-books-heres-why.html> (accessed July 15, 2021).

⁴⁰ NYU Furman Center, *How NYCHA Preserves Diversity in New York’s Changing Neighborhoods*, April 2019, https://furmancenter.org/files/NYCHA_Diversity_Brief_Final-04-30-2019.pdf (accessed July 2, 2021), p. 2.

⁴¹ *Ibid.*, p.3; HUDUser, *Picture of Subsidized Households*.

Kristen Hackett, an activist with the Justice for All Coalition and PhD student researching public housing at the City University of New York, told Human Rights Watch that many residents “found themselves living in public housing after a series of displacements, both within the context of their own lives and intergenerationally.”⁴²

Jasmin Sanchez’s story is a testament to this history. Sanchez was raised by her grandparents, who came to New York City from Puerto Rico in 1959. Her grandparents rented an apartment on the Lower East Side, which was demolished as part of an urban renewal project. Her grandparents were then forced to move to another apartment on the Lower East Side, but, according to Sanchez, in the early 1970s, were again displaced after their landlord burned down the apartment building. Such arson was a common occurrence at the time, as landlords abandoned buildings in predominately Black and brown neighborhoods following disinvestment and neglect.⁴³ After being displaced a second time, Sanchez’s family was able to move into public housing, where they could raise a family. “They found permanent housing in public housing, after being hit so hard with horrific housing circumstances due to our government,” she says. “They no longer had to worry about not having a place to live.”⁴⁴

Housing and Structural Racism

There are entrenched racial disparities in US housing, reflecting the structural racism perpetuated and promoted by US government agencies and policies. The practice of “redlining” — in which private lenders and the federal government denied mortgage financing to those in predominately Black or immigrant neighborhoods — systemically denied Black and brown people access to homeownership. Moreover, the Federal Housing Administration, which was

⁴² Human Rights Watch Interview with Kristen Hackett, February 10, 2017.

⁴³ Landlords at the time would sometimes resort to arson to claim insurance money at a time when the effects of redlining — a practice where the government and private entities refuse provide mortgages or housing insurance for housing located in majority-minority neighborhoods — could make refinancing buildings impossible. See Valeria Ricciulli, “In the 1970s, the Bronx was Burning, but Some Residents Were Rebuilding,” *Curbed New York*, May 2, 2019, <https://ny.curbed.com/2019/5/3/18525908/south-bronx-fires-decade-of-fire-vivian-vazquez-documentary> (accessed May 6, 2021); Peter Marcuse, “Gentrification, Abandonment, and Displacement: Connections, Causes, and Policy Responses in New York City,” *Journal of Urban and Contemporary Law* 28: 195 (1985), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1396&context=law_urbanlaw (accessed May 10, 2021), pp. 216, 228.

⁴⁴ Human Rights Watch Interview with Jasmin Sanchez, April 12, 2021.

established to reform mortgage practices and provide mortgage insurances by private lenders, implemented its own permanent systems to preserve and intensify racial segregation.⁴⁵ As of 2021, 45 percent of Black households owned homes, compared to 74 percent of white households.⁴⁶ Black homeowners are also almost five times more likely to own homes in formerly redlined areas than in formerly “greenlined” areas, which were deemed to be lowest risk for mortgage lenders. These disparities are major components of persistent racial wealth gaps, given that homeownership is crucial to wealth-building in the US.⁴⁷

Beyond homeownership, there are also racial disparities in the habitability and stability of housing. Black and brown households are far more likely to be rent burdened, evicted, or live in overcrowded or substandard homes.⁴⁸

The history of public housing cannot be separated from this history of structural discrimination. Many public housing developments were originally constructed as part of “slum clearance” programs that displaced thousands of Black, brown, and low-income households.⁴⁹ Because public housing was often segregated, in some cases, these programs had the effect of turning formerly integrated communities into segregated ones.⁵⁰ In the mid-twentieth century, pressure from private real estate interests helped place strict income limits on public housing,

⁴⁵ Dreisen Heath, “H.R. 40: Exploring the Path to Reparative Justice in America: Written Testimony of Dreisen Heath Submitted to the US House Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties,” Human Rights Watch Testimony, February 17, 2021, <https://www.hrw.org/news/2021/02/17/hr-40-exploring-path-reparative-justice-america>.

⁴⁶ US Census Bureau, Quarterly Residential Vacancies and Homeownership, Second Quarter 2021, <https://www.census.gov/housing/hvs/files/currenthvspress.pdf> (accessed October 1, 2021).

⁴⁷ See e.g., Laurie S. Goodman and Christopher Mayer, “Homeownership and the American Dream,” *Journal of Economic Perspectives* 32(1) (2018): 31, 52-53, accessed October 1, 2021, doi: 10.1257/jep.32.1.31; Dana Anderson, “Redlining’s Legacy of Inequality: \$212,000 Less Home Equity, Low Homeownership Rates For Black Families,” *Redfin*, October 15, 2020, <https://www.redfin.com/news/redlining-real-estate-racial-wealth-gap/> (accessed October 8, 2021).

⁴⁸ National Low Income Housing Coalition, “The Gap: A Shortage of Affordable Homes,” p. 7; see, e.g., Where We Live NYC, Housing Conditions, <https://wherewelive.cityofnewyork.us/explore-data/housing-conditions/> (based on 2017 Census Bureau New York City Housing and Vacancy Survey); Peter Hepburn, Renee Louis, Matthew Desmond, “Racial and Gender Disparities Among Evicted Americans,” *Sociological Science* 7 (2020): 649, accessed October 1, 2021, doi: 10.15195/v7.a27.

⁴⁹ See, e.g., Nicholas Dagen Bloom, *Public Housing That Worked: New York in the Twentieth Century*, (Philadelphia: University of Pennsylvania Press, 2008). p. 119

⁵⁰ Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York: Liveright Publishing, 2017), pp. 26-43.

displacing higher-income tenants.⁵¹ Combined with “white flight” — driven by racist attitudes and subsidized by federal policies enabling low-cost home ownership for white families ⁵² — these changes exacerbated the segregation of public housing and, because rental income dropped, made PHAs more reliant on federal subsidies.⁵³ Today, public housing is a critical resource for Black, Indigenous, and other people of color throughout the US. In New York City, public housing has preserved affordable rental housing opportunities for Black and brown residents. ⁵⁴ However, without further structural reforms, public housing cannot itself solve a housing crisis that is influenced by racialized and classist policy choices and which perpetuates segregated housing and the Black-white wealth gap.⁵⁵

Given its importance as a source of affordable housing for marginalized communities, disinvestment from public housing perpetuates racial disparities in both housing quality and stability. Moreover, beyond the fact that Black, Indigenous or other people of color disproportionately reside in public housing, Black and brown public housing residents have borne the brunt of recent waves of demolition. According to a 2011 study, PHAs across the country “systematically” chose to demolish public housing developments that had disproportionately high Black occupancy compared with other public housing in their cities.⁵⁶ In addition to the trauma inherent in such displacement, those

⁵¹ Rothstein, *The Color of Law*, pp. 41-42.

⁵² Alex F. Schwartz, *Housing Policy in the United States*, p. 168.

⁵³ Ibid; Schwartz, *Housing Policy in the United States*, pp. 176-177;

⁵⁴ See generally NYU Furman Center, *How NYCHA Preserves Diversity in New York’s Changing Neighborhoods*

⁵⁵ See generally, *Shauna Noel and Emmanuella Senat v. City of New York*, 15-CV-5236, (S.D.N.Y. 2019), Expert Report of Professor Andrew A. Beveridge. (“New York City’s level of segregation by these measures was and remains high. Particularly notable is the fact the City has apparently made little or no progress in reducing segregation levels over time, especially as compared with the results of most other large cities.”); Fiscal Policy Institute, *The Racial Dimensions of New York’s Income Inequality*, March 2017, <http://www.fiscalpolicy.org/wp-content/uploads/2017/03/Racial-Dimension-of-Income-Inequality.pdf> (accessed October 8, 2021).

⁵⁶ Edward Goetz, “Gentrification in Black and White: The Racial Impact of Public Housing Demolition in American Cities,” *Urban Studies* 48(8) (2011): 1581, accessed October 1, 2021, doi: 10.1177/0042098010375323

forced to relocate following demolition often faced increased housing costs and limited improvements in income or employment.⁵⁷

The Rental Assistance Demonstration Program (RAD)

The Rental Assistance Demonstration (RAD) is a program developed by HUD in response to inconsistent and meagre federal appropriations to the public housing capital and operating funds. Authorized by Congress in 2012, RAD is designed to help PHAs finance large renovations, as well as fund ongoing maintenance and property management.

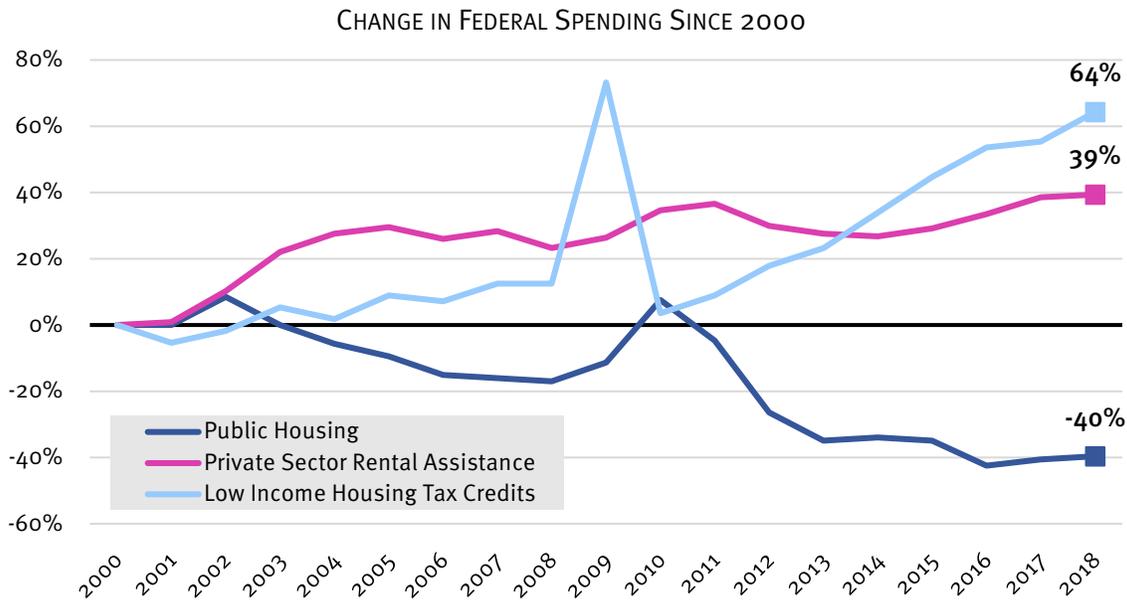
RAD does not allocate money to the conventional public housing program, which was funded by annual grants under Section 9 of the US Housing Act and by annual congressional appropriations.⁵⁸ Rather, it allows PHAs to fund their developments using long-term contracts governed by Section 8, a program typically used to subsidize private sector housing. In addition, RAD allows PHAs to take advantage of other funding sources, such as federal tax credits, which are also primarily used to finance private low-income housing. In practice, RAD often entails PHAs entering into various types of public-private partnerships, with for-profit entities sometimes assuming responsibility for management, including making repairs, collecting rent, and initiating eviction proceedings.

As the data below shows, although long-term contracts under Section 8 are also subject to annual appropriations,⁵⁹ congressional funding has favored subsidizing private sector housing programs rather than funding public housing. Given this, for many PHAs, the choice is between RAD or possible demolition.

⁵⁷ See, e.g., Schwartz, *Housing Policy in the United States*, p. 189; Danya E. Keene and Arline T. Geronimus, “Weathering’ HOPE VI: The Importance of Evaluating the Population Health Impact of Public Housing Demolition and Displacement,” *Journal of Urban Health* 88(3) (2011): 419-426, accessed October 1, 2021. doi:10.1007/s11524-011-9582-5

⁵⁸ CRS, Introduction to Public Housing, p. 9.

⁵⁹ See HUD, Rental Assistance Demonstration: Guide to Choosing Between Project-based Vouchers and Project-based Rental Assistance for Public Housing Conversions, February 27, 2015, https://www.hud.gov/sites/dfiles/Housing/documents/RAD_PBVPBRA_CompareGuide.pdf (accessed September 13, 2021) p. 4



Source: HRW analysis. Comparative funding data for public housing and private sector subsidies from Congressional Research Service. Tax credit funding information from Joint Committee on Taxation. Inflation adjusted with BLS CPI-U inflation calculator.
Note: Public housing funding includes funding for demolitions and programs such as HOPE VI, which lead to a decrease in public housing units. Private sector rental assistance includes both project and tenant-based Section 8 programs, as well as rural housing programs operated by the US Department of Agriculture.

NYCHA utilizes RAD through a program called “Permanent Affordability Commitment Together,” or PACT. Under PACT, public housing developments are leased to private developers, and private companies take over building management. NYCHA plans to convert one-third of its apartments, or 62,000 homes, over 10 years using PACT. The first NYCHA building converted in 2016, and as of March 2021, around 9,500 homes are under the program.⁶⁰ Residents and advocates are sharply divided over NYCHA’s strategy.⁶¹

Given the large number of units in NYCHA’s portfolio and its importance as a key source of affordable housing in New York City, it is crucial that any changes to these units’ management protect the affordability of housing and security of tenure while management protect the affordability of housing and security of tenure while simultaneously improving conditions and ensuring accessibility for people with disabilities.

⁶⁰ NYCHA, Development Data Book 2021, <https://www1.nyc.gov/assets/nycha/downloads/pdf/pdb2021.pdf> (accessed July 2, 2021), pp. 210-219.

⁶¹ Victor Bach, Oksana Mironova, and Tom Waters, CSS, NYCHA in Flux: Public Housing Residents Respond, July 2020, https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/2020_NYCHA_Report_V81.pdf (accessed June 8, 2021), pp. 13, 17.

RAD also impacts public housing residents across the US. Congress has greatly expanded the program, increasing the total number of eligible homes from 60,000 in 2012 to 455,000 in 2018.⁶² Based on a Human Rights Watch analysis, given that, on average, 2.1 people live in each public housing apartment, over 950,000 people could be impacted.⁶³ Including off-lease tenants, the true number could be far higher.

Citing concerns over oversight, various advocacy organizations have called for Congress to not raise the cap on conversion. The National Low Income Housing Coalition (NLIHC) has called for detailed assessments of the impact of RAD on tenants, recommending that the cap on RAD conversions to remain at current levels “until this ‘demonstration’ has convincingly shown that HUD will rigorously monitor PHA and owner compliance with all tenant protections.”⁶⁴

In response to criticism from the Government Accountability Office (GAO), HUD has developed, or is in the process of developing, mechanisms for monitoring various aspects of the PACT program to ensure compliance with various tenant protections.⁶⁵ In September 2021, HUD announced a complaint mechanism to enable residents of RAD-converted developments, as well as advocates, to raise their concerns with HUD.⁶⁶ However, HUD does not track evictions across RAD properties, nor across any other subsidy program, including conventional public housing, and non-RAD Section 8 housing.⁶⁷ The “We Need Eviction Data Now Act,” introduced in September 2021 in the US Congress, would require HUD to establish and maintain a national database of evictions, which would include data for HUD-assisted households, including conventional public housing and RAD-converted

⁶² NLIHC, 2021 Advocate’s Guide, https://nlihc.org/sites/default/files/AG-2021/2021_Advocates-Guide.pdf (accessed April 25, 2021), p. 4-50-4-51.

⁶³ Human Rights Watch Analysis HUDUser, Picture of Subsidized Households. HUDUser is a HUD database containing statistics concerning various HUD programs. According to HUDUser, the average public apartment housed 2.1 people.

⁶⁴ ⁶⁴ NLIHC, 2021 Advocate’s Guide, p. 4-50-4-51.

⁶⁵ .See GAO, Rental Assistance Demonstration: HUD Needs to Take Action to Improve Metrics and Ongoing Oversight, <https://www.gao.gov/products/gao-18-123>, (accessed November 5, 2021).

⁶⁶ HUD, RAD Complaint Process, September 21, 2021 https://www.hud.gov/sites/dfiles/Housing/documents/RAD_External_Complaint_Process_2021-09-21.pdf (Accessed November 5, 2021).

⁶⁷ See United States Representative Rosa DeLauro, DeLauro, Auchincloss Introduces the We Need Eviction Data Now Act, September 24, 2021, <https://delauero.house.gov/media-center/press-releases/delauro-auchincloss-introduce-we-need-eviction-data-now-act> (accessed November 4, 2021).

housing.⁶⁸ HUD did not respond in writing to Human Rights Watch questions about the RAD program.

A Tale of Unaffordable Housing

RAD is a continuation of a trend starting in the mid-1970s with the creation of the Section 8 program, and accelerating since 2000, in which Congress has favored private sector-led programs over direct support for public housing in the US.⁶⁹ This prioritization of the private sector is happening in the context of insufficient overall support for all subsidized housing programs. Throughout the US, there are just 37 affordable and available homes for every 100 renter households with incomes below 30 percent of their metropolitan area’s median income (AMI) and just 60 homes for every 100 households with incomes below 50 percent AMI.⁷⁰ Yet while overall budget authority — how much HUD is authorized to spend — for all HUD programs combined has increased since 2000, Congress appropriates far less to these programs today than it did 40 years ago. HUD’s 2021 budget of \$69.3 billion, which is among this highest in the last 20 years, pales in comparison to the compared to \$159 billion (in 2021 dollars) Congress appropriated for HUD in 1978.⁷¹

Because of these insufficient appropriations, HUD’s actual expenditures are increasingly used to renew existing subsidy contracts rather than add new affordable homes.⁷²

Combined with the increase in the number of extremely or very low-income households, this has resulted in a growing gap between the number of low-income households and the number of HUD subsidized homes.

⁶⁸ We Need Eviction Data Now Act of 2021, H.R. 5361, 117th Congress, September 24, 2021, sec. 3.

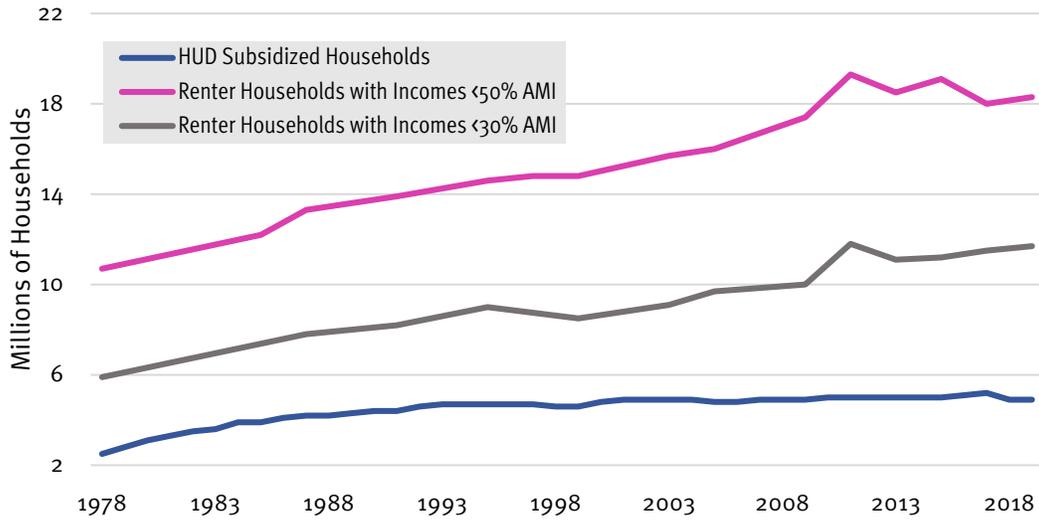
⁶⁹See generally Lawrence J. Value and Yonah Freemark, “From Public Housing to Public-Private Housing: 75 Years of American Social Experimentation,” *Journal of the American Planning Association* 78 (2012): 379, 387-390, accessed August 20, 2021, DOI:10.1080/01944363.2012.737985; UN Human Rights Council, 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: Mission to the United States of America, A/HRC/13/20/Add.4, February 12, 2010, <https://undocs.org/en/A/HRC/13/20/Add.4> (accessed May 12, 2021), para. 10, Overview of Federal Housing Assistance Programs and Policy, March 27, 2019, <https://crsreports.congress.gov/product/pdf/RL/RL34591> (accessed August 20, 2021), table 15, pp. 36-38..

⁷⁰National Low Income Housing Coalition, “The Gap: A Shortage of Affordable Homes,” p. 2..

⁷¹ Human Rights Watch Analysis of Office of Management and Budget Historical Table 5.2: Budget Authority by Agency, 1976-2026. The 2021 HUD Budget was the fourth highest since 2000, which includes 2009, when HUD received additional money as part of a post-recession stimulus package.

⁷² Alex F. Schwartz, *Housing Policy in the United States* (Third Edition, New York: Routledge, 2015), pp. 55-56.

SUBSIDIZED HOUSEHOLDS AND VERY OR EXTREMELY LOW-INCOME HOUSEHOLDS



Source: HRW analysis of HUD data and reports on worst-case housing needs.

Note: Number of HUD subsidized households does not include housing built using low-income housing tax

II. What is RAD?

RAD, at its most basic, allows PHAs to change how their public housing developments are financed. The program allows PHAs to “convert” their developments from the conventional public housing program under Section 9 of the US Housing Act, to a long-term contract under Section 8 of the Act,⁷³ a program typically used to subsidize private low-income housing. Doing so allows PHAs to access a funding source that has enjoyed more generous and stable congressional appropriations. Combined with the increased regulatory flexibility of the Section 8 program, this more stable funding allows PHAs to better access financing on the private market as well as utilize other housing subsidies typically used by the private sector, such as tax credits, which are sold to outside investors in exchange for equity to finance construction or renovation.⁷⁴ Like Section 8 itself, tax-credit spending has grown while spending on public housing has declined.⁷⁵

On paper, the additional resources should help PHAs ensure habitable housing, while provisions in the legislation and regulations governing RAD should ensure that tenants remain protected. In practice, those goals have not always been met, and existing rules governing both RAD and traditional public housing provide those managing housing with significant discretion which can impact tenants.

By utilizing the Section 8 program, RAD allows PHAs to access both private financing, but also substantial public subsidies that, before, were largely reserved for private sector. In

⁷³Traditional public housing is governed by Section 9 of the US Housing Act, which utilizes annual, formula based grants for funding. Section 8 encompasses a variety of programs used primarily to subsidize private sector housing, including tenant-based vouchers which tenants can use to select housing on private market, and rental assistance that is specific to particular housing developments. CRS, Introduction to Public Housing, p. 9. In the case of RAD, project-based assistance is utilized in the form of long-term subsidy contracts between the owner of the public housing development and HUD. While still reliant on annual appropriations, the long-term contract is seen by proponents as a more stable funding platform. See HUD Exchange, Rental Assistance Demonstration (RAD), <https://www.hudexchange.info/programs/rad/> (accessed August 3, 2021).

⁷⁴ See generally National Housing Law Project (NHLP), Rental Assistance Demonstration (RAD), September 7, 2017, <https://www.nhlp.org/resources/rental-assistance-demonstration-rad/> (accessed July 2, 2021). For an overview of the low-income housing tax credit program, see Corianne Payton Scally, Amanda Gold, Nicole DuBois, The Low-Income Housing Tax Credit: How It Works and Who It Serves, July 2018, https://www.urban.org/sites/default/files/publication/98758/lithc_how_it_works_and_who_it_serves_final_2.pdf (accessed April 26, 2021), pp. 4–6.

⁷⁵ See above chart on funding changes for various housing subsidies. Human Rights Watch Analysis of CRS data and reports from Joint Committee on Taxation.

doing so, the program, opened the door to significant private sector involvement in the operations, financing, and sometimes the ownership of public housing.

However, it is difficult to make generalizations about the RAD program nationally, as the extent and form of private-sector involvement varies by public housing authority. Various PHAs have transferred ownership and operation of their developments to private, for-profit entities.⁷⁶ When a PHA sells public housing to a for-profit private entity — which often occurs in transactions utilizing federal tax-credits — the RAD authorizing statute and subsequent HUD notices require either the PHA itself, another public entity, or a nonprofit to retain an interest in the property by, for instance, utilizing a ground lease or retaining certain control rights over the private entity, as approved by HUD.⁷⁷

Other PHAs, however, have limited the for-profit sector’s involvement in the operation of their RAD properties. For example, various PHAs partnered with nonprofits or created single-purpose subsidiaries to assume ownership of converted homes,⁷⁸ and of 20 PHAs surveyed in an evaluation of RAD prepared for HUD, 15 still managed their RAD developments.⁷⁹ Many other PHAs utilized no private funding whatsoever, and simply converted to RAD to take advantage of more stable annual appropriations.⁸⁰

⁷⁶See e.g., Housing Authority of Baltimore City, A Moving to Work Agency, Moving to Work Annual Plan Fiscal Year 2019, April 11, 2018, <https://www.hud.gov/sites/dfiles/PIH/documents/BaltimoreFY2019AnnualPlan.pdf> (accessed June 30, 2021), p.3..

⁷⁷ Consolidated and Further Continuing Appropriations Act of 2012 (hereinafter RAD Statute), November 18, 2011, Pub. L. No. 112-55, as amended by P.L. 113-76, P.L. 113-235, P.L. 114-113, P.L. 115-31, and P.L. 115-141,

https://www.hud.gov/sites/dfiles/Housing/documents/RAD_112-55_Comprehensive_Ramseyer_3-30-18.pdf (accessed June 30, 2021), secs. 14, 20; H-2019-09 PIH-2019-23 (HA), Rental Assistance Demonstration REV-4, (hereinafter RAD Notice), https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23_RAD_Notice%20Rev4

[_20190905.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/H-2019-09-PIH-2019-23_RAD_Notice%20Rev4_20190905.pdf) (accessed June 30, 2021), pp. 30-31. Other options for control include holding a fee simple interest in the real property, legal authority to direct the financial and legal interests of the private owner, owns 51 percent or more of the general partner interests in a limited partnership or of the managing member interests in an LLC, owns 51 percent or more of the ownership interests in the LLC or limited partnership and holds HUD approved control rights, or otherwise demonstrates other ownership or control arrangements approved by HUD.

⁷⁸James Hanlon, “The Origins of the Rental Assistance Demonstration Program and the End of Public Housing,” *Housing Policy Debate* 24 (2017): 624-625, accessed July 7, 2021, doi:10.1080/10511482.2016.1262445; J.K. Dineen, “San Francisco’s Long-Struggling Housing Authority Has Cleaned Up Its Finances,” *San Francisco Chronicle*, October 9, 2020, <https://www.sfchronicle.com/bayarea/article/San-Francisco-s-long-struggling-Housing-15632600.php> (accessed July 2, 2021)..

⁷⁹ Econometrica Inc. and Urban Institute, Final Report: Evaluation of HUD’s Rental Assistance Demonstration (RAD), June 2019, <https://www.huduser.gov/portal/sites/default/files/pdf/RAD-Evaluation-Final-Report.pdf> (accessed July 7, 2021), p. 54.

⁸⁰ Will Fischer, Sonya Acosta, and Anna Bailey, An Agenda for the Future of Public Housing, March 11, 2021, <https://www.cbpp.org/sites/default/files/3-11-21hou.pdf>, (accessed August 20, 2021), p.9, n.14.

PACT: Public Money to Private Hands?

NYCHA has chosen to almost exclusively privatize the administration of public housing while retaining ownership. The authority typically partners with for-profit developers and utilizes private property managers. Under PACT, NYCHA retains ownership of the land and buildings but leases them to one or more private developers for 99 years. Private management companies manage PACT-converted NYCHA buildings, collect rent, and initiate evictions. NYCHA retains an oversight role, maintaining the waiting lists for PACT developments and monitoring evictions, tenant selection, and repairs.⁸¹ NYCHA's most recent request for expressions of interest (RFEI), which calls for companies to bid on a PACT contract, requires future PACT development teams to include at least one minority-or-woman-owned or nonprofit developer to help build the capacity of, and increase opportunities for, such developers.⁸²

As of March 2021, nearly 22,000 residents across 50 formerly NYCHA-managed developments have seen their homes converted from NYCHA management to PACT.⁸³ NYCHA has partnered with 26 different developers and 11 property management companies to implement the program.⁸⁴ The authority has partnered with for-profit developers in every case but two and utilizes private property managers.⁸⁵

New York City officials gave a variety of reasons for choosing to work with for-profit interests. Greg Russ, Chair and CEO of NYCHA, told Human Rights Watch that nonprofit developers often lack sufficient capital to participate in PACT conversions.⁸⁶ Johnathan Gouveia, NYCHA's Executive Vice President for Real Estate Development, and Vicki Been, Deputy Mayor for Housing and Economic Development for New York City, told Human Rights Watch that PACT developers have experience developing affordable housing, and

⁸¹ See generally NYCHA, Round 10 RFEI, Preliminary Summary of Reporting Requirements, <https://eshare.nycha.info/sites/pact10/Library/Exhibit%20Q%20-%20Asset%20Management%20Reporting%20Requirements.pdf> (accessed August 3, 2021); NYCHA, Template NYCHA-Required Provisions for Organizational Documents, December 12, 2019, <https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Required%20Provisions%20for%20Organizational%20Documents-12-12-19-NYCHA%20PACT%20FORM.pdf> (accessed August 3, 2021).

⁸² NYCHA, PACT Round 12 RFEI, December 22, 2021, <https://www1.nyc.gov/assets/nycha/downloads/pdf/pact12-rfei.pdf> (accessed January 24, 2022), p. 16.

⁸³ NYCHA, Development Data Book 2021, pp. 210-219.

⁸⁴ NYCHA, NYCHA PACT Projects, June 2021, https://www1.nyc.gov/assets/nycha/downloads/pdf/PACT_Dataset.pdf (Accessed July 15, 2021).

⁸⁵ NYCHA response to Human Rights Watch Letter, August 10, 2021.

⁸⁶ Human Rights Watch Interview with Greg Russ, May 5, 2021.

that NYCHA is utilizing private property management because of the large size of NYCHA's portfolio coupled with its dwindling resources. "We're trying to get to a place where we're rationalizing and right-sizing NYCHA, trying to get to a place where we can better serve our residents," Gouveia said.⁸⁷ Been also stated that the competition among private managers creates a "laboratory of experiment," from which NYCHA could learn to operate more efficiently.⁸⁸

This approach gives profit-driven entities unprecedented control over public housing residents, who are among the city's most vulnerable. At time of writing, the program has financed over \$1 billion in repairs and is eventually intended to address nearly \$13 billion in capital needs.⁸⁹

PACT deals are designed to be profitable for the private sector to incentivize their participation and like other RAD deals, require significant public money. Typical sources of revenue consist of tenant rents, a developer fee, as well the federal subsidy dollars attached to Section 8 contracts and other federal subsidy programs that NYCHA has utilized to make RAD transactions financially feasible. One of the primary sources of debt financing for these projects are tax-exempt bonds, issued by New York City's municipal housing finance agency, the New York City Housing Development Corporation (HDC).⁹⁰ According to NYCHA's May 2021 RFEI, it requires development partners to contribute 5 or 10 percent of the total development cost minus existing debt, developer fee, and reserves, depending on whether city subsidies are involved.⁹¹ For the PACT Conversions in the May 2021 RFEI, total development costs range between \$247 and \$380 million.⁹²

However, each transaction is different, and NYCHA does not appear to publicly disclose the financing mix for each transaction. For instance, Johnathan Cruz, Development Project Manager at MDG Design and Construction, a developer for three PACT projects, told Human

⁸⁷ Human Rights Watch Interview with Jonathan Gouveia, May 18, 2021

⁸⁸ Human Rights Watch Interview with Vicki Been, June 24, 2021.

⁸⁹ NYCHA, Executive Summary: NYCHA's Draft Agency Plan for FY 2022, https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA_ExecutiveSummary_DraftAnnualPlanFY22_061121_Final.pdf (accessed July 16, 2021).

⁹⁰ NYU Furman Center, NYCHA's Road Ahead: Capital and Operating Budget, Needs, Shortfalls, and Plans, August 2019, https://furmancenter.org/files/NYCHAs_Road_Ahead_Final.pdf (accessed June 9, 2021), p. 6; NYCHA, PACT Round 10 RFEI, p. 11; Human Rights Watch Interview with Johnathan Gouveia, June 9, 2021.

⁹¹ NYCHA, PACT Round 10 RFEI, May 5, 2021, <https://www1.nyc.gov/assets/nycha/downloads/pdf/pactround10.pdf>

⁹² See NYCHA, PACT Round 10 RFEI, Exhibit C, <https://eshare.nycha.info/sites/pact10/SitePages/Home.aspx> (accessed July 16, 2021).

Rights Watch that the PACT conversion of Betances Houses in the Bronx used long-term Section 8 contracts to secure a mortgage on the development from a private bank, rather than use HDC bonds. Cruz added that the Betances PACT developers contributed 15 percent of the project's costs.⁹³

PACT differs in some respects from other PHAs' models for RAD conversions, but its use of public money is typical. An evaluation of RAD prepared for HUD found that, through October 2018, the program had raised \$12.6 billion in total funding.⁹⁴ However, the vast majority of this amount was public money. Proponents of RAD argue that the program uses public dollars to attract high amounts of private investment, and HUD had previously touted leverage ratios (i.e., how many dollars of external financing is raised for each dollar of RAD subsidy) as high as 19:1. However, their methodology was criticized by GAO for erroneously considering certain types of public funding as private.⁹⁵ A final evaluation report on RAD prepared for HUD, incorporating the GAO's criticisms, found that for every \$1 of publicly held or subsidized funding, just \$0.29 of private, unsubsidized financing was raised.

Because RAD is formally budget neutral and does not provide any additional housing subsidy dollars, utilizing other public resources for the program comes at the cost of using them to create or preserve additional affordable housing. A 2021 study, published in *Cityscape*, a scholarly journal published by HUD's Office of Policy Development and Research, found that RAD's use of low-income housing tax credits (LIHTCs) constrains the LIHTC program's "capacity to expand the supply of affordable rental housing and preserve existing affordable housing outside of the public housing program."⁹⁶ That same paper

⁹³ Human Rights Watch Interview with Johnathan Cruz, September 14, 2021. Nationally, using private mortgage financing is a common way of securing financing for repairs in RAD converted public housing. Government Accountability Office (GAO), Report to the Ranking Member, Committee on Financial Services, House of Representatives: Rental Assistance Demonstration, pp. 8-9. Protections in the RAD statute are designed to ensure that foreclosed properties have rents set at no higher than 30 percent of 80 percent AMI, but this would likely be unaffordable to most current public housing residents. See Hunter College Planning Studio, *Under the RADar: Community Development and the Future of NYCHA*, 2019, http://www.hunterurban.org/wp-content/uploads/2019/09/HunterStudio_FinalReport.pdf (accessed October 2, 2021).

⁹⁴ Econometrica Inc. and Urban Institute, *Evaluation of HUD's Rental Assistance Demonstration*, June 2019, p. 4.

⁹⁵ United States Government Accountability Office (GAO), Report to the Ranking Member, Committee on Financial Services, House of Representatives: Rental Assistance Demonstration, HUD Needs to Take Action to Improve Metrics and Ongoing Oversight, February 2018, <https://www.gao.gov/assets/gao-18-123.pdf> (Accessed June 9, 2021), pp. 10-15.

⁹⁶ Alex Schwartz and Kirk McClure, *The Rental Assistance Demonstration Program and Its Current and Projected Consumption of Low-Income Housing Tax Credits*, *Cityscape* 23(2) (2021): 22, accessed October 28, 2021, <https://www.huduser.gov/portal/periodicals/cityscpe/vol23num2/ch1.pdf>.

noted that funding the public housing capital fund would be the “[i]n many ways . . . the simplest and most direct way of preserving the nation’s public housing”⁹⁷

⁹⁷ *Ibid.*, p. 23.

III: Insufficient Oversight and Loss of Key Protections

Compared to NYCHA’s conventional public housing, where NYCHA is essentially the only entity involved in the operation and maintenance, PACT housing involves a number of private entities, in addition to NYCHA. Consequently, some protections resulting from lawsuits against NYCHA no longer apply to PACT developments.

“The conversion of public housing to project-based Section 8 under PACT/RAD fundamentally changes who is responsible for ensuring the many, interrelated rights of tenants,” Elizabeth Gyori, a staff attorney at Legal Services New York City (LSNYC) who has represented PACT tenants seeking repairs, told Human Rights Watch. “Prior to conversion, the public housing authority was ultimately responsible for safeguarding tenants' rights. Under PACT/RAD, responsibility for protecting key rights — such as the right to safe and habitable apartments, the right to income-based rents and due process rights — is spread out among multiple actors, including the private landlord, the management company, NYCHA and HUD.”⁹⁸

Federal Monitor Agreement

In 2018, the US Attorney for the Southern District of New York (SDNY) sued NYCHA, alleging that, since at least 2010, the authority had systematically misled HUD inspectors, underreporting a variety of critical issues, including lead paint, widespread harmful mold growth, pest infestations, lack of heat, and failing elevators.⁹⁹ According to the complaint, NYCHA failed to remediate widespread mold growth, and although NYCHA knew about the risks of lead poisoning, it failed to carry out required visual inspections.¹⁰⁰ The suit also alleged that NYCHA developed protocols to hide such issues from HUD inspectors, including distributing a “Quick Fix Tips” guide, which directed staff on how to superficially cover up issues in buildings. It also alleged that workers were not trained in lead-safe work

⁹⁸ Human Rights Watch Interview with Elizabeth Gyori, November 19, 2021.

⁹⁹ *United States v. New York City Housing Authority*, 1:18-cv-05213-WHP, (S.D.N.Y., 2019), Notice of Dismissal Without Prejudice Pursuant to Rule 41(a)(1)(A)(i), Agreement, p.2; *United States v. New York City Housing Authority*, complaint, paras. 9, 69-73, 163-98, 221-28.

¹⁰⁰ *United States v. New York City Housing Authority*, complaint, paras. 62-67, 163-176.

practices, and NYCHA manipulated the work order process to make it appear, falsely, that it was reducing its maintenance backlog.¹⁰¹

As a result of the lawsuit, NYCHA and the SDNY entered into an agreement appointing a federal monitor to oversee the agency to ensure its compliance with federal law.¹⁰² As part of this agreement, NYCHA admitted to having unsafe conditions in its housing concerning mold, lead, heating, elevators, and pests, as well as to making untrue statements to HUD regarding these conditions, manipulating its work order process, failing to conduct visual lead paint inspections, failing to ensure that staff are trained in lead-safe work practices, and distributing the “Quick Fix Tips” guide.¹⁰³

The federal monitor agreement has compliance requirements and standards as well as reporting requirements regarding these issues in NYCHA buildings.¹⁰⁴ In particular, the agreement lays out detailed protocols for the removal of lead-based paint, and standards for heat, mold, pests, and elevators.¹⁰⁵ The monitor has full access to NYCHA’s data systems and documents, and, in the event of noncompliance by NYCHA, can issue remedial directives which are enforceable if approved by HUD and the SDNY.¹⁰⁶

However, while some provisions of this agreement apply to PACT-converted properties, most do not. NYCHA must ensure that lead abatement in converted properties is carried out in accordance with federal regulations, but other portions of the agreement concerning pests do not apply to PACT buildings.¹⁰⁷ PACT properties also appear exempt from detailed reporting and performance obligations concerning elevators and heating. The agreement

¹⁰¹Ibid., paras. 68-71, 220.

¹⁰² *United States v. New York City Housing Authority*, 1:18-cv-05213-WHP, (S.D.N.Y., 2019), Notice of Dismissal Without Prejudice Pursuant to Rule 41(a)(1)(A)(i), Agreement, p.2, 5-14.

¹⁰³ Ibid., p. 2; See also *United States v. New York City Housing Authority*, 1:18-cv-05213-WHP, (S.D.N.Y., 2019), Consent Degree, <https://www.clearinghouse.net/chDocs/public/PH-NY-0005-0002.pdf> (accessed October 18, 2021), pp. 1-2.

¹⁰⁴ Ibid., p. 13-14, Exhibit A, Exhibit B.

¹⁰⁵ Ibid., Exhibit A, Exhibit B.

¹⁰⁶ Ibid., pp. 23-24.

¹⁰⁷ Ibid., p.4. The agreement states, “If, due to a conversion program an apartment unit, common area, residential building, or building site is no longer operated by NYCHA and receiving funds through Section 9 of the Housing Act, then the obligations of this agreement shall no longer apply as to those conversions as of the closing of the applicable transaction.” An article on the subject in The City notes that a spokesperson for NYCHA “confirmed that RAD apartments aren’t covered by either the monitor or the Baez agreement.” Greg Smith, “NYCHA Monitor, Mold Protections Vanish for Tenants Under Private Management,” February 7, 2020, <https://www.thecity.nyc/housing/2020/2/7/21210561/nycha-monitor-mold-protections-vanish-for-tenants-under-private-management>.

merely specifies that NYCHA “will transfer” 150 elevators and 200 boilers, which are used for heating, to third-party management through PACT, and that developers “will replace elevators as needed” and “replace or repair the boiler and accessory heating systems as needed.”¹⁰⁸

Fields Settlement

In 2019, twelve public housing residents sued NYCHA under Section 9 of the US Housing Act, alleging that NYCHA had a pattern and practice of failing to quickly and accurately determine residents’ incomes, resulting in illegal rent overcharges, since rent in public housing is based on a household’s adjusted income.¹⁰⁹ The residents further alleged that these overcharges resulted in improper eviction proceedings being brought against them.¹¹⁰ NYCHA disputed the residents’ allegations, stating that its income review procedures are consistent with federal law.¹¹¹

In July 2021, a federal court approved a settlement agreement between NYCHA and the residents. While NYCHA did not admit wrongdoing, the settlement contains several protections, which will apply starting in January 2022 and last for three years, for residents who believe they are being overcharged. Firstly, NYCHA cannot commence an eviction proceeding while an interim income recertification — in which a resident requests that NYCHA adjust its rent calculation due to a loss in income — is pending.¹¹² Secondly, NYCHA cannot start an eviction proceeding while a resident has an open grievance concerning NYCHA’s rent calculation.¹¹³ If NYCHA improperly commences an eviction, NYCHA must seek to discontinue the eviction proceeding until the correct rent amount is determined and credits are issued for any past overcharges.¹¹⁴

¹⁰⁸ *Ibid.*, pp. 4, 8. PACT developers are not party to the monitor agreement. NYCHA confirmed to Human Rights Watch that these provisions of the Federal Monitor Agreement apply to PACT and stated that “While much of the Federal Monitor Agreement deals with aspects of the properties while under NYCHA management, the Agreement does not exclude PACT.” NYCHA response to Human Rights Watch Letter, August 10, 2021.

¹⁰⁹ *Fields et al. v. Russ and the New York City Housing Authority*, 19-cv-1368 (ER) (S.D.N.Y., 2021), Stipulation of Settlement and Order, pp. 1-2.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, p.2.

¹¹² *Ibid.*, pp. 9-13.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*, p. 11. However, if a resident raises repair issues as a defense to eviction, the proceeding may continue to assess the repair claims.

The *Fields* settlement agreement does not apply to PACT buildings, which are governed by Section 8 of the US Housing Act.¹¹⁵ Under PACT, NYCHA still determines, based on household income, how much a resident must pay in rent. For public housing residents, income determinations are made by NYCHA's public housing department, whereas income determinations for PACT residents are made by NYCHA's leased housing department, which also administers NYCHA's Section 8 tenant voucher program.¹¹⁶ This means that if NYCHA commits an error in calculating a PACT resident's rent, and the PACT developer commences an eviction proceeding, the resident will not have the protection that *Fields* offers to NYCHA residents: freezing eviction proceedings while the rent calculation grievance is resolved.

Multiple PACT residents told Human Rights Watch that they believed that NYCHA erred in calculating their rent, though Human Rights Watch was unable to verify the validity of these claims. However, one resident, Dianna R., saw her rent increase from 30 percent of her income — the amount at which rent in both public housing and PACT is capped — to over 50 percent.¹¹⁷ After she first found it difficult to either obtain an explanation for the increase or have it reduced, NYCHA lowered her rent.¹¹⁸ An eviction proceeding was not commenced against Dianna, though such a proceeding would have likely been barred by the eviction moratorium in place at the time due to the Covid-19 pandemic. As discussed below, even if an individual does not ultimately lose their home, even merely commencing an eviction proceeding can have severe consequences on a tenant's ability to secure housing in the future.¹¹⁹

¹¹⁵ Email from Elizabeth Gyori to Human Rights Watch, September 1, 2021. Gyori is a lawyer at Legal Services New York City, the organization that represented the plaintiffs in the *Fields* case.

¹¹⁶ A similar lawsuit was brought concerning NYCHA's Section 8 housing choice voucher (HCV) program, alleging a policy and practice of delayed interim recertifications. NYCHA did not admit liability, and entered into a settlement agreement with the plaintiff. The agreement provided deadlines by which NYCHA had to process recertifications; however, it did not bar NYCHA from commencing a termination of subsidy proceeding, nor did it prevent private landlords from bringing non-payment suits against tenants using HCVs while a tenant's income recertification was pending. This protections contained under this agreement expired in April 2016. See generally Scheré Barclay et al. v. NYCHA, 1:11-cv-06740-TPG-MHD (S.D.N.Y. 2016), stipulation of settlement.

¹¹⁷ Human Rights Watch Interview with Dianna R., (pseudonym) March 29, 2021; Documents provided by Dianna R. to Human Rights Watch, March 29, 2021.

¹¹⁸ Email between Human Rights Watch and a resident association leader at Dianna's development.

¹¹⁹ See generally, New York State Bar Association, LEGALESE: The Use of Tenant Screening Reports and Tenant Blacklisting, 2018, https://nysba.org/NYSBA/Publications/LegalEASE%20Pamphlet%20Series/PUB_LegalEase_Tenant%20Screening%20and%20Blacklisting.pdf (accessed August 4, 2021).

NYCHA Has Disclaimed Responsibility for Repairs

Residents' legal recourse is also insufficient. Tenants can sue over housing conditions based on New York landlord-tenant law and concerning landlord obligations in their leases. PACT leases contain requirements that tenants have access to a grievance process before they can be evicted and specifies what constitutes "good cause" for an eviction.¹²⁰

Additional protections for residents, over and above standard landlord-tenant law, are contained in the contracts between NYCHA and private companies that form the basis of PACT deals. However, only HUD and NYCHA, not residents themselves, have the ability to enforce them.

Under a PACT subsidy contract obtained by NY Commons, a collaboration of nonprofit organizations that catalogs information about publicly owned land in New York City, as well as a template control agreement available on NYCHA's website, developers and managers must maintain the buildings and make ordinary and extraordinary repairs. PACT developers must also meet HUD's federal "Housing Quality Standards," minimum standards that all Section 8 housing is required to meet.¹²¹ PACT development teams must report information to NYCHA regarding repair times and apartment conditions, and NYCHA can select a new property manager if the existing one is failing to meet its obligations. Finally, these transactional documents require PACT teams to respect various tenant rights under the RAD statute and HUD notices.¹²²

However, because PACT transactional documents explicitly disclaim third-party beneficiary rights, there is no private right of action for tenants to enforce these contractual provisions. Only NYCHA and HUD can enforce them.¹²³

¹²⁰ NYCHA, PACT Sample Resident Lease, February 16, 2021, p. 6
https://www1.nyc.gov/assets/nycha/downloads/pdf/PACT%20Residential%20Lease_English.pdf (accessed November 3, 2021), pp. 6-7.

¹²¹ Housing Assistance Payment Contract between NYCHA and PACT Renaissance Collaborative LLC, July 2019, https://nycommons.org/media/files/HAP_contract_Pages_103_to_412_from_PIC_Application_DDA0011071-2.pdf, (accessed June 14, 2021), Exhibit B

¹²² NYCHA, Template Control Agreement, pp. 9-11, Exhibit E, Attachment 1B.

¹²³ Template Control Agreement, December 12, 2019, pp. 2-3 (cross-referencing Template Declaration of Restrictive Covenants and Use Agreement, sec. 6); Housing Assistance Payment Contract between NYCHA and PACT Renaissance Collaborative LLC, part 2, p. 17 (sec. 17(c)); This is a national issue with RAD. Human Rights Watch Interview with Deborah Thrope, February 9, 2021.

Moreover, Gyori, who has represented PACT tenants seeking repairs, told Human Rights Watch that, when sued, NYCHA has disclaimed responsibility for ensuring repairs, arguing that “they cannot be held responsible because if they were to do repairs on the premises, they would be trespassers and would be arrested.”¹²⁴ “That’s the whole point of doing PACT, is that NYCHA is no longer the day-to-day manager,” Lucy Newman, a staff attorney at the New York City Legal Aid Society, told Human Rights Watch. “It’s to get [buildings] off of [NYCHA’s] books.”¹²⁵

Gyori also pointed out that NYCHA has not publicly disclosed all of the transactional documents that underlie PACT deals, which she says can make it more difficult to challenge the actions of NYCHA and PACT developers.¹²⁶

In a response to a letter from Human Rights Watch, NYCHA stated that “it is a fundamental component of the PACT program to bring in another entity, the PACT Partner, to be responsible for rehabilitation and repairs in lieu of NYCHA.” They added that NYCHA requires regular reporting from PACT partners on maintenance and repairs and “can ultimately replace a PACT Partner if they are not performing to NYCHA’s expected standards and/or as required by federal, state, or local codes.”¹²⁷

Given these issues, many residents feel as though NYCHA is not effectively monitoring PACT conversions. “We were supposed to have an overseer,” Jeanine Henderson said. “You don’t have anybody really, really watching.”¹²⁸ Justin Cuevas stated that there needs to be a “sizeable meeting between NYCHA, tenants, and incoming management,” where NYCHA can make clear its expectations and tenants can express their concerns.¹²⁹

“I don’t know that there is any particular entity at NYCHA that is overseeing post-conversion issues,” Victor Bach, Senior Housing Policy Analyst at the Community Service Society in New York City, told Human Rights Watch. “There clearly needs to be a

¹²⁴ Human Rights Watch Interview Elizabeth Gyori, June 15, 2021.

¹²⁵ Human Rights Watch Interview with Lucy Newman, June 14, 2021.

¹²⁶ Human Rights Watch Interview with Elizabeth Gyori, February 17, 2021.

¹²⁷ NYCHA response to Human Rights Watch Letter, August 10, 2021.

¹²⁸ Human Rights Watch Interview with Jeanine Henderson, May 20, 2021.

¹²⁹ Human Rights Watch Interview with Justin Cuevas, March 21, 2021.

specifically designated oversight entity that monitors [PACT] conversions.”¹³⁰ The Community Service Society has called for the creation of an oversight entity, independent of NYCHA and PACT developers, to actively monitor any issues following conversion and which includes seats for resident leaders from converted developments to “channel and address emerging resident concerns.”¹³¹

¹³⁰ Human Rights Interview with Victor Bach, February 24, 2021.

¹³¹ Victor Bach, Oksana Mironova, and Tom Waters, CSS, NYCHA in Flux: Public Housing Residents Respond, July 2020, https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/2020_NYCHA_Report_V81.pdf (accessed June 8, 2021), p. 27.

IV. Evictions and Renter Protection Fears under PACT

On paper, both RAD itself and PACT guarantee residents largely the same procedural protections against eviction that they have under traditional public housing governed by Section 9 of the Housing Act.¹³² These provide that eviction may not be arbitrary and may only take place for non-payment of rent, other serious or repeated violations of lease terms, or other good cause.¹³³ Before an eviction can be initiated, residents are entitled to an informal grievance procedure, in which they are notified of the grounds for eviction and informed of the evidence against them. Residents are then given the opportunity to present contrary evidence or question witnesses before an impartial hearing officer or staff member.¹³⁴

However, a key factor in protecting tenants' right to housing is NYCHA's exercise of its wide discretion over decisions affecting residents' ability to stay in their homes.¹³⁵ For example, NYCHA staff are empowered to develop payment plans to resolve rent arrears and consider mitigating factors when tenants face possible eviction for criminal activity, which includes both violent crimes as well as drug and property offenses.¹³⁶

The precarity of many tenants can make late payments unavoidable. Although rent for both public housing and PACT residents is capped at 30 percent of income, many tenants still

¹³² RAD Statute, sec. 5.

¹³³ 24 CFR § 966.4(l). There are some differences in wording between the regulations applicable to Section 9, and the regulations applicable to Section 8, which thus govern RAD conversions. For the regulations concerning Section 9 note that termination of tenancy can only occur for violations of material lease terms whereas the regulations for Section 8 state that "Repeated minor violations of the lease that disrupt the livability of the building" will also be grounds for eviction. See 24 CFR § 880.607. However, the Section 9 regulations outline a number of "household obligations," the violation of which are grounds for eviction. These include, among other things, keeping the apartment in a clean and safe condition, and acting in a way that does not disturb other residents "peaceful enjoyment of their accommodations." 24 CFR § 966.4(f).

¹³⁴ RAD Notice, pp. 64-65, 84, 151, 295-296; 24 CFR § 982.555; NYCHA, PACT Sample Resident Lease, p. 2. Informal hearings over subsidy calculations and income adjustments are conducted by the PHA before an impartial hearing officer. Hearings over other grounds, including those preceding eviction, are carried out by the RAD property managers, but must be conducted by an "impartial member of the Project Owner's staff." RAD Notice, pp. 84, 151.

¹³⁵ See generally, Human Rights Watch, *United States—No Second Chance: People with Criminal Records Denied Access to Public Housing*, November 2004, <https://www.hrw.org/reports/2004/usa1104/usa1104.pdf>.

¹³⁶ See generally, NYCHA, Guidelines on Handling of Termination Cases, Exclusion of Violent or Dangerous Individuals and the Lifting of Exclusions, <https://www1.nyc.gov/assets/nycha/downloads/pdf/law-ansf-case-handling-guidelines.pdf> (June 9, 2021); NYCHA, Management Manual: Rent and Rent Collection, June 7, 2017, <https://eshare.nycha.info/RFQ/Property%20Management%20RFP%20Documents/RFP-66734/RFP%2066734%20-%20Exhibit%20D/Management%20Manual/Management%20Manual%20Chapter%2011.pdf>, pp. 14-15, 43.

struggle to afford it. In the latest Mayor’s Management Report, NYCHA reported that around 40 percent of its households — over 65,000 families — are currently in arrears.¹³⁷ This issue predates the Covid-19 pandemic, as from 2016 through 2019, the percentage of households with arrears increased from 28 percent to 35 percent.¹³⁸ Consequently, many tenants likely face homelessness if they are evicted.

NYCHA can initiate non-payment proceedings with only 14 days’ notice under its leases, but multiple residents, as well as Sylvia T., a former NYCHA housing assistant, told Human Rights Watch that NYCHA only starts eviction proceedings after a tenant is at least 2.5 months in arrears.¹³⁹ Several residents told Human Rights Watch that NYCHA’s leniency depends on the discretion of individual staff, but many reported instances when NYCHA was flexible concerning rent.¹⁴⁰

Many residents in both NYCHA-managed housing and privately managed housing under PACT are concerned that private entities will be more likely to evict residents.¹⁴¹ Some residents Human Rights Watch spoke with specifically mentioned the example of Ocean Bay, discussed in detail below, which experienced an increase in evictions following its conversion in 2017. Due to the eviction moratorium put in place in March 2020 in response to the Covid-19 pandemic, which remained in effect until January 15, 2022, it is difficult to evaluate whether more recent PACT conversions have been associated with increased eviction rates.

“The tenant never wins, only landlords,” Jackie Lara, who lives at a NYCHA development slated for PACT conversion, told Human Rights Watch. “Because it’s about money. Everything is money.”¹⁴² Cesar Yoc, a resident in NYCHA-managed housing in the Bronx, expressed a similar concern. “That’s what the fight is, to protect us from investors who

¹³⁷ New York City, Preliminary Mayor’s Management Report, January 2021, p. 264; Human Rights Watch estimate of affected families based on NYCHA, 2021 Fact Sheet.

¹³⁸ New York City, Mayor’s Management Report, September 2020, https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf (accessed September 2, 2021), p. 308.

¹³⁹ A NYCHA tenant showed Human Rights Watch her lease; Human Rights Watch Interview with Sylvia T. (pseudonym), June 4, 2021; Human Rights Watch Interviews NYCHA Residents, March-June 2021.

¹⁴⁰ Human Rights Watch Interviews NYCHA Residents, March-June 2021.

¹⁴¹ Ibid; See Victor Bach, Oksana Mironova, and Tom Waters, CSS, NYCHA in Flux: Public Housing Residents Respond, p. 15.

¹⁴² Human Rights Watch Interview with Jackie Lara, May 13, 2021.

don't give an 'F' about us," he told Human Rights Watch.¹⁴³ NYCHA appears to be aware of this potential tension between resident stability and the need of its private partners to make returns on their investments. Gregory Russ, NYCHA's chair and chief executive officer, told Human Rights Watch that NYCHA "recognized the issue about potentially having a private developer," adding, "I want to keep the resident protections because I don't want that model to overwhelm the residents somehow."¹⁴⁴ NYCHA's plan to rehabilitate the two-thirds of its stock not currently slated for PACT involves transferring its developments to a newly created public agency.¹⁴⁵

The Eviction Process

Each step in the eviction process can have serious consequences for tenants. Formal evictions typically begin with a court filing.¹⁴⁶ Because eviction filings are public court records, they can appear on tenant screening reports utilized by landlords. Even if tenants ultimately remain in their homes, the filing itself may negatively affect their ability to find housing in the future.¹⁴⁷ If a court rules in favor of the landlord, they receive an eviction judgment, which enables the landlord to remove a tenant from their home. Having an eviction judgment also negatively affects a resident's ability to find future housing and will likely impact one's credit score.¹⁴⁸ In some cases, in New York City, these judgments will be

¹⁴³ Human Rights Watch Interview with Cesar Yoc, March 19, 2021.

¹⁴⁴ Human Rights Watch Interview with Gregory Russ, May 5, 2021.

¹⁴⁵ See generally NYCHA, NYCHA's Blueprint for Change: Transformation Plan March 2, 2021, https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA_Transformation_Plan_Final.pdf (accessed September 3, 2021).

¹⁴⁶ In NYCHA-managed, Section 9 Public Housing, only evictions for nonpayment and unauthorized occupants begin with a court filing. Holdover evictions, for instance, involving a breach of lease term, utilize an administrative hearing. If the hearing determines that a resident should be evicted, NYCHA may then go to housing court to secure a warrant of eviction, which is typically carried out by New York City marshals. See MFY Legal Services, How Do I Handle NYCHA Termination-of-Tenancy Procedures? 2016, <https://mobilizationforjustice.org/wp-content/uploads/NYCHA-How-Do-I-handle-termination-of-tenancy-March-2016.pdf> (accessed September 2, 2021).

¹⁴⁷ Human Rights Watch Interview with Anne Kat Alexander, Researcher and Project Manager at the Princeton University Eviction Lab, August 24, 2021; New York State Bar Association, LEGALESE: The Use of Tenant Screening Reports and Tenant Blacklisting.

¹⁴⁸ New York State Bar Association, LEGALESE: The Use of Tenant Screening Reports and Tenant Blacklisting, p. 5. A poor credit score can have wide-ranging impacts on an individual's life, threatening various human rights. A low score can impede access to employment and loans for other often essential goods such as a car or phone, as well as increase the cost of insurance and utilities. See Megan Leonhardt, "A Poor Credit Score Affects More Than Just Getting a Loan or Credit Card," *CNBC*, December 17, 2020, <https://www.cnbc.com/2020/12/17/poor-credit-scores-affect-more-than-just-getting-a-loan-or-credit-card.html> (accessed October 1, 2021).

executed by marshals, public officers who enforce civil court judgments. However, even after an eviction is executed, tenants who repay their arrears may be permitted to remain in their homes. A “permanent eviction” occurs when a tenant ultimately loses their home following an eviction judgment. Eviction data that relies on court records may only give a partial picture of tenants’ housing stability, as some tenants will involuntarily leave their homes without going through this formal court process. This can occur following threats of evictions, a lock out, a mere eviction filing, or harassment by landlords.¹⁴⁹

PACT leases permit the new management to begin eviction proceedings for non-payment after 14 days’ notice, and PACT developers can pursue the development’s pre-conversion rent arrears.¹⁵⁰ Responding to a letter from Human Rights Watch, one PACT developer, RDC Development, said that there is “no financial incentive for RDC to evict residents, as we will receive the exact same rent regardless of the tenant’s income.”¹⁵¹ The eviction process itself is expensive, and in most cases, under PACT, tenant rent contributions are set at 30 percent of household income. Federal subsidy makes up the gap between the tenant’s contribution of 30 percent of their income and the total fixed “contract rent,” set by NYCHA in accordance with HUD requirements, which does not vary based on a household’s income.¹⁵² As a result, there is less of an incentive to evict existing tenants and replace them with higher-income occupants. However, regardless of their household income, tenants must pay 30 percent of their income as rent, and if they fall into arrears, the developer loses revenue. As a result, some developers might believe that aggressively pursuing rent delinquencies, which may lead to more evictions, maximizes the revenue generated by the PACT housing development.

¹⁴⁹ For a discussion on informal eviction, see Matthew Desmond, “Eviction and the Reproduction of Urban Poverty,” *American Journal of Sociology*: 118 (2012): 95, accessed September 1, 2021, doi: 10.1086/666082

¹⁵⁰ Human Rights Watch Interview with Elizabeth Gyori, Staff Attorney in the Tenant Rights Coalition at Legal Services NYC, February 17, 2021.

¹⁵¹ Letter from RDC Development LLC to Human Rights Watch, August 11, 2021.

¹⁵² In some cases, a PACT developer can receive more than the fixed contract rent. This occurs where a tenant becomes “over income,” such that 30 percent of household income is greater than their home’s contract rent. In such cases, under HUD rules, tenants are still be obligated to pay 30 percent of their income, even though this is higher than the contract rent a PACT developer ordinarily receives. See Chelsea NYCHA Working Group, Final Report, February 2021, <https://www1.nyc.gov/assets/nycha/downloads/pdf/Chelsea-NYCHA-WG-Report-Final.pdf> (accessed August 25, 2021), p. 34.

Every PACT developer that Human Rights Watch wrote to concerning eviction rates responded that, before any eviction proceeding is commenced, they conduct outreach to tenants to try to avoid eviction. RDC, the developer for the Ocean Bay PACT conversion, told Human Rights Watch that they are “committed to keeping residents affordably in their homes” and that eviction is a “last resort.”¹⁵³

Russ told Human Rights Watch that, in one PACT development, the incoming private manager agreed to forgive the arrears that tenants had accrued while NYCHA was managing the development.¹⁵⁴

Beyond any possible incentive to maximize revenue, the financing structure and operating requirements of PACT housing necessitate diligent rent collection, as the consequences of forgoing rental income could negatively impact both PACT developers’ ability to meet ongoing maintenance needs and their ability to meet their financial obligations. “We have bills to pay,” Susan Camerata, principal of RDC Development and chief financial officer of Wavecrest Management, a PACT property manager and development partner, told Human Rights Watch, referencing the fact that as part of the financing for Betances, RDC, the developer, took out a private mortgage.¹⁵⁵ Camerata also stated that NYCHA too needs rental income to cover its expenses and noted that NYCHA may have been better able to maintain their buildings had they been more diligent about collecting rent.

Changing rent collection practices are not the only potential cause of possible increases in eviction following PACT conversion. The process of PACT conversion, which entails existing residents signing new leases with the incoming PACT development team, also poses a potential risk to unauthorized “off-lease” tenants. Especially when the tenant-of-record moves out or dies, such unauthorized residents are, if they are not eligible to remain in public housing, at risk of eviction. “A lot of [unauthorized occupancy] gets discovered upon lease signing,” Camerata told Human Rights Watch. NYCHA’s own staff, who administers the PACT tenants’ subsidies, is also involved in scrutinizing whether a

¹⁵³ RDC Development response to letter from Human Rights Watch, August 11, 2021;

¹⁵⁴ Human Rights Watch Interview with Greg Russ, May 5, 2021.

¹⁵⁵ Human Rights Watch Interview with Susan Camerata, September 14, 2021.

household contains unauthorized residents.¹⁵⁶ As discussed in more detail in the section below, even evictions of those residing in for-public housing despite being ineligible for the program can raise human rights concerns.

The following sections focus primarily on permanent eviction rates, where a resident is removed from their home pursuant to a court order. However, as discussed below, this is an important, but incomplete, picture of residents' overall security of tenure.

New York City Eviction Law Falls Short of Human Rights Standards

As discussed above, in both conventional public housing and PACT housing, evictions can only occur for “good cause.” This itself is an exception from New York City landlord-tenant law, which, at the time of this report, allows landlords to refuse to renew a tenant’s lease even absent good cause.¹⁵⁷ However, even where good cause protections are applicable, neither federal nor New York City or state law requires a court to examine the consequences of eviction for a tenant before issuing an order of eviction.¹⁵⁸ By failing to make such an examination, New York law falls short of international human rights standards.

As discussed in more detail in Section V, international human rights law prohibits evictions that place individuals at risk of homelessness or make them vulnerable to further violations of human rights. It further requires that, before an individual is evicted from their home, judicial authorities determine whether the “legitimate objective of the eviction” is proportionate to the “consequences for the rights of the evicted persons.”¹⁵⁹

¹⁵⁶ Human Rights Watch Interview with Susan Camerata, September 14, 2021; See Brett Yates, “What Will Happen to NYCHA’s Hidden Population under RAD?”. *The Red Hook Star Revue*, December 6, 2019, <http://www.star-revue.com/what-will-happen-to-nychas-hidden-population-under-rad/> (accessed October 2, 2021).

¹⁵⁷ David Brand, “NYC Tenants Reignite Push for ‘Good Cause’ Eviction Protections, Despite Landlord Opposition,” *City Limits*, October 20, 2021, <https://citylimits.org/2021/10/20/nyc-tenants-reignite-push-for-good-cause-eviction-protections-despite-landlord-opposition/> (accessed October 21, 2021).

¹⁵⁸ See generally Access to Justice: New York State Courts, New York City Tenants: Questions & Answers About Housing Court, November 2016, <https://nycourts.gov/courts/nyc/housing/pdfs/tenantsguide.pdf> (accessed October 21, 2021); New York Attorney General, Residential Tenants’ Rights Guide Renter’s Rights and Protections Under New York State Law, https://ag.ny.gov/sites/default/files/tenants_rights.pdf (accessed October 21, 2021).

¹⁵⁹ CESCR, Views adopted by the Committee Concerning Communication No. 85/2018 (El Goumari and Tidli v. Spain), March 16, 2021, E/C.12/69/D/85/2018, <https://undocs.org/pdf?symbol=en/E.C.12/69/D/85/2018> (accessed December 14, 2021), para 8.3; see also CESCR, Views Adopted by the Committee, Concerning Communication No. 37/2018 (López Albán v. Spain), November 29, 2019, E/C.12/66/D/37/2018, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmI BEDzFEovLCuW%2fixYqrebPI9nrLL63ZxgEYzaU8K93ZZ%2b31fCTRBEigY9tavjXQOPQQu%2fyVepYPeFNKZd5Vyu9dVrvOmXoM%2bfqVLoSopt5gN%2buKaR5b7fTq27JogYEOicuBudZEprbyow%3d%3d> (accessed December 14, 2021), para. 11.5

These standards apply to all individuals being evicted from their homes, including those who have persistently failed to pay rent and those who, like “off-lease” tenants, lack a legal entitlement to reside in a given property.¹⁶⁰

Given that public housing residents, including those living in PACT developments, often have extremely low incomes, the risk that they will face homelessness following an eviction is high. As discussed below, NYCHA and companies involved in PACT conversions both told Human Rights Watch that they take steps to connect households with social services before initiating an eviction proceeding. However, NYCHA told Human Rights Watch that they do not monitor households once they have been evicted and are no longer part of either PACT or NYCHA’s public housing.¹⁶¹

The Need for Increased Transparency

In response to an inquiry from Human Rights Watch, NYCHA provided statistics — attached as an appendix to this report and discussed in detail below — regarding permanent eviction rates within their own properties as well as PACT properties. The data NYCHA shared was disaggregated by reason for eviction — including both the number of households evicted for non-payment of rent and the number of households evicted for other reasons (referred to as “holdovers”) — providing some broad information on the causes of housing instability in public housing.

NYCHA subsequently published this same data in the September issue of the *NYCHA Journal*, NYCHA’s resident-facing newspaper.¹⁶² Prior to this release, Human Rights Watch was unable to uncover any comprehensive public information concerning the eviction rates either in NYCHA’s own housing or in PACT housing.¹⁶³

¹⁶⁰ See generally also *López Albán v. Spain*, para. 11.7 (“[A] State party will be committing a violation of the right to adequate housing if it stipulates that a person who is occupying a property without legal title must be evicted immediately irrespective of the circumstances in which the eviction order would be carried out.”).

¹⁶¹ NYCHA response to Human Rights Watch Letter, August 10, 2021.

¹⁶² NYCHA, “NYCHA’s ‘Permanent Affordability Commitment Together’ (PACT) Progress Report: Summer 2021,” *NYCHA Journal*, September 2, 2021, <https://nychajournal.nyc/nychas-permanent-affordability-commitment-together-pact-progress-report-summer-2021/> (accessed October 25, 2021).

¹⁶³ Partial eviction data has been published in various public documents, including NYCHA’s annual plans as well as various other public documents. See, e.g., NYCHA, *Next Generation NYCHA*, May 2015, <https://www1.nyc.gov/assets/nycha/downloads/pdf/nextgen-nycha-web.pdf> (accessed October 25, 2021), p. 50 (stating that NYCHA evicts 0.12 percent of its households for non-payment of rent). NYCHA, *Final Significant Amendment to the Annual PHA Plan for Fiscal Year 2020*, January 15, 2021, https://www1.nyc.gov/assets/nycha/downloads/pdf/Final%20Amendment_FY%202020%20Annual%20Plan_01.15.21%20FINAL.pdf (accessed October 25, 2021), p. 73 (stating that the 2019 eviction rate in PACT properties was

Publicly sharing disaggregated eviction statistics is an important step toward transparency and can help residents meaningfully engage with NYCHA regarding the PACT program. However, the data provided only gives a partial picture of residents' security of tenure.

First, as discussed below, the information provided to Human Rights Watch by NYCHA fails to account for the effect of the eviction moratorium, in place between March 2020 and January 2022, and consequently may underestimate changes in rates of eviction in certain PACT developments.

More fundamentally, data on permanent evictions can only provide a limited picture of housing stability. Even eviction filings that do not necessarily result in a permanent eviction can have long-term impacts on an individual's right to housing by limiting their ability to find new housing on the private market. If a tenant "voluntarily" leaves public housing in response to an eviction filing or other threat of eviction, that also may not appear as an eviction in official data, unless a court order is executed.¹⁶⁴

If such a resident leaves without informing their development's management, their eviction could be recorded as an "abandonment" rather than a non-payment eviction.¹⁶⁵

In addition, some residents in NYCHA-managed housing can be evicted through an administrative "termination of tenancy" process, which occurs outside of housing court. Termination of tenancy proceedings can be brought for a variety of reasons, including "non-desirability," which includes criminal activity as well as poor housekeeping habits, and "chronic rent delinquency," where a resident may be evicted despite having no rent arrears, if they are consistently late in paying rent.¹⁶⁶

0.18 percent, "nearly half that of the NYCHA eviction rate). The data disclosed appears to be incorrect or only partial. As NYCHA's data disclosed in its response to a letter from Human Rights Watch indicates a 2019 PACT eviction rate of 0.5 percent, compared to a 0.3% eviction rate in NYCHA-managed developments. NYCHA response to Human Rights Watch Letter, August 10, 2021.

¹⁶⁴ Human Rights Watch asked NYCHA "If a tenant moves out in response to an eviction filing — as opposed to a full judgment — would that be counted in NYCHA's eviction data as a holdover/abandonment or as a nonpayment eviction?" NYCHA responded: "There are many reasons as to why a tenant may move out during the course of an eviction proceeding. As such, we can only count evictions once a warrant has been executed, not eviction filings." Email from NYCHA to Human Rights Watch, September 5, 2021.

¹⁶⁵ NYCHA told Human Rights Watch that an eviction may be classified as an abandonment where "a household moves out of its apartment without notifying their property manager." NYCHA response to Human Rights Watch Letter, August 10, 2021.

¹⁶⁶ See MFY Legal Services, How Do I Handle NYCHA Termination-of-Tenancy Procedures?

If the officer presiding over the administrative hearing finds in favor of NYCHA, NYCHA must still get an eviction order from housing court in order to forcibly evict tenants.¹⁶⁷ However, some residents may leave following the hearing decision, even absent a court order. Human Rights Watch could only find information concerning administrative termination of tenancy proceedings for non-desirability, not for other grounds such as chronic rent delinquency.¹⁶⁸

Similarly, in PACT properties, NYCHA, itself, can terminate residents' individual Section 8 subsidy, which covers the gap between 30 percent of household income and the rent charged by the PACT development team. Like for public housing residents, grounds terminating a PACT resident's subsidy include broad definitions of criminal activity.¹⁶⁹ For many PACT households, loss of this subsidy would result in their becoming severely rent-burdened and, consequently, place them at high risk of eviction.¹⁷⁰

NYCHA should, going forward, disclose regularly updated, comprehensive data regarding *all* stages of the eviction process, from filing to permanent eviction. This data should be disaggregated both by reason of eviction and by eviction process (that is, whether the eviction occurred through an administrative termination of tenancy procedure or through housing court). Such comprehensive information is critical to monitoring the security of tenure of both NYCHA and PACT tenants.

Private Management of NYCHA Housing Prior to PACT

A previous NYCHA program, pre-dating PACT, which transferred management to private companies, led to an increase in evictions, especially in the years following introduction of

¹⁶⁷ Ibid.

¹⁶⁸ For the latest data, see NYCHA, Outcomes of Non-Desirability Cases 2020, <https://www1.nyc.gov/assets/nycha/downloads/pdf/2020-Outcomes-of-NonDes-and-PE-Removal.pdf> (accessed October 25, 2021).

¹⁶⁹ See NYCHA, Housing Choice Voucher Administrative Plan, May 18, 2020, <https://www1.nyc.gov/assets/nycha/downloads/pdf/HCVAdministrativePlan-05-18-2020.pdf> (accessed October 25, 2021), pp. 45 (giving NYCHA discretion to terminate subsidy assistance if “any member of the household commits drug-related criminal activity; violent criminal activity; criminal activity directly relating to domestic violence, sexual violence, dating violence, sexual assault or stalking; or other criminal activity,” as well as when “NYCHA has reasonable cause to believe that a household member’s alcohol or illegal drug use, or a pattern of alcohol or illegal drug, use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.”).

¹⁷⁰ The average contract rent (the total amount a landlord is entitled to, including both NYCHA subsidy and the portion of the rent paid by tenants) for households assisted under NYCHA’s Section 8 program is \$1,547 per month. On average, tenants pay \$363 of this amount each month with NYCHA subsidy making up the remaining \$1,185. NYCHA, Resident Data Summary 2021, p. 4.

private actors. In 2014, NYCHA launched the Triborough Pilot Project, which did not utilize RAD, but, similar to PACT, involved transferring developments to for-profit developers and outsourcing management to private companies. Under the Pilot Project, NYCHA transferred ownership of six of its housing developments, or 874 apartments, to a partnership of for-profit developers, in which NYCHA retained a 50 percent stake. C+C Property Management, the property management subsidiary of L+M, one of the project developers, took over operations. Transfer of management occurred in December 2014.

A 2018 report by the Citizens Housing Planning Council (CHPC), a nonprofit housing policy research organization, found that the eviction rate in Pilot Project housing was around four times higher than when NYCHA managed the buildings. Moreover, compared to a control group of NYCHA-managed developments that were similar in location, size, and resident demographics, the 2016 eviction rate was nearly four times greater in Pilot Project housing, — 1.0 percent compared to 0.2 percent — and turnover was three times higher, according to the same CHPC report.¹⁷¹ Ron Moelis, co-founder and CEO of L+M, told the *Wall Street Journal* in 2018 that “Sometimes when new management takes over they need to get rid of tenants who are disruptive to others, and that may have led to the slightly higher turnover.”¹⁷²

Responding to letters from Human Rights Watch, C+C management and NYCHA reported that the permanent eviction rate in Pilot Project housing has declined since 2016. The eviction rate was lower than the NYCHA average in 2017, about equal to the NYCHA average in 2018, and higher in 2019. About half of the evictions were for non-payment, while the other half was for unauthorized “off-lease” tenants.¹⁷³ C+C stated that they work with residents to avoid evictions by processing residents’ income adjustments, developing payment plans, and connecting tenants with social services and eviction prevention programs.¹⁷⁴ While C+C did not provide an annualized turnover rate, based on the numbers

¹⁷¹ Citizens Housing Planning Council, *New Partners in Public Housing: Evaluation of NYCHA’s Triborough Pilot Project*, Interim Report, June 2018, <https://chpcny.org/wp-content/uploads/Public-Housing-Triborough-Interim-Report.pdf> (Accessed June 9, 2019), p.12. A final report has not been released as of July 2021.

¹⁷² Laura Kusisto, “Private Sector Does Better Job Managing Public Housing than New York City: Study,” *Wall Street Journal*, June 18, 2018, <https://www.wsj.com/articles/private-sector-does-better-job-managing-public-housing-than-new-york-city-study-1529248106> (accessed June 10, 2021).

¹⁷³ Response from C+C Apartment Management LLC to Human Rights Watch, August 4, 2021; NYCHA response to Human Rights Watch Letter, August 10, 2021.

¹⁷⁴ Response from C+C Apartment Management LLC to Human Rights Watch, August 4, 2021.

provided concerning households moving into pilot project apartments, the turnover rate since 2017 appears to be comparable to NYCHA's.¹⁷⁵

Eviction Risks in PACT Developments

A video shared with Human Rights Watch showed Queens Borough President Donovan Richards meeting with a group of NYCHA residents to present the PACT program to them. Richards warned residents of the potential changes:

[T]hey're not going to be as lenient on you if you are behind three years on your rent . . . This is much different than NYCHA, private management means they can boot you when they want . . . All the stuff you used to get away with, no no, the private management is not putting up with it.¹⁷⁶

Out of the six PACT conversions, permanent eviction rates in two large developments — which together account for around half of the units that converted before February 2020 — significantly increased following conversion.¹⁷⁷ Looking at the PACT portfolio as a whole, the eviction rate was higher than NYCHA-managed housing in 2017, 2018, and 2019.¹⁷⁸ Data provided by NYCHA, in response to a request from Human Rights Watch, indicates that evictions did not increase across three of the five PACT developments that converted before February 2020, one month before New York State enacted an eviction moratorium.

The Ocean Bay Conversion

NYCHA's first RAD conversion was at the Ocean Bay (Bayside) development in Queens in 2016. The Ocean Bay development contains 1,393 apartments and is home to over 3,700

¹⁷⁵ Ibid.

¹⁷⁶ Video on file with Human Rights Watch. Human Rights Watch was unable to ascertain when the video was recorded.

¹⁷⁷ NYCHA response to Human Rights Watch Letter, August 10, 2021; Human Rights Watch Analysis of NYCHA, Development Data Book 2021.

¹⁷⁸ NYCHA response to Human Rights Watch Letter, August 10, 2021 According to figures provided by NYCHA, in 2017, the eviction rate in NYCHA housing was 1 per 326 households, compared to 1 per 66 PACT households. In 2018, 1 out of every 302 NYCHA households was evicted, compared to 1 in every 257 PACT households. In 2019, 1 out of every 303 NYCHA households was evicted, compared with 1 out of every 207 PACT households. These rates may underestimate the eviction rates at PACT developments, as the number of total households for each given year includes developments that converted late in that year. For example, the denominator NYCHA used to calculate the overall PACT eviction rate in 2018 includes developments that converted in November and December of 2018

people.¹⁷⁹ It was leased to the developer MDG and property management company Wavecrest, who together formed the joint venture RDC Development LLC.¹⁸⁰

Permanent Evictions

According to information provided to Human Rights Watch by NYCHA and RDC Development, as well as data provided by Wavecrest to Enterprise Community Partners, since conversion in December 2017, there have been 52 total permanent evictions.¹⁸¹ Due to the moratorium, there have not appeared to be any evictions since mid-March 2020. RDC did not provide Human Rights Watch with an annual breakdown of evictions, but data provided by Wavecrest in a report by Enterprise Community Partners, a nonprofit affordable housing developer and housing policy organization, indicates there were 50 total evictions at Ocean Bay between January 2017 and August 2019 — 20 in 2017, 15 in 2018, and 15 in 2019.¹⁸² Of these 50 evictions, 18 were for non-payment of rent, 26 were “holdover evictions,” where a tenant either does not sign a lease or breaks lease provisions for reasons other than a failure to pay rent, and 6 were classified as abandonments, where tenants leave without notifying management.¹⁸³ RDC’s letter to Human Rights Watch affirmed the accuracy of the Enterprise report.¹⁸⁴

These numbers amount to annual permanent eviction rates of 1.4 percent in 2017, and 1.1 percent in 2018 and 2019.¹⁸⁵ According to data provided to Human Rights Watch by NYCHA, NYCHA’s city-wide annual permanent eviction rate for each of these years was 0.3 percent.¹⁸⁶

¹⁷⁹ NYCHA, Development Data Book 2021, p. 216.

¹⁸⁰ RDC Development response to letter from Human Rights Watch, August 11, 2021.

¹⁸¹ NYCHA response to Human Rights Watch Letter, August 10, 2021; RDC Development response to letter from Human Rights Watch, August 11, 2021; Enterprise Community Partners, Rental Assistance Demonstration (RAD): Lessons Learned at the Ocean Bay (Bayside) Apartments 2017-2018, <https://www.enterprisecommunity.org/sites/default/files/2021-06/RAD-lessons-learned-at-ocean-bay.pdf> (accessed June 10, 2021), pp. 43-44,

¹⁸² Enterprise Community Partners, Rental Assistance Demonstration (RAD), pp. 43-44. NYCHA has, in the past, reported inconsistent eviction data for Wavecrest. In the same Enterprise Community Partners report, NYCHA reported just 15 evictions at Ocean Bay between January 2017 and August 2019. *Ibid.*, p. 44.

¹⁸³ Enterprise Community Partners, Rental Assistance Demonstration (RAD), pp. 43-44

¹⁸⁴ RDC Development response to letter from Human Rights Watch, August 11, 2021.

¹⁸⁵ Human Rights Watch analysis based on dividing the number of evictions by the number of households at Ocean Bay (1,393).

¹⁸⁶ NYCHA response to Human Rights Watch Letter, August 10, 2021.

The permanent eviction rate at Ocean Bay, compared to a city-wide NYCHA eviction rate of 0.3 percent, is significant. Breaking down by cause of eviction, Wavecrest’s report to Enterprise Community Partners stated that 18 of the 50 evictions between January 2017 and August 2018 were for non-payment of rent. There were six non-payment evictions in 2017, seven in 2018, and five between January and August 2019.¹⁸⁷ This amounts to annual non-payment eviction rates between 0.5 and 0.4 percent.¹⁸⁸ The data NYCHA provided to Human Rights Watch indicates an annual non-payment eviction rate of 0.1 percent between 2017 and 2019.¹⁸⁹

The non-payment eviction rate at Ocean Bay (Bayside) has been significantly higher than the NYCHA average, despite the fact that the rent collection rate — the percentage of the total amount of rent owed that is collected — was the same at Ocean Bay and NYCHA in 2017 and higher at Ocean Bay in 2018 and 2019.¹⁹⁰ Moreover, despite the economic effects of the pandemic, Ocean Bay’s rent collection rate appears to have remained high. NYCHA does not collect data on rent collection rates for PACT properties or on the percentage of PACT households in arrears (referred to as the rent delinquency rate),¹⁹¹ though such data could provide information on PACT managers’ rent collection practices. In a letter to Human Rights Watch, RDC said its rent collection rate is 96 percent.¹⁹² By comparison, NYCHA’s rent collection rate for its Queens developments was 78 percent as of August 2021. RDC also reported a rent delinquency rate of 4 percent, though it was unclear from RDC’s letter whether it was referring to the percentage of households with rent arrears or the percentage of total, aggregate rent which was uncollected. Typically, in NYCHA housing, the rent delinquency rate is higher than the percentage of uncollected rent, as households in arrears may only owe small amounts of unpaid rent.¹⁹³

¹⁸⁷ Enterprise Community Partners, Rental Assistance Demonstration (RAD), p. 43

¹⁸⁸ *Ibid.*

¹⁸⁹ NYCHA response to Human Rights Watch Letter, August 10, 2021.

¹⁹⁰ RDC Development Response to Human Rights Watch Letter, August 11, 2021; New York City, Mayor’s Management Report, September 2021, p. 397.

¹⁹¹ NYCHA response to Human Rights Watch Letter, August 10, 2021.

¹⁹² RDC Development Response to Human Rights Watch Letter, August 11, 2021

¹⁹³ For example, NYCHA’s 2021 rent collection rate was 78 percent, meaning that the percentage of aggregate uncollected rent was 22 percent. However, 40 percent of its households are in arrears. New York City, Mayor’s Management Report 2021, p. 397. To provide a hypothetical illustration of the difference in the two concepts, if a public housing development has 10 tenants who each owe \$100 a month in rent, and 5 of those tenants are only able to pay \$90 a month in rent, the development would have a rent collection rate of 95 percent (\$950 out of the \$1000 in total rent owed was collected), but a rent delinquency rate of 50 percent (5 out of 10 tenants are in arrears).

In addition to being higher than the city-wide NYCHA permanent eviction rate, evictions at Ocean Bay itself appeared to increase following conversion. Adjusting NYCHA's figures to account for the eviction moratorium, there were, on average, 10.9 annual evictions at Ocean Bay in the 4.5 years before PACT conversion, and 16.0 annual evictions in the 3 years and 3 months between conversion and the institution of an eviction moratorium in March 2020.¹⁹⁴

In city council testimony in 2021, NYCHA attributed “most” of the evictions at Ocean Bay to residents abandoning their homes.¹⁹⁵ However, Wavecrest's report to Enterprise Community Partners stated that 6 out of the 50 evictions were due to abandonment.¹⁹⁶ It is unclear why these apartments were abandoned in the first place. One resident described a neighbor leaving her home and entering a homeless shelter after receiving a letter threatening eviction, an event that could appear as an abandonment in eviction data, but Human Rights Watch was unable to corroborate this account or to determine the context for any of the other abandonments. NYCHA told Human Rights Watch that an eviction is classified as an abandonment when “a household moves out of its apartment without notifying their property manager,” and that “the circumstances surrounding the moveout are rarely known.”¹⁹⁷

Some of the evictions at Ocean Bay, according to NYCHA officials and the data Wavecrest provided to Enterprise Community Partners, may have been due to some residents not signing new leases with the incoming PACT developer. Greg Russ, NYCHA Chair and CEO, told Human Rights Watch, “Some of those terminations came about because families

¹⁹⁴ Human Rights Watch analysis based on data provided by NYCHA in response to a letter from Human Rights Watch. In their response, NYCHA noted that there were 49 evictions in the 4.5 years leading up to Ocean Bay's PACT conversion, compared with 52 evictions in the 4.5 years following. They did not provide an annual eviction breakdown. This data indicates that, both before and after PACT, Ocean Bay had higher eviction rates than the NYCHA average. However, this way of presenting the number of evictions fails to account for the fact that, between March 2020 and August 2021, there has been a moratorium on evictions due to the Covid-19 pandemic. In NYCHA's response, they stated that, in both PACT and NYCHA properties, there have been no permanent evictions since the moratorium was instituted, though Human Rights Watch was unable to independently verify this.

¹⁹⁵ City Council of New York, Transcript of the Committee on Public Housing, January 13, 2021, <https://legistar.council.nyc.gov/View.ashx?M=F&ID=9101393&GUID=B2202EC6-FC66-488B-A09F-C6F901494501> (accessed July 9, 2021), p. 134.

¹⁹⁶ Enterprise Community Partners, Rental Assistance Demonstration (RAD), p. 43. In public housing, after an apartment is abandoned, NYCHA or PACT developers must still go through a formal eviction process to allow the apartment to be re-let. Human Rights Watch was unable to uncover information regarding why a given resident abandoned their apartment.

¹⁹⁷ NYCHA response to Human Rights Watch Letter, August 10, 2021.

refused to sign the lease, so what do you do with that family?” PACT properties do not access subsidy dollars unless a lease is signed.¹⁹⁸

According to the data Wavecrest provided to Enterprise, 26 of the 50 evictions were due to holdovers, where a tenant either does not sign a lease or breaks lease provisions for reasons other than a failure to pay rent, such as terms pertaining to disturbance of neighbors or poor housekeeping habits.¹⁹⁹ It is unclear from the data how many of the 26 holdovers involved failure to sign a lease, but as is detailed in the next section, some residents described not understanding what new lease terms meant and told Human Rights Watch that NYCHA and the incoming management did not do enough to clarify the process.

According to NYCHA, some of the other holdover evictions may have involved “off-lease” tenants, who are not authorized by NYCHA to reside in a NYCHA or PACT apartment.²⁰⁰ Some of these occupants reside with authorized tenants, and, in some cases, continue to reside in a unit even after the tenants on the lease move out or pass away.

NYCHA told Human Rights Watch that it and its PACT Partners “conduct extensive outreach to ensure that households understand the requirement that all apartment occupants must be on the lease in order to ensure succession when the tenant of record dies or moves.” However, many off-lease residents are not eligible to be added to a public housing lease, potentially placing them at an especially high risk of eviction.

Ineligible, “off-lease” tenants reside in NYCHA for a variety of reasons. Some mistakenly believe that they are authorized occupants. Others have nowhere else to go and may be excluded from public housing due to, for instance, immigration status, or prior criminal activity.²⁰¹ NYCHA has permanently excluded hundreds of residents each year for “non-

¹⁹⁸ Human Rights Watch Interview with Greg Russ, May 5, 2021.

¹⁹⁹ Enterprise Community Partners, Rental Assistance Demonstration (RAD), p. 43; See NYCHA, PACT Sample Resident Lease, pp. 6-9.

²⁰⁰ NYCHA response to Human Rights Watch Letter, August 10, 2021

²⁰¹ See generally Jake Blumgart, “The Ghost Tenants of New York City.” See also Human Rights Watch, *United States—No Second Chance* (discussing public housing screening processes that unreasonably deny housing to those with criminal records). Revisions to NYCHA’s policies surrounding permanent exclusion and denial of potential residents with criminal records are pending, as of this writing. See, NYCHA, Changes to Policies Related to Criminal Justice, 2020, https://www1.nyc.gov/assets/nycha/downloads/pdf/CJ-Policies-For-Public-Comment-FINAL.pdf?mc_cid=68ae4ba722&mc_eid=8c953b63db (accessed October 2, 2021).

desirability,” and can exclude individuals from public housing if criminal charges are merely pending or even if they have been dismissed.²⁰²

“You have the issue of family members that have those who are incarcerated and are let out,” said Celine M., a long-term NYCHA resident who recently moved out of public housing. “They have no other place to go to, but NYCHA doesn’t want a person coming from prison living in NYCHA.”²⁰³ In other cases, tenants worry that adding new residents to their lease will make their rent unaffordable. Adding new residents to the household can result in rent increases if the additional resident has a source of income. However, regardless of household size, rents remain capped at 30 percent of adjusted household income.

One resident Human Rights Watch spoke with resides with her spouse, who was not an authorized occupant. She reported trying to add him to the lease but fears that she will face large rent increases due to her spouse’s additional income and owe back rent from the time he was residing with her without authorization. The inspections and the process requiring residents to sign new leases may lead to many of these unauthorized residents being discovered, and potentially subject to eviction if they do not meet NYCHA’s eligibility requirements.²⁰⁴ If there is no authorized occupant in the household — such as where, for instance, the tenant of record dies and unauthorized occupants remain in the unit — the federal subsidy for that apartment is terminated.²⁰⁵

Some Ocean Bay tenants shared their experiences and observations of PACT with Human Rights Watch. Jeanine Henderson, an Ocean Bay resident for 27 years, said that “When they first came in here, it was sad, because there were so many families that were getting evicted.”²⁰⁶

²⁰² See generally Maia M. Cole, “Permanently Excluded,” *New York University Law Review* 95 (2020): 1066, 1074, accessed October 1, 2021, <https://www.nyulawreview.org/wp-content/uploads/2020/10/NYULawReview-Volume-95-Issue-4-Cole.pdf>

²⁰³ Human Rights Interview with Celine M. (pseudonym), March 25, 2021.

²⁰⁴ Nate File, “When Rent Comes Due, Residents of Privatized Public Housing May be Most Vulnerable,” *Bedford and Bowery*, July 7, 2020, <https://bedfordandbowery.com/2020/07/when-rent-comes-due-residents-of-privatized-public-housing-may-be-most-vulnerable/> (accessed September 3, 2021).

²⁰⁵ Human Rights Watch Interview with Lucy Newman, June 14, 2021; RDC Development Response to Human Rights Watch Letter, August 11, 2021.

²⁰⁶ Human Rights Watch Interview with Jeanine Henderson, May 20, 2021.

According to Tina M., based on her experiences and observations, Wavecrest is still quicker to threaten eviction than NYCHA. They “put you out faster,” she said. Henderson also stated that, until the eviction moratorium was instituted during the Covid-19 pandemic, Wavecrest had been quicker to evict than NYCHA.

Responding to a letter from Human Rights Watch, RDC Development stated that eviction is a “last resort” and that they are “committed to keeping residents affordably in their homes.” RDC further stated that they take numerous steps to assist tenants in arrears, including helping residents complete income adjustment forms to lower their rent, working with residents on a case-by-case basis to create payment plans, and referring residents to programs that provide rent assistance. RDC Development further stated that the eviction process only begins after either 2.5 months of nonpayment or when tenants owe around \$2,500.²⁰⁷

NYCHA stated that all evictions at Ocean Bay were reviewed by the Legal Aid Society and that “none were the result of any residents losing their rights under the PACT program.”²⁰⁸ Lucy Newman, staff attorney at the Legal Aid Society, told Human Rights Watch, “From what I could see, it wasn’t that they were bringing cases and evicting people for small sums of money or stuff that wasn’t legitimate.”²⁰⁹

Eviction Filings

A housing court filing typically starts the process of eviction. In NYCHA, however, only evictions for nonpayment and for unauthorized occupancy begin with housing court filings. Other NYCHA cases, such as those where tenant misconduct is alleged, go through an administrative process.²¹⁰ Given this, making comparisons between NYCHA and PACT developments can be difficult, and this section only utilizes data for proceedings concerning non-payment of rent, which, for both PACT and NYCHA housing, begin with a filing in housing court.

²⁰⁷ RDC Development Response to Human Rights Watch Letter, August 11, 2021.

²⁰⁸ NYCHA response to Human Rights Watch Letter, August 10, 2021

²⁰⁹ Human Rights Watch Interview with Lucy Newman, June 14, 2021.

²¹⁰ MFY Legal Services, How Do I Handle NYCHA Termination-of-Tenancy Procedures? 2016.

Even if they ultimately remain in their homes, an eviction filing can be traumatic for tenants and can negatively impact their ability to find other housing, since they can show up in tenant screening reports utilized by landlords.²¹¹

Non-payment eviction filings at Ocean Bay appear to be similar, or even slightly lower, than the NYCHA average.²¹² Data provided to Human Rights Watch by RDC indicates 888 nonpayment eviction filings since conversion. RDC did not provide an annualized breakdown, and the New York eviction moratorium sharply reduced the number of filings since March 2020.²¹³ Of these filings, RDC states that 40 percent were repeat filings for the same household.²¹⁴

Regardless of the exact changes, the number of eviction filings across NYCHA buildings and at Ocean Bay are high. In 2019, nearly 20 percent of all nonpayment eviction filings in New York City were for NYCHA tenants.²¹⁵ Moreover, 888 eviction filings raise concerns, even if 40 percent are repeat filings, as there are just 1,393 households at Ocean Bay.²¹⁶

Both NYCHA and RDC Development told Human Rights Watch the primary eviction prevention assistance programs in New York City, which predate the Covid-19 pandemic, required tenants to have an eviction filing to be eligible.²¹⁷ According to a 2021 report by the Eviction Prevention Roundtable, a coalition of landlords, tenant advocates, as well as legal and social services providers, before the pandemic, having an eviction filing was

²¹¹ See generally New York State Bar Association, LEGALESE: The Use of Tenant Screening Reports and Tenant Blacklisting, 2018.

²¹² Human Rights Watch analysis of Rent Guidelines Board Income and Affordability Studies, 2018-2021. These reports reveal nonpayment eviction filing rates from 2017 to 2019 across NYCHA between 23% and 17%. RDC development did not provide an annual breakdown of evictions, but it likely ranges between 20% and 14%. The exact annual rate depends on the impact eviction moratorium.

²¹³ See Eviction Lab, Eviction Tracking: New York, New York, Last updated August 29, 2021, <https://evictionlab.org/eviction-tracking/new-york-ny/> (accessed September 2, 2021).

²¹⁴ RDC Development Response to Human Rights Watch Letter, August 11, 2021.

²¹⁵ See, e.g., NYC Rent Guidelines Board, 2019 Income and Affordability Study, <https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2019/08/2019-IA.pdf> (accessed November 19, 2021), p. 19.

²¹⁶ Human Rights Watch's Analysis of eviction filing numbers provided by NYCHA and RDC indicate that the annual eviction rate is between 14 and 20, depending on the impact of the eviction moratorium. An eviction filing rate is calculated by taking the number of filings and dividing it by the number of households at a development. However, that 40 percent of eviction filings were, according to RDC, repeat filings for the same households, means that the annual filing rate may not translated into the percentage of households that actually received an eviction filing.

²¹⁷ NYCHA response to Human Rights Watch Letter, August 10, 2021; RDC Development Response to Human Rights Watch Letter, August 11, 2021.

either a formal or *de facto* requirement for tenants seeking emergency assistance.²¹⁸ Federal pandemic relief measures, such as the Emergency Rental Assistance Program (ERAP), likewise initially prioritized tenants with pending eviction cases, though applications are now processed on a first-come, first-serve basis.²¹⁹

As discussed above, PACT residents are not included in the *Fields* settlement, which will prevent NYCHA from filing for eviction either while a resident has challenged NYCHA's determination of their income or while a resident's request to have their rent reduced because of a loss of income is pending.²²⁰

Executed Eviction Judgments

When a court rules for a landlord, an eviction judgment is issued. In some cases, tenants may still ultimately avoid permanent eviction even after a judgment is issued if they are able to repay their arrears. However, such judgments, like filings, can still have long-term consequences for tenants' ability to find future housing and may negatively impact their credit score.²²¹ According to NYCHA and RDC Development, no eviction judgments result in a permanent eviction, since tenants may still pay back their arrears and be allowed to remain in their homes.²²²

New York City's public data on evictions executed by city marshals — public officers who enforce civil court judgments — indicates that there were between 83 and 90 evictions at Ocean Bay between January 2017 and December 2019, a yearly eviction rate between 2.7 percent (2017) and 1.6 percent (2019).²²³ The Right to Council Coalition and the Anti-

²¹⁸ Project Parachute, Preventing Eviction for New Yorkers Amid Covid-19: Policy Recommendations of the New York City Eviction Prevention Roundtable, January 2021, <https://www.enterprisecommunity.org/download?fid=14688&nid=11615#:~:text=The%20New%20York%20City%20Eviction%20Prevention%20Roundtable%20is%20a%20collaborative,providers%20and%20social%20service%20providers>. (accessed September 2, 2021), p.1.

²¹⁹ New York State, ERAP Questions and Answers, <https://otda.ny.gov/programs/emergency-rental-assistance/faq.asp> (accessed September 22, 2021).

²²⁰ *Fields et al. v. Russ and the New York City Housing Authority*, 19-cv-1368 (ER) (S.D.N.Y., 2021), Stipulation of Settlement and Order, sec. V.

²²¹ Human Rights Watch Interview with Anne Kat Alexander, Researcher and Project Manager at the Princeton University Eviction Lab, August 24, 2021; New York State Bar Association, LEGALESE: The Use of Tenant Screening Reports and Tenant Blacklisting.

²²² NYCHA response to Human Rights Watch Letter, August 10, 2021

²²³ The different numbers reflect different ways that Human Rights Watch excluded possible duplicate cases in the data. There were 83 separate apartments that were subject to eviction proceedings between 2017 and 2019. There were 90 evictions if only cases involving the same apartment and *either* the same date or docket number are excluded.

Eviction Mapping Project,²²⁴ using New York City’s public data, which tracks evictions executed by city marshals, estimated NYCHA’s 2019 eviction rate to be 0.4 percent, significantly lower than even Wavecrest’s reported permanent eviction rate for Ocean Bay.²²⁵

As discussed above, NYCHA can also evict tenants through an administrative process. In the event that the hearing officer presiding over the process finds in favor of NYCHA, NYCHA can issue a notice to vacate, but must still obtain a housing court judgment to forcibly remove tenants. Consequently, eviction judgment data for NYCHA does not include tenants who feel compelled to leave their homes following completed administrative proceedings, absent a court order

Evictions at Other PACT Sites

Ocean Bay is just one of the 50 formerly NYCHA-managed developments that have converted under PACT as of March 2021. These other developments can involve different developers and property managers. With eviction moratoriums in place for much of 2020 and through 2021, it is hard to draw long-term conclusions about eviction rates or to evaluate the 26 NYCHA developments that converted to PACT in 2020.²²⁶

Data provided by NYCHA and RDC Development also indicates that one other PACT development, Betances in the Bronx — consisting of 10 formerly NYCHA-managed developments that together include 1,088 apartments — which is also operated by RDC Development, saw evictions rise between its PACT conversion in November 2018 and the eviction moratorium in March 2020. In the year and four months between its conversion and the eviction moratorium’s enactment, there were 13 evictions at Betances, compared

²²⁴ The Right to Counsel Coalition is a coalition of tenants, lawyers, and activists who advocate for measures which protect tenants from eviction. See generally, Right to Counsel NYC Coalition, <https://www.righttocounselnyc.org/> (accessed August 4, 2021). The Anti-eviction Mapping Project is a “data-visualization, critical cartography, and multimedia storytelling collective,” consisting of volunteers, which analyzes housing and eviction data, primarily in high-cost areas. See Anti-eviction Mapping Project, About, <https://antievictionmap.com/about> (accessed August 4, 2021).

²²⁵ NYC’s Worst Evictors, The 2019 Worst Evictors in New York City, <https://www.worstevictorsnyc.org/evictors-list/citywide> (accessed July 1, 2021) (finding 722 evictions). Total number of NYCHA units from NYCHA, 2020 Fact Sheet, p.1. Human Rights Watch was unable to ascertain whether judgments in all cases that proceed through NYCHA’s administrative eviction process are executed by city marshals. However, even if the number of administrative evictions on non-desirability grounds in 2019 (96) is added to the 722 evictions recorded in city marshal data, the rate (0.5) would still be lower than that of Ocean Bay. See, NYCHA, Outcomes of Non-Desirability Cases – 2019, <https://www1.nyc.gov/assets/nycha/downloads/pdf/2019-permanent-exclusion-report.pdf> (accessed October 4, 2021).

²²⁶ NYCHA, Development Data Book 2021, p. 3.

to 10 in the 2.5 years leading up to conversion, amounting to an eviction rate of 0.9 percent.²²⁷ Twelve of these cases were holdovers, while one of them was for non-payment, representing a non-payment eviction rate of 0.1 percent, in line with the NYCHA average.²²⁸ City data on executed eviction judgments is similar, indicating 15 executed judgments following conversion in 2019 and the first three months of 2020, compared to 11 in 2017 and 2018.²²⁹

RDC told Human Rights Watch that eviction is a “last resort” and that they work with residents to avoid eviction and arrange payment plans. They stated that eviction proceedings are only initiated when residents are at either 2.5 months of nonpayment or when they owe around \$2,500.²³⁰

Ocean Bay and Betances were, respectively, the first and third largest PACT conversions before February 2020, together comprising nearly half of all units converted under the program before that point.²³¹ At the other four PACT developments that converted before February 2020 — the earliest of which converted on October 31, 2018 — data provided by NYCHA and other PACT developers show no permanent evictions following PACT conversions thus far.

NYCHA’s latest request for expressions of interest (RFEI) requires prospective PACT developers to create a “Resident Stability and Retention Plan,” that expects PACT managers to work with tenants in arrears to set up repayment agreements.²³² Pre-eviction actions are supposed to be reported to NYCHA. In addition, like residents in NYCHA’s housing, PACT tenants must have access to an informal grievance proceeding where they can present evidence to a neutral decisionmaker before being taken to court for eviction.²³³

²²⁷ NYCHA response to Human Rights Watch Letter, August 10, 2021. NYCHA’s data for Betances was, as the information for Ocean Bay, presented in a way which minimized the discrepancy in evictions by having the comparison timeframe include periods when the eviction moratorium was in effect.

²²⁸ NYCHA response to Human Rights Watch Letter, August 10, 2021.

²²⁹ Human Rights Watch review of New York City marshal eviction data.

²³⁰ RDC Development Response to Human Rights Watch Letter, August 11, 2021.

²³¹ Human Rights Watch analysis of NYCHA Development Data Book 2021.

²³² NYCHA, Resident Stability & Retention Guidelines for PACT Development Teams, https://eshare.nycha.info/sites/PACT12/Library/Exhibit%20F_Housing%20Stability%20and%20Retention%20Guidance.pdf (accessed January 24, 2022), p. 3

²³³ RAD Notice, pp. 64-65.

However, Gyori stated that some tenants in PACT buildings have struggled to access this protection: “We’ve gone to NYCHA, and NYCHA says that there is no grievance process . . . and then you go to the landlord, and the landlord is just suing them in court to get them out.”²³⁴

Some residents expressed concerns about strict management practices at converted developments, including what tenants in Hope Gardens and Ocean Bay described as aggressive use of letters warning tenants of potential legal action. Human Rights Watch was unable to verify these claims or the extent to which management practices at these developments had changed, and various NYCHA residents also told Human Rights Watch that they received similar threats from NYCHA management.²³⁵

Anthony Sanchez is a tenant at Hope Gardens in Brooklyn, which converted under PACT in July 2019. The development team at Hope Gardens is Hunt and Penrose, and the property manager is Pinnacle. According to Sanchez, his neighbor, who is 73 and speaks little English, had various medical conditions, could not get out of bed independently, and was in and out of the hospital. She did not have anyone to support her to leave her apartment and travel to the management office to certify that she was eligible to remain in her home. Sanchez told Human Rights Watch that after Pinnacle sent a letter warning legal action, Sanchez and others informed the property manager about why she could not complete the paperwork. However, Pinnacle still sent her a notice, reviewed by Human Rights Watch, stating that she had 60 days to vacate her home:

She’s panicking, she’s crying. She calls me saying, “Anthony, they’re trying to kick me out, where am I going to go?” . . . I call and email [Pinnacle], and I tell them, “Listen, she is physically unable to come to you. Send a representative with all the documentation you need so she can fill those forms out and we can get this done.” Nothing happened.

Sanchez contacted his state senator’s office and a Pinnacle executive on behalf of his neighbor to resolve the issue, and his neighbor was not evicted. Sanchez said that he also received a notice warning of possible eviction after he had already submitted his

²³⁴ Human Rights Watch Interview Elizabeth Gyori, June 15, 2021.

²³⁵ Human Rights Watch Interviews with NYCHA residents, March-June 2021.

recertification documents. According to Sanchez, when he asked management why they threatened eviction, they told him that he needed to sign a form related to his certification and stated, “We have to send those harsh letters to make people react faster.”²³⁶

Responding to a letter from Human Rights Watch, Pennrose stated that they do not threaten eviction, but that residents “receive numerous verbal/written communication from management and social service partners prior to attorney engagement for eviction proceeding.”²³⁷

Both NYCHA data and the Pennrose letter indicated that there have been no permanent evictions at Hope Gardens.²³⁸ Pennrose reported having 12 active non-payment cases and 27 active holdover cases, which include 16 “off-lease” tenants. Pennrose stated that they utilize a social service provider to reach out to residents in arrears, create payment arrangements, and utilize city eviction prevention programs.²³⁹

RDC told Human Rights Watch that they “strictly [follow] NYCHA's guidelines regarding tenant notices” and only begin proceedings after “a minimum of 2.5 months of unpaid rent.” They further stated that they “work with residents whenever possible to refer them to social services and resources to help them if they fall behind and “obtain approval from NYCHA before any legal proceedings are filed to ensure that the unpaid portion of rent only relates to the resident portion.”²⁴⁰

Tenants who feel less secure in their housing may be more reluctant to speak out about housing conditions, and in some cases, residents may leave their homes despite having the right to remain until an eviction order is obtained.²⁴¹

²³⁶ Human Rights Watch Interview with Anthony Sanchez, March 26, 2021. Human Rights Watch also reviewed the relevant 60-day notice to vacate.

²³⁷ Pennrose response to letter from Human Rights Watch, August 12, 2021.

²³⁸ NYCHA response to Human Rights Watch Letter, August 10, 2021; Pennrose response to letter from Human Rights Watch, August 12, 2021.

²³⁹ Pennrose response to letter from Human Rights Watch, August 12, 2021.

²⁴⁰ RDC Development Response to Human Rights Watch Letter, August 11, 2021. Obtaining verification that a landlord is only suing for the tenant portion of the rent, as opposed to NYCHA’s portion, is legally required pursuant to *Williams v. New York City Housing Authority*, 975 F. Supp. 317 (S.D.N.Y., 1997).

²⁴¹ Philip ME Garboden and Eva Rosen, “Serial Filing: How Landlords Use the Threat of Eviction,” *City and Community*, 18 (2019):639-640, accessed August 4, 2021, doi:10.1111/cico.12387. In New York City, evictions can only be carried out pursuant to court order. Informal evictions, such as lockouts, are illegal. See New York City, *New Protections for All Tenants*, <https://www1.nyc.gov/content/tenantprotection/pages/new-protections-for-all-tenants> (accessed October 27, 2021).

However, various NYCHA residents also told Human Rights Watch that they received similar threats from NYCHA management.²⁴²

²⁴² Human Rights Watch Interviews with NYCHA residents, March-June 2021.

V. Other Concerns with RAD Conversions

Ongoing Concerns over Repairs

The goal of RAD nationally is to allow PHAs to carry out needed major capital repairs and day-to-day maintenance, either by themselves or by utilizing a private property management company. NYCHA has promised residents that the PACT program would lead to significant improvements and renovations.²⁴³ Given the horrific conditions many residents face,²⁴⁴ for many, it is an attractive proposal. The program has undoubtedly allowed for needed repairs and upgrades to be carried out, though after visiting properties and interviewing tenants across five different PACT developments Human Rights Watch found that residents' views on repair issues and the responsiveness of maintenance varied. The grounds at Ocean Bay (Bayside), for instance, are visibly better maintained than the NYCHA-run building just across the street, and the PACT deal brought in over \$300 million for critically needed renovations at the development²⁴⁵ Of the five residents we spoke with, two had a negative view of how the property manager handled maintenance and repairs, two had a positive view, and one felt that it was the same as NYCHA. Apartments and building systems at Betances have received needed upgrades,²⁴⁶ and a recent study found that over half of Betances residents surveyed reported improvements to their living conditions.²⁴⁷ At other developments, though, some residents told Human Rights Watch that they considered NYCHA to have often been more responsive than their new property manager under PACT.²⁴⁸ Some residents at sites that had either not yet begun

²⁴³ See, e.g., NYCHA, Presentation at June 2021 PACT Information Session, <https://www1.nyc.gov/assets/nycha/downloads/pdf/juneinfosessiona.pdf> (accessed July 13, 2021), pp. 6-7.

²⁴⁴ Human Rights Watch interviews with NYCHA residents revealed issues surrounding heat, pests, potentially toxic mold, lead paint, broken elevators, and a persistent inability to obtain necessary repairs. See generally *United States v. New York City Housing Authority*, 1:18-cv-05213-WHP, (S.D.N.Y., 2019).

²⁴⁵ Human Rights Watch visit to Ocean Bay (Bayside) and Ocean Bay (Oceanside). Oceanside is operated by NYCHA; NYCHA, NYCHA, NYS, and Hud Announce \$560 Million Upgrade and Preservation of Nycha's Ocean Bay Bayside Apartments in Far Rockaway, June 19, 2017, <https://www1.nyc.gov/site/nycha/about/press/pr-2017/bayside-apartments-20170619.page> (accessed December 29, 2021)

²⁴⁶ Human Rights Watch visit to Betances Houses, September 13, 2021. This visit was organized by Wavecrest Management, and involved a tour of the grounds and model apartments. Human Rights Watch did not tour any occupied units.

²⁴⁷ See Diana Hernández et al., "A New Lease on Life in Public Housing: Assessing the Impact of the Rental Assistance Demonstration Program on Smoking in Buildings and Resident Satisfaction," *Cityscape* 23(2) (2021): 81-82, accessed September 22, 2021, <https://www.huduser.gov/portal/periodicals/cityscape/vol23num2/ch4.pdf>.

²⁴⁸ Human Rights Watch Interviews with tenants in PACT Developments, March-June 2021.

major renovations or sites where renovation was ongoing reported experiencing especially acute problems.

Pre-Conversion and the Lack of Maintenance by NYCHA

Many residents told us that maintenance at their developments hit an all-time low immediately prior to conversion when NYCHA appeared to stop conducting maintenance in anticipation of conversion. Jeanine Henderson, a resident at Ocean Bay, said, “NYCHA, when they knew that they were getting ready to go, they wasn’t doing nothing, when I tell you nothing, [I mean] nothing . . . Grass was damn near to my knees, the building was filthy; they weren’t even pulling the [trash] compactor.”²⁴⁹

Sonyi Lopez, a journalist and resident, observed the same phenomenon at Betances in the Bronx, which converted to PACT in 2018. Lopez described seeing unclean hallways occasionally littered with human feces and urine in the leadup to conversion. Lopez told Human Rights Watch, “That was the worst time in my entirety of living here, for the past 19 years I’ve never witnessed anything like that.”²⁵⁰

Jackie Lara lives in Fulton Houses in Chelsea, which is slated to convert to PACT in 2022. She told Human Rights Watch that a similar situation is unfolding at her development. “Things got worse when they decided to take over our development,” she said. Lara expressed previously being broadly satisfied with maintenance at her development, but said that recently, there have been more broken doors, broken mailboxes, and elevator outages. These changes led her mother, who uses a walker, to move out of the development. Lara is also thinking about moving herself.²⁵¹

This, according to Gyori, is a constant issue in PACT conversions. “NYCHA refuse[s] to perform basic repairs for these violations prior to conversion,” she told Human Rights Watch.”²⁵²

²⁴⁹ Human Rights Watch Interview with Jeanine Henderson, May 20, 2021.

²⁵⁰ Human Rights Watch Interview with Sonyi Lopez, March 31, 2021.

²⁵¹ Human Rights Watch Interview with Jackie Lara, May 13, 2021.

²⁵² Human Rights Watch Interview with Elizabeth Gyori, June 11, 2021.

Post-Conversion Issues

Human Rights Watch interviewed tenants at five of the eight fully converted PACT sites as of September 2021.²⁵³

After conversion, residents report that improvements in maintenance have been mixed, and it is unclear whether PACT has, thus far, led to consistent improvements in property management.

In some developments, residents told Human Rights Watch that the responsiveness of maintenance has worsened. The housing units at 344 East 28th Street — which was one of the 17 developments comprising the PACT Manhattan Bundle that converted in November 2020 — was leased to a consortium of multiple developers called PACT Renaissance Collaborative (PRC). This development has yet to begin major construction, according to a letter PRC sent to Human Rights Watch,²⁵⁴ but appears to have witnessed a decline in maintenance. Essentially all of the eight residents we spoke with said that NYCHA was more responsive than the new management company, Cornell Pace.

Resident Demetrius Gonzalez said that he is dealing with repair issues.²⁵⁵ He added that it took new management over a month to respond to his repair request, and that repairs were superficial.²⁵⁶ Justin Cuevas, another resident, also expressed concerns about superficial repairs.²⁵⁷

Aida Gonzalez, also a resident, had a similar impression. “When you call that number [for the property manager], [they say] ‘I’ll talk to you when I get the chance,’” she said. Gonzalez described her water being shut off without notice and having to go without a working toilet for 8 hours. “My grandchildren had to go in bottles and bags,” she added.²⁵⁸ According to PRC’s response to a letter from Human Rights Watch, residents can submit work orders online or through a dedicated repair line. PRC has also “increased the number

²⁵³ PACT deals frequently consist of “bundles,” in which developments that were formally separate under NYCHA are combined into single PACT developments. The five PACT developments where Human Rights Watch conducted interviews consist of 42 formerly separate NYCHA-managed developments.

²⁵⁴ PRC response to letter from Human Rights Watch, August 9, 2021.

²⁵⁵ Human Rights Watch Interview with Demetrius Gonzalez, March 23, 2021.

²⁵⁶ *Ibid.*

²⁵⁷ Human Rights Watch Interview with Justin Cuevas, March 21, 2021.

²⁵⁸ Human Rights Watch Interview with Aida Gonzalez, March 23, 2021.

of repair coordinators in response to tenant requests.” They further stated that residents who face plumbing shut offs are provided with “advanced notice to allow residents time to prepare.”²⁵⁹

Various residents told Human Rights Watch that elevator problems have persisted, and in some cases gotten worse, since conversion. Many buildings which have converted to PACT are high-rises, with as many as 26 floors. According to interviewees in both NYCHA-managed and PACT developments, broken elevators can have wide-ranging impacts. For instance, broken elevators not only impact residents’ ability to get to work, but can also make it harder to arrange childcare, as babysitters may be unwilling or unable to climb potentially dozens of flights of stairs.

Justin Cuevas, who has health conditions that limit his mobility, said that, at times, none of the elevators were functioning. “I can’t walk down the stairs, let alone walk up,” he said. “It’s worse now than it was with NYCHA.”²⁶⁰ Jessica Devalle and David Leitchter, both residents at Independence Towers in Brooklyn, which is in the process of being converted under PACT, told Human Rights Watch about issues with elevators either breaking or being taken out of service for extended periods of time.²⁶¹ Devalle, who lives on the ninth floor of her building, described how prolonged elevator shutdowns impact her daily life. “Sometimes you are waiting 15, 20 minutes at a time for an elevator . . . I have a baby with a stroller, with a bag. Who’s wanting to go down the stairs or up the stairs with a baby like that?”²⁶²

Such frequent elevator outages pose a potential risk during the Covid-19 pandemic, as both Leichter and Devalle described people crowding into the remaining working elevator. Devalle expressed concerns about exposure to Covid-19, as she told Human Rights Watch that residents are often not wearing masks: “You’re trapped in the elevator with construction dust, somebody who is not masked, and packed in there, because everybody is trying to pack themselves into that one [working] elevator.”²⁶³

²⁵⁹ PRC response to letter from Human Rights Watch, August 9, 2021.

²⁶⁰ Human Rights Watch Interview with Justin Cuevas, March 21, 2021.

²⁶¹ Human Rights Watch Interview with Jessica Devalle, August 22, 2021; Human Rights Watch Interview with David Leichter, May 31, 2021.

²⁶² Human Rights Watch Interview with Jessica Devalle, August 22, 2021.

²⁶³ Ibid.

A review of public records from New York City Department of Buildings public records for various buildings at Independence Towers reveals over 20 complaints of elevator outages since February 2020, when the development converted to PACT.²⁶⁴ Responding to a letter from Human Rights Watch, Renewal Construction LLC, the contractor renovating Independence Towers, stated that the elevators at the development were “well beyond their expected useful life,” and that elevators would be taken out of service for modernization while keeping one elevator in operation at each building. Renewal further stated that they try to give tenants two weeks’ notice before an elevator is shut down.²⁶⁵

PRC told Human Rights Watch that, as of July 2021, they have not started rehabilitation work at 344 East 28th Street, but renovations will involve “full elevator replacements” which, they anticipate, will “decrease the number or work orders.”²⁶⁶

At 344 East 28th Street, multiple residents said they felt that unsafe work practices could expose them to potentially harmful substances, though Human Rights Watch was unable to verify specific claims.²⁶⁷ PRC, the Developer at 344 East 28th Street, is carrying out repair work while the building is occupied and is legally required to submit a tenant protection plan (TPP), which is supposed to include efforts to isolate the construction area, as well as contain dust and construction debris.²⁶⁸ In the TPP that PRC submitted, it stated that the contractor would “isolate [the] construction area from occupied building areas by means of temporary partitions or heavy weight drop cloths.”²⁶⁹

²⁶⁴ DOB, Complaints By Address: 73 Wilson Street, <http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?requestid=5&allbin=3341987> (accessed October 8, 2021); DOB, Complaints By Address: 121 Taylor Street, <http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?requestid=1&allbin=3334989> (accessed October 8, 2021); DOB, Complaints by Address: 528 Bedford Ave., <http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?requestid=9&allbin=3059905> (accessed October 8, 2021); DOB, Complaints by Address: 85 Taylor Street, <http://a810-bisweb.nyc.gov/bisweb/ComplaintsByAddressServlet?requestid=9&allbin=3334990> (accessed October 8, 2021).

²⁶⁵ Response of Renewal Construction LLC to Human Rights Watch Letter, October 22, 2021. Renewal also stated that they have not received any violations from the Department of Buildings for overcrowded elevators.

²⁶⁶ PRC response to letter from Human Rights Watch, August 9, 2021.

²⁶⁷ Construction dust can cause or exacerbate respiratory conditions. Ronda Kaysen, “The Risks of Inhaling Construction Dust” *New York Times*, May 14, 2016, <https://www.nytimes.com/2016/05/15/realestate/the-risks-of-inhaling-construction-dust.html> (accessed October 13, 2021).

²⁶⁸ Administrative Code of New York City, Sec. 28-120.1. A tenant protection plan will vary depending on the project and site of construction, but must be public and outline detailed and specific provisions related to resident safety, including egress, fire safety, health requirements, compliance with housing standards, structural safety, noise restrictions, and maintenance of essential services such as water, gas, heating, and power.

²⁶⁹ NYC Department of Buildings, TPP1: Tenant Protection Plan for 344 East 28th Street, <http://a810-bisweb.nyc.gov/bisweb/BScanJobDocumentServlet?requestid=9&passjobnumber=140941202&passdocnumber=01&allbin=1020611&scancode=ES190430671> (accessed July 16, 2021).

However, Aida Gonzalez described workers breaking into her apartment wall, while she and her grandchildren were in the apartment, without isolating the work area.

When they broke the wall, I was in the bedroom. I thought that there were going to be covering it. They did not cover nothing. By the time I went from the bedroom out, my whole wall was on the floor . . . Who do you call? Who do you complain to? What are you going to say, “Stop?” It’s too late. You exposed my whole family.²⁷⁰

Demetrius Gonzalez (no relation to Aida Gonzalez) believes that the manner in which workers carried out repairs in his home led to his mother, who lives in the same apartment, being hospitalized. He told Human Rights Watch that workers entered his home without masks and did not cordon off the work area. Neither Demetrius nor his siblings were told to leave the apartment.²⁷¹ His mother, he said, who was out of the home, came back to the apartment before the work was complete.²⁷² Demetrius said that, when she opened the door, she was hit by a wall of fumes: “She turned so white that she fell — she collapsed that day.”²⁷³

PRC did not respond to a general question about whether a resident was sent to the hospital because of fumes during repair work.²⁷⁴

Melanie Aucello, the resident association president at 344 East 28th Street, told Human Rights Watch that she still has concerns about the renovations at her building. She observed the recent asbestos abatement in her building’s lobby and believes it was conducted without a third-party, independent of the abatement contractor, monitoring the prevalence of asbestos fibers in the air, as required by New York law.²⁷⁵ The company

²⁷⁰ Human Rights Watch Interview with Aida Gonzalez, March 23, 2021.

²⁷¹ Human Rights Watch Interview with Demetrius Gonzalez, March 23, 2021.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ PRC response to letter from Human Rights Watch, August 9, 2021.

²⁷⁵ 15 N.Y.C.R., secs. 1-02, 1-31, 1-36. Letter from PACT Renaissance Collaborative, LLC to residents at 344 East 28th Street; Human Rights Watch Interview with Melanie Aucello, June 14, 2021. Documents submitted to the New York City Department of Buildings list multiple common areas and apartments where asbestos is present. Asbestos Assessment Report for 344 East 28th Street, <http://a810-bisweb.nyc.gov/bisweb/BScanJobDocumentServlet?requestid=9&passjobnumber=140941202&passdocnumber=01&allbin=1020611&scancode=ES180738680> (accessed July 16, 2021).

contracted to do the abatement has been cited over a dozen times for asbestos safety violations since March 2020, 10 times for failure to retain an independent air monitor.²⁷⁶

The contractor did not respond to Human Rights Watch’s letter inquiring about the company’s regulatory violations and the work conducted at 344 East 28th Street. However, in response to a request for comment on these complaints by another entity, the contractor stated that it had performed work in the development’s boiler room, but not in common areas and rejected the allegations as false.

In a letter to Human Rights Watch, PRC stated that major rehabilitation is, as of July 2021, yet to begin, and that work being carried out was in response to work orders. PRC denied that there were issues regarding repair practices, stating that “repair work is completed by certified vendors and all work to address environmental hazards is completed pursuant to federal, state and local codes.” In response to questions from Human Rights Watch about the asbestos contractor, PRC stated that “there are two open violations, unrelated to this property, that are in the process of being dismissed” and that having such violations “is not uncommon for contractors.”²⁷⁷ According to New York City data, current as of December 28, 2021, hearings are scheduled for 11 outstanding violations. One previous charge for failing to conduct a proper visual inspection was dismissed in October.²⁷⁸

Jessica Devalle is a tenant at Independence Towers, part of the PACT Brooklyn Bundle, which consists of eight formerly NYCHA-managed developments. She similarly described a number of concerns with the renovation being carried out at her apartment, though Human Rights Watch was unable to verify specific claims. She told Human Rights Watch that she continues to have issues with mold and warping floors. She also stated that her bathroom wall is bowed due to chronic water damage and that there are exposed wires in her apartment. “Even though they came in and they tried to fix whatever NYCHA couldn’t fix, they didn’t really fix it, they just kinda made it look nice,” Devalle said. “It’s like taking an ugly face and taking makeup and making it look pretty, but it’s still ugly behind the makeup.”²⁷⁹ Public records from the New York City Department of Housing Preservation

²⁷⁶ NYC Open Data, Asbestos Violations, <https://data.cityofnewyork.us/City-Government/asbestos-violations/r6c3-8mpt/data> (accessed September 24, 2021).

²⁷⁷ PRC response to letter from Human Rights Watch, August 9, 2021.

²⁷⁸ Human Rights Watch review of NYC Open Data, Asbestos Violations (accessed December 29, 2021).

²⁷⁹ Human Rights Watch Interview Jessica Devalle, August 22, 2021.

and Development (HPD) for Devalle’s apartment reveal numerous violations of the New York City Housing Maintenance Code reported in August 2021, including for visible mold growth, exposed wiring, and broken or defective plastered surfaces and paint.²⁸⁰

In August 2021, Devalle sued in housing court in order to receive an inspection of her home and obtain repairs.²⁸¹ She agreed to dismiss the lawsuit in October 2021.²⁸² Renewal told Human Rights Watch that all violations in Devalle’s apartment have been corrected.²⁸³

Devalle also expressed concerns over construction leaving what she considered excessive amounts of debris and dust in common areas and in her apartment. NYCHA has found lead-based paint in nearly 70 percent of the apartments it has tested at Independence Towers,²⁸⁴ and Devalle told Human Rights Watch that her building’s elevators frequently are filled with construction dust and debris. “All the work that they do, all that stuff that they bring in from other people’s apartments is all over the elevator,” Devalle told Human Rights Watch. “The elevator looks like a dusted donut.”²⁸⁵

Devalle also told Human Rights Watch that she was worried about the possible presence of lead paint in her unit. She became concerned about her family’s safety after seeing her newborn son ingest paint dust in her apartment, following work in the adjacent unit that involved workers drilling into the wall dividing the unit from Devalle’s apartment. “As I look around to see where the [paint] came from, I see the dust of white on the armrest of the couch, and then it’s on the floor, and then it’s on the dresser. It’s coming from the wall, they’re drilling through the wall.”²⁸⁶

On May 26, 2021, a contractor carrying out construction at Independence Towers admitted during a hearing before the New York City Office of Administrative Trials and Hearings (OATH) to having “excessive construction debris and materials throughout public

²⁸⁰ HPD, Building Registration Summary Report (accessed October 7, 2021).

²⁸¹ *Jessica Devalle v. Reliant Realty Services LLC and NYC Department of Housing Preservation and Development*, LT-0000644-21/KI, Case Summary, August 19, 2021.

²⁸² *Jessica Devalle v. Williamsburg Housing Preservation L.P., et al.*, L&T 307797/2021, Stipulation to Dismiss with Prejudice, October 21, 2021 (New York City Civil Court).

²⁸³ Email from Renewal Construction to Human Rights Watch, November 8, 2021.

²⁸⁴ NYCHA, Lead-Based Paint Report: XRF Testing Initiative, August 26, 2021, <https://my.nycha.info/PublicSite/Transparency/XrfReport> (accessed September 1, 2021).

²⁸⁵ *Ibid.*

²⁸⁶ Human Rights Watch Interview Jessica Devalle, August 22, 2021.

corridors,” a violation classified as Class 1, or “Immediately Hazardous,” by the New York City Department of Buildings. A stop work order was imposed and the contractor paid a \$2,500 fine.²⁸⁷

Human Rights Watch was unable to verify whether Devalle or any other resident at Independence Towers was exposed to lead paint.

Renewal Construction LLC is the contractor carrying out renovation work at Independence Towers. Renewal is owned by the principals of Omni New York LLC, one of the developers for the PACT Brooklyn bundle. Responding to a letter from Human Rights Watch, Renewal stated that the violation for uncontained construction debris resulted from repairs of the building’s standpipe system, a system of pipes to which fire hoses can be connected in case of a fire. According to Renewal, because of inadequate maintenance by NYCHA, the pipes were corroded and required prompt repair, which entailed opening up various hallway walls. Renewal stated that they direct workers or subcontractors to contain construction debris and take steps to remedy any violations when issued.²⁸⁸

Renewal further stated that they were unaware of any cases where residents were placed at risk of lead exposure and that all lead inspections are carried out in accordance with HUD guidelines. Renewal stated that they have special procedures in place to “minimize the creation and distribution of lead contaminated dust and to ensure that, except for authorized activities, lead containing building materials and suspect lead containing building materials are not disturbed.”²⁸⁹

Anthony Sanchez, who lives in Hope Gardens in Brooklyn, told Human Rights Watch that he went without hot water and heat for a week in January 2020, which forced him to heat up water on his stove in order to bathe. Sanchez had to reach out to his state senator to get repairs completed: “We had to suffer for a week, taking bird baths, heating up water on our stoves, and sleeping in our hoodies and sweats and socks and quilts, in the dead of winter,” Sanchez said.²⁹⁰

²⁸⁷ OATH/ECB Violation Number 39035263P, January 21, 2021 39035263P (accessed August 27, 2021).

²⁸⁸ Response from Renewal Construction LLC to Human Rights Watch Letter, October 22, 2021.

²⁸⁹ *Ibid.*

²⁹⁰ Human Rights Watch Interview with Anthony Sanchez, March 26, 2021.

Sanchez also said that he did not believe that management improved since conversion to PACT, and that they have been difficult to communicate with. “NYCHA was slow to respond because they were starved fiscally,” he said. “[Pinnacle – the PACT management company] made a lot of promises, but they didn’t make good on a lot of promises.”²⁹¹

Human Rights Watch was unable to verify these allegations. Pennrose did not respond to Human Rights Watch’s inquiry about their responsiveness to residents’ repair needs.²⁹²

Several PACT residents Human Rights Watch interviewed complained of poor communication between residents and the new property manager and development team.

Some of these issues, as discussed further below, may result from residents not being adequately informed of changes under PACT, a responsibility of NYCHA and the new property manager. Gyori told Human Rights Watch that many PACT residents are confused about whom to contact for repairs. Some, she said, “are still suing NYCHA because they don’t know that their building has converted or who’s responsible.”²⁹³

Leichter, at Independence Towers, has been frustrated by the construction and, in addition to elevators being frequently taken out of service, described water being shut off without notice. Leichter told Human Rights Watch that he has found it difficult to communicate his concerns, as he says the management office is open at inconsistent hours and that it is difficult to speak to the developer on the phone. “If I call after 4 p.m., I get routed to [a call center],” Leichter said.²⁹⁴

Mercedes Diaz, along with many other residents of 344 East 28th Street, expressed a similar sentiment: “Before we could even go to the office and say hello. Here you can’t communicate with anybody.”²⁹⁵ Unlike Leichter, Devalle stated that she has been able to get in contact with management, though she has stated that they have been largely unhelpful.²⁹⁶

²⁹¹ Human Rights Watch Interview with Anthony Sanchez, March 26, 2021.

²⁹² Pennrose response to letter from Human Rights Watch, August 12, 2021.

²⁹³ Human Rights Watch Interview with Elizabeth Gyori, June 15, 2021.

²⁹⁴ Human Rights Watch Interview with David Leichter, May 31, 2021.

²⁹⁵ Human Rights Watch Interview with Mercedes Diaz, March 29, 2021

²⁹⁶ Human Rights Watch Interview with Jessica Devalle, August 22, 2021.

In a response to a letter from Human Rights Watch, Omni New York LLC, one of the members of the PACT development team, stated that notice is provided before water is shut off unless there is an emergency. They also stated that property management is on-site from 9 a.m. to 5 p.m., Monday through Friday and from 9 a.m. to 7 p.m. one day each week. According to the letter, a third-party call center is used for after-hours emergencies, which relays messages to management staff.²⁹⁷

PRC stated in their response to a letter from Human Rights Watch that residents can submit work orders online or through a dedicated repair line, and that they have “increased the number of repair coordinators in response to tenant requests.”²⁹⁸

In Ocean Bay (Bayside), where renovations have been completed, some tenants said that management had improved.²⁹⁹ Others, however, felt that management was worse.

Tina M. described the management at her development as “horrible.”³⁰⁰ She told Human Rights Watch that she only sees repairs before a major inspection and described having persistent issues with roaches, saying that the new property manager does not carry out sufficient exterminations.³⁰¹ She also stated that her water has been shut off without notice.³⁰²

Jeanine Henderson had a similar experience at the development. While she has appreciated the renovations, she stated that, overall, management was less responsive than NYCHA.³⁰³ She has had particular issues with heat, a problem that other reports suggest may not be limited to her: “The second year, we’ve been here freezing ever since . . . I had to go out and buy heaters to put in each room.”³⁰⁴ Henderson also stated that she has started to have recurring issues with black-colored mold in her bathroom, and

²⁹⁷ Response from Omni New York LLC to Human Rights Watch Letter, August 13, 2021.

²⁹⁸ PRC response to letter from Human Rights Watch, August 9, 2021.

²⁹⁹ Human Rights Watch interview with tenants at Ocean Bay (names withheld), June 7, 2021.

³⁰⁰ Human Rights Watch Interview with Tina M. (pseudonym), June 7, 2021.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Human Rights Watch Interview with Jeanine Henderson, May 20, 2021.

³⁰⁴ Ibid; see also Greg B. Smith and Trone Dowd, “Tenants in Privately Managed NYCHA Homes Kept in Dark on Building Repairs,” *The City*, February 3, 2020, <https://www.thecity.nyc/housing/2020/2/3/21210568/tenants-in-privately-managed-nycha-homes-kept-in-dark-on-building-repairs> (June 14, 2021).

that she is only able to have issues resolved quickly after “raising hell” and threatening to call a reporter.³⁰⁵

Another Ocean Bay resident, Sonia Delawrence, said that, while the development now looks “beautiful,” she is unable to control the temperature of her hot water, which scalds her when she washes dishes. She said that the heat is better but that when she complains to management, nothing happens. She was unable to say whether she thought management had improved. “Nothing ever changes,” Delawrence said.³⁰⁶

Sonyi Lopez said that Wavecrest, the new property manager under PACT at Betances, is more responsive than NYCHA. She still has concerns, however. Her home had mold problems prior to the conversion, but even after, though some of the mold in her apartment was remediated, this problem has not been completely fixed. “Even now, with RAD, they just paint over the problem, they don’t address what the issue is with mold,” Lopez said.³⁰⁷ .

RDC Development, a joint venture between Wavecrest and MDG Design + Construction, the PACT developer for both Betances and Ocean Bay, responded to a letter from Human Rights Watch stating that they have “transformed the quality of life” for residents and cut down repair times. RDC further stated that, when provided timely notice, they attempt to resolve issues within 24 hours.³⁰⁸

Another common concern among PACT residents is that renovations are of low quality. “It looks pretty, but the functionality and practicality of it is not there,” Sanchez said. “On the pantry that they gave me, one of the rack shelves already broke; it hasn’t even been a full year yet.”³⁰⁹ Sonyi Lopez and Jeanine Henderson also described shoddy renovations. Henderson says she has been through three refrigerators, eventually becoming so frustrated that she bought her own.³¹⁰ To Sonyi Lopez and her mother, Sonia, “it feels like a lot of things that they promised they were going to fix were like half-way done.” Their home

³⁰⁵ Human Rights Watch Interview with Jeanine Henderson, May 20, 2021.

³⁰⁶ Human Rights Watch Interview with Sonia Delawrence, June 7, 2021.

³⁰⁷ Ibid; Email from Lopez to Human Rights Watch, July 6, 2021.

³⁰⁸ RDC Development response to letter from Human Rights Watch, August 11, 2021

³⁰⁹ Human Rights Watch Interview with Anthony Sanchez, March 26, 2021.

³¹⁰ Human Rights Watch Interview with Jeanine Henderson, May 20, 2021.

has chipping paint and exposed insulation, and they are worried that things will soon deteriorate further.³¹¹ “This may seem trivial,” Sanchez said, “[but] if you were to present that to any affluent neighborhood . . . you would never be hired again.”³¹²

Pennrose, the PACT developer for Hope Gardens, did not respond to Human Rights Watch’s questions concerning repairs.³¹³ RDC stated that renovations at Ocean Bay and Betances have “significantly cut down repair times, improved occupancy rates, and transformed the quality of life, all while remaining affordable for residents.”

Process of Conversion

NYCHA and incoming PACT developers hold multiple meetings with residents prior to conversion that are intended to explain the benefits and process of conversion, as well as answer resident questions. Such meetings are required by HUD.³¹⁴

In addition, HUD notices that govern RAD conversions — portions of which are incorporated into leases and transactional documents —also require that “language assistance be provided to residents . . . who are Limited English Proficient (LEP) to ensure that they have meaningful access to RAD resident notifications and meetings.”³¹⁵ The guidance also states that housing authorities should “make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient’s programs and activities,” including by providing oral interpretation, having bilingual staff, or providing written translation services.³¹⁶

³¹¹ Human Rights Watch Interview with Sonyi Lopez and Sonia Lopez, March 30, 2021.

³¹² Human Rights Watch Interview with Anthony Sanchez, March 26, 2021.

³¹³ Pennrose response to letter from Human Rights Watch, August 12, 2021.

³¹⁴ RAD Notice, pp. 92-95.

³¹⁵ RAD Notice, pp. 92-95.

³¹⁶ See generally, HUD, Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, Fed. Reg. Vol. 72 January 22, 2007, p. 2751, <https://www.hud.gov/sites/documents/FINALLEP2007.PDF> (accessed August 4, 2021). During the Covid-19 pandemic, meetings were allowed to be held virtually, though PHAs “should be attentive to the nature of technology which residents are likely to have in their homes.” See HUD Office of Multifamily Housing Programs, Questions and Answers for Office of Multifamily Housing Stakeholders: Coronavirus (COVID-19), May 21, 2020, https://www.hud.gov/sites/dfiles/Housing/documents/MF_COVID-19_QA_5.21.20_RAD_Only.pdf (August 4, 2021).

HUD does not require the actual leases that tenants sign to be translated and recommends that tenants sign only English-language versions of leases.³¹⁷ However, this does not diminish a PHA’s obligation to ensure language assistance to those who are LEP to ensure “meaningful access,” as described above.³¹⁸

NYCHA told Human Rights Watch that draft PACT leases are translated into several languages.³¹⁹ Draft leases in five languages are available on NYCHA’s website.³²⁰

In a response to a letter from Human Rights Watch, PRC, which manages 344 East 28th Street, stated that they mailed out sample leases with a cover letter translated into various languages, which indicated that translated leases were available online. PRC also stated that they scheduled translation services with residents, held three virtual town halls, and established a hotline with the Legal Aid Society. PRC further stated that lease signings were conducted on site.³²¹ Omni, one of the PACT developers of Independence Towers, similarly told Human Rights Watch that multiple meetings were held with residents prior to the conversion, and that staff were on site to explain lease terms to residents. They further stated that sample leases were provided in multiple languages and that interpreters were available during signing.³²²

Although NYCHA and incoming PACT developers conduct outreach prior to any PACT conversions, for some public housing tenants, the first time they fully understand that their development changing to new management is when they are asked to sign new leases with PACT developers. Some residents Human Rights Watch spoke to said that pre-conversion presentations by NYCHA and PACT developers were informative and helpful. However, other tenants expressed that they never fully understood the leases they were signing.³²³ According to Elizabeth Gyori, this problem has been especially prevalent during

³¹⁷ HUD, Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, p. 2734.

³¹⁸ Ibid.

³¹⁹ Human Rights Watch Interview with Greg Russ and Barbara Brancaccio, Chief Communications Officer at NYCHA, May 5, 2021.

³²⁰ NYCHA, PACT Resources for Residents, June 13, 2021, <https://www1.nyc.gov/site/nycha/about/pact/resident-resources.page> (accessed June 13, 2021). Leases are available in English, Spanish, French, Chinese (both simplified and traditional), and Russian.

³²¹ PRC response to letter from Human Rights Watch, August 9, 2021.

³²² Response from Omni New York LLC to Human Rights Watch Letter, August 13, 2021.

³²³ Human Rights Watch Interviews with tenants in PACT Developments, March-June 2021.

the Covid-19 pandemic, when NYCHA’s ability to reach out to tenants in person was limited: “They can’t do in-person meetings or one-on-one meetings, so tenants don’t understand what this lease is for or what it says.”³²⁴

Human Rights Watch found that the lease signing process can vary greatly, leading to some tenants not understanding leases or feeling pressured into signing.³²⁵ In some cases, tenants alleged that they were not provided with copies of the lease, given assistance in understanding lease terms, or even given versions of the lease in their primary language to review, though several developers stated in letters to Human Rights Watch that they did provide leases in multiple languages and disputed tenants’ characterizations of the lease signing process.

Melanie Aucello, Resident Association President at 344 East 28th Street , described a lack of information leading up to the conversion. Aucello said that residents were sent draft leases in English only and were never given copies:

I witnessed Asian and Spanish [speaking] residents going down to the lobby, because [PACT management] had an office, if you can call it that, it was the contractors’ room, that was filthy. They had them go in there and sign the leases . . . and they didn’t have translators or anything like that . . . and no one was given a copy of what they signed.³²⁶

Other residents at 344 East 28th Street shared similar stories, and several stated that they did not fully understand what they were signing.³²⁷ Demetrius Gonzalez said, “There was a lot of stuff on the lease that we didn’t understand. We tried to get it explained to us, but they never told us what it was.”³²⁸ Diane De Jesus said she was not allowed to get a copy of the lease upon signing and that it took over two months to get a copy sent in the mail.³²⁹

³²⁴ Human Rights Watch Interview with Elizabeth Gyori, February 17, 2021.

³²⁵ Human Rights Watch Interviews with tenants in PACT Developments, March-June 2021; Human Rights Watch Interview with Elizabeth Gyori, February 17, 2021, June 15, 2021.

³²⁶ Human Rights Watch Interview with Melanie Aucello, April 16, 2021.

³²⁷ Human Rights Watch Interviews with residents at 344 East 28th Street, March 23, 2021, March 29, 2021.

³²⁸ Human Rights Watch Interview with Demetrius Gonzalez, March 23, 2021.

³²⁹ Human Rights Watch Interview with Diane De Jesus, March 23, 2021.

Aida Gonzalez also described never receiving a copy of her lease and being taken to an unclean room: “They tried to put us in a dirty room . . . the walls were filthy”³³⁰

Some residents at other properties, however, described a better signing process. Sanchez said that, at Hope Gardens, he was able to receive a copy of his new lease.³³¹

Residents also described feeling that they had no choice but to sign leases with the incoming PACT developer. Not signing leases can put tenants at risk of eviction, Gyori told Human Rights Watch: “Upon conversion, their public housing lease terminates, and they become licensees, so they have significantly less protection [against eviction].”³³² Aucello said that, given her concerns about conversion, she did not want residents in her building to sign the lease, but NYCHA told her that she would be responsible if her neighbors were evicted: “So I had to pull back to tell everyone to sign it, and it made me physically ill.”³³³ Other residents told Human Rights Watch that they signed out of fear. Devalle at Independence Towers told Human Rights Watch that she did not want to sign the lease because she wanted to try to transfer to another development, but eventually signed out of concern that she would lose her apartment: “When somebody’s put in a corner, and you don’t make money like that, and you’re told, ‘Look, if you don’t do this, then you’ll lose it all,’ you’re like, fuck it, I don’t want to lose my stuff so let me just sign, it’s easier to just sign.”³³⁴

The confusion that several residents of PACT developments have experienced around lease signing issues is exacerbated, Gyori said, by the fact that NYCHA has done little to earn residents’ trust in the conversion process: “There is a lot of anger and distrust on the part of tenants, reasonably because they’ve withstood widespread and longstanding neglect by NYCHA for years and years and years.”³³⁵

³³⁰ Human Rights Watch Interview with Aida Gonzalez, March 23, 2021.

³³¹ Human Rights Watch Interview with Anthony Sanchez, March 26, 2021.

³³² Human Rights Watch Interview with Elizabeth Gyori, February 17, 2021.

³³³ Human Rights Watch Interview with Melanie Aucello, April 16, 2021.

³³⁴ Human Rights Watch Interview with Jessica Devalle, August 22, 2021.

³³⁵ Human Rights Watch Interview with Elizabeth Gyori, February 17, 2021.

“This Is Not [NYCHA] Anymore” — Difficulties Accessing Services and Registering Complaints with City Authorities

Once a development converts under PACT, NYCHA is far less involved in tenants' lives, even though it retains ownership of the land and buildings and maintains an oversight role.³³⁶ PACT is predicated on NYCHA's continued oversight of private developers and managers,³³⁷ yet the agency often disclaims responsibility for ensuring repairs, referring residents to the developer. Residents described challenges with securing transfers to other developments, reporting habitability problems in their homes to NYCHA, and accessing social service providers.

Problems Reporting Unsafe Conditions and Accessing Social Services

Many PACT residents reported finding it difficult or impossible to register complaints with a government agency concerning unmet repair needs or issues with construction.

Aucello, at 344 East 28th Street, explained to Human Rights Watch that residents frequently attempt to call “311,” a general city government phone number, for non-emergency complaints.³³⁸ NYCHA residents have a different number they can call to register complaints, but because Aucello's building is privately managed under PACT, that number does not apply. Aucello said:

When we call 311 to make complaints, they say to us “your address doesn't exist” . . . We can't complain about the elevators, garbage, or anything. I had to go through acrobatics to get a 311 complaint about how the elevator [with slowly-closing doors for people with disabilities] wasn't working.³³⁹

Both Devalle and Leichter, residents at Independence Towers, had a similar experience when they tried to call 311 to report concerns about construction. “[311] is like, ‘no, you're NYCHA,’ but then when you call NYCHA, they're like, ‘No, you're

³³⁶ See NYCHA, Preliminary Summary of Reporting Requirements for Round 10 RFEI, <https://eshare.nycha.info/sites/pact10/Library/Exhibit%20Q%20-%20Asset%20Management%20Reporting%20Requirements.pdf> (accessed July 13, 2021).

³³⁷ See, e.g., NYCHA, Permanent Affordability Commitment Together (PACT): Frequently Asked Questions (FAQs), <https://www1.nyc.gov/assets/nycha/downloads/pdf/PACT-RAD-FAQs-2020.pdf>, (accessed September 1, 2021).

³³⁸ Human Rights Watch Interview with Melanie Aucello, April 16, 2021.

³³⁹ *Ibid.*

that Reliant [the property management company],” Devalle told Human Rights Watch. “So you’re falling in between and you’re in this grey area where it’s like, ‘where am I?’”³⁴⁰

In its RFEI, NYCHA requires PACT development teams to include a social service provider, often a charitable organization,³⁴¹ to residents by connecting them with resources, provide credit-building opportunities, develop resident programming, and assist those who are behind on rent.³⁴² All PACT development teams that Human Rights Watch contacted stated that the residents have access to social services at their development.

PRC, which manages the PACT Manhattan Bundle that consists of 17 formerly NYCHA-managed developments, including 344 East 28th Street, told Human Rights Watch that they utilize a social service provider that has two resident coordinators to support residents when they are paying rent, submitting maintenance requests, and communicating with construction contractors. They hold a welcome event at each development before construction begins, but they said that rehabilitation work had not begun at 344 East 28th Street as of July 2021. PRC also stated that the social service provider made wellness calls during the early months of the pandemic.³⁴³

Omni New York LLC, a member of the development team for the PACT Brooklyn Bundle, which includes Independence Towers, stated in a letter to Human Rights Watch, “All existing social service providers at the time of PACT conversion remain on site.” Omni further stated that a social service coordinator connects residents with other social service providers in the neighborhood.³⁴⁴

However, while some PACT residents told Human Rights Watch there was a social service provider available at their buildings, others either described struggling to access one, felt that providers had little presence, or appeared confused as to the availability of providers.

³⁴⁰ Human Rights Watch Interview Jessica Devalle, August 22, 2021.

³⁴¹ For a list of social service providers who are pre-qualified to be selected for PACT conversions, see PACT 2021: Pre-Qualified Partners (As of 10/19/20), <https://www1.nyc.gov/assets/nycha/downloads/pdf/PACT%202021%20Prequalified%20Partner%20List%20Social%20Service%20Providers.pdf>, accessed October 15, 2021.

³⁴² NYCHA, PACT Round 10 RFEI, pp. 1, 20-21, 24.

³⁴³ PRC response to letter from Human Rights Watch, August 9, 2021.

³⁴⁴ Response from Omni New York LLC to Human Rights Watch Letter, August 13, 2021.

At 344 East 28th Street, Dianna R., who has an intellectual disability, told Human Rights Watch that she lost access to her NYCHA social worker. When, as discussed above, Dianna’s rent nearly doubled following her building’s conversion to PACT, her social worker was no longer able to support her. “I called my social worker [at NYCHA] and she told me that she had nothing to do anymore with this building, and that she could not help me,” Dianna said. “Now I don’t have one, I don’t know who to call, or who to help me.”³⁴⁵

Various residents at 344 East 28th Street said that there is little or no social service presence at their building. Residents at Independence Towers reported similar problems.”³⁴⁶ Devalle stated that she was unaware of any social services at her development.³⁴⁷

Difficulties Transferring to Other Developments

According to NYCHA’s response to a letter from Human Rights Watch, because PACT residents become Section 8 participants and are no longer part of the public housing program, they can only transfer to another unit within their PACT development.³⁴⁸

However, one key protection of the RAD program nationally, which has been incorporated into NYCHA’s PACT program, is that, after one year in the PACT program, a resident can request a tenant-based “choice mobility voucher,” which will be provided if funding is available.³⁴⁹ Unlike NYCHA residents, who can transfer between public housing developments, PACT residents can use this voucher to find housing on the private market anywhere in the country where a PHA operates a voucher program. The voucher will cover the gap between 30 percent of household income and between 90 and 110 percent of the HUD-determined “fair market rent” for a given area.³⁵⁰

This option gives tenants the ability to move if they are dissatisfied with the conditions in their homes or with property management, and in theory, this aspect of the program could

³⁴⁵ Human Rights Watch Interview with Dianna R., March 29, 2021.

³⁴⁶ Human Rights Watch Interview with David Leichter, June 14, 2021.

³⁴⁷ Human Rights Watch Interview Jessica Devalle, August 22, 2021.

³⁴⁸ NYCHA response to Human Rights Watch Letter, August 10, 2021

³⁴⁹ NYCHA response to Human Rights Watch Letter, August 10, 2021.

³⁵⁰ See generally Congressional Research Service, *An Overview of Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*, February 7, 2014, p. 7.

provide PACT residents a greater ability to move than NYCHA's public housing residents. For non-emergency transfers, the latter can only transfer between NYCHA's public housing developments. Given the low vacancy rate for NYCHA housing, residents seeking to move must often wait years.³⁵¹

However, in practice, PACT residents still face challenges in moving to other housing, in part because they are no longer allowed to transfer to other public housing developments.

Tina M. told Human Rights Watch that she had been on the waitlist to transfer to NYCHA housing in Manhattan for 18 years, only to be removed once her development, Ocean Bay (Bayside), converted under PACT.³⁵² When she asked NYCHA why she was removed, she was told that Ocean Bay “is not Housing [referring to NYCHA] anymore.”³⁵³ Aucello also told Human Rights Watch about a resident at her building who was denied a transfer because she was no longer considered a NYCHA resident.³⁵⁴

For non-emergency transfers, NYCHA told Human Rights Watch that all requests for choice mobility vouchers by PACT tenants have been granted.³⁵⁵ However, due in part to New York City's tight rental market and low voucher payment standards, even residents who are granted choice mobility vouchers are often unable to successfully use them to obtain housing that meets their needs.

Human Rights Watch was unable to uncover any systematic public data on the extent to which PACT residents could successfully use choice mobility vouchers to find new housing, but Enterprise Community Partners' report on Ocean Bay found that, of 107 residents who applied for a voucher to move, 85 residents were granted one. Of this 85, only 11 residents successfully found housing utilizing the voucher.

Devalle, who hopes to use her voucher to leave Independence Towers in Williamsburg, Brooklyn, described the difficulty in finding suitable housing with rents low enough to

³⁵¹ NYCHA response to Human Rights Watch Letter, August 10, 2021; Human Rights Watch Interview with Tina M., June 7, 2021.

³⁵² Human Rights Watch Interview with Tina M., June 7, 2021.

³⁵³ Ibid.

³⁵⁴ Human Rights Watch Interview with Melanie Aucello, April 16, 2021.

³⁵⁵ NYCHA response to Human Rights Watch Letter, August 10, 2021.

utilize the voucher. Two of her children attend high school in Manhattan, but she says that available affordable apartments would drastically increase her commute. “The apartments are at the ends of each borough; like they are far, so far,” Devalle said, “[If] it’s not somewhere where I have to take a bus to a train to a bus to get to places, because of my teens, then I’ll [take] it, because I need to get out of here.”³⁵⁶

³⁵⁶ Human Rights Watch Interview Jessica Devalle, August 22, 2021.

VI. International Human Rights Standards on Housing

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) recognizes the right to adequate housing, as does the UN Convention on the Rights of Persons with Disabilities (CRPD), and the Universal Declaration of Human Rights, which was ratified by the UN General Assembly in 1948 and is widely accepted as reflective of customary international law.³⁵⁷

The United States has signed, but not yet ratified, the ICESCR. As a signatory, the US is obligated to refrain from acts that would defeat the treaty's object and purpose.³⁵⁸ Fundamental to the object and purpose of the ICESCR is the commitment by states to the dedication of available resources toward the progressive realization of the rights enumerated in the treaty. In turn, this entails that they avoid, wherever possible, retrogressive policies and practices that will harm rights protected under the treaty, including the right to housing; any such measures need to be fully justified by reference to the totality of rights protected by the ICESCR.³⁵⁹

In addition, the United States has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which prohibits policies and practices that have either the purpose or effect of restricting rights on the basis of race.³⁶⁰ The US has signed, but not yet ratified, the CRPD. The CRPD guarantees “the right to adequate, safe, and accessible housing, and “to the continuous improvement of living conditions.” It also specifically requires governments to ensure “access by persons with disabilities to public

³⁵⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), entered into force January 3, 1976, art. 11(1). The United States has signed but not ratified the ICESCR; Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 25(1).

³⁵⁸ Vienna Convention on the Law of Treaties adopted May 22, 1969, G.A. Res. 2166 (XXI), 2287 (XXII), 1155 U.N.T.S. 331, U.N. Doc. A/CONF.39/11/Add.2, entered into force January 27, 1980, art. 18. The Vienna Convention is widely viewed as being reflective of customary international law.

³⁵⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations, U.N. Doc E/1991/23 (1990), para. 9

³⁶⁰ International Convention on the Elimination of All Forms of Racial Discrimination, adopted December 21, 1965, G.A. Res. 2106 (XX), 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), entered into force January 4, 1969, ratified by the United States on October 21, 1994, Art. 1. Under ICERD, racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” ICERD, Part I, Article 1(1).

housing programmes,” and to “appropriate and affordable services, devices and other assistance for disability-related needs.”³⁶¹ The right to housing is also inherently linked to the right of people with disabilities to live independently in the community, which includes states’ obligations to ensure “persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement,” and “Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”³⁶²

The ICESCR prohibits discrimination based on age or disability status.³⁶³ In the housing context, the CESCR has stated that governments should accord older persons and those with disabilities “full and sustainable access to adequate housing resources.”³⁶⁴

Habitability, Accessibility and Availability of Services

The Committee on Economic Social and Cultural Rights, the body charged with providing authoritative interpretations of the ICESCR, has set out several factors relevant to determining whether housing is adequate under the ICESCR. One of these factors is habitability. The CESCR requires housing to be physically safe and protect residents from “cold, damp, heat, rain, wind, or other threats to health, structural hazards, and disease vectors.”³⁶⁵

The right to adequate housing also encompasses accessibility, as well as availability of materials, facilities, and services essential for “health, security, comfort and nutrition,” including “safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”³⁶⁶

³⁶¹ UN Convention on the Rights of Persons with Disabilities, art. 28, and Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on living independently and being included in the community.

³⁶² CRPD, art. 19.

³⁶³ CESCR, General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20, (2009), paras. 27-29; see also ICESCR, art. 2(2) (prohibiting discrimination based on “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth *or other status.*”) (emphasis added).

³⁶⁴ CESCR, General Comment No. 4, para. 8(e).

³⁶⁵ CESCR, General Comment No. 4: The Right to Adequate Housing, U.N. Doc. E/1992/23 (1991), para. 8(d).

³⁶⁶ *Ibid.*, para 8(b)

Forced Evictions and Affordability

For housing to be adequate, it needs to provide residents with “a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”³⁶⁷ Housing also needs to be affordable: housing costs cannot be so high that they threaten the attainment of other basic needs, and tenants should be protected from “unreasonable rent levels or rent increases.”³⁶⁸ The CESCR has also stressed the importance of ensuring “that the percentage of housing-related costs is, in general, commensurate with income levels” and that states “should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.”³⁶⁹

According to the CESCR, “forced evictions,” are *prima facie* incompatible with the right to adequate housing, and “can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”³⁷⁰ Not all evictions, however, are forced evictions, which the CESCR defines as the “removal against their will of individuals, families and/or communities from [their] homes . . . without the provision of, and access to, appropriate forms of legal or other protection.”³⁷¹

In accordance with international human rights standards, the law governing evictions should provide tenants the “greatest possible security of tenure,” and should include consultation with those affected, adequate notice, provision of legal remedies, the presence of government representatives during an eviction, and provision, where possible, of legal aid to people who are in need of it to seek redress in the courts. But regardless of the procedures in place: “evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.” States should ensure that adequate alternative housing is available for those who cannot provide for themselves. While eviction for “persistent nonpayment of rent,” or unauthorized occupancy may be

³⁶⁷ Ibid. Para 8(a)

³⁶⁸ CESCR, General Comment No. 4, para. 8(c).

³⁶⁹ Ibid.

³⁷⁰ CESCR, General Comment No. 4, para. 18.

³⁷¹ CESCR, General Comment No. 7: The Right to Adequate Housing: Forced Evictions, U.N. Doc. E/1998/22, (1997), para. 3.

justifiable, this does not relieve the state of its obligation to ensure that evictions do not leave tenants vulnerable to either homelessness or violations of other human rights.³⁷²

In all cases, an eviction is only justifiable under human rights standards if its impact on an individual’s right to housing is outweighed by the legitimate objective of the eviction, as determined by an independent authority. In making this determination, the availability of adequate alternative housing and the personal circumstances of the resident are “crucial factors.” In addition, a distinction should be drawn between individual landlords for whom rent provides “vital income” and institutional landlords such as “financial institutions” or “other entities,” including governments and private companies, as the proportionality of the eviction will in part turn on “the owner’s need to recover possession of the property.”³⁷³

This analysis of the proportionality between the grounds for eviction and its consequences for the tenant should be undertaken in all eviction cases, even where a tenant lacks a legal right under domestic law to reside in their home.

In examining the communication submitted by Maribel Viviana López Albán to the CESCR, the CESCR stated:

“[A] State party will be committing a violation of the right to adequate housing if it stipulates that a person who is occupying a property without legal title must be evicted immediately irrespective of the circumstances in which the eviction order would be carried out.”³⁷⁴

³⁷² CESCR, General Comment No. 7, para. 9, 11, 15-16; See also Human Rights Watch, *United States—No Second Chance* (discussing public housing screening processes that unreasonably deny housing to those with criminal records).

³⁷³ *El Goumari and Tidli v. Spain*, para 8.3; see also *López Albán v. Spain*, para. 11.5.

³⁷⁴ *López Albán v. Spain*, para. 11.7. This communication was submitted under the optional protocol to the ICESCR, which Spain, the country in which Albán resided, had ratified. The optional protocol to ICESCR allows individuals to submit complaints to the CESCR alleging that they were victims of a violation of rights guaranteed under the ICESCR. Such communications are admissible only if the CESCR determines that all domestic remedies have been exhausted. If admissible, the CESCR will submit its views regarding the communication to the relevant State party. The State party is obligated to give due consideration to the views of the CESCR and provide a written response within six months, including in action taken in light of the CESCR’s recommendations. See Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights, adopted December 10, 2008, GA Res. 63/117, 63 U.N. GAOR Supp. (No. 49) at 329, U.N. Doc. A/Res/62/117 (2008), 2922 U.N.T.S. 29, entered into force May 5, 2013.

Albán and her children had been evicted on the grounds that she was illegally occupying the apartment in which she resided,³⁷⁵ and the CESCR found that her eviction violated her human right to adequate housing, as it was carried out without prior assessment of the proportionality between the aim of the eviction and its consequences for the rights of Albán and her children.³⁷⁶

As noted by the CESCR, forced evictions “may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home.”³⁷⁷ These are all rights protected by the International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified.³⁷⁸

The ICCPR also protects individuals against “arbitrary or unlawful” interference with their home.³⁷⁹ The Human Rights Committee, a body of independent experts that monitor implementation of the ICCPR, has considered how these standards apply to evictions. In *Liliana Assenova Naibidenova et al. v. Bulgaria*, the Committee found eviction procedures against a Roma community that had resided for decades on land they did not own would be arbitrary and in violation of the ICCPR, as authorities failed to consider the various interests involved and the reasonableness of the eviction, and there was no pressing need to carry out the eviction. The committee highlighted that failing to give “due consideration” to the fact that evictees were impoverished and at risk of becoming homeless due to a lack of immediately available and satisfactory replacement housing would result in a violation of article 17.³⁸⁰

Evictions, therefore, should not only be lawful but also reasonable in light of a range of factors, including the tenants’ interests and the availability of adequate replacement housing. For housing, such as public housing, that is occupied by low-income individuals,

³⁷⁵ López Albán v. Spain, paras. 2.2-2.12, 7.2.

³⁷⁶ *Ibid.*, para. 11.7

³⁷⁷ CESCR, General Comment No. 7, para. 4

³⁷⁸ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, arts 6, 9, 17.

³⁷⁹ *Ibid.*, art. 17(1). The term “home” is not limited by ownership and is to be interpreted broadly to include the place where a person resides. UN Human Rights Committee, General Comment No. 16: The Right to Privacy, (1988), para. 5.

³⁸⁰ *Naidenova et al. v Bulgaria*, Communication No. 2073/2011, November 27, 2012, CCPR/C/106/D/2073/2011, paras. 2.1, 14.6-14.7

for whom eviction is especially likely to result in homelessness, ill health, or other impacts on rights, any evictions warrant the most careful scrutiny.

Racial Discrimination

International law, including the ICCPR, ICESCR, and ICERD, prohibit racial and ethnic discrimination. The ICERD specifically prohibits any policy that has the purpose or effect of restricting rights on the basis of race.³⁸¹ It proscribes apparently race-neutral practices that affect fundamental rights—for example, the right to adequate housing and the right against arbitrary interference with the home—regardless of racist intent, if those practices create unwarranted racial disparities. The Committee on the Elimination of Racial Discrimination, which interprets the ICERD, has specifically stated that “indirect—or de facto—discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”³⁸²

Under the ICERD, governments may not ignore the need to secure equal treatment of all racial and ethnic groups, but rather need to act affirmatively to prevent or end policies with unjustified discriminatory impacts.³⁸³

Many Black and brown people already struggle to obtain affordable housing in New York City and make up a disproportionate share of the population in public housing. Policies that weaken their access to adequate housing or increase the risk that they will be subject to arbitrary interference with their home, are likely to compound existing disparities, deepening the structural discrimination they already experience.

³⁸¹ Under the ICERD, racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” ICERD, Part I, Article 1(1).

³⁸² CERD, “Consideration of Reports Submitted by State Parties under Article 9 of the Convention: Concluding Observations, United States of America,” U.N. Doc. CERD/C/USA/CO/6 (2008), para. 10; Human Rights Watch, United States – Submission to the Committee on the Elimination of Racial Discrimination, vol. 20, no. 2(G), February 2008, <http://hrw.org/reports/2008/uso2008/>.

³⁸³ ICERD, Part I, Article 2(1)(a).

Lack of Redress

The CESCR has made clear that appropriate means of redress, or remedies, for violations of the rights protected by the ICESCR need to be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability need to be put in place.³⁸⁴ According to the CESCR, such remedies may be judicial or, in many cases, administrative, but in all cases, they should be “adequate to ensure fulfilment of the obligations under the [ICESCR].”³⁸⁵ In particular, in addition to being effective, the process for obtaining remedies needs to be accessible, affordable, and timely.³⁸⁶

The ICCPR also protects the right to an effective remedy, to enable individuals to vindicate their rights when they are violated.³⁸⁷ Even when legal systems formally provide appropriate remedies, states can still violate the covenant where such remedies are ineffective in practice.³⁸⁸

Threats to the Right to Housing Under PACT

Chronic underfunding has led to conditions in NYCHA’s public housing that have violated tenants’ right to habitable housing, including mold, lead paint, and failing heat. While PACT has helped improve those conditions for some, other residents of PACT housing still report dealing with mold, failing heat, and unresponsive management. During construction, residents in several developments have reported facing persistent water shutoffs, elevator outages, and potentially unsafe work practices.

Meanwhile, PACT residents have lost critical protections for their rights and other oversight mechanisms appear inadequate. While the transactional documents underlying PACT deals require developers and managers to respect resident rights, PACT tenants have no private right of action to enforce these obligations. They also lost much of the oversight

³⁸⁴ CESCR, General Comment No. 9: The Domestic Application of the Covenant, UN Doc. E/C.12/1998/24 (1998), para. 2. Although the committee recognizes that, in rare cases, it may be possible that domestic legal remedies are not “appropriate means” under article 2(1) of the ICESCR, the committee states that it would be “difficult to show this” and that, in many cases, other means will be “rendered ineffective if they are not reinforced or complemented by judicial remedies.” *Ibid.*, para 3.

³⁸⁵ *Ibid.* para 7.

³⁸⁶ *Ibid.* para. 9.

³⁸⁷ ICCPR, art. 2(3); UN Human Rights Committee (HRC), General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, (2004), para. 15.

³⁸⁸ HRC, General Comment No. 31 [80], para. 20.

provided by the federal monitor agreement. When faced with issues that threaten their rights, PACT residents too often report being unable to obtain redress.

Perhaps in part due to the reduction in oversight and the program's financial structure, PACT appears to have created new risks, in certain developments, pertaining to security of tenure. Two developments housing around 6,500 people appear to have experienced significant increases in eviction post-conversion. But just as concerning, there is no regular public disclosure of eviction rates that can enable advocates to effectively monitor PACT developments. With New York's eviction moratorium expiring on January 15, 2022, residents are potentially at great risk of losing their homes. For many public housing residents, eviction will almost certainly result in homelessness.

NYCHA housing is one of the last remnants of affordable housing in one of the world's most expensive cities, but as with many PHAs, federal policy has forced NYCHA to choose between programs like PACT, which have reduced important protections for housing rights, and eventual demolition.

Substantially increased federal, state, and city funding for public housing can enable NYCHA to provide housing that is both stable *and* habitable. In the absence of such funding, NYCHA should reform how it utilizes RAD to better protect the rights of residents, improve its oversight, and access to redress. HUD should also review the structure of RAD to ensure effective oversight and remedies for violations of residents' rights.

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Annex: Excerpt from NYCHA Response Email to Human Rights Watch, August 10, 2021, Concerning Eviction Rates in PACT Housing

2. We understand that NYCHA does not publicly disclose eviction rates, either in the developments that it manages or in PACT housing. Can you confirm whether this is the case? If such information is not publicly disclosed, why does NYCHA not provide public data on evictions?

The eviction rates across all NYCHA public housing and PACT-converted properties are very low and the evictions are based on a court order and a finding that there is a legal basis to evict the household. The most recent data from New York City Council reported a citywide annual eviction rate^[1] of 1 per 168 households in 2018. NYCHA's eviction rates were much lower that same year – 1 per 302 households in public housing and 1 per 257 households in PACT (see Table A and B below). Overall, evictions at PACT-converted properties have decreased after transition to private management: 84 evictions prior to conversion vs. 65 evictions after conversion (see Table C below).

For NYCHA's PACT properties, the majority of evictions have been holdover cases where the tenant of record died or vacated the property. In these instances, a formal legal proceeding in housing court is required to terminate the lease before the apartment can be leased to a new household from NYCHA's Project-Based Section 8 waiting list. NYCHA and our PACT Partners conduct extensive outreach to ensure that households understand the requirement that all apartment occupants must be on the lease in order to ensure succession when the tenant of record dies or moves.

Table A. NYCHA Evictions across Public Housing Properties

Year	Nonpayment Evictions	Holdover and Other Evictions	Total Evictions	Total Households	Eviction Rate (evictions per total households)
2017	226	306	532	173,946	1 per 326 households
2018	219	346	565	170,740	1 per 302 households
2019	213	344	557	168,952	1 per 303 households
2020 ^[2]	56	61	117	164,509	1 per 1406 households

[1] As published on their website, the [New York City Council's](#) eviction rate is the percentage of tenants who received an eviction judgment from the housing court and were ordered to leave as compared to the total number of rental housing units in the city. Note, we cannot verify the accuracy of the data used by the Council website.

[2] There have been 0 evictions since NYS eviction moratorium was put into effect on March 20, 2020.

Table B. PACT Evictions across Converted Properties

Year	Nonpayment Evictions	Holdover and Other Evictions	Total Evictions	Total Households	Eviction Rate (evictions per total households)
2017	6	15	21	1,395	1 per 66 households
2018	7	8	15	3,853	1 per 257 households
2019	5	20	25	5,174	1 per 207 households

2020 ²	2	2	4	9,517	1 per 2354 households
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Table C. PACT Evictions by Development

Project Name	Conversion Date	~ Years since Conversion	Total Evictions Pre-Conversion ^[3]	Total Evictions Post-Conversion	Total Households
Ocean Bay (Bayside)	12/31/2016	4.5	49	52	1,395
Highbridge Franklin	11/30/2018	2.5	3	0	336
Twin Parks West	10/31/2018	2.5	2	0	312
Betances	11/16/2018	2.5	10	13	1,088
Baychester Murphy	12/27/2018	2.5	6	0	722
Hope Gardens	7/18/2019	2	4	0	1,321
Brooklyn Bundle	2/12/2020	1.5	10	0	2,625
Manhattan Bundle	11/30/2020	0.5	0	0	1,718
Total:			84	64	9,517

[3] During a timeframe equal to how long the properties have been in the PACT program.

“The Tenant Never Wins”

Private Takeover of Public Housing Puts Rights at Risk in New York City

Public housing is a critical source of affordable housing in the United States, yet the US government has drastically cut funding for it since 2000. These cuts have contributed to deteriorating living conditions in public housing, forcing many residents to live in homes that pose risks to their health and safety. In addressing this problem, the New York City Housing Authority (NYCHA) has put in place a program called Permanent Affordability Commitment Together (PACT), leasing some of its buildings to private developers for 99-year terms and outsourcing management to private companies.

This report documents how the transition to private management has impacted the right to housing of many PACT residents. The report finds that residents in PACT developments lose some of the legal protections they enjoyed in public housing. Some residents described continued challenges obtaining needed repairs, and in two developments, eviction rates increased following the introduction of private management.

The report recommends that the federal government increase funding for the public housing program to enable cities, among other things, to repair their public housing. It also recommends that New York State amend its eviction laws to conform with human rights standards. To the extent programs such as PACT are utilized to finance public housing repairs, the federal government, NYCHA, New York City, and New York State should improve transparency, oversight, and protections for the rights of residents.



Work permits are displayed in front of the New York City Housing Authority's Ocean Bay Apartments Bayside complex during renovations, part of the US Housing and Urban Development Rental Assistance Demonstration program, in the Queens borough of New York, US, on Tuesday, July 17, 2018.

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