

I. Criminalization of homelessness in the United States of America

II. Reporting Organization(s)

National Law Center on Homelessness and Poverty, Yale Law Allard K. Lowenstein International Human Rights Law Clinic, UC Irvine School of Law International Human Rights Clinic.

III. Issue Summary

In a 2012 report, the Department of Justice and the United States Interagency Council on Homelessness recognized criminalization of homelessness as a potential violation of the International Covenant on Civil and Political Rights (ICCPR) - the first time any domestic agency has recognized any domestic practice as a treaty violation.¹ Despite this, the approximately 3.5 million homeless persons in the U.S. face increasing harassment in many cities under laws making it illegal to sleep outside or ask for money and allowing police sweeps of areas where homeless people sleep including search and seizure of their property, and by the disparate enforcement of other laws.² This occurs despite the national shortage of shelter space to meet even the emergency needs of homeless people, thus penalizing individuals for activities they have no choice but to engage in due to their homelessness.³ In some cases, federal funds are used to support criminalization activities.⁴ In 2006, the Human Rights Committee recognized the disparate racial impact of homelessness in the U.S.⁵ Although some domestic courts have also found criminalization to be a Constitutional violation,⁶ it is of the utmost importance for advocates that the Committee build on its previous observation, growing Special Rapporteur commentary, and the U.S. government report to firmly establish the emerging norm around criminalization constituting cruel, inhuman and degrading treatment.

IV. Concluding Observations

"...50% of homeless people are African American although they constitute only 12% of the U.S. population...The State Party should take ... adequate and adequately implemented policies, to bring an end to such de facto and historically generated racial discrimination."⁷

V. U.S. Government Report

¹ United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* 7-8 (2012).

² *Id.* at 40.

³ National Law Center on Homelessness & Poverty, *Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities*, 6 (November 2011).

⁴ See Damien Cave, At Key West Beach, Wondering Who's a Vagrant, N.Y. Times, A12 (Mar. 31, 2010) http://www.nytimes.com/2010/03/31/us/31keywest.html?_r=0&ref=homelesspersons&pagewanted=print.

⁵ Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, CCPR/C/USA/CO/3 (2006), at para. 22 [hereinafter HRC 2006].

⁶ See *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992); *Jones v. City of Los Angeles*, 444 F.3d 1118, 1123 (9th Cir. 2006).

⁷ HRC 2006 at para. 22.

"The Obama Administration is committed to combating racial discrimination in this and other contexts. The Administration has formed a government-wide Interagency Council on Homelessness...to address this critical issue. The United States is extremely concerned that members of racial minority groups, and particularly Blacks or African Americans, are over-represented among homeless populations...racial disparities in homelessness must also be addressed through programs designed to ensure equal opportunities for all, regardless of race. The federal government, states, and local jurisdictions in the United States have in place myriad programs and legal enforcement measures to address racial discrimination...While much work has been done to address issues of racial discrimination in the United States, much more work continues at the present time and will be necessary in the future."⁸

VI. Legal Framework

ICCPR Articles 7 and 26 both apply to issues of criminalization of homelessness. Criminally punishing individuals for basic life-sustaining activities such as sleeping, eating, or eliminating bodily wastes when no legal alternative exists is cruel, inhuman and degrading. Disparate enforcement of facially neutral laws against homeless individuals often discriminates on multiple, intersecting grounds, including race, gender, social origin, property and disability status. For domestic advocates, it is important to establish the norm under Art. 7 for potential use in litigation; recognition of Art. 26 violations on grounds beyond race would also be welcomed.

VII. Human Rights Committee General Comments

None.

VIII. Other UN Body Recommendations

General Comment 4 to Article 11(1) of the International Covenant on Economic, Social and Cultural Rights: "...all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats."⁹

Special Rapporteur on the Right to Water and Sanitation: "Local statutes prohibiting public urination and defecation, while facially constitutional are often discriminatory in their effects. [Lack of] access to public restrooms...is...a violation of human rights that may amount to cruel, inhuman or degrading treatment."¹⁰

Special Rapporteur on Racism: "...the enforcement of minor law enforcement violations... take a disproportionately high number of African American homeless persons to the criminal justice

⁸ Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights In Conjunction with the Periodic Review, 2010, at para. 588 – 589.

⁹ *Id.*

¹⁰ Catarina de Albuquerque, UN Independent Expert on the right to water and sanitation: Mission to the United States of America from 22 February to 4 March 2011, (Mar. 4, 2011), *available at* <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10807&LangID=E>, (last visited Dec. 4, 2012).

system."¹¹

Special Rapporteur on Adequate Housing: "When shelter is not available in the locality, homeless persons should be allowed to shelter themselves in public areas."¹²

Special Rapporteur on Extreme Poverty and Human Rights: "Homeless persons ... are frequently ... criminalized for using public space...States should...[r]epeal or reform any laws that criminalize life-sustaining activities in public places...[and] refrain from criminalizing sanitation activities...in public places where there are no adequate sanitation services available."¹³

Joint Statement of Special Rapporteurs on Extreme Poverty, Housing, and Water & Sanitation:: "welcomed a groundbreaking ... report ... which recognizes that the criminalization of homelessness may violate the human rights of homeless persons."¹⁴

IX. Recommended Questions

While commending the State Party for recognizing the criminalization of homelessness as a violation of the ICCPR, please explain what concrete steps the United States government is taking to decrease the criminalization of homelessness, including providing incentives for decriminalization and constructive alternative approaches, and discontinuing its own funding of local law enforcement practices that criminalize homelessness.

X. Suggested Recommendations

The State Party should take immediate measures to eliminate the criminalization of basic life activities where homeless persons have no choice but to perform them in public, and cease disparate enforcement of other laws against homeless persons. Federal agencies should promulgate guidance for communities emphasizing the negative consequences of criminalization, provide incentives for decriminalization and constructive alternative approaches, discontinue its own funding of local law enforcement practices that criminalize homelessness, and investigate criminalization policies or enforcement where they occur. (Articles 7 and 26).

¹¹ U.N. Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diene, mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 at para. 64 (Apr. 28, 2009).

¹² U.N. 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, Raquel Rolnik, mission to the United States of America*, U.N. Doc. A/HRC/13/20/Add.4 at para. 95 (Feb. 12, 2012).

¹³ U.N. Human Rights Council, *Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, U.N. Doc. A/HRC/21/39 at para. 65, 66(c) (July 18, 2012); *see also* U.N. Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights*, U.N. Doc. A/67/278 at para. 48-50, 78(c) (August 9, 2012).

¹⁴ Special Rapporteurs on the rights to adequate housing, water & sanitation, & extreme poverty & human rights, USA: "Moving away from the criminalization of homelessness, a step in the right direction," (23 April, 2012) <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E>.