

**Cruel, Inhuman, and Degrading:
Homelessness in the United States under the International Covenant on Civil and Political Rights**

I. Reporting Organizations

1. The National Law Center on Homelessness and Poverty (NLCHP) and the Yale Law School Allard K. Lowenstein International Human Rights Clinic (Yale) respectfully submit this report to supplement the United States' response to the Committee's List of Issues. NLCHP and Yale offer this shadow report to provide additional information on the imposition of criminal penalties on people living in homelessness, as requested in Issue 6 of the Committee's List of Issues. Beyond this short summary, NLCHP and Yale have prepared a comprehensive shadow report, accessible through the NLCHP website.¹ In addition to NLCHP and Yale, the following organizations endorse this report: Family Promise, FEANTSA (European Federation of National Organisations working with the Homeless), Global Initiative for Economic, Social, and Cultural Rights, Housing Action Illinois, Los Angeles Community Action Network, National AIDS Housing Coalition, National Center for Housing & Child Welfare, National Coalition for the Homeless, National Economic & Social Rights Initiative, National Health Care for the Homeless Council, National Lawyers Guild, National Lawyers Guild Housing Committee, Northeast Ohio Coalition for the Homeless, Partnering for Change, PATH (People Assisting The Homeless), PATH Beyond Shelter, Poverty & Race Research & Action Council, Sacramento Regional Coalition to End Homelessness, Santa Clara University School of Law –International Human Rights Clinic, Take Back the Land Committee, U.S.A. and Canadian Alliance of Inhabitants, Western Regional Advocacy Project, and the Women's International League for Peace and Freedom – U.S. Section.

II. Introduction and Issue Summary

2. This report details violations of the International Covenant on Civil and Political Rights (ICCPR) stemming from U.S. policy toward the more than 3.5 million people who experience homelessness in the U.S. annually. While the U.S. government should be commended for recognizing that the imposition of criminal penalties on homeless people is counterproductive public policy in violation of the ICCPR and Convention Against Torture (CAT),² criminalization of homelessness at the state and local levels continues to cause significant rights violations.³ The Human Rights Committee's List of Issues for the United States' fourth periodic review requested information on criminalization as it relates to the

¹ NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *CRUEL, INHUMAN, AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* (2013), available at <http://nlchp.org>.

² UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, *SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS* (2012), available at www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf [hereinafter USICH, *SEARCHING OUT SOLUTIONS*].

³ See, e.g., NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES* (2011) [hereinafter NLCHP, *CRIMINALIZING CRISIS*].

right to be free from discrimination under Articles 2 and 26 of the ICCPR.⁴ The Committee's explicit recognition that criminalization of homelessness is discriminatory and constitutes cruel, inhuman, and degrading treatment would be a powerful affirmation for advocates working to safeguard the fundamental rights of homeless people in the United States.

3. This report describes how state policies of criminalization routinely penalize people for their involuntary status in violation of Articles 2 and 26. Penalization contributes to violations of many other rights, including the right to be free from cruel, inhuman and degrading treatment (Article 7), the right to liberty and security of the person (Article 9), the right to privacy (Article 17), the right to the family (Articles 17 and 23), the right to freedom of assembly (Article 21), and voting rights (Article 25). Discrimination against homeless people further entrenches the laws and social norms that allow systemic violations of these rights. As a consequence of state policies, a family that loses its home may soon experience increased physical and psychological insecurity and separation from one another, and homeless people are disproportionately likely to suffer from electoral disenfranchisement, violence, and many other harms.
4. Criminalization inflicts indignities and violations on homeless people generally, but its harms are particularly acute for homeless people who experience one or multiple intersecting forms of discrimination in U.S. society. The violations described in our larger shadow report, from voter disenfranchisement to family dissolution, are especially severe for people of color, immigrants, lesbian, gay, bisexual, and transgender people, people with disabilities, and others who are especially subject to discrimination at the hands of private actors and law enforcement officials. These populations are among the most likely to be rendered homeless, and are often subject to the harshest treatment when that occurs.
5. Left with minimal state protection in extremely vulnerable positions, many homeless people must undertake self-made solutions, such as forming alternative communities like tent cities,⁵ creating self-designed sanitation processes,⁶ or using public space to perform basic bodily functions when there is no other option available. And yet people engaging in self-help measures are often penalized through ordinances that prohibit the use of public space for these activities,⁷ seek to render homelessness invisible,⁸ and aim to dissolve communities

⁴ Human Rights Committee, *List of Issues to be Taken up in Connection with the Consideration of the Fourth Periodic Report of the United States of America (CCPR/C/USA/4)*, Adopted by the Committee at its 107th Session, 11-28 March 2013 (advance unedited version), ¶ 6.

⁵ JULIE HUNTER, PAUL LINDEN-RETEK & SIRINE SHEBAYA, *WELCOME HOME: THE RISE OF TENT CITIES IN THE UNITED STATES*, NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY & ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC (2012).

⁶ See, e.g., U.N. Human Rights Council, *Report of the U.N. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum: Mission to the United States of America*, ¶ 58, A/HRC/18/33/Add.4 (2011), available at www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf [hereinafter UNHRC, *Report of Albuquerque*].

⁷ USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 2, at 6-7 (citing NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY & NATIONAL COALITION FOR THE HOMELESS, *HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES* (2009) [hereinafter NLCHP, *HOMES NOT HANDCUFFS*]).

⁸ “[M]unicipalities have a variety of objectives in passing laws that criminalize homelessness. The objectives most frequently cited are the desire to maintain public safety, to improve the city’s image, and to meet the desires of middle- and upper-class elites who experience compassion fatigue . . . Underlying this compassion fatigue and

created by homeless people to counter the isolation and vulnerability they often face.⁹ Given the relative wealth of the United States,¹⁰ the consistent lack of support afforded to this deeply vulnerable population is particularly troubling. It is even more troubling that homeless people, when failed by the lack of a state safety net, are routinely penalized for designing self-help solutions to ensure their basic survival. Indeed, the criminal penalties associated with the activities of homelessness deepen vulnerabilities, making it more difficult for homeless people to find shelter or economic opportunity. The U.S. government has already recognized that criminalization is poor public policy, but it persists at local levels.¹¹ Ending criminalization by state and local governments is a key step in reducing this vulnerability.

III. Brief Summary and Critique of U.S. Response

6. In response to the Committee's Issue 6, the U.S. notes that the U.S. Interagency Council on Homelessness issued a report, *Searching out Solutions*, in 2012, based on consultations with its agencies and civil society, which presented a series of recommendations for constructive alternatives to criminalization. The U.S. government should be commended for this report and its recognition at the national level that criminalization is ineffective public policy and may "violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights," and for actively engaging with NGOs to discuss criminalization in the context of the ICCPR review.¹² However, it has yet to take sufficient action to ensure that individuals' rights are protected from abuse by state and local governments.
7. In its response to Issue 6, the U.S. also highlights its promotion of constructive approaches to reduce criminalization of homelessness in its federal plan to prevent and end homelessness, *Opening Doors*. This strategic plan calls for a collective effort from communities, law enforcement and advocates.¹³

NIMBY-ism ['not in my backyard'] is likely a psychological desire of elites simply to make the homeless invisible . . ." Donald Saelinger, *Nowhere to Go: the Impacts of City Ordinances Criminalizing Homelessness*, 13 GEO. J. ON POVERTY L. & POL'Y 545, 558 (2006) (citing Neil Smith, *New Globalism, New Urbanism: Gentrification as Global Urban Strategy*, 34 ANTIPODE 427 (2002)).

⁹ See, e.g., HUNTER, LINDEN-RETEK & SHEBAYA, *supra* note 5, at 98 ("Homeless encampments, while of course often a matter of necessity, are also a form of protest—a refusal to remain invisible. In tent cities, homeless individuals are able to constitute a community in which they can find companionship, respect, safety, autonomy, and a sense of dignity.").

¹⁰ For 2011, UN data ranked the U.S. GDP per capita as the twenty-first highest, out of 211 countries for which data was available. UN DATA, *Per Capita GDP at Current Prices – US Dollars*, <http://data.un.org/Data.aspx?q=per+capita+gdp&d=SNAAMA&f=grID%3a101%3bcurrID%3aUSD%3bpcFlag%3a1> (last visited April 27, 2013) (using data filter to select 2011 values only).

¹¹ USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 2.

¹² *Id.* at 7 (citing NLCHP, *HOMES NOT HANDCUFFS*, *supra* note 7); USICH, *Reducing the Criminalization of Homelessness*, <http://1.usa.gov/15n4emv>, Aug. 17, 2013; NLCHP, *Organizing Federal Action to Combat Criminalization of Homelessness*, <http://bit.ly/12Pv83e/>, July 18, 2013.

¹³ UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, *OPENING DOORS: FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS* (2010), *available at* http://www.usich.gov/PDF/OpeningDoors_2010_FSPPPreventEndHomeless.pdf.

8. While state and local governments are the primary violators of homeless persons' rights through criminalization measures, the federal government has not taken necessary steps to end the criminalization of homelessness. In some cases, federal funding is even used to enhance cities' abilities to enforce criminalization measures. In 2010, Key West police used funding from a Department of Justice grant to specifically target homeless individuals with the "sole mission" to conduct "quality of life policing."¹⁴ The federal government must adjust its funding policies and structures to prevent the use of federal funds for criminalization and incentivize constructive alternatives to criminalization.
9. Additionally, working on their own, a number of states have passed Homeless Bills of Rights to prevent communities from violating homeless individuals' rights.¹⁵ The federal government, however, has failed to take a vocal position in support of these Homeless Bills of Rights.
10. Federal agencies should promulgate guidance for communities emphasizing the negative consequences of criminalization, provide incentives for decriminalization and constructive alternative approaches, discontinue their funding of local law enforcement practices that criminalize homelessness, and investigate and prosecute criminalization policies or enforcement wherever they occur.

IV. Recommended Questions

11. As the Committee conducts its review, we respectfully request the following questions and concerns be raised during the U.S. government's hearing:
 1. How do federal agencies ensure the funds they distribute are not used to criminalize homelessness by state or local entities?
 2. Has the federal government taken any steps to work with local authorities to cease forced evictions and sweeps of outdoor encampments and instead ensure homeless residents are provided with adequate alternative housing?
 3. Does the Department of Justice have any plans to open investigations or intervene in cases to challenge local criminalization practices?
 4. What measures does the federal government take to challenge specific criminalizing ordinances or promote specific constructive alternative policies?

V. Suggested recommendations

12. While all the issues in this report are urgent, we respectfully suggest the Committee make the following Concluding Observations on the U.S. government report, which will be of greatest importance for homeless people. This includes recognizing that criminalization of

¹⁴ See Damien Cave, *At Key West Beach, Wondering Who's a Vagrant*, N.Y. TIMES, Mar. 30, 2010, http://www.nytimes.com/2010/03/31/us/31keywest.html?_r=0.

¹⁵ See, e.g. R.I. Gen. Laws § 34-37.1-3 (2013); *Homeless Bills of Rights Gaining Momentum Across the Country*, National Law Center on Homelessness and Poverty, <http://homelessnesslaw.org/2013/06/homeless-bills-of-rights-pass-gaining-momentum-across-the-country> (last visited July 24, 2013); USICH, SEARCHING OUT SOLUTIONS, *supra* note 2.

homelessness raises issues under Articles 2, 7, 9, 17, 21 and 26, which will assist legal defenders in asserting homeless persons' rights in court.

1. Positive aspects

The Committee welcomes the report of the USICH, *Searching Out Solutions* (2012), acknowledging that criminalization of homelessness constitutes discrimination and cruel, inhuman, and degrading treatment or punishment in violation of the ICCPR and CAT.

2. Principle subjects of concern and recommendations

The Committee notes with concern reports that homeless persons in the United States are routinely and disproportionately criminalized for essential human functions and behaviors they have no choice but to perform in public due to lack of available housing or shelter space (Articles 2, 7, 9, 17, 21 and 26). 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 that adversely affect homeless persons. Federal agencies should promulgate guidance for communities emphasizing the negative consequences of criminalization, provide incentives for decriminalization and constructive alternative approaches, discontinue their funding of local law enforcement practices that criminalize homelessness, and investigate and prosecute criminalization policies or enforcement wherever they occur.