Criminalization of Homelessness in the United States of America

A Report to the U.N. Committee Against Torture

Drafted by: National Law Center on Homelessness & Poverty, National Coalition for the Homeless, and Southern Legal Counsel, as the US Human Rights Network CAT Homelessness Working Group

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Criminalization of Homelessness Constitutes Cruel, Inhuman, and Degrading Treatment

1. This report details violations of the Convention Against Torture (CAT) stemming from the criminalization of homelessness in the United States, affecting the more than 3.5 million people who experience homelessness in the United States of America annually.\(^2\) Many homeless people in the United States regularly face the degradation of performing basic bodily functions – sitting, eating, sleeping, and going to the bathroom – in public, a condition which is compounded when they are criminally punished for doing so,\(^3\) and leads to a climate which permits brutal violent crimes against homeless persons to take place.\(^4\) Earlier this year in their Concluding Observations on the U.S., the Human Rights Committee recognized criminalization of homelessness as cruel, inhuman, and degrading treatment,\(^5\) and the Committee on the Elimination of Racial Discrimination called for its abolition.\(^6\) The U.S. government itself has already recognized it may be a violation of our CAT obligations.\(^7\) We seek the Committee’s confirmation that criminalization of homelessness does violate the CAT and strong recommendations for remedial actions.

2. 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,\(^8\) creating self-designed sanitation processes,\(^9\) or using public space to perform basic bodily functions when there is nowhere else to go. When doing this, individuals engaging in self-help measures are often penalized.\(^10\) A significant number of jurisdictions routinely and indiscriminately target homeless people under ordinances which prohibit particular behaviors—for example, obstructing sidewalks, loitering, panhandling, begging, trespassing, camping, being in particular places after hours, sitting or lying in particular areas, sleeping in public, erecting temporary structures, storing belongings in public places, or urinating in public.\(^11\) These laws are common—and worse, their use is growing,\(^12\) despite the severe deficit of affordable housing in the United States\(^13\) and the shortage of shelter space to meet even the emergency needs of homeless people.\(^14\) Under these laws, homeless people are regularly cycled through prisons and jails, which exacerbate discrimination, exclusion, and violation.\(^15\) The violations described in this report are especially severe for people of color, immigrants, gay, lesbian, bisexual, and transgender people, and people with disabilities, who are among the most likely to be rendered homeless, and are often subject to the harshest treatment by private actors and law enforcement officials when that occurs.\(^16\)

3. Jacob, a homeless youth from Salt Lake City, Utah, described the sleep deprivation, the fear, and the comprehensive sense of despair to which he was subjected this way: “The cops give us no rest….There was one night I couldn’t even get a full eight hours of sleep because I was getting woken up by cops and told to go from place to place. And I would just go lay down and get woken up an hour later. Go lay down another place, and get woken up. I got five tickets that night…I don’t [have income to pay the tickets], I try to get a job…but they don’t hire homeless people around here… I’m at risk of getting a ticket every night. I can sleep on the sidewalk and get a ticket. I can sleep [across the street] and get a ticket. No matter where I go I get a ticket.”\(^17\)
4. Criminalizing homelessness and its associated activities when people have nowhere else to go constitutes cruel, inhuman, and degrading treatment (CIDT) in violation of Article 16. Enforcement of criminalizing ordinances forces an impossible choice: sleep deprivation, hunger, thirst, or denial of access to dignified sanitation – each of which has been recognized as a violation of this treaty – or criminal punishment for engaging in life-sustaining behavior. On March 27, 2014, the U.N. Human Rights Committee condemned the criminalization of homelessness in the United States as CIDT in violation of Article 7 of the International Covenant on Civil & Political Rights, and called upon the U.S. government to abolish criminalization and take corrective action. On August 29, 2014, the U.N. Committee on the Elimination of Racial Discrimination echoed this concern and called for abolition of criminalization of homelessness. Numerous Special Rapporteurs and international authorities have similarly condemned criminalization of homelessness as CIDT in both mission reports on the U.S. and in thematic reports on penalization of poverty and stigmatization. These statements reflect a growing consensus. In its List of Issues to the U.S. Government, this Committee expressed concern about reports of ill-treatment of vulnerable groups by law enforcement officials and asked the U.S. to describe steps taken to address this concern. We urge the Committee to use this opportunity to confirm and build on this emerging norm with specific questions and a concluding observation recognizing the criminalization of homelessness as a violation of Article 16. Explicit recognition of criminalization of homelessness as CIDT from this Committee would be a powerful affirmation for advocates working to safeguard the fundamental rights of homeless people in the United States.

5. The U.S. government should be commended for its 2012 recognition that criminalization of homelessness 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 strategies to deter criminalization. Yet the federal government’s recognition that criminalization of homelessness is poor public policy and contrary to its legal obligations has not translated to improved treatment of homeless people.

6. A 2012 U.S. government report noted that indicators of both homelessness and the criminalization of homelessness have increased steadily in recent years. For example, 33% of the 235 cities surveyed for a 2009 report cited by the U.S. government had an anti-camping ban in at least some public areas, and 17% had a citywide ban, effectively making these cities partial or total “no homeless” zones. Thirty percent prohibited sitting or lying in public places, 47% prohibited “loitering”, and 47% prohibited begging in at least some public places. A subsequent 2011 report found that, since the data was collected in 2009, there had been a 7% increase in prohibitions on begging or panhandling, a 7% increase in prohibitions on camping in public places, and a 10% increase in prohibitions on loitering in particular public places. A new report from 2014 found that since 2011 city-wide bans on camping in public have increased by 60%, city-wide bans on begging in public have increased by 25%, city-wide bans on loitering, loafing, and vagrancy have increased by 35%, city-wide bans on sitting or lying down in particular public places have increased by 43%. Bans on sleeping in vehicles have increased by 119% and city-wide bans on sleeping in public have continued in place since 2011.
7. While eliminating criminalization measures or halting their enforcement is essential, it is also critical to implement the human right to adequate housing, so no person need face the degrading choices imposed on those living on the streets. Even where some shelter accommodation exists, it may not meet the needs of all homeless persons due to religious requirements, gender segregation, or other reasons – and it is not a solution to homelessness. Unless true adequate alternatives exist, governments should not criminalize people who choose not to go into shelters.

8. For example, according to a lawsuit filed in 2009, in Boise, Idaho, “anywhere from 2,000 to 4,500 people are homeless on any given night, while area shelters only have beds for approximately 300 and . . . space for approximately 400 more to sleep on mats on the floor.” During the three years in which Boise resident Brian Carson has been homeless, he, like many local homeless people, has been frequently turned away from local shelters because they were at capacity. Carson received a disorderly conduct citation for sleeping in public after he had unsuccessfully attempted to find shelter. A police officer woke him up with a kick and said that if he allowed him to sleep outside others will do the same, which would be a “mess.” The officer arrested Carson because of a warrant associated with a previous citation for sleeping in public, and Carson spent two days in jail. He was billed $50 for this period of incarceration, which he cannot afford to pay. Carson expressed fears that he will receive additional citations for sleeping in public places that will interfere with his ability to find employment and housing. He does not have the money to pay additional criminal fines.

9. The City of St. Petersburg has established a comprehensive program of criminalization of homelessness, which demonstrates the cruel, inhuman, and degrading “choices” forced upon homeless people. As originally implemented, the program consists of the following elements:
   a. In a city which does not have adequate shelter capacity for the homeless population, the City has enacted five ordinances, prohibiting lying down, sleeping, using temporary shelter, or "reclining" on the streets, and “trespass” – where homeless persons can be banned from public places (including public parks) by a police officer, based on his complete discretion;
   b. At the time of arrest, police officers give homeless persons a choice: to either go to Safe Harbor - a shelter located far from downtown in a former jail annex - or go to jail;
   c. If the person “chooses” to go to Safe Harbor, they are transported to the jail-like facility 10 miles from downtown St. Petersburg.
      i. Residents start by sleeping on mats on the floor inside or outside in the courtyard with no air conditioning or protection from the elements. They must comply with rules to "earn" their way to a place inside or a bed. A rules infraction, such as not putting away your mat fast enough or taking an extra towel, will get a resident placed outside and they will have to "earn" their way back in. Residents sleeping outside do not have access to showers every day and instead are permitted showers every three days. If a person agrees to an evaluation for mental health or substance abuse, or completes
community service, the original charge is dropped through a county jail diversion program.iii.

While the facility is unlocked and residents are not forcibly detained there, should they return to downtown St. Petersburg they are faced with a lack of sufficient shelter space and the resulting likelihood of receiving additional citations, and return to Safe Harbor or jail. The issuance of trespass warnings ensures that homeless people are not permitted to return to the same place in the City where they were originally cited or arrested; their physical presence in those parts of the City has become a crime.iii.

Additionally, trespass warnings issued for a main city park downtown have the effect of banning homeless people from using the public bathroom located there, one of the only such bathrooms that is accessible to homeless people. People have been arrested for "trespassing" for trying to use the bathrooms, faced with the untenable choice of committing a crime one way or the other -- for trespassing or for meeting a basic human need.iii. The lack of access to bathrooms is particularly harmful to women and persons with medical conditions such as diabetes.iv. Women report the humiliation they suffer at having to use the bathroom outside, exposing themselves to potential harm from sexual assault.iv. Women also report the degrading condition of not having access to adequate facilities during their menstrual cycles to be able to use hygiene products and change them on a regular basis.iv. Women have also reported experiencing urinary tract infections and bladder infections -- from not drinking enough water during the day so that they do not have to use the bathroom overnight when there are no facilities available.iv.

d. Individuals who do not choose to go to Safe Harbor are sent to jail.iv.

e. A final aspect of the program, currently in abeyance due to budgetary limitations but likely to be reinstated, is if individuals refuse to go to Safe Harbor more than three times, police officers, at their sole discretion, can write "Homeless Diversion" on the arrest affidavit. Those individuals not permitted to be released on their own recognizance are housed in solitary confinement in a separate wing of the jail, unlike the regular jail population, until they change their minds and “choose” to transfer to Safe Harbor or some other program, or are brought to their arraignment, often after an extended delay.iv.

Under this plan, homeless people in St. Petersburg have no option to conduct any of their basic life necessities – indeed even to exist – in the city without the threat of extended solitary confinement or exile.

10. Once arrested, unaffordable bail means that homeless persons are nearly always incarcerated until their trials occur – or until they agree to waive their trial rights in exchange for convictions. In a survey of homeless persons, 57% stated that bench warrants had been issued, leading to their arrest.iv. 49% of homeless people report having spent five or more days in a city or county jail.iv. In 87% of cases with bail of $1000 or less in New York City in 2008, defendants were not able to pay and were incarcerated pending trial.iv. The average length of pretrial detention was 15.7 days.iv. This means homeless persons could spend more than two weeks in detention for crimes as minor as sitting on the sidewalk or littering. More than that, pretrial confinement leads to a higher likelihood of conviction. Confinement, or the threat of confinement, prompts defendants to plead guilty and give up their right to a trial.iv.
Eight in 10 convicted misdemeanor arrestees receive sentences that do not include jail time – meaning that if they were detained pre-trial, it was unwarranted.

11. While in jail, homeless people are subject to the poor physical conditions that already exist in these facilities. In one especially horrific case, on February 15, 2014, when Jerome Murdough, a homeless veteran, “baked to death,” dying of dehydration in an overheated jail cell on Rikers Island in New York City. Arrested for trespassing in a public housing stairwell where he sought shelter from sub-freezing temperatures, he was still in jail five days after his arrest for the “crime” of simply trying to survive.53

12. Criminalization prolongs homelessness, and creates a correctional-system-to-homelessness cycle with astronomical costs to governments.54 Criminalization also misdirects state resources away from more effective (and cost-effective) short- and long-term solutions such as shelters and transitional housing, as well as permanent supportive housing and affordable housing programs,55 all of which are more likely to reduce the number of people living on the streets.56 Thus, policies in many parts of the United States increase homelessness and exposure to cruel, inhuman, and degrading conditions rather than working to reduce them.

13. The severity and disproportionality of the consequences imposed on people who must perform necessary bodily functions in public because they lack other options further constitutes CIDT. For example, criminal convictions—even for minor offenses like loitering—can erect serious and lasting barriers to social integration and economic well-being. Employers are more likely to discriminate against those with criminal records.57 And periods of unexpected imprisonment prevent homeless workers from showing up to their job, and may cost them opportunities to obtain shelter58 or eligibility for benefits like public housing.59

14. Moreover, the degrading and dehumanizing climate produced by criminalization ordinances promotes hate crimes and violence against people experiencing homelessness by private individuals. From 1999-2013, the National Coalition for the Homeless (NCH) documented 1,437 acts of violence against homeless individuals by housed perpetrators, in 47 states, Puerto Rico, and Washington, DC, resulting in 375 deaths, though many more likely go unreported.60 The federal government does not currently recognize homelessness as a protected class under its hate crimes statute, but several states have done so, for sentencing and/or tracking purposes.61 These crimes, including an array of atrocities from murder to beatings, rapes, and even mutilation, are believed to have been motivated by the perpetrators’ biases against homeless individuals or by their ability to target homeless people with relative ease. NCH found startling data in the number and severity of attacks, including that the most violent crimes occur in states with the highest rates of criminalization, California and Florida.62 Florida produced four of eighteen lethal hate crimes against homeless persons in 2013, including the story of Frank Rudolph, a 54-year-old homeless man beaten to death with sticks and punches by three teenagers in New Port Richey, FL.63

15. In the absence of strong federal enforcement, local governments continue to enact restrictive ordinances that impose extreme hardships on individuals, and state and local courts have ruled inconsistently on whether criminalization of homelessness violates prohibitions on
“cruel and unusual punishment” under the Eighth Amendment of the U.S. Constitution. While some courts have provided relief for individual plaintiffs or communities, pursuing such rulings demands time and effort from some of the country’s poorest and most vulnerable people, and often only results in minimal compliance with legal obligations while leaving the underlying problem of homelessness, and culture of degradation, unaddressed. The result is wholly insufficient to bring the United States into compliance with Article 16.

Questions for the United States Government

16. As the Committee conducts its review, we respectfully request the following questions and concerns be raised during the U.S. government’s hearing:
   a. How do federal agencies ensure that the funds they distribute are not used to criminalize homelessness by state or local entities?
   b. Will the State Party create funding incentives in its federal grants to decrease the criminalization of homeless persons?
   c. Has the federal government taken any steps to work with local authorities to cease forced evictions and sweeps of outdoor encampments and instead ensure that homeless residents are provided with adequate alternative housing?
   d. Does the Department of Justice (DOJ) have any plans to open investigations or to intervene in cases to challenge local criminalization practices?
   e. What measures does the federal government take to challenge specific criminalizing ordinances or promote specific constructive alternative policies?

Recommended Concluding Observations

17. The Committee welcomes the report of the U.S. Interagency Council on Homelessness, Searching Out Solutions (2012), acknowledging that criminalization of homelessness may constitute discrimination and cruel, inhuman, and degrading treatment or punishment in violation of the ICCPR and CAT.

18. 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. The Committee finds this constitutes cruel, inhuman, and degrading treatment (Article 16). 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, cease disparate enforcement of other laws that adversely affect homeless persons, and ensure homeless persons are provided with housing -- not punishment for their status. Federal agencies should take active steps to discourage criminalization, provide funding 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.

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1 Endorsing organizations and individuals jointly endorse this report as a statement of solidarity, but do not necessarily endorse every assertion or policy recommendation made herein.


6 See USICH, SEARCHING OUT SOLUTIONS, supra note 3, at 8.

7 JULIE HUNTER, PAUL LINDEN-RETJEK & SRINE 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) [hereinafter NLCHP, WELCOME HOME].


10 For example, In St. Petersburg, Florida, advocates filed a 2009 class action complaint on behalf of the city’s homeless, who were routinely penalized for using public space to perform basic bodily functions when they had nowhere else to go (Amended Complaint, Catron v. City of St. Petersburg, Case No. 8:09-cv-923-SDM-EAJ, at 59 (Dec. 15, 2009)).

11 NLCHP, NO SAFE PLACE , supra note 2, at 7-9; NLCHP, CRIMINALIZING CRISIS supra note 2, at 7-8; USICH, SEARCHING OUT SOLUTIONS, supra note 3, 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]).

12 NLCHP, NO SAFE PLACE , supra note 2, at 7-9; NLCHP, CRIMINALIZING CRISIS, supra note 2, at 8.

13 See, e.g., NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH (2013), available at http://nlchc.org/oor/2013; NLCHP, NO SAFE PLACE , supra note 2, at 7

14 See NLCHP, NO SAFE PLACE supra note 2, at 14.


Committee on the Elimination of Racial Discrimination, Concluding Observations, CERD/C/USA/CO/7-9, para. 12, Aug. 29, 2014.


U.N. Committee against Torture, List of issues prior to the submission of the fifth periodic report of United States Of America, ¶ 42 CAT/C/USA/5 (January 20, 2010).


Id. at 6-7 (citing NLCHP, HOMES NOT HANDCUFFS, supra note 10).

Id.

See, e.g., NLCHP, CRIMINALIZING CRISIS, supra note 2, at 8.

NLCHP, NO SAFE PLACE, supra note 2, at 8-9.


Id. at 5-6.

St. Petersburg City Code §§ 20-73, 20-74, 20-75, 20-76

See St. Petersburg City Code § 20-30; Catron v. City of St. Petersburg, 658 F.3d 1260 (11th Cir. 2011) (“Section 20–30 provides no guidance to city officials (or their designees) or police officers in exercising their discretion to determine whether a person has actually committed a violation that permits issuance of a trespass warning: this lack of specificity suggests that whenever an authorized city employee thinks a violation has occurred, he may issue a trespass warning.”)


Life, Liberty and the Pursuit of Happiness…and other current events, Mar. 11, 2014,

See, e.g., Human Rights Watch,

Picture the Homeless,

Paul Boden,

Stephen

Id.

Email from Kirsten Clanton, attorney, Southern Legal Counsel, July 25, 2014, based on interviews from 2007-present.


St. Petersburg City Code §§ 20-30.


Email from Kirsten Clanton, attorney, Southern Legal Counsel, July 25, 2014, based on interviews from 2007-present.

Id.

Id.


NLCHP, WELCOME HOME, supra note 8, at 51-55; ROBERT G. MARBUT JR., FOLLOW-UP REVIEW OF HOMELESSNESS IN THE CITY OF ST. PETERSBURG: PRESENTATION OF FINDINGS AND ACTION PLAN RECOMMENDATIONS TO THE CITY OF ST. PETERSBURG (June 8, 2014).


Id.

Id. at 2, 5.


56 See, e.g., USICH, SEARCHING OUT SOLUTIONS, supra note 3.
57 See, e.g., Devah Pager, The Mark of a Criminal Record, 105 AMERICAN J. OF SOCIOLOGY 937-975 (2003); Gary Shaheen & John Rio, Recognizing Work as a Priority in Preventing or Ending Homelessness 28 J. PRIMARY PREVENTION 341 (2007). See also NLCHP, NLCHP, NO SAFE PLACE, supra note 2, at 32: id. at 32 (thirty-eight states allow employers to consider arrests, even if they never resulted in conviction, when making hiring decisions).
59 Public Housing Authorities often “use overly exclusive policies when determining whether an applicant with a criminal record is eligible for public housing” and may even reject applicants even if the charges against them are dropped. NLCHP, NO SAFE PLACE, supra note 2, at 33.
60 NCH, VULNERABLE TO HATE, supra note 4, at 4.
61 Id.
62 Id., at 8, 10.
63 Ibid.
64 Criminalization of an involuntary status was ruled unconstitutional by the U.S. Supreme Court. Robinson v. California, 370 U.S. 660, 667 (1962). Other courts have found that penalizing people “for performing innocent conduct in public places—in particular, for being in a park or on public streets at a time of day when there is no place where they can lawfully be—most definitely interferes with their right under the constitution to be free from cruel and unusual punishment,” Pottinger v. City of Miami, 810 F. Supp. 1551, 1579 (S.D. Fla. 1992), and that the enforcement of an anti-loitering law “at all times and in all places against homeless individuals who are sitting, lying, or sleeping in Los Angeles's Skid Row because they cannot obtain shelter violates the Cruel and Unusual Punishment Clause,” Jones v. City of Los Angeles, 444 F.3d 1118, 1135 (9th Cir. 2006). Yet despite these holdings, criminalization remains the norm rather than the exception in U.S. communities.