1. **Criminalization of Homelessness in the United States of America**
2. **Reporting Organizations**

National Law Center on Homelessness and Poverty, Coalition on Homelessness of San Francisco, Global Initiative on Economic, Social, and Cultural Rights, Legal Aid Foundation of Los Angeles, National Health Care for the Homeless Council, Public Interest Law Project, Sacramento Regional Coalition to End Homelessness, and Southern Legal Counsel.

1. **Issue Summary**

Despite the end of the Recession, unsheltered homelessness is increasing in many American cities, [[1]](#footnote-1) with reports of homeless encampments increasing by more than 1300% between 2007 and 2017.[[2]](#footnote-2) Rather than provide adequate housing or even basic shelter, cities have increasingly attempted to police homeless persons out of public view, with laws prohibiting camping, sleeping, or resting in public increasing by double- or triple-digit percentages over approximately the same time period.[[3]](#footnote-3) Moreover, selective enforcement of otherwise neutral civic laws has an outsize effect on persons experiencing homelessness.[[4]](#footnote-4) Because homelessness has a racially disparate impact in the U.S., these policies exacerbate the over-incarceration of people of color, along with all its collateral consequences.[[5]](#footnote-5) Existing shelters do not have the capacity to meet even the emergency needs of homeless people, so homeless people suffer penalization for conduct they have no choice but to engage in; in effect, these laws criminalize homelessness itself.[[6]](#footnote-6) In some cases, federal funds have been used to support the criminalization of homelessness.[[7]](#footnote-7) Criminalization provides a tacit state endorsement of the dehumanization of persons experiencing homelessness, which in turn encourages private actors to commit hate crimes, including harassment, assault, and even murder against those living on the streets.[[8]](#footnote-8) Relatedly, although recent court rulings have begun to limit communities’ ability to criminalize homelessness, many local governments are turning over law enforcement powers to private business improvement districts which undertake similar criminalization policies.[[9]](#footnote-9) As a result of constant harassment, both day and night, people experiencing homelessness experience chronic sleep deprivation, mental trauma, and worsened medical conditions due to loss of medical devices in “sweeps” of encampments.[[10]](#footnote-10) Whether as a result of direct violence or structural violence, homelessness reduces life expectancy by 20-30 years, and results in 13,000 people dying on the streets each year.[[11]](#footnote-11) To its credit, the federal government has acknowledged that the criminalization of homelessness potentially violates the International Covenant on Civil and Political Rights (ICCPR),[[12]](#footnote-12) and following the Human Rights Committee’s 2014 Concluding Observations confirming this violation and making strong recommendations for the abolition of criminalization,[[13]](#footnote-13) the U.S. has taken some constructive steps. These include funding incentives, enforcement action by the Justice Department, and policy guidance.[[14]](#footnote-14) However, as indicated by the above statistics citing the growth of criminalization, these measures have been insufficient: in 2018, the Special Rapporteur on Extreme Poverty and Human Rights found in his report on his mission to the United States that criminalization of homelessness continues.[[15]](#footnote-15) Although courts, including prominent federal appellate courts and others, have held that laws criminalizing homelessness violate the Constitution,[[16]](#footnote-16) it is critically important that the Committee build on its previous observations, growing Special Rapporteur commentary, and the United States government initiative to firmly establish that the way to address homelessness consistent with its obligations under the Covenant is through housing and services, not through criminalization.

1. **Concluding Observations**

The Committee has previously made the following Concluding Observations related to the criminalization of homelessness:

* “While appreciating the steps taken by federal and some state and local authorities to address homelessness, the Committee is concerned about reports of criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc. The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman or degrading treatment . . . . The State party should engage with state and local authorities to: . . . [a]bolish the laws and policies criminalizing homelessness[;] [e]nsure close cooperation among all relevant stakeholders . . . to intensify efforts to find solutions[; and] [o]ffer incentives for decriminalization and the implementation of such solutions . . . .”[[17]](#footnote-17)
* “The Committee is concerned with reports that some 50% of homeless people are African American although they constitute only 12% of the U.S. population . . . . The State Party should take measures, including adequate and adequately implemented policies, to bring an end to such de facto and historically generated racial discrimination.”[[18]](#footnote-18)
1. **U.S. Government Report**

The United States, in its most recent comprehensive report to the Committee, wrote “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.”[[19]](#footnote-19)

In July 2018, the Interagency Council on Homelessness issued *Home, Together: The Federal Strategic Plan to Prevent and End Homelessness*, covering fiscal years 2018 to 2022.[[20]](#footnote-20) A summary released by the Council, under the objective, “Ensure Homelessness Is a Brief
Experience,” states: “Support communities to develop partnerships with law enforcement that reduce the criminalization of homelessness. Federal partners will develop further guidance on best practices in addressing unsheltered homelessness and encampments and strategies that reduce the criminalization of homelessness.”[[21]](#footnote-21)

1. **Legal Framework**

ICCPR Articles 2, 6, 7, 9, 17, and 26 all apply in some way to the criminalization of homelessness, and the Committee has noted that the United States’ criminalization policy potentially violates these articles.[[22]](#footnote-22) Lack of adequate measures to address homelessness itself increases vulnerability to crime and other elements, violating the right to life (Art. 6). 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 (Art. 7), and embodies a policy of punishment that is disproportionate to any purported justification and that also may be practiced in an arbitrary and selective manner (Art. 9). Disparate enforcement of facially neutral laws against homeless individuals often discriminates on multiple, intersecting grounds, including race, gender, social origin, property, and disability status (Arts. 2 & 26). Law enforcement’s invasive searches, seizures, and destruction of the property of homeless people violate the right to privacy (Art. 17).

Other core human rights may also be implicated by the criminalization of homelessness, including the right to freedom of assembly (Art. 21), the right to the family (Arts. 17 & 23), and the right to vote (Art. 25).[[23]](#footnote-23)

1. **Human Rights Committee General Comments**
* General Comment No. 36: “The duty to protect life also implies that State parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include . . . extreme poverty and homelessness. The measures called for addressing adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health-care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions such as . . . social housing programs.”[[24]](#footnote-24)
1. **Recommendations from Other United Nations Bodies**
* U.N. Committee on Economic, Social and Cultural Rights, General Comment No. 4: “[A]ll persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”[[25]](#footnote-25)
* Special Rapporteur on the Right to Safe Drinking Water and Sanitation: “Local statutes prohibiting public urination and defecation—which can constitute a sexual offence in some cases—, while facially constitutional to protect public health, are often discriminatory in their effects. . . . [D]enial of opportunities to [use the restroom] could, in some cases . . . amount to cruel, inhumane or degrading treatment.”[[26]](#footnote-26)
* Special Rapporteur on Racism: “[T]he enforcement of minor law enforcement violations… take a disproportionately high number of African American homeless persons to the criminal justice system.”[[27]](#footnote-27)
* Special Rapporteur on Adequate Housing: “When shelter is not available in the locality, homeless persons should be allowed to shelter themselves in public areas.”[[28]](#footnote-28) “Any and all laws or measures that criminalize, impose fines on or restrict homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces, must be immediately repealed; Homeless people must be recognized as a protected group in all relevant domestic anti-discrimination and hate-crime laws, including where relevant in national Constitutions, national and subnational human rights legislation and in city charters; A careful review of existing legislation and policies must be undertaken to ensure that those that include discriminatory intent or effect against people who are homeless are repealed or amended, in compliance with international human rights law. Funding or transfer payments for local programmes should be made conditional on the elimination of all laws that criminalize or discriminate against homeless persons;…”[[29]](#footnote-29)
* Special Rapporteur on Extreme Poverty and Human Rights: “In many cities, homeless persons are effectively criminalized for the situation in which they find themselves. . . . The criminalization of homeless individuals in cities that provide almost zero public toilets seems particularly callous. . . . Ever more demanding and intrusive regulations lead to infraction notices for the homeless, which rapidly turn into misdemeanors, leading to warrants, incarceration, unpayable fines and the stigma of a criminal conviction that in turn virtually prevents subsequent employment and access to most housing. . . . Homelessness on this scale is far from inevitable and reflects political choices to see the solution as law enforcement rather than adequate and accessible low-cost housing, medical treatment, psychological counselling and job training. . . . In the United States, it is poverty that needs to be arrested, not the poor simply for being poor.”[[30]](#footnote-30)
1. **Recommended Questions**

Please explain in detail the steps, including grant incentives, enforcement, policy guidance, and training, the federal government is taking to ensure homelessness is addressed through housing and services rather than criminalization, and what measures the government is using to evaluate the impact and effectiveness of these steps. Please also provide information on the impact of expected federal cutbacks to social welfare and housing programs on the federal efforts to combat the criminalization of homelessness, and whether the current federal plans take such impacts into consideration.

1. **Suggested Recommendations**

The State Party should take immediate measures to end the crisis in unsheltered homelessness through provision of adequate housing and services rather than 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. Until adequate alternative shelter is available in a locality, homeless persons must be allowed to rest and shelter themselves in public areas. Any and all laws or measures that criminalize, impose fines on, or restrict homeless people or behavior associated with being homeless, such as sleeping or resting in public spaces or asking for donations, must be immediately repealed. Homeless people should be recognized as a protected group in all relevant domestic anti-discrimination and hate-crime laws. Federal grants for law enforcement, housing, and infrastructure should be conditioned on recipients repealing criminalization policies. Federal law enforcement should investigate criminalization policies or enforcement where they occur. (Articles 6, 7 and 26).

1. **For more information**

For more information, do not hesitate to contact Eric Tars, Legal Director, National Law Center on Homelessness & Poverty, +1-202-464-0034, etars@nlchp.org.

1. Of those who experience homelessness each year in the United States, at least 1.36 million are children enrolled in public schools. National Law Center on Homelessness & Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* 8 (2016). The United States government found that, on a single night in 2017, 553,742 people experienced homelessness across the country—which represented a one percent increase from the previous year. U.S. Department of Housing and Urban Development, *The 2017 Annual Homeless Assessment Report (AHAR) to Congress*, *Part 1: Point-in-Time Estimates of Homelessness* 1 (Dec. 2017). [↑](#footnote-ref-1)
2. National Law Center on Homelessness & Poverty, *Tent City, USA: The Growth of America’s Homeless Encampments and How Communities are Responding* (2017), <https://www.nlchp.org/Tent_City_USA_2017>. [↑](#footnote-ref-2)
3. *See Housing Not Handcuffs*, *supra* note 1, at 10-11 (finding bans on city-wide camping increased by 69%, bans on city-wide sleeping in public increased by 31%, bans on living in vehicles increased by 143% between 2006-16). [↑](#footnote-ref-3)
4. *Id.* For example, laws prohibiting public urination, storage of property in public places, littering, parking regulations, or eating or sharing food in public. [↑](#footnote-ref-4)
5. *See* National Law Center on Homelessness & Poverty, *Don’t Count on It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America* 13 (2017), <https://www.nlchp.org/documents/HUD-PIT-report2017>. [↑](#footnote-ref-5)
6. *Id.* One recent survey found that even if every emergency shelter and transitional housing bed were to be filled, over 34,000 people would still be unsheltered on a given night. U.S. Conference of Mayors, *The U.S. Conference of Mayors’ Report on Hunger and Homelessness*  (2017), <https://endhomelessness.atavist.com/mayorsreport2016>. [↑](#footnote-ref-6)
7. *See, e.g.*,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>. [↑](#footnote-ref-7)
8. *See* National Coalition for the Homeless, *Vulnerable to Hate: A Survey of Bias-Motivated Violence against People Experiencing Homelessness in 2016-2017* (2018), <https://nationalhomeless.org/wp-content/uploads/2018/12/hate-crimes-2016-17-final_for-web.pdf>; National Law Center on Homelessness & Poverty, *Grading the U.S. Response to Homelessness: The 2016 Human Right to Housing Report Card* 17 (2016), <https://www.nlchp.org/documents/Right_to_Housing_Report_Card_2016>. The most crimes occur in states with the highest rates of criminalization, including California, with 25% of the attacks against persons experiencing homelessness in 2014-15, and Florida, with 18%. [↑](#footnote-ref-8)
9. Berkeley Law, University of California, Policy Advocacy Clinic, *Homeless Exclusion Districts: How California Business Improvement Districts Use Policy Advocacy and Policing Practices to Exclude Homeless People from Public Space* (2018), <https://wraphome.org/homeless-exclusion-districs/pac-bid-report-2018-web-rev/>. [↑](#footnote-ref-9)
10. *See, e.g.* Erica Sweeney, *Sleep Deprivation Is an ‘Unrecognized Problem’ for Homeless People,* Rewire.News (Sep. 27, 2018), <https://rewire.news/article/2018/09/27/sleep-deprivation-is-an-unrecognized-problem-for-homeless-people/>; HCH Clinicans Network, *Sufficient Sleep: A Necessity, Not a Luxury,* Healing Hands, Vol. 18, No. 2 (2014), [www.nhchc.org/wp-content/uploads/2014/03/spring2014healinghands.pdf](http://www.nhchc.org/wp-content/uploads/2014/03/spring2014healinghands.pdf). [↑](#footnote-ref-10)
11. National Coalition on Homelessness, *supra* note 8, *at* 9. [↑](#footnote-ref-11)
12. United States Interagency Council on Homelessness, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness* 7 (2012). [↑](#footnote-ref-12)
13. Concluding Observations of the Human Rights Committee on the Fourth Period U.S. Report to the Committee, CCPR/C/USA/CO/4 (Apr. 23, 2014), at para. 19 [hereinafter HRC 2014]. [↑](#footnote-ref-13)
14. *See Grading the U.S. Response to Homelessness, supra,* note 8. [↑](#footnote-ref-14)
15. U.N. Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, on his mission to the United States of America*, U.N. Doc. A/HRC/38/22/Add.1, at paras. 54-55 (May 4, 2018); *see also* Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, at para. 37 (Dec. 15, 2017), *available at* https://www.ohchr.org/EN/NewsEvents/
Pages/DisplayNews.aspx?NewsID=22533&LangID=E; Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, CCPR/C/USA/CO/3 (Dec. 18, 2006), at para. 22 [hereinafter HRC 2006]. [↑](#footnote-ref-15)
16. *See, e.g.*, Martin v. City of Boise, 902 F.3d 1031, 1049 (9th Cir. 2018) (“We conclude that a municipality cannot criminalize [sleeping in public] consistently with the Eighth Amendment when no sleeping place is practically available in any shelter.”); Norton v. City of Springfield, 806 F.3d 411, 412-13 (7th Cir. 2015) (striking down anti-panhandling ordinance, in reliance on Reed v. Town of Gilbert, 135 S. Ct. 2218 (2015)); *see also* Jones v. City of Los Angeles, 444 F.3d 1118, 1123 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007); Johnson v. City of Dallas, 860 F. Supp. 344, 350 (N.D. Tex. 1994), *rev’d on other grounds*, 61 F.3d 442 (5th Cir. 1995); Pottinger v. City of Miami, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992). *Cf.* Commonwealth v. Magadini, 52 N.E.3d 1041, 1054 (Mass. 2016) (vacating criminal conviction of homeless man for trespassing in order to sleep indoors during the winter, and holding that the jury should have been instructed on the defense of necessity). [↑](#footnote-ref-16)
17. HRC 2014 at para. 19. [↑](#footnote-ref-17)
18. HRC 2006 at para. 22. [↑](#footnote-ref-18)
19. Fourth Periodic Report of the United States of America Submitted to the U.N. Human Rights Committee, at paras. 588-589 (Dec. 30, 2011). [↑](#footnote-ref-19)
20. United States Interagency Council on Homelessness, *Summary of Home, Together: The Federal Strategic Plan to Prevent and End Homelessness*, at 1 (July 2018) [hereinafter USICH 2018], *available at* https://www.usich.gov/
resources/uploads/asset\_library/Summary\_of\_Essential\_Elements\_of\_the\_Plan.pdf. [↑](#footnote-ref-20)
21. *Id.* at 6. [↑](#footnote-ref-21)
22. HRC 2014, at para. 19. [↑](#footnote-ref-22)
23. *See* National Law Center on Homelessness & Poverty, *Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil and Political Rights*, at paras. 23-26, 44-57 (Aug. 23, 2013). [↑](#footnote-ref-23)
24. U.N. Human Rights Committee*, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the right to life*, at para. 26 (Oct. 30, 2018) (advance unedited version). [↑](#footnote-ref-24)
25. U.N. Committee on Economic, Social and Cultural Rights, *General Comment No. 4 to Article 11(1) of the International Covenant on Economic, Social and Cultural Rights*, at para. 8(a) (Jan. 1, 1992). [↑](#footnote-ref-25)
26. U.N. Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, on her mission to the United States of America*, U.N. Doc. A/HRC/18/33/Add.4, at paras. 56-60 (Aug. 2, 2011). [↑](#footnote-ref-26)
27. U.N. Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, on his mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 at para. 64 (Apr. 28, 2009). [↑](#footnote-ref-27)
28. 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, on her mission to the United States of America*, U.N. Doc. A/HRC/13/20/Add.4 at para. 95 (Feb. 12, 2010). [↑](#footnote-ref-28)
29. 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, Leilani Farha, para. 91, A/HRC/31/54, Dec. 30, 2015. [↑](#footnote-ref-29)
30. *Report of the Special Rapporteur on extreme poverty and human rights*, *supra* note 9, at paras. 44-45, 73. [↑](#footnote-ref-30)