The State of Civil and Human Rights in the United States

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Constitution, Civil Rights, and Human Rights

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Statement for the Record: Criminalization of Homelessness

submitted by
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The Allard K. Lowenstein Clinic at Yale Law School appreciates the Senate’s examination of the current state of civil and human rights in the United States. This submission surveys the many human rights violations stemming from the criminalization of homelessness, affecting the millions of people who experience homelessness in the United States annually. As the events in Staten Island, Ferguson, and elsewhere make plain, public scrutiny is critically needed to understand and to address interactions between police and society’s most vulnerable members. While race is and should be a central focus, we also urge Members to consider how the policies and practices of local and state governments adversely affect individuals living in homelessness. From Florida to California, homeless people regularly experience cruel, inhuman, and degrading treatment, in violation of U.S. obligations under the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Across the country, homeless people face a web of state and local ordinances that effectively ban the most basic acts of survival. Left with no access to safe housing or even to temporary shelter, many homeless people must resort to self-made solutions, such as forming alternative communities like tent cities and performing basic human bodily functions – sitting, eating, sleeping, and going to the bathroom – in public. But rather than offering these individuals a safe harbor, many municipalities punish the use of public space by homeless people. That harsh treatment – intended to render homelessness invisible – serves to further the cycle of poverty and incarceration. Criminalization also discourages homeless people from seeking protection from the law and contributes to a climate that permits brutal violent crimes against homeless persons to take place.

Recent years have seen a marked increase in homelessness. In 2007, the National Law Center on Homelessness and Poverty Law estimated that about 3.5 million people, including 1.35 million children, were likely to experience homelessness. Those figures grew in the wake of significant events. A report by the National Law Center on Homelessness and Poverty Law in 2011 identified the criminalization of homelessness in U.S. cities as a primary cause of homelessness. The report highlighted the use of criminal sanctions as a means of forcing homeless people off the streets and out of public spaces.

Portions of this submission draw significantly from the most recent statement submitting to the Committee Against Torture by the NLCHP, with which the Lowenstein Clinic has collaborated on a number of reports concerning homelessness in the United States. See Criminalization of Homelessness in the United States of America, Submission to the United Nations Committee Against Torture for its 2014 Review of the United States of America September 15, 2014, http://www.nlchp.org/documents/No_Safe_Place_Advocacy_Manual.


Welcome Home, supra note 1.


of the 2008 fiscal and foreclosure crisis. According to a 2013 report by the National Center on Homeless Education, the number of homeless children identified by schools increased by almost 75% since the beginning of the economic crisis in 2007. The National Alliance to End Homelessness reported in 2013 that a majority of states saw an increase in their homeless populations, with rises in family homelessness reported at about four percent. Given the severe deficit of affordable housing in the United States and the shortage of shelter space to meet even the emergency needs of homeless people, the National Alliance found that nearly four in ten homeless people were living on the street, in a car, or in other places neither fit nor intended for human habitation.

Despite their lack of alternatives, individuals engaging in self-help measures often face criminal sanctions. 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. These laws are common—and worse, their use is growing. Under these laws, homeless people are regularly harassed by law enforcement officials and cycled through prisons and jails.

Criminalization constitutes cruel, inhuman and degrading treatment, as it forces an impossible choice on homeless individuals: endure sleep deprivation, hunger, thirst, or denial of access to dignified sanitation or face criminal punishment for engaging in life-sustaining activities.

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9 National Alliance to End Homelessness, State of Homelessness in America, 10 (2013) (State of Homelessness in America), http://www.endhomelessness.org/page/-/files/SOH_2013.pdf. 2012 survey by the U.S. Conference of Mayors reached similar conclusions. The survey found that between 2011 and 2012 the majority of cities surveyed experienced a seven percent increase in homelessness, with an eight percent increase in homeless families. U.S. Conference of Mayors 2012 Survey on Hunger and Homelessness, 2, (2012), http://usmayors.org/pressreleases/uploads/2012/1219-report-HH.pdf. Survey cities also reported that an average of seventeen percent of homeless persons needing assistance did not receive it. In addition, sixty percent of survey cities expected an increase in the number of homeless families and fifty-six percent expected an increase in the number of homeless individuals. Id. at 3.
10 See, e.g., National Low Income Housing Coalition, Out of Reach (2013), http://nlihc.org/or/2013; NLCHP, No Safe Place, supra note 3, at 7.
11 See NLCHP, No Safe Place supra note 3 at 14.
12 State of Homelessness in America, supra note 9, at 9.
13 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-ETJ, at 59 (Dec. 15, 2009)).
14 NLCHP, No Safe Place, supra note 3, at 7-9; NLCHP, Criminalizing Crisis, supra note 3, at 7-8; USICH, Searching Out Solutions, supra note 4, 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]).
15 NLCHP, No Safe Place, supra note 3, at 7-9; NLCHP, Criminalizing Crisis, supra note 3, at 8.
behavior. Numerous Special Rapporteurs and international authorities have thus condemned criminalization of homelessness as CIDT in both mission reports on the U.S. and in thematic reports on penalization of poverty and stigmatization. On March 27, 2014, the U.N. Human Rights Committee condemned the criminalization of homelessness in the United States as discriminatory and as “cruel, inhuman, or degrading treatment” in violation of Articles 2, 7, 9, 17, and 26 of the ICCPR; the Committee called upon the U.S. government to abolish criminalization and take corrective action. On November 13, 2014, the Committee against Torture again stressed the “implementation of the recommendations to decrease criminalization of the homeless” in the United States. In the words of Sir Nigel Rodney, the Chair of the UN Human Rights Committee, and former U.N. Special Rapporteur on Torture: “I’m just simply baffled by the idea that people can be without shelter in a country, and then be treated as criminals for being without shelter. The idea of criminalizing people who don’t have shelter is something that I think many of my colleagues might find as difficult as I do to even begin to comprehend.”

The criminalization of homelessness also places the United States out of step with the jurisprudence of peer nations and regional human rights systems. Several U.S. courts of appeal

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22 For example, the Inter-American Court of Human Rights used the concept of dignity to expand the scope of the right to life, as including “not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence.” Inter-American Court of Human Rights, Case of the ‘Street Children’ (Villagran-Morales v. Guatemala, Judgment of Nov. 1999 (Merits), at para. 144. On this basis, the Court challenged the Guatemalan government for failing to provide necessary standards of care to street children. In elaborating the forms of treatment contained within CIDT protections under Article 3 of the European Convention on Human Rights, the European Court of Human Rights observed in Pretty v. United Kingdom: “Where treatment humiliates or debases an individual showing a lack of
have held that criminalizing homelessness when no realistic alternative exists may amount to cruel, inhuman treatment under the Eighth Amendment of the U.S. Constitution.\(^\text{23}\)

Arrests for even minor offenses – such as loitering or pan-handling – can have severe and lasting effects. 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.\(^\text{24}\) 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, 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.\(^\text{25}\) 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.\(^\text{26}\) And periods of unexpected imprisonment prevent homeless workers from showing up to their job, and may cost them opportunities to obtain shelter\(^\text{27}\) or eligibility for benefits like public housing.\(^\text{28}\)

Violations 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; these particularly vulnerable populations are often subject to the harshest treatment by private actors and law enforcement officials when that occurs.\(^\text{29}\) The 2010 Census
estimated that roughly 25.2% of the U.S. population is non-white, but non-white people represent about 60% of homeless people in shelters, and African Americans are by far the largest group (38%). As the Special Rapporteur on racism noted, “the enforcement of minor law enforcement violations . . . take[s] a disproportionately high number of African American homeless persons to the criminal justice system.” Policymaking has also had racially disparate effects. States and municipalities cutting budgets during the recession have placed black and Latino families at a particularly high risk of homelessness; for example, in 2012, New York State eliminated housing assistance rental vouchers for 8,000 households that were overwhelmingly black or Latino. Racial and ethnic minorities face barriers in accessing education, employment, health care, housing, and social services that interact with residential segregation, patterns of incarceration, and intergenerational poverty to make minority communities more susceptible to becoming or remaining homeless.

The stark racial disparities among homeless individuals—and the role that criminalization plays in perpetuating them—are in direct contravention of the United States’ obligations under the International Covenant on the Elimination of Racial Discrimination, which calls on states to eliminate racial disparities in the right to housing. The Committee and the Special Rapporteur on Racism have condemned the racially disparate aspects of homelessness in the United States as a human rights violation. On August 29, 2014, the Committee repeated these concerns and called for the abolition of criminalization of homelessness.

The degrading and dehumanizing climate produced by criminalization ordinances also promotes hate crimes and violence against homeless people by private individuals. From 1999 to 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. Many more acts of violence likely go unreported, given the strained relations between homeless individuals and law enforcement officials who enforce criminalizing ordinances. 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. These crimes – including an array of atrocities such as murders, beatings, rapes, and even mutilation – are believed to have been motivated by the perpetrators’ biases against homeless individuals and/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

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32 UNHRC, Report of Diéne, supra note 1836, at para. 64.
37 Committee on the Elimination of Racial Discrimination, Concluding Observations, CERD/C/USA/CO/7-9, ¶ 12, Aug. 29, 2014 [hereinafter CERD, Concluding observations].
38 NCH, VULNERABLE TO HATE, supra note 6, at 4.
39 Id.
occur in states with the highest rates of criminalization, California and Florida. 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.

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. However, as the above description demonstrates, 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.

In the absence of strong federal enforcement, local governments continue to enact restrictive ordinances that impose extreme hardships on homeless 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 ignoring the underlying problem of homelessness and the culture of degradation. The result is wholly insufficient to bring the United States into compliance with Article 16 of the CAT; Articles 2, 7, 9, 17, and 26 of the ICCPR; and Articles 2 and 5(e) of the CERD.

We therefore stress and recommend, as did the U.N. treaty bodies cited above, that federal authorities work with urgency to fulfill the following:

1. Abolish the laws and policies criminalizing homelessness at state and local levels;
2. Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels, to intensify efforts to find solutions for the homeless, in accordance with human rights standards; and

40 Id., at 8, 10.
41 Ibid.
43 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.
3. Offer incentives for decriminalization and the implementation of such solutions, including by providing continued financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize the homeless.45

No person in the United States should face the degrading choices imposed on those living on the streets. Eliminating criminalization is essential, but the long-term goal should be to implement the human right to adequate housing. Homeless individuals are not nuisances whose presence must be restricted or managed. Rather, these men and women are resourceful and resilient, despite often overwhelming challenges. Their voices should be central to conversations on how to make our cities safe and vibrant communities for all people who call them home.

45 See HRC, Concluding observations; CERD, Concluding observations, supra notes 5 and 6.