



## **CRUEL, INHUMAN, AND DEGRADING:**

Homelessness in the United States under the International Covenant on Civil and Political Rights

Submitted to the U.N. Human Rights Committee  
**August 23, 2013**



Prepared by

**NATIONAL LAW CENTER  
ON HOMELESSNESS & POVERTY**



**ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC  
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The National Law Center on Homelessness & Poverty is committed to solutions that address the causes of homelessness, not just the symptoms, and works to place and address homelessness in the larger context of poverty.

To this end, we employ three main strategies: impact litigation, policy advocacy, and public education. We are a persistent voice on behalf of homeless Americans, speaking effectively to federal, state, and local policy makers. We also produce investigative reports and provide legal and policy support to local organizations.

You are invited to join the network of attorneys, advocates, students, activists, and committed individuals who support the Law Center. Our network provides a forum for individuals, non-profits, and corporations to participate and learn more about using the law to advocate for solutions to homelessness. For more information about our organization and access to publications such as this report, please visit our website at [www.nlchp.org](http://www.nlchp.org).

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Homelessness in the United States under the International Covenant on Civil & Political Rights**

**Prepared By**

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**Submitted to the U.N. Human Rights Committee**

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## EXECUTIVE SUMMARY

1. 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),<sup>1</sup> criminalization of homelessness at the state and local levels continues to cause significant rights violations.<sup>2</sup> The Committee's List of Issues for the United States' fourth periodic review requested information on criminalization as it relates to the right to be free from discrimination under Articles 2 and 26 of the ICCPR.<sup>3</sup> 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.
2. 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 people experiencing homelessness are disproportionately likely to suffer from electoral disenfranchisement, violence, and many other harms.
3. 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 this report, from voter disenfranchisement to family dissolution, are especially severe for people of color, immigrants, gay, lesbian, bisexual, and transgender (LGBT) people, people with disabilities, and others who are especially subject to discrimination by 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.
4. 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,<sup>4</sup> creating self-designed sanitation processes,<sup>5</sup> or using public space to perform basic bodily functions when there is nowhere else to go. And yet individuals engaging in self-help measures are often penalized through ordinances that prohibit the use of public space for these activities,<sup>6</sup> seek to render homelessness invisible,<sup>7</sup> and aim to dissolve communities created by homeless people to counter the isolation and vulnerability they often face.<sup>8</sup> Given the relative wealth of the United States,<sup>9</sup> 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 adequate housing or economic opportunity. The U.S. government has already recognized that criminalization is poor public policy, and some states have taken positive steps in passing "Homeless Bills of Rights," but punitive laws and ordinances persist at local levels. Ending criminalization by state and local governments is a key step in reducing this vulnerability; ensuring the human right to adequate housing is the ultimate solution.
5. Recent statements by U.N. Special Rapporteurs represent a growing international consensus that criminalization of homelessness is both discriminatory and raises concerns of cruel, inhuman, or degrading treatment.<sup>11</sup> We respectfully suggest the Committee join this consensus and make the following Concluding Observations on the U.S. government report:

A. *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.

B. *Principle subjects of concern and recommendations*

The Committee notes with concern reports that homeless people 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 people have no choice but to perform them in public, and cease disparate enforcement of other laws that adversely affect homeless people. 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.

## I. CRIMINALIZATION OF HOMELESSNESS VIOLATES ICCPR RIGHTS

6. Homeless people in the United States routinely and disproportionately experience violations of their civil and political rights in violation of Articles 2, 9, 17, 21 and 26 of the ICCPR, which require that all persons enjoy equal protection of the laws, regardless of property or other status.<sup>12</sup>
7. Many of the estimated 3.5 million homeless people in the United States regularly face discriminatory treatment and basic deprivations of human rights simply because they are homeless.<sup>13</sup> Indeed, they are often explicitly targeted for adverse treatment on the basis of their poverty or lack of housing as communities seek to sweep “undesirable” residents out of public view. A significant number of jurisdictions routinely and discriminately 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.<sup>14</sup> These laws are passed and enforced despite the national and local shortage of shelter space to meet even the emergency needs of homeless people, penalizing individuals for activities they have no choice but to engage in due to their homelessness.<sup>15</sup> Under these laws, homeless people are regularly cycled through prisons and jails, which exacerbates discrimination, exclusion, and violation.<sup>16</sup>
8. Anti-homelessness ordinances and laws are common—and worse, their use is growing.<sup>17</sup> They implicitly or explicitly target homeless people and are typically enforced in a discriminatory fashion.<sup>18</sup>
9. Criminalization of homelessness and its associated activities in public space, when people have nowhere else to go, deprives individuals of safe, legal, and dignified opportunities to perform necessary human functions, such as sleeping, eating, urinating, and defecating. This deprivation constitutes a violation of the Article 7 rights of homeless people.<sup>19</sup>
10. 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 criminalization in the context of the ICCPR review.<sup>20</sup> 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 in many communities. We urge the Committee to recognize that the widespread criminalization of homelessness represents an Article 7 violation.

### *A. Criminalization of Homelessness Constitutes Cruel, Inhuman, and Degrading Treatment*

11. A 2012 U.S. government report found that indicators of both homelessness and the criminalization of homelessness have increased steadily in recent years.<sup>21</sup> For example, 33% of the 235 cities surveyed for a 2009 report cited by the U.S. government had an anti-camping ban for 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.<sup>22</sup> 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.<sup>23</sup> Furthermore, the majority of local jurisdictions in the United States criminalize public performance of at least some basic human functions—for example, eating, sleeping, urinating or defecating, and storing belongings—without providing alternatives.<sup>24</sup>
12. Because of the severe deficit of affordable housing in the United States<sup>25</sup> and insufficient housing or shelter options, many indigent people simply have no private place to perform these functions. Barred by municipalities from engaging in the most basic human functions without an alternative, thousands of homeless people find themselves caught in intolerable situations. Moreover, one facet of treating shelter accommodation as if it is adequate housing is the criminalization of people who choose not to go into shelters. Thus, while eliminating criminalization measures or halting their enforcement is an immediate solution, the ultimate solution is implementing the human right to adequate housing so no person need face the degrading choices imposed on those living on the streets.
13. For example, according to a complaint 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.”<sup>26</sup> 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. According to a class action complaint filed on behalf of the city’s homeless community,  
On or about May 6, 2009, Carson received a disorderly conduct citation for sleeping in public. He had unsuccessfully attempted to find shelter the previous evening and eventually became so tired that he fell asleep next to a building in downtown Boise. He was awoken early the next morning by a kick from a Boise police officer. The officer issued Carson a disorderly conduct citation and told Carson that if he allowed him to sleep outside, others would do the same, which would be a “mess.” Carson did not engage in any conduct that was disorderly, he was merely sleeping in a public place. The officer arrested Carson because of a warrant associated with a previous citation, and Carson spent two days in jail. He was billed \$50 for this period of incarceration, which he cannot afford to pay. He also has additional outstanding fines from previous citations that he cannot pay. Carson was recently convicted of the disorderly conduct charge and served four days incarceration. Carson 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.<sup>27</sup>
14. As detailed in the same lawsuit, another homeless Boise resident, Lawrence Lee Smith, “often sleeps along the Boise River and in other out-of-the-way areas in Boise.” Mr. Smith is homeless in part because he “suffers from degenerative joint disease of his left hip and knee that prevents him from engaging in his former employment in construction and sprinkler installation.” He does not stay at the Boise Rescue Mission because it conflicts with his religious beliefs. In 2007, he received two anti-camping citations for sleeping at a secluded location along the Boise River. He was convicted of violating the ordinance and served a total of 100 days in jail for the two citations.<sup>28</sup>
15. 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. For example, many public bathrooms are closed during the night, and Florida's disorderly conduct statute may be used against people engaging in public urination. As a result, homeless people in St. Petersburg have no legal option for urinating or defecating during many hours of each day. For William Shumate, who has diabetes, it is difficult to go through the night without using the bathroom. At about 1 a.m. on November 1, 2007, Mr. Shumate needed to urinate and, without public restrooms accessible, went to do so near the City Hall building. Mr. Shumate, who was then age 60, was arrested and fined \$300 for "disorderly conduct," based on his public urination.<sup>29</sup> Jo Anne Reynolds, also named in the 2009 suit, was homeless and had kidney problems that also made it difficult to get through the night. As a result, she refrained from drinking water in the evenings because it was the only way she could ensure she would avoid arrest for public urination.<sup>30</sup> Although St. Petersburg has opened new shelter options, it simultaneously destroyed many of the tent cities that people in homelessness used as sleeping options of last resort.<sup>31</sup> Furthermore, St. Petersburg, like many cities, has not addressed the criminalization of people who do not have access to shelter. The city continues to penalize people who panhandle, sleep, or store goods in many areas of the city,<sup>32</sup> and as recently as March 2013, homeless activists in St. Petersburg complained that police continued to harass homeless people, using pretexts as minor as violations of an open container ordinance to arrest them.<sup>33</sup>

16. Criminalization of basic bodily functions when people have no other space to perform them can constitute cruel, inhuman, and degrading treatment in violation of Article 7. A report from the U.N. Special Rapporteur on extreme poverty and human rights found that such criminalization leaves homeless people with "no viable place to sleep, sit, eat or drink . . . [and] can thus have serious adverse physical and psychological effects on persons living in poverty, undermining their right to an adequate standard of physical and mental health and even amounting to cruel, inhuman or degrading treatment."<sup>34</sup> Statements from other international authorities and the U.S. government reflect a growing consensus that the criminalization of homelessness often constitutes cruel, inhuman, or degrading treatment or torture.<sup>35</sup>

17. Public space frequently functions as the site of last resort for people in homelessness to perform basic bodily functions. A 2011 report by the U.N. Special Rapporteur on the human right to safe drinking water and sanitation found that "[b]ecause evacuation of the bowels and bladder is a necessary biological function and because denial of opportunities to do so in a lawful and dignified manner can both compromise human dignity and cause suffering, such denial could, in some cases (e.g., where it results from deliberate actions or clear neglect) amount to cruel, inhumane or degrading treatment."<sup>36</sup> Statutes that criminalize basic bodily functions in public spaces in the absence of alternatives represent deliberate state action that deprives people of the opportunity to perform their "necessary biological function[s] . . . in a lawful and dignified manner."<sup>37</sup>

18. The State Party should undertake additional measures to foster policies that reduce rates of homelessness. Empirical studies show that criminalization prolongs and increases homelessness, and creates a correctional-system-to-homelessness cycle with astronomical costs to governments.<sup>38</sup> 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,<sup>39</sup> all of which are more likely to represent an exit from homelessness and reduce the number of people living on the streets.<sup>40</sup> 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.

19. In practice, criminal convictions—even for minor offenses like loitering—can carry erect serious and lasting barriers to social integration and economic well-being. It is well-documented that employers are more likely to discriminate against those with criminal records.<sup>41</sup> Periods of unexpected imprisonment prevent homeless workers from showing up to their job, and may cost them opportunities to obtain shelter<sup>42</sup> or eligibility for benefits like public housing.<sup>43</sup> In 2011, following commitments made during the Universal Periodic Review, the Department of Housing and Urban Development (HUD) issued a letter to Public Housing Authorities (PHAs) recommending they reduce exclusion from public housing for ex-offenders to the statutory minimum.<sup>44</sup> Despite this, many PHAs continue to bar many ex-offenders from eligibility.<sup>45</sup> The severity and disproportionately

of the consequences imposed on people who must perform necessary bodily functions in public because they lack other options further constitutes cruel, inhuman and degrading treatment.

20. The United States should be commended for recognizing at the national level that criminalization is ineffective public policy,<sup>46</sup> but it has yet to take sufficient action to ensure that individuals' rights are protected from abuse by state and local governments. Unfortunately, both the Department of Justice (DOJ) and HUD continue to fund municipal programs that criminalize homelessness.<sup>47</sup> Both agencies should generate enforceable standards against criminalization of homelessness and structure the grant-making process so as to incentivize alternatives to criminalization. Further, the DOJ's Civil Rights Division should explore ways to use current domestic civil rights laws to investigate and to enforce the civil and political rights of persons discriminated against by municipalities on account of homelessness.
  21. In the absence of strong federal enforcement, local governments continue to enact restrictive ordinances that exacerbate extreme hardships, 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.<sup>48</sup> As a result, individuals living in homelessness in different jurisdictions must contest laws separately. While some courts have provided relief for individual plaintiffs or communities, these rulings demand time and effort from some of the country's poorest and most vulnerable people, and have been insufficient to bring the United States into compliance with Article 7.
  22. The U.S. government's 2012 recognition that criminalization may violate the country's ICCPR and CAT obligations represented the first time any government agency recognized domestic practices toward homeless people as potential sources of a treaty violation.<sup>49</sup> Numerous Special Rapporteurs have similarly condemned criminalization of homelessness as cruel, inhuman, and degrading treatment.<sup>50</sup> We urge the Committee to confirm and build on this understanding with a concluding observation recognizing the criminalization of homelessness as a violation of Article 7 in addition to other Articles.
- B. Criminalization of Homelessness Interferes with the Right to Freedom of Assembly*
23. Criminalization interferes with the right to freedom of assembly protected under Article 21. Article 21 protects "intentional, temporary gatherings of several persons for a specific purpose."<sup>51</sup> Assembly by people in homelessness serves many purposes, including safety, community formation, expression, and access to services. Unjustified restrictions on the use of public space by homeless people undercuts their ability to enjoy these basic human goods.
  24. Homelessness creates extremely precarious situations, and the right to assemble enables homeless people to mitigate some forms of physical and psychological vulnerability by giving and receiving support, sharing resources, and protecting one another. An analysis of tent cities, a form of community constituted by and for homeless people in the United States, found that, "[i]n tent cities, homeless individuals are able to constitute a community in which they can find companionship, respect, safety, autonomy, and a sense of dignity."<sup>52</sup> Yet such communities are often specifically targeted for removal. In 2007, for example, police in St. Petersburg, Florida, forcibly evicted people from a tent city and used box cutters and blades to slash (and permanently destroy) twenty of their tents.<sup>53</sup>
  25. Moreover, many ordinances that allow police to disperse gatherings, such as anti-loitering laws or "no-sit, no-lie" ordinances, are often disproportionately used against homeless people, especially in areas where merchants, residents, or tourists are likely to encounter them.<sup>54</sup> This erasure of homelessness from places of visibility also interferes with the expressive power associated with the freedom of assembly. While people with access to resources have many avenues to publicly communicate their interests, homeless people have few opportunities to assert their visibility in the public sphere. One report on tent cities found that "[h]omeless encampments, while of course often a matter of necessity, are also a form of protest—a refusal to remain invisible."<sup>55</sup> Prohibitions on the uses of public space by the indigent are troubling not only because of the direct hardships they impose, but also because they deny homeless people one of the few public forums where their concerns might be conveyed, discussed, and addressed.
  26. Under Article 21, international legal authorities have affirmed a presumption in favor of

allowing assemblies and observed that peaceful assembly should not be restricted for reasons other than those outlined in human rights law.<sup>56</sup> The U.S. government itself has recognized that criminalization does not reduce homelessness or protect public order,<sup>57</sup> and ordinances that restrict the assembly of homeless people cannot usually be justified by a public policy balancing test. Unfortunately, most jurisdictions forego any public discussion of homeless people's rights or visible efforts to balance competing interests, treating homeless people not as stakeholders, but as nuisances whose presence should be restricted or managed.<sup>58</sup>

### *C. Criminalization of Homelessness Undermines the Right to Liberty and Security of the Person and Protections Against Arbitrary Arrest and Detention*

27. Regulations and practices that criminalize behavior that homeless people cannot avoid routinely result in unjustified arrests under Article 9. The consequences of these punitive measures, which are often selectively enforced against homeless people, far outweigh the societal benefits they allegedly produce.<sup>59</sup> These deprivations of homeless people's liberty are disproportionate, unfair, and irregular, violating Article 9's protection against arbitrary arrest and detention. The Committee has recognized that Article 9 provisions specifically protect against vagrancy laws targeting the poor.<sup>60</sup>

28. The criminalization of homelessness violates Article 9 in two ways. First, jurisdictions penalize behavior, such as sleeping and bodily functions, that homeless people must engage in, thereby restricting their liberty in a manner disproportionate to any purported justification. Second, jurisdictions enforce these laws and practices in an arbitrary and selective manner against homeless people.

#### *i. Measures that criminalize homelessness violate Article 9 because they inflict harm disproportionate to their purported ends.*

29. The Special Rapporteur on extreme poverty and human rights has warned that "[s]tates must only have recourse to deprivation of liberty insofar as it is necessary to meet a pressing social need, and in a manner proportionate to that need."<sup>61</sup> Under Article 9, the State may legitimately deprive someone of his or her liberty *only* if it is done in the appropriate manner and for commensurate ends.<sup>62</sup> To this end, Article 9.1 protects individuals from "arbitrary arrest and detention."<sup>63</sup> Yet

criminalization frequently results in deprivations of liberty and penalties that are disproportionate to the harm alleged or purported social gain.

30. Many justifications are offered for anti-homelessness ordinances, such as preventing crime, safeguarding commerce, and preserving aesthetics.<sup>64</sup> However, criminalization ineffectively addresses these goals;<sup>65</sup> the temporary arrest and detention of homeless individuals will not deter them from continuing to sleep, sit, and beg in public because they must engage in this behavior to survive, and have no alternative means to do so.<sup>66</sup>

31. The justifications for these laws and practices are fundamentally flawed; "in most cases the presence of people sleeping, sitting, or lying down in public places or peacefully soliciting alms cannot reasonably be deemed a direct threat to public health or safety."<sup>67</sup> For example, in *Bell v. City of Boise*, homeless individuals in Boise, Idaho, brought suit to challenge two of the city's municipal codes that prohibited camping and sleeping in public places despite the fact that these activities did not cause a threat to the public.<sup>68</sup> Janet Bell, one of the homeless plaintiffs, received her first of multiple citations simply for sitting on a riverbank with another individual.<sup>69</sup> Brian Carson, also of Boise and discussed in paragraph 13, *supra*, received a disorderly conduct citation that ended in his arrest, even though he "did not engage in any conduct that was disorderly, he was merely sleeping in a public place."<sup>70</sup> The city targeted many other homeless individuals in this manner for harmless behavior.<sup>71</sup>

32. The vulnerability of homeless people should be taken into account when examining whether the goals of criminalizing measures warrant an infringement on their right to liberty. As the Special Rapporteur on extreme poverty and human rights noted, the negative effects of detention and incarceration on people living in poverty are substantial:

Detention not only means a temporary loss of income, but also often leads to the loss of employment, particularly where individuals are employed in the informal sector. The imposition of a criminal record creates an additional obstacle to finding employment. Detention and incarceration, even for minor non-violent offenses, will often result in the temporary or permanent

withdrawal of social benefits or the denial of access to social housing, for both the detainee and his or her family.<sup>72</sup>

33. As the Special Rapporteur has observed, homeless people suffer severe consequences from having an arrest or minor offense on their record. Criminalization measures are counterproductive because they create the many obstacles to overcoming homelessness listed in paragraphs 18-19, *supra*. This violates the prohibition against arbitrary arrests and detentions, which is to be interpreted broadly;<sup>73</sup> “[c]ases of deprivation of liberty provided for by law must not be manifestly disproportional, unjust or unpredictable.”<sup>74</sup> Given the flawed justifications for criminalization, as well as the magnitude of the harm that arrests and citations inflict on homeless people, the laws and practices of the United States are undeniably disproportionate,<sup>75</sup> and we respectfully urge the Committee to denounce them as arbitrary.

*ii. Criminalization measures violate Article 9 when they are applied selectively and arbitrarily*

34. Another problematic aspect of criminalization is the selective enforcement of public space ordinances against homeless people. Article 9 requires that “the specific manner in which an arrest is made must not be discriminatory and must be able to be deemed appropriate.”<sup>76</sup> Article 9’s prohibition on arbitrariness extends beyond legislators to enforcement authorities: “It is not enough for deprivation of liberty to be provided by law. The law itself must not be arbitrary, and the enforcement of the law in a given case must not take place arbitrarily.”<sup>77</sup>
35. Authorities in the United States regularly target homeless people through seemingly neutral ordinances.<sup>78</sup> A 2011 survey of persons experiencing homelessness found that the majority of respondents believed they are disproportionately targeted by law enforcement.<sup>79</sup> For example, one of the homeless plaintiffs in *Bell v. City of Boise*, Lawrence Lee Smith, received two citations from the same policeman for setting up a tent; “[b]ecause he was sleeping deep in the woods and could not be observed from any public path, [Smith] believes that the officer sought him out.”<sup>80</sup> Indeed, a recently passed ordinance in Columbia, South Carolina would ban homeless persons from downtown, force them to relocate to a shelter out of town, station a police officer between

the shelter and the city to prevent homeless persons from returning to the city, and provide a telephone number so residents can specifically report homeless people to be picked up by police for simply walking on the street in the downtown area.<sup>81</sup>

36. The result is that people with the least access to resources and defense are particularly vulnerable to having their rights violated. The U.N. Special Rapporteur on extreme poverty and human rights has warned that people living in poverty are

disproportionately subjected to police powers to impose anti-social behaviour and move-on orders, and public safety laws allowing police to “stop and search” individuals. These measures are often wide-reaching and subject to considerable discretion on the part of police officers, who make subjective judgements that do not need to meet a high burden of proof. Overwhelmingly, these regulations are targeted at the marginalized and most vulnerable and the areas and communities in which they live.<sup>82</sup>

37. The Special Rapporteur was critical of how “law enforcement officials often use ‘poverty,’ ‘homelessness’ or ‘disadvantage’ as an indicator of criminality,”<sup>83</sup> rather than actual or alleged criminal activity. We urge the Committee to recognize that when law enforcement disproportionately targets individuals due to homelessness, the United States violates Article 9’s protection against arbitrary application of the law.

*D. Criminalization Violates the Right to Privacy*

38. Homeless people by definition exist in the public sphere, where they “have to face a consistent suspicion and scrutiny because they are consistently visible.”<sup>84</sup> What little privacy a homeless person enjoys rests on their personal belongings and makeshift dwellings. However, many U.S. jurisdictions have enacted measures that invade even this modicum of privacy, including cleaning sweeps that result in “the often arbitrary seizure and frequent destruction of homeless people’s personal property . . . . Belongings are seized while homeless people are asleep, momentarily away from their possessions,



or under arrest.”<sup>85</sup> These sweeps are prevalent throughout the United States.<sup>86</sup> In 2012, Los Angeles, California, faced its fifth lawsuit since 1987 over the city’s practice of seizing homeless people’s property during cleaning sweeps.<sup>87</sup> Although the court issued a preliminary injunction to halt these sweeps,<sup>88</sup> this has not stopped the searches and seizures of homeless people’s valuable property. In the past, Los Angeles has continued this practice despite an existing injunction.<sup>89</sup>

39. Public authorities often claim that the cleaning sweeps serve important public purposes. For example, the city of Seattle, Washington, justified its sweeps by arguing that encampments represent a danger to public health and safety.<sup>90</sup> The city focused on these concerns instead of addressing the underlying causes of the encampments, such as the lack of shelter space.
40. The repercussions of the sweeps alone are significant enough to render them unreasonable, regardless of their alleged purpose. For example, during sweeps in Fresno, California, police destroyed homeless people’s personal property such as medicine and clothing.<sup>91</sup> The loss of property can have profound ramifications for a homeless individual’s health.<sup>92</sup>
41. Because the detrimental effects of sweeps on homeless people are out of proportion with the alleged governmental purpose, they violate the privacy rights of homeless people. Article 17 limits the manner in which the State can interfere with the right to privacy. The specific prohibition of “arbitrary” interference extends the right to privacy beyond interferences that

are provided for by law. It adds a protection against “capriciousness”<sup>93</sup>, since “regardless of its lawfulness, arbitrary interference contains elements of injustice, unpredictability and unreasonableness.”<sup>94</sup> Indeed, the Committee has recognized:

[T]he concept of arbitrariness is intended to guarantee that even interference provided by the law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, *reasonable in the particular circumstances*.<sup>95</sup>

42. Thus, the proportionality standard inquires into whether enforcement “had a purpose that seems legitimate on the basis of the Covenant in its entirety, whether it was predictable in the sense of rule of law and, in particular, *whether it was reasonable (proportional) in relation to the purposes to be achieved*.”<sup>96</sup> Furthermore, the right to privacy “dictates that State interference be restrained and the principle of reasonableness be respected even with conduct that has certain effects upon the common good (e.g., *vagrancy, begging, prostitution, etc.*)”<sup>97</sup>
43. Since the United States fails to provide homeless people with adequate shelter, they have no choice but to live on the streets. Makeshift encampments, such as the tent cities described above, add security and privacy to an otherwise haphazard existence. Under Article 17, the harsh repercussions that sweeps impose on homeless people are disproportionate to the ends of cleaning up public spaces and are a violation of the homeless population’s right to privacy.

## II. VIOLATIONS OF THE RIGHT TO THE FAMILY

44. Families represent “the fastest growing segment of the homeless population in the United States.”<sup>98</sup> In 2009, “more than 535,000 families sought shelter over the year – a 13% increase from 2007. Over 238,000 families were counted as homeless on a single night.”<sup>99</sup> Families facing homelessness often have little choice but to separate.
45. The right to family is widely protected under international law.<sup>100</sup> The ICCPR addresses the right in two ways: Article 17 includes it in the right to privacy,<sup>101</sup> and Article 23 further emphasizes that the State and society owe protection to the family

because it is “the natural and fundamental group unit of society.”<sup>102</sup> Rather than protecting the right of homeless families to stay together, however, U.S. laws and practices thwart family unification.

*A. Homeless people’s right to family is violated when shelters discriminate based on gender and/or familial status.*

46. Shelters that impose regulations based on sex or familial status threaten family integrity. Since most shelters in the United States are segregated by sex,<sup>103</sup> fathers rarely have the option of staying with their family.<sup>104</sup> Furthermore, mothers may



be separated from their adolescent sons, since “[f]amilies with adolescent males are more likely to be excluded than individuals with records of child abuse; one study found that 40% of family shelters exclude families because of the presence of adolescent males.”<sup>105</sup> Thus, families have a choice of either foregoing shelter altogether, or separating fathers and teenage males from other relatives.<sup>106</sup> These separations may last a long time, since families stay in shelters for an average of nearly six months.<sup>107</sup>

47. The U.S. government should be commended for addressing this problem by forbidding family separation in shelters through the HEARTH Act of 2009.<sup>108</sup> Although most homeless shelters are private organizations, most receive funding from the federal government.<sup>109</sup> HUD has the ability to enforce the HEARTH Act and prevent federally-funded family shelters from excluding teenage males, by asking questions in their grant reports, requiring proof of compliance for grant applications, including requirements in regulations, and investigating where reports of non-compliance are raised. The Committee should encourage the United States to monitor and increase compliance at the local and federal levels. Even if they do, however, the prevalence of sex-segregated shelters means that fathers will continue to be separated from their family.

*B. Homeless people's right to family is violated when they are disproportionately affected in child custody procedures.*

48. In some homeless families, the State forcibly removes children because of “neglect.” States’ definitions of neglect often resemble characteristics of poverty and homelessness,<sup>110</sup> placing homeless families at increased risk of separation.<sup>111</sup> Furthermore, two-thirds of the states admit that they lack appropriate supportive services for families,<sup>112</sup> which could protect these families from having their children removed because of neglect. Only twelve of fifty states and the District of Columbia have recognized this contradiction by adopting an explicit provision “that declares a parent’s financial inability to provide basic necessities, like stable housing, for children does not, in [and] of itself, constitute child neglect.”<sup>113</sup> In most states, “poverty can be the sole cause for state intervention, findings of child neglect, and family separation. Colorado even cites homelessness as a reason for finding neglect.”<sup>114</sup>
49. The states’ broad and inconsistent definitions of

child neglect lead to governmental infringement on homeless people’s right to family, with detrimental repercussions for the parents and especially the children. For example, two recent studies

measured arrest rates, imprisonment, teen motherhood, employment, and earnings for children who were placed into foster care. These studies found that similarly situated children who are on the margin of being placed in foster care and who remain at home, even without receiving services, have better long-term outcomes than children who are placed in foster care.<sup>115</sup>

Placing a child in foster care is not always in the child’s best interests and thus not a sufficient reason for the State to break up a family. Homeless people are further disadvantaged by the obstacles to counsel they encounter.<sup>116</sup> Poor families, whose very lack of resources is exemplified by the finding of neglect, “should not be expected to pay for legal assistance in child neglect proceedings which may be erroneously initiated.”<sup>117</sup> Although most states have enacted the right to counsel in these proceedings, this right remains discretionary in about twelve states,<sup>118</sup> which shows “how fragile the statutory right to counsel remains . . . [A] parent’s ability to receive assistance of counsel may depend on the county where he or she lives or the current fiscal situation.”<sup>119</sup>

50. The structure of federal funding for child welfare encourages placement in foster care instead of other supportive services. States “receive federal funding to support foster care placements, but receive little money to provide services to keep children out of foster care or safely reunify their families after a removal to foster care.”<sup>120</sup> Thus, placing children in foster care defers costs from the state to the federal level, which incentivizes state agencies to promote family disintegration. However, this practice actually ineffectively allocates State resources, as foster care costs significantly more than keeping a family together.<sup>121</sup>
51. The Committee has found that the “right to found a family implies, in principle, the possibility to procreate and live together.”<sup>122</sup> Furthermore, it “implies the adoption of appropriate measures . . . to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.”<sup>123</sup> Therefore, the State’s obligation goes *beyond*

abstention from interfering with the family. Rather, the right to family includes a broader, positive obligation to actively support family integrity, which is appropriate under the widely held conception of the family as society's foundation.<sup>124</sup> When the United States follows laws and practices that obstruct the integrity of homeless families, it violates the children's and parents' rights under Article 17 and Article 23. Instead, the U.S. government should adjust laws governing federal financing of the child welfare system to allow states to keep families together and safe, and should assist families in meeting their basic needs rather than removing children from their homes and penalizing the homelessness of their parents.

### III. VIOLATIONS OF THE RIGHT TO VOTE

52. U.S. laws increasingly disenfranchise homeless people by making voting contingent upon proof of identification, citizenship, or residency.<sup>125</sup> Although legislation varies from state to state, all of these restrictive voting laws deprive homeless people of their right to political participation.<sup>126</sup>
53. Many jurisdictions predicate voting on the presentation of photo identification, and use of this practice is increasing. Until 2011, only two states imposed strict photo identification requirements in order to vote.<sup>127</sup> In anticipation of the U.S. elections in 2012, legislation requiring certain types of photo identification in order to vote was introduced in at least thirty-four states, and passed into law in nine states.<sup>128</sup> The documentation needed to obtain identification is typically tied to housing.<sup>129</sup> Homeless people are particularly unlikely to possess such identification, both because of the requirements and the costs involved.<sup>130</sup>
54. For example, Wisconsin's recent voter ID law, only allows would-be voters to present select forms of identification—such as a driver's license, state ID card, or passport—but will not accept Veteran's Identification Cards, government benefit cards, or other state-issued IDs.<sup>131</sup> To obtain a state ID card in Wisconsin, first-time applicants must provide proof of name and date of birth, proof of identity, proof of citizenship or resident status in the US, proof of Wisconsin residency, and a Social Security number.<sup>132</sup> Low-income voters are unable to vote if they do not have the \$15 needed to obtain a copy of their birth certificate,<sup>133</sup> or are unable to pay fees of up to \$200 to amend their birth certificate.<sup>134</sup> Voters must produce a utility bill from the past thirty days, a paycheck or pay stub, an account statement from a bank in Wisconsin, or mortgage documents, which homeless people are extremely unlikely to possess.<sup>135</sup> Officials at both the issuing agency and polling places also erroneously tell voters that their ID must reflect their current address, which disproportionately disenfranchises those without stable housing.<sup>136</sup>
55. Other jurisdictions require that a person produce proof of citizenship in order to vote or register to vote,<sup>137</sup> or impose residency requirements, which disenfranchise migratory or seasonal residents as well as long-term residents who cannot prove the duration of their residency.<sup>138</sup> To prove residency, federal law requires that a voter present either photo identification or "a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter."<sup>139</sup> The laws of individual states are even stricter.<sup>140</sup> Although the Committee has insisted that "[i]t is unreasonable to restrict the right to vote on the ground of . . . property requirements,"<sup>141</sup> U.S. states continue to propose and pass laws that virtually require people to have housing in order to exercise their political rights.
56. Article 25 guarantees the right to political participation, including the right to vote.<sup>142</sup> The Committee has affirmed that the state has an obligation to ensure that its citizens are able to vote, whether or not the state is responsible for the conditions that might deter or prevent

populations from voting.<sup>143</sup> The Committee has clarified what this requires from state parties: States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude homeless person from the right to vote.<sup>144</sup>

57. In recent years, however, jurisdictions in the United States have made it harder, not easier, for homeless people to exercise this basic right. The United States must eliminate voting requirements that discriminatorily target homeless people in order to comply with the State's ICCPR obligations, and the DOJ should continue to challenge Voting Rights Act violations, including among homeless persons rights.

#### IV. DISCRIMINATION

58. Criminalization measures discriminate against homeless people on the basis of their status or property. Discrimination also affects homeless subpopulations, such as racial minorities, women, and transgender people, in unique ways.

59. The United States has signed and ratified the International Convention on the Elimination of All Forms of Racial Discrimination, which calls on states to eliminate racial disparities in the right to housing.<sup>145</sup> 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.<sup>146</sup> Nonetheless, stark disparities persist. The 2010 Census estimated that roughly 25.2% of the U.S. population is nonwhite,<sup>147</sup> but non-white people represent about 60% of homeless people in shelters.<sup>148</sup> The disparate impact of homelessness also falls unevenly within the larger population of people of color.<sup>149</sup>

60. Too often, U.S. laws and policies perpetuate these inequalities. Laws criminalizing homelessness tend to target minorities; as the Special Rapporteur on racism has noted, "the enforcement of minor law enforcement violations . . . take[s] a disproportionately high number of African American homeless persons to the criminal justice system."<sup>150</sup> 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, New York State recently eliminated housing assistance rental vouchers for 8,000

households that were overwhelmingly black or Latino.<sup>151</sup> 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.<sup>152</sup> The Committee has called upon the United States to implement "adequate and adequately implemented policies, to bring an end to such de facto and historically generated racial discrimination."<sup>153</sup> Such policies are still urgently needed.

61. Homelessness also has gendered dimensions that must be addressed under the ICCPR. According to the Committee, "[s]tates parties should address the ways in which any instances of discrimination on other grounds affect women in a particular way, and include information on the measures taken to counter these effects."<sup>154</sup> Although the homeless population is disproportionately male, women often experience homelessness in distinctive ways. In 2011, HUD estimated that roughly 63% of homeless adults in shelters are men, and 37% are women.<sup>155</sup> Of the sheltered adults in families with children, however, 80% are female, and only 20% are male.<sup>156</sup> From 2007 to 2011, the percentage of women in shelters has increased by 2.4% as the number of homeless families—typically headed by women—rose.<sup>157</sup> As discussed above, there is a dearth of shelter space for families, leaving women with children uniquely vulnerable.

62. The conditions that render individuals homeless

also often differ for men and women. Between 22% and 57% of homeless women report that the immediate cause of their homelessness was domestic or sexual violence.<sup>158</sup> Alarming, status as a survivor of domestic violence also seriously jeopardizes housing security.<sup>159</sup> Only 13 states have state laws that protect survivors of domestic violence from housing discrimination,<sup>160</sup> and the laws that do exist are often ineffective.<sup>161</sup> Should survivors leave or be forced to leave the abusive situation, homelessness itself may put them at risk of physical or sexual violence. One study has estimated that nearly 92% of homeless mothers will be subject to severe physical or sexual violence over the course of their lives.<sup>162</sup>

63. The gendered risks of homelessness are particularly acute for transgender people, who face one of the highest rates of homelessness in the United States. In 2010, HUD issued guidance prohibiting housing discrimination against transgender individuals under the federal Fair Housing Act, but the impact of this guidance has been limited by a lack of awareness and clarity in practice.<sup>163</sup> Shelters continue to discriminate against transgender people; nearly 30% of transgender people facing homelessness have been turned away from a shelter because of their gender expression or gender identity.<sup>164</sup> Approximately 42% of transgender people facing homelessness have had to stay in a shelter as the wrong gender, which both robs them of dignity and places them at risk of verbal or physical violence.<sup>165</sup>
64. A lack of state intervention has also hampered the response to lesbian, gay, bisexual or transgender (LGBT) youth homelessness. A recent survey of service providers for homeless youth found that LGBT youth comprised approximately 40% of their clientele.<sup>166</sup> Nonetheless, over 40% of service providers do not address the family issues that often generate LGBT youth homelessness, and

cite a lack of funding from the government as the primary reason they are unable to meaningfully respond to the problem.<sup>167</sup>

65. Physical and mental disabilities also increase the likelihood of homelessness. Although roughly 15% of the U.S. population is disabled, disabled people make up 38% of the sheltered homeless population.<sup>168</sup> Evictions on the basis of mental illness are especially harmful; losing housing often exacerbates the underlying condition and makes it impossible for a person to adhere to treatment or otherwise function.<sup>169</sup> The state's obligation to ensure the rights of disabled people is not only located in the ICCPR, but in the Convention on the Rights of Persons with Disabilities and the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.<sup>170</sup>
66. Article 2 of the ICCPR guarantees rights to all people, without distinctions of any kind.<sup>171</sup> As the preceding sections demonstrate, homeless people are at high risk for a range of violations of their civil and political rights. The prevalence and effects of homelessness in the United States vary based on race, ethnicity, nationality, migrant status, gender, sexual orientation and gender identity, youth, and disability. Regardless of the origins of sociopolitical vulnerability, states have an obligation to ensure that marginalized people are fully able to enjoy their rights.<sup>172</sup> Nonetheless, the laws and policies of the United States have either failed to address or actively exacerbated these discrepancies. The USICH should actively promote efforts to protect the rights of people experiencing homelessness, such as Homeless Bills of Rights, and actively oppose criminalization ordinances through statements, outreach, and education. In addition, HUD should promote a framework that recognizes adequate housing as a human right and would hold government units at all levels accountable for creating accessible, affordable housing for all.

## V. CONCLUSIONS AND RECOMMENDATIONS

### *A. Recommendations to the Human Rights Committee*

67. 67. 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 the funds they distribute are not used to criminalize homelessness by state or local entities?
- b. 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?
- c. Does the Department of Justice have any plans to open investigations or to intervene in cases to challenge local criminalization practices?
- d. What measures does the federal government take to challenge specific criminalizing ordinances or promote specific constructive alternative policies?

68. 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 impact for homeless people. This includes recognizing that criminalization of 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.

### *B. Recommendations to the U.S. Government*

1. USICH should publicly oppose specific local criminalization measures, as well as inform local governments of their obligations to respect the rights of homeless individuals.
2. DOJ should investigate and challenge particular instances of local and state criminalization measures.
3. DOJ and HUD should better structure their funding by including specific questions in requests for funding proposals and giving points to applicants who create constructive alternatives to homelessness, while subtracting points from applicants who continue to criminalize homelessness.
4. DOJ should include people experiencing homelessness as a monitored class in its collection of hate crimes statistics, in order to better understand and address the violence perpetuated against them.
5. HUD should take additional steps to ensure PHAs use their discretion to accept people with criminal histories unless federal law requires their exclusion.
6. DOJ should encourage state and local governments to remove burdensome fines



imposed through criminalization measures and eliminate imprisonment of homeless individuals when they are unable to pay such penalties.

7. DOJ and HUD should work with local authorities to cease sweeps of outdoor encampments and instead to ensure homeless residents are provided with adequate alternative housing. If sweeps are deemed to serve proportional government goals, the authorities should at a minimum ensure sufficient prior notice and collection of personal belongings, with clear policies for retention and retrieval in a manner reasonably accessible to homeless persons.
8. HUD should enforce the HEARTH Act's provisions prohibiting family separation in homeless shelters.
9. HHS should work with Congress to change the laws governing federal financing of the child welfare system to allow states to keep families together and safe, and should assist families in meeting their children's basic needs rather than removing children from their homes and penalizing the homelessness of their parents.
10. HHS should continue to work to prevent state child welfare workers from removing children from the home solely due to homelessness or poverty, and instead focus on programs providing services and assistance to prevent homelessness and the resulting family separation in the first place.
11. DOJ should continue to challenge legislation requiring identification for voting, and issue guidance promoting policies to enable homeless people to register to vote despite their lack of permanent addresses.

- 1 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](http://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf) [hereinafter USICH, *SEARCHING OUT SOLUTIONS*].
- 2 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*].
- 3 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.
- 4 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).
- 5 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-Add.4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add.4_en.pdf) [hereinafter UNHRC, *Report of Albuquerque*].
- 6 USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 1, 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*]).
- 7 “[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 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)).
- 8 See, e.g., HUNTER, LINDEN-RETEK & SHEBAYA, *supra* note 4, 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.”).
- 9 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 Apr. 27, 2013) (using data filter to select 2011 values only).
- 10 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 1.
- 11 See 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*, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012) [hereinafter UNHRC, *Report of Raquel Rolnik*]; 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*, ¶¶ 65, 66(c), U.N. Doc. A/HRC/21/39 (July 18, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶¶ 48-50, 78(c), U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, *USA: “Moving Away from the Criminalization of Homelessness, A Step in the Right Direction”* (Apr. 23, 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E>.
- 12 In addition to the ICCPR, the United States is a signatory to the Habitat Agenda, a product of the 1996 Second United Nations Conference on Human Settlements, which affirms that “homeless people should not be penalized for their status.” The United Nations Conference on Human Settlements, *Istanbul, June 3-4, 1996*, ¶ 61(b), U.N. Doc. A/CONF.165/14 (1996). Some U.S. courts have affirmed that homelessness is a status rather than a choice, and cannot be used to justify discrimination and criminalization of homeless persons. See, e.g., *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006); *Pottinger v. Miami*, 810 F. Supp. 1551, 1564 (S.D. Fla. 1992). The court in *Pottinger* did not reach the question of whether homelessness is or could be a suspect class. *Id.* at 1578.
- 13 See USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 1.
- 14 See NLCHP, *CRIMINALIZING CRISIS* *supra* note 2, at 7-8; USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 1, at 6-7.
- 15 See NLCHP, *CRIMINALIZING CRISIS* *supra* note 2, at 6.
- 16 For the effects of imprisonment on voting, for example, see Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination (United States of America)*, ¶ 27, U.N. Doc. CERD/C/USA/CO/6 (2008); *Hirst v. United Kingdom* (No. 2), 2005-IX Eur. Ct. H.R. 681; MATTHEW CARDINALE, *TRIPLE-DECKER DISENFRANCHISEMENT: FIRST-PERSON ACCOUNTS OF LOSING THE RIGHT TO VOTE AMONG POOR, HOMELESS AMERICANS WITH A FELONY CONVICTION*, THE SENTENCING PROJECT (2004).
- 17 NLCHP, *CRIMINALIZING CRISIS*, *supra* note 2, at 8.
- 18 HUNTER, LINDEN-RETEK & SHEBAYA, *supra* note 4, at 47-48.
- 19 See, e.g., U.N. Human Rights Council, *Report of the U.N. Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶ 36, U.N. Doc. A/66/265 (2011), available at <http://www.ohchr.org/Documents/Issues/EPoverty/A.66.265.pdf> [hereinafter UNHRC, *Report of Sepúlveda Carmona*].
- 20 USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 1, at 7 (citing NLCHP, *HOMES NOT HANDCUFFS*, *supra* note 6); 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.
- 21 *Id.* at 6-7 (citing NLCHP, *HOMES NOT HANDCUFFS*, *supra* note 6).
- 22 *Id.*
- 23 See, e.g., NLCHP, *CRIMINALIZING CRISIS*, *supra* note 2, at 8.
- 24 See, e.g., *id.* at 7-8. A survey of “154 service providers, advocates, and people experiencing homelessness from 26 different states” found that 73% of respondents reported arrests or citations, or both, in their cities for public urination/defecation; 55% reported public camping/sleeping citations or arrests; 55% reported loitering citations or arrests; 20% reported public storage of belonging citations or arrests; and 19% reported sidewalk-sitting citations or arrests. Yet more than 80% of respondents who reported such restrictions also reported that their city lacked sufficient facilities for

people experiencing homelessness to sleep, perform bodily functions, or store belongings.

- 25 See, e.g., NATIONAL LOW INCOME HOUSING COALITION, *OUT OF REACH* (2013), available at <http://nlihc.org/oor/2013>.
- 26 Complaint, *Bell v. City of Boise*, Case No. 1:09-CV-540-REB, at 2 (Oct. 22, 2009).
- 27 *Id.* at 5-6.
- 28 *Id.* at 8.
- 29 Amended Complaint, *Catron v. City of St. Petersburg*, Case No. 8:09-cv-923-SDM-EAJ, at 59 (Dec. 15, 2009).
- 30 *Id.* at 58.
- 31 HUNTER, LINDEN-RETEK & SHEBAYA, *supra* note 4, at 48-59.
- 32 CITY OF ST. PETERSBURG, FL, *Ordinances & Laws Regarding Homelessness*, <http://www.stpete.org/socialservices/homelessness/ordinanceslaws.asp> (last visited Apr. 21, 2013).
- 33 Janelle Irwin, *Arrested Activist Claims St. Pete Police Harass People Without Homes in Williams Park*, WMNF TAMPA COMMUNITY RADIO (Mar. 28, 2013), [http://www.wmnf.org/news\\_stories/arrested-activist-claims-st-pete-police-harass-people-without-homes-in-williams-park](http://www.wmnf.org/news_stories/arrested-activist-claims-st-pete-police-harass-people-without-homes-in-williams-park).
- 34 UNHRC, *Report of Sepúlveda Carmona*, *supra* note 19, at ¶ 36. The Special Rapporteur further noted, “[t]he argument that the punishment of homeless people for behaviours that they have no choice but to perform in public may amount to cruel and inhuman treatment has been accepted in a number of United States jurisdictions. See, e.g., *Pottinger v. City of Miami*, 76 F.3d 1154 (11th Cir. 1996); *Johnson v. City of Dallas*, 61 F.3d 442 (5th Cir. 1995).” *Id.* at n.19.
- 35 The United States has recognized that the criminalization of homelessness may violate the country’s treaty obligations under the ICCPR and CAT. See USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 1, at 7 (citing NLCHP, *HOMES NOT HANDCUFFS*, *supra* note 6). On the growing international consensus, see UNHRC, *Report of Sepúlveda Carmona*, *supra* note 19, at ¶ 36; UNHRC, *Report of Albuquerque*, *supra* note 5, at ¶ 58. International authorities have also criticized the practice of criminalization more generally, describing it as a source of a broad range of rights violations. See, e.g., UNHRC, *Report of Rolnik*, *supra* note 11, at ¶ 95; U.N. Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, Mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009) [hereinafter UNHRC, *Report of Diène*]; Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, *supra* note 11. Finally, wrongful detention may exacerbate mental health conditions, which the Committee has also recognized as an Article 7 violation. Human Rights Committee, *C v. Australia*, 900/99 (Nov. 13, 2002), § 8.4. Based on “essentially unanimous” medical opinions, the Committee found that the applicant’s “psychiatric illness developed as a result of the protracted period of immigration detention.” *Id.* When a state party is aware of a detainee’s mental illness and fails to take steps to address it, the Committee found that it constitutes a violation of a detainee’s rights under Article 7. *Id.*
- 36 UNHRC, *Report of Albuquerque*, *supra* note 5, at ¶ 58. The Rapporteur offered this vivid example: “The independent expert visited a community of homeless people in Sacramento, California, where she met a man [Tim] who called himself the “sanitation technician” for the community. He engineered a sanitation system that consists of a seat with a two-layered plastic bag underneath. Every week Tim collects the bags full of human waste, which vary in weight between 130 to 230 pounds, and hauls them on his bicycle a few miles to a local public restroom. Once a toilet becomes available, he empties the content of the bags; packs the plastic bags with leftover residue inside a third plastic bag; ties it securely and disposes of them in the garbage; he sanitizes his hands with water and lemon. He said that even though this job is difficult, he does it for the community, especially the women.” The UN Special Rapporteur observed, “The fact that Tim is left to do this is unacceptable, an affront to human dignity and a violation of human rights that may amount to cruel, inhuman or degrading treatment. An immediate, interim solution is to ensure access to restrooms facilities in public places, including during the night.” Press Release, 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), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10807&LangID=E>.
- 37 *Id.*
- 38 See, e.g., *Ending the Cycle between Corrections and Homelessness*, USICH BLOG (Jul. 30, 2012), [http://www.usich.gov/media\\_center/blog/ending\\_the\\_cycle\\_between\\_corrections\\_and\\_homelessness](http://www.usich.gov/media_center/blog/ending_the_cycle_between_corrections_and_homelessness) (“Research has shown that individuals without stable housing upon exit from jails or prisons are up to seven times more likely re-offend; sometimes cycling for years between jails, prisons, emergency psychiatric care, and homelessness. As John Fallon, the session moderator from the Corporation for Supportive Housing [at the National Alliance to End Homelessness’ annual conference] noted, this cycle is extremely costly for state and local governments. He shared a real case study of Richard, a 42-year old who had spent the previous 21 years cycling between jails, mental health centers, and homelessness at an average annual cost of \$72,910.”).
- 39 See, e.g., THE LEWIN GROUP, *COSTS OF SERVING HOMELESS INDIVIDUALS IN NINE CITIES: CHARTBOOK* (2004), available at <http://www.rwjf.org/files/newsroom/cshLewinPdf.pdf>; UTAH DEPT. OF COMMUNITY & ECON. DEV., *UTAH’S TEN-YEAR BUSINESS PLAN TO END HOMELESSNESS 6-7* (2004), available at <http://www.usich.gov/slocal/plans/utah.pdf> (noting that permanent supportive housing cost approximately \$6,100 per resident per year, compared to \$35,000 per year in Utah state prisons or \$146,730 per year for incarceration in the state mental hospital).
- 40 See, e.g., USICH, *SEARCHING OUT SOLUTIONS*, *supra* note 1.
- 41 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, *CRIMINALIZING CRISIS*, *supra* note 2, at 8-9 (citing a service provider in Salem, Oregon whose client lost his identification documents in a homeless sweep and struggled to get new documents, which made it harder for him to access employment); *id.* at 32 (thirty-eight states allow employers to consider arrests, even if they never resulted in conviction, when making hiring decisions).
- 42 See, e.g., LEGAL ACTION CENTER, *AFTER PRISON: ROADBLOCKS TO REENTRY 2009 UPDATE* (2009), available at <http://www.lac.org/roadblocks-to-reentry/upload/lacreport/Roadblocks-to-Reentry--2009.pdf>.
- 43 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, *CRIMINALIZING CRISIS*, *supra* note 2, at 34.
- 44 Letter from Shaun Donovan, Secretary of Housing and Urban Development, and Sandra B. Henriquez, Assistant Secretary of Public and Indian Housing, to Public Housing Authority Executive Directors (June 17, 2011), <http://scr.bi/o52ex9>; see also Eric S. Tars & Deódonné

- Bhattarai, *Opening the Door to the Human Right to Housing, The Universal Periodic Review and Strategic Federal Advocacy for a Rights-Based Approach to Housing*, 45 CLEARINGHOUSE REV. J. OF POVERTY L. & POL'Y 197, 206 (2011).
- 45 Matthew D. Callahan, *Protecting the Unconvicted: Limiting Iowa's Rights to Public Access in Search of Greater Protection for Criminal Defendants Whose Charges Do Not End in Convictions*, 98 IOWA L. REV. 1275, 1299 (2013); Marie Claire Tran-Leung, *When Discretion Means Denial: The Use of Criminal Records to Deny Low-Income People Access to Federally Subsidized Housing in Illinois*, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW 22-23 (2011).
- 46 USICH, SEARCHING OUT SOLUTIONS, *supra* note 1, at 2.
- 47 See, e.g., 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](http://www.nytimes.com/2010/03/31/us/31keywest.html?_r=0&ref=homelesspersons&pagewanted=print). Compare U.S. DEP'T OF HOUS. AND URB. DEV.; *Community Planning and Development Program Formula Allocations for FY 2013* (June 11, 2013), [portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/about/budget/budget13](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/budget/budget13), (recording the Fiscal Year 2013 budget for HUD and full-year allocations for the Office of Community Planning and Development formula programs, including Community Development Block Grants to United States cities; allocations reflect the level of funding approved for homelessness assistance) with NLCHP, CRIMINALIZING CRISIS, *supra* note 2, at Advocacy Manual 42-56 (providing data identifying U.S. cities that use laws or policies that target or are likely to have a particularly negative impact on homeless individuals).
- 48 Criminalization of an involuntary status was ruled unconstitutional by the U.S. Supreme Court, which overturned a California statute criminalizing narcotics addiction, absent predicate acts of engaging in the sale or possession of banned substances. The Court observed that “[e]ven one day in prison would be cruel and unusual punishment for the ‘crime’ of having a common cold.” *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. As a result, people experiencing homelessness around the country must repeatedly challenge local governments’ efforts to prohibit their activities. For example, in San Diego, a class of homeless plaintiffs brought a suit alleging that the regular citation of homeless people sleeping in public for illegal lodging, when they had nowhere else to go, violated their Eighth Amendment rights to freedom from cruel and unusual punishment. The nine named plaintiffs represented an estimated 4,000-5,000 homeless people in the city. *Spencer v. City of San Diego*, No. 04 CV-2314 BEN (S.D. Cal. May 2, 2006). The city’s policy effectively prevented people from sleeping in public “at all times and all places.” The city eventually settled with the plaintiffs, agreeing to refrain from issuing citations between 9 p.m. and 5:30 a.m., and emphasizing to police officers that their role in dealing with homeless people was to provide information about available services. NLCHP, CRIMINALIZING CRISIS, *supra* note 2, at 93. Although the federal government has recognized the inefficacy of criminalization and advocates other measures, until such change takes place at the local level, people in homelessness will continue to suffer violations of their Article 7 rights.
- 49 USICH, SEARCHING OUT SOLUTIONS, *supra* note 1, at 7.
- 50 See note 11, *supra*.
- 51 MANFRED NOWAK, UN COVENANT ON CIVIL AND POLITICAL RIGHTS, CCPR COMMENTARY 373 (1993) (“The term ‘assembly’ is not defined but rather presumed in the Covenant. Therefore, it must be interpreted in conformity with the customary, generally accepted meaning in national legal systems, taking into account the object and purpose of this traditional right. . . . [O]nly intentional, temporary gatherings of several persons for a specific purpose are afforded the protection of freedom of assembly.”).
- 52 HUNTER, LINDEN-RETEK & SHEBAYA, *supra* note 4, at 98. See also *id.* at 19-24 (describing the self-organization and self-government activities of Camp Runamuck, a homeless community in Rhode Island).
- 53 Abhi Ragunathan & Alisa Ulferts, *Police Slash Open Tents to Roust the Homeless*, ST. PETERSBURG TIMES (Jan. 20, 2007), [http://www.sptimes.com/2007/01/20/Southpinellas/Police\\_slash\\_open\\_ten.shtml](http://www.sptimes.com/2007/01/20/Southpinellas/Police_slash_open_ten.shtml).
- 54 See, e.g., Heather Knight, *Sit/Lie Law Primarily Enforced in Haight*, S.F. CHRONICLE (Aug. 5, 2012), <http://www.sfgate.com/news/article/Sit-lie-law-primarily-enforced-in-Haight-3763521.php>.
- 55 HUNTER, LINDEN-RETEK & SHEBAYA, *supra* note 4, at 98.
- 56 See, e.g., OSCE/ODIHR, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 89, n.2 (2007). A significant body of law on freedom of assembly has also been developed by the European Court of Human Rights, in interpreting Article 11 of the European Convention, which uses language almost identical to Article 21 of the ICCPR. After reviewing the jurisprudence of member states and international and regional legal bodies, the Organization for Security and Cooperation in Europe summarized the international legal consensus on Article 21’s balancing test, which includes: a presumption in favor of allowing assemblies, a state duty to protect peaceful assembly, any restrictions based in formal law and proportional to the harms they aimed to avoid, no state discriminate between different types of assembly, and public access to and information about the relevant regulatory authority. *Id.* at 13-14. The OSCE further found that “[l]egitimate grounds for restriction are prescribed in universal and regional human rights instruments, and these should not be supplemented by additional grounds in domestic legislation.” *Id.* at 15.
- 57 See, e.g., USICH, SEARCHING OUT SOLUTIONS, *supra* note 1.
- 58 See, e.g., HUNTER, LINDEN-RETEK & SHEBAYA, *supra* note 4.
- 59 *Id.*; see also THE LEWIN GROUP, *supra* note 39.
- 60 “The Committee points out that paragraph 1 [of Article 9] is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.” Human Rights Committee, *General Comment No. 8: Right to Liberty and Security of Persons* (Art. 9) (June 30, 1982) ¶ 51 (emphasis added).
- 61 UNHRC, *Report of Sepúlveda Carmona*, *supra* note 19, at ¶ 20.
- 62 “It is not the deprivation of liberty in and of itself that is disapproved of but rather that which is arbitrary and unlawful.” MANFRED NOWAK, UN COVENANT ON CIVIL AND POLITICAL RIGHTS, CCPR COMMENTARY 211 (2005).
- 63 International Covenant on Civil and Political Rights, art. 9.
- 64 See Saelinger, *supra* note 7, at 553.
- 65 See Jennifer E. Watson, *When No Place Is Home: Why the Homeless Deserve Suspect Classification*, 88 IOWA L. REV. 501, 524 (2003).



- 66 Maria Foscarinis et. al., *Out of Sight-Out of Mind?: The Continuing Trend Toward the Criminalization of Homelessness*, 6 GEO. J. ON POVERTY L. & POL'Y 145, 156 (1999).
- 67 *Id.* at 152.
- 68 The Plaintiffs challenged: Boise City Code § 9–10–02 (the “Camping Ordinance”), which made it a crime for anyone “to use any of the streets, sidewalks, parks or public places as a camping place at any time,” and § 6–01–05(A) (the “Sleeping Ordinance”), which criminalized “sleeping in any location without permission of the owner” as disorderly conduct. *Bell v. City of Boise*, 834 F. Supp. 2d 1103, 1105 (D. Idaho 2011) *rev'd*, 709 F.3d 890 (9th Cir. 2013).
- 69 Amended Complaint, *Bell v. City of Boise*, *supra* note 26, at 5-6.
- 70 *Id.* at 5-6.
- 71 The District Court granted defendants’ motion for summary judgment; the Ninth Circuit reversed and remanded, finding that the court *did* have subject matter jurisdiction over claims for retrospective relief and that these claims had *not* been rendered moot by the police department’s special order clarifying its policy, because the defendant’s did not prove that “the challenged conduct cannot reasonably be expected to start up again.” *Bell v. City of Boise*, 709 F.3d 890, 898 (9th Cir. 2013).
- 72 UNHRC, *Report of Sepúlveda Carmona*, *supra* note 19, at ¶¶ 19-20.
- 73 *A. v. Australia* (560/1993), ICCPR, A/52/40 vol. II, ¶ 145 (Apr. 3 1997), available at [http://www.bayefsky.com/themes/liberty\\_jurisprudence.pdf](http://www.bayefsky.com/themes/liberty_jurisprudence.pdf) (individual opinion by Prafullachandra N. Bhagwati) (“It would not be right to adopt an interpretation which will attenuate a human right. It must be interpreted broadly and expansively”).
- 74 NOWAK, *supra* note 63, at 225.
- 75 For example, in *Marques v. Angola*, the Committee found that the author’s arrest and detention violated Article 9 even though he had been charged with a criminal offense under national law, because the *circumstances* of the arrest and detention were unreasonable and unnecessary. The Committee emphasized its constant jurisprudence that “the notion of ‘arbitrariness’ is not to be equated with ‘against the law,’ but must be interpreted more broadly to include elements of *inappropriateness*, injustice, lack of predictability and due process of law. This means that remand in custody must not only be lawful but *reasonable* and *necessary in all the circumstances*, for example to prevent flight, interference with evidence or the recurrence of crime.” *Marques v. Angola* (1128/2002), ICCPR, A/60/40 vol. II, ¶ 6.1 (Mar. 29, 2005) (emphasis added). See also *Gorji-Dinka v. Cameroon* (1134/2002), ICCPR, A/60/40 vol. II, ¶ 5.1 (Mar. 17, 2005) (confirming the Committee’s constant view with identical language); *Jalloh v. The Netherlands* (794/1998), ICCPR, A/57/40 vol. II, ¶ 8.2 (Mar. 26, 2002) (“Recalling its previous jurisprudence, the Committee notes that “arbitrariness” must be interpreted more broadly than “against the law” to include elements of unreasonableness”); *A. v. Australia* (560/1993), ICCPR, A/52/40 vol. II, at ¶ 9.2 (Apr. 3, 1997) (“[T]he Committee recalls that the notion of “arbitrariness” must not be equated with “against the law” but be interpreted more broadly to include such elements as inappropriateness and injustice”); *Mukong v. Cameroon* (458/1991), ICCPR, A/49/40 vol. II, ¶ 9.8 (July 21, 1994) (“It remains however to be determined whether other factors may render an otherwise lawful arrest and lawful detention “arbitrary” within the meaning of article 9. The drafting history of article 9, paragraph 1, confirms that “arbitrariness” is not to be equated with “against the law,” but must be interpreted broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. As the Committee has observed on a previous occasion, this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances”).
- 76 NOWAK, *supra* note 63, at 225.
- 77 *Id.* at 224.
- 78 For example, in Berkley, California, “police routinely search and/or arrest people suspected of being homeless in public spaces, based on the authority of nonexistent or selectively enforced laws.” Saelinger, *supra* note 7, at 552.
- 79 “65 percent of respondents . . . believed homeless people are more likely to be given citations and/or arrested for similar violations. Of that 65 percent of respondents, over 70 percent felt that homeless individuals are disproportionately criminalized in each or all of the following categories: violation of open container and/or public intoxication laws, loitering, and public urination/defecation.” NLCHP, *CRIMINALIZING CRISIS*, *supra* note 2, at 18.
- 80 Amended Complaint, *Bell v. City of Boise*, *supra* note 26, at 5-6.
- 81 Jacob Davidson, *Kicking Out the Homeless in Downtown Columbia, South Carolina*, TIME (Aug. 22, 2013), <http://ti.me/1dx70ey>.
- 82 UNHCR, *Report of Sepúlveda Carmona*, *supra* note 19, at ¶ 12.
- 83 *Id.* at ¶ 65.
- 84 Justin Stec, *Why the Homeless Are Denied Personhood Under the Law: Toward Contextualizing the Reasonableness Standard in Search and Seizure Jurisprudence*, 3 RUTGERS J. L. & URB. POL'Y 321 (2006).
- 85 Kevin Bundy, “Officer, Where’s My Stuff?” *the Constitutional Implications of A De Facto Property Disability for Homeless People*, 1 HASTINGS RACE & POVERTY L. J. 57, 59 (2003).
- 86 In the 2011 NLCHP survey mentioned above, 62% of respondents answered that their city engaged in cleaning sweeps (only 14% answered no; the remaining 24% did not know). Of those who answered in the affirmative, 42% stated that their cities did not provide notification before engaging in the sweeps (23% did not know, only 35% said yes), while 37% said their city did not retain the belongings seized so that owners could claim them afterwards (46% did not know, while only 17% said yes). NLCHP, *CRIMINALIZING CRISIS*, *supra* note 2, at 19-20.
- 87 Christina Hoag, *Lawsuit Fights Seizures of LA Homeless’ Property*, ASSOC. PRESS (Mar. 30, 2012), <http://www.utsandiego.com/news/2012/mar/30/lawsuit-fights-seizures-of-la-homeless-property>.
- 88 The injunction forbade the city from seizing property “absent an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, or is evidence of a crime, or contraband,” and the court forbade “destruction of said seized property without maintaining it in a secure location for a period of less than 90 days.” *Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005, 1020 (C.D. Cal. 2011) *appeal denied*, 693 F.3d 1022 (9th Cir. 2012). On appeal, the Ninth Circuit upheld the injunction. *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1031 (9th Cir. 2012).
- 89 In 2000, the court ordered an injunction forbidding the city from “[c] onfiscating the personal property of the homeless when it has not been abandoned and destroying it without notice.” *Justin v. City of Los Angeles*, CV0012352LGBAUX, 2000 WL 1808426 (C.D. Cal. Dec. 5, 2000).
- 90 The city’s arguments against encampments included their purported “unsanitary hygiene conditions, including the



- accumulation of garbage, human and animal feces, and other hazardous materials . . . criminal activity, including incidents of violent crime and felony drug tracking . . . destruction or vandalism of public property . . . [and] obstructions that interfere with the intended uses of the property." *Media Analysis of Homeless Encampment "Sweeps,"* HOMELESS MEDIA COVERAGE STUDY GROUP 10-11, available at <http://faculty.washington.edu/stygall/homelessmediacoveragegroup/EncampmentSweepsCoverageFinal3.3.pdf>.
- 91 NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, "SIMPLY UNACCEPTABLE": HOMELESSNESS AND THE HUMAN RIGHT TO HOUSING IN THE UNITED STATES 43 (2011).
- 92 The loss of medicine can obviously lead to untreated conditions, while the loss of clothing may increase exposure to harsh weather. In the resulting lawsuit, the court issued an injunction preventing Fresno from continuing the sweeps, stating that, "[t]he City's destruction of the property of the homeless, including shelter, blankets, clothes, food and medication, makes it more difficult for the homeless to survive." *Kincaid v. City of Fresno*, 106CV-1445 OWW SMS, 2006 WL 3542732 (E.D. Cal. Dec. 8, 2006).
- 93 NOWAK, *supra* note 63, at 382.
- 94 *Id.* at 383.
- 95 Human Rights Committee, *General Comment No. 16: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (Art. 17)*, §4 (Apr. 8, 1988) (emphasis added).
- 96 NOWAK, *supra* note 63, at 383 (emphasis added).
- 97 *Id.* at 389 (emphasis added). The Committee has applied this test in previous jurisprudence regarding interferences with the right to privacy. When examining legislation proscribing private homosexual behavior, the Committee interpreted "the requirement of reasonableness to imply that any interference with privacy must be proportional to the end sought and necessary in the circumstances of any given case," and found that the authorities' public health argument failed the reasonableness test because it did not amount to "a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV." *Toonen v. Australia* (488/1992), ICCPR, A/49/40 vol. II, ¶ 8.3 (Mar. 31, 1994).
- 98 Betsy Gwin, *Housing Resources for Families at Risk of Separation*, 30 CHILD. L. PRAC. 1, 5 (2011).
- 99 These numbers do not include the substantial number of families who live in motels or "double-up" with friends. *Id.*
- 100 See Universal Declaration of Human Rights, arts. 12 and 16; American Convention on Human Rights, art. 11; Convention on the Rights of the Child, art. 16; European Convention on Human Rights, arts. 8 and 12; African Charter on the Rights and Welfare of the Child, art. 10.
- 101 ICCPR art. 17 ("No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.") (emphasis added).
- 102 ICCPR art. 23.
- 103 Greg C. Cheyne, *Facially Discriminatory Admissions Policies in Homeless Shelters and the Fair Housing Act*, 1 U. CHI. LEGAL F. 459, 460 (2009).
- 104 Even family shelters sometimes accept only the mother and children. *Id.* at 464.
- 105 *Id.*
- 106 Indeed, a 25-city survey found that in 57% of the cities, families are divided for shelter purposes. NLCHP, HOMELESSNESS AND UNITED STATES COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 4 (2006).
- 107 Cheyne, *supra* note 104, at 461.
- 108 Section 404 provided that two years after its enactment, "any project sponsor receiving funds under this title to provide emergency shelter, transitional housing, or permanent housing to families with children under age 18 shall not deny admission to any family based on the age of any child under age 18." The Homeless Emergency Assistance and Rapid Transition to Housing Act, 42 U.S.C. § 11361 (2009).
- 109 Most shelters receive federal funding ranging from 29% to over 50% of their budget. Cheyne, *supra* note 104, at 464-65.
- 110 Such as "[l]ack of housekeeping services, babysitting, medicine, shelter and appropriate clothing for cold weather." Steven M. Cytryn, *What Went Wrong? Why Family Preservation Programs Failed to Achieve Their Potential*, 17 CARDOZO J.L. & GENDER 81, 106 (2010) (emphasis added).
- 111 Indeed, "[c]hildren from families with housing problems are 19% more likely to end up in foster care and to stay in care longer than children without housing problems." Gwin, *supra* note 99, at 5 (citing U.S. DEP'T OF HEALTH AND HUM. SERVS., NATIONAL STUDY OF PROTECTIVE, PREVENTIVE AND REUNIFICATION SERVICES TO CHILDREN AND THEIR FAMILIES (1997).
- 112 Cytryn, *supra* note 111, at 84 (citing U.S. GEN. ACCOUNTING OFFICE, FOSTER CARE: RECENT LEGISLATION HELPS STATES FOCUS ON FINDING PERMANENT HOMES FOR CHILDREN BUT LONG-STANDING BARRIERS REMAIN, GAO Report No. 02-585 (2002), available at <http://www.gao.gov/new.items/d02585.pdf>).
- 113 Some other states, such as California, have adopted narrower exemptions of a similar nature. Gwin, *supra* note 99, at 5.
- 114 *Id.*
- 115 Cytryn, *supra* note 111, at 91.
- 116 The Supreme Court has explicitly denied low-income parents an absolute constitutional right to counsel in child abuse and neglect proceedings under the Due Process Clause of the Fourteenth Amendment, leaving possible appointment to counsel at discretion of court. *Lassiter v. Dep't of Soc. Serv.* 452 U.S. 18 (1981).
- 117 Candra Bullock, *Low Income Parents Victimized by Child Protective Services*, 11 AM. U.J. GENDER SOC. POL'Y & L. 1023, 1037 (2003).
- 118 "Statutes in Hawaii, Indiana, Minnesota, Missouri, Nevada, New Jersey, Oregon, Wisconsin, and Wyoming provide judges with discretion to appoint counsel in dependency cases. In Virginia, the right to counsel is only guaranteed at the adjudication and termination of parental rights hearings. In Mississippi, no statute governs the appointment of counsel in child welfare cases. This author could not locate a statute addressing the issue in Idaho." Vivek S. Sankaran, *Protecting A Parent's Right to Counsel in Child Welfare Cases*, 28 CHILD. L. PRAC. 97, 104 n.17 (2009).
- 119 Even when the right to counsel is provided by statute, low-income parents have difficulty establishing an erroneous denial of counsel, and attorneys are often underpaid, overworked, and lacking resources to effectively advocate for their clients. *Id.*
- 120 Zuzana Murarova & Elizabeth Thornton, *Federal Funding for Child Welfare: What You Should Know*, 29 CHILD. L. PRAC. 33, 39 (2010).
- 121 According to the Child Welfare League of America, "providing supportive services and rental assistance to one family costs about

- one-third of the amount it costs to keep the children of that same family in foster care.” Gwin, *supra* note 99, at 8.
- 122 Human Rights Committee, *General Comment No. 19: Protection of the Family, the Right to Marriage and Equality of the Spouses (Art. 23)*, §5 (July 27, 1990).
- 123 *Id.*
- 124 Similarly, the ECHR has interpreted Article 8 of the ECHR to include positive obligations for the state. The Court found “the expression “family life” . . . normally comprises cohabitation. The latter proposition is reinforced by the existence of Article 12 [right to marry and establish a family], for it is scarcely conceivable that the right to found a family should not encompass the right to live together” and “that, although the essential object of Article 8 (art. 8) is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in an effective “respect” for family life.” *Abdulaziz v. United Kingdom*, 7 Eur. Ct. H.R. ¶¶ 62, 67 (1985).
- 125 See generally WENDY R. WEISER & LAWRENCE NORDEN, BRENNAN CENTER FOR JUSTICE, *VOTING LAW CHANGES IN 2012* (2012). Such legislation is often introduced when elections are nearing; this phenomenon was especially striking in the months leading up to the U.S. elections in November 2012. *Id.* For a deeper analysis of the ways in which voting laws disenfranchise homeless persons, see generally NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *VOTER REGISTRATION AND VOTING: ENSURING THE VOTING RIGHTS OF HOMELESS PERSONS* (2004).
- 126 Many of the most egregious violations have taken place at the state rather than the federal level. Article 50 of the ICCPR states that the Covenant’s provisions “shall extend to all parts of federal states without any limitations or exceptions.” ICCPR art. 50.
- 127 WEISER & NORDEN, *supra* note 126, at 2.
- 128 WENDY R. WEISER & DIANA KASDAN, BRENNAN CENTER FOR JUSTICE, *VOTING LAW CHANGES: ELECTION UPDATE*, at 2 (2012). Although every state has some form of voter ID requirement, if only for new voters, “these laws were far more stringent,” and were “highly inflexible and restrictive” in the types of ID they required. *Id.* The eleven percent of Americans without these select forms of ID “are disproportionately seniors, African-Americans, the poor, students, or people with disabilities.” *Id.*
- 129 Maria Foscarinis, *Advocating for the Human Right to Housing: Notes from the United States*, 30 N.Y.U. REV. L. & SOC. CHANGE 447, 457-58 (2006).
- 130 In 2004, for example, at least 26 states required proof of a physical address in order to prove residency and obtain a state-issued ID. See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, *PHOTO IDENTIFICATION BARRIERS FACED BY HOMELESS PERSONS: THE IMPACT OF SEPTEMBER 11*, at 5 (2004). Individuals with a physical address still may not be able to afford photo identification; a survey by NLCHP in 2004 found that 36% of clients were unable to obtain photo identification because they could not afford it. *Id.*
- 131 Complaint in *Frank v. Walker*, 2:11-cv-01128-LA (Mar 2, 2012), at 21-23.
- 132 *Id.* at 35.
- 133 *Id.* at 10.
- 134 *Id.* at 5.
- 135 *Id.* at 45.
- 136 *Id.* at 33.
- 137 WEISER & NORDEN, *supra* note 126, at 2. Only one state enforced a citizenship requirement before 2012. Prior to the elections in 2012, however, at least twelve states sought to impose proof of citizenship requirements, and they passed in three states. *Id.*
- 138 NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. & NAACP, *DEFENDING DEMOCRACY: CONFRONTING MODERN BARRIERS TO VOTING RIGHTS IN AMERICA* 24 (2011).
- 139 42 U.S.C. § 15483 (2000).
- 140 Sarah Devlin, “I Lost My Home, Don’t Take My Voice!” *Ensuring the Voting Rights of the Homeless Through Negotiated Rulemaking*, 2009 J. DISP. RESOL. 175, 176 (2009).
- 141 Human Rights Committee, *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).
- 142 Article 25 of the ICCPR provides: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.”
- 143 Human Rights Committee, *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996).
- 144 *Id.*
- 145 International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (1969).
- 146 UNHRC, *Report of Diéne, supra* note 35; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee*, U.N. Doc. CCPR/C/USA/CO/3 (2006).
- 147 U.S. CENSUS BUREAU, *THE WHITE POPULATION: 2010*, at 3 (2011).
- 148 OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *THE 2011 ANNUAL HOMELESSNESS ASSESSMENT REPORT TO CONGRESS 16* (2012) [hereinafter OCPD, 2011 REPORT TO CONGRESS].
- 149 Of the total sheltered homeless population, 38.1% were African Americans, 8.9% were Hispanic or Latino, 7.9% were multiracial, 4.0% were American Indian or Native Alaskan, 0.8% were Native Hawaiian or Pacific Islander, and 0.7% were Asian. *Id.*
- 150 UNHRC, *Report of Diéne, supra* note 35, at ¶ 64.
- 151 David R. Jones, *Homelessness in America – A Racial Issue*, COMMUNITY SERVICE SOCIETY 2 (2012).
- 152 Ralph da Costa Nunez, Matthew Adams & Anna Simonsen-Meehan, *Intergenerational Disparities Experienced by Homeless Black Families*, INSTITUTE FOR CHILDREN, POVERTY, AND HOMELESSNESS 1 (2012).
- 153 UN Human Rights Committee, *supra* note 148, at ¶ 22.
- 154 Human Rights Committee, *General Comment No. 28: Equality of Rights Between Men and Women (Art. 3)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).
- 155 OCPD, 2011 REPORT TO CONGRESS, *supra* note 150, at 15.

- 156 *Id.* at 40.
- 157 *Id.* at 15.
- 158 The figures vary based on region and study design. See NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, SOME FACTS ON HOMELESSNESS, HOUSING, AND VIOLENCE AGAINST WOMEN 2 (2006).
- 159 Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 A.U. J. GENDER SOC. POL'Y & L. 377, 385 (2006); see also Margaret E. Johnson, *A Home With Dignity: Domestic Violence and Property Rights* (forthcoming 2013).
- 160 da Costa Nunez, Adams & Curtis, *supra* note 154, at 2; See, e.g., NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, THERE'S NO PLACE LIKE HOME: STATE LAWS THAT PROTECT HOUSING RIGHTS FOR SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE (2012) [hereinafter NLCHP, THERE'S NO PLACE LIKE HOME].
- 161 In New York City, for example, 27.5% of housing providers have not provided housing to survivors of violence after learning of the tenant's history. da Costa Nunez, Adams & Curtis, *supra* note 154, at 2.
- 162 Ellen Bassuk, et al., *The Characteristics and Needs of Sheltered Homeless and Low-Income Housed Mothers*, 276 JAMA 640 (1996).
- 163 *Housing and Homelessness*, NAT'L CTR. FOR TRANSGENDER EQUALITY, <http://transequality.org/Issues/homelessness.html> (last visited Mar. 10, 2013).
- 164 *Id.*
- 165 *Id.*
- 166 Laura E. Durso & Gary J. Gates, *Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth Who are Homeless or At Risk of Becoming Homeless*, WILLIAMS INSTITUTE 3 (2012).
- 167 *Id.* at 4.
- 168 OCPD, 2011 REPORT TO CONGRESS, *supra* note 150, at 17.
- 169 See Meghan P. Carter, *How Evictions from Subsidized Housing Routinely Violate the Rights of Persons with Mental Illness*, NW J. L. AND SOC. POL'Y 118 (2010).
- 170 Convention on the Rights of Persons with Disabilities, available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>; Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/PersonsWithMentalIllness.aspx>.
- 171 Article 2(1) of the ICCPR provides: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
- 172 Human Rights Committee, *General Comment No. 3: Implementation at the National Level (Art. 2)*, U.N. Doc. HRI/GEN/1/Rev.9 (1981); see also Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) ("However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."); Human Rights Committee, *General Comment No. 18: Non-Discrimination*, U.N. Doc. HRI/GEN/1/Rev.9 (1989) ("The Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions.").

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