

Mandate 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

REFERENCE:
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Excellency,

I have the honour to address you in my capacity as 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, pursuant to Human Rights Council resolution 34/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **persons living in homelessness in the United States**.

According to the information received:

In 2017, 1,416,908 persons accessed shelter for persons in homelessness in the United States¹. On a single night, the Department of Housing and Urban Development (HUD) counted 552,830 persons living in homelessness in 2018.²

Research shows that both figures only represent a small fraction of persons living in homelessness in the US. The first figure excludes persons in homelessness who do not access official shelters. The second relies on the work of volunteers who walk throughout cities trying to identify and visually count homeless persons. For safety reasons, and as a result of criminalization³, many homeless persons intentionally choose to stay in places where they cannot be seen. Additionally, volunteers conducting the visual count do not venture into poorly lit parks or other places that could pose a threat to their safety, among other methodological problems that result in a severe undercount.⁴

¹ Department of Housing and Urban Development, "Estimates of Homelessness in the United States, Part 2", 2018, <https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf>, p.7.

² Department of Housing and Urban Development, "Estimates of Homelessness in the United States, Part 1", 2018, <https://files.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf> p.1.

³ "However, fear and distrust may be a major barrier to accurately counting people experiencing homelessness.

People experiencing homelessness may fear or not trust any person who seems to be connected to government

for a number of reasons. Consider that in some places activities like sleeping, eating, sitting, or asking for money in public are criminalized. What's more, people with mental illnesses are often jailed rather than offered treatment and support." Georgetown Law Center Poverty and Inequality, Counting People Experiencing Homelessness, 2018, p.2, available at <http://www.georgetownpoverty.org/wp-content/uploads/2018/09/GCPI-ESOI-Counting-People-Experiencing-Homelessness-20180904.pdf>

⁴ Hopper, Shinn, Laska, Meisner and Wanderling; Estimating Numbers of Unsheltered Homeless People Through Plant-Capture and Postcount Survey Methods; available at <https://ajph.aphapublications.org/doi/10.2105/AJPH.2005.083600>

The Department of Education estimated that 2,561,492 children experienced homelessness in 2018, which shows the magnitude of homelessness in the United States.⁵

Vulnerable groups

Minorities who suffer discrimination in the United States, such as African Americans, Hispanic/Latino Americans and Native Americans, experience homelessness at higher rates than White and Asian Americans.⁶ 38.7% of the homeless population in the United States are African American, even though African Americans make up only 12% of the total population.⁷ Discrimination across all aspects of the housing system is a key factor in this regard.⁸

Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) persons are also likelier to experience homelessness than the rest of the population. They represent between 20% and 40% of persons in homelessness while comprising approximately 5-10% of the general population.⁹ Discrimination, family breakdown and abuse are key factors.

Formerly incarcerated persons face homelessness at rates ten times that of the general population.¹⁰ Key causes are discrimination by housing providers, who conduct petty crime background checks, and rules preventing some formerly incarcerated persons from accessing public housing or public housing assistance.¹¹

Other groups particularly vulnerable to homelessness are persons with mental disabilities, survivors of domestic-violence, drug users and veterans of the armed forces.¹²

Homeless persons themselves experience discrimination as a social group (see below).

⁵ Department of Education, Early Childhood Homelessness State Profiles 2018.

⁶ Homelessness Research Institute, Demographic Data Project: Race, Ethnicity and Homelessness, p.1, available at: <https://endhomelessness.org/wp-content/uploads/2019/07/3rd-Demo-Brief-Race.pdf>

⁷ Department of Housing and Urban Development (2018) “Estimates of Homelessness in the United States, Part 2” <https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf> p.xix

⁸ Institute of Global Homelessness, State of Homelessness in Countries with Developed Economies, 2019, available at: https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/CASEY_Louise_Paper.pdf

⁹ Fraser, Pierse, Chisholm and Cook, LGBTIQ+ Homelessness: A Review of the Literature, International Journal of Environmental Research and Public Health, 2019, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6695950/>

¹⁰ Couloute, Lucius (2018) “Nowhere to Go: Homelessness among formerly incarcerated people” <https://www.prisonpolicy.org/reports/housing.html>

¹¹ Ibid.

¹² The Washington Post, The surprising holes in our knowledge of America’s homeless population, 2019, available at: <https://www.washingtonpost.com/business/2019/09/18/surprising-holes-our-knowledge-americas-homeless-population/>

Insufficient shelters and permanent housing for homeless persons

According to HUD data, 51 per cent of homeless persons in the United States live in the 50 largest cities—particularly New York City and Los Angeles.¹³ These cities often fail to provide basic services to their homeless populations, leaving many with no access to temporary housing. In Los Angeles, for example, 75 per cent of those experiencing homelessness in 2018 were unsheltered.¹⁴ Analysis conducted by the Urban Institute found that in Alameda County, California, the lack of emergency and permanent housing units created a “bottleneck” where the homelessness services system could only place one person into permanent housing for every two people who became homeless in 2017, resulting in rapid increases in the homeless population between 2014 and 2017.¹⁵

Encampments

Due to unavailability of shelters, many people experiencing unsheltered homelessness in the United States resort to living in encampments, found in all states in the country. The number of these encampments has increased by 1,342%: from 19 in 2006 to 267 in 2016.¹⁶ Half of the encampments have between 11 and 50 residents, but one out of six has more than one hundred.¹⁷

Residents are often subjected to forced evictions, which are typically carried out in the absence of safeguards for their rights: only 2.7% of cities require alternative accommodation to be provided for the residents, and only 11% are required to provide notice prior to the eviction and to provide in storage for the possessions of the residents.¹⁸ Evictions often involve the removal of the only protection residents have against harsh weather conditions and the destruction of all their property, including clothing, medicine and other essential items for survival.¹⁹ In 2016, in Charleston, West Virginia, a long-term encampment was evicted without prior warning or alternative accommodation when the temperature was -11° c.²⁰

¹³ Department of Housing and Urban Development (2019) “Estimates of Homelessness in the United States, Part 1” <https://files.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf> p.18

¹⁴ Ibid.

¹⁵ Brown, Batko, Leopold, and Shroyer (2018) “Final Report and Recommendations on Homelessness in Alameda County, CA” Urban Institute <https://homelessness.acgov.org/homelessness-assets/docs/final-report-urban-institute.pdf> p.11

¹⁶ National Law Center on Homelessness and Poverty (2017) “Tent City, USA” https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf p.21

¹⁷ National Law Center on Homelessness and Poverty (2017) “Tent City, USA” https://nlchp.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf p.21

¹⁸ Ibid.

¹⁹ National Law Center on Homelessness and Poverty, Violations of the Human Rights of Persons Experiencing Homelessness in the United States, 2017, p.3, available at: <https://nlchp.org/wp-content/uploads/2018/10/sr-ep-2017.pdf>

²⁰ National Law Center on Homelessness and Poverty, Violations of the Human Rights of Persons Experiencing Homelessness in the United States, 2017, p.3, available at: <https://nlchp.org/wp-content/uploads/2018/10/sr-ep-2017.pdf>

Criminalization and stigmatization

Homeless persons are systematically criminalized simply for their situation of homelessness, resulting in the penalization of life-sustaining actions. Sleeping on the street, sitting in public places, loitering, storing belongings, public urination and other offences are systematically used to persecute homeless persons. Persons in homelessness have no other choice than committing the offense of “public urination” given the absence of public toilets in cities in the United States.²¹

In a recurring cycle of criminalization, stigma and marginalization that increasingly reduces the opportunity of persons in homelessness to enjoy dignified living conditions, petty infractions turn into misdemeanors, leading to warrants, incarceration, fines and criminal convictions, hindering access to employment and housing. As observed by the UN Special Rapporteur on extreme poverty and human rights on his visit to the United States, authorities in Los Angeles increased the number of arrests of homeless persons in Skid Row (14,000) by 31 per cent from 2011 and 2016, while overall arrests decreased by 15 per cent in the city in the same period.²²

On 13 September 2019, the President of the United States made several statements against persons in homelessness, claiming that their presence was affecting the interests of real estate investors (including foreign investors), spoiling “our best highways, our best streets, our best entrances to buildings”, jeopardizing the health of police officers and bringing shame to the prestige of “our great American cities”.

Legislative and Judicial developments

Several states and cities are developing legislation and regulations recognizing the rights of persons in homelessness, including the states of California, Connecticut, Delaware, Illinois, Minnesota, Missouri, Oregon, Rhode Island, Tennessee, and Vermont and the cities of Baltimore (Maryland) and Madison (Wisconsin). These developments and proposals attempt, to different degrees, to prevent criminalizing homeless persons for their situation and to recognize their right to adequate living conditions.

Similarly, on September 4th, 2018, the 9th Circuit Court of Appeals ruled in *Martin v. Boise* that a State may not ‘criminalize conduct that is an unavoidable consequence of being homeless.’ To punish this conduct is akin to punishing a person’s homeless status which is a violation of the 8th Amendment. On

²¹ Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America, par. 44

²² Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America, par. 45

December 16th, 2019 the Supreme Court of the United States let *Martin v. Boise* stand.

Despite this progress, it has come to my attention that the President is taking steps to issue an executive order that would take an aggressive approach to homelessness that centres on law enforcement. The order could include increase spending in police departments so that they may have more capacity to remove homeless encampments and conduct sweeps.

While I do not wish to prejudge the accuracy of the information made available to me, I wish to express my serious concern about these allegations of multiple violations of human rights, contrary to international human rights law. The number of persons living in homelessness across the country is an indication that the right to adequate housing is not being effectively implemented. The fact that particular vulnerable groups are over-represented in the homeless population suggests rights to non-discrimination and equality are not being upheld.

In light of the direct relationship between homelessness and otherwise preventable disease and illness and premature mortality, this would indicate that the Government's obligations with respect to the right to health and the right to life are not being met. Treating all persons living in homelessness as criminals is contrary to human rights.

The removal of persons living in homelessness from public spaces by force, without providing sufficient short and long-term accommodation in keeping with international human rights standards, and subjecting them to fines or imprisonment, would also constitute violations of the prohibition of cruel, inhuman or degrading treatment. The disproportionate impact of the above-mentioned violations on vulnerable groups would also indicate violations of the rights to equality and non-discrimination.

I call on Governments of the United States of America to cease all forced evictions of homeless encampments and to provide such encampments with basic services such as toilets, garbage collection and access to sanitation facilities.

I also call on Governments to develop a strategy for the collection of disaggregated data on the current number of persons in homelessness and to take immediate life-saving action to address their situation of emergency. The imminent arrival of winter exacerbates the risks faced by thousands of persons in homelessness. Furthermore, according to international human rights bodies, States have an obligation to immediately implement measures to eliminate homelessness within broader rights-based housing strategies.²³ Rights-based housing strategies must contain clear goals and timelines as well as set out the responsibilities of all levels of government and of other actors for the implementation of specific, time-bound measures, and must be supported by the necessary resources required for implementation. This process should involve

²³ Please see my report on rights-based housing strategies: *A/HRC/37/53*

consultation with, and participation by, persons living in homelessness and their representative organizations.²⁴

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain what measures are in place to ensure access to adequate shelter and housing for persons who are currently homeless.
3. By what date and through what measures do you anticipate eliminating homelessness as required by international human rights law and Sustainable Development Goal 11, Target 11.1?
4. Please provide details of measures undertaken to ensure that those living in homeless encampments are not forcibly evicted, contrary to international human rights standards.
5. Please provide information on measures to ensure active participation of persons living in homelessness and residents of informal settlements in the design and implementation of policies that affect them.
6. Please provide information on strategies to prevent stigmatization of persons living in homelessness.
7. Please provide more information on any laws, regulations, Executive Orders, etc (current or pending) that would penalize persons in homelessness for their presence in public spaces. Please clarify under which circumstances such laws or regulations impose fines or detention on persons who stay in a public space and whether such regulations also authorize the confiscation or destruction of personal belongings, including sleeping bags, tents or other materials used for shelter.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

²⁴ Please see my report on homelessness and related State obligations: A/HRC/31/54

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Homelessness is a human rights crisis of a global scale; I am also sending similar letters calling the attention of other Governments to the situation of homeless persons in their respective countries.

I intend to publicly express my concern for homelessness as a global human rights crisis in the near future as, in my view, the information available to me is sufficiently reliable to indicate a matter warranting immediate attention. Should I issue a press release, it will mention several countries as an example of the global homelessness crisis, and indicate that I have been in contact with the respective Governments to clarify the issues in question.

Please accept, Excellency, the assurances of my highest consideration.

Leilani Farha

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

Annex

Reference to international human rights law

In connection with the above, and without prejudice to the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

I wish to draw the attention of your Excellency's Government to article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), signed by the United States on 5 October 1972, which recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. [...]" According to article 18 of the Vienna Convention on the Law of Treaties, a State who has signed a treaty is "obliged to refrain from acts which would defeat the object and purpose of a treaty". Pursuant to article 2.2 of the ICESCR, the Covenant's rights must be exercised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [emphasis added]." Finally, the Committee on Economic, Social and Cultural Rights has stressed in General Comment No. 4 that the right to adequate housing includes affordability, accessibility, and legal security of tenure.

The Committee on Economic, Social and Cultural Rights has previously recognized that a significant number of individuals being deprived of basic shelter and housing shows, *prima facie*, a failure to discharge its obligations under the Covenant. The Covenant requires demonstrating that every effort has been made to use a maximum of available resources in an effort to discharge their obligations. Furthermore, I wish to direct your Excellency's Government to my report on homelessness and the right to adequate housing (A/HRC/31/54), in which I note that homelessness constitutes a serious violation of the right to adequate housing to which must respond to homelessness with the highest level of urgency. National and sub-national governments must immediately repeal any laws or measures that criminalize, impose fines on or restrict persons living in homelessness or behaviour associated with being homeless, such as sleeping or eating in public spaces. Governments also have an obligation to combat and prohibit any law or practice that serves to discriminate, stigmatize and negatively stereotype persons living in homelessness.

I also draw your attention to article 6 of the International Covenant on Civil and Political Rights, ratified to by the United States on 8 June 1992, which protects the right to life, which is understood as "the supreme right from which no derogation is permitted" and, "the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights."²⁵ The Human Rights Committee specifically states that "The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include ... homelessness."

²⁵ Human Rights Committee, General Comment No. 36 para. 2.

The Committee also states that the measures called for to address adequate conditions for protecting the right to life include, where necessary, “measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care ...” [emphasis added].²⁶ Violations of the right to life must be treated with the utmost seriousness and urgency. There is little doubt that homelessness triggers right to life interests.

I also call your attention to article 27.1 of the Convention on the Rights of the Child, signed by the United States on 16 February 1995, which recognizes “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” Further, article 27.3 contains the obligation to take “appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.” Adequate housing has an adverse impact on the physical health, well-being and development of children. As such, any increase in the number of children living in homelessness is incompatible with the Convention.

I also recall General Comments No. 4, 7 and 20 of the Committee on Economic, Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy for those that may be affected by eviction orders. Demolitions and destruction of property are strictly forbidden under international human rights law and standards. According to these General Comments, the United States must have explored all feasible alternatives to forced eviction in consultation with the affected persons. Moreover, demolitions must never lead to homelessness of evicted persons by ensuring there is provision of adequate alternative housing facilities, resettlement and compensation for lost property.

Furthermore, I wish to direct your Excellency’s Government to my report on homelessness and the right to adequate housing (A/HRC/31/54), in which I note that homelessness constitutes a gross violation of the right to adequate housing. States must therefore respond to homelessness with the highest level of urgency. The Committee on Economic, Social and Cultural Rights has previously recognized that a significant number of individuals being deprived of basic shelter and housing is, *prima facie*, incompatible with the Covenant.

I note that through Agenda 2030 for Sustainable Development, the Government of the United States has committed itself to eliminating homelessness. Target 11.1 requires all States to ensure access for everyone to adequate, safe, and affordable housing by 2030. This necessarily means eliminating homelessness by 2030. To this end, states must adopt rights-based housing strategies with the aim of eliminating homelessness by that date. I refer you to my report on human rights-based housing strategies (A/HRC/37/53) in which I identify ten key principles for the strategies’ effective development and implementation. According to these principles, States must ensure the political

²⁶ Human Rights Committee, General Comment No. 36 para 26.

participation of persons living in homelessness in the design, implementation, and monitoring of rights-based housing strategies. Strategies should also work to combat stigmatization and discrimination against persons living in homelessness.

The full texts of the human rights instruments and standards recalled above are available at www.ohchr.org or can be provided upon request.