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### Challenging Domestic Injustice Through International Human Rights Advocacy: Addressing Homelessness in The United States

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# CHALLENGING DOMESTIC INJUSTICE THROUGH INTERNATIONAL HUMAN RIGHTS ADVOCACY: ADDRESSING HOMELESSNESS IN THE UNITED STATES

*Eric Tarst, Tamar Ezer†, Melanie Ng†, David Stuzint, and Conor Arevalo†*

*This Article explores how international human rights norms and procedures can serve as a powerful tool in addressing injustice in the United States context, using work addressing the criminalization of homelessness as a case study. Moreover, it explores how civil and political rights and negative obligations by the government can serve as an entry point for asserting a more robust understanding of rights that includes social and economic rights and affirmative obligations by government. The Article documents and analyzes original work led by the National Homelessness Law Center and other pioneering advocates, reflecting on lessons learned and next steps to make the human right to housing a legal obligation in our country.*

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## INTRODUCTION

Imagine people forced to sleep on a cold, concrete slab, exposed to the elements. Imagine they are deliberately sleep-deprived through repeated middle-of-the-night wakeups, with lights constantly on and sometimes with loud music played. Imagine they are denied adequate food and water, then forced to endure the humiliation of exposing themselves in public to urinate or defecate and denied adequate sanitary facilities to clean themselves. Imagine them being degraded, threatened, and harassed by both private actors with the tacit or explicit blessing of the government, or the government's own law enforcement. For many, this may recall the disturbing photos of detainees at the Abu Ghraib

prison in Iraq. And few would have any doubt that the treatment in these images constitutes torture, or at a minimum, cruel, inhuman, or degrading treatment.<sup>1</sup> And yet, many people walk past people experiencing this same treatment every day on the streets of the United States of America without further consideration. People experiencing homelessness are deliberately subjected to such conditions through laws, policies, and practices that criminalize their most basic, life-sustaining activities, such as sleeping, eating, and going to the bathroom. While those in Abu Ghraib were victims of a foreign war, people experiencing homelessness in the United States are victims of a domestic war on the poor and undergo trauma no less harmful. Now, thanks to the work of dedicated advocates, such treatment is recognized as a human rights violation, not only at the international level, but also domestically. Advocacy in far-off Geneva to develop human rights standards has resulted in concrete changes to federal policy here at home and has ultimately impacted the practical enjoyment of human rights by some of the most marginalized and vulnerable in our society. This experience may be helpful to other marginalized groups, which continue to face human rights violations in the United States, in developing their own strategies to protect basic rights.

The United States' founding document, the Declaration of Independence, leads with the "self-evident" truth that all citizens are endowed with the basic rights to "Life, Liberty, and the pursuit of Happiness."<sup>2</sup> The U.S. Constitution further provides that citizens will be free from "cruel and unusual punishments" and that they shall not be deprived of "life, liberty, or property, without due process of law;" clauses that the Supreme Court has accepted to mean that the government is prohibited from enforcing laws that criminalize a person's life-sustaining conduct in the absence of adequate alternatives.<sup>3</sup> These principles are echoed in international human rights law, including within the Universal Declaration of Human Rights (UDHR), which the United States assisted in drafting, that expressly

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<sup>1</sup> Eric Tars, *I Believe in Human Rights: Homelessness—Torture on the Streets of America*, USICH BLOG (Jan. 16, 2014), <https://web.archive.org/web/20150814085212/http://usich.gov/blog/i-believe-in-human-rights-homelessness-torture-on-the-streets-of-america> [<https://perma.cc/GD8W-AJ7G>].

<sup>2</sup> THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

<sup>3</sup> U.S. CONST. amend. VIII; U.S. CONST. amend. XIV, § 1; *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (holding that laws criminalizing "vagrancy" are unconstitutional under the Due Process Clause contained in the Fourteenth Amendment to the U.S. Constitution because these laws "fail[] to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute," and "encourage[] arbitrary and erratic arrests and convictions."); see *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018).

establishes that all human beings possess the “right to life, liberty and security of person” and the right to be free from “cruel, inhuman or degrading treatment or punishment.”<sup>4</sup>

Despite this, many state and local governments in the United States enact and actively enforce laws that effectively criminalize the existence of people experiencing homelessness.<sup>5</sup> Without a home, a person must live the entirety of his or her life in the public sphere, including: eating, sleeping, using the bathroom, storing belongings, enjoying a beverage—as well as any other act that human beings engage in as a natural part of life.<sup>6</sup> And while the act of experiencing homelessness is not itself expressly illegal anywhere in the United States, state and municipal governments effectively prohibit it by passing laws that criminalize the public performance of many or all of these life-sustaining activities despite the absence of adequate alternatives.<sup>7</sup> These laws violate the basic human rights to life; freedom from cruel, inhuman, and degrading treatment; security of person; freedom of movement; freedom of assembly; freedom of expression; and freedom from arbitrary arrest and detention—violations that all result from the United States’ unfortunate denial of adequate housing as an essential human right. Moreover, studies reveal that laws criminalizing homelessness are both expensive and ineffective in decreasing homelessness.<sup>8</sup>

This Article traces how, over the last two decades, advocates challenging the criminalization of homelessness have successfully employed the international human rights framework to strengthen

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<sup>4</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights arts. 3, 5 (Dec. 10, 1948) [hereinafter UDHR].

<sup>5</sup> NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 37 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> [<https://perma.cc/8G8D-DRG7>] [hereinafter LAW CTR., HOUSING NOT HANDCUFFS] (noting that “[d]espite a lack of affordable housing and . . . shelter space . . . many cities have chosen to criminally or civilly punish people living on the street for doing what any human being must do to survive”); *id.* at Appendix A (listing laws criminalizing homelessness in the criminal codes of 187 U.S. cities).

<sup>6</sup> *Id.* at 11–14; Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. REV. 295, 301 (1991).

<sup>7</sup> Waldron, *supra* note 6, at 306, 310–11.

<sup>8</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, OPENING DOORS: FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 53–54 (2015) [hereinafter USICH, OPENING DOORS] (noting “[c]riminalizing acts of survival is not a solution to homelessness and results in unnecessary public costs for police, courts, and jails”); *see* CENT. FLA. COMM’N ON HOMELESSNESS, THE COST OF LONG-TERM HOMELESSNESS IN CENTRAL FLORIDA 1, 5, 8 (2014) [hereinafter CENT. FLA. COMM’N ON HOMELESSNESS], <https://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf> [<https://perma.cc/AY6B-S9KY>] (arguing that reducing the population of chronic homelessness would save taxpayer dollars spent on criminalization).

federal laws and policies that address laws criminalizing homelessness. Moreover, it explores how advocacy initially focused on negative state obligations provided an entry point for asserting a more robust understanding of rights with affirmative dimensions. This analysis documents original work led by pioneering advocates and the National Homelessness Law Center (Law Center), where one of the authors serves as Legal Director,<sup>9</sup> reflecting on lessons learned and next steps to make the right to housing a legal obligation. Although the United States maintains a complex relationship with international law, this Article argues that international human rights advocacy can serve as a potentially powerful tool for effecting change and strengthening domestic laws and policies. The international human rights framework provides a rich source for normative development, as well as practical tools to exert political pressure and facilitate coalition-building and mobilization.

This Article is divided into four Parts. Part I discusses the criminalization of homelessness in the United States and provides an analysis of the relevant international human rights standards and interpretations. Part II addresses the United States' relationship with international human rights law, including challenges and opportunities for advocacy. Part III then delves into a case study using advocacy with United Nations' (U.N.) human rights bodies as a lever to strengthen federal laws and policies challenging the criminalization of homelessness. We also reflect on lessons learned from this case study. Finally, Part IV examines opportunities to translate federal gains to the state and local levels and recognize a holistic right to adequate housing.

## I. CRIMINALIZATION OF HOMELESSNESS AND INTERNATIONAL HUMAN RIGHTS STANDARDS

The criminalization of homelessness is a major human rights crisis in the United States, violating the rights of individuals and plaguing municipalities with serious costs—both human and economic. Given the broad array of laws criminalizing homelessness across the country and the violation of fundamental rights this entails, advocates sought to approach this issue from a human rights perspective. This Part provides

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<sup>9</sup> Eric Tars has been profiled for this work by the American Bar Association. See, e.g., Mathew Mecoli, *Human Rights Heroes: Maria Foscarinis, Eric Tars and the National Law Center on Homelessness & Poverty*, A.B.A. HUMAN RTS. MAG. (Nov. 30, 2019), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/economic-justice/human-rights-heroes--maria-foscarinis--eric-tars-and-the-nationa](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/human-rights-heroes--maria-foscarinis--eric-tars-and-the-nationa) [<https://perma.cc/FY2Y-B76H>].

an overview of criminalization of homelessness in the United States, laying out the various problems with these policies, as well as the reasons for their enactment, despite their flaws. This Part further introduces readers to the extensive network of human rights treaties and organizations within the U.N. system, providing a rich source of norms and tools for advocates to use in addressing the criminalization of homelessness.

### A. *Criminalization of Homelessness*

The sheer number of individuals experiencing homelessness in the United States is staggering. The official government study looking into the scope of the problem, the U.S. Department of Housing and Urban Development's (HUD) annual point-in-time (PIT) estimate, determined that roughly 553,000 individuals experienced homelessness on any given night in 2018.<sup>10</sup> However, even HUD acknowledges that this number is an undercount, and non-governmental organizations (NGOs) critique its calculation method for greatly underestimating the number of people experiencing homelessness.<sup>11</sup> One 2001 study, looking at the administrative data from a number of homeless services organizations, found that the actual number of individuals experiencing homelessness might be 2.5–10.2 times greater than the PIT count.<sup>12</sup>

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<sup>10</sup> U.S. DEPT. OF HOUSING & URB. DEV., THE 2018 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 1 (2018), <https://files.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf> [<https://perma.cc/H4VQ-JMVP>].

<sup>11</sup> See NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, DON'T COUNT ON IT: HOW THE HUD POINT-IN-TIME COUNT UNDERESTIMATES THE HOMELESSNESS CRISIS IN AMERICA 1, 6 (2017), <https://nlchp.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf> [<https://perma.cc/9SN7-3CJC>]; HUD's *Inaccurate Count Affects Funding for Homeless Families and Our Youth*, SOLUTIONS FOR CHANGE (Mar. 13, 2018), <https://solutionsforchange.org/news-events/newsroom.html/article/2018/03/12/hud-s-inaccurate-count-affects-funding-for-homeless-families-and-our-youth> [<https://perma.cc/YZ7V-NLHY>]; *The Pitfalls of HUD's Point-in-Time Count*, SCHOOLHOUSE CONNECTION (Jan. 7, 2020), <https://www.schoolhouseconnection.org/the-pitfalls-of-huds-point-in-time-count> [<https://perma.cc/2CLF-5TKG>]; see also NAT'L CTR. FOR HOMELESS EDUC., FEDERAL DATA SUMMARY SCHOOL YEARS 2014–15 TO 2016–17 (2019), <https://nche.ed.gov/wp-content/uploads/2019/02/Federal-Data-Summary-SY-14.15-to-16.17-Final-Published-2.12.19.pdf> [<https://perma.cc/DPR7-VDF2>] (discussing data reported annually by states to the Department of Education, finding that in the 2016–2017 school year, 1.36 million students experienced homelessness—a number that is substantially larger than HUD's PIT count for that same year and only focusing on one segment of the total population of individuals experiencing homelessness).

<sup>12</sup> Stephen Metraux, Dennis Culhane, Stacy Raphael, Matthew White, Carol Pearson, Eric Hirsch, Patricia Ferrell, Steve Rice, Barbara Ritter, & J. Stephen Cleghorn, *Assessing Homeless Population Size Through the Use of Emergency and Transitional Shelter Services in 1998: Results*

Critics point to the fact that HUD's PIT estimate only looks at individuals experiencing homelessness in shelters and sight-counts of unsheltered individuals on a given night; this methodology ignores individuals who are not visible during the night of the count, individuals who are temporarily doubled up with friends or family, as well as individuals temporarily housed in institutions, such as hospitals or jails.<sup>13</sup>

HUD's faulty methodology expresses a policy outcome that it, consciously or not, shares with many of the United States' policies on homelessness: rather than aiming to solve the problem of homelessness, it aims to make the problem invisible. This attitude towards homelessness is evident at the state and local levels, where governments, in a misguided attempt to eradicate homelessness, criminalize life-sustaining activities that people experiencing homelessness must engage in to stay alive.<sup>14</sup> A 2019 survey of 187 American cities conducted by the Law Center found that 55% of cities surveyed have enacted one or more laws that prohibit sitting and/or lying down in public; 72% have one or more laws prohibiting camping in public places; and 60% have one or more laws that prohibit public loitering, loafing, and vagrancy.<sup>15</sup> These laws encompass a fraction of the numerous laws enacted by municipalities targeting homelessness.

Enforcement of these laws makes it difficult, if not impossible, for people experiencing homelessness to legally exist. For example, Jacob, a youth experiencing homelessness in Salt Lake City, Utah, explained the impossible dilemma that such laws impose on him for simply trying to sleep: "I could sleep on the sidewalk and get a ticket, I could sleep over there and get a ticket, you know, no matter where I go, I get a ticket."<sup>16</sup> While enforcement of these laws varies from municipality to municipality, enforcement frequently takes on cruel and inhumane dimensions as Beau, a man experiencing homelessness in Venice Beach, California, described: "Sometimes [the police] give us a 60-gallon bag

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from the *Analysis of Administrative Data from Nine US Jurisdictions*, 116 PUB. HEALTH REPS. 344, 350 (2001).

<sup>13</sup> *Id.* at 345.

<sup>14</sup> *Criminalization*, NAT'L COAL. FOR THE HOMELESS, <https://nationalhomeless.org/issues/civil-rights> [<https://perma.cc/3WQ3-UMD9>]; see also Waldron, *supra* note 6, at 306 (discussing criminalization as a way of restraining homeless individuals with a kind of negative freedom that restricts their right to exist at all: "[w]hat stands in their way is simply what stands in the way of anyone who is negatively unfree: the likelihood that someone else will forcibly prevent their action").

<sup>15</sup> LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 13, 38.

<sup>16</sup> *Homeless Youth Aged Out of Foster Care*, INVISIBLE PEOPLE, <https://invisiblepeople.tv/videos/jacob-homeless-youth-foster-care-salt-lake-city> [<https://perma.cc/AAJ2-QJSJ>].



and say that's all the property we're allowed to have . . . and then they just throw [the rest] of our stuff away."<sup>17</sup> On the other side of the country, Jackie, a woman who experienced homelessness in Columbia, South Carolina, related: "[The police in Columbia] were criminalizing the homeless. Rounding them up and putting them in white minivans . . ."<sup>18</sup> By enforcing these laws, municipalities fail to respect the rights of people experiencing homelessness within their jurisdiction to exist and have property.

Homelessness, and its criminalization, disparately affect other historically marginalized populations, including people of color, people with disabilities, and lesbian, gay, bisexual, transgender, queer, and other gender-non-conforming (LGBTQ+) populations.<sup>19</sup> These populations are at particular risk of experiencing homelessness as a result of policies and prejudices that disproportionately impact their housing security, as well as their ability to obtain alternative housing should they be evicted.<sup>20</sup> Black people make up 40% of the homeless population, far exceeding their 13% share of the general population, and Latinx, Native American, and Pacific Islander populations are also disproportionately represented.<sup>21</sup> Similarly, 40% of youths experiencing homelessness identify as LGBTQ+.<sup>22</sup> Because these populations are already disproportionately targeted by police, those experiencing homelessness and, consequently, living their entire lives exposed to public scrutiny and enforcement of laws designed to keep less popular

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<sup>17</sup> *Beau and His Wife Are Homeless in Venice Beach, California*, INVISIBLE PEOPLE, <https://invisiblepeople.tv/videos/venice-beach-homeless-man-shares-about-police-sweeps-in-los-angeles> [<https://perma.cc/R8VU-C3X9>].

<sup>18</sup> *Homeless Woman Is Making Her Own Home*, INVISIBLE PEOPLE, <https://invisiblepeople.tv/videos/jackie-homeless-woman-washington-dc> [<https://perma.cc/Z3JW-MF4B>].

<sup>19</sup> See LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 15, 32–33; Kaya Lurie, Breanne Schuster, & Sara Rankin, *Discrimination at the Margins: The Intersectionality of Homelessness & Other Marginalized Groups*, HOMELESS RTS. ADVOC. PROJECT (2015).

<sup>20</sup> See generally MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016) (discussing the racist and homophobic prejudices that often lead to evictions and which, in turn, make it difficult for affected populations to apply for alternate housing).

<sup>21</sup> For an excellent discussion of racial discrimination and its effects on rates of homelessness, see JEFFREY OLIVET, MARC DONES, MOLLY RICHARD, CATRIONA WILKEY, SVETLANA YAMPOLSKAYA, MAYA BEIT-ARIE, & LUNISE JOSEPH, CTR. SOC. INNOVATION, SUPPORTING PARTNERSHIPS FOR ANTI-RACIST COMMUNITIES: PHASE ONE STUDY FINDINGS 1, 6 (2018), <https://center4si.com/wp-content/uploads/2016/08/SPARC-Phase-1-Findings-March-2018.pdf> [<https://perma.cc/E6LG-DZY7>].

<sup>22</sup> Jaimie Seaton, *Homeless Rates for LGBT Teens Are Alarming, but Parents Can Make a Difference*, WASH. POST (Mar. 29, 2017, 9:00 AM), <https://www.washingtonpost.com/news/parenting/wp/2017/03/29/homeless-rates-for-lgbt-teens-are-alarming-heres-how-parents-can-change-that> [<https://perma.cc/3RKX-99CM>].

groups out of sight, must contend with intersecting discrimination.<sup>23</sup> Indeed, today's laws criminalizing homelessness are, in many cases, directly connected to historical Jim Crow "sundown town," anti-Okie, or "ugly" laws establishing who is entitled to exist in public space.<sup>24</sup>

These laws are not just needlessly cruel but are also ineffective and economically inefficient when compared with guaranteeing the right to adequate housing to individuals experiencing homelessness. One study conducted by Creative Housing Solutions, on behalf of the Central Florida Commission on Homelessness, found that giving "housing [to] just 50% of the current chronic homeless population in Central Florida over a multiyear period, with a 10% recidivism rate, would save the taxpayers a minimum of \$149,220,414," compared to the amount spent on pursuing criminalization policies.<sup>25</sup> Furthermore, the United States Interagency Council on Homelessness (USICH) contends that "criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back."<sup>26</sup>

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<sup>23</sup> An intersectional analysis developed within Black feminism to address multiple forms of discrimination experienced by Black women. Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139. Human rights bodies, such as the Committee on the Elimination of Discrimination against Women, recognize the importance of taking an intersectional approach, noting that "discrimination against women is compounded by intersecting factors that affect some women to a different degree or in different ways than men and other women." Comm. on the Elimination of Discrimination against Women, *General Recommendation on Women's Access to Justice*, ¶ 8, U.N. Doc. CEDAW/C/GC/33 (July 23, 2015).

<sup>24</sup> Eric S. Tars, *Criminalization of Homelessness*, 6 NAT'L LOW INCOME HOUS. COAL. 34 (2019), [https://nlihc.org/sites/default/files/AG-2019/06-08\\_Criminalization-of-Homelessness.pdf](https://nlihc.org/sites/default/files/AG-2019/06-08_Criminalization-of-Homelessness.pdf) [<https://perma.cc/66JZ-22MJ>]; LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 13.

<sup>25</sup> CENT. FLA. COMM'N ON HOMELESSNESS, *supra* note 8, at 8; *see also* JOSEPH COOTER, ERICKA MEANOR, EMILY SOLI, & JEFFREY SELBIN, BERKELEY L. POL'Y ADVOC. CLINIC, DOES SIT-LIE WORK: WILL BERKELEY'S "MEASURE S" INCREASE ECONOMIC ACTIVITY AND IMPROVE SERVICES TO HOMELESS PEOPLE? (2012), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2165490](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2165490) [<https://perma.cc/Z5PZ-U3AL>] (finding "that while economic costs [of a law criminalizing sitting or lying on Berkeley sidewalks] may be substantial, economic benefits are uncertain and perhaps illusory"); Emily Alpert Reyes, *L.A. Agrees to Pay Nearly \$950,000 in Two Cases Involving the Homeless*, L.A. TIMES (June 14, 2016, 11:08 AM), <http://www.latimes.com/local/lanow/la-me-ln-attorney-fees-homeless-case-20160613-snap-story.html> [<https://perma.cc/HF5V-KKFR>] (discussing the high expense associated with litigating challenges against enforcement of L.A. laws criminalizing homelessness).

<sup>26</sup> USICH, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 1, 6 (2012), <https://www.usich.gov/tools-for-action/searching-out-solutions> [<https://perma.cc/9TFG-MV9Z>] [hereinafter SEARCHING OUT SOLUTIONS].

Despite these costs, municipalities enact laws criminalizing homelessness because these laws are a politically convenient response to complaints by property owners about the presence of nearby individuals experiencing homelessness.<sup>27</sup> Criminalization policies allow municipal governments to effect immediate “action” in moving visible homelessness, while simultaneously hiding the associated costs from taxpayers in jail, court, and law enforcement budgets.<sup>28</sup> By contrast, enactment of policies that target the root causes of homelessness, e.g., the lack of adequate housing in metropolitan areas, is slower and more complicated to put into place, requiring challenging negotiations with powerful political groups, such as real estate developers, businessowners, and homeowners.<sup>29</sup> Furthermore, such policies often require governments to engage in visible tax expenditures, community outreach, services, and funding for adequate housing that might come with additional political consequences. Although, in the long run, policies that work towards guaranteeing a universal right to adequate housing would be more effective than policies that criminalize homelessness, local politicians have pursued criminalization policies that simply ensure that homelessness will be less visible—costing both that jurisdiction’s taxpayers and its constituents experiencing homelessness.<sup>30</sup>

### B. *International Human Rights Standards Addressing Criminalization of Homelessness*

Legislation criminalizing homelessness in the United States violates important human rights protected under international law.

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<sup>27</sup> See LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 11–14 (discussing the steady increase in laws criminalizing homelessness since 2006).

<sup>28</sup> See COURTE C.W. VOORHEES, SCOTT R. BROWN, & DOUGLAS D. PERKINS, VAND. UNIV. CTR. CMTY. STUD., THE HIDDEN COSTS OF HOMELESSNESS IN NASHVILLE: A REPORT TO THE NASHVILLE METRO HOMELESSNESS COMMISSION 2–3 (2011), <https://my.vanderbilt.edu/perkins/files/2011/09/Costs-of-Homelessness.Final-Report.doc> [<https://perma.cc/W7K4-NKFY>] (finding the total cost associated with homelessness in the city of Nashville over a year was “\$7,537 per average homeless person in our sample and \$10,624 for the average chronic homeless person in the sample”; costs that were less than the estimated costs of providing permanent housing at \$5,907–7,618 per person. The authors note that many of the costs of current policies include expenditures for jail, police, and court costs, which are born by Nashville taxpayers. Many of costs associated with current homelessness policy are so hidden that the authors note that their estimate likely underestimate the total cost of homelessness.).

<sup>29</sup> Maria Foscarinis, *Downward Spiral: Homelessness and Its Criminalization*, 14 YALE L. & POL’Y REV. 1, 53–54 (1996).

<sup>30</sup> LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 63–67.

Several key U.N. instruments make up this body of law, including the UDHR,<sup>31</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>32</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>33</sup> the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>34</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>35</sup> the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>36</sup> the Convention on the Rights of Persons with Disabilities (CRPD),<sup>37</sup> and the Convention on the Rights of the Child (CRC).<sup>38</sup> These instruments, together with interpretations in the context of homelessness by the U.N. bodies that oversee their implementation, provide a well-developed set of human rights standards and norms. The United States has, to date, ratified the ICCPR, ICERD, CAT, and two Optional Protocols pertaining to the CRC, and is legally bound to implement them.<sup>39</sup> It has also signed the ICESCR, CRC, CEDAW, and CRPD,<sup>40</sup> which is the first step towards ratification. While the United States has no positive obligations to implement these treaties, it must refrain from actions that “would defeat” their “object” and “purpose.”<sup>41</sup>

The right to life broadly protects an individual’s right to live with dignity. As discussed above, laws criminally prohibiting people experiencing homelessness from public engagement in life-sustaining

<sup>31</sup> UDHR, *supra* note 4.

<sup>32</sup> See G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights (Dec. 16, 1966) [hereinafter ICCPR].

<sup>33</sup> G.A. Res. 2200 (XXI) A, International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966) [hereinafter ICESCR].

<sup>34</sup> G.A. Res. 39/46, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984) [hereinafter CAT].

<sup>35</sup> G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination (Dec. 21, 1965) [hereinafter ICERD].

<sup>36</sup> G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 18, 1979) [hereinafter CEDAW].

<sup>37</sup> G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities (Dec. 13, 2006) [hereinafter CRPD].

<sup>38</sup> G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989) [hereinafter CRC].

<sup>39</sup> *Ratification Status for United States of America*, U.N. HUMAN RIGHTS OFF. OF THE HIGH COMM’R, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN) [https://perma.cc/B4K8-6FTX] [hereinafter OHCHR].

<sup>40</sup> *Id.*

<sup>41</sup> RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 (AM. LAW INST. 2018); *What Is the Difference Between Signing, Ratification and Accession of UN Treaties?*, DAG HAMMARSKJÖLD LIBR. [hereinafter DAG HAMMARSKJÖLD LIBR.], <https://ask.un.org/faq/14594> [https://perma.cc/KCJ3-F4DV].

conduct effectively negate those persons' inherent right to exist.<sup>42</sup> This right to exist, also known as the right to life, is enshrined in Article 3 of the UDHR<sup>43</sup> and Article 6 of the ICCPR.<sup>44</sup> The CPRD and CRC also provide for a right to life in the context of persons with disabilities<sup>45</sup> and children.<sup>46</sup> According to the Human Rights Committee (HRC), the U.N. treaty body responsible for overseeing the ICCPR, the right to life requires States to affirmatively address "general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity."<sup>47</sup> As such, member states are not only obliged to protect citizens against violations of their right to life, but must also "ensure access . . . to essential goods and services . . . and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective . . . social housing programs."<sup>48</sup> The U.N. 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 (Special Rapporteur on Adequate Housing) linked the right to life and the right to adequate housing in her 2019 report: "When courts approve evictions without ensuring alternative accommodation or fail to provide remedies for violations of the right to life caused by homelessness, they violate international human rights and the rule of law and, in so doing, place the State in non-compliance with its international human rights obligations."<sup>49</sup>

Policies criminalizing homelessness further violate the right to freedom from cruel, inhuman, and degrading treatment (CIDT), as they harshly punish people experiencing homelessness for uncontrollable circumstances and life-sustaining conduct. The UDHR, ICCPR, and

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<sup>42</sup> Waldron, *supra* note 6, at 295–300.

<sup>43</sup> UDHR, *supra* note 4, at art. 3 ("Everyone has the right to life, liberty and security of person.")

<sup>44</sup> ICCPR, *supra* note 32, at art. 6(1) ("Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.")

<sup>45</sup> CPRD, *supra* note 37, at art. 10 ("States Parties reaffirm that every human being has the inherent right to life . . .")

<sup>46</sup> CRC, *supra* note 38, at art. 6(1) ("States Parties recognize that every child has the inherent right to life.")

<sup>47</sup> Hum. Rts. Comm., *CCPR General Comment No. 36: Art. 6 (Right to Life)*, ¶ 26, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019) [hereinafter *CCPR General Comment 36*].

<sup>48</sup> *Id.*

<sup>49</sup> Hum. Rts. Council, *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, Access to Justice for the Right to Housing*, ¶ 19, U.N. Doc. A/HRC/40/61 (Jan. 15, 2019) [hereinafter *Special Rapporteur on Adequate Housing*].

CAT set out the right to freedom from CIDT,<sup>50</sup> and the HRC explains that this provision applies not only to “acts that cause physical pain but also to acts that cause mental suffering to the victim.”<sup>51</sup> Punishing individuals for engaging in life-sustaining activity when they have no alternative available to them is CIDT, a point that the HRC made explicitly in its Concluding Observations on the fourth periodic review of the United States in 2014.<sup>52</sup>

Furthermore, the criminalization of homelessness violates the rights to freedom of movement and assembly of a person experiencing homelessness. Freedom of movement, which protects people’s right to move within state borders, was first set out in Article 13 of the UDHR<sup>53</sup> and subsequently protected under the ICCPR,<sup>54</sup> ICERD,<sup>55</sup> and CEDAW.<sup>56</sup> The HRC clarifies that this right protects “against all forms of forced internal displacement,” a protection municipalities enforcing criminalization polices routinely violate by forcing people experiencing homelessness to frequently relocate within a jurisdiction.<sup>57</sup> This displacement, moreover, violates the right to assembly, established in Article 20 of the UDHR<sup>58</sup> and further codified into law under the

<sup>50</sup> CAT, *supra* note 34, at art. 16(1) (“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment . . .”); UDHR, *supra* note 4, at art. 5 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); ICCPR, *supra* note 32, at art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”).

<sup>51</sup> Hum. Rts. Comm., *CCPR General Comment No. 20: Art. 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 10, 1992) [hereinafter *CCPR General Comment 20*].

<sup>52</sup> Hum. Rts. Comm., *Concluding Observations on the Fourth Report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014) (“The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman or degrading treatment.”).

<sup>53</sup> UDHR, *supra* note 4, at art. 13 (“Everyone has the right to freedom of movement and residence within the borders of each State.”).

<sup>54</sup> ICCPR, *supra* note 32, at art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”).

<sup>55</sup> ICERD, *supra* note 35, at art. 5(d)(i) (“The right to freedom of movement and residence within the border of the State.”).

<sup>56</sup> CEDAW, *supra* note 36, at art. 15 (“States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.”).

<sup>57</sup> Hum. Rts. Comm., *CCPR General Comment No. 27: Art. 12 (Freedom of Movement)*, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (Nov. 2, 1999).

<sup>58</sup> UDHR, *supra* note 4, at art. 20 (“Everyone has the right to freedom of peaceful assembly and association.”).

ICCPR<sup>59</sup> and ICERD.<sup>60</sup> Municipalities that criminalize homelessness violate this right, which allows people to peacefully assemble in public, by forcing people experiencing homelessness to disperse from public spaces that they are peacefully occupying. The U.N. Special Rapporteur on the Rights to Freedom of Assembly and Association, Maina Kiai, noted after his 2016 mission to the United States that “[m]arginalized groups such as . . . homeless often suffer disproportionately from intimidation practices.”<sup>61</sup> He further recommended that the United States “[a]bandon the ‘broken windows’ policing tactics that encourage racial discrimination and the systematic harassment of African Americans and other marginalized communities.”<sup>62</sup>

Additionally, the criminalization of homelessness in the United States violates the human rights to security of person and freedom from arbitrary arrest or detention. The ICCPR protects both of these rights in Article 9,<sup>63</sup> thus echoing Article 3 of the UDHR.<sup>64</sup> The ICERD also protects these rights, specifying that they apply whether violated by “government officials or by any individual group or institution.”<sup>65</sup> The HRC interprets the right to security of person as, “protect[ing] individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained.”<sup>66</sup> Thus, similar to the right to the freedom from CIDT, the criminalization of homelessness violates the right to security of person by imposing significant physical and psychological burdens on people experiencing

<sup>59</sup> ICCPR, *supra* note 32, at art. 21 (“The right of peaceful assembly shall be recognized.”).

<sup>60</sup> ICERD, *supra* note 35, at art. 5(d)(ix) (“The right to freedom of peaceful assembly and association.”).

<sup>61</sup> *Statement by the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of His Visit to the United States of America*, FORMER UN SPECIAL RAPPORTEUR (July 27, 2016), <http://freeassembly.net/news/usa-statement> [<https://perma.cc/DD5Q-56NK>].

<sup>62</sup> Hum. Rts. Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association on His Follow-Up Mission to the United States of America*, ¶ 86(k), U.N. Doc. A/HRC/35/28/Add.2 (June 12, 2017).

<sup>63</sup> ICCPR, *supra* note 32, at art. 9 (“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.”).

<sup>64</sup> UDHR, *supra* note 4, at art. 3 (“Everyone has the right to . . . security of person.”); *see also* Hum. Rts. Comm., *CCPR General Comment No. 35: Art. 9 (Liberty and Security of Person)*, ¶ 2, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014) [hereinafter *CCPR General Comment 35*] (The HRC notes that the prominent placement of these rights within the UDHR “indicates the profound importance of article 9 of the Covenant both for individuals and for society as a whole.”).

<sup>65</sup> ICERD, *supra* note 35, at art. 5(b) (“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.”).

<sup>66</sup> *CCPR General Comment 35*, *supra* note 64, ¶ 9.

homelessness, particularly during arrest. The HRC further clarifies that the word “arbitrary” in the right to freedom from arbitrary arrest or detention 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, as well as elements of reasonableness, necessity and proportionality.”<sup>67</sup> Under this interpretation, arrests for offenses targeting the status of homelessness, such as sleeping or loitering in public, violate this right. Such arrests are fundamentally unjust and disproportionate with the supposed “crimes” of engaging in life-sustaining conduct.

Finally, laws criminalizing homelessness violate the right to free expression. This right is broadly protected under the ICCPR in Article 19,<sup>68</sup> expanding upon the UDHR’s original formulation.<sup>69</sup> This right is also provided in the ICERD,<sup>70</sup> protecting expression in the context of racial discrimination; in the CRC,<sup>71</sup> protecting the rights of children to express themselves freely; and in the CPRD,<sup>72</sup> protecting expression for persons with disabilities. The HRC characterizes this right as foundational: “Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”<sup>73</sup> The HRC further interprets “expression” to include any “expression [or] receipt of communications of every form of idea and opinion capable of transmission to others.”<sup>74</sup> Following HRC’s definition, then,

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<sup>67</sup> *Id.* ¶ 12.

<sup>68</sup> ICCPR, *supra* note 32, at art. 19 (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”).

<sup>69</sup> UDHR, *supra* note 4, at art. 19 (“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”).

<sup>70</sup> ICERD, *supra* note 35, at art. 5 (“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following . . . [p]olitical rights . . . [including] [t]he right to freedom of opinion and expression . . .”).

<sup>71</sup> CRC, *supra* note 38, at art. 12(1) (“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”).

<sup>72</sup> CRPD, *supra* note 37, at art. 21 (“States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion.”).

<sup>73</sup> Hum. Rts. Comm., *CCPR General Comment No. 34: Art. 19 (Freedom of Opinion and Expression)*, ¶ 3, CCPR/C/GC/34 (Sept. 12, 2011).

<sup>74</sup> *Id.* ¶ 11.



laws that criminalize begging or panhandling violate this right by effectively censoring the speech of people experiencing homelessness.

These various violations stem from the United States' refusal to guarantee its citizens a universal right to adequate housing. That is, if governments invested in adequately housing unsheltered people, there would be no homelessness or the push to criminalize it.<sup>75</sup> This right to adequate housing, first articulated in Article 25 of the UDHR<sup>76</sup> and developed further in the ICESCR, is a critical component of the "right to an adequate standard of living."<sup>77</sup> Four other treaties guarantee the right to adequate housing in the context of protecting the rights of particular marginalized groups: (1) the ICERD guarantees the right to adequate housing in the context of maintaining racial "equality before the law";<sup>78</sup> (2) CEDAW guarantees the right to adequate housing for all women;<sup>79</sup> (3) the CRPD guarantees the right to adequate housing for persons with disabilities;<sup>80</sup> and (4) the CRC maintains that State Parties will provide "material assistance" for children in need of adequate housing.<sup>81</sup>

<sup>75</sup> See LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 85–91.

<sup>76</sup> UDHR, *supra* note 4, at art. 25 ("Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing . . .").

<sup>77</sup> ICESCR, *supra* note 33, at art. 11(1) ("The States Parties to the present Covenant recognize 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."); see also Comm. on Econ., Soc., & Cultural Rts., *CESCR General Comment No. 4 (Right to Adequate Housing)*, ¶ 3, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter *CESCR, General Comment 4, Right to Adequate Housing*] (noting that CESCR, the main treaty body responsible with providing official interpretations on ICESCR, held that "[a]lthough a wide variety of international instruments address the different dimensions of the right to adequate housing article 11 (1) of [ICESCR] is the most comprehensive and perhaps the most important of the relevant provisions").

<sup>78</sup> ICERD, *supra* note 35, at art. 5 ("States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following . . . [e]conomic, social and cultural rights . . . [including] [t]he right to housing . . .").

<sup>79</sup> CEDAW, *supra* note 36, at art. 14(2)(h) ("State Parties shall . . . ensure to such women the right . . . [t]o enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.").

<sup>80</sup> CRPD, *supra* note 37, at art. 28(1) ("States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing . . .").

<sup>81</sup> CRC, *supra* note 38, at art. 27(3) ("States Parties . . . shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.").

Like the other rights discussed above, the right to adequate housing is not a narrow right satisfied by simply providing people experiencing homelessness with any form of shelter. On the contrary, the Committee on Economic, Social and Cultural Rights (CESCR), the treaty body responsible for overseeing the ICESCR, interprets the right to adequate housing as a holistic right that includes security of tenure; availability of services, materials, and infrastructure; affordability; accessibility; habitability; location; and cultural adequacy.<sup>82</sup> This interpretation implies that member states have a duty to provide adequate, sustainable, and well-located housing to all its citizens and to intervene in housing markets that do not provide such housing for its low-income citizens.

## II. THE UNITED STATES' RELATIONSHIP WITH INTERNATIONAL HUMAN RIGHTS: CHALLENGES AND OPPORTUNITIES

While the rights discussed in Part I should either prevent or severely limit United States governments from implementing legislation that criminally punishes individuals experiencing homelessness, reality is not so simple. The United States has represented itself as a champion of international human rights law abroad, but, domestically, it has struggled to fully adopt many of the rights and treaties that it helped develop.<sup>83</sup> This Part discusses the United States' relationship with the U.N. human rights system. It addresses the obstacles imposed by ratification with certain limitations or outright failure to ratify human rights treaties, as well as opportunities for advocates to, nevertheless, push the United States to meet human rights standards.

The United States considers its leadership in international law and human rights a core component of its identity.<sup>84</sup> Indeed, the

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<sup>82</sup> See CESCR, *General Comment 4, Right to Adequate Housing*, *supra* note 77, ¶ 8.

<sup>83</sup> Amy C. Harfeld, *Oh Righteous Delinquent One: The United States' International Human Rights Double Standard—Explanation, Example, and Avenues for Change*, 4 CUNY L. REV. 59, 62 (2001) (“While quick to condemn human rights violations abroad, the U.S. cannot brag about its own human rights record. Currently, we stand as the only major world power who has failed to fully ratify or adhere to any of the significant human rights instruments introduced by the U.N. or other human rights bodies.”).

<sup>84</sup> See, e.g., COMM'N ON UNALIENABLE RTS., REPORT OF THE COMMISSION ON UNALIENABLE RIGHTS 8 (2020) [hereinafter COMM'N ON UNALIENABLE RTS.], <https://www.state.gov/wp-content/uploads/2020/07/Draft-Report-of-the-Commission-on-Unalienable-Rights.pdf> [<https://perma.cc/B9RB-BRAS>] (noting, in a document authored by the Trump Administration, that this commitment to human rights is so fundamental to American identity that “much of American history can be understood as a struggle to deliver on the nation’s founding promise by

Constitution considers international treaties as “the supreme Law of the Land,” on par with the Constitution itself.<sup>85</sup> Moreover, as a lead player in drafting the UDHR and a major proponent of the U.N. human rights system,<sup>86</sup> the United States considers itself a leader in the normative development of human rights around the world. While the UDHR is a declaration—like the Declaration of Independence—and not a legally binding treaty that countries can ratify, it possesses an important normative force.<sup>87</sup> The UDHR is generally considered a yardstick for determining compliance with human rights, and States that fall short of the UDHR’s standards risk condemnation on the world stage.<sup>88</sup> The UDHR has persuasive value in the United States and has been cited in several federal court cases.<sup>89</sup> Politicians also frequently cite to the UDHR, and even the Trump administration, which has had a particularly antagonistic relationship with international human rights institutions,<sup>90</sup> references the UDHR with respect.<sup>91</sup>

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ensuring that what came to be called human rights were enjoyed by all persons who lived under the laws of the land”).

<sup>85</sup> U.S. CONST. art. VI, cl. 2; see also David M. Golove & Daniel J. Hulsebosch, *A Civilized Nation: The Early American Constitution, the Law of Nations, and the Pursuit of International Recognition*, 85 N.Y.U. L. REV. 932, 932 (2010) (arguing that the Founders’ animating purpose in drafting the Constitution was to achieve international recognition for the United States through its commitment to treaties and demonstration of international norms).

<sup>86</sup> *History of the Document: Universal Declaration of Human Rights*, U.N., <https://www.un.org/en/about-us/udhr/history-of-the-declaration> [<https://perma.cc/PW8V-74AH>] (discussing the United States’ role in the UDHR, including the fact that Eleanor Roosevelt, widow of American President Franklin Delano Roosevelt, chaired the UDHR’s drafting committee and is considered by most historians to be a driving force behind its adoption).

<sup>87</sup> Harfeld, *supra* note 83, at 67. But see Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT’L & COMP. L. 287, 290 (1996) (arguing that the UDHR is binding as customary international law).

<sup>88</sup> Chandler Green, *70 Years of Impact: Insights on the Universal Declaration of Human Rights*, U.N. FOUND. (Dec. 5, 2018), <https://unfoundation.org/blog/post/70-years-of-impact-insights-on-the-universal-declaration-of-human-rights> [<https://perma.cc/Q8F5-99EV>].

<sup>89</sup> See, e.g., *Hilao v. Estate of Marcos*, 103 F.3d 789, 794 (9th Cir. 1996); *Perkovic v. I.N.S.*, 33 F.3d 615, 622 (6th Cir. 1994); *Wong v. Ilchert*, 998 F.2d 661, 663 (9th Cir. 1993); *Cerrillo-Perez v. I.N.S.*, 809 F.2d 1419, 1423 (9th Cir. 1987); *Filartiga v. Pena-Irala*, 630 F.2d 876, 882 (2d Cir. 1980).

<sup>90</sup> E.g., Susan Hannah Allen & Martin S. Edwards, *The U.S. Withdrew from the U.N. Human Rights Council. That’s Not How the Council Was Supposed to Work*, WASH. POST (Jun. 26, 2018, 5:00 AM), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/06/26/the-u-s-withdrew-from-the-u-n-human-rights-council-thats-not-how-the-council-was-supposed-to-work> [<https://perma.cc/D837-944U>] (discussing the Trump administration’s withdrawal of the United States from the HRC in 2018).

<sup>91</sup> See Katherine M. Marino, *How Mike Pompeo’s New Commission on ‘Unalienable Rights’ Butchers History*, WASH. POST (Aug. 15, 2019, 6:00 AM), <https://www.washingtonpost.com/outlook/2019/08/15/how-mike-pompeos-new-commission-unalienable-rights-butchers-history> [<https://perma.cc/24W2-8DH3>]; COMM’N ON UNALIENABLE RTS., *supra* note 84, at 29–33

Moreover, the United States has made binding commitments to international human rights law by ratifying several of the major U.N. treaties discussed in Part I, including the ICCPR, ICERD, CAT, and two Optional Protocols pertaining to the CRC.<sup>92</sup> The United States has, generally, been amenable to ratifying treaties that focus on civil and political rights, i.e., rights that generally protect an individual's freedom from governmental infringement and relate to participation in public life, such as those contained in the ICCPR.<sup>93</sup> These rights include many of the rights violated by policies criminalizing homelessness, such as the rights to life, freedom from CIDT, freedom of movement, freedom of assembly, security of person, and freedom from arbitrary arrest and detention. By contrast, the United States has tended to shy away from treaties that protect social and economic rights, i.e., rights that give people access to the basic necessities of human existence, such as the ICESCR's right to adequate housing.<sup>94</sup> This may partially be due to the misconception that protecting civil and political rights is cost-free, while social and economic rights are expensive.<sup>95</sup> However, at the very least, enforcement of civil and political rights requires investment in a justice system.<sup>96</sup> Moreover, ensuring social and economic rights may be more cost-effective in the long term by targeting the root causes of social problems, such as the lack of adequate housing in major urban

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(noting, in a document authored by the Trump administration, that “the UDHR belongs to the same modern tradition of freedom as does the Declaration of Independence, the U.S. Constitution, and the nation’s quest to honor its founding principles”).

<sup>92</sup> OHCHR, *supra* note 39.

<sup>93</sup> Many of the international human rights treaties the United States has ratified focus largely on civil and political rights. *See, e.g.*, International Covenant on Civil and Political Rights Ratification, United States, 1676 U.N.T.S. 543, 545 (June 8, 1992) [hereinafter Ratification of the ICCPR], <https://treaties.un.org/doc/Publication/UNTS/Volume%201676/v1676.pdf> [<https://perma.cc/97KL-W8MB>]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Ratification and Accession, United States, 1830 U.N.T.S. 320 (Oct. 21, 1994) [hereinafter Ratification of CAT], <https://treaties.un.org/doc/Publication/UNTS/Volume%201830/v1830.pdf> [<https://perma.cc/3UQH-C4PQ>].

<sup>94</sup> The United States has signed, but not ratified, the major international human rights treaty protecting social and economic rights, ICESCR. *See* ICESCR, *supra* note 33. The ICESCR was signed by the United States on October 5, 1977. *See International Covenant on Economic, Social and Cultural Rights*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en) [<https://perma.cc/J3LX-9JYQ>].

<sup>95</sup> Cass R. Sunstein, *Why Does the American Constitution Lack Social and Economic Guarantees?*, 56 SYRACUSE L. REV. 1, 6–8 (2005).

<sup>96</sup> *Id.*

areas, rather than the symptoms, such as the visibility of unsheltered people.<sup>97</sup>

Nonetheless, the social and economic rights contained in human rights treaties can still be useful in domestic advocacy. With respect to the right to adequate housing, the United States has some direct obligations under the ICERD “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin . . . in the enjoyment of the following . . . [e]conomic, social and cultural rights . . . [including] the right to housing.”<sup>98</sup> Furthermore, various civil and political rights may include aspects of social and economic rights. For example, as discussed in Part I, the HRC and Special Rapporteur on Adequate Housing have interpreted the civil and political right to life to entail a life with dignity, thus implying the social and economic right to adequate housing.<sup>99</sup> The U.N. Secretary General has also drawn a connection between the right to adequate housing and realization of civil and political rights, stating “[t]he right to adequate housing and other related rights must sit at the centre of an agenda for cities. Housing is a cornerstone right, indivisible from all other rights and fundamental to an approach that begins with the dignity, equality and security of the human person.”<sup>100</sup>

Moreover, while the United States has not ratified some of the core international human rights treaties, it has at least signed them, including the ICESCR, CEDAW, CRC, and CRPD.<sup>101</sup> While the United States need not take affirmative steps to comply with these treaty provisions, signing imposes an obligation “to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.”<sup>102</sup> Therefore, by passing laws that criminalize homelessness, the United States has, arguably, taken action to “defeat the object and the purpose”

<sup>97</sup> *Id.*; see, e.g., CENT. FLA. COMM’N ON HOMELESSNESS, *supra* note 8, at 8; VOORHEES ET AL., *supra* note 28, at 2 (both studies noting the substantial costs associated with criminalizing homelessness and noting the lesser cost of guaranteeing permanent housing).

<sup>98</sup> ICERD, *supra* note 35, at art. 5(e)(iii) (“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following . . . [e]conomic, social and cultural rights . . . [including] [t]he right to housing . . .”).

<sup>99</sup> See Special Rapporteur on Adequate Housing, *supra* note 49, ¶ 19; CCPR General Comment 20, *supra* note 51, ¶ 2 (As discussed in Part I, *supra*, both the HRC and Special Rapporteur on Adequate Housing have interpreted ICCPR’s civil and political right to life to imply an economic and cultural right to housing.).

<sup>100</sup> U.N. Secretary-General, *Adequate Housing as a Component of the Right to an Adequate Standard of Living*, ¶ 12, U.N. Doc. A/70/270 (Aug. 4, 2015).

<sup>101</sup> OHCHR, *supra* note 39.

<sup>102</sup> DAG HAMMARSKJÖLD LIBR., *supra* note 41.

of a right to adequate housing under the ICESCR, CEDAW, CRC, and CRPD.<sup>103</sup> Laws criminalizing sleeping in public places, for instance, violate security of tenure under the right to adequate housing, which explicitly prohibits forced evictions and “sweeps,” as well as habitability, as police destruction of personal property functioning as shelter unnecessarily exposes individuals experiencing homelessness to the elements.<sup>104</sup>

Another challenge in the use of human rights standards in advocacy is that even when the United States has ratified a treaty, it frequently only does so subject to several reservations, understandings, and declarations (RUDs) that may limit the domestic scope of a treaty’s obligations.<sup>105</sup> For many human rights treaties, including the ICCPR and ICERD, the United States has issued a general declaration that the treaties “are not self-executing”<sup>106</sup> or actionable in United State courts without subsequent implementing legislation.<sup>107</sup> In reporting to the HRC, the U.S. government explained that this declaration “did not limit the international obligations of the United States under the Covenant. Rather, it means that, as a matter of domestic law, the Covenant does not, by itself, create private rights directly enforceable in U.S. courts.”<sup>108</sup>

<sup>103</sup> Women, children, and disabled persons are all represented among populations of people experiencing homelessness. See generally *State of Homelessness: 2020 Edition*, NAT’L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report> [<https://perma.cc/CMJ9-W3LL>].

<sup>104</sup> CESCR, *General Comment 4, Right to Adequate Housing*, *supra* note 77, ¶ 8.

<sup>105</sup> See Harfeld, *supra* note 83, at 75 (“Each time the U.S. has crossed the threshold to ratification, it has done so only with numerous . . . RUDs . . . This practice has enraged and inflamed even long-time allies of the United States, who take their obligations under ratified treaties much more seriously.”).

<sup>106</sup> International Covenant on Civil and Political Rights Ratification, United States, 1676 U.N.T.S. 543, 545 (June 8, 1992), <https://treaties.un.org/doc/Publication/UNTS/Volume%201676/v1676.pdf> [<https://perma.cc/97KL-W8MB>] [hereinafter Ratification of the ICCPR]; see also International Covenant on the Elimination of All Forms of Racial Discrimination Ratification, United States, 1830 U.N.T.S. 284, 285 (Oct. 21, 1994), <https://treaties.un.org/doc/Publication/UNTS/Volume%201830/volume-1830-A-9464-English.pdf> [<https://perma.cc/SSY2-RD25>] (CERD is also non-self-executing: “The Senate’s advice and consent is subject to the following declaration: “That the United States declares that the provisions of the Convention are not self-executing.””).

<sup>107</sup> See Carlos Manuel Vázquez, *Treaties as Law of the Land: The Supremacy Clause and Judicial Enforcement of Treaties*, 122 HARV. L. REV. 599, 629–30 (2008). See generally *When Is a Treaty Self-Executing*, CORNELL L. SCH. LEGAL INFO. INST., <https://www.law.cornell.edu/constitution-conan/article-2/section-2/clause-2/when-is-a-treaty-self-executing> [<https://perma.cc/6BRG-RMSX>].

<sup>108</sup> Hum. Rts. Comm., *Initial Reports of States Due in 1993: United States of America*, ¶ 8, CCPR/C/81/Add.4 (Aug. 24, 1994), [http://www.bayefsky.com/reports/usa\\_ccpr\\_c\\_81\\_add.4\\_1994.php](http://www.bayefsky.com/reports/usa_ccpr_c_81_add.4_1994.php) [<https://perma.cc/PNA4-E3VU>].

This leaves open, however, the possibility of using the ICCPR in conjunction with domestic provisions in litigation,<sup>109</sup> and a few courts have in fact referred to the ICCPR as an aid in interpretation.<sup>110</sup>

Moreover, for both the ICCPR and CAT, the United States employs RUDs to further limit the customarily applied international definition of "cruel, inhuman or degrading treatment or punishment" to "only insofar as the term . . . means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."<sup>111</sup> This effectively curtails the definition of CIDT treatment to however the U.S. Supreme Court defines it, rather than the more expansive interpretations under international law.<sup>112</sup> Nonetheless, advocates suing in federal court have experienced some success by using international human rights instruments to influence domestic interpretation of "cruel and unusual punishments" by the U.S. Supreme Court.<sup>113</sup> For example, in *Roper v. Simmons*, a case considering whether a state's death penalty should be applicable to juvenile offenders, defendants and several amici briefs cited the CRC's ban on the juvenile death penalty as evidence that it was a form of cruel and unusual punishment.<sup>114</sup> Even though the United States had not yet ratified the CRC, the Court found this argument persuasive, though not definitive, in determining "'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be 'cruel and unusual.'"<sup>115</sup> The Court noted that the "overwhelming weight of international opinion" implicit in the CRC's ban provided "significant confirmation" for its ultimate determination that the death penalty for juvenile offenders was cruel and unusual under the Eighth Amendment.<sup>116</sup>

Even more recently, in *Graham v. Florida*, the Supreme Court again responded to international human rights arguments in its

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<sup>109</sup> *Id.* The U.S. government further explained that "the fundamental rights and freedoms protected by the Covenant are already guaranteed as a matter of U.S. law, either by virtue of constitutional protections or enacted statutes, and can be effectively asserted and enforced by individuals in the judicial system on those bases," seeming to indicate that constitutional protections and statutes should be interpreted as consistent with the ICCPR. *Id.*

<sup>110</sup> *E.g.*, *Roper v. Simmons*, 543 U.S. 551, 576 (2005); *Sterling v. Cupp*, 625 P.2d 123, 131 n.21 (Or. 1981).

<sup>111</sup> Ratification of the ICCPR, *supra* note 93; Ratification of CAT, *supra* note 93.

<sup>112</sup> CCPR General Comment 20, *supra* note 51.

<sup>113</sup> U.S. CONST. amend. VIII.

<sup>114</sup> *See Roper*, 543 U.S. at 576.

<sup>115</sup> *Id.* at 551 (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958)).

<sup>116</sup> *Id.* at 554.

interpretation of the Eighth Amendment. In *Graham*, the Court considered whether the Eighth Amendment's prohibition of "cruel and unusual punishment" applied to life without parole sentences for juvenile offenders who had not committed homicide.<sup>117</sup> In determining that such sentences violated the Eighth Amendment, the Court again applied the "evolving standard of decency test" and noted that the "United States is the only Nation that imposes this type of sentence" in the world.<sup>118</sup> The Court further noted that its analysis:

[T]reated the laws and practices of other nations and international agreements as relevant to the Eighth Amendment not because those norms are binding or controlling but because the judgment of the world's nations that a particular sentencing practice is inconsistent with basic principles of decency demonstrates that the Court's rationale has respected reasoning to support it.<sup>119</sup>

Additionally, human rights standards can play a role in advocacy at the state and local levels. Major cities across the United States, such as Washington, D.C.,<sup>120</sup> Boston, MA,<sup>121</sup> and Pittsburgh, PA,<sup>122</sup> have adopted resolutions defining themselves as "Human Rights Cities" and broadly incorporating international human rights norms into their city policies. Other cities, such as Chicago, IL,<sup>123</sup> Miami, FL,<sup>124</sup> and San Francisco, CA,<sup>125</sup> have taken a more targeted approach by attempting to

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<sup>117</sup> See *Graham v. Florida*, 560 U.S. 48, 52–53 (2010).

<sup>118</sup> *Id.* at 58, 81.

<sup>119</sup> *Id.* at 82.

<sup>120</sup> *Washington D.C. Human Rights City Resolution*, AM. FRIENDS SERV. COMM., <https://www.afsc.org/resource/washington-dc-human-rights-city-resolution> [https://perma.cc/WY2G-6DDF].

<sup>121</sup> Bos. City Council, Res. 0563, April 13, 2011 Meeting (Bos. 2011), [https://www.umb.edu/editor\\_uploads/images/sgisd\\_humanrights/Boston\\_A\\_Human\\_Rights\\_City\\_Resolution.pdf](https://www.umb.edu/editor_uploads/images/sgisd_humanrights/Boston_A_Human_Rights_City_Resolution.pdf) [https://perma.cc/58P6-YNWC].

<sup>122</sup> *Pittsburgh City of Pittsburgh Human Rights Proclamation*, AM. FRIENDS SERV. COMM., <https://www.afsc.org/sites/default/files/documents/Pittsburgh%20Human%20Rights%20City%20Resolution.doc> [https://perma.cc/65WD-HLHQ].

<sup>123</sup> TOOLKIT FOR THE ADOPTION OF THE CONVENTION ON THE RIGHTS OF THE CHILD BY CITY COUNCILS AND STATE LEGISLATURES, NW. UNIV. SCH. L. BLUHM LEGAL CLINIC 1, 3 (2009), <http://www.law.northwestern.edu/legalclinic/cfjc/documents/CRC-TOOLKIT-11-2009.pdf> [https://perma.cc/N3NA-5U6H].

<sup>124</sup> Mia., Fl., Ordinance 15–87 (Sept. 1, 2015).

<sup>125</sup> *CEDAW Ordinance*, CITY & CNTY. OF S.F., <http://sfgov.org/dosw/cedaw-ordinance> [https://perma.cc/YE3D-JRAN].



integrate provisions from specific treaties, such as the CRC and CEDAW, into their municipal policies. Further, groups in Chicago have been using a human rights framework to introduce a package of ordinances that would require the city to adopt a universal right to adequate housing.<sup>126</sup> While these resolutions are often aspirational in nature, many include budgetary and compliance provisions.<sup>127</sup> Binding or not, these commitments create a rallying point for advocates to organize around and pressure municipalities to comply with the rights provided for under international human rights instruments.

The instruments described in this Part all have persuasive force at the federal, state, and local level within the United States. They provide a rich source of well-developed norms and address fundamental human rights that the United States considers a core part of its national identity. Furthermore, these instruments and their official interpretations embody the perspective of the international community and can provide a useful reference point for advocates pushing for progressive laws and policies.

### III. CASE STUDY: INTERNATIONAL HUMAN RIGHTS ADVOCACY TO ADDRESS THE CRIMINALIZATION OF HOMELESSNESS IN THE UNITED STATES

This Part provides a case study of advocacy using the international human rights framework to strengthen domestic laws and policies to address the criminalization of homelessness, as well as key lessons. Over the last two decades, the Law Center and its partners strategically engaged with human rights mechanisms to build awareness and accountability around the criminalization of homelessness. The hope is that careful documentation of this engagement will be useful to advocates working in other areas. Use of the international human rights framework helped to exert political pressure, contributed to social mobilization, and further developed international standards and recommendations that are being implemented domestically. Effective human rights advocacy entailed continuous connection to the domestic

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<sup>126</sup> *Our Home Chicago Ordinance Package*, CHI. HOUS. INITIATIVE, <https://www.chicagohousinginitiative.org/copy-of-keeping-the-promise> [https://perma.cc/Z3ES-JFYS].

<sup>127</sup> Martha F. Davis, *Bringing It Home: Human Rights Treaties and Economic, Social, and Cultural Rights in the United States*, A.B.A. (Apr. 1, 2015), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/2015-vol-41-/vol-41-no-2-human-rights-at-home/bringing-it-home-human-rights-treaties-and-economic-social-an/?q=&fq=\(id%3A%5C%2Fcontent%2Faba-cms-dotorg%2Fen%2Fgroups%2Fcrsj%2F\\*\)&wt=json&start=0](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2015-vol-41-/vol-41-no-2-human-rights-at-home/bringing-it-home-human-rights-treaties-and-economic-social-an/?q=&fq=(id%3A%5C%2Fcontent%2Faba-cms-dotorg%2Fen%2Fgroups%2Fcrsj%2F*)&wt=json&start=0) [https://perma.cc/QHB7-RSY2].

sphere, creative use of human rights standards beyond litigation, and focus on a specific issue through consistent engagement across human rights bodies.

This process involved a progressive interplay between international and domestic advocacy, with each building on the other, ultimately resulting in concrete improvements in the enjoyment of basic rights by people experiencing homelessness. As described below, advocacy commenced with self-education and training, and then progressed through three main phases with some overlap, each targeting a different U.N. human rights body. The first stage entailed engagement with the U.N. Special Rapporteurs, who possess the greatest flexibility to create norms by highlighting under-recognized issues. Once the Special Rapporteurs laid the groundwork for addressing criminalization of homelessness as a human rights issue, advocates turned to the more legalistic treaty bodies charged with monitoring compliance with the U.N. treaties to further develop standards. Finally, advocates used the Universal Periodic Review by the U.N. Human Rights Council, an intergovernmental body, to affirm these standards. During all phases, advocates engaged with international bodies and the federal government in parallel to advance human rights standards domestically.

#### A. *Self-Education and Training*

The Law Center's advocacy using the international human rights framework commenced with self-education and training. The Law Center's Executive Director, Maria Foscarinis, was invited to attend the 1996 Habitat II Conference in Istanbul, where she witnessed the bold advocacy for adequate housing as a human right by the rest of the world while U.S. advocates were working on piecemeal solutions to resist cuts in anti-poverty programs.<sup>128</sup> She determined that the Law Center's mission to end homelessness in the United States could not be achieved without a shift to viewing adequate housing as a human right, as well as the mobilization of resources to implement this vision.<sup>129</sup> Pro bono research by law firms and law school clinics assisted the Law Center in developing expertise in the human rights framework.<sup>130</sup> Then, in

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<sup>128</sup> See NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HUMAN RIGHTS TO HUMAN REALITY: A 10 STEP GUIDE TO STRATEGIC HUMAN RIGHTS ADVOCACY 1, 9 (2014) [hereinafter HUMAN RIGHTS TO HUMAN REALITY].

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 10.

partnership with the Centre on Housing Rights and Evictions, an international NGO, the Law Center began to publish reports and conduct trainings across the country with legal and grassroots advocates.<sup>131</sup> The Law Center further strategically invited governmental officials to trainings, both to gain their insights into housing policy and to familiarize them with the human rights framework to lay the groundwork for future human rights advocacy.<sup>132</sup>

B. *Engaging with the Special Rapporteurs to Generate Domestic Change*

Advocates first focused their engagement with U.N. Special Rapporteurs, independent experts with thematic expertise, to address criminalization of homelessness in the United States. Special Rapporteurs conduct country visits, publish country and thematic reports, respond to letters alleging violations, communicate with officials, engage with media, and conduct other advocacy to promote the rights under their mandate.<sup>133</sup> Official Special Rapporteur visits require a government invitation, but advocates can call for a Special Rapporteur to request an invitation and lobby the State Department to grant it.<sup>134</sup> Advocates found that Special Rapporteur visits provided an opportunity to bring human rights directly into communities and highlight community concerns. This engagement focused on the Special Rapporteurs on racism, adequate housing, water and sanitation, and extreme poverty, in conjunction with advocacy with federal agencies, Congress, and the courts.

Engagement began with a visit of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur on Racism), Doudou Diene, in 2008. Thanks to a grassroots training that the Law Center led in 2006, the Los Angeles Community Action Network (LACAN) was prepared to

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<sup>131</sup> See *id.* at 11.

<sup>132</sup> *Id.*

<sup>133</sup> COLUM. L. SCH. HUM. RTS. INST., ENGAGING U.N. SPECIAL PROCEDURES TO ADVANCE HUMAN RIGHTS AT HOME: A GUIDE FOR U.S. ADVOCATES (2015), [https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/special\\_rapporteurs\\_report\\_final.pdf](https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/special_rapporteurs_report_final.pdf) [<https://perma.cc/7SPE-C45L>] [hereinafter ENGAGING U.N. SPECIAL PROCEDURES TO ADVANCE HUMAN RIGHTS AT HOME]; *Special Procedures of the Human Rights Council*, OFF. U.N. HIGH COMM'R HUM. RTS., <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx> [<https://perma.cc/ZY78-X6U7>].

<sup>134</sup> ENGAGING U.N. SPECIAL PROCEDURES TO ADVANCE HUMAN RIGHTS AT HOME, *supra* note 133, at 23.

take advantage of the visit and arranged for the Special Rapporteur on Racism to visit Skid Row to observe the disparate racial impact of homelessness and criminalization policies. The Law Center then brought the Rapporteur to Washington, D.C. to meet with representatives from HUD and the Department of Justice (DOJ), where he could connect his visit to the work of those agencies. His subsequent report specifically noted, “the enforcement of minor law enforcement violations . . . take a disproportionately high number of African American homeless persons to the criminal justice system.”<sup>135</sup>

Working with national and local partners, the Law Center built on the Special Rapporteur on Racism’s visit by successfully lobbying the federal government to issue an official invitation to the Special Rapporteur on Adequate Housing, Raquel Rolnik, in 2009.<sup>136</sup> The Special Rapporteur visited many cities where the Law Center had conducted base-building trainings.<sup>137</sup> The Special Rapporteur’s report

<sup>135</sup> Doudou Diene (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Doudou Diene: *Mission to the United States of America*, U.N. Doc. A/HRC/11/36/Add.3, ¶ 64 (Apr. 28, 2009).

<sup>136</sup> HUMAN RIGHTS TO HUMAN REALITY, *supra* note 128, at 17; *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*, OFF. U.N. HIGH COMM’R HUM. RTS. (last updated Mar. 2014), <https://www.ohchr.org/EN/Issues/Housing/Pages/RaquelRolnik.aspx> [<https://perma.cc/SSE4-439U>]. Rolnik’s report “highlights the implications of significant cuts in federal funding for low-income housing, the persistent impact of discrimination in housing, substandard conditions such as overcrowding and health risks, as well as the consequences of the foreclosure crisis. It also focuses on participation and underlines the importance of adequately informing the public of housing opportunities and involving them in the planning, decision-making, and implementation of programmes and policies that directly affect their lives.” Raquel Rolnik, *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* 2–4, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2010) [hereinafter *Report of the Special Rapporteur on Adequate Housing’s Visit to the U.S. in 2009*]; see also Campaign to Restore Nat’l Hous. Rts., *The Mission*, The Movement Blog for the UN Special Rapporteur on Adequate Housing’s US Mission, [https://web.archive.org/web/20091130082050/http://restorehousingrights.org/?page\\_id=201](https://web.archive.org/web/20091130082050/http://restorehousingrights.org/?page_id=201) [<https://perma.cc/VMR2-2MS6>]. The Law Center acknowledges the partnership of the National Economic & Social Rights Initiative, LACAN, Picture the Homeless, the Chicago Coalition for the Homeless, the International Indian Treaty Council, May Day New Orleans, and Friends and Residents of Arthur Capers as key partners in organizing the visit. Eric Tars, *National Organizations Involved in the UN Mission* (Nov. 6, 2009) (on file with authors).

<sup>137</sup> See HUMAN RIGHTS TO HUMAN REALITY, *supra* note 128, at 17. The Rapporteur’s visit also culminated with a half day of testimony at the Law Center’s National Forum on the Human Right to Housing, where individuals from cities that were not visited had the opportunity to share their stories. See NAT’L L. CTR. ON HOMELESSNESS & POVERTY, *COMPILATION OF WRITTEN*

highlighted the criminalization of homelessness<sup>138</sup> and made a key recommendation: “The Interagency Council on Homelessness should develop constructive alternatives to the criminalization of homelessness in full consultation with members of civil society. When shelter is not available in the locality, homeless persons should be allowed to shelter themselves in public areas.”<sup>139</sup>

The Law Center immediately drew on this recommendation in its advocacy with Congress and the agencies to focus their attention on the criminalization of homelessness. In 2009, following years of advocacy by the Law Center and its partners, Congress passed the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act. The HEARTH Act is the primary federal legislation (amending the McKinney-Vento Homeless Assistance Act) addressing homelessness and reaffirming USICH’s role in ending homelessness in the United States<sup>140</sup> For the first time, the HEARTH Act mandated a federal agency, USICH, to address and report on the criminalization of homelessness.<sup>141</sup> The Law Center used the Special Rapporteurs’ visits, alongside traditional advocacy, to maintain pressure on USICH to fulfill that mandate, ultimately convincing USICH and DOJ to host a summit on criminalization in December 2010.<sup>142</sup> The same year, USICH issued the first Federal Strategic Plan to End Homelessness, *Opening Doors*, highlighting the need to reduce criminalization of homelessness as an essential strategy to end homelessness.<sup>143</sup>

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TESTIMONY TO SUPPLEMENT ORAL PRESENTATIONS BEFORE THE UN SPECIAL RAPPORTEUR ON ADEQUATE HOUSING (2009) (on file with authors).

<sup>138</sup> *Report of the Special Rapporteur on Adequate Housing’s Visit to the U.S. in 2009*, *supra* note 136, ¶ 56 (“Many cities that do not provide enough affordable housing and shelters are resorting to the criminal justice system to punish people living on the streets. Some of the measures adopted include prohibition of sleeping, camping, eating, sitting, and/or begging in public spaces and include criminal penalties for violation of these laws.”).

<sup>139</sup> *Id.* ¶ 95.

<sup>140</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS HISTORICAL OVERVIEW (2016), [https://www.usich.gov/resources/uploads/asset\\_library/USICH\\_History\\_2016.pdf](https://www.usich.gov/resources/uploads/asset_library/USICH_History_2016.pdf) [<https://perma.cc/BNY9-VZRK>]; *see also* *Homeless Emergency Assistance and Rapid Transition to Housing Act*, HUD EXCH., <https://www.hudexchange.info/homelessness-assistance/hearth-act> [<https://perma.cc/Y8WC-FH6A>] [hereinafter HEARTH Act].

<sup>141</sup> 42 U.S.C. §§ 11301–11320 (amending the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301 (1987)).

<sup>142</sup> *See* E-mail from Maria Foscarinis, Exec. Dir., Nat’l L. Ctr. on Homelessness & Poverty, to Barbara Poppe, Exec. Dir., U.S. Interagency Council on Homelessness, & Lynn Overman, Access to Just., U.S. Dep’t of Just. (Dec. 14, 2010) (on file with authors).

<sup>143</sup> *See* U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *OPENING DOORS: FEDERAL STRATEGIC PLAN TO END HOMELESSNESS* 1, 48 (2010), [https://web.archive.org/web/20101117081446/http://www.usich.gov/PDF/OpeningDoors\\_2010\\_](https://web.archive.org/web/20101117081446/http://www.usich.gov/PDF/OpeningDoors_2010_)

In 2009, the Law Center filed the case of *Martin v. Boise* (then known as *Bell v. Boise*), together with Idaho Legal Aid Services, Inc. and with the pro bono assistance of Latham & Watkins. This case alleged a violation of the Eighth Amendment in the enforcement of Boise's anti-camping and disorderly conduct ordinances against people experiencing homelessness attempting to shelter themselves from the elements in the absence of adequate alternative shelter.<sup>144</sup> Although the principle that this practice violated the Eighth Amendment had been established earlier in *Pottinger v. Miami*,<sup>145</sup> and in *Jones v. Los Angeles*,<sup>146</sup> the *Jones* case had been vacated per settlement, and the Law Center wanted the opportunity to reaffirm this principle in the Ninth Circuit. Because the Eighth Amendment language of "freedom from cruel and unusual punishment" is analogous to the international human rights standard of "freedom from cruel, inhuman, and degrading treatment", the Law Center focused its efforts on getting this specific standard included in human rights recommendations, thus potentially influencing domestic interpretations.

The first opportunity to articulate this standard occurred in 2011, when the United States invited the (then) Independent Expert (now the Special Rapporteur) on the human rights to safe drinking water and sanitation (Special Rapporteur on Water and Sanitation), Catarina de Albuquerque, to visit the United States. The Law Center worked with local advocates at Safe Ground Sacramento and Legal Services of Northern California to arrange her visit to Sacramento to receive testimony directly from residents of Safe Ground's homeless encampment. The Law Center again facilitated meetings between the Independent Expert and officials from USICH, HUD, and DOJ. Her final report 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 . . . amount to cruel, inhumane or degrading treatment."<sup>147</sup> This was the first explicit

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FSPPreventEndHomeless.pdf ("Reduce criminalization of homelessness by defining constructive approaches to street homelessness and considering incentives to urge cities to adopt these practices.").

<sup>144</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1035 (9th Cir. 2018).

<sup>145</sup> *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1561–65 (S.D. Fla. 1992).

<sup>146</sup> *Jones v. City of Los Angeles*, 444 F.3d 1118, 1125 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007).

<sup>147</sup> Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque: Mission to the United States of America*, ¶ 58, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011); *see also* Catarina de Albuquerque (Special Rapporteur

reference to criminalization of homelessness as CIDT. The Law Center and local advocates capitalized on this achievement by requesting that the Independent Expert issue a follow up communication to the Mayor of Sacramento, which she did in a letter, garnering national press.<sup>148</sup>

The Law Center next worked with then Special Rapporteur on extreme poverty and human rights (Special Rapporteur on Extreme Poverty), Magdalena Sepúlveda Carmona, using the thematic reporting mechanism to highlight the criminalization of homelessness in the absence of a country visit. Her August 2011 report on “Extreme Poverty and Human Rights” echoed the CIDT standard: “Where there is insufficient public infrastructure and services to provide families with alternative places to perform such behaviours, persons living in poverty and homelessness are left with no viable place to sleep, sit, eat or drink[,] . . . even amounting to cruel, inhuman or degrading treatment.”<sup>149</sup> Her footnote cites to *Pottinger*, demonstrating the positive feedback loop between domestic and international advocacy.<sup>150</sup> The following year, the Law Center worked with her to reinforce these themes in her *Guiding Principles on Extreme Poverty and Human Rights*.<sup>151</sup> Although she did not conduct an official visit to the United

on the Human Right to Safe Drinking Water and Sanitation), *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation: Stigma and the Realization of the Human Rights to Water and Sanitation*, ¶ 53, U.N. Doc. A/HRC/21/42 (July 2, 2012).

<sup>148</sup> Letter from Catarina de Albuquerque, Special Rapporteur on the Hum. Right to Safe Drinking Water & Sanitation, Off. U.N. High Comm’r Hum. Rts., to Kevin Johnson, Mayor, City of Sacramento (Jan. 23, 2012), <http://www.scribd.com/doc/80310395/Letter-to-Mayor-Johnson-from-UN> [<https://perma.cc/KE38-Q4ZB>]; Janell Ross, *In Sacramento, Budget Cuts Leave Homeless Without Bathrooms, Water Overnight*, HUFFPOST (Feb. 13, 2012, 9:27 AM), [https://www.huffpost.com/entry/sacramento-united-nations-warning-homeless\\_n\\_1268946](https://www.huffpost.com/entry/sacramento-united-nations-warning-homeless_n_1268946) [<https://perma.cc/3ATB-E7TJ>].

<sup>149</sup> Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty and Human Rights), *Extreme Poverty and Human Rights*, ¶ 36, U.N. Doc. A/66/265 (Aug. 4, 2011).

<sup>150</sup> *Id.* at 11 n.19.

<sup>151</sup> Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty and Human Rights), *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, U.N. Doc. A/HRC/21/39 (July 18, 2012) [hereinafter *Guiding Principles*] (“Homeless persons in particular are frequently subject to restrictions on their freedom of movement and criminalized for using public space. [Subsequently,] [s]tates should: (a) Assess and address any disproportionate effect of criminal sanctions and incarceration proceedings on persons living in poverty; (b) Ensure that, to the greatest extent possible, bail processes take into account the economic and societal circumstances of persons living in poverty; (c) Repeal or reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities; (d) Review sanctions procedures that require the payment of disproportionate fines by persons living in poverty, especially those related to begging, use of public space and welfare fraud, and consider abolishing prison sentences for non-payment of fines for those unable to pay.”).

States, the Law Center leveraged her presence in the United States during the presentation of her report to the U.N. General Assembly in New York City to get her to come to Washington, D.C. to discuss her findings and recommendations with federal officials.<sup>152</sup>

Repeated meetings with federal officials emphasizing the international recommendations led to domestic results. In 2012, the Law Center and its partners achieved a breakthrough with USICH's report on criminalization, *Searching Out Solutions*.<sup>153</sup> In the report, for the first time, a domestic governmental agency recognized a domestic practice as not only a potential constitutional violation, but also as a human rights treaty violation,<sup>154</sup> stating, "[C]riminalization measures may also violate international human rights law, specifically the Convention Against Torture and the International Covenant on Civil and Political Rights."<sup>155</sup> *Searching Out Solutions* cites directly to the Law Center's criminalization reports and human rights analyses as support.<sup>156</sup> This statement laid the basis for subsequent human rights advocacy with the federal government, enabling advocates to indicate that it was the United States government's own position that criminalization may be a human rights treaty violation.<sup>157</sup>

The Law Center used *Searching Out Solutions* to create a positive feedback loop, encouraging the federal agencies to expand work promoting human rights. The Law Center sent the report to the Special Rapporteurs with whom it had worked, thanking them for their role in this outcome and asking them to reinforce it in a press release. The Special Rapporteurs complied, linking their visits and thematic reports to the USICH report.<sup>158</sup> The Law Center sent this release, in turn, back

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<sup>152</sup> U.N. GAOR, 67th Sess., 29th mtg. at 2–4, U.N. Doc. A/C.3/67/SR.29 (Nov. 5, 2012); Magdalena Sepúlveda Carmona et al., Remarks at Brainstorm Meeting on Advancing a Human Rights Frame for Dealing with Extreme Poverty (Nov. 2, 2012) (on file with authors).

<sup>153</sup> This report was mandated by the 2009 HEARTH Act, see *supra* note 140.

<sup>154</sup> SEARCHING OUT SOLUTIONS, *supra* note 26, at 8 (citing James Michael Charles, Note, "America's Lost Cause": The Unconstitutionality of Criminalizing our Country's Homeless Population, 18 B.U. PUB. INT. L.J. 315, 315–46 (2009)) ("Laws imposing criminal penalties for engaging in necessary life activities when there are no other public options that exist have been found to violate the Eighth Amendment.").

<sup>155</sup> *Id.* (citing HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 26 (2009)); see ICCPR, *supra* note 32; see also UDHR, *supra* note 4.

<sup>156</sup> SEARCHING OUT SOLUTIONS, *supra* note 26, at 7–8.

<sup>157</sup> In fact, because each of the agencies are also members of USICH and all agencies were required to sign off on the report, this was arguably already their position.

<sup>158</sup> Press Release, Off. U.N. High Comm'r Hum. Rts., USA: "Moving Away from the Criminalization of Homelessness, a Step in the Right Direction" (Apr. 23, 2012), <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E> [<https://perma.cc/56WJ-37FD>].



to the government, indicating that where the United States takes positive steps, advocates would praise its efforts, just as they would hold it accountable for lack of progress.

C. *Engaging with the Treaty Bodies to Generate Domestic Change*

While the Law Center and its partners continued to work with the Special Rapporteurs, garnering references to the criminalization of homelessness as CIDT in their thematic and country reports,<sup>159</sup> it began to engage with the more legalistic human rights treaty bodies to reinforce and further develop this standard. Along with its substantive provisions, each international human rights treaty also establishes a treaty body of independent experts to monitor compliance with its provisions.<sup>160</sup> Each state party to the treaty must submit periodic reports to the treaty body for review.<sup>161</sup> In its review, the treaty body considers both the official state submission, as well as shadow reports by civil society.<sup>162</sup> The review takes place in stages, with the treaty body first examining the government's submission and creating a list of issues or themes of specific concern that were not adequately addressed (although some treaty bodies reverse the order and send a list of issues to the country first).<sup>163</sup> The government submits an additional report to the treaty body, and then the treaty body conducts an oral review in Geneva, ultimately issuing Concluding Observations with recommendations to the state.<sup>164</sup> These processes afford various advocacy opportunities.

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<sup>159</sup> *Guiding Principles*, *supra* note 151, ¶¶ 65, 66(c), 78(c) (“Homeless persons . . . are frequently . . . criminalized for using public space. States should . . . [r]epeal or reform any laws that criminalize life-sustaining activities in public places, . . . [and] refrain from criminalizing sanitation activities . . . in public places, where there are no adequate sanitation services available.”); *see also* Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty and Human Rights), *Extreme Poverty and Human Rights*, U.N. Doc. A/67/278, ¶¶ 48–50 (Aug. 9, 2012).

<sup>160</sup> Eric Tars, *Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice*, 42 CLEARINGHOUSE REV. J. POVERTY L. & POL’Y 475, 476–78 (2009).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*; OHCHR Training Package on Reporting to the United Nations Human Rights Treaty Bodies, OFF. U.N. HIGH COMM’R HUM. RTS., <https://www.ohchr.org/EN/PublicationsResources/Pages/TrainingPackage.aspx> [https://perma.cc/QKL9-N2BZ] [hereinafter *OHCHR Training*].

<sup>164</sup> Tars, *supra* note 160; *OHCHR Training*, *supra* note 163. In addition to these periodic state reviews, treaty bodies issue General Comments or Recommendations, providing guidance and greater detail on particular treaty provisions.

The period of 2012–2014 presented a unique opportunity for advocates to engage with three treaty bodies in rapid succession. The United States submitted its overdue reports to the HRC, Committee on the Elimination of Racial Discrimination (CERD), and Committee Against Torture (CAT Committee), setting them up for review.<sup>165</sup> The Law Center worked with the U.S. Human Rights Network (USHRN), which cultivated and coordinated engagement by hundreds of advocates, enabling them to take advantage of these reviews to further domestic goals.<sup>166</sup>

### 1. The Human Rights Committee

The first review scheduled was with the HRC, which monitors compliance with the ICCPR.<sup>167</sup> First, the Law Center attempted to persuade the U.S. government to include the issue of criminalization of homelessness in the state report. However, the government neglected to do this.<sup>168</sup> Then, leading a USHRN Working Group on Housing & Homelessness, the Law Center coordinated a short report and advocated with the HRC, ultimately obtaining two questions on criminalization in the List of Issues addressed to the U.S. government.<sup>169</sup>

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<sup>165</sup> Hum. Rts. Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Fourth Periodic Report, United States of America*, U.N. Doc. CCPR/C/USA/4 (May 22, 2012); Comm. on the Elimin. of Racial Discrim., *Reports Submitted by States Parties Under Article 9 of the Convention, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America*, U.N. Doc. CERD/C/USA/7-9 (Oct. 3, 2013); Comm. Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure, Third to Fifth Periodic Reports of States Parties Due in 2011, United States of America*, U.N. Doc. CAT/C/USA/3-5 (Dec. 4, 2013).

<sup>166</sup> See *Projects and Campaigns*, U.S. HUM. RTS. NETWORK, <https://web.archive.org/web/20140728184908/http://www.ushrnetwork.org/our-work/projects-campaigns>. Due to the proximity of the reviews—HRC in March 2014, CERD in August 2014, and CAT in November 2014, meetings with government officials served as consultation for multiple purposes, and advocates took advantage of time in Geneva to meet with officials from various U.N. bodies to prepare for future reviews. Thus, while divided into three sections for clarity here, some advocacy pieces described are overlapping.

<sup>167</sup> ICCPR, *supra* note 32, at art. 28; PHILIP ALSTON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS: THE SUCCESSOR TO INTERNATIONAL HUMAN RIGHTS IN CONTEXT 763 (2013).

<sup>168</sup> The U.S. government responded instead to a recommendation from the previous HRC review addressing the disparate racial impact of homelessness. See Hum. Rts. Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Fourth Periodic Report: United States of America*, ¶¶ 588–89, U.N. Doc. CCPR/C/USA/4 (May 22, 2012).

<sup>169</sup> Hum. Rts. Comm., *List of Issues in Relation to the Fourth Periodic Report of the United States of America (CCPR/C/USA/4 and Corr. 1), Adopted by the Committee at its 107th Session (11–28 March 2013)*, ¶ 6, U.N. Doc. CCPR/C/USA/Q/4 (Apr. 29, 2013) (“Please provide information on the imposition of criminal penalties on people living on the streets. Please also

Having thus ensured the discussion of criminalization at the review, the Law Center drafted recommendations for actions that the United States could take to implement the ICCPR. It emphasized that if the government took these steps, advocates would support the state before the HRC, but if it did not, advocates would call for accountability in a separate submission.<sup>170</sup> These recommendations included three concrete demands addressed at particular agencies:

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 . . . .<sup>171</sup>

The Law Center further leveraged the HRC review to convince USICH to convene the first-ever meeting of domestic agencies in the context of a human rights treaty review.<sup>172</sup> While the United States response to the HRC, submitted on July 5, 2013, did not address the Law Center's recommendations, it highlighted the HEARTH Act's mandate for USICH to develop alternatives to criminalization, the meeting held in December 2010, and *Searching Out Solutions*.<sup>173</sup>

The Law Center further engaged in international advocacy as part of the treaty review process. In September, in partnership with the Housing & Homelessness Working Group, the Law Center submitted a shadow report to the HRC, which underscored previously obtained

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provide information on the implementation of the 2009 Helping Families Save Their Home Act and the creation of durable alternatives to criminalization measures to address homelessness.”)

<sup>170</sup> See NAT'L L. CTR. ON HOMELESSNESS & POVERTY, CRUEL, INHUMAN, AND DEGRADING: HOMELESSNESS IN THE UNITED STATES UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (Aug. 23, 2013), [https://nlchp.org/wp-content/uploads/2018/10/Cruel\\_Inhuman\\_and\\_Degrading.pdf](https://nlchp.org/wp-content/uploads/2018/10/Cruel_Inhuman_and_Degrading.pdf) [<https://perma.cc/E54H-QAS8>] [hereinafter CRUEL, INHUMAN, AND DEGRADING] (submitted to the HRC).

<sup>171</sup> *Id.* at 17.

<sup>172</sup> See USICH, *Human Rights & the Criminalization of Homelessness Agenda* (on file with authors). The July 17, 2013 meeting, titled “Human Rights and the Criminalization of Homelessness,” was led by USICH together with the State Department, and also involved the DOJ, HUD, the Department of Health and Human Services, and the Veterans Administration (along with the Law Center).

<sup>173</sup> Hum. Rts. Comm., *Replies of the United States of America to the List of Issues*, ¶¶ 17–18, U.N. Doc. CCPR/C/USA/Q/4/Add.1 (Sept. 13, 2013).

statements of the Special Rapporteurs characterizing criminalization as CIDT.<sup>174</sup> The report also strategically noted USICH's acknowledgment in *Searching Out Solutions* that criminalization of homelessness may violate the ICCPR, making it easier for the HRC to confront the United States on the issue and to confirm the treaty violation.<sup>175</sup> At the March 2014 formal hearing on the United States report,<sup>176</sup> the USHRN coordinated a series of briefings with the HRC in Geneva, as well as meetings with the U.S. delegation.<sup>177</sup> For these meetings, the Law Center developed a one-page, double-sided advocacy document, mixing personal testimony and case studies with human rights commentary, the United States' own words on criminalization, and specific recommendations.<sup>178</sup>

The HRC directly addressed the criminalization of homelessness in the United States in its review. During its oral review, HRC member Walter Kaelin drew from the Law Center's recommendations, referring to criminalization as "cruel, inhuman, and degrading" and asking about the steps the government was taking to end it.<sup>179</sup> The HRC Chair, the

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<sup>174</sup> CRUEL, INHUMAN, AND DEGRADING, *supra* note 170, at 5, 8; ICCPR, *supra* note 32, arts. 2, 7, 9, 17, 21, 36.

<sup>175</sup> CRUEL, INHUMAN, AND DEGRADING, *supra* note 170, at 6.

<sup>176</sup> Although the Committee was initially scheduled to review the United States in October 2013, due to the budget-related government shut down and the inability of the U.S. delegation to travel, the review was postponed until March 2014. Stephanie Nebehay, *U.S. Shutdown Forces Delay in U.N. Scrutiny of Rights Record*, REUTERS (Oct. 10, 2013, 3:52 PM), <https://www.reuters.com/article/us-usa-fiscal-un-rights/u-s-shutdown-forces-delay-in-u-n-scrutiny-of-rights-record-idUSBRE99911F20131010> [<https://perma.cc/F5ZU-FK6L>]. However, the Law Center sent a legal fellow from Northeastern Law School's Program on Human Rights and the Global Economy, Kirsten Blume, to the hearings during the October session to conduct advanced lobbying with HRC members as well as meet with Special Rapporteur staff and other NGO actors. Kirsten sent back video blogs, elevating interest amongst U.S. advocates in the process. Kirsten Blume, *Geneva Update Day 1-2—Oct 15, 2013*, YOUTUBE (Oct. 15, 2013), <https://www.youtube.com/watch?v=yOfW9uX-pHg> [<https://perma.cc/7KVS-5HPJ>]; Kirsten Blume, *Geneva Update Day 3-4—Oct 17, 2013*, YOUTUBE (Oct. 17, 2013), <https://www.youtube.com/watch?v=PvtfVTI8uUc> [<https://perma.cc/M4TT-FRRA>]; Kirsten Blume, *Geneva Update Days 4-5—Oct 18, 2013*, YOUTUBE (Oct. 18, 2013), [https://www.youtube.com/watch?v=Jl\\_81aibKck](https://www.youtube.com/watch?v=Jl_81aibKck) [<https://perma.cc/KBF5-WJU6>].

<sup>177</sup> U.S. HUM. RTS. NETWORK, U.S. CIVIL SOCIETY DELEGATION: UN HUMAN RIGHTS COMMITTEE REVIEW OF UNITED STATES COMPLIANCE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) 4, 20 (2014) (on file with authors).

<sup>178</sup> NAT'L L. CTR. ON HOMELESSNESS & POVERTY, 2014.3.5 HRC One Pager (Mar. 2014) (on file with authors).

<sup>179</sup> Maria Foscarnis, *US ICCPR Review 2014: Cruel, Inhuman, and Degrading*, YOUTUBE (Mar. 19, 2014), <https://www.youtube.com/watch?v=IM6eXpJVuIA> [<https://perma.cc/RCT3-WVLM>]. The U.S. delegation included a member of USICH and Mayor Ralph Becker of Salt Lake City and provided an extended, if insufficient, answer to Kaelin's question.

late Sir Nigel Rodley, a former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, stated:

I'm just simply baffled by the idea that people can be without shelter in a country, and then be treated as criminals for being without shelter . . . . The idea of criminalizing people who don't have shelter is something that I think many of my colleagues might find as difficult as I do to even begin to comprehend.<sup>180</sup>

In its Concluding Observations, the HRC provided the requested language, noting, "criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas . . . raises concerns of discrimination and cruel, inhuman or degrading treatment."<sup>181</sup> Moreover, it recommended that the United States engage with state and local authorities to:

(a) Abolish the laws and policies criminalizing homelessness at state and local levels . . . and (c) Offer incentives for decriminalization and the implementation of such solutions, including by providing continued financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize the homeless.<sup>182</sup>

In addition to participating in the treaty review process, the Law Center also engaged with the HRC's "General Comment" function to ensure a broad definition of the right to life that incorporates access to housing.<sup>183</sup>

<sup>180</sup> *Id.*; see also Press Release, Nat'l L. Ctr. On Homelessness & Poverty, U.N. Human Rights Committee Calls U.S. Criminalization of Homelessness "Cruel, Inhuman, and Degrading": Call Follows Death of Homeless Veteran, in Jail for Seeking Shelter from Cold (Mar. 27, 2014), [https://nlchp.org/wp-content/uploads/2018/12/U.N.\\_Human\\_Rights\\_Committee\\_Calls\\_U.S.\\_Criminalization\\_of\\_Homelessness\\_Cruel\\_Inhuman\\_and\\_Degrading.pdf](https://nlchp.org/wp-content/uploads/2018/12/U.N._Human_Rights_Committee_Calls_U.S._Criminalization_of_Homelessness_Cruel_Inhuman_and_Degrading.pdf) [<https://perma.cc/6PKF-8URP>].

<sup>181</sup> Hum. Rts. Comm., *Concluding Observations on the Fourth Periodic Report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014). In addition, the observation also references Articles 2, 7, 9, 17, and 26 of the treaty.

<sup>182</sup> *Id.*

<sup>183</sup> Early drafts of General Comment 36, providing guidance on the right to life, had excluded a broader definition of this right incorporating access to housing and other necessities. However, thanks to advocacy by the Law Center and others, the final 2018 version includes this standard. See E-mail from Bruce Porter, to Human Rights Committee members (Mar. 23, 2018, 9:06 PM) (on file with authors); CCPR General Comment 36, *supra* note 47, ¶ 26 ("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 . . . includ[ing] . . . homelessness. The measures called for . . . include . . . measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and . . . social housing programmes.").

The Law Center used the ICCPR review to build an unprecedented human rights narrative within USICH. In the midst of the review, in observance of Human Rights Day on December 10, 2013, USICH hosted a blog series, entitled “I Believe in Human Rights.” This included blog posts from the HUD Secretary, the Executive Director of USICH, the Law Center, and other advocates.<sup>184</sup> A USICH staff member shared her enthusiasm for engagement with advocates through the treaty review process:

USICH convened a conversation to further explore how the Federal government can better support communities to protect human rights and eliminate criminalization of homelessness. . . . It is clear that human rights must be at the center of every aspect of planning and implementation[.] We will continue to explore, learn, and share from the community strategies that end homelessness instead of criminaliz[ing] it. . . . We are your partners for success and for human rights.<sup>185</sup>

Then, from January 2014 to June 2017, USICH hosted a full web page with the heading, “Human Rights and Alternatives to Criminalization.”<sup>186</sup>

## 2. The Committee on the Elimination of Racial Discrimination

The Law Center and its partners similarly engaged with CERD, the committee charged with monitoring implementation of the ICERD,<sup>187</sup> leveraging the treaty review processes to prompt conversations with federal government officials. In February 2013, the Law Center and USHRN coordinated a meeting with federal officials to inform the

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<sup>184</sup> Barbara Poppe, *I Believe in Human Rights*, USICH BLOG (Dec. 9, 2013), <https://web.archive.org/web/20140916172427/http://usich.gov/blog/i-believe-in-human-rights>; Shaun Donovan, *I Believe in Human Rights: My Personal Commitment to Ending Homelessness*, USICH BLOG (Dec. 17, 2013), [https://web.archive.org/web/20140916154416/http://usich.gov/blog/Shawn\\_Donovan\\_human\\_rights](https://web.archive.org/web/20140916154416/http://usich.gov/blog/Shawn_Donovan_human_rights); Tars, *supra* note 1.

<sup>185</sup> Amy Sawyer, *Criminalizing Homelessness Is Costly, Ineffective, and Infringes on Human Rights*, USICH BLOG (Apr. 15, 2014), <https://web.archive.org/web/20140916173130/http://usich.gov/blog/criminalizing-homelessness>.

<sup>186</sup> *Human Rights and Alternatives to Criminalization*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://web.archive.org/web/20150814040748/http://usich.gov/issue/human-rights>. While dropping the “human rights” heading, as of the writing of this article, the USICH continues to maintain an extensive set of resources under its main “Solutions” heading on its website for “Reduce Criminal Justice Involvement.” *Reduce Criminal Justice Involvement*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS (last updated Oct. 16, 2019), <https://www.usich.gov/solutions/criminal-justice> [<https://perma.cc/4ECD-HHGF>].

<sup>187</sup> ICERD, *supra* note 35, at art. 8.

content on housing and homelessness content in the official U.S. report.<sup>188</sup> The United States then submitted its report to CERD in June 2013, which, while addressing homelessness generally, did not address the disparate impact of criminalization of homelessness on communities of color.<sup>189</sup> While in Geneva for the HRC review in March 2014, the Law Center met with CERD officials to encourage them to include the disparate racial impact of criminalization in their List of Themes (CERD's equivalent to the List of Issues), which they did in July 2014.<sup>190</sup>

A major advantage of the ICERD is that it explicitly requires remedying not only intentional discrimination but also policies with disparate impacts.<sup>191</sup> The Housing & Homeless Working Group's shadow report to CERD built on all of the previously developed human rights standards around criminalization but also focused specifically on the fact that "[h]omelessness and the lack of affordable housing in the United States of America have a disparate racial impact."<sup>192</sup> The history of slavery, Southern Jim Crow, Northern redlining, and federal discrimination in mortgages has resulted in racially and economically segregated neighborhoods that persist to this day.<sup>193</sup> These poor, principally minority neighborhoods are in turn over-policed, particularly for minor misdemeanors, such as laws criminalizing homelessness, and allow officers significant discretion in enforcement,

<sup>188</sup> See E-mail from CERD to David V. Truong (July 2, 2014, 11:36 AM) (on file with authors).

<sup>189</sup> Comm. on the Elimin. of Racial Discrim., *Reports Submitted by States Parties Under Article 9 of the Convention, Seventh to Ninth Periodic Reports of States Parties Due in 2011, United States of America*, U.N. Doc. CERD/C/USA/7-9 (Oct. 3, 2013).

<sup>190</sup> Comm. on the Elimin. of Racial Discrim., *List of Themes in Relation to the Combined Seventh to Ninth Periodic Reports of United States of America (CERD/C/USA/7-9)*, ¶ 2(c), U.N. Doc. CERD/C/USA/Q/7-9 (July 7, 2014).

<sup>191</sup> ICERD, *supra* note 35, at art. 2(1)(c).

<sup>192</sup> NAT'L L. CTR. ON HOMELESSNESS & POVERTY & L.A. CMTY. ACTION NETWORK, *Racial Discrimination in Housing and Homelessness in the United States: A Report to the U.N. Committee on the Elimination of Racial Discrimination* (July 3, 2014) [hereinafter *Racial Discrimination in Housing & Homelessness in the U.S.*].

<sup>193</sup> Jeffrey Olivet, Marc Dones, Molly Richard, Catriona Wilkey, Svetlana Yampolskaya, Maya Beit-Arie, & Lunise Joseph, *Supporting Partnerships for Anti-Racist Communities: Phase One Study Findings*, CTR. SOC. INNOVATION 12 (2018), <https://center4si.com/wp-content/uploads/2016/08/SPARC-Phase-1-Findings-March-2018.pdf> [<https://perma.cc/E6LG-DZY7>]; LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 32 ("Today, 70% of poor Blacks and 63% of poor Hispanics live in high-poverty communities as compared with only 35% of poor Whites."); Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631> [<https://perma.cc/3N4X-K5U6>] (discussing the legacy of slavery and Jim Crow in shaping early and mid-twentieth century housing policies. These policies systemically deprived Black Americans of access to home mortgages and intentionally devalued neighborhoods where Black Americans lived.).

leading to a large and persistent racial disparity in incarceration.<sup>194</sup> This creates a vicious cycle, as criminal convictions carry collateral consequences that make obtaining housing and employment more difficult, if not impossible. Additionally, fines and fees make it harder to save funds for a first month of rent and security deposit, thus maintaining racial disparities in housing and homelessness.<sup>195</sup> The Law Center, in coordination with the USHRN, highlighted these concerns and pushed for remedies at a consultation hosted by the State Department with the participation of many government agencies.<sup>196</sup>

The Law Center, together with grassroots allies and directly impacted individuals, then attended the oral review in Geneva in August 2014, again meeting with Committee members and government officials through the USHRN's coordination. The Committee responded with a strong Concluding Observation, echoing the HRC and recommending that the United States "(a) [a]bolish laws and policies making homelessness a crime . . . [and] (c) [o]ffer incentives to decriminalize homelessness, including by providing financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize homelessness."<sup>197</sup>

### 3. The Committee Against Torture

The CAT Committee, which monitors implementation of CAT,<sup>198</sup> was the final treaty body to review the United States in November 2014. The CAT Committee adopts its List of Issues Prior to Review at the midway point between a state party's last report and its next due report, which occurred in 2010. The Law Center, focused on the Special Rapporteurs at the time, did not participate in advocacy around the List of Issues, and, consequently, no question on the criminalization of

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<sup>194</sup> *Racial Discrimination in Housing & Homelessness in the U.S.*, *supra* note 192; see also Megan Stevenson & Sandra Mayson, *The Scale of Misdemeanor Justice*, 98 B.U. L. REV. 731 (2018).

<sup>195</sup> See LAW CTR., *HOUSING NOT HANDCUFFS*, *supra* note 5, at 32–36.

<sup>196</sup> See E-mail from Salimah Hankins, CERD Coordinator, to Ejim Dike & Rebecca Landy (July 7, 2014, 2:52 PM) (on file with authors).

<sup>197</sup> Comm. on the Elimin. of Racial Discrim., *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, ¶ 12, CERD/C/USA/CO/7–9 (Sept. 25, 2014).

<sup>198</sup> CAT, *supra* note 34, at art. 17.



homelessness was posed.<sup>199</sup> This made it an uphill battle to get the issue addressed as part of the oral review. But, given that the United States had explicitly noted that CAT may be violated by criminalization of homelessness in *Searching Out Solutions*, advocates decided to attempt it. Again, in collaboration with the USHRN Working Group, the Law Center submitted a shadow report to the CAT Committee in 2014, sharing references from the Special Rapporteur and other treaty bodies.<sup>200</sup> This led the Committee to raise the issue of criminalization of homelessness twice during the oral review, but the United States did not respond, and the Committee ultimately did not include the issue in its Concluding Observations.<sup>201</sup>

Despite this, the treaty review process provided a useful platform for advocacy with the federal government. During a meeting with the government prior to the review, the Law Center requested that the DOJ file a statement of interest brief supporting the position that criminalization of homelessness violates the Eighth Amendment, as well as human rights treaty obligations. Then Chief of the Special Litigation Section of the Civil Rights Division of the DOJ, Jonathan Smith, asked about cases ripe for intervention. Several months later, the DOJ filed its brief in *Bell* (now *Martin*) *v. Boise*, and it had an immediate as well as long-term, nationwide impact.<sup>202</sup> Although the brief did not directly cite international human rights law, following further advocacy, in 2016, the DOJ later affirmed that its position in *Bell* was an

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<sup>199</sup> Comm. Against Torture, *List of Issues Prior to the Submission of the Fifth Periodic Report of United States of America (CAT/C/USA/5)*, U.N. Doc. CAT/C/USA/Q/5 (Jan. 20, 2010).

<sup>200</sup> NAT'L L. CTR. ON HOMELESSNESS & POVERTY, CRIMINALIZATION OF HOMELESSNESS IN THE UNITED STATES OF AMERICA: A REPORT TO THE U.N. COMMITTEE AGAINST TORTURE (2014) [hereinafter CAT REPORT CRIMINALIZATION OF HOMELESSNESS].

<sup>201</sup> Press Release, Nat'l L. Ctr. on Homelessness & Poverty, In Wake of U.N. Torture Committee Call for More Action on Homelessness, U.S. Gets Failing Grades on Right to Housing Report Card: Advocates Share Resources for Addressing Concerns (Dec. 10, 2014), [https://nlchp.org/wp-content/uploads/2018/12/Press\\_Release\\_CAT\\_and\\_Report\\_Card.pdf](https://nlchp.org/wp-content/uploads/2018/12/Press_Release_CAT_and_Report_Card.pdf) [<https://perma.cc/9GAM-Q5HL>]. The Law Center and its partners engaged with the CAT Committee from the start of the process for the next round and got the Committee in its List of Issues Prior to Review to ask the U.S. to "describe any measures adopted to abolish the laws and policies criminalizing homelessness at state and local levels" under Article 16 of the treaty, focused on cruel, inhuman, and degrading treatment. Comm. Against Torture, *List of Issues Prior to Submission of the Sixth Periodic Report of the United States of America*, ¶ 46, U.N. Doc. CAT/C/USA/QPR/6 (Jan. 26, 2017); see also CAT REPORT CRIMINALIZATION OF HOMELESSNESS, *supra* note 200.

<sup>202</sup> Statement of Interest of the United States, *Bell v. City of Boise*, 993 F. Supp. 2d 1237 (D. Idaho 2014) (No. 1:09-cv-00540-REB); Press Release, U.S. Dep't of Just., Off. of Pub. Affs., Justice Department Files Brief to Address the Criminalization of Homelessness (Aug. 6, 2015), <http://www.justice.gov/opa/pr/justice-department-files-brief-address-criminalization-homelessness> [<https://perma.cc/CNY5-QBMF>].

“acknowledgement of the human rights of people experiencing homelessness.”<sup>203</sup> The DOJ statement affirming criminalization of homeless as a constitutional violation received national news attention<sup>204</sup> and led to several cities outside of Boise preemptively repealing their ordinances or modifying their enforcement,<sup>205</sup> as well as courts adopting the DOJ’s position.<sup>206</sup>

The DOJ’s brief featured prominently in arguments in the Law Center’s Ninth Circuit appeal of the case,<sup>207</sup> and the 2018 decision adopts the Brief’s position. It states an affirmative answer to the question, “Does the Cruel and Unusual Punishments Clause of the Eighth Amendment preclude[s] the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter?”<sup>208</sup> Although the City submitted a petition for en banc review,<sup>209</sup> that petition was denied in April 2019,<sup>210</sup> as was a petition to the Supreme Court in December 2019.<sup>211</sup> The *Martin* case, consistent with international human rights recommendations, now stands as the law of the land in the Ninth Circuit, and cities there and beyond have begun to implement it.<sup>212</sup>

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<sup>203</sup> Letter from Lisa Foster, Dir., Off. for Access to Just., U.S. Dept. of Just., to Seattle City Council Members 3 (Oct. 13, 2016), <https://assets.documentcloud.org/documents/3141894/DOJ-ATJ-Letter-to-Seattle-City-Council-10-13-2016.pdf> [<https://perma.cc/JB64-BATZ>]. The DOJ made this statement in a letter to Seattle’s City Council, commending a proposed bill that ensured homeless persons living in encampments would be placed into housing or safe, secure alternative accommodations before a homeless encampment is evicted.

<sup>204</sup> See, e.g., Emily Badger, *It’s Unconstitutional to Ban the Homeless from Sleeping Outside, the Federal Government Says*, WASH. POST (Aug. 13, 2015, 7:45 AM), <https://www.washingtonpost.com/news/wonk/wp/2015/08/13/its-unconstitutional-to-ban-the-homeless-from-sleeping-outside-the-federal-government-says> [<https://perma.cc/9VF3-PQAW>].

<sup>205</sup> See, e.g., *Homelessness Toolkit*, CITY OF PORTLAND, OR., <https://www.portlandoregon.gov/toolkit/article/562206> [<https://perma.cc/3QTW-N9JS>] (stating “Why won’t the police arrest people experiencing homelessness? Being homeless is not against the law. The Department of Justice has recently made it clear that not allowing people to sleep on the street may be illegal.”).

<sup>206</sup> See, e.g., *Smith v. City of Corvallis*, No. 6:14-cv-01382-MC, 2016 WL 3193190, at \*1–2 (D. Or. June 6, 2016); *Cobine v. City of Eureka*, No. C 16-02239 JSW, 2016 WL 1730084 (N.D. Cal. May 2, 2016); *City of North Bend v. Bradshaw*, No. Y123426A (Issaquah Mun. Ct. Jan. 13, 2016).

<sup>207</sup> Brief of Plaintiffs-Appellants Robert Martin et al. at 8, 27, *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018) (No. 15-35845).

<sup>208</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1046 (9th Cir. 2018), *amended by* 920 F.3d 584.

<sup>209</sup> Petition for a Writ of Certiorari, *Martin*, 902 F.3d 1031 (No. 15-35845).

<sup>210</sup> *Martin v. City of Boise*, 920 F.3d 584, 588 (9th Cir. 2019).

<sup>211</sup> *City of Boise v. Martin*, 140 S. Ct. 674 (2019).

<sup>212</sup> See, e.g., Patrick Sisson, *Homeless People Gain ‘De Facto Right’ to Sleep on Sidewalks Through Federal Court*, CURBED (Dec. 16, 2019, 11:23 AM), <https://www.curbed.com/2019/4/5/18296772/supreme-court-homeless-lawsuit-boise-appeals-court> [<https://perma.cc/6YDV-74E7>] (“Cities have already been adjusting their policy based on the September ruling in the case. San Francisco, Portland, and Sacramento have stopped enforcing such rules based on this new

D. *Engaging with the Human Rights Council to Generate Domestic Change*

Following the Special Rapporteurs and treaty bodies, the next strategic point of engagement was Universal Periodic Review (UPR) by the U.N. Human Rights Council (the Council), an intergovernmental body of forty-seven states.<sup>213</sup> Through the UPR process, the Council reviews the human rights records of all U.N. member states approximately every four years.<sup>214</sup> Similar to treaty body reviews, the UPR provides opportunities for both state and NGO submissions, followed by an oral review in Geneva.<sup>215</sup> Unlike the treaty reviews, however, the UPR is a peer review by other states, rather than by independent experts.<sup>216</sup>

The timing of the United States' second UPR in 2015 was ideal. Having laid a base with the Special Rapporteurs and developed a normative framework with the treaty bodies over the past four years, the Law Center used the opportunity of the UPR to compile all these pieces, generating further pressure on the United States to take concrete steps towards implementation. Coordinating with the USHRN, the Law Center led the Housing & Homelessness Working Group in arranging a series of consultations with senior government officials from spring 2014 through winter 2014–15.<sup>217</sup> Although these meetings did not produce a strong response from the United States in its official UPR submission,<sup>218</sup> they flowed into conversations with the DOJ begun

precedent. Modesto, California, dedicated a park to housing the homeless, while Olympia, Washington, called off sweeps of homeless encampments.”)

<sup>213</sup> *UN Universal Periodic Review*, INT'L JUS. RES. CTR., <https://ijrcenter.org/un-human-rights-council/un-universal-periodic-review> [<https://perma.cc/KG7P-WJNY>].

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Universal Periodic Review*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx> [<https://perma.cc/GT2A-3RWW>]; ALSTON & GOODMAN, *supra* note 167, at 737.

<sup>217</sup> See, e.g., 2014.4.1 Access to Justice One Pager FINAL (on file with authors); NAT'L L. CTR. ON HOMELESSNESS & POVERTY, IN JUST TIMES (2015), <https://nlchp.org/wp-content/uploads/2018/12/2015February.pdf> [<https://perma.cc/JZ2Z-CQAA>]; see also E-mail from Toussaint Losier to Eric Tars (Dec. 4, 2014, 12:02 PM) (on file with authors).

<sup>218</sup> Hum. Rts. Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: United States of America*, ¶ 105, U.N. Doc. A/HRC/WG.6/22/USA/1 (Feb. 13, 2015). The United States claimed it was “committed to ending homelessness, and has made great progress in this area” and noted that in 2010, the United States launched the Opening Doors program, a strategy for ending homelessness among selected minorities before 2020 and “setting a path to eradicate all types of homelessness in the United States.” It also referenced the National Housing Trust Fund and that federal law now guarantees

through the CAT review process, building new allies within the Department's Access to Justice Initiative, which ultimately led to the DOJ's statement of interest brief in *Bell v. Boise*.<sup>219</sup>

From the fall of 2014 through spring 2015, in parallel with this domestic advocacy, the Law Center coordinated a Working Group submission to the Council, as well as lobbied governments to raise the issues it highlighted during the review.<sup>220</sup> At an April briefing coordinated by the USHRN, a chance meeting with an early-arriving Egyptian representative provided an opportunity for an extended conversation, which eventually led to a strong UPR recommendation the following month, demonstrating the effectiveness of lobbying in the United States even if one cannot visit Geneva.<sup>221</sup> Additionally, as the UPR is conducted by the political representatives of other nations rather than independent experts, it was useful to point out again that the United States had already accepted that criminalization of homelessness may constitute a human rights violation in *Searching Out Solutions*, making it less politically risky to raise this issue.<sup>222</sup> This was amplified by the fact that in October 2014, in the midst of the treaty reviews, HUD's Office of Special Needs Assistance Programs (SNAPS) published guidance that outlined policy reasons why criminalization is a poor approach, reiterating that "*Searching Out Solutions* emphasizes

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children and youth experiencing homelessness access to a free appropriate public education. See also *U.S. Report to the Human Rights Council Under-Represents the Violations of the Human Right to Housing*, HOMLESSNESSLAW.ORG (Feb. 11, 2015), <http://homelessnesslaw.org/2015/02/u-s-report-to-the-human-rights-council-under-represents-the-violations-of-the-human-right-to-housing> [<https://perma.cc/9SE6-FX9E>].

<sup>219</sup> See E-mail from Bob Bullock, Senior Couns., Access to Just. Initiative, U.S. Dep't of Just., to Eric Tars (Feb. 5, 2015, 7:00 PM) (on file with authors).

<sup>220</sup> NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING AND HOMELESSNESS IN THE UNITED STATES OF AMERICA: SUBMISSION TO THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW OF UNITED STATES OF AMERICA (2014), [https://nlchp.org/wp-content/uploads/2018/10/UPR\\_Housing\\_Report\\_2014-1.pdf](https://nlchp.org/wp-content/uploads/2018/10/UPR_Housing_Report_2014-1.pdf) [<https://perma.cc/N5CG-RWWP>]. In addition to the Law Center, the report had sections contributed by the Chicago Anti-Eviction Campaign, National Coalition for the Homeless, National Fair Housing Alliance, National Low Income Housing Coalition, and Unity Parenting & Counseling, Inc., and received forty-six additional endorsements. The Law Center sent emails to embassy staff at specific country missions that had submitted questions in prior UPRs on housing and homelessness issues. See, e.g., E-mail from Samuel Goldsmith, to Coordinator Tinajero et. al. (Nov. 5, 2014) (on file with authors). Taking advantage of the CAT review in November 2014 prior to the UPR review in 2015, Law Center staff met with U.N. mission staff in Geneva. See, e.g., E-mail from Carlos Zorilla Pina to Eric Tars (Nov. 7, 2014) (on file with authors). The Law Center also helped coordinate USHRN-sponsored briefings for embassy staff in DC in February and April 2015. See E-mail from Thenjiwe McHarris (Feb. 19, 2015) (on file with authors); UPR April 15 flyer (on file with authors).

<sup>221</sup> See E-mail from Eric Tars to Jeremy Rosen (May 18, 2015) (on file with authors).

<sup>222</sup> See *SEARCHING OUT SOLUTIONS*, *supra* note 26.

a human rights approach to ending homelessness and points out that criminalization measures are not aligned with this approach.”<sup>223</sup>

In May 2015, the Council conducted the UPR of the United States.<sup>224</sup> Egypt recommended that the United States “[a]mend laws that criminalize homelessness and which are not in conformity with international human rights instruments.”<sup>225</sup> This recommendation emphasized the creation of a new human rights norm—the Special Rapporteurs’ comments and treaty body recommendations had coalesced into a clear standard: laws that criminalize homelessness fail to conform with international human rights instruments. Additionally, it created an opportunity for follow-up, as, once the reviewing countries prepare their report of comments and recommendations on a state, that state then has an opportunity to note at the following HRC session whether it accepts or rejects a recommendation. Through the Law Center’s ongoing advocacy,<sup>226</sup> the United States accepted, in part,

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<sup>223</sup> *SNAPS in Focus: The Case Against Laws That Criminalize Homelessness*, HUD EXCH. (Oct. 6, 2014), <https://www.hudexchange.info/news/snaps-in-focus-the-case-against-laws-that-criminalize-homelessness> [<https://perma.cc/4XPK-KVMW>].

<sup>224</sup> *Universal Periodic Review—United States of America*, U.N. HUM. RTS. COUNCIL (May 11, 2015), <https://www.ohchr.org/EN/HRBodies/UPR/Pages/USindex.aspx> [<https://perma.cc/L54Y-FR48>].

<sup>225</sup> Eric Tars & Liz Osborn, *Leading By Example on Human Rights of People Experiencing Homelessness*, USICH (Oct. 13, 2015), <https://dev2.usich.gov/news/leading-by-example-on-human-rights-of-people-experiencing-homelessness> [<https://perma.cc/HG6C-WPEZ>]; HRC Recommendations to U.S.A. (Egypt) A/HRC/30/12/Add.1—176.310; see also *Police Violence Against Homeless, Poor Persons, Housing & Homelessness Addressed at Global Review of U.S. Human Rights Record*, HOMLESSNESSLAW.ORG (May 14, 2015), <http://homelessnesslaw.org/2015/05/police-violence-against-homeless-poor-persons-housing-homelessness-addressed-at-global-review-of-u-s-human-rights-record> [<https://perma.cc/35M3-XHG2>].

<sup>226</sup> Since at least the early 2000s round of treaty reviews, and up through the 2015 UPR, advocates, including the Law Center, have been calling for a permanent institutionalization of the informal interagency working group where domestic agencies and the State Department could engage in an ongoing dialogue between the international human rights system and domestic implementation of human rights standards. *E.g.*, CATHERINE POWELL, HUMAN RIGHTS AT HOME: A DOMESTIC POLICY BLUEPRINT FOR THE NEW ADMINISTRATION (2008), <http://www.nlginternational.org/report/adminblueprint.pdf> [<https://perma.cc/YBC5-LKZ3>]; HUMAN RIGHTS TO HUMAN REALITY, *supra* note 128, at 7. While it never operated as robustly as hoped, the Law Center was able to take advantage of the structures provided by the convening powers of the Domestic Policy Council, Justice Department, and State Department, which organized the Equality Working Group (EWG) and which emerged as the structure through which the federal government addressed human rights monitoring. See Reut Cohen, *Real Commitment or Just a Show? An Outsider Perspective on the 2014 U.S. Government Human Rights Consultation Sessions*, HOMLESSNESSLAW.ORG (July 21, 2014), <http://homelessnesslaw.org/2014/07/real-commitment-or-just-a-show-an-outsider-perspective-on-the-2014-u-s-government-human-rights-consultation-sessions> [<https://perma.cc/98PR-Q3S4>]; 2016 *Year-End Summary of the U.S. Universal Periodic Review Working Groups*, U.S. MISSION TO INT’L. ORG. IN GENEVA (Jan.

Egypt's recommendation.<sup>227</sup> Disappointingly, the United States hedged its answer, stating, "We disagree with some of this recommendation's premises, but are committed to helping communities pursue alternatives to criminalizing homelessness. We believe our laws are consistent with our international obligations."<sup>228</sup>

Despite this somewhat lackluster conclusion to the international portion of the dialogue, domestic dialogue continued, resulting in important steps forward by various federal agencies. Since 2010, the Federal Strategic Plan to End Homelessness has addressed the need to reduce criminalization of homelessness as an essential strategy in ending homelessness.<sup>229</sup> In June 2015, following the treaty reviews and UPR, the Plan was updated and included a quote from the Law Center, stating, "Criminally punishing people for living in public when they have no alternative violates human rights norms, wastes precious resources, and ultimately does not work," thus directly integrating human rights norms into the domestic policy framework for the nineteen federal agencies comprising the USICH.<sup>230</sup> The 2018 revision of the Plan, *Home Together*, also reflects the impact of CERD review, as it highlights that the government "must also address the racial inequities and other disparities in the risks for, and experiences of, homelessness"<sup>231</sup> and "[i]mprove access to emergency assistance, housing, and supports for historically underserved and overrepresented groups."<sup>232</sup>

In August 2015, less than a week after the DOJ submitted its landmark brief in the *Bell v. Boise* case,<sup>233</sup> USICH issued *Ending*

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11, 2017), <https://geneva.usmission.gov/2017/01/17/u-s-upr-working-groups-2016-year-end-summary> [<https://perma.cc/NQ5Y-3SWJ>].

<sup>227</sup> Hum. Rts. Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, U.N. Doc. A/HRC/30/12/Add.1, ¶ 12 (Sept. 14, 2015), <https://undocs.org/pdf?symbol=en/A/HRC/30/12/Add.1> [<https://perma.cc/3LLM-456H>].

<sup>228</sup> *Id.*

<sup>229</sup> See *supra* note 143, at 48; USICH, *OPENING DOORS*, *supra* note 8, at 53–54; U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *HOME, TOGETHER: THE FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS* 1, 16 (2018), [https://www.usich.gov/resources/uploads/asset\\_library/Home-Together-Federal-Strategic-Plan-to-Prevent-and-End-Homelessness.pdf](https://www.usich.gov/resources/uploads/asset_library/Home-Together-Federal-Strategic-Plan-to-Prevent-and-End-Homelessness.pdf) [<https://perma.cc/ST6Z-HZL4>] [hereinafter *HOME, TOGETHER*].

<sup>230</sup> USICH, *OPENING DOORS*, *supra* note 8, at 53

<sup>231</sup> *HOME TOGETHER*, *supra* note 229, at 5.

<sup>232</sup> *Id.* at 18.

<sup>233</sup> Statement of Interest of the United States, *Bell v. City of Boise*, 993 F. Supp. 2d. 1237 (D. Idaho 2014) (No. 1:09-cv-00540-REB); Press Release, U.S. Dep't of Just. Off. of Pub. Aff., Justice Department Files Brief to Address the Criminalization of Homelessness (Aug. 6, 2015), <http://www.justice.gov/opa/pr/justice-department-files-brief-address-criminalization-homelessness> [<https://perma.cc/2Q46-K8CQ>]; see, e.g., Sisson, *supra* note 212 ("Cities have

*Homelessness for People Living in Encampments: Advancing the Dialogue.*<sup>234</sup> This new guidance takes a blunt anti-criminalization position: “The forced dispersal of people from encampment settings is not an appropriate solution or strategy, accomplishes nothing toward the goal of linking people to permanent housing opportunities, and can make it more difficult to provide such lasting solutions to people who have been sleeping and living in the encampment.”<sup>235</sup>

In September 2015, this guidance was followed by HUD’s addition of a one-point question to its funding application for almost two billion dollars in federal homelessness funding. This question asked what steps communities are taking to end the criminalization of homelessness, directly implementing the HRC and CERD recommendations.<sup>236</sup> Further HUD funding applications (2016, 2017, 2018, and 2019) increased this question’s worth to two points.<sup>237</sup> As noted by former HUD SNAPS Director, Ann Oliva, “half a point or a point can make a

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already been adjusting their policy based on the September ruling in the case. San Francisco, Portland, and Sacramento have stopped enforcing such rules based on this new precedent. Modesto, California, dedicated a park to housing the homeless, while Olympia, Washington, called off sweeps of homeless encampments.”).

234 U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, ENDING HOMELESSNESS FOR PEOPLE LIVING IN ENCAMPMENTS: ADVANCING THE DIALOGUE (2015), [https://www.usich.gov/resources/uploads/asset\\_library/Ending\\_Homelessness\\_for\\_People\\_Living\\_in\\_Encampments\\_Aug2015.pdf](https://www.usich.gov/resources/uploads/asset_library/Ending_Homelessness_for_People_Living_in_Encampments_Aug2015.pdf) [<https://perma.cc/PPC5-HSVM>] [hereinafter ENDING HOMELESSNESS]; see also Press Release, Nat’l L. Ctr. on Homelessness & Poverty, Federal Government Recommends Housing, Not Sweeps for Homeless Encampment Residents (Aug. 12, 2015), <https://nlchp.org/wp-content/uploads/2018/12/Press-Release-8.12.2015.pdf> [<https://perma.cc/PKD2-GCLK>].

235 ENDING HOMELESSNESS, *supra* note 234, at 2.

236 See NAT’L L. CTR. ON HOMELESSNESS & POVERTY, SCORING POINTS: HOW ENDING THE CRIMINALIZATION OF HOMELESSNESS CAN INCREASE HUD FUNDING TO YOUR COMMUNITY 1, 6 (2018), <https://nlchp.org/wp-content/uploads/2018/10/NOFAtoolkit2018.pdf> [<https://perma.cc/PV8A-4YJR>] [hereinafter SCORING POINTS].

237 *Id.*; U.S. DEP’T HOUS. & URB. DEV., NOTICE OF FUNDING AVAILABILITY (NOFA) FOR THE FISCAL YEAR (FY) 2016 CONTINUUM OF CARE PROGRAM COMPETITION TECHNICAL CORRECTION 1, 35 (2016), <https://www.hudexchange.info/resources/documents/FY-2016-CoC-Program-NOFA.pdf> [<https://perma.cc/7BH2-MVGL>]; U.S. DEP’T HOUS. & URB. DEV., NOTICE OF FUNDING AVAILABILITY (NOFA) FOR THE FISCAL YEAR (FY) 2017 CONTINUUM OF CARE PROGRAM COMPETITION 1, 45 (2017), <https://www.hudexchange.info/resource/5419/fy-2017-coc-program-nofa> [<https://perma.cc/386G-FFSZ>]; U.S. DEP’T HOUS. & URB. DEV., NOTICE OF FUNDING AVAILABILITY (NOFA) FOR THE FISCAL YEAR (FY) 2018 CONTINUUM OF CARE PROGRAM COMPETITION 1, 54 (2018), <https://www.hudexchange.info/resource/5719/fy-2018-coc-program-nofa> [<https://perma.cc/YXM8-Z4NG>]; U.S. DEP’T HOUS. & URB. DEV., NOTICE OF FUNDING AVAILABILITY (NOFA) FOR THE FISCAL YEAR (FY) 2019 CONTINUUM OF CARE PROGRAM COMPETITION 1, 64 (2019), <https://www.hudexchange.info/resource/5842/fy-2019-coc-program-nofa> [<https://perma.cc/47MZ-U3CK>].

difference between being funded or not funded.”<sup>238</sup> These incentives have increased the number of communities reporting that they are educating local officials and law enforcement on criminalization, though it is difficult to track whether and how policies are changing.<sup>239</sup> That same month, the Law Center convinced HUD to add a permanent web page addressing criminalization, adopting language similar to the *Searching Out Solutions* report, noting that criminalization may violate both domestic and international human rights standards.<sup>240</sup>

In October 2015, the Law Center and USICH authored a joint blog on human rights and criminalization for USICH’s website.<sup>241</sup> This blog specifically made the connection between the UPR recommendation to “amend laws that criminalize homelessness, and which are not in conformity with international human rights instruments,” and the steps subsequently taken by DOJ in intervening in the *Boise* case, HUD in creating funding incentives, and USICH in issuing guidance on encampments.<sup>242</sup> The blog also noted that CERD cited to the DOJ brief in its review of Norway, demonstrating a positive feedback loop between the national and international spheres.<sup>243</sup>

In December 2015, the DOJ Community Oriented Policing Services Office (COPS) published an entire issue of its newsletter dedicated to positive alternatives to the criminalization of homelessness.<sup>244</sup> The lead article by the USICH Director, Matthew

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<sup>238</sup> Alan Pyke, *Local Officials Have Pushed to Criminalize Homelessness for Years. The Feds Are Starting to Push Back*, THINKPROGRESS (Aug. 18, 2015, 12:00 PM), <https://thinkprogress.org/local-officials-have-pushed-to-criminalize-homelessness-for-years-the-feds-are-starting-to-push-back-c71b2feffe45> [<https://perma.cc/GT8K-G7EH>].

<sup>239</sup> See SCORING POINTS, *supra* note 236, at 6.

<sup>240</sup> *Decriminalizing Homelessness*, HUD EXCHANGE, <https://www.hudexchange.info/homelessness-assistance/alternatives-to-criminalizing-homelessness> [<https://perma.cc/3RHM-CD6R>] (“Although individuals experiencing homelessness should be afforded the same dignity, compassion, and support provided to others, criminalization policies further marginalize men and women who are experiencing homelessness, fuel inflammatory attitudes, and may even unduly restrict constitutionally protected liberties and violate our international human rights obligations.”). In November 2015, the Law Center was also able to get HUD and the DOJ to co-sponsor a viewing of the film *Under the Bridge: The Criminalization of Homelessness* and host a post-film discussion with the director and the Law Center. Flyer, HUD Off. of Fair Hous. and Equal Opportunity et. al., *Under the Bridge: The Criminalization of Homelessness Film Screening and Discussion* (Nov. 30, 2015) (on file with authors).

<sup>241</sup> Tars & Osborn, *supra* note 225.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> Eric Tars, *Alternatives to Criminalization: The Role of Law Enforcement*, DISPATCH (Dec. 2015), [https://cops.usdoj.gov/html/dispatch/12-2015/alternatives\\_to\\_criminalization.asp](https://cops.usdoj.gov/html/dispatch/12-2015/alternatives_to_criminalization.asp) [<https://perma.cc/4JP-KR5G>]. This was shared with the newsletter’s more than 6,000 law enforcement subscribers. See E-mail from Nazmia E.A. Comrie, Senior Soc. Sci. Analyst, COPS



Doherty, highlights “[the government’s] commitment to helping communities pursue alternatives to criminalizing homelessness in response to the Human Rights Council’s recommendation to ‘amend laws that criminalize homelessness.’”<sup>245</sup> The issue also featured an article that discusses how Continuums of Care and law enforcement agencies can collaborate to reduce homelessness, a piece about an upcoming DOJ toolkit for law enforcement agencies interested in strengthening their outreach with homeless populations, a contribution from the Law Center on the importance of enacting alternatives to criminalization, and firsthand experiences of officers who have successfully instituted new approaches to ending homelessness.<sup>246</sup>

Through the remainder of the Obama Administration and the first few years of the Trump Administration, the federal government’s stance against criminalization of homelessness as a human rights violation remained consistently strong, reflecting its bipartisan support.<sup>247</sup> In

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Off., U.S. Dept. of Just., to Eric Tars, Senior Att’y, Nat’l L. Ctr. on Homelessness & Poverty (Dec. 7, 2015, 4:02 PM) (on file with authors).

<sup>245</sup> Matthew Doherty, *Incarceration and Homelessness: Breaking the Cycle*, DISPATCH (Dec. 2015), [https://cops.usdoj.gov/html/dispatch/12-2015/incarceration\\_and\\_homelessness.asp](https://cops.usdoj.gov/html/dispatch/12-2015/incarceration_and_homelessness.asp) [<https://perma.cc/5W9A-6J3L>].

<sup>246</sup> Tars, *supra* note 244. In 2016, DOJ took additional steps on areas related to the criminalization of homelessness, issuing guidance and grants to discourage the excessive use of fines and fees and their non-payment as a reason for incarceration. Press Release, U.S. Dept. of Just. Off. of Pub. Aff., Justice Department Announces Resources to Assist State and Local Reform of Fine and Fee Practices (Mar. 14, 2016), <https://www.justice.gov/opa/pr/justice-department-announces-resources-assist-state-and-local-reform-fine-and-fee-practices> [<https://perma.cc/2NTP-3P3D>]. The DOJ also filed a statement of interest brief in *Walker v. Calhoun*, stating bail practices of detaining indigent defendants before trial without a court’s meaningful consideration of the individual’s ability to pay violate the Fourteenth Amendment. Brief for the United States as Amicus Curiae in Support of Neither Party, *Walker v. City of Calhoun*, 901 F.3d 1245 (11th Cir. 2018) (No. 17-13139).

<sup>247</sup> Press Release, White House Off. of the Press Sec’y, Fact Sheet: Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration (June 30, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/06/30/fact-sheet-launching-data-driven-justice-initiative-disrupting-cycle> [<https://perma.cc/HAA7-L3GU>]. In June 2016, the Obama White House also launched the Data-Driven Justice Initiative (DDJI), with the Law Center as a founding non-governmental partner. DDJI is a bipartisan coalition of over 140 city, county, and state governments who have “committed to using data-driven strategies to divert low-level offenders with mental illness out of the criminal justice system and change approaches to pre-trial incarceration, so that low-risk offenders no longer stay in jail simply because they cannot afford a bond.” *Id.* Following the change of administration, the DDJI is now being carried forward by the National Association of Counties. *Data-Driven Justice*, NAT’L ASS’N OF CNTYS., <https://www.naco.org/node/129601> [<https://perma.cc/2VD5-WUPM>]. Compare U.S. DEP’T HOUS. & URB. DEV., NOTICE OF FUNDING AVAILABILITY (NOFA) FOR THE FISCAL YEAR (FY) 2016 CONTINUUM OF CARE PROGRAM COMPETITION TECHNICAL CORRECTION 1, 35 (2016), <https://www.hudexchange.info/resources/documents/FY-2016-CoC-Program-NOFA.pdf> [<https://perma.cc/7BH2-MVGL>], with U.S. DEP’T HOUS. & URB. DEV., NOTICE OF FUNDING

fact, the *Martin* decision and HUD funding requirements likely influenced the Trump Administration to shelve plans to issue an executive order that would have potentially forcibly evicted and incarcerated people experiencing homelessness in mega-tent facilities.<sup>248</sup> Having succeeded in influencing policies at the federal level, the Law Center and its partners turned their attention to implementing these standards at the state and local levels, as well as pushing beyond anti-criminalization policies to address the underlying human right to adequate housing.

### E. *Lessons Learned*

Human rights advocacy to address the criminalization of homelessness highlights the need for constant interplay between the international and domestic spheres, as well as creative engagement outside litigation. Moreover, it is important for advocates to identify a specific focus and consistently engage across human rights bodies.

International advocacy must be connected with domestic advocacy to be meaningful. Advocacy to address the criminalization of homelessness made use of the full range of opportunities offered by the international system as a cumulative and interconnected strategy to build relationships with federal officials. The Law Center and its partners started by inviting targeted federal and local officials to participate on panels at human rights trainings; while these officials would briefly present, they would also sit through the remainder of the panel, gaining exposure to human rights and grassroots enthusiasm for this framework. Then, with each visit of a Special Rapporteur and at each stage of a human rights body's review of the United States' record, the Law Center followed up with those same federal officials at HUD, DOJ, and USICH—not just at the State Department—further familiarizing them with the human rights framework. Recognizing that the government is not a monolith, advocates tailored concrete demands to particular agencies. At follow-up meetings, the Law Center translated

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AVAILABILITY (NOFA) FOR THE FISCAL YEAR (FY) 2017 CONTINUUM OF CARE PROGRAM COMPETITION 1, 45 (2017), <https://www.hudexchange.info/resource/5419/fy-2017-coc-program-nofa> [<https://perma.cc/386G-FFSZ>] (Since Trump took office in 2017, HUD has kept the Continuums of Care (COC) funding requirements in place, which condition federal funds on decriminalization.)

<sup>248</sup> Jeff Stein, Erica Werner, & Josh Dawsey, *White House Shifts Strategy on California Homelessness, Opting for More Cooperation*, WASH. POST (Jan. 14, 2020, 6:00 AM), <https://www.washingtonpost.com/business/2020/01/14/white-house-shifts-strategy-california-homelessness-crisis-opting-more-cooperation> [<https://perma.cc/PL5L-WR59>].

the broad international recommendations it helped generate—notably that the U.S. should take action to abolish criminalization of homelessness—into agency-specific actions as follows: “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,” and the “[DOJ] should investigate and challenge particular instances of local and state criminalization measures.”<sup>249</sup> It was “not anyone meeting that made the difference, but the repeated interaction with HUD, USICH, DOJ and other agencies, consistently engaging them through the human rights framework, that slowly built their familiarity with, and sense of accountability to, the standards.”<sup>250</sup> The tipping point came when USICH convened its own meeting and developed its own blog series on human rights, engaging with the human rights framework on its own.<sup>251</sup>

Moreover, training and self-education played a critical role in effective advocacy. Meetings with federal officials built on the power of local advocates trained in human rights who shared the voices of directly impacted individuals. It was no coincidence that the Special Rapporteurs visited the cities they did—these were the places where a cultivated base stood ready to take advantage of the opportunities for domestic advocacy presented by the international visit. During the Trump Administration, which has failed to invite Special Rapporteurs or submit its treaty reports, it may be particularly strategic to focus on trainings in order to lay the groundwork for a time when more progress is possible at the federal level.

It is also important to use human rights standards creatively and expansively outside bringing a cause of action in court. Although the Law Center referenced the CIDT standard developing internationally in its legal briefs in the hopes of influencing judges to draw on it in interpreting the Eighth Amendment, less legalistic engagement with the human rights system led to broader impact. While the Law Center was

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<sup>249</sup> Law Center Releases Report on Criminalization of Homelessness, Announces Webinar, Nat'l Low Income Housing Coal., <https://nlihc.org/resource/law-center-releases-report-criminalization-homelessness-announces-webinar> [<https://perma.cc/8MHY-NYWG>].

<sup>250</sup> HUMAN RIGHTS TO HUMAN REALITY, *supra* note 128, at 18 (noting “once the shift happened, we now see USICH independently quoting human rights standards in its own materials. We are changing the baseline of the policy conversation . . .”).

<sup>251</sup> *Id.* at 23–24. “In the past, it had been [the Law Center] working to hold the government accountable to our demands; now it was the USICH [a federal agency] working with us and reaching out to its member agencies.” *Id.* at 18.

not able to obtain a reference to international law in the lower court's decision in the *Boise* case, even if it had, it would have been only one footnote in an Idaho District Court case.<sup>252</sup> However, consistent meetings with the DOJ through international processes led to the department's intervention in this case, which garnered national attention and caused even communities not being sued to alter their policies. This built a record that ultimately led to victory at the Ninth Circuit, preserved by the Supreme Court's denial of certiorari.<sup>253</sup>

Furthermore, advocacy focus is critical. The Law Center initially engaged with human rights standards broadly, applying them to various issues faced by people experiencing homelessness in the United States.<sup>254</sup> The Law Center had some initial success but soon realized that without sustained focus on one specific aspect, its advocacy would be too diffuse to effect real change.<sup>255</sup> It further was not feasible at the outset to tackle the challenge of realizing the full right to adequate housing with the complexity of factors involved and the United States so far from this goal.<sup>256</sup> Instead, the Law Center decided to focus on addressing criminalization of homelessness, a violation of civil and political rights more familiar to a United States audience.<sup>257</sup> Building one clear and consistent standard across multiple human rights reviews and repeating the same specific demands with the same officials in meeting after meeting, the Law Center and its partners achieved concrete, national impact.<sup>258</sup> This success, in turn, is now building momentum for recognition of the human right to adequate housing.

#### IV. OPPORTUNITIES MOVING FORWARD

Moving forward not only presents opportunities to build on the work of advocates to continue to challenge the criminalization of homelessness but also to move beyond merely ending criminalization to approaching adequate housing as a human right. This entails both translating federal standards addressing the criminalization of homelessness to the state and local levels, as well as adopting a more

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<sup>252</sup> *Martin v. City of Boise*, No. 1:09-cv-00540-REB, 2015 WL 5708586 (D. Idaho Sept. 28, 2015).

<sup>253</sup> *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019); *City of Boise v. Martin*, 140 S. Ct. 674 (2019).

<sup>254</sup> HUMAN RIGHTS TO HUMAN REALITY, *supra* note 128, at 15.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.* at 15–16.

holistic approach to housing at all levels. In fact, a cultural shift to the human right to adequate housing is already apparent in public discourse.

A. *Translating Human Rights Standards Addressing the Criminalization of Homelessness to the State and Local Level*

Following the success of advocates in adopting human rights standards at the federal level to address the criminalization of homelessness, the next step entails translating these standards to the state and local levels. As discussed in the previous Section, HUD's added questions to its annual funding application,<sup>259</sup> as well as the *Martin v. Boise* case,<sup>260</sup> provide important opportunities to influence local laws and policies. In fact, the Law Center has already documented the impact of HUD's funding questionnaire at the local level,<sup>261</sup> and cities are changing their policies in response to comply with the *Martin* ruling.<sup>262</sup> States and municipalities are further taking a rights-oriented approach by adopting homeless bills of rights (HBoRs) and right to rest acts.

HBoRs and right to rest laws provide a rights-oriented framework to address the criminalization of homelessness. HBoRs are legislative enactments that guarantee equal rights for people experiencing homelessness as for those who are housed, largely by protecting them from discrimination by public or private actors. Due to the efforts of advocates, HBoRs have been enacted at the state level in Connecticut,<sup>263</sup>

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<sup>259</sup> See *supra* note 237 and accompanying text (These added questions provide an incentive for municipalities to remove laws criminalizing homelessness as a condition of their continuum of care networks receiving certain HUD funds.).

<sup>260</sup> *Martin v. City of Boise*, 902 F. 3d 1031 (9th Cir. 2018) (banning cities from criminalizing sleeping or camping in public in the Ninth Circuit).

<sup>261</sup> A report released by the Law Center found that since the change in HUD's questionnaire, the number of surveyed COCs that reported zero strategies to prevent the criminalization of the homeless declined from "nine to only one." Furthermore, the report found that from 2015 to 2017, the number of surveyed CoCs reporting community-wide plans to decriminalize homelessness increased by 11.9 percent. SCORING POINTS, *supra* note 236, at 6.

<sup>262</sup> Kevin Valine, *Ruling Protecting Homeless Who Sleep in Parks When They Don't Have Options Remains*, MODESTO BEE (Apr. 1, 2019, 4:24 PM), <https://www.modbee.com/news/article228697684.html> [<https://perma.cc/W9DQ-PFFL>]; Michael Barba & Joshua Sabatini, *Police Commission Urges SF to Address Homelessness with Health Workers Instead of Cops*, S.F. EXAM'R (Jan. 15, 2020, 6:51 PM), <https://www.sfexaminer.com/news/police-commission-urges-sf-to-address-homelessness-with-health-workers-instead-of-cops> [<https://perma.cc/6799-JZYU>].

<sup>263</sup> Homeless Person's Bill of Rights, CONN. GEN. STAT. § 1-500 (2013).

Illinois,<sup>264</sup> Puerto Rico,<sup>265</sup> and Rhode Island.<sup>266</sup> Several other states, like California, Colorado, and Oregon, have considered similar right to rest bills, which protect many, but often not all, of the rights under a typical HBoR. They also affirmatively state a right to shelter in the absence of adequate alternatives.<sup>267</sup> Additionally, a number of municipalities have either passed or are seriously considering passing similar laws.<sup>268</sup>

Each HBoR has its particularities, but most generally protect negative rights,<sup>269</sup> which prevent a government from engaging in prohibited conduct, rather than positive rights, which compel government action.<sup>270</sup> Accordingly, existing HBoRs, excepting Puerto Rico,<sup>271</sup> follow the Rhode Island model, which protects seven negative rights for people experiencing homelessness: (1) the right to move freely in public spaces; (2) the right to equal treatment from all state and municipal agencies; (3) the right to be free from employment discrimination based on housing status; (4) the right to receive emergency medical care; (5) the right to vote; (6) the right to protection from disclosure of information provided to shelters or other public organizations; and (7) the right to a reasonable expectation of privacy

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<sup>264</sup> Bill of Rights for the Homeless Act, 775 ILL. COMP. STAT. 45/10 (2013); *see also* NAT'L. L. CTR. ON HOMELESSNESS & POVERTY, FROM WRONGS TO RIGHTS: THE CASE FOR HOMELESS BILL OF RIGHTS LEGISLATION (2018), [https://nlchp.org/wp-content/uploads/2018/10/Wrongs\\_to\\_Rights\\_HBOR.pdf](https://nlchp.org/wp-content/uploads/2018/10/Wrongs_to_Rights_HBOR.pdf) [<https://perma.cc/L6NV-4M5L>].

<sup>265</sup> P.R. LAWS ANN. tit. 8, § 1006c (2007); *see also* Sara K. Rankin, *A Homeless Bill of Rights (Revolution)*, 45 SETON HALL L. REV. 383, 410 (2015).

<sup>266</sup> 34 R.I. GEN. LAWS § 34-37.1-3 (2012).

<sup>267</sup> *See* Jeffrey Selbin & Paul Boden, *End Homeless-Exclusion Districts*, S.F. CHRON. (Sept. 20, 2018, 5:02 PM), <https://www.sfchronicle.com/opinion/article/End-homeless-exclusion-districts-13245984.php> [<https://perma.cc/M6CN-AE3C>]; *Decriminalizing Homelessness in Oregon*, ACLU OR. (Apr. 5, 2017), <https://www.aclu-or.org/en/publications/decriminalizing-homelessness-oregon> [<https://perma.cc/CF4Q-FT59>]; Faith Miller, *Homeless Right to Rest Act Gets Fifth Try in Colorado Assembly*, COLO. SPRINGS INDEP. (Feb. 2, 2019), <https://www.csindy.com/TheWire/archives/2019/02/02/homeless-right-to-rest-act-gets-fifth-try-in-colorado-assembly> [<https://perma.cc/3TEB-X96M>].

<sup>268</sup> *Local Homeless Bill of Rights Measures*, NAT'L. COAL. FOR THE HOMELESS, <https://nationalhomeless.org/campaigns/bill-of-right> [<https://perma.cc/KGL2-Z66B>].

<sup>269</sup> One notable exception is the right to emergency medical care, existing in Rhode Island, Illinois, and Connecticut state HBoR implementation. *See* 34 R.I. GEN. LAWS § 34-37.1-3 (2012); 775 ILL. COMP. STAT. 45/10 (2013); CONN. GEN. STAT. § 1-500 (2013).

<sup>270</sup> *See* Tamar Ezer, *A Positive Right to Protection for Children*, 7 YALE HUM. RTS. & DEV. L.J. 1, 4 (2004) (discussing the difference between positive and negative rights).

<sup>271</sup> Rankin, *supra* note 265 (explaining that Puerto Rico's Bill guarantees, in addition to most of the negative rights provided in the other existing HBoRs, the following positive rights including: the right to shelter, nourishment, preventative medicine, access to legal orientation, and a postal address free of charge).

for personal property.<sup>272</sup> The bills also provide a judicial cause of action for people experiencing homelessness whose rights have been violated and outline recoverable damages, allowing them to file suit against state or municipal governments for relief.<sup>273</sup>

The rights protected under HBoRs are important in creating a cause of action for rights violations and for preventing state and local governments from passing laws that criminalize homelessness. On the individual level, while it is difficult to find many cases brought under HBoRs, at least one example in Illinois shows promise. In this case, a homeless man reached a settlement agreement with the City of Chicago after city workers destroyed his property.<sup>274</sup> Without bringing suit, people experiencing homelessness have also effectively referred to HBoRs in their interactions with police to prevent harassment.<sup>275</sup> On a more macro level, HBoRs deter harmful legislation and could serve as an effective means for organizations to bring suit against states and municipalities for laws or practices that discriminate against people experiencing homelessness.<sup>276</sup>

The main criticism of HBoRs is that they make promises that are, in practice, difficult to enforce. Creating a judicially enforceable cause of action for people experiencing homelessness whose rights are violated relies on the assumption that people experiencing homelessness can file suit against violators.<sup>277</sup> However, people experiencing homelessness lack the financial resources to pursue legal action on their own and may not be able to access free legal representation.<sup>278</sup> Moreover, much of “their day is spent trying to

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<sup>272</sup> *Id.*; see tit. 34, § 34-37.1-3; see also tit. 775, § 45/10; § 1-500.

<sup>273</sup> tit. 34, § 34-37.1-3.

<sup>274</sup> Diane O’Connell, *Settlement in First Substantive Case Filed Under Illinois’ Bill of Rights for the Homeless*, CHI. COAL. FOR HOMELESS (Feb. 14, 2018), <https://www.chicagohomeless.org/settlement-first-substantive-case-filed-illinois-bill-rights-homeless> [<https://perma.cc/YDR4-D2Y6>].

<sup>275</sup> PETTY OFFENSES SYMPOSIUM: CHALLENGING CRIMINALIZATION OF POVERTY, MARGINALIZATION, AND GENDER NON-CONFORMITY, UNIV. OF MIA. HUM. RTS. CLINIC 13 (2019), <https://miami.app.box.com/s/q891w54b661c6bismf190x23835kamsq> [<https://perma.cc/L9YA-RGML>].

<sup>276</sup> See Jordan Bailey, *Food-Sharing Restrictions: A New Method Criminalizing Homelessness in American Cities*, 23 GEO. J. ON POVERTY L. & POL’Y 273, 290–92 (2016); Sarah Golabek-Goldman, Note, *Ban the Address: Combating Employment Discrimination Against the Homeless*, 126 YALE L.J. 1788, 1837–45 (2017); Lindsay J. Gus, *The Forgotten Residents: Defining the Fourth Amendment “House” to the Detriment of the Homeless*, 2016 U. CHI. LEGAL F. 769, 804–05 (2016).

<sup>277</sup> See Rankin, *supra* note 265, at 420–21.

<sup>278</sup> Martha Bergmark & Ellen Lawton, *One Reason So Many Veterans Are Homeless? They Can’t Afford Lawyers*, WASH. POST (July 8, 2016, 6:00 AM), <https://www.washingtonpost.com/>

survive—searching for food, clothing, shelter, and employment”—life-sustaining activities that make attending court appearances and legal strategy sessions challenging.<sup>279</sup> The existence of the *Martin* decision, protecting the right to shelter oneself in the absence of adequate alternatives, may make HBoRs less necessary in the coming years. Alternatively, some advocates are looking to HBoRs as a means of legislatively implementing the *Martin* decision and helping clarify some areas it has left unaddressed. Ultimately, advocates hope to move beyond the need for HBoRs by ensuring everyone is adequately housed, so that people are not on the streets to be criminalized in the first place.

### B. *Opportunity to Recognize a Holistic Human Right to Adequate Housing*

Using the human rights framework to end the criminalization of homelessness is a first step towards a more holistic approach that encompasses full enjoyment of the right to adequate housing. The Law Center noted that “by using human rights norms to affirm the rights of homeless people not to be penalized for their lack of housing, we also affirm the framework that holds that government has a positive obligation to ensure the right to housing.”<sup>280</sup> This entails recognition that homelessness is merely a downstream consequence of a lack of housing and that advocates must transition from a civil and political rights lens—focused on decriminalization of homelessness—to a more robust social and economic rights lens—focused on the right to adequate housing. In the United States, some communities are moving first toward a right to shelter, while many have jumped straight to adoption of a Housing First framework as a matter of policy, even if not recognized as a right. Additionally, creative local initiatives are advancing other components of the right to adequate housing. This includes legal security of tenure through a right to counsel in eviction court, and habitability through laws around the right to water.

One step on the road to the right to adequate housing is the right to shelter, which guarantees people experiencing homelessness a right to basic and often temporary indoor shelter. The first case finding a legal right to shelter was the 1979 New York State case, *Callahan v.*

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posteverything/wp/2016/07/08/one-reason-so-many-veterans-are-homeless-they-cant-afford-lawyers [https://perma.cc/DL98-VRUZ].

<sup>279</sup> George B. Cauthen & Jennifer P. Wilson, *Homeless Courts: Alternatives to the Criminalization of the Homeless*, 30 S.C. LAW. 50, 52 (2019).

<sup>280</sup> HUMAN RIGHTS TO HUMAN REALITY, *supra* note 128, at 15.



*Carey*, in which the court located this right in the state's constitutional duty to provide social welfare for the needy.<sup>281</sup> The outcome of this case was a consent decree, expanded on multiple occasions, requiring New York City to provide shelter for all people experiencing homelessness who meet the welfare standard or who are physically or mentally disabled.<sup>282</sup> This right has significantly reduced unsheltered homelessness in New York City and provided many people experiencing homelessness at least some protection against the dangers of living on the streets.<sup>283</sup>

Few other cities or states have adopted a full right to shelter, although it does exist in some form for people meeting certain conditions in Washington, D.C. and Massachusetts.<sup>284</sup> A large number of cities have implemented "code blue" nights, where emergency shelter spaces are made available when the temperature drops below a certain point.<sup>285</sup> This represents some recognition of a basic duty by the state not to let its people freeze, but not much more.

While the right to shelter is a step in the right direction, it falls short of a right to adequate housing, as it does not guarantee a permanent residence for people experiencing homelessness, nor does it

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<sup>281</sup> Callahan v. Carey, No. 79-42582, at \*10 (N.Y. Sup. Ct. 1979); see N.Y. CONST. art. XVII, § 1.

<sup>282</sup> *Our History*, COAL. FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/our-history> [<https://perma.cc/X2K8-WCLX>].

<sup>283</sup> *The Callahan Legacy: Callahan v. Carey and the Legal Right to Shelter*, COAL. FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/our-programs/advocacy/legal-victories/the-callahan-legacy-callahan-v-carey-and-the-legal-right-to-shelter> [<https://perma.cc/A72G-F57H>]; see also Lisa T. Alexander, *Occupying the Constitutional Right to Housing*, 94 NEB. L. REV. 245, 248 (2015). Alexander discusses the way that the right to housing, while not guaranteed explicitly under any U.S. laws, has been progressively interpreted by grassroots movements as a natural extension of Constitutionally guaranteed rights, noting that "[t]hese movements construct the human right to housing in American law by establishing through private and local laws a right to remain, a right to adequate and sustainable shelter, a right to housing in a location that preserves cultural heritage, a right to a self-determined community, and a right to equal housing opportunities for non-property owners, among other rights. By challenging local property rights, these movements also demonstrate how non-property owners, who lack adequate housing, also lack equal dignity, equal opportunity, equal citizenship, privacy, personal autonomy, and self-determination—all norms explicit in the U.S. constitutional order." *Id.*

<sup>284</sup> Martin Austerhuhle, *'Absurd' And 'Dehumanizing': D.C. Advocates Respond to White House Proposals to Fight Homelessness*, WAMU (Sept. 23, 2019), <https://wamu.org/story/19/09/23/absurd-disingenuous-and-dehumanizing-d-c-advocates-respond-to-white-house-proposals-to-fight-homelessness> [<https://perma.cc/L8SH-WW56>]; Lucy Ellis, *Massachusetts Family Homelessness System*, BOS. FOUND. (Feb. 22, 2017), <https://www.tbf.org/old-blog/2017/february/massachusetts-family-homelessness-system> [<https://perma.cc/7YBJ-C3ZE>].

<sup>285</sup> Christina Tkacik, *What Does 'Code Blue' Mean in Baltimore, and Who Is Responsible for Declaring It?*, BALT. SUN (Jan. 14, 2019), <https://www.baltimoresun.com/weather/bs-md-ci-code-blue-20190113-story.html> [<https://perma.cc/8ZZN-ZKR9>].

mitigate many of the negative effects of transient homelessness. While shelters can be a step up from living on the streets, many individuals experiencing homelessness find themselves more at risk of theft, disease, sexual violence, and other conditions not conducive to mental health while in shelters.<sup>286</sup> Finally, it is extremely expensive to maintain a right to shelter with individuals cycling in and out of homelessness.<sup>287</sup> These reasons are perhaps why New York City has been recently moving towards providing permanent housing to people experiencing homelessness and investing in preventing homelessness through a Housing First approach.<sup>288</sup>

Over the past few decades, the U.S. federal government adopted a Housing First framework that aims to end homelessness by providing affected individuals with immediate access to affordable housing.<sup>289</sup> As the USICH described in *Opening Doors*, successful implementation of the Housing First framework is premised on the following principles:

- 1) [H]omelessness is a housing crisis and can be addressed through the provision of safe and affordable housing;
- 2) all people experiencing homelessness, regardless of their housing history and duration of homelessness, can achieve housing stability in permanent housing;
- 3) everyone is “housing ready,” meaning that sobriety, compliance in treatment, or even a clean criminal history is not necessary to succeed in housing;
- 4) many people experience improvements in quality of life, in the areas of health, mental health, substance use, and employment, as a result of achieving housing;
- 5) people experiencing homelessness have the right to self-determination and should be treated with dignity and respect and;
- 6) the exact configuration of housing and services depends upon the needs and preferences of the population.<sup>290</sup>

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<sup>286</sup> Micah Bertoli, *Why Homeless People Choose the Street Over Shelters*, INVISIBLE PEOPLE, <https://invisiblepeople.tv/why-homeless-people-choose-the-street-over-shelters> (July 3, 2019) [<https://perma.cc/5HH9-FQJ7>].

<sup>287</sup> Brendan Cheney, *City Spending \$364M Per Year on Hotels for Homeless People*, POLITICO N.Y. (Mar. 16, 2018, 7:27 PM), <https://www.politico.com/states/new-york/city-hall/story/2018/03/16/city-spending-364m-per-year-on-hotels-for-homeless-people-318770> [<https://perma.cc/B29Q-PJPY>].

<sup>288</sup> Sarah Gonzalez, *NYC Invests in Permanent Housing for Homeless. Will Phase Out Hotel Use*, NPR (June 6, 2019, 5:00 AM), <https://www.npr.org/2019/06/06/730207999/nyc-officials-invest-in-permanent-housing-for-homeless-will-phase-out-hotel-use> [<https://perma.cc/EU2F-FBRG>].

<sup>289</sup> HEARTH Act, *supra* note 140.

<sup>290</sup> USICH, *OPENING DOORS*, *supra* note 8, at 14.

Moreover, Housing First programs engage in proactive outreach and provide access to supportive services to maintain housing stability, although these services are completely voluntary.<sup>291</sup>

Housing First models, which focus on quick access to housing, are both cheaper and more effective in the long term in addressing homelessness.<sup>292</sup> Communities that implemented a Housing First framework have reaped benefits such as reduced arrests, decreased spending, fewer emergency room visits, and elimination of chronic homelessness.<sup>293</sup> USICH reported: “In Seattle, Washington, a permanent supportive housing site using Housing First practices experienced an average savings of \$2,449 per person per month in public service costs after 6 months of intervention (including jail, hospitalizations, detoxification treatment, emergency, and Medicaid-funded services).”<sup>294</sup>

As the Law Center remarked:

We can either pay more to react to people’s homelessness, endlessly chasing them through the expensive rotating doors of the criminal justice system and emergency rooms, or we can decide that we all need to step up and invest in finally ending homelessness, once and for all, through the proven intervention of supportive housing.<sup>295</sup>

However, Housing First programs are still limited by scarce resources and are not available “by right.” This contrasts with some other countries, such as Scotland, where those experiencing homelessness are able to move directly from the streets into a temporary accommodation and then, within a limited period of time, into permanent housing for as long as needed.<sup>296</sup> Only when Housing First is fully funded based on actual need will it represent a right to adequate housing.

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<sup>291</sup> *Id.* at 29; LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 20.

<sup>292</sup> NAT’L ALL. TO END HOMELESSNESS, FACT SHEET: HOUSING FIRST 2 (2016). See generally Michael R. Diamond, *The Costs and Benefits of Affordable Housing: A Partial Solution to the Conflict of Competing Goods*, 27 GEO. J. ON POVERTY L. & POL’Y 231 (2020) (Diamond conducts a thorough cost benefit analysis of affordable housing in the U.S. He concludes that affordable housing would not only largely pay for itself but also largely eradicate homelessness, benefit public health, and increase economic productivity.).

<sup>293</sup> LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 20–22

<sup>294</sup> USICH, OPENING DOORS, *supra* note 8, at 7 (citation omitted).

<sup>295</sup> LAW CTR., HOUSING NOT HANDCUFFS, *supra* note 5, at 86.

<sup>296</sup> See Eric S. Tars & Caitlin Egleson, *Great Scot!: The Scottish Plan to End Homelessness and Lessons for the Housing Rights Movement in the United States*, 16 GEO. J. POVERTY L. & POL’Y 187, 190–91 (2009).

Municipalities have further adopted creative local initiatives that advance a right to adequate housing. As noted in Part II, the human right to adequate housing means more than just four walls and a roof over one's head; it consists of seven elements, including the right to legal security of tenure and habitable housing.<sup>297</sup> This means ensuring that people can stay in their residences and that those residences have access to potable drinking water. Moreover, some municipalities are taking HBORs further at the city level to include elements of a right to adequate housing.

One way that cities are addressing the root cause of homelessness and ensuring legal security of tenure is by adopting a right to counsel in the context of landlord-tenant disputes.<sup>298</sup> Landlords instigate evictions for any number of reasons, legal or not, and tenants, particularly those with low income, are often left on their own to navigate the complex and confusing legal processes.<sup>299</sup> By contrast, landlords often have skilled counsel representing them in housing court, as well as threatening lawyer-less tenants into settlement outside the courtroom doors.<sup>300</sup> For decades, advocates have addressed this disparity by pushing cities to adopt a tenant's right to counsel, which would provide low-income tenants facing evictions with representation by a city-funded public attorney; this advocacy has had increasing success in the last few years.<sup>301</sup> Since 2017, New York City, NY; San Francisco, CA; Detroit, MI; Washington, D.C.; Philadelphia, PA; and Newark, NJ have all adopted or are piloting tenant right to counsel programs.<sup>302</sup> Massachusetts, Connecticut, and Minnesota are considering bills that adopt the right at the state level.<sup>303</sup> On the federal level, NGOs such as the National Coalition for a Civil Right to Counsel have worked to introduce two bills to Congress that, if adopted, would provide state and

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<sup>297</sup> CESCR, *General Comment 4, Right to Adequate Housing*, *supra* note 77, ¶ 7.

<sup>298</sup> John Whitlow, *Gentrification and Countermovement: Right to Counsel and New York City's Affordable Housing Crisis*, 46 *FORDHAM URB. L.J.* 1081, 1087–93 (2019).

<sup>299</sup> *Id.* at 1092–93.

<sup>300</sup> *Id.* at 1092 (noting that “90% of landlords have historically been represented by counsel, as compared to 5–10% of tenants”).

<sup>301</sup> *See generally id.*

<sup>302</sup> The Times Editorial Board, *Editorial: Better Access to Legal Representation is Crucial—Even in Civil Cases*, *L.A. TIMES* (Apr. 20, 2019, 3:05 AM), <https://www.latimes.com/opinion/editorials/la-ed-civil-gideon-20190420-story.html> [<https://perma.cc/4BFT-SZRJ>].

<sup>303</sup> Natalie Rodriguez, *Virus Lights Fire Under Eviction Right to Counsel Movement*, *L. 360* (Aug. 16, 2020, 8:02 PM), <https://www.law360.com/articles/1301174/virus-lights-fire-under-eviction-right-to-counsel-movement> [<https://perma.cc/NQ9P-RBAX>].

local governments with funding to launch tenant right to counsel programs.<sup>304</sup>

New York City's tenant right to counsel was the first in the United States, starting in 2017, and it has already had a significant impact in protecting tenant rights. This program is being rolled out over five years, zip code by zip code.<sup>305</sup> According to a Community Service Society report, New York City zip codes with a tenant right to counsel saw an eleven percent decrease in evictions between 2017 and 2018.<sup>306</sup> Comparable zip codes that did not have a tenant right to counsel saw evictions fall only two percent during this period.<sup>307</sup>

Although falling short of a full right to counsel, simply providing tenants with the assistance of "court navigators" has had a beneficial impact in New York City. These non-lawyer "court navigators" help tenants to fill out complicated paperwork, understand the court system, and effectively advocate for themselves in court proceedings.<sup>308</sup> Merely providing this service decreases the power and information asymmetry between landlords and tenants, leading to fewer evictions.<sup>309</sup> For example, tenants assisted by navigators are almost twice as likely as unassisted tenants to have their defenses recognized and addressed by the housing court.<sup>310</sup>

Providing tenants with a right to counsel, however, is insufficient, as it only seeks to intervene once a landlord has filed for eviction proceedings—proceedings which low-income tenants are by no means guaranteed to win. Furthermore, the right cannot completely protect against the rising costs of housing in major urban centers and legal rent increases that price low-income tenants out of affordable housing. The

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<sup>304</sup> 2019/2020 *Civil Right to Counsel Bills*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS., [http://www.civilrighttocounsel.org/legislative\\_developments/2019\\_civil\\_right\\_to\\_counsel\\_bills](http://www.civilrighttocounsel.org/legislative_developments/2019_civil_right_to_counsel_bills) [<https://perma.cc/4UJ8-C5WQ>].

<sup>305</sup> OKSANA MIRONOVA, NYC RIGHT TO COUNSEL: FIRST YEAR RESULTS AND POTENTIAL FOR EXPANSION 3 (2019), [https://d3n8a8pro7vhmx.cloudfront.net/righttocounselnyc/pages/23/attachments/original/1554239752/RTC\\_Print\\_Version.pdf?1554239752](https://d3n8a8pro7vhmx.cloudfront.net/righttocounselnyc/pages/23/attachments/original/1554239752/RTC_Print_Version.pdf?1554239752) [<https://perma.cc/EA6T-RTBP>].

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> Tamar Ezer, *Medical-Legal Partnerships with Communities: Legal Empowerment to Transform Care*, 17 YALE J. HEALTH POL'Y, L. & ETHICS 309, 322 (2017).

<sup>309</sup> Beth Fertig, *For Tenants in Housing Court, Study Finds 'Navigators' Can Be Good Alternatives to Lawyers*, WNYC NEWS (Dec. 13, 2016), <http://www.wnyc.org/story/tenants-housing-court-study-finds-navigators-can-be-good-alternatives-lawyers> [<https://perma.cc/LPW7-ACP2>].

<sup>310</sup> *Id.*

right to counsel is thus only one essential component of a holistic right to adequate housing.

Communities are additionally using informal Special Rapporteur visits to address other aspects of the right to adequate housing, including access to water. While a Special Rapporteur has not officially visited the United States since 2017 (and the Trump Administration has indicated no official invitations are forthcoming),<sup>311</sup> informal visits can also be useful. For instance, during the Flint and Detroit water crises in 2014, the Law Center and its partners invited the Special Rapporteurs on Adequate Housing and on Water and Sanitation to host an informal tribunal in Detroit.<sup>312</sup> Local, national, and international news outlets extensively reported on their advocacy efforts.<sup>313</sup> Following the unofficial visit, the Rapporteurs issued a joint statement highlighting that “adequate housing and access to safe water are clearly essential to maintain life and health, and the right to life is found in treaties the United States has ratified, including the International Covenant on

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<sup>311</sup> Ed Pilkington, *Nikki Haley Attacks Damning UN Report on US Poverty Under Trump*, GUARDIAN (June 21, 2018, 4:39 PM), <https://www.theguardian.com/world/2018/jun/21/nikki-haley-un-poverty-report-misleading-politically-motivated> [<https://perma.cc/4FVV-S5JK>]; *View Country Visits of Special Procedures of the Human Rights Council Since 1998*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&Lang=en> [<https://perma.cc/EX3X-SPWY>].

<sup>312</sup> See Press Release, U.N. Hum. Rts. Off. of the High Comm’r, Joint Press Statement by Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and to Right to Non-Discrimination in this Context, and Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation Visit to City of Detroit (United States of America) 18–20 October 2014 (Oct. 20, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188> [<https://perma.cc/NQ8G-MUFT>] [hereinafter Joint Press Statement by the Special Rapporteurs on Adequate Housing and Safe Drinking Water and Sanitation].

<sup>313</sup> *UN Officials Criticize Detroit Water Shutoffs*, BBC (Oct. 20, 2014), <https://www.bbc.com/news/world-us-canada-29697767> [<https://perma.cc/VX4Q-BQZ9>]; *In Detroit, City-Backed Water Shut-Offs ‘Contrary to Human Rights,’ Say UN Experts*, UN NEWS (Oct. 20, 2014), <https://news.un.org/en/story/2014/10/481542-detroit-city-backed-water-shut-offs-contrary-human-rights-say-un-experts> [<https://perma.cc/UY3K-CKJ2>]; Steve Carmody, *UN Team Says Detroit Water Shutoff Program Violates Human Rights*, MICH. RADIO (Oct. 20, 2014), <https://www.michiganradio.org/post/un-team-says-detroit-water-shutoff-program-violates-human-rights> [<https://perma.cc/AJX5-ZFPZ>]; Emily Badger, *The U.N. Says Water Is a Fundamental Human Right in Detroit*, WASH. POST (Oct. 23, 2014, 4:47 PM), <https://www.washingtonpost.com/news/wonk/wp/2014/10/23/the-u-n-says-water-is-a-fundamental-human-right-in-detroit> [<https://perma.cc/53CV-WF6E>]; Alana Semuels, *Detroit Water Cutoffs for Unpaid Bills a Human Rights Issue*, U.N. SAYS, L.A. TIMES (June 25, 2014, 2:31 PM), <https://www.latimes.com/nation/nationnow/la-na-nn-detroit-water-cutoffs-united-nations-20140625-story.html> [<https://perma.cc/NY6X-C8YK>].

Civil and Political Rights.”<sup>314</sup> Moreover, this statement recommended that “the City of Detroit provide . . . housing when people are unable, for reasons beyond their control, to cover the costs themselves.”<sup>315</sup> While the tribunal was not legally binding, it added to the public pressure that ultimately brought some relief to the citizens of Flint and Detroit in addressing the environmental and economic factors impacting water access.

Furthermore, some municipalities are pushing for local HBoRs that give people experiencing homelessness positive protections. Traverse City, Michigan, where there is also no statewide HBoR, went a step beyond the Rhode Island model by including positive guarantees to “[a]ccess basic requirements necessary for sustaining life, including shelter, sanitation, medical care, clothing and food.”<sup>316</sup> While Connecticut already has a statewide HBoR, advocates in New Haven, CT are petitioning the local government to adopt a local HBoR that would go further and contain rights to adequate housing and medical care.<sup>317</sup> The bill is currently being introduced in the city legislature and, if passed, could become a model for other municipalities.<sup>318</sup>

Moreover, states and localities have taken important steps to realize the right to housing in addressing the COVID-19 pandemic. As the U.N. Special Rapporteur on Adequate Housing explained: “Housing has become the frontline defence against the coronavirus. Home has rarely been more of a life or death situation.”<sup>319</sup> Los Angeles,<sup>320</sup> San

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<sup>314</sup> Joint Press Statement by the Special Rapporteurs on Adequate Housing and Safe Drinking Water and Sanitation, *supra* note 312.

<sup>315</sup> *Id.*

<sup>316</sup> Lee Hornberger, *A Resolution Recognizing the Rights of Homeless Persons*, TRAVERSE CITY HUM. RTS. COMM’N (July 13, 2015), [http://www.traversecitymi.gov/downloads/ltrresolution\\_to\\_cc\\_re\\_rights\\_of\\_homeless\\_07132015.pdf](http://www.traversecitymi.gov/downloads/ltrresolution_to_cc_re_rights_of_homeless_07132015.pdf) [<https://perma.cc/95HT-C7TL>].

<sup>317</sup> City of New Haven Homeless Advisory Comm’n, *Bill of Rights for New Haven Residents Experiencing Homelessness* (2017), [https://www.newhavenindependent.org/archives/upload/2018/12/Tom/New\\_Haven\\_Homeless\\_Bill\\_of\\_Rights\\_Rev.pdf](https://www.newhavenindependent.org/archives/upload/2018/12/Tom/New_Haven_Homeless_Bill_of_Rights_Rev.pdf) [<https://perma.cc/P47F-4BCB>]; *see also* Homeless Person’s Bill of Rights, CONN. GEN. STAT. § 1-500 (2014).

<sup>318</sup> Mary E. O’Leary, *New Haven Proposes Bill of Rights for Homeless People*, NEW HAVEN REG. (Dec. 4, 2019, 7:51 PM), <https://www.ctinsider.com/news/nhregister/article/New-Haven-proposes-bill-of-rights-for-homeless-14882782.php> [<https://perma.cc/9AQX-Z8PZ>].

<sup>319</sup> “Housing, the Front Line Defence Against the COVID-19 Outbreak,” *Says UN Expert*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R (Mar. 18, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E> [<https://perma.cc/56XQ-F7XE>].

<sup>320</sup> Doug Smith, *Once \$400 a Night, This Westside L.A. Hotel Is Now for Homeless People Fleeing Coronavirus*, L.A. TIMES (Apr. 6, 2020, 7:06 PM), <https://www.latimes.com/homeless-housing/story/2020-04-06/coronavirus-homeless-hotel-shelter-westside-los-angeles> [<https://perma.cc/M86G-M9T5>].

Francisco,<sup>321</sup> and New York City<sup>322</sup> have taken steps to house people experiencing homelessness in vacant hotels, although San Francisco and New York also continue to sweep people experiencing homelessness from the streets.<sup>323</sup> Many cities and states have further suspended evictions and are providing mortgage deferrals, and even the federal government has provided eviction protection to renters and homeowners in buildings with federally backed mortgages.<sup>324</sup> Michigan has finally declared a moratorium on water shut-offs.<sup>325</sup> Now, the challenge is building on these gains and avoiding retrogression.

### C. *A Cultural Shift Toward the Human Right to Adequate Housing in Public Discourse*

While shifting law and policy toward the human right to adequate housing is important, equally critical is moving the cultural conversation in this direction. *Brown v. Board* and the Civil Rights Acts would not have happened without marches in the streets and a shift in public opinion, and while once racial segregation was an accepted part of American life, most Americans now look back and wonder how this

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<sup>321</sup> Katie Canales, *San Francisco May Spend \$105 Million to House Its Homeless Population in 7,000 Hotel Rooms for 90 Days in an Effort to Limit Spread of the Coronavirus*, BUS. INSIDER (Apr. 10, 2020, 1:18 PM), <https://www.businessinsider.com/san-francisco-homeless-hotels-coronavirus-2020-4> [<https://perma.cc/RS72-NDU6>].

<sup>322</sup> Thomas Tracy, *NYC Moving 6,000 Homeless with Coronavirus to Hotels, Mayor De Blasio Says*, N.Y. DAILY NEWS (Apr. 11, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirus-mayor-moving-homeless-to-hotels-20200411-vqnaexoesfehho5f7ytuy44pqu-story.html> [<https://perma.cc/WDU3-NJW7>].

<sup>323</sup> Brian Howey, *S.F. Still Taking Tents From Homeless People During Deadly Pandemic*, S.F. PUB. PRESS (Mar. 27, 2020), <https://sfpublicpress.org/news/2020-03/sf-still-taking-tents-from-homeless-people-during-deadly-pandemic> [<https://perma.cc/JEC6-XZFP>]; Tina Moore & David Meyer, *NYPD Deploying 1K Cops to Remove Homeless from Subways*, N.Y. POST (May 5, 2020, 3:52 PM), <https://nypost.com/2020/05/05/over-one-thousand-nypd-cops-set-to-remove-subway-homeless> [<https://perma.cc/ZR65-QZ2Z>]. *But see* Elizabeth Chou, *Homeless People Will Be Permitted to Keep Their Tents Up During the Day*, L.A. DAILY NEWS (Mar. 17, 2020, 10:46 AM), <https://www.dailynews.com/2020/03/17/la-leaders-propose-changes-on-homeless-encampment-sweeps-amid-coronavirus-crisis> [<https://perma.cc/J2TM-2SEJ>].

<sup>324</sup> Conor Dougherty, Matthew Goldstein, & Emily Flitter, *Racing to Head Off Evictions and Foreclosures*, N.Y. TIMES (Mar. 18, 2020), <https://www.nytimes.com/2020/03/18/business/economy/coronavirus-evictions.html> [<https://perma.cc/RH3Q-VNWU>]; Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, § 4022-24 (2020) (enacted).

<sup>325</sup> Aaron Mondry, *Whitmer Orders Water Restored to Shutoff Customers During Covid-19 Outbreak*, CURBED (Mar. 31, 2020, 3:42 PM), <https://detroit.curbed.com/2020/3/31/21201865/detroit-water-shutoffs-restore-whitmer-michigan-coronavirus> [<https://perma.cc/T3WU-J5T4>].



ever could have been.<sup>326</sup> In the same way, housing advocates are now pushing for the cultural acceptance of the human right to adequate housing in the hopes that one day Americans will look back and wonder, “how did we ever let homelessness happen to our fellow Americans?” We end this Article on the hopeful note that this shift has already started to take place in the political discourse and media.

The reaction to a report by the Special Rapporteur on Extreme Poverty, Philip Alston, marked a tipping point with a shift in both political discourse and media towards a right to adequate housing. In 2017, the Law Center worked closely with the Special Rapporteur to inform his official visit and arrange stops in San Francisco and Los Angeles, home to Skid Row, where hundreds of individuals experiencing homelessness attempt to shelter themselves.<sup>327</sup> The Special Rapporteur’s subsequent report emphasized that “[h]omelessness on this scale is far from inevitable and reflects political choices to see the solution as law enforcement rather than adequate and accessible low-cost housing, medical treatment, psychological counselling and job training,” and highlighted the “[r]eliance on criminalization to conceal the underlying poverty problem.”<sup>328</sup> He also noted that the conditions in Skid Row do not satisfy the minimum standards set by the U.N. for emergency refugee camps.<sup>329</sup> In contrast to previous visits of Special Rapporteurs, which received limited media coverage, this visit and report received substantial national media coverage.<sup>330</sup> Advocates worked with Congressional leaders, led by Senator Bernie Sanders’s office, to draft a letter to the Trump Administration calling for a response to the report’s allegations, prompting Ambassador Nikki

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<sup>326</sup> See Elahe Izadi, *Black Lives Matter and America’s Long History of Resisting Civil Rights Protesters*, WASH. POST (Apr. 19, 2020), <https://www.washingtonpost.com/news/the-fix/wp/2016/04/19/black-lives-matters-and-americas-long-history-of-resisting-civil-rights-protesters> [<https://perma.cc/2WKT-ZWJL>] (discussing how “[t]oday, sit-ins, freedom rides and marches for voting rights are viewed with historical reverence. . . . But in their day, activists were met with widespread disapproval. A review of polling data from the 1960s paints a picture of an America in which the majority of people felt such protest actions would hurt, not help, African Americans’ fight for equality.”).

<sup>327</sup> Hum. Rts. Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶¶ 44–46, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

<sup>328</sup> *Id.* ¶¶ 42–45.

<sup>329</sup> *Id.* ¶ 44; see *Emergency Sanitation Standards*, UNHCR UN REFUGEE AGENCY, <https://emergency.unhcr.org/entry/33015/emergency-sanitation-standard> [<https://perma.cc/3UV9-CHQ5>].

<sup>330</sup> See, e.g., Alastair Gee, *At Night on Skid Row, Nearly 2,000 Homeless People Share Just Nine Toilets*, GUARDIAN (June 30, 2017, 3:01 AM), <https://www.theguardian.com/us-news/2017/jun/30/la-skid-row-homeless-toilet-access-report> [<https://perma.cc/Y7UX-6B5B>].

Haley to respond directly.<sup>331</sup> Although the Trump Administration rejected the report, it was endorsed by leaders of the Democratic Party.<sup>332</sup>

Advocates built on this breakthrough, and discussion of homelessness featured prominently in the presidential election with mainstream political candidates, for the first time, using a human right to housing framing.<sup>333</sup> Following the Special Rapporteur's report, the Law Center and its partners hosted a congressional briefing on its implications for federal policy to a standing-room-only crowd of more than 100 congressional staffers, calling for elected officials to refer to adequate housing as a human right.<sup>334</sup> Through follow-up meetings prompted by the briefing, numerous Presidential-nominee candidates, including Senators Cory Booker, Kamala Harris, Bernie Sanders, and Elizabeth Warren, as well as Joe Biden, Julian Castro, Andrew Yang, and Tom Steyer, all stated they believe that "housing is a human right," with some explicitly including this standard in their platform

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<sup>331</sup> Jeff Stein, *Nikki Haley: 'It Is Patently Ridiculous for the United Nations to Examine Poverty in America'*, WASH. POST (June 21, 2018, 2:11 PM), <https://www.washingtonpost.com/news/work/wp/2018/06/21/nikki-haley-it-is-patently-ridiculous-for-the-united-nations-to-examine-poverty-in-america> [<https://perma.cc/8M7E-UEKX>]; *Sanders and Sewell Call on Trump to Honor Treaty Obligations in Response to Scathing UN Report*, BERNIE SANDERS U.S. SEN. FOR VT. (June 12, 2018), <https://www.sanders.senate.gov/newsroom/press-releases/sanders-and-sewell-call-on-trump-to-honor-treaty-obligations-in-response-to-scathing-un-report> [<https://perma.cc/X3DE-K2JU>].

<sup>332</sup> Pilkington, *supra* note 311.

<sup>333</sup> Pam Fessler, *2020 Democrats Offer Up Affordable Housing Plans Amid Surging Prices*, N.P.R. (June 21, 2019, 5:00 AM), <https://www.npr.org/2019/06/21/734143716/2020-democrats-offer-up-affordable-housing-plans-amid-surging-prices> [<https://perma.cc/L6LW-XPQ6>]; Megan Haberle & LeGrand Northcutt, *2020 Democratic Candidates' Positions on Fair and Affordable Housing*, PRRAC (July 30, 2019), <https://prrac.org/the-2020-democratic-candidates-positions-on-affordable-housing-and-fair-housing-issues> [<https://perma.cc/9ASV-JDXR>]; Kriston Capps, *Will Housing Swing 2020 Election?*, BLOOMBERG CITYLAB (June 18, 2019, 10:51 AM), <https://www.citylab.com/equity/2019/06/democratic-candidates-housing-election-2020-trump-campaign/591604> [<https://perma.cc/FJG8-WDWB>].

<sup>334</sup> NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS JANUARY 2019 CAMPAIGN NEWSLETTER (2019), <http://housingnohandcuffs.org/wp-content/uploads/2017/11/January-2019-HNH-Newsletter.pdf> [<https://perma.cc/8QTX-LT6A>] (was hosted by (later candidate) Sen. Cory Booker and Reps. Danny Davis and Terri Sewell, and organizing partners included the Center for Reproductive Rights, the American Civil Liberties Union, the City University of New York School of Law Human Rights and Gender Justice Clinic, the Columbia Law School Human Rights Institute, and the US Human Rights Network); *see also* USHRN *Presents at Congressional Briefing in Washington, D.C.*, US HUM. RTS. NETWORK BLOG (Jan. 28, 2019), <https://ushrnetwork.org/news/32/100/USHRN-presents-at-Congressional-Briefing-in-Washington-D.C.> [<https://perma.cc/S5KR-UM7M>]; Flyer, U.S. Hum. Rts. Network et al., *Extreme Poverty in the United States: A Human Rights Response* (Jan. 28, 2019) (on file with authors).

proposals.<sup>335</sup> One candidate's mention of housing as a human right would have been a unprecedented step forward, but seven leading candidates regularly using human rights language around housing, including in their formal platforms, entailed a quantum leap in public discussion. Moreover, other representatives, including members of "the Squad," have been regularly using human right to housing framing and introducing bills on this basis.<sup>336</sup> 2020 brought the introduction of the Human Right to Housing Act of 2020 at the federal level and a proposed amendment to the California Constitution to recognize housing as a human right at the state level. Additionally, President Joe Biden's website asserts that "[h]ousing should be a right, not a privilege," and he has posted a similar message to his Twitter account.<sup>337</sup> Clearly, the moment for the political mainstreaming of a human-rights-based approach to housing has arrived.

Media is likewise discussing homelessness in the context of a right to adequate housing. Media across the country widely covered the DOJ's intervention in *Martin v. Boise*, shifting discussion against the criminalization of homelessness.<sup>338</sup> There are also many examples of

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<sup>335</sup> *Policies for the People*, KAMALAHARRIS.ORG, <https://web.archive.org/web/20200513011721/https://kamalaharris.org/policies>; *Elizabeth Is Fighting to . . .*, WARREN DEMOCRATS, <https://elizabethwarren.com/plans> [<https://perma.cc/3HGZ-PAMM>]; *Issues*, BERNIESANDERS.COM, <https://berniesanders.com/issues> [<https://perma.cc/6GSM-3Q23>]; *Issues*, JULIANCASTRO.COM, <https://issues.juliancastro.com> [<https://perma.cc/P73T-YYYM>]; *Housing*, CORYBOOKER.COM, <https://web.archive.org/web/20200113193027/https://corybooker.com/issues/housing>; *The Biden Plan for Investing in Our Communities Through Housing*, JOEBIDEN.COM, <https://joebiden.com/housing> [<https://perma.cc/E8NQ-WXGY>].

<sup>336</sup> Press Release, Ilhan Omar, Rep. Ilhan Omar Introduces Homes for All Act, a New 21st Century Public Housing Vision (Nov. 20, 2019), <https://omar.house.gov/media/press-releases/rep-ilhan-omar-introduces-homes-all-act-new-21st-century-public-housing-vision> [<https://perma.cc/Y4T2-3A87>]; Aris Folley, *Ocasio-Cortez: Housing Should Be Legislated as a Human Right*, HILL (May 31, 2019, 7:43 AM), <https://thehill.com/homenews/house/446287-ocasio-cortez-housing-should-be-legislated-as-a-human-right> [<https://perma.cc/R9DF-ZLWD>]; *Housing*, AYANNA PRESSLEY, <https://pressley.house.gov/issues/housing> [<https://perma.cc/4GEJ-WQZQ>].

<sup>337</sup> *Housing Is a Human Right Act of 2020*, H.R. 6308, 116th Cong. (2020); *State of California Housing Agency Act*, Assemb. B. 2506, Reg. Sess. (Cal. 2020); *The Biden Plan for Investing in Our Communities Through Housing*, JOEBIDEN.COM, <https://joebiden.com/housing> [<https://perma.cc/E8NQ-WXGY>]; Joe Biden (@JoeBiden), TWITTER (Feb. 24, 2020, 11:13 AM), <https://twitter.com/joebiden/status/1231975321311694849?lang=en> [<https://perma.cc/9P2T-SBGU>].

<sup>338</sup> Hayley Harding, *U.S. Supreme Court Will Not Take Up Boise's Controversial Homeless Camping Case*, IDAHO STATEMAN (Dec. 16, 2019, 8:31 AM), <https://www.idahostatesman.com/news/local/community/boise/article238116429.html>; Michael Beattie, *Trump Administration Has Ignored Best Source of Information on Homelessness*, WASH. POST (Sept. 29, 2019, 7:40 PM), [https://www.washingtonpost.com/opinions/the-trump-administration-has-ignored-the-best-source-of-information-on-homelessness/2019/09/29/3aa1c296-e09f-11e9-be7f-4cc85017c36f\\_](https://www.washingtonpost.com/opinions/the-trump-administration-has-ignored-the-best-source-of-information-on-homelessness/2019/09/29/3aa1c296-e09f-11e9-be7f-4cc85017c36f_)

local media directly discussing a right to adequate housing.<sup>339</sup> Unfortunately, some coverage has come in the context of President Trump's recent steps away from housing and toward a potential criminalization approach.<sup>340</sup> However, this may have also prompted Senator Warren, Senator Castro, and Tom Steyer to have all explicitly condemned criminalization of homelessness.<sup>341</sup> Senator Castro even joined a rally against a Las Vegas anti-camping ordinance and

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story.html [https://perma.cc/UV3K-5Z8W]; Jeff Stein, Tracy Jan, Josh Dawsey, & Ashley Parker, *Trump Pushing for Major Crackdown on Homeless Camps in California, with Aides Discussing Moving Residents to Government-Backed Facilities*, WASH. POST (Sept. 10, 2019, 9:13 PM), <https://www.washingtonpost.com/business/2019/09/10/trump-pushing-major-crackdown-homeless-camps-california-with-aides-discussing-moving-residents-government-backed-facilities> [https://perma.cc/URZ7-6YEM]; Andrew Van Dam, *Surprising Holes in Our Knowledge of America's Homeless Population*, WASH. POST (Sept. 17, 2019, 2:45 PM), <https://www.washingtonpost.com/business/2019/09/18/surprising-holes-our-knowledge-americas-homeless-population> [https://perma.cc/B2GC-FEB6]; Jon Henley, *Homelessness Is Not Inevitable—and Can Be Solved—These Cities Show Us How*, GUARDIAN (Dec. 10, 2019, 7:00 AM), <https://www.theguardian.com/cities/2019/dec/10/homelessness-is-not-inevitable-and-can-be-solved-these-cities-show-us-how> [https://perma.cc/S4YJ-LD5T]; Francesca Giuliani-Hoffman, *How to Help Homeless Students Around the Holidays and Beyond*, CNN (Dec. 22, 2019, 8:16 AM), <https://www.cnn.com/2019/12/21/us/help-homeless-children-trnd/index.html> [https://perma.cc/C7V4-3BPF].

<sup>339</sup> Saud Anwar, *Connecticut Should Become the 'Right to Housing State'*, HARTFORD COURANT (Jan. 9, 2020, 6:00 AM), <https://www.courant.com/opinion/op-ed/hc-op-anwar-housing-0109-20200109-djs67wckuva7fgvteglywqwsim-story.html> [https://perma.cc/XT4T-XF6M]; Andres Viglucci & Rene Rodriguez, *Miami Finally Has a Strategy to Tackle Its Housing Affordability Crisis. Here's the Plan*, MIA. HERALD (Jan. 7, 2020, 6:00 AM), <https://www.miamiherald.com/news/business/real-estate-news/article238954388.html> [https://perma.cc/6CC7-Q8YK].

<sup>340</sup> See, e.g., Stein, *supra* note 331; Laurel Wamsley, *White House Names Controversial Pick to Head Homelessness Office*, NPR (Dec. 5, 2019, 3:25 PM), <https://www.npr.org/2019/12/05/785129572/white-house-names-controversial-pick-to-head-homelessness-office> [https://perma.cc/E6L4-4S2Y]; see also COUNCIL OF ECON. ADVISORS, *THE STATE OF HOMELESSNESS IN AMERICA 10–21* (2019), <https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf> [https://perma.cc/7FK5-Z3MF] (indicating that homelessness can be reduced by deregulating the housing market, decreasing the level of comfort of sleeping on the streets by increasing regulations that criminalize homelessness, decreasing the number and quality of homeless shelters, and addressing individual-level factors that are associated with homelessness).

<sup>341</sup> Ed Komenda, *Las Vegas Outlaws Camping or Sleeping on Downtown Streets as Protestors Decry the City's 'War on the Poor'*, USA TODAY (Nov. 7, 2019, 12:04 AM), <https://www.usatoday.com/story/news/nation/2019/11/06/las-vegas-homeless-camping-ban-protests-becomes-law/2515452001> [https://perma.cc/QAE9-GLEL]; Mat Lushek, *Julian Castro Attends Homeless Protest in Las Vegas*, LAS VEGAS REV.-J. (Oct. 2, 2019, 4:59 PM), <https://www.reviewjournal.com/videos/julian-castro-attends-homeless-protest-in-las-vegas> [https://perma.cc/8SMH-Z5M2]; Shea Johnson & Briana Erickson, *Las Vegas Passes Controversial Homeless Camping Ban*, LAS VEGAS REV.-J. (Nov. 6, 2019, 5:57 PM), <https://www.reviewjournal.com/news/politics-and-government/las-vegas/las-vegas-passes-controversial-homeless-camping-ban-1887290> [https://perma.cc/RR99-PBTQ].

remarked, “it may seem that if you get homeless folks out of sight, and perhaps out of mind, that is an improvement, but that is a lie.”<sup>342</sup> Moreover, in responding to the Trump Administration, California is now considering a bill that would implement a full right to adequate housing for families and children, as well as a ballot measure that would compel local governments to create adequate affordable housing.<sup>343</sup>

Additionally, social media is playing an increasingly important role in sharing personal stories to humanize the issue of homelessness and promote a human rights culture. An example of this is the Invisible People project, which posts videos of interviews with people experiencing homelessness, as well as supporting content.<sup>344</sup> The project was created by Mark Horvath, who has experienced homelessness and uses the video format to allow a firsthand perspective of homelessness.<sup>345</sup> Starting with the experiences of those directly impacted by human rights violations is an essential component of the human rights approach, and generating empathy through narrative can help transform the cultural discourse.<sup>346</sup>

## CONCLUSION

Work to address the criminalization of homelessness reveals how international human rights advocacy can serve as a powerful tool to challenge domestic injustice. The international human rights framework provides a rich source of norms, levers for shaping standards and exerting political pressure, and opportunities for building advocacy coalitions and relations with officials. However, to be effective, international advocacy must entail constant connection to the domestic sphere and a specific focus with consistent engagement across human rights bodies. Moreover, it is important to look beyond

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<sup>342</sup> Lusчек, *supra* note 341.

<sup>343</sup> Jeremy B. White, *California Will Consider ‘Right to Housing’ Legislation This Year*, POLITICO (Jan. 6, 2020, 8:48 PM), <https://www.politico.com/states/california/story/2020/01/06/california-will-consider-right-to-shelter-legislation-this-year-9420607> [<https://perma.cc/PE3W-2H8K>]; Theresa Clift & Sophia Bollag, *Newsom Homeless Task Force Wants CA to Require Cities to Meet Aggressive Housing Goals*, SACRAMENTO BEE (Jan. 13, 2020, 12:38 PM), <https://www.sacbee.com/news/local/article239179853.html> [<https://perma.cc/5GUL-4YD9>].

<sup>344</sup> *About Invisible People*, INVISIBLE PEOPLE, <https://invisiblepeople.tv/about> [<https://perma.cc/GG65-GCSS>].

<sup>345</sup> *Id.*

<sup>346</sup> PETTY OFFENSES SYMPOSIUM: CHALLENGING CRIMINALIZATION OF POVERTY, MARGINALIZATION, AND GENDER NON-CONFORMITY, UNIV. OF MIA. HUM. RTS. CLINIC 25–26 (Sep. 21, 2019) (Panel Discussion on Creative Campaigning); see also Brett Davidson, *The Role of Narrative Change in Influencing Policy*, ASKJUSTICE, <http://askjustice.org/2016/06/04/the-role-of-narrative-change-in-influencing-policy> [<https://perma.cc/52MF-DMWA>].

litigation at opportunities to influence law and policy through concrete demands targeted at particular agencies, and steps must be taken to translate federal gains to the state and local levels. The human rights framework further provides an opening for a deeper cultural shift and a more holistic, rights-oriented approach that, with wider use, will result not only in recognizing a basic right to adequate housing for all, but the full range of universal human rights.

