



End the Criminalization of Homelessness and Enforce Human Rights in
the U.S.

Submission to the United Nations
Universal Periodic Review of

United States of America

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SUMMARY

1. In this submission the Meiklejohn Civil Liberties Institute (MCLI) asks the Human Rights Council and its member states to denounce the U.S. criminalization and mistreatment of the homeless. We also ask that MCLI's prior report to the U.N. Committee on the Elimination of Racial Discrimination and Questions to the Human Rights Committee be reviewed during the Universal Periodic Review due to the Trump administration's violation of reporting requirements under their respective treaties.

BACKGROUND

U.S. REFUSAL TO PARTICIPATE IN REPORTING

2. The U.S. administration of Donald Trump has refused to follow treaty obligations to provide reports to U.N. Committees. Because of this it is more urgent that the Human Rights Council and its member states hold the U.S. accountable for human rights violations.

3. In violation of its treaty reporting obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, the U.S. refused to submit a report to the U.N. Committee on the Elimination of Racial Discrimination (CERD) due November 20, 2017. However, the Meiklejohn Civil Liberties Institute (MCLI) submitted a shadow report to CERD, but CERD has taken no action. MCLI requests that the Human Rights Council review that report¹.

4. The U.S. refusal to participate in reporting to CERD is more poignant given Donald Trump's racist rhetoric and an increase in white supremacist activity.

5. Most human rights monitoring relies on state parties to provide reports, and the U.S. refusal to participate has disrupted monitoring efforts. However, the U.N. Human Rights Committee has allowed NGO's to submit lists of questions for review in the absence of U.S. participation. MCLI requests that the Human Rights Council review the list of questions MCLI provided to the Human Rights Committee on January 14, 2019².

6. In this submission MCLI calls upon the Human Rights Council and its member states to demand the end of the following human rights violations in the U.S.:

1. The criminalization of homelessness.
2. Structural barriers preventing access to courts for low income people, Latin Americans, and African Americans.
3. Mass incarceration which disproportionately incarcerates African Americans, Latin Americans, and poor people.
4. Slavery through incarceration and exploitative labor conditions.

¹ See: <http://www.mclihumanrights.org/wp-content/uploads/2018/06/2018.06.01-MCLI-Report-to-CERD-1.pdf>

² See: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_IC_S_USA_33404_E.pdf

5. The criminalization of sex workers including FOSTA-SESTA which criminalizes communication.
6. Lack of accountability for law enforcement officers engaged in extrajudicial violence including killing of nonviolent or unarmed people.
7. Separation of children from their families without justification and isolation of these children from their culture, language, and community within systems of immigration, foster care, and adoption.

7. Due to word limits MCLI cannot address all these issues in this submission. Accordingly, MCLI will focus on violations of the human rights of homeless people.

CRIMINALIZATION OF HOMELESSNESS

8. The U.S. criminalizes homelessness in violation of Articles 2, 7, 9, 17 and 26 of the International Convention on Civil and Political Rights (ICCPR) as well as Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

9. Also, criminalization of homelessness undermines the human right to housing guaranteed by Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as Articles 22, 24, and 28 of UDHR and Articles 10, 12, 13, and 15 of ICESCR which the U.S. has signed and is still awaiting ratification. The U.S. has stated that it is “committed to not defeating the object and purpose of [ICESCR]”.³

10. In the United States many cities, counties, and state governments engage in criminalizing activities essential to life-sustaining activity such as sitting, lying, sleeping, eating, urinating, defecating, loitering, panhandling, and seeking shelter. These laws and policies seek to criminalize homelessness with the intention of removing the homeless from communities by imprisonment or pressuring unhoused residents to leave their community.

11. These policies have been documented by U.N. Special Rapporteurs. U.N. Special Rapporteur on Extreme Poverty, Philip Alston, documented the mistreatment of the homeless in the United States in his report from May 4, 2018⁴. U.N. Special Rapporteur on Adequate Housing, Leilani Farha, also documented the mistreatment of the homeless in the United States in her report from September 19, 2018⁵.

12. The Western Regional Advocacy Project (WRAP) recently commissioned a study by Policy Advocacy Clinic at the University of California, Berkeley School of Law⁶ which found that so-called “Business Improvement Districts” require the criminalization of homelessness as

³ Michael H. Posner, “The Four Freedoms Turn 70: Ensuring Economic, Political, and National Security in the 21st Century”, 24 Mar. 2011, at <https://2009-2017.state.gov/j/drl/rls/rm/2011/159195.htm>

⁴ See: Paragraphs 39, 43 through 46, and 77, <http://undocs.org/A/HRC/38/33/ADD.1>

⁵ See: Paragraphs 44, 46, 47, and 115 through 117, <http://www.undocs.org/A/73/310/rev.1>

⁶ See: <https://wraphome.org/wp-content/uploads/2018/09/PAC-BID-Report-2018-web-rev.pdf>.

part of systematic policies designed to remove homeless residents from targeted downtown areas and main thoroughfares in order to convert public space for private businesses.

13. MCLI has witnessed local officials in Berkeley and Oakland initiate sweeps of homeless encampments while MCLI assists homeless residents access the courts resulting in multiple civil rights lawsuits⁷. MCLI has witnessed the destruction of unhoused residents' possessions in trash compactors before being displaced from encampments formed as a means for survival.

14. MCLI Intern Rachel Schroder wrote, "After witnessing several evictions in which the city destroyed residents' possessions in a trash compactor as the residents stood by helplessly, I was shocked to learn that the City of Oakland's official eviction policy actually requires the Public Works Department to safely store residents' possessions and provide both an itemized list of possessions and instructions to retrieve them from storage. No one we spoke to over the course of these six months had ever seen this official protocol followed."

15. "In fact, instead of upholding constitutional and human rights through the standardized procedures outlined in city policy, Oakland blatantly jeopardizes the lives of its curbside residents throughout the eviction process. I'll never forget standing next to a city trash compactor as it illegally crushed a pile of tents during an eviction. Needa Bee was across the street, trying to halt the eviction, but I was close enough to hear a steady knocking coming from within the machine. The compactor operator heard it too, and stared at the compactor door for a moment before calling, "Is someone in there?" There was no answer. I really hope he was trying to make a bad joke at my expense but something tells me he wasn't, and that city employee was fully aware that there was at least a chance that someone was sleeping in one of the compacted tents."

16. "Most commonly, I witnessed an appalling amount of illegal dumping by people who did not even live in the curbside communities. Every week, almost without fail, a car would drive up to the corner of the encampment, pull out an old mattress or boxes of broken appliances, toss them into an ever-growing trash pile in the corner of the encampment, and drive away. Dumping trash not only increases health and safety risks in these communities but also incentivizes the city to evict them. From the high rates of illegal dumping to the city's blatant disregard for its own policies, it is clear that both the city of Oakland and its residents take advantage of the vulnerability of curbside communities, leaving little for unhoused people and their advocates to work with."⁸

17. Due to the numerosity of local governments, the types of laws and policies targeting the homeless are highly varied⁹. Some laws prohibit sitting or lying in public. Other laws prohibit sleeping in public¹⁰.

⁷ Needa Bee, "Right to Exist: Curbside Communities Upgrade Encampments", *Human Rights Now!*, Fall 2019, <http://www.mclihumanrights.org/wp-content/uploads/2019/09/Human-Rights-Now-2019-Fall-Newsletter.pdf>

⁸ Rachel Schroder, "Reflections on a 6-Month Internship with MCLI", *Human Rights Now!*, Fall 2019, <http://www.mclihumanrights.org/wp-content/uploads/2019/09/Human-Rights-Now-2019-Fall-Newsletter.pdf>

⁹ See pages 9 through 11, http://www.nationalhomeless.org/publications/crimreport/crimreport_2009.pdf

¹⁰ See page 25, <https://www.nlchp.org/documents/Housing-Not-Handcuffs>

18. Some policies direct law enforcement to use existing laws to discriminatorily target the homeless. It is common for law enforcement to arrest or remove homeless people from public land by asserting that encampments violate trespassing or anti-camping ordinances^{11,12}. Other policies fail to provide a legal basis with public workers removing encampments while law enforcement stands by ready to arrest the homeless who resist with charges such as “obstructing justice”¹³.

19. There have been some U.S. Courts which have found that the criminalization of homelessness violates the U.S. Constitution’s Eighth Amendment prohibition against cruel and unusual punishment. However, most federal courts have not, and it is unclear the extent to which such rulings have discouraged the criminalization of homelessness by local governments due to the fact that access to the courts by the homeless is limited due to a lack of resources and specialized education necessary to navigate the courts¹⁴.

20. In the U.S., the majority of poor people cannot access the courts thus depriving homeless residents redress of grievances including grievances based upon human rights violations. Although individuals have the right to represent themselves in court, the ability to navigate the court system and have effective advocacy largely depends on specialized training exclusive to legal professionals such as attorneys¹⁵.

21. There is no right to counsel in the U.S. except for criminal defense. MCLI has been working with homeless encampments and attorneys to facilitate access to the courts, but the volume of homeless people experiencing human rights violations exceeds the capacity of NGOs, and attorneys willing to work without payment.

22. Additionally, aside from the U.S. Ninth Circuit Court of Appeal, most U.S. Courts have been largely unwilling to intervene to protect homeless people from abuse by local officials. The United States Supreme Court will soon hear a case at the request of the City of Boise where the city is requesting that the Supreme Court allow cities broad authority to criminalize homelessness¹⁶.

23. Recently, the Trump administration has begun criticizing widespread homelessness in Los Angeles, San Francisco, and “numerous other cities”. He has not announced any plans, but his rhetoric does not appear to indicate a desire to work with homeless residents. Instead, Trump stated we “need to get that whole thing cleaned up.” This indicates that the Trump administration

¹¹ See: *Martin v. Boise*, Ninth Circuit Court of Appeal (September 4, 2018) <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/04/15-35845.pdf>

¹² See: *Sullivan v. City of Berkeley*, <https://www.leagle.com/decision/infdco20171102a99> and *Miralle v. City of Oakland*, <https://docs.justia.com/cases/federal/district-courts/california/candce/4:2018cv06823/334572/44>

¹³ See: *Pottinger v. Miami*, 810 F. Supp. 1551, 1556 (1992)

¹⁴ Question Two in the ICCPR List of Issues Submissions by the Meiklejohn Civil Liberties Institute (See: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_ICJ_USA_33404_E.pdf)

¹⁵ See: <http://ncforaj.org/wp-content/uploads/2016/12/NCAJ-CHRI-9-15-16-Recommended-AtJ-National-Indicators-12-1-16-final.pdf>

¹⁶ *City of Boise, Idaho v. Martin*, U.S. Supreme Court, Docket No. 19-247, See: <https://www.scotusblog.com/case-files/cases/city-of-boise-idaho-v-martin/>

is blaming homeless residents rather than current policies displacing residents from housing. Since the White House has proposed cutting funding for low-income housing, the Trump administration may consider intensifying human rights violations in order to remove homeless people from eyesight¹⁷. Given the Trump administration's immigration policies, MCLI is concerned that similar strategies may be used to remove homeless residents from public spaces.

24. In General Comments from this Committee on October 30, 2018, this Committee found that the Right to Life under Article 6 of the ICCPR imposed a duty to address homelessness. Not only has the United States failed to address homelessness, the United States has increased the risks associated with homelessness by criminalizing and disrupting life-sustaining activity¹⁸.

RECOMMENDATIONS

25. The criminalization of homelessness must immediately end.

26. Federal law should be enacted prohibiting the criminalization of homelessness including an accessible process for homeless individuals to hold officials accountable for criminalizing life-sustaining activities.

27. The United States Government should provide funding to upgrade homeless encampments including sufficient oversight and accountability to ensure that funds are properly allocated.

28. Homelessness ends with a home. The U.S. must invest in housing for low-income and no-income people. The United States Government should establish effective programs to end homelessness.

29. Local governments should adopt policy proposals developed by the Bay Area Landless Peoples Alliance which was created as a collaboration led by people who are currently homeless. The proposals are as follows:

First: All criminalization of homelessness must end immediately. All people who are sheltering themselves on public land will be immediately protected under the Eighth Amendment of the United States Constitution which demands that public authority provide for "safe havens" for all homeless people where they can shelter themselves with dignity. This will include provision by local governments of water, sewer, toilets, sanitation, and trash removal services.

Second: To live in dignity, landless people in "safe havens" will be allowed to self-govern. "Safe havens" will be run by their residents, not outside agencies nor non-profits. Local governments will provide equivalent funding to train and hire residents to provide their own services rather than hire outside contractors.

¹⁷ Jeff Stein, Tracy Jan, Josh Dawsey, and Ashley Parker, "Trump pushing for major crackdown on homeless camps in California, with aides discussing moving residents to government-backed facilities" *The Washington Post*, September 10, 2019. See: <https://www.washingtonpost.com/business/2019/09/10/trump-pushing-major-crackdown-homeless-camps-california-with-aides-discussing-moving-residents-government-backed-facilities/>

¹⁸ See Paragraph 26, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

Third: Collective punishment and all other activity designed to undermine “safe havens” will end. Local officials will not raid an entire “safe haven” based on the activity of one or a small number of residents. Local authorities will also not interfere with the internal composition of residents within a “safe haven” by removing individuals without probable cause nor forcing “safe havens” to accept new residents without their consent.

Fourth: All confiscation of landless people’s property will end, and all property immediately returned.

Fifth: Officials will communicate to all public agencies the location and status of all sanctioned encampments to coordinate transitional housing services.

Sixth: Resolve that all landless people have the human right to assert self-defense against prosecution for activities necessary for survival. Prohibitions on sleeping, sitting, lying, panhandling, performing, and loitering in public will end. Individuals will be allowed to sleep in cars, and plans to reclaim vacant properties to provide housing will be put in place.

Seventh: All new housing shall prioritize housing for landless people including Section 8 housing and housing for truly low-income people such as those with an income below 30% of the Area Median Income. This goal shall include one or more of the following: eminent domain, community land trusts, housing cooperatives, affordability covenants, and changes to building, zoning, permitting, and other local codes to expand low-income housing opportunities.¹⁹”

¹⁹ See: <http://www.mclihumanrights.org/wp-content/uploads/2018/08/Declaration-of-Campaign-for-the-Human-Rights-of-Landless-People.pdf>