

Mandates 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 and the Special Rapporteur on extreme poverty and human rights

Ref.: AL USA 23/2024
(Please use this reference in your reply)

18 October 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 52/10 and 53/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **an ordinance, adopted in October 2023, amending the Miami Beach City Code and House Bill 1365 of the State of Florida, which came into force on 1 October 2024. The city ordinance criminalizes the act of camping, sleeping or cooking in private or public spaces, for persons experiencing homelessness when they refuse to move to a homeless shelter, allowing police to arrest them. The House Bill 1365 forces all counties in Florida to legislate similar local legislation criminalizing homelessness, providing only a few exceptions where on a temporary basis local Governments could, under certain conditions, designate public spaces in which camping or sleeping would be allowed.**

Summary of the reasoning

It is alleged that the arrest or detention of persons experiencing homelessness is not compliant with international human rights standards, when shelter space at the habitual place of residence is either lacking, inadequate, or unsuitable to guarantee the rights of the persons experiencing homelessness. The arrest and repeated detention of persons experiencing homelessness for the mere offence of sleeping in a public space instead amounts to cruel, inhuman and degrading treatment or punishment, when such behaviour is caused by the lack of any housing alternative that is adequate, suitable and provides a reasonable degree of security of tenure. The arrest and detention of persons experiencing homelessness is furthermore a significant encroachment on the right to liberty of the person. Such restrictions to the liberty of the person would only be compliant with human rights law if they are strictly necessary, justifiable and proportionate. In the given situation, arrest and detention are neither necessary, proportionate, nor suitable to achieve the envisaged goal of eliminating homelessness, and thus not justifiable. Any arrest and detention must therefore be considered arbitrary. By pushing persons experiencing homelessness outside city and State borders, the

His Excellency
Mr. Antony J. Blinken
Secretary of State

legislations have also the potential to violate the right to freedom of movement and choice of residence.

The criminalization of sleeping or camping is furthermore not suitable nor effective to address the human rights violations that should be the core concern of the State and subnational Governments, namely the high number of persons experiencing homelessness. This highlights the continued failure of the State to guarantee access to housing that is adequate, ensure the rights to privacy and to life, including the right to enjoy a life with dignity, protect the security of the person and the right to the highest attainable standard of physical and mental health, to all persons within its jurisdiction without any discrimination (see previous communication USA 26/2019). The State should first make all efforts to guarantee the enjoyment of these human rights to all persons who live within its jurisdiction, before considering penalizing individuals for behaviours that are, to a large extent, the consequence of the State's failure to uphold these human rights.

Criminalizing life-sustaining activities carried out in public spaces by persons living in homelessness has also proven to be not only inadequate and unsuitable to combat and end homelessness, but also more costly than providing housing support that would meet adequacy standards.¹

In essence, in our view, both legislations have the potential to exacerbate homelessness and to subject individuals who are already victims of human rights violations to a further violation of their rights, while not being adequate measures to prevent or end homelessness.

According to information received:

The legislations criminalizing homelessness

In October 2023, the City of Miami Beach passed an ordinance amending section 70-45 of chapter 70 of the Miami Beach City Code titled "Camping Prohibited". The amendment authorizes the police to arrest persons experiencing homelessness for sleeping, lying or cooking over an open flame in private or public spaces. The amendment provides that arrest should not be carried out if the person decides to voluntarily move to a homeless shelter, or if a homeless shelter or other facility or government assistance which would result in immediate housing is not available. While the City of Miami Beach already enforced a ban on outdoor sleeping, this ordinance notably eliminates the prior requirement for police to issue a warning before making an arrest. In addition, there are no homeless shelters within the limits of the City of Miami Beach, forcing this population out of their city.

Since its enactment, the Miami Beach Ordinance has already resulted in a series of arrests. Since the beginning of 2024, the City of Miami Beach has made over 200 arrests of homeless residents under the ordinance, including repeated detentions of the same persons who were found sleeping, lying or cooking in

¹ For example, a comparative cost analysis of the Central Florida Commission on Homelessness revealed that the annual expense of providing housing and case management to a homeless individual is roughly USD 10,000, significantly lower than the 31,000 USD incurred through law enforcement and health care services.

public or private places. In the broader Miami-Dade County, between May 2015 and March 2024, 57 individuals were arrested and jailed on charges of illegal camping. Then, between April and August of this year, over 90 separate people have been jailed for illegal camping charges. This means that more people have been jailed for illegal camping so far in 2024 than in the previous eight years combined. Reportedly, this increase is largely driven by the Miami Beach Ordinance.

On March 20, 2024, the Legislature of the State of Florida approved House Bill (HB) 1365, titled the “Unauthorized Public Camping and Public Sleeping” Bill. The Bill entered into force on 1 October 2024.

This bill requires local governments to disband current homeless encampments and introduces a licensing requirement for public camping, without allocating funds for the removal of such encampments or the establishment of designated camping sites, shelters or long-term housing for persons experiencing homelessness. Failure to comply with these requirements exposes municipalities to liability, as private citizens are given a right to sue local governments if they fail to enforce the legislation. The bill theoretically allows the establishment of encampments, but only if they do not impact existing property values or security, making it very difficult or nearly impossible for local governments to find suitable properties in urban centres.

The establishment of designated encampment sites is only permitted in counties and cities that lack sufficient beds in homeless shelters. However, such designation of encampment sites should not exceed a period of one year. The designation is subject to certification by the Department of Children and Families (DCF). While the designated property should meet minimum standards to ensure safety and security of the residents, as well as guarantee access to operable restrooms and running water, the bill does not foresee the allocation of funds to enable counties to undertake such work. As the designed sites are only envisaged as temporary places for camping and must be closed after one year, there is reason to fear that infrastructure, tents or other support services provided at these camp sites will be of a limited nature and thus fail to meet core elements of housing adequacy of the right to adequate housing under international human rights law. In the way they are envisaged, the designated encampment sites would only be able to provide security of tenure for up to one year, without any legal guarantee that the people staying there will subsequently have access to any long-term housing solution.

These legislations have been adopted in the context of growing homelessness across the United States of America and in Florida. According to the January 2023 Point-In-Time Count, on a single night in 2023, 653,104 people were living in homelessness in the United States of America, including 30,756 in Florida.² Over the past five years, the number of people in Florida who are experiencing homelessness has increased by 9 percent. In 2023, approximately

² See Department of Housing and Urban Development, Office of Policy Development and Research, 2007 - 2023 Point-in-Time Estimates by State, <https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html>

50 percent of people experiencing homelessness in Florida were unsheltered.³ The largest proportion of persons experiencing homelessness in Florida, amounting to 3,657 (around 12%), resided in Miami-Dade County.⁴ The City of Miami counted 608 unsheltered homeless in January 2023, and 631 in January 2024.⁵

Availability and adequacy of shelters

In 2023, the number of total year-round beds in emergency, safe haven and transitional housing in Florida amounted to 18,815⁶, meaning that the existing structures would only be sufficient to host about 61 percent of the total homeless population.

Despite estimates of over 150 unhoused residents in the City of Miami Beach, an ordinance bans shelters in the city. Therefore, shelters in the City of Miami Beach are per se inadequate to support the homeless population. One organization estimates that there are 1,863 total emergency shelter beds available in Miami-Dade County and 754 transitional housing beds,⁷ but none of these are located in the municipalities of Surfside, Indian Creek Village, Bay Harbor Islands, Bal Harbour, or North Bay Village, which surround the City of Miami Beach. Thus, effectively, unhoused people in the City Miami Beach face a choice between arrest and relocation away from their community.

The City of Miami Beach has a walk-in center that coordinates relocation of individuals verified as homeless in Miami Beach to 3-4 shelters in the City of Miami. It is only open Monday-Friday, from 7.30 a.m. to 12 p.m. and from 1 p.m. to 3.30 p.m. Miami Beach contracts 75 beds in these shelters, of which only about a dozen are available on any given day. To be verified as homeless in Miami Beach, city staff investigate whether individuals seeking services have resided in Miami Beach for at least 30 days, along with other additional requirements.

Except for rooms for families, shelter beds are not private. The City of Miami Beach refers to at least one men-only shelter, at least one co-ed shelter, one shelter catered to supporting LGBTQIA+ individuals, and one children's shelter. Shelters further come with numerous restrictions. For example, residents "must agree to complete a care plan [...] as a condition of placement."⁸ Residents are generally told not to bring many belongings to reduce the risk of theft. Shelters also have curfews and wake up times, although adjustments may be made for residents who have a job. Shelters provide breakfast, lunch, and dinner, but do not allow residents to keep food in their rooms. Residents are

³ Florida Department of Children and Families, Florida's Council on Homelessness – Annual Report, <https://www.myflfamilies.com/sites/default/files/2023-07/Florida%27s%20Council%20On%20Homelessness%20Annual%20Report%202023.pdf>

⁴ Estimated Households (Census ACS), FL HEALTH CHARTS, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrpCounts.Dataviewer> (last visited June 16, 2024).

⁵ Homeless Trust Census Results & Comparison: January 26, 2023 to January 25, 2024, MIAMI-DADE COUNTY, <https://www.homelesstrust.org/resources-homeless/library/2024-jan-pit-census.pdf>

⁶ CoC_HIC_NatlTerrDC_2023.pdf (hudexchange.info)

⁷ <https://www.homelesshelterdirectory.org/county/fl-miami-dade>

⁸ <https://www.miamibeachfl.gov/city-hall/housing-and-community-development/homeless-outreach/>

given a deadline by when they need to leave the shelter, generally 60 or 90 days if they have a job. Residents are also on notice that they can be evicted at any time for rule violations. Failure to keep appointments with a case manager, for instance, might lead to a summary eviction. People experiencing homelessness report that shelter conditions — coupled with a lack of long-term affordable housing — can make the streets feel like their best option. Others express concern about the safety of shelters.

Moreover, certain groups in vulnerable situations are particularly exposed to the risk of homelessness and may need special attention and targeted care. For example, adults aged 64 and older represent 28% of the homeless population in Florida. The shelter system, nursing homes, hospice care, and other aging services often do not have a history of addressing the specific challenges and needs of older persons. This may make some older adults reluctant to seek care in these spaces, even if they might be able to afford it.

Impact of criminalization

As we noted in our recent joint report, criminalizing life-sustaining activities associated with homelessness and extreme poverty perpetuates homelessness and exclusion. Criminal records create barriers to obtaining stable housing and employment, preventing people from passing background checks (A/HRC/56/61 Add.3). The measures being enacted in the City of Miami Beach and in the State of Florida appear to be part of a broader pattern of increase of measures criminalizing persons experiencing homelessness and extreme poverty throughout the United States of America. This has been identified as a matter of concern by various human rights experts and human rights bodies of the United Nations.

After his visit to the United States of America in 2018, the former Special Rapporteur on extreme poverty and human rights highlighted that “unpayable fines and the stigma of a criminal conviction (...) virtually prevent subsequent employment and access to most housing” (A/HRC/38/33/Add.1, para. 45).

Following a mission to the United States of America, the UN Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement expressed deep concern “that homelessness persecution and criminalization is ineffective in addressing the issue and deeply damaging to individuals and communities.” It explained that “once released, a criminal record makes it even more difficult to find new employment and housing, leading to more risks of homelessness, and more arrest and incarceration” (A/HRC/54/CRP.7, para. 121).

Without prejudging the accuracy of the information received, we wish to express our serious concern over the fact that the Miami Beach City Ordinance and Florida State House Bill 1365 may violate several international human rights, without being an effective and suitable measure to prevent and end homelessness. In our view, the criminalization of homelessness through the Miami Beach Ordinance and House Bill 1365 violates several human rights standards enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and

Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and other Cruel, Inhuman and Degrading Treatment (CAT) and the Convention on the Elimination of all Forms of Racial Discrimination (ICERD). While the United States of America have ratified the ICCPR, ICERD, and CAT as legally binding standards, it has so far only signed the ICESCR and not yet ratified it. As a signatory to the ICESCR, the United States of America are still obliged to refrain from any actions that would go against the objective and purpose of this human rights treaty and the rights enshrined in it.

As the city ordinance and House Bill 1365 fall into local and State-level authority, we would like to stress that human rights law entails binding obligations of States as a whole and binds all institutions exercising public authority, including subnational governments (see article 50 ICCPR and article 28 ICESCR). A federal system of governance does not change the obligation to ensure that entities at subnational level protect, respect and fulfil human rights. Human rights obligations are binding on them in the same way as on the national or federal executive (Human Rights Committee, general comment 31, para. 4, and A/HRC/28/62).

In our view, the above-mentioned legislations are highly problematic as they have either the potential or already violate the right to liberty and security of the person, the prohibition of cruel, inhuman and degrading treatment or punishment, the freedom of movement and choice of residency, the right to adequate housing, the right to the highest attainable standard of health, and the right to life. In addition, we fear that the enforcement of these legislations will exacerbate homelessness rather than prevent or end it. Homelessness, which is in itself a violation of various human rights, needs to be addressed through measures and policies which comply with international human rights standards.

We wish to underscore that offering temporary housing solutions that may be substandard is, in certain circumstances, not against human rights law as it is better than providing no accommodation at all, but it must be stressed that such offers remain insufficient to fulfil the right to adequate housing and other human rights obligations under international human rights law. States remain under the obligation to end such a non-rights compliant solution as soon as possible and ensure that the concerned individuals or households have access to long-term housing that complies fully with the right to adequate housing and other rights.

Shelters or encampment sites that fail in their conception or in the way they operate to provide access to long-term housing solutions, that only manage homelessness without ending it, that largely discharge their clients back into street homelessness - sometimes already the next morning - can never be considered to be suitable and adequate housing alternative that meets international human rights standards. A refusal to accept an offer that is not human rights compliant can therefore never provide a legal justification for arrest or detention. According to information received, there are no shelter beds at disposal directly in the City of Miami Beach, and we are concerned that shelters located in adjacent cities might not meet the above-mentioned housing adequacy standards.

The Miami Beach Ordinance therefore forces persons experiencing homelessness either to accept temporary institutionalization in homeless shelters whose

conditions might not be adequate, or being arrested and incarcerated, without considering, on an individual basis, if such forced sheltering under threat of arrest, penalization and detention would be necessary or suitable for the concerned individual. While House Bill 1365 does not provide a legal basis for the arrest or detention of persons who fail to access shelter beds or designated camp sites, we are concerned that it may lead to the enactment of similar ordinances as the one in the City of Miami Beach; local Governments might feel compelled to criminalize homelessness to avoid civil litigation for failure to enact encampment bans within their jurisdiction. The arrest and detention of a person, including institutionalization in collective accommodation against their own will, may only be justifiable in the rather rare circumstances where it is not possible to ensure the protection of the rights of other persons or legitimate public interests by other means.

We are also concerned that this situation might be further aggravated following the Supreme Court's decision in *City of Grants Pass v. Johnson*, case 23-175, where it was deliberated that people experiencing homelessness can be arrested and fined for sleeping outside when there are no safe alternatives. In that context, we submitted an amicus brief to the Supreme Court of the United States of America arguing that, in situations where municipalities fail to offer any shelter or adequate housing, punishing persons experiencing homelessness for camping or sleeping in public spaces does not only violate the right to adequate housing, but amounts to cruel, inhumane and degrading treatment and punishment, prohibited by article 7 of the ICCPR. By specifically targeting resting and sleeping in non-specifically designated areas, we are concerned that House Bill 1365 might expand this violation throughout the State of Florida.

Please refer to the **Annex on Reference to international human rights law** attached to this letter which provides a more detailed legal analysis of the applicable international human rights instruments and standards mentioned above.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the number of arrests (including repeated arrest of the same person) that have so far been carried out under the City of Miami Beach ordinance since its entry into force in October 2023.
3. Please provide any cost estimates related to law enforcement of the City of Miami Beach ordinance, including related to the judicial enforcement, as well as staff costs related to law-enforcement, patrolling, notifications, arrest and detention, including average cost for keeping a person and their belongings for one day in jail.
4. Please provide details of the conditions to access the shelters and on the living conditions in the shelters, including relevant regulations governing them. Please also indicate any instances where the shelters

had to refuse providing a shelter bed due to lack of capacity during the last year.

5. Please provide information on the extent to which shelters are suitable to respond to the gender-specific needs of individuals experiencing homelessness, as well as to the particular needs of other vulnerable persons, including persons with disabilities.
6. Please provide any available data on the number of clients accessing homeless shelters who have secured permanent housing of their own in the City of Miami Beach or in other cities and counties in Florida. How many clients returned to the street after accessing shelter?
7. Please provide any details of how many encampment sites used by persons experiencing homelessness in Florida would have to be closed under House Bill 1365, and on of how many persons would be impacted.
8. Please provide information on whether the City of Miami Beach or other local governments in Florida run any Housing First programmes, providing persons experiencing homelessness direct access to housing and individually tailored socio-psychological support services.
9. Please provide information on measures that your Excellency's Government is undertaking to ensure the active participation of persons living in homelessness in the design and implementation of policies that affect them.
10. Please provide information on the strategies, if any, that are in place to prevent the stigmatization of persons experiencing homelessness.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

In this specific case we urge the United States of America to ensure that the legislation of subnational Governments is compliant with international human rights standards. We furthermore urge the City of Miami Beach to repeal provisions contained in its city ordinance that allow for the arrest and detention of persons undertaking life-sustaining activities in public places who refuse to access shelter. We also call upon the Government of the State of Florida and its House of Assembly to repeal the provisions of House Bill 1365 that will force local governments in Florida to adopt similar local legislation prohibiting public encampments of persons in situations of homelessness,

without providing any alternative housing solutions, nor funding to local governments to address the issue.

Instead of criminalizing life-sustaining activities of persons experiencing homelessness, we call on all State authorities of the United States of America to prevent and overcome homelessness by stepping up preventive and responsive measures, in particular by providing affected persons with access to adequate and affordable housing alternatives and socio-psychological support services as needed. We believe that housing-led and rights-based approaches to end homelessness, such as Housing First models, have been the most effective to overcome street homelessness. They are also best suited to solve the public order concerns that are related to encampments of persons experiencing homelessness in public places.

We would kindly request your Excellency's Government to share this letter as well with the State authorities of Florida and the authorities of the City of Miami Beach.

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

Balakrishnan Rajagopal
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

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards.

We would like to draw the attention of your Excellency's Government to its obligations under articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America on 8 June 1992, on the rights to life, including the right to life with dignity, and to non-interference with privacy, family, home or correspondence. We wish to recall in this respect that, under article 6 ICCPR, the right to life is understood as "the supreme right from which no derogation is permitted" and "the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights." In general comment No. 36, para. 26, the Human Rights Committee specifically stated that "The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include (...) homelessness." The right to life encompasses not only the State obligation to protect persons from unnatural and premature death, but it also entails the obligation to guarantee that all persons within its jurisdiction can enjoy this right with dignity (Human Rights Committee, general comment No. 36, para. 3). Both aspects of the right to life are violated when persons have to endure street homelessness over a longer period.

We wish to recall that article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), signed by the United States of America on 5 October 1972, recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. [...]" This entails guaranteeing security of tenure, including protection against forced eviction, and availability of services, materials and infrastructure, which should be affordable, habitable, accessible, well-located, and culturally adequate. Adequate housing alternative should not be confused with having only access to a "shelter", a "shelter bed" or to a space at any "designated encampment site". The housing alternative offered should meet all essential elements of housing adequacy under international human rights law. This means that the alternative housing should be accessible, affordable, habitable, reasonably well located, culturally adequate and suitable for the concerned individual or family, provide access to public services, and a reasonable degree of security of tenure (ICESCR, general comment No. 4). For women, children, families, persons with addictions, persons with physical and mental disabilities, additional requirements apply as the housing alternative must also be compliant with their particular rights and their needs and ensure a dignified life within the community.⁹

The Committee on Economic, Social and Cultural Rights has held that States may in exceptional situations, after having made every effort to offer a permanent,

⁹ See for example relevant provisions in article 23 ICCPR, article 14 CEDAW, articles 16 and 27 CRC and articles 9 and 19 CRPD.

alternative residence to a person at risk of homelessness resort to temporary accommodation that does not fully conform with the right to adequate housing, provided that the accommodation protects the human dignity of the person, meets all safety and security requirements and does not become a permanent solution, but a step towards obtaining adequate housing.¹⁰ While the US has not ratified ICESCR, as a signatory it must not act in a way that violates the Covenant's objectives.

The right to adequate housing is also included in article 5(e)iii of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), that the United States of America ratified on 21 October 1994. Housing remains essential to protect many other human rights that the United States of America have either expressly recognized in their constitutional order or by ratifying international human rights treaties.

The Committee on Economic, Social and Cultural Rights has noted that homelessness is in itself a violation of the right to adequate housing, as enshrined in article 11 of the ICESCR, and a State where a significant number of persons live in situations of homelessness is failing to discharge its obligations under the Covenant. While the realization of the right to housing must take into account the financial resources of State parties, the Committee on Economic, Social and Cultural Rights has noted that “any deliberately retrogressive measures [which would impact the realization of the rights of the pact] would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources” (general comment No. 3, para. 9).

Moreover, we wish to draw your attention to article 5 of the UDHR, article 7 of the ICCPR and article 16 of the CAT on the prohibition of cruel, inhuman and degrading treatment. In this respect, we wish to recall that the Human Rights Committee in its concluding observations noted that criminalizing eating, sleeping, and sitting in certain areas, “raises concerns of discrimination and cruel, inhuman and degrading treatment” (CCPR/C/USA/CO/4, para. 19). In the recent Amicus Curiae that we submitted to the Supreme Court of the United States in *City of Grants Pass v. Johnson*,¹¹ we stressed that punishing persons experiencing homelessness for camping or sleeping in public places when there are no shelters or other adequate housing available, does not only violate the right to adequate housing, but amounts as well to cruel, inhumane and degrading treatment and punishment.

We further wish to remind your Excellency's Government that the right to liberty and security of the person (article 3 of the UDHR, article 9(1) of the ICCPR, and article 5(b) of the ICERD) entails the prohibition of subjecting persons to arbitrary arrest and detention. The right to liberty and security of the person is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc. (Human Rights Committee, general comment No. 8, para 1). Any restriction of

¹⁰ See Committee on Economic, Social and Cultural rights, *López Albán v. Spain* ([communication No. 37/2018](#)), para. 9.

¹¹ Amicus curiae submission of the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights to the Supreme Court of the United States of America, available at: https://www.ohchr.org/sites/default/files/documents/issues/housing/Amicus_curiae_SRhousing_SRpoverty.pdf

personal liberty may only be justifiable if it is necessary and proportionate. The principle of proportionality requires that any infringement of individuals' rights must be limited to the extent that is appropriate and necessary for achieving a legitimate aim. Where measures restrict a right protected under the ICCPR, States 'must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights', including the right to liberty (Human Rights Committee, general comment No. 31, para. 6).

We also wish to highlight that the freedom of movement under article 13 of the UDHR, article 12 of the ICCPR, article 5(d)(i) of the ICERD entails the right to freedom of choice of place of residence. The *raison d'être* of the freedom of choice of residence is to give individuals the liberty to select their location for habitual residence at own choice to access work, health care, living conditions and be able to live alone or with others in a community.

Furthermore, various UN bodies have made recommendations on the need to repeal measures criminalizing life-sustaining activities in public spaces carried out by persons experiencing homelessness or extreme poverty.

The Human Rights Council of the United Nations has repeatedly adopted resolutions calling on States to "take all measures necessary to eliminate legislation that criminalizes homelessness" (see, for example, A/HRC/RES/43/14 and A/HRC/RES/54/11). Similarly, the United Nations Secretary-General has recommended to all Member States to "take steps to repeal or reform laws that penalize or criminalize homelessness and essential activities such as sleeping, begging, eating, or maintaining personal hygiene in public spaces" (A/78/236, para 82(f)).

In its concluding observations, the Human Rights Committee has recently called on the United States of America to abolish laws and policies criminalizing homelessness, review criminal records policies and practices that can lead to homelessness, and intensify efforts to find solutions for persons experiencing homelessness, including by redirecting funding from criminal justice response towards adequate housing and shelter programmes (CCPR/USA/CO/5, para. 41).

In its September 2022 review, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed concern "at the increasing number of state and local laws that criminalize homelessness and at the disproportionately high number of persons belonging to racial and ethnic minorities affected by homelessness, in particular persons of African descent, indigenous peoples and persons of Hispanic/Latino origin, including women and lesbian, gay, bisexual and transgender persons" (CERD/C/USA/CO/10-12, para. 39). Consequently, CERD called upon the United States to "abolish laws and policies that criminalize homelessness," "redirect funding from criminal justice responses to adequate housing and shelter programs, in particular for persons belonging to racial and ethnic minorities most affected by homelessness," (CERD/C/USA/CO/10-12, para. 40) and "affirmatively further fair housing and protection against discriminatory effects" (CERD/C/USA/CO/10-12, para. 38). Similarly, the UN Special Rapporteur on contemporary forms of slavery has raised concerns about the disproportionate impact of criminalization on persons of color and

called for states to “decriminalize conduct associated with homelessness” (A/HRC/54/30).

Finally, in our joint report on the decriminalization of homelessness and extreme poverty, we noted that homelessness constitutes a serious violation of the right to adequate housing and threatens the enjoyment of a broad range of human rights. We called national and sub-national governments to repeal any laws or measures that criminalize, impose fines on or restrict persons living in homelessness or behaviour associated with being homeless, such as sleeping or eating in public spaces (A/HRC/56/61 Add.3).