

**Mandates of the Special Rapporteur on the right to food; the Working Group of Experts on People of African Descent; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on freedom of religion or belief**

Ref.: AL USA 30/2024  
(Please use this reference in your reply)

20 December 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food; Working Group of Experts on People of African Descent; Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 the situation of human rights defenders; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 49/13, 45/24, 50/17, 52/10, 52/4, 53/10, 52/36 and 49/5.

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 June 2020 by the City of Miami, criminalizing community kitchens taking place without a permit. The ordinance is still in place and according to the allegations it could be infringing on the right to food of persons in a situation of homelessness and poverty in the City of Miami as well as criminalizing them, the organizations, many of which are religious organizations, and human rights defenders providing them with vital support. Afro descendants are overrepresented among persons in a situation of homelessness in Miami-Dade County.**

The Special Procedures mandate-holders have recently sent communications to Your Excellency's Government raising concerns on allegations of criminalization of homelessness and poverty (JAL USA 23/2024), as well as on racial discrimination particularly affecting persons of African and Hispanic descent (JAL USA 7/2024, JAL USA 12/2023 and JAL USA 3/2023) and addressing in-work poverty in the United States of America (OL USA 21/2024 and AL USA 21/2023). We thank your Excellency's Government for the responses we have received to JAL USA 7/2024 and JAL USA 12/2023. We equally hope to receive responses to the other letters sent, as well to the allegations outlined below.

According to the information received:

Miami has high economic inequality and some of the least affordable housing in the United States. On 30 September 2024, Florida's minimum wage has

increased to 13 USD per hour, and will increase yearly of one dollar until reaching 15 USD per hour in 2026, while the United States federal minimum wage is set at 7.25 USD per hour. According to official data of May 2023, the mean hourly wage in the Miami metropolitan area is of 30.47 USD, whereas the mean hourly wage across the United States is 31.48 USD.<sup>1</sup> According to the latest official data, across the United States 42.5 percent of its population pay 35 percent or more of their household income in gross rent, this data increases to 55.3 percent for the population in Miami-Dade County.<sup>2</sup> This has created a housing crisis in this county which disproportionately affects persons of African descent. Although individuals of African descent make up approximately 17 percent of the total population in Miami-Dade County, they are disproportionately affected by homelessness, comprising nearly 60 percent of the county's homeless population. This data is consistent with the overall situations across the United States, where persons of African descent represent around 13 percent of the total population but circa 40 percent of the population in a situation of homelessness.

In this context, community kitchen events and public feedings have been an efficient, community-led tool to provide persons experiencing homelessness, economic hardship or food insecurity with economic and physical access to adequate food, as well as to a shared and safe community space, for years. Community kitchens and food providing services used to take place in easily accessible public spaces, such as parks, where volunteers assembled tables and chairs, cooked or directly distributed food, attracting a considerable number – dozens or even hundreds – of persons in a situation of homelessness or poverty. Persons that for over a decade have engaged in the organization of community kitchens denote how these events carry much more meaning than just providing food, they underline how community kitchens strengthen the community and make persons in a situation of homelessness or poverty feel seen and cared for, rather than avoided and marginalized.

On 25 June 2020, during the COVID-19 pandemic, the City of Miami adopted ordinance No. 13907, article II. – Public Feeding, sec. 25-25. – Regulations for large group feedings (the ordinance). According to the ordinance, “large group feeding” is defined as an event attracting “25 or more people, including distributors and servers for the delivery of service of food in a public space”. Any such event taking place without a permission to do so, through a permit issued by the City Commission or the City Manager, would be considered unlawful.

The ordinance also requires for at least five large group feedings’ locations to be designated by the City Manager at their own discretion, these locations must be within walking distance from locations where persons in a situation of homelessness usually congregate. The current five designated locations are clustered in central areas, excluding locations like Overtown, where high numbers of persons, primarily of African descent, experiencing homelessness reside. This makes the designated locations inaccessible to those who cannot travel to reach them, either for physical or economic reasons. Only two of the

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<sup>1</sup> [https://www.bls.gov/regions/southeast/news-release/occupationalemploymentandwages\\_miami.htm](https://www.bls.gov/regions/southeast/news-release/occupationalemploymentandwages_miami.htm)  
<sup>2</sup> <https://data.census.gov/table?q=rent%20US&g=050XX00US12086>

five designated locations allow for food sharing past 8 pm.

In order to obtain a permit, the application for it must be submitted at least two business days prior to the planned large group feeding event, through a webpage.<sup>3</sup> The application must identify one designated location for the event, it must indicate the approximate number of food-preparers and servers, the approximate number of persons that will attend the event, and it must clearly indicate the organization or individual requesting the permit. If the individual requesting the permit belongs to an organization, that individual is obliged to indicate such association, under penalty of being precluded from receiving a permit for large group feedings for a period up to 12 months.

There are also certain restrictions that apply to the issuance of permits; only one permit per day per designated location can be issued, and an organization or an individual belonging to the same organization can receive only one permit per week. Therefore, due to the limited number of designated locations for large group feedings, only five of these events can take place per day in the City of Miami.

The penalty for individuals or organizations not complying with the ordinance consists of a civil fine of 250 USD for a first occurrence, or 500 USD for each subsequent occurrence. Repeated violations within a one-year period may result in the individual or the organization being prohibited from obtaining a permit for large group feedings, for a period of up to 12 months.

According to the ordinance, the City of Miami commits to providing “support services at designated feeding locations for any permitted large group feeding, including, but not limited to containers or receptacles for disposal of waste; restroom facilities; handwashing stations; and the availability of city staff to assist with outreach to the homeless”.

According to the latest Code of Ordinances of the City of Miami when ordinances are proposed by the City Commission, comprised of the mayor and four elected-City Commissioners, the adoption and text of the ordinance can be influenced by community members or advocacy groups. Once an ordinance is proposed, it is presented at a City Commission meeting for its first reading, where the Commissioners discuss the ordinance’s objectives and language, usually without public input. If the ordinance passes this initial stage, it proceeds to a second reading, which includes a public hearing, allowing for Miami residents to voice their support or concerns, which can influence final amendments or revisions. After community feedback, the Commission conducts a final vote, majority vote is required for the ordinance to pass. Upon passing, the mayor signs the ordinance, making it legally binding within the City of Miami.

On 24 June 2020, before the Ordinance was adopted, a letter from the Greater Miami Chapter of the American Civil Liberties Union (ACLU) of Florida, the National Law Center on Homelessness and Poverty and other stakeholders was

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<sup>3</sup> <https://www.miami.gov/Community-Health/Apply-for-a-Large-Group-Food-Distribution-Permit-for-the-Homeless>

sent to the Mayor, the City of Miami Commission Chairman, and the Miami City Attorney expressing their strong opposition to the proposed Ordinance, arguing that it would infringe on fundamental human rights, particularly because it would:

- effectively serve as a ban on public feeding services to persons in a situation of homelessness in the City of Miami;
- have a disproportionate impact on persons of African descent, older persons and persons with disabilities among persons in a situation of homelessness;
- infringe on charitable groups' First Amendment Rights to freedoms of speech, association and religion or belief; and
- exacerbate the negative impacts of the COVID-19 pandemic and economic crisis, targeting a group of individuals already in a position of disadvantage and heightened vulnerability.

According to the letter, with the pandemic and before the adoption of the Ordinance, a decrease in the number of groups travelling to homeless encampments to provide them with meals had already been observed. The letter suggested that the City of Miami should invest in constructive alternatives to end homelessness, instead of punishing persons in a situation of homelessness and the charitable organizations, many of which are religious organizations, seeking to provide them with support.

It has been reported that after the adoption of the Ordinance many individuals and organizations, including human rights defenders and religious groups, were deterred from trying to provide food to persons in a situation of homelessness and poverty, fearing criminalization, fines and harassment. Reportedly, this has increased social stigma and deepened the isolation of persons in a situation of homelessness and poverty. Providers have reported being denied permits without reason and remaining uncertain as to whether or not they will receive approval for scheduled food sharing services until the last moment. This uncertainty deters some organizations, especially smaller groups that may find it challenging to meet the requirements and timelines of the Ordinance.

Some organizations and human rights defenders have continued to provide food and community assistance to persons in a situation of homelessness and poverty, and have on instances allegedly faced harassment by law enforcement officials who claimed that they had left the feeding locations unclean, an accusation that has been refuted by the organizers of the community kitchens. Those who continue to organize community kitchens and food distribution try to keep serving similar quantities of food compared to before the adoption of the Ordinance. Providing food has become more cumbersome for some organizations, especially small ones, given that overall less organizations can provide food on each given day and that the number of persons in a situation of homelessness and poverty has not decreased.

Previously, other cities in Florida, including Tampa, Palm Bay, Hallandale Beach, Jacksonville, Gainesville, Fort Lauderdale and Orlando, had adopted similar regulations imposing limitations on community kitchens.

Without prejudging the accuracy of the information received, we wish to express our serious concern over the fact that through this Ordinance, the City of Miami not only is failing to progressively realize the right to an adequate standard of living, particularly the right to food and right to adequate housing, for persons in a situation of homelessness and poverty, but also affirmatively inhibits the enjoyment of this right by criminalizing the actions of organizations seeking to feed people experiencing hunger. In particular, the Ordinance seems to target both persons in a situation of homelessness and poverty, and persons facing food insecurity, as well as those seeking to provide assistance through food, meals and a safe space to them. We would like to recall that the right to an adequate standard of living is a necessary precondition to ensure the respect, fulfilment and enjoyment of the right to life.

While the Ordinance was adopted with the purpose of regulating public feeding in a moment of global crisis due to the COVID-19 pandemic, we are concerned that due consideration was not given to the impact that the Ordinance could have on the food security of persons experiencing homelessness who already found themselves in heightened vulnerability during the pandemic, thus jeopardizing their survival. Furthermore, we are surprised that the Ordinance was not repealed with the end of the COVID-19 pandemic, which raises doubts regarding the actual purpose of its adoption and concerns that the Ordinance might continue to infringe on the right to food of persons in a situation of homelessness and poverty, as well as the right to freedom of peaceful assembly and of association, and in some cases freedom of expression and freedom of religion or belief, of individuals and organizations seeking to provide food and a safe space to persons experiencing homelessness, thus deterring them from carrying out their legitimate human rights work. Moreover, we remain concerned that the ordinance remains in effect while homelessness does not seem to be decreasing in the City of Miami.

In his thematic report to the General Assembly on “[t]he right to food and the coronavirus disease pandemic” (A/77/177), in July 2022, the Special Rapporteur on the right to food recognized that the COVID-19 pandemic not only underlined the fragility of food systems but also “underlined the value of sharing and solidarity, and the importance of the application of traditional, local knowledge in times of extreme hardship”, among the local resilient solutions associated public food distribution systems, mutual assistance and the sharing of food, were particularly commended. On the other hand, when communities were marginalized they had difficulty accessing adequate food, especially if they were not self-reliant. Therefore, the Special Rapporteur called on States to recognize the role of and provide support to local and regional governments in meeting needs related to the right to food, as well as to develop action plans on the right to food based on the principles of solidarity, self-sufficiency and dignity, including through the promotion of local governance, sovereignty and the empowerment of local communities. Additionally, in her thematic report presented to the General Assembly in October 2024, the Special Rapporteur on freedom of peaceful assembly and association highlighted that that “negative and hostile narratives increasingly used to vilify and criminalize civil society and activists

deepen the stigmatization of those exercising their rights to peaceful assembly and association. Stigmatization, whether intentional or not, especially when propagated by authorities, effectively denies these fundamental rights. It misrepresents legitimate exercises of freedom as illegal and those involved as criminals or threats to national security, public order or morals. This fuels harmful stereotypes, fosters hostility, justifies punitive measures and triggers undue restrictions on these rights” (A/79/263, para. 11).

We would also like to express our concerns over the apparent fact that the letter expressing opposition towards the adoption of the Ordinance with due explanation of various concerns, does not seem to have been duly taken into consideration by the City of Miami Commission when deciding to adopt the Ordinance. Furthermore, we find it concerning that the text of the Ordinance allows for the City of Miami Manager to choose and change designated feeding locations without consulting any of the persons and groups involved. We would like to remind that any decision should include good faith consultation with those impacted, in this case persons in a situation of homelessness and poverty and individuals or organizations providing them with food, in order for the decision to be effective and abide by human rights standards.

Furthermore, we are especially concerned that the Ordinance might be disproportionately affecting the right to an adequate standard of living of persons of African-descent and/or originally from Latin America. Thus, the Ordinance might be perpetrating racism and racial inequities in the City of Miami, and overall, in the United States of America, contrary to your Excellency’s obligations under international human rights law and international human rights standards. To this regard, we would like to refer to the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) on its review of the United States of America, of September 2022, in particular to paragraph 39-40 on homelessness, and 40-41 on the right to food (CERD/C/USA/CO/10-12); as well as to the concluding observations of the Human Rights Committee to the United States of America, in December 2023, especially to paragraphs 40-41 on the criminalization of homelessness (CCPR/USA/CO/5).

We would like to reiterate the concerns of both Committees regarding the increasing number of state and local laws that criminalize homelessness, the prevalence of violence against persons experiencing homelessness, the higher risk of premature death that they experience due to homelessness and the disproportionately high number of persons belonging to racial and ethnic minorities affected by homelessness, in particular people of African descent, Indigenous Peoples and persons of Hispanic/Latino origin, including women and lesbian, gay, bisexual and transgender persons. Therefore, both Committees recommended to the United States of America to abolish all laws and policies that criminalize homelessness at all levels, review criminal records policies and practices that can lead to homelessness, and intensify efforts to find solutions for persons experiencing homelessness, for example through financial and legal incentives to decriminalize homelessness, including by conditioning or withdrawing funding from state and local authorities that criminalize homelessness and encouraging them to redirect funding from criminal justice responses towards adequate housing and shelter programmes, in particular for persons belonging to racial and ethnic minorities, who are most affected by homelessness.

Additionally, the CERD expressed its concern at the disproportionate impact of food insecurity on racial and ethnic minorities, in particular Indigenous Peoples, people of African descent and persons of Hispanic/Latino origin, and particularly women and children from these communities, due to, among other factors, the disparate rates of poverty and unemployment in these communities, racial wage disparities, and legislation and practices that have a discriminatory effect on the tenure and use of land. Thus, the CERD recommended to the United States of America to take all measures necessary to guarantee the right to adequate food and to strengthen its efforts to combat hunger and food insecurity, disproportionately affecting racial and ethnic minorities, and especially women and children, in consultation with all relevant stakeholders, including members of the communities most affected by food insecurity.

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

As it is 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 inform if any good faith consultation with impacted persons, including persons in a situation of homelessness and individuals or organizations providing them with support, was conducted before the adoption of the Ordinance. Please inform if and how the letter sent to the Mayor, the Commission Chairman, and the Attorney of the City of Miami, on 24 June 2020, was taken into consideration.
3. Please inform if your Excellency's Government and the City of Miami have conducted a human rights due diligence assessment before the adoption of the Ordinance, and if after its adoption any human rights monitoring of the impact of the Ordinance has been conducted, with particular regard to the right to food and the right to non-discrimination, as well as the right to freedom of peaceful assembly, association, expression and religion or belief.
4. Please provide information on any measures taken by your Excellency's Government and the City of Miami to prevent and end homelessness, abstain from and end the criminalization of homelessness and poverty, and guarantee the right to an adequate standard of living, including the right to adequate housing and the right to food, of those currently experiencing homelessness, particularly in the City of Miami.

5. Please inform on any measures taken by your Excellency's Government to ensure that law enforcement of the City of Miami do not harass or criminalize persons in a situation of homelessness and poverty for conducting activities essential for their survival in public spaces, and persons and organizations, including human rights defenders and religious groups, for providing them with support.
6. Please provide information on any measures taken by your Excellency's Government to implement recommendations 40 and 42 of the Committee on the Elimination of Racial Discrimination, in its concluding observations to the review of the United States of America in September 2022 (CERD/C/USA/CO/10-12), as well as recommendation 41 of the Human Rights Committee, in its concluding observations to the review of the United States of America in December 2023 (CCPR/USA/CO/5).

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

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence, as well as to prevent and end homelessness, and any criminalization of persons in a situation of homelessness or poverty and of those wishing to provide them with support. In the event that the investigations support or suggest the allegations to be correct, we urge you to ensure the accountability of any person(s) responsible for the alleged violations.

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

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xenophobia and related intolerance

Nazila Ghanea  
Special Rapporteur on freedom of religion or belief

## **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 wish to draw the attention of your Excellency's Government to its obligations under article 25 of the Universal Declaration on Human Rights (UDHR), which recognizes the right of everyone to a standard of living adequate for the health and well-being of themselves and of their family, including food, clothing, housing and medical care. We further wish to refer you to the inherent right to life as enshrined in article 3 UDHR.

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 of the 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 [...] widespread hunger and malnutrition and extreme poverty and homelessness." The right to life encompasses not only the State obligation to protect persons from unnatural and premature death, but also 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 hunger, street homelessness and poverty over a longer period. General comment No. 36 further states that measures called for addressing adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food. The Human Rights Committee recognized that the right to life should not be interpreted narrowly, noting that it places not only negative obligations on States but also positive obligations to ensure access to the basic conditions necessary to sustain life. It has affirmed that measures that restrict access to basic and life-saving services, such as food, are contrary to article 6 of ICCPR.

We would like to refer also to article 21 of the ICCPR, that states that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline. We also recall that article 22 of the ICCPR protects the right to freedom of association, including the rights of everyone to

associate with others and to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and are necessary and proportionate for achieving that purpose.

The Human Rights Committee stated that “the imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect” (CCPR/C/GC/37, para. 36).

We would also like to refer your Excellency’s Government to article 18 of the ICCPR which states that “everyone shall have the right to freedom of thought, conscience and religion. These rights shall include freedom [...] either individual or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

While the United States of America has not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), it has signed this treaty on 5 October 1972. As a signatory to the Covenant, the United States of America are obliged to "refrain from acts which would defeat the object and purpose" of the ICESCR (article 18 of the Vienna Convention on the Law of Treaties, *U.N.T.S.*, vol. 1155, p. 331).

We wish to recall that article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. While article 11(1), requiring States to “take appropriate steps to ensure the realization of the right to food”, is subjected to progressive realization to the maximum of States available resources, article 11(2), provides “the fundamental right to freedom from hunger and malnutrition”, which is of immediate application. In interpreting this provision, the Committee on Economic Social and Cultural Rights (Committee) stressed in its general comment No. 12 that the core content of the right to adequate food refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems (para. 12). Thus, the right to food entails both economic and physical accessibility of food, as well as the sustainability of food access for both present and future generations (para. 7). Additionally general comment No. 12 further underlines, the obligations to respect existing access to adequate food requires States to refrain from taking any pressures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, in order to ensure their food security (para. 15.) Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

Complying and fulfilling article 11 ICESCR 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, psychosocial or intellectual 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.

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, 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. 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 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”, which could entail a violation of 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 (CCPR/C/USA/CO/4, para. 19). In the recent *amicus curiae* brief submitted jointly by the UN Special Rapporteurs on the right to adequate housing and on extreme poverty and human rights to the Supreme Court of the United States of America in *City of Grants Pass v. Johnson*, the experts 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. Nevertheless, the Supreme Court of the United States of America in *City of Grants Pass v. Johnson*, case 23-175, deliberated that people experiencing homelessness can be arrested and fined for sleeping outside even when there are no adequate and safe alternatives, this decision might further aggravate the situation of

persons living in homelessness.

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)). 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 the joint report by the UN Special Rapporteur on the right to adequate housing and the UN Special Rapporteur on extreme poverty and human rights on the decriminalization of homelessness and extreme poverty, the experts noted that homelessness constitutes a serious violation of the right to adequate housing and threatens the enjoyment of a broad range of human rights. The Special Rapporteurs called on 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).

We also wish to draw your Excellency’s attention to article 2 and article 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by the United States of America on 21 October 1994. Article 2 of ICERD prohibits all forms of racial discrimination and bestows broad duties upon States parties to prevent, eliminate and remedy all forms of such discrimination. Article 5 (3) recognizes that 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 economic, social and cultural rights. In that sense, article 5(e) explicitly refers to the right to work (ii) and to the right to housing (iii). Finally, article 5(f) of the ICERD recognizes the right of access to any place or service intended for use by the general public, such as [...] parks. 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.

Following her visit to the United States in 2023, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance expressed concern in her report to the Human Rights Council (A/HRC/56/68/Add.1) about “shocking levels of homelessness exist among people of African descent in the United States”. The Special Rapporteur lamented that “State policy often exacerbates homelessness, excludes unhoused persons from public goods and accommodation and/or acts as a barrier to the protection and promotion of human

rights. Many states with visible, intractable homelessness do not have right-to-shelter laws, rendering services and shelter initiatives voluntary and piecemeal. Many localities have passed laws banning and penalizing sitting, lying down, sleeping, using or maintaining personal property on a street or sidewalk, or in the vicinity of a school, day-care centre, park or library.” The Special Rapporteur reported that she was “shocked by such laws and policies, which criminalize homelessness, as well as by initiatives such as the targeting of encampments of unhoused persons, the banning of the sharing of food with unhoused people, and the disproportionate application of criminal sanctions for loitering, jaywalking or consuming alcohol among unhoused persons. Such practices unnecessarily and cruelly contribute to mass incarceration, obscure the State’s concrete obligation to prevent and address racial discrimination and constitute a comprehensive status-based denial of social protection”. The Special Rapporteur recommended that the United States Government *inter alia* “step up efforts to address poverty and inequality affecting those from marginalized racial and ethnic groups, ensuring that structural issues driving such poverty are recognized and effectively addressed; end the criminalization of homelessness, including repealing any legislation that contributes to this phenomenon; and address the root causes of the high number of unhoused people of African descent and from other racially marginalized communities.”

We would also like to highlight the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, adopted by the General Assembly in resolution 53/144 of 9 December 1998. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 5(b) of this Declaration, establishes the right to form, join, or participate in non-governmental organizations, associations, or groups; article 6(a) and (c), which establishes the right to know, obtain, and possess information about human rights, and to study and discuss whether human rights are being observed, both in law and in practice; and article 12, which provides that the State must ensure the protection of everyone against any threat, reprisal, or pressure resulting from the exercise of the rights authorized by the Declaration, as well as the right to effective protection of the laws when reacting to or opposing, by peaceful means, activities that cause violations of human rights and fundamental freedoms.

In addition, we would like to refer to Human Rights Council resolution 22/6 which urges States to publicly recognize the important and legitimate role played by human rights defenders in the promotion of human rights, democracy and the rule of law, as well as resolution 13/13 of the same Council which urges States to take concrete steps to end threats, harassment, violence and attacks by States and non-State entities against those engaged in the promotion and protection of human rights and fundamental freedoms for all. As the Human Rights Committee has underlined in its general comment 35, States parties should respond appropriately to patterns of violence against certain categories of victims, such as intimidation of human rights defenders (CCPR/C/GC/35 para. 9).