



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Written statement\* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[01 February 2020]

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\* Issued as received, in the language(s) of submission only.

GE.20-02366(E)



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## Ending criminalization and discrimination based on Housing Status

### Introduction

The right to adequate housing is a human right that States frequently violate. In keeping with international law, States should be focused on protecting and ensuring the right to housing for those who are homeless and inadequately housed rather than criminalizing them.<sup>1</sup>

International human rights law recognizes the right to adequate housing. The primary instrument that preserves the right to adequate housing is the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 2019, the Special Rapporteur on adequate housing issued a report on the access to justice to end criminalization and discrimination based on housing status. The report indicated that laws and their interpretation have frequently perpetuated discrimination on homeless people rather than treating them as rights holders and affording them remedies.<sup>2</sup> The Human Rights Committee has found that the criminalization of homelessness can violate the right to be free from cruel, inhumane or degrading treatment.<sup>3</sup> The Special Rapporteur has recommended States to provide access to effective remedies and treat those whose right to housing has been violated as equal members of the human family.<sup>4</sup>

### Criminalization

Criminalization of homelessness worsens the problem, instead of fixing it. When homeless people are burdened with high fines they are systematically affected. These fines do not allow homeless people to break out of homelessness because of a continued cycle of oppression that prolongs homelessness by creating barriers to their employment and housing options.<sup>5</sup> Criminalization creates a circulation from homelessness to the criminal justice system and back which depletes resources that could otherwise be used to solve the problem.<sup>6</sup> For example, a 2016 report on Homeless and Poverty indicated that criminalizing homeless would cost cities millions, which would be wasted resources.<sup>7</sup> The following are examples of countries who have attempted or have criminalized homelessness.

### United States of America

An estimated 552,830 people were counted as homeless in the United States of America (“U.S.”). Federally, the criminalization of homelessness is not illegal, leaving it up to the localities to make their own laws on the issue. Recently, the Ninth Circuit Court of Appeals invoked the constitutional protection of the Eighth Amendment prohibition of cruel and unusual punishment to strike down an ordinance by Boise, Idaho that would have banned the use of street, sidewalks, parks or public places as camping places.<sup>8</sup> Boise appealed to the Supreme Court, but the Court refused to consider the case, allowing the Ninth Circuit decision to stand.<sup>9</sup> However, the court’s holding is a narrow one. The court indicated that

<sup>1</sup> Leilani Farha (Special Rapporteur), *Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, U.N. Doc. A/HRC/40/61 (Jan. 15, 2019).

<sup>2</sup> Farha, *supra* note 1, ¶41.

<sup>3</sup> Id. ¶43.

<sup>4</sup> Id. ¶70-71.

<sup>5</sup> National Law Cent on Homelessness & Poverty, *Housing Not Handcuffs* (Jan. 12, 2019), <https://nlchp.org/wp-content/uploads/2018/10/criminalization-one-pager.pdf>

<sup>6</sup> Id.

<sup>7</sup> Institute of Global Homelessness, *State of Homelessness in Countries with Developed Economies*, (May. 2019). Citation [https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/CASEY\\_Louise\\_Paper.pdf](https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/CASEY_Louise_Paper.pdf)

<sup>8</sup> *Martin v. City of Boise*, 709 F.3d 890 (9th Cir. 2019).

<sup>9</sup> Richard Wolf & Chris Woodyard, *Supreme Court refuses to consider cities’ efforts to prosecute the homeless for sleeping outside*, USA Today (Dec. 16, 2019), <https://www.usatoday.com/story/news/politics/2019/12/16/homeless-supreme-court-living-street->

homeless people could not be prosecuted unless jurisdictions offered “adequate” housing.<sup>10</sup> The court failed to define adequate, leaving it to the localities to interpret.

Another issue is the disproportionate number of Black individuals experiencing homelessness.<sup>11</sup> As a party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) the United States is bound to implement the right to housing.

## Hungary

In Hungary, a movement for anti-homeless initiated in the early 2000s included localities introducing local ordinances banning people from begging, picking up left over food from bins or sleeping in public spaces.<sup>12</sup> In 2018, Hungary’s parliament passed a constitutional amendment

banning people from living on the streets.<sup>13</sup> This amendment aimed at eliminating Hungary’s homeless population, which is predominantly comprised of people living in poverty, refugees, migrants, people with disabilities and Roma. In addition to being a member of the ICESCR, Hungary is also a member of CERD, therefore bound to provide housing to all regardless of race, sex, language or religion. The ban forces homeless people to go into hiding and move into the outskirts forests where many will freeze to death during winters. The Hungarian government has indicated that there are enough beds to house all of their homeless population.<sup>14</sup> However, non-government organizations estimate that while there are 11,000 beds available there is an estimated 30,000 people who are homeless.<sup>15</sup>

## England and Wales

The Vagrancy Act of 1824 makes it an offence to be homeless or beg, meaning anyone who is sleeping in a public space or begging for money can be arrested and subject to a fine.<sup>16</sup> This law causes a circular systematic oppression since those who get fined for begging, ironically will have to beg to pay their fines. In 2018, it was estimated that 320,000 people were homeless in the United Kingdom of Great Britain and Northern Ireland.<sup>17</sup> Despite these staggering statistics of homelessness, the Act remains in effect in England and Wales.

In 2018, a petition was brought to the government requesting the repeal of the Act. The government refused to repeal the law since it kept homeless people off the streets.<sup>18</sup> As a member to the ICESCR, the United Kingdom of Great Britain and Northern Ireland (“U.K.”) is bound to provide adequate housing.<sup>19</sup> Moreover, the U.K. is also a member to the

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<sup>10</sup> *Supra* note 9, 617.

<sup>11</sup> *Supra* note 8.

<sup>12</sup> Renata De Souza, *Governments are criminalizing homeless people to distract from their own failures*, Amnesty International (Oct. 2, 2017), <https://www.amnesty.org/en/latest/news/2017/10/governments-are-criminalizing-homeless-people-to-distract-from-their-own-failures/>

<sup>13</sup> Rick Noack, *Hungary bans homeless people from living in public spaces, in law described as ‘cruel’ by the U.N.*, Washington Post (Oct. 17, 2018), <https://www.washingtonpost.com/world/2018/10/17/hungary-bans-homeless-people-living-public-spaces-law-described-cruel-by-un/>

<sup>14</sup> *Id.*

<sup>15</sup> Valerie Hopkins, *Hungary’s ban on homelessness leaves many people vulnerable*, Financial Times, (Nov. 23, 2018), <https://www.ft.com/content/f8f0076e-e026-11e8-a6e5-792428919cee>

<sup>16</sup> Shaista Aziz, *Why are we still using a 19<sup>th</sup>-century law that criminalizes homeless people*, The Guardian, (Jan. 24, 2019), <https://www.theguardian.com/commentisfree/2019/jan/24/19-century-law-criminalises-homeless-vagrancy-act-rough-sleepers>

<sup>17</sup> Hannah Richardson, *At least 320,00 people homeless in Britain*, BBC News, (Nov. 22, 2018), <https://www.bbc.com/news/education-46289259>

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

<sup>19</sup> United Nations Treaty Collection, International Covenant on Economic, Social and Cultural Rights, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-)

Convention on the Right of the Child. Under Article 27, member states must recognize the right of every child to have an adequate standard of living for their physical, mental, spiritual, moral and social development.<sup>20</sup> The number of children living in poverty in the U.K. is estimated at 4.1 million, meaning that these children are at risk of becoming homeless. In England, the age for being held criminally liable is 10, putting children at a high risk of being arrested.<sup>21</sup>

## Examples of countries addressing homelessness

Very few countries or localities have been able to affect positive change to homelessness. The following are some examples.

### Finland

In Finland, “Housing First” was created as a program to tackle homelessness. The program uses housing as an instrument of reintegration, supporting homeless people with mental health and addiction problems. Rather than seeing housing as an end point, “Housing First” sees it as a starting point.<sup>22</sup> Finland is giving people a place of their own rather than putting them in shelters and offering them support services. These support services are prepared to meet the needs of each individual.

### California, United States of America

In 2020, California has considered legislation to open vacant state land to emergency shelters for homeless people. California has proposed creating funds to pay rent and build affordable housing for homeless people.<sup>23</sup> This new housing would include board and care homes for the mentally ill.<sup>24</sup> However, the legislature still has to approve the proposal. Since California’s homelessness crisis is in part due to the lack of affordable housing, this proposal would allow for more stable living situations.<sup>25</sup> California’s proposal would allow housing as a starting point rather than an ending point.

## Conclusion

The criminalization of homelessness is causing human suffering, resulting in human rights violations. Action must be taken by all Nations to eradicate this violation. Countries should take into consideration programs such as “Housing First” as steppingstones to implement programs that will provide all individuals the right to adequate housing.

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<sup>20</sup> David Weissbrodt, Fionnuala Ní Aoláin, Mary Rumsey, Marci Hoffman and Joan Fitzpatrick, *Selected International Human Rights Instruments and Bibliography for Research on International Human Rights Law*, 2009, page 139.

<sup>21</sup> Consortium for Street Children, *CSC Calls for the UK Vagrancy Act to be Scrapped*, (Sep. 10, 2019), <https://www.streetchildren.org/news-and-updates/csc-calls-for-the-uk-vagrancy-act-to-be-scrapped/>

<sup>22</sup> Nicholas Pleace, *Housing First Guide Europe: Chapter 1: What is Housing First*, Housing First Europe Hub, (2016), <http://www.housingfirstguide.eu/website/wp-content/uploads/2016/HFG/Chapter1.pdf>

<sup>23</sup> Alexei Koseff and Kevin Fagan, *California will open vacant state land for homeless shelters under Newsom order*, (Jan. 13, 2020), <https://www.sfchronicle.com/politics/article/California-will-open-vacant-state-land-for-14957993.php>

<sup>24</sup> Id.

<sup>25</sup> The Times Editorial Board, *NIMBYs beware: California could make it harder to block homeless and affordable housing*, Los Angeles Times (Jan. 19, 2020), <https://www.latimes.com/opinion/story/2020-01-19/ceqa-exemption-affordable-housing>

## **Recommendations**

Human Rights Advocates (“HRA”) urges the Human Rights Council to:

- Further define that adequate housing means not criminalizing homelessness;
- Urge State Parties to the convention to address the pervasive problems that homeless people face due to criminalization; and

Urge countries to not criminalize homelessness

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