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

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† Eric Tars is the Legal Director of the National Homelessness Law Center, formerly the National Law Center on Homelessness & Poverty.
† Tamar Ezer is the Acting Director and a Lecturer in Law with the Human Rights Clinic of the University of Miami School of Law.
† Melanie Ng is a former student with the Human Rights Clinic at the University of Miami School of Law.
† David Stuzin is a Student Fellow with the Human Rights Clinic at the University of Miami School of Law.
† Conor Arevalo is a former student with the Human Rights Clinic at the University of Miami School of Law.
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INTRODUCTION

Imagine people forced to sleep on a cold, concrete slab, exposed to the elements. Imagine they are deliberately sleep-deprived through repeated middle-of-the-night wakeups, with lights constantly on and sometimes with loud music played. Imagine they are denied adequate food and water, then forced to endure the humiliation of exposing themselves in public to urinate or defecate and denied adequate sanitary facilities to clean themselves. Imagine them being degraded, threatened, and harassed by both private actors with the tacit or explicit blessing of the government, or the government’s own law enforcement. For many, this may recall the disturbing photos of detainees at the Abu Ghraib prison in Iraq. And few would have any doubt that the treatment in these images constitutes torture, or at a minimum, cruel, inhuman, or
And yet, many people walk past people experiencing this same treatment every day on the streets of the United States of America without further consideration. People experiencing homelessness are deliberately subjected to such conditions through laws, policies, and practices that criminalize their most basic, life-sustaining activities, such as sleeping, eating, and going to the bathroom. While those in Abu Ghraib were victims of a foreign war, people experiencing homelessness in the United States are victims of a domestic war on the poor and undergo trauma no less harmful. Now, thanks to the work of dedicated advocates, such treatment is recognized as a human rights violation, not only at the international level, but also domestically. Advocacy in far-off Geneva to develop human rights standards has resulted in concrete changes to federal policy here at home and has ultimately impacted the practical enjoyment of human rights by some of the most marginalized and vulnerable in our society. This experience may be helpful to other marginalized groups, which continue to face human rights violations in the United States, in developing their own strategies to protect basic rights.

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

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2 THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).
3 U.S. Const. amend. VIII; U.S. Const. amend. XIV, § 1; Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972) (holding that laws criminalizing “vagrancy” are unconstitutional under the Due Process Clause contained in the Fourteenth Amendment to the U.S. Constitution because these laws “fail[] to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,” and “encourage[] arbitrary and erratic arrests and convictions.”); see Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018).
security of person” and the right to be free from “cruel, inhuman or degrading treatment or punishment.”

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

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

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

I. CRIMINALIZATION OF HOMELESSNESS AND INTERNATIONAL HUMAN RIGHTS STANDARDS

The criminalization of homelessness is a major human rights crisis in the United States, violating the rights of individuals and plaguing municipalities with serious costs—both human and economic. Given the broad array of laws criminalizing homelessness across the country and the violation of fundamental rights this entails, advocates sought to approach this issue from a human rights perspective. This Part provides an overview of criminalization of homelessness in the United States, laying out the various problems with these policies, as well as the reasons for their enactment, despite their flaws. This Part further

introduces readers to the extensive network of human rights treaties and organizations within the U.N. system, providing a rich source of norms and tools for advocates to use in addressing the criminalization of homelessness.

A. Criminalization of Homelessness

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

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individuals who are not visible during the night of the count, individuals who are temporarily doubled up with friends or family, as well as individuals temporarily housed in institutions, such as hospitals or jails.13

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

Enforcement of these laws makes it difficult, if not impossible, for people experiencing homelessness to legally exist. For example, Jacob, a youth experiencing homelessness in Salt Lake City, Utah, explained the impossible dilemma that such laws impose on him for simply trying to sleep: “I could sleep on the sidewalk and get a ticket, I could sleep over there and get a ticket, you know, no matter where I go, I get a ticket.”16 While enforcement of these laws varies from municipality to municipality, enforcement frequently takes on cruel and inhumane dimensions as Beau, a man experiencing homelessness in Venice Beach, California, described: “Sometimes [the police] give us a 60-gallon bag and say that’s all the property we’re allowed to have... and then they just throw [the rest] of our stuff away.”17 On the other side of the country, Jackie, a woman who experienced homelessness in Columbia,

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13 Id. at 345.
14 Criminalization, NAT’L COAL. FOR THE HOMELESS, https://nationalhomeless.org/issues/civil-rights [https://perma.cc/3WQ3-UMD9]; see also Waldron, supra note 6, at 306 (discussing criminalization as a way of restraining homeless individuals with a kind of negative freedom that restricts their right to exist at all: “[w]hat stands in their way is simply what stands in the way of anyone who is negatively unfree: the likelihood that someone else will forcibly prevent their action”).
15 LAW CTR., HOUSING NOT HANDCUFFS, supra note 5, at 13, 38.
South Carolina, related: “[The police in Columbia] were criminalizing the homeless. Rounding them up and putting them in white minivans . . . .” By enforcing these laws, municipalities fail to respect the rights of people experiencing homelessness within their jurisdiction to exist and have property.

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

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

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


23 An intersectional analysis developed within Black feminism to address multiple forms of discrimination experienced by Black women. Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. Chl. LEGAL F. 139. Human rights bodies, such as the Committee on the Elimination of Discrimination against Women, recognize the importance of taking an intersectional approach, noting that “discrimination against women is compounded by intersecting factors that affect some women to a different degree or in different ways than men.
Indeed, today’s laws criminalizing homelessness are, in many cases, directly connected to historical Jim Crow “sundown town,” anti-Okie, or “ugly” laws establishing who is entitled to exist in public space.24 These laws are not just needlessly cruel but are also ineffective and economically inefficient when compared with guaranteeing the right to adequate housing to individuals experiencing homelessness. One study conducted by Creative Housing Solutions, on behalf of the Central Florida Commission on Homelessness, found that giving “housing [to] just 50% of the current chronic homeless population in Central Florida over a multiyear period, with a 10% recidivism rate, would save the taxpayers a minimum of $149,220,414,” compared to the amount spent on pursing criminalization policies.25 Furthermore, the United States Interagency Council on Homelessness (USICH) contends that “criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”26

Despite these costs, municipalities enact laws criminalizing homelessness because these laws are a politically convenient response to complaints by property owners about the presence of nearby individuals experiencing homelessness.27 Criminalization policies allow municipal governments to effect immediate “action” in moving visible homelessness, while simultaneously hiding the associated costs from


27 See LAW CTR., HOUSING NOT HANDCUFFS, supra note 5, at 11–14 (discussing the steady increase in laws criminalizing homelessness since 2006).
taxpayers in jail, court, and law enforcement budgets. By contrast, enactment of policies that target the root causes of homelessness, e.g., the lack of adequate housing in metropolitan areas, is slower and more complicated to put into place, requiring challenging negotiations with powerful political groups, such as real estate developers, business owners, and homeowners. Furthermore, such policies often require governments to engage in visible tax expenditures, community outreach, services, and funding for adequate housing that might come with additional political consequences. Although, in the long run, policies that work towards guaranteeing a universal right to adequate housing would be more effective than policies that criminalize homelessness, local politicians have pursued criminalization policies that simply ensure that homelessness will be less visible—costing both that jurisdiction’s taxpayers and its constituents experiencing homelessness.

B. International Human Rights Standards Addressing Criminalization of Homelessness

Legislation criminalizing homelessness in the United States violates important human rights protected under international law. Several key U.N. instruments make up this body of law, including the 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

28 See Courte C.W. Voorhees, Scott R. Brown, & Douglas D. Perkins, Vand. Univ. Ctr. Cmtv. Stud., The Hidden Costs of Homelessness in Nashville: A Report to the Nashville Metro Homelessness Commission 2–3 (2011), https://my.vanderbilt.edu/perkins/files/2011/09/Costs-of-Homelessness.Final-Report.doc [https://perma.cc/W7K4-NKFY] (finding the total cost associated with homelessness in the city of Nashville over a year was “$7,537 per average homeless person in our sample and $10,624 for the average chronic homeless person in the sample”; costs that were less than the estimated costs of providing permanent housing at $5,907–7,618 per person. The authors note that many of the costs of current policies include expenditures for jail, police, and court costs, which are born by Nashville taxpayers. Many of costs associated with current homelessness policy are so hidden that the authors note that their estimate likely underestimate the total cost of homelessness.).


30 Law Ctr., Housing Not Handcuffs, supra note 5, at 63–67.

31 UDHR, supra note 4.


Cruel, Inhuman or Degrading Treatment or Punishment (CAT),\(^{34}\) the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),\(^{35}\) the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),\(^{36}\) the Convention on the Rights of Persons with Disabilities (CRPD),\(^{37}\) and the Convention on the Rights of the Child (CRC).\(^{38}\) These instruments, together with interpretations in the context of homelessness by the U.N. bodies that oversee their implementation, provide a well-developed set of human rights standards and norms. The United States has, to date, ratified the ICCPR, ICERD, CAT, and two Optional Protocols pertaining to the CRC, and is legally bound to implement them.\(^{39}\) It has also signed the ICESCR, CRC, CEDAW, and CRPD,\(^{40}\) which is the first step towards ratification. While the United States has no positive obligations to implement these treaties, it must refrain from actions that “would defeat” their “object” and “purpose.”\(^{41}\)

The right to life broadly protects an individual’s right to live with dignity. As discussed above, laws criminally prohibiting people experiencing homelessness from public engagement in life-sustaining conduct effectively negate those persons’ inherent right to exist.\(^{42}\) This right to exist, also known as the right to life, is enshrined in Article 3 of the UDHR\(^{43}\) and Article 6 of the ICCPR.\(^{44}\) The CRPD and CRC also provide for a right to life in the context of persons with disabilities\(^{45}\) and

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

\(^{35}\) G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination (Dec. 21, 1965) [hereinafter ICERD].

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


\(^{38}\) G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989) [hereinafter CRC].


\(^{40}\) Id.


\(^{42}\) Waldron, supra note 6, at 295–300.

\(^{43}\) UDHR, supra note 4, at art. 3 (“Everyone has the right to life, liberty and security of person.”).

\(^{44}\) ICCPR, supra note 32, at art. 6(1) (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”).

\(^{45}\) CRPD, supra note 37, at art. 10 (“States Parties reaffirm that every human being has the inherent right to life . . . . ”).
According to the Human Rights Committee (HRC), the U.N. treaty body responsible for overseeing the ICCPR, the right to life requires States to affirmatively address “general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.” As such, member states are not only obliged to protect citizens against violations of their right to life, but must also “ensure access...to essential goods and services...and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective...social housing programs.”

The U.N. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (Special Rapporteur on Adequate Housing) linked the right to life and the right to adequate housing in her 2019 report: “When courts approve evictions without ensuring alternative accommodation or fail to provide remedies for violations of the right to life caused by homelessness, they violate international human rights and the rule of law and, in so doing, place the State in non-compliance with its international human rights obligations.”

Policies criminalizing homelessness further violate the right to freedom from cruel, inhuman, and degrading treatment (CIDT), as they harshly punish people experiencing homelessness for uncontrollable circumstances and life-sustaining conduct. The UDHR, ICCPR, and CAT set out the right to freedom from CIDT, and the HRC explains that this provision applies not only to “acts that cause physical pain but also to acts that cause mental suffering to the victim.”

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46 CRC, supra note 38, at art. 6(1) (“States Parties recognize that every child has the inherent right to life.”).
48 Id.
50 CAT, supra note 34, at art. 16(1) (“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment . . . .”); UDHR, supra note 4, at art. 5 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); ICCPR, supra note 32, at art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”).
51 Hum. Rts. Comm., CCPR General Comment No. 20: Art. 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 10, 1992) [hereinafter CCPR General Comment 20].
individuals for engaging in life-sustaining activity when they have no alternative available to them is CIDT, a point that the HRC made explicitly in its Concluding Observations on the fourth periodic review of the United States in 2014.52

Furthermore, the criminalization of homelessness violates the rights to freedom of movement and assembly of a person experiencing homelessness. Freedom of movement, which protects people’s right to move within state borders, was first set out in Article 13 of the UDHR53 and subsequently protected under the ICCPR,54 ICERD,55 and CEDAW.56 The HRC clarifies that this right protects “against all forms of forced internal displacement,” a protection municipalities enforcing criminalization polices routinely violate by forcing people experiencing homelessness to frequently relocate within a jurisdiction.57 This displacement, moreover, violates the right to assembly, established in Article 20 of the UDHR58 and further codified into law under the ICCPR59 and ICERD.60 Municipalities that criminalize homelessness violate this right, which allows people to peacefully assemble in public, by forcing people experiencing homelessness to disperse from public spaces that they are peacefully occupying. The U.N. Special Rapporteur on the Rights to Freedom of Assembly and Association, Maina Kiai, noted after his 2016 mission to the United States that “[m]arginalized groups such as . . . homeless often suffer disproportionately from intimidation practices.”61 He further recommended that the United

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53 UDHR, supra note 4, at art. 13 (“Everyone has the right to freedom of movement and residence within the borders of each State.”).
54 ICCPR, supra note 32, at art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”).
55 ICERD, supra note 35, at art. 5(d)(i) (“The right to freedom of movement and residence within the border of the State.”).
56 CEDAW, supra note 36, at art. 15 (“States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.”).
58 UDHR, supra note 4, at art. 20 (“Everyone has the right to freedom of peaceful assembly and association.”).
59 ICCPR, supra note 32, at art. 21 (“The right of peaceful assembly shall be recognized.”).
60 ICERD, supra note 35, at art. 5(d)(ix) (“The right to freedom of peaceful assembly and association.”).
61 Statement by the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association at the Conclusion of His Visit to the United States of America,
States “[a]bandon the ‘broken windows’ policing tactics that encourage racial discrimination and the systematic harassment of African Americans and other marginalized communities.”

Additionally, the criminalization of homelessness in the United States violates the human rights to security of person and freedom from arbitrary arrest or detention. The ICCPR protects both of these rights in Article 9, thus echoing Article 3 of the UDHR. The ICERD also protects these rights, specifying that they apply whether violated by “government officials or by any individual group or institution.” The HRC interprets the right to security of person as, “protect[ing] individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained.” Thus, similar to the right to the freedom from CIDT, the criminalization of homelessness violates the right to security of person by imposing significant physical and psychological burdens on people experiencing homelessness, particularly during arrest. The HRC further clarifies that the word “arbitrary” in the right to freedom from arbitrary arrest or detention is “not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.” Under this interpretation, arrests for offenses targeting the status of homelessness, such as sleeping or loitering in public, violate this right. Such arrests are fundamentally unjust and disproportionate with the supposed “crimes” of engaging in life-sustaining conduct.

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

These various violations stem from the United States’ refusal to guarantee its citizens a universal right to adequate housing. That is, if governments invested in adequately housing unsheltered people, there would be no homelessness or the push to criminalize it. This right to adequate housing, first articulated in Article 25 of the UDHR and developed further in the ICESCR, is a critical component of the “right

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

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

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

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

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


74 Id. ¶ 11.

75 See LAW CTR., HOUSING NOT HANDCUFFS, supra note 5, at 85–91.

76 UDHR, supra note 4, at art. 25 (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing . . . .”).
to an adequate standard of living.”77 Four other treaties guarantee the right to adequate housing in the context of protecting the rights of particular marginalized groups: (1) the ICERD guarantees the right to adequate housing in the context of maintaining racial “equality before the law”;78 (2) CEDAW guarantees the right to adequate housing for all women;79 (3) the CRPD guarantees the right to adequate housing for persons with disabilities;80 and (4) the CRC maintains that State Parties will provide “material assistance” for children in need of adequate housing.81

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

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

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

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

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

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

82 See CESCR, General Comment 4, Right to Adequate Housing, supra note 77, ¶ 8.
II. THE UNITED STATES’ RELATIONSHIP WITH INTERNATIONAL HUMAN RIGHTS: CHALLENGES AND OPPORTUNITIES

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

The United States considers its leadership in international law and human rights a core component of its identity. Indeed, the Constitution considers international treaties as “the supreme Law of the Land,” on par with the Constitution itself. Moreover, as a lead player in drafting the UDHR and a major proponent of the U.N. human rights system, the United States considers itself a leader in the normative development of human rights around the world. While the UDHR is a

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

84 See, e.g., COMM’N ON UNALIENABLE RTS., REPORT OF THE COMMISSION ON UNALIENABLE RIGHTS 8 (2020) [hereinafter COMM’N ON UNALIENABLE RTS.], https://www.state.gov/wp-content/uploads/2020/07/Draft-Report-of-the-Commission-on-Unalienable-Rights.pdf [https://perma.cc/B9R8-BRAS] (noting, in a document authored by the Trump Administration, that this commitment to human rights is so fundamental to American identity that “much of American history can be understood as a struggle to deliver on the nation’s founding promise by ensuring that what came to be called human rights were enjoyed by all persons who lived under the laws of the land”).

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

declaration—like the Declaration of Independence—and not a legally binding treaty that countries can ratify, it possesses an important normative force. The UDHR is generally considered a yardstick for determining compliance with human rights, and States that fall short of the UDHR’s standards risk condemnation on the world stage. The UDHR has persuasive value in the United States and has been cited in several federal court cases. Politicians also frequently cite to the UDHR, and even the Trump administration, which has had a particularly antagonistic relationship with international human rights institutions, references the UDHR with respect.

Moreover, the United States has made binding commitments to international human rights law by ratifying several of the major U.N. treaties discussed in Part I, including the ICCPR, ICERD, CAT, and two Optional Protocols pertaining to the CRC. The United States has, generally, been amenable to ratifying treaties that focus on civil and political rights, i.e., rights that generally protect an individual’s freedom from governmental infringement and relate to participation in public life, such as those contained in the ICCPR. These rights include many

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


92 OHCHR, supra note 39.

93 Many of the international human rights treaties the United States has ratified focus largely on civil and political rights. See, e.g., International Covenant on Civil and Political Rights Ratification, United States, 1676 U.N.T.S. 543, 545 (June 8, 1992) [hereinafter Ratification of the ICCPR], https://treaties.un.org/doc/Publication/UNTS/Volume%201676/v1676.pdf [https://perma.cc/97KL-W8MB]; Convention Against Torture and Other Cruel, Inhuman or
of the rights violated by policies criminalizing homelessness, such as the rights to life, freedom from CIDT, freedom of movement, freedom of assembly, security of person, and freedom from arbitrary arrest and detention. By contrast, the United States has tended to shy away from treaties that protect social and economic rights, i.e., rights that give people access to the basic necessities of human existence, such as the ICESCR’s right to adequate housing. This may partially be due to the misconception that protecting civil and political rights is cost-free, while social and economic rights are expensive. However, at the very least, enforcement of civil and political rights requires investment in a justice system. Moreover, ensuring social and economic rights may be more cost-effective in the long term by targeting the root causes of social problems, such as the lack of adequate housing in major urban areas, rather than the symptoms, such as the visibility of unsheltered people.

Nonetheless, the social and economic rights contained in human rights treaties can still be useful in domestic advocacy. With respect to the right to adequate housing, the United States has some direct obligations under the ICERD “to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin . . . in the enjoyment of the following . . . [e]conomic, social and cultural rights . . . [including] the right to housing.” Furthermore, various civil and political rights may include aspects of social and economic rights. For example, as discussed in Part I, the HRC and Special Rapporteur on Adequate Housing have interpreted the civil and political right to life to entail a life with dignity, thus implying the social and economic right to


Id.

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

ICESCR, supra note 35, at art. 5(e)(iii) (“States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following . . . [e]conomic, social and cultural rights . . . [including] [t]he right to housing . . . .”).
adequate housing.99 The U.N. Secretary General has also drawn a connection between the right to adequate housing and realization of civil and political rights, stating “[t]he right to adequate housing and other related rights must sit at the centre of an agenda for cities. Housing is a cornerstone right, indivisible from all other rights and fundamental to an approach that begins with the dignity, equality and security of the human person.”100

Moreover, while the United States has not ratified some of the core international human rights treaties, it has at least signed them, including the ICESCR, CEDAW, CRC, and CRPD.101 While the United States need not take affirmative steps to comply with these treaty provisions, signing imposes an obligation “to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.”102 Therefore, by passing laws that criminalize homelessness, the United States has, arguably, taken action to “defeat the object and the purpose” of a right to adequate housing under the ICESCR, CEDAW, CRC, and CRPD.103 Laws criminalizing sleeping in public places, for instance, violate security of tenure under the right to adequate housing, which explicitly prohibits forced evictions and “sweeps,” as well as habitability, as police destruction of personal property functioning as shelter unnecessarily exposes individuals experiencing homelessness to the elements.104

Another challenge in the use of human rights standards in advocacy is that even when the United States has ratified a treaty, it frequently only does so subject to several reservations, understandings, and declarations (RUDs) that may limit the domestic scope of a treaty’s obligations.105 For many human rights treaties, including the ICCPR and ICERD, the United States has issued a general declaration that the

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


101 OHCHR, supra note 39.

102 DAG HAMMARSKJÖLD LIBR., supra note 41.


104 CESCR, General Comment 4, Right to Adequate Housing, supra note 77, ¶ 8.

105 See Harfeld, supra note 83, at 75 (“Each time the U.S. has crossed the threshold to ratification, it has done so only with numerous . . . RUDs . . . . This practice has enraged and inflamed even long-time allies of the United States, who take their obligations under ratified treaties much more seriously.”).
treaties “are not self-executing”\textsuperscript{106} or actionable in United States courts without subsequent implementing legislation.\textsuperscript{107} In reporting to the HRC, the U.S. government explained that this declaration “did not limit the international obligations of the United States under the Covenant. Rather, it means that, as a matter of domestic law, the Covenant does not, by itself, create private rights directly enforceable in U.S. courts.”\textsuperscript{108} This leaves open, however, the possibility of using the ICCPR in conjunction with domestic provisions in litigation,\textsuperscript{109} and a few courts have in fact referred to the ICCPR as an aid in interpretation.\textsuperscript{110}

Moreover, for both the ICCPR and CAT, the United States employs RUDs to further limit the customarily applied international definition of “cruel, inhuman or degrading treatment or punishment” to “only insofar as the term . . . means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eight, and/or Fourteenth Amendments to the Constitution of the United States.”\textsuperscript{111} This effectively curtails the definition of CIDT treatment to however the U.S. Supreme Court defines it, rather than the more expansive interpretations under international law.\textsuperscript{112} Nonetheless, advocates suing in federal court have experienced some success by using international human rights instruments to influence domestic interpretation of


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

\textsuperscript{110} E.g., Roper v. Simmons, 543 U.S. 551, 576 (2005); Sterling v. Cupp, 625 P.2d 123, 131 n.21 (Or. 1981).

\textsuperscript{111} Ratification of the ICCPR, supra note 93; Ratification of CAT, supra note 93.

\textsuperscript{112} CCPR General Comment 20, supra note 51.
“cruel and unusual punishments” by the U.S. Supreme Court. For example, in Roper v. Simmons, a case considering whether a state’s death penalty should be applicable to juvenile offenders, defendants and several amici briefs cited the CRC’s ban on the juvenile death penalty as evidence that it was a form of cruel and unusual punishment. Even though the United States had not yet ratified the CRC, the Court found this argument persuasive, though not definitive, in determining “the evolving standards of decency that mark the progress of a maturing society” to determine which punishments are so disproportionate as to be ‘cruel and unusual.’ The Court noted that the “overwhelming weight of international opinion” implicit in the CRC’s ban provided “significant confirmation” for its ultimate determination that the death penalty for juvenile offenders was cruel and unusual under the Eighth Amendment.

Even more recently, in Graham v. Florida, the Supreme Court again responded to international human rights arguments in its interpretation of the Eighth Amendment. In Graham, the Court considered whether the Eighth Amendment’s prohibition of “cruel and unusual punishment” applied to life without parole sentences for juvenile offenders who had not committed homicide. In determining that such sentences violated the Eighth Amendment, the Court again applied the “evolving standard of decency test” and noted that the “United States is the only Nation that imposes this type of sentence” in the world. The Court further noted that its analysis:

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

Additionally, human rights standards can play a role in advocacy at the state and local levels. Major cities across the United States, such

113 U.S. Const. amend. VIII.
114 See Roper, 543 U.S. at 576.
115 Id. at 551 (quoting Trop v. Dulles, 356 U.S. 86, 100–01 (1958)).
116 Id. at 554.
118 Id. at 58, 81.
119 Id. at 82.
as Washington, D.C., Boston, MA, and Pittsburgh, PA, have adopted resolutions defining themselves as “Human Rights Cities” and broadly incorporating international human rights norms into their city policies. Other cities, such as Chicago, IL, Miami, FL, and San Francisco, CA, have taken a more targeted approach by attempting to integrate provisions from specific treaties, such as the CRC and CEDAW, into their municipal policies. Further, groups in Chicago have been using a human rights framework to introduce a package of ordinances that would require the city to adopt a universal right to adequate housing. While these resolutions are often aspirational in nature, many include budgetary and compliance provisions. Binding or not, these commitments create a rallying point for advocates to organize around and pressure municipalities to comply with the rights provided for under international human rights instruments.

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


III. Case Study: International Human Rights Advocacy to Address the Criminalization of Homelessness in the United States

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

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

A. Self-Education and Training

The Law Center’s advocacy using the international human rights framework commenced with self-education and training. The Law Center’s Executive Director, Maria Foscarinis, was invited to attend the
1996 Habitat II Conference in Istanbul, where she witnessed the bold advocacy for adequate housing as a human right by the rest of the world while U.S. advocates were working on piecemeal solutions to resist cuts in anti-poverty programs. She determined that the Law Center’s mission to end homelessness in the United States could not be achieved without a shift to viewing adequate housing as a human right, as well as the mobilization of resources to implement this vision. Pro bono research by law firms and law school clinics assisted the Law Center in developing expertise in the human rights framework. Then, in partnership with the Centre on Housing Rights and Evictions, an international NGO, the Law Center began to publish reports and conduct trainings across the country with legal and grassroots advocates. The Law Center further strategically invited governmental officials to trainings, both to gain their insights into housing policy and to familiarize them with the human rights framework to lay the groundwork for future human rights advocacy.

B. Engaging with the Special Rapporteurs to Generate Domestic Change

Advocates first focused their engagement with U.N. Special Rapporteurs, independent experts with thematic expertise, to address criminalization of homelessness in the United States. Special Rapporteurs conduct country visits, publish country and thematic reports, respond to letters alleging violations, communicate with officials, engage with media, and conduct other advocacy to promote the rights under their mandate. Official Special Rapporteur visits require a government invitation, but advocates can call for a Special Rapporteur to request an invitation and lobby the State Department to

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

129 Id.

130 Id. at 10.

131 See id. at 11.

132 Id.

Advocates found that Special Rapporteur visits provided an opportunity to bring human rights directly into communities and highlight community concerns. This engagement focused on the Special Rapporteurs on racism, adequate housing, water and sanitation, and extreme poverty, in conjunction with advocacy with federal agencies, Congress, and the courts.

Engagement began with a visit of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (Special Rapporteur on Racism), Doudou Diene, in 2008. Thanks to a grassroots training that the Law Center led in 2006, the Los Angeles Community Action Network (LACAN) was prepared to take advantage of the visit and arranged for the Special Rapporteur on Racism to visit Skid Row to observe the disparate racial impact of homelessness and criminalization policies. The Law Center then brought the Rapporteur to Washington, D.C. to meet with representatives from HUD and the Department of Justice (DOJ), where he could connect his visit to the work of those agencies. His subsequent report specifically noted, “the enforcement of minor law enforcement violations . . . take a disproportionately high number of African American homeless persons to the criminal justice system.”

Working with national and local partners, the Law Center built on the Special Rapporteur on Racism’s visit by successfully lobbying the federal government to issue an official invitation to the Special Rapporteur on Adequate Housing, Raquel Rolnik, in 2009. The

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134 Engaging U.N. Special Procedures to Advance Human Rights at Home, supra note 133, at 23.


136 Human Rights to Human Reality, supra note 128, at 17; Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, OFF. U.N. HUMAN. RTS. (last updated Mar. 2014), https://www.ohchr.org/EN/Issues/Housing/Pages/RaquelRolnik.aspx [https://perma.cc/SSE4-439U]. Rolnik’s report “highlights the implications of significant cuts in federal funding for low-income housing, the persistent impact of discrimination in housing, substandard conditions such as overcrowding and health risks, as well as the consequences of the foreclosure crisis. It also focuses on participation and underlines the importance of adequately informing the public of housing opportunities and involving them in the planning, decision-making, and implementation of programmes and policies that directly affect their lives.” Raquel Rolnik, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Raquel Rolnik: Mission to the United States of America 2–4, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2010) [hereinafter Report of the Special Rapporteur on Adequate Housing’s Visit to the U.S. in 2009]; see also Campaign to Restore Nat’l Hous. Rts., The Mission, The Movement Blog for the
Special Rapporteur visited many cities where the Law Center had conducted base-building trainings. The Special Rapporteur’s report highlighted the criminalization of homelessness and made a key recommendation: “The Interagency Council on Homelessness should develop constructive alternatives to the criminalization of homelessness in full consultation with members of civil society. When shelter is not available in the locality, homeless persons should be allowed to shelter themselves in public areas.”

The Law Center immediately drew on this recommendation in its advocacy with Congress and the agencies to focus their attention on the criminalization of homelessness. In 2009, following years of advocacy by the Law Center and its partners, Congress passed the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act. The HEARTH Act is the primary federal legislation (amending the McKinney-Vento Homeless Assistance Act) addressing homelessness and reaffirming USICH’s role in ending homelessness in the United States. For the first time, the HEARTH Act mandated a federal agency, USICH, to address and report on the criminalization of homelessness. The Law Center used the Special Rapporteurs’ visits, alongside traditional advocacy, to maintain pressure on USICH to fulfill


137 See HUMAN RIGHTS TO HUMAN REALITY, supra note 128, at 17. The Rapporteur’s visit also culminated with a half day of testimony at the Law Center’s National Forum on the Human Right to Housing, where individuals from cities that were not visited had the opportunity to share their stories. See NAT’L L. CTR. ON HOMELESSNESS & POVERTY, COMPILATION OF WRITTEN TESTIMONY TO SUPPLEMENT ORAL PRESENTATIONS BEFORE THE UN SPECIAL RAPPORTEUR ON ADEQUATE HOUSING (2009) (on file with authors).

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

139 Id. ¶ 95.


that mandate, ultimately convincing USICH and DOJ to host a summit on criminalization in December 2010. \textsuperscript{142} The same year, USICH issued the first Federal Strategic Plan to End Homelessness, \textit{Opening Doors}, highlighting the need to reduce criminalization of homelessness as an essential strategy to end homelessness. \textsuperscript{143}

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

The first opportunity to articulate this standard occurred in 2011, when the United States invited the (then) Independent Expert (now the Special Rapporteur) on the human rights to safe drinking water and sanitation (Special Rapporteur on Water and Sanitation), Catarina de Albuquerque, to visit the United States. The Law Center worked with local advocates at Safe Ground Sacramento and Legal Services of Northern California to arrange her visit to Sacramento to receive testimony directly from residents of Safe Ground’s homeless encampment. The Law Center again facilitated meetings between the

\begin{footnotesize}
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  \item \textsuperscript{143} See U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, OPENING DOORS: FEDERAL STRATEGIC PLAN TO END HOMELESSNESS 1, 48 (2010), https://web.archive.org/web/20101117081446/http://www.usich.gov/PDF/OpeningDoors_2010_FSP/PreventEndHomeless.pdf (“Reduce criminalization of homelessness by defining constructive approaches to street homelessness and considering incentives to urge cities to adopt these practices.”).
  \item \textsuperscript{144} Martin v. City of Boise, 902 F.3d 1031, 1035 (9th Cir. 2018).
  \item \textsuperscript{146} Jones v. City of Los Angeles, 444 F.3d 1118, 1125 (9th Cir. 2006), \textit{vacated}, 505 F.3d 1006 (9th Cir. 2007).
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Independent Expert and officials from USICH, HUD, and DOJ. Her final report found that “because evacuation of the bowels and bladder is a necessary biological function and because denial of opportunities to do so in a lawful and dignified manner can both compromise human dignity and cause suffering, such denial could . . . amount to cruel, inhumane or degrading treatment.” This was the first explicit reference to criminalization of homelessness as CIDT. The Law Center and local advocates capitalized on this achievement by requesting that the Independent Expert issue a follow up communication to the Mayor of Sacramento, which she did in a letter, garnering national press.

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

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150 Id. at 11 n.19.

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

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

The Law Center used Searching Out Solutions to create a positive feedback loop, encouraging the federal agencies to expand work promoting human rights. The Law Center sent the report to the Special

153 This report was mandated by the 2009 HEARTH Act, see supra note 140.
154 SEARCHING OUT SOLUTIONS, supra note 26, at 8 (citing James Michael Charles, Note, “America’s Lost Cause”: The Unconstitutionality of Criminalizing our Country’s Homeless Population, 18 B.U. PUB. INT. L.J. 315, 315–46 (2009)) (“Laws imposing criminal penalties for engaging in necessary life activities when there are no other public options that exist have been found to violate the Eighth Amendment.”).
155 Id. (citing HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 26 (2009)); see ICCPR, supra note 32; see also UDHR, supra note 4.
156 SEARCHING OUT SOLUTIONS, supra note 26, at 7–8.
157 In fact, because each of the agencies are also members of USICH and all agencies were required to sign off on the report, this was arguably already their position.
Rapporteurs with whom it had worked, thanking them for their role in this outcome and asking them to reinforce it in a press release. The Special Rapporteurs complied, linking their visits and thematic reports to the USICH report.\(^{158}\) The Law Center sent this release, in turn, back to the government, indicating that where the United States takes positive steps, advocates would praise its efforts, just as they would hold it accountable for lack of progress.

\section*{C. Engaging with the Treaty Bodies to Generate Domestic Change}

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

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\item Guiding Principles, supra note 151, ¶¶ 65, 66(c), 78(c) (“Homeless persons . . . are frequently . . . criminalized for using public space. States should . . . [r]epeal or reform any laws that criminalize life-sustaining activities in public places, . . . [and] refrain from criminalizing sanitation activities . . . in public places, where there are no adequate sanitation services available.”); see also Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty and Human Rights), Extreme Poverty and Human Rights, U.N. Doc. A/67/278, ¶¶ 48–50 (Aug. 9, 2012).
\item Id.
\item Id.
\end{enumerate}
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the treaty body, and then the treaty body conducts an oral review in Geneva, ultimately issuing Concluding Observations with recommendations to the state.\textsuperscript{164} These processes afford various advocacy opportunities.

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

1. The Human Rights Committee

The first review scheduled was with the HRC, which monitors compliance with the ICCPR.\textsuperscript{167} First, the Law Center attempted to persuade the U.S. government to include the issue of criminalization of homelessness in the state report. However, the government neglected to do this.\textsuperscript{168} Then, leading a USHRN Working Group on Housing &

\textsuperscript{164} Tars, supra note 160; OHCHR Training, supra note 163. In addition to these periodic state reviews, treaty bodies issue General Comments or Recommendations, providing guidance and greater detail on particular treaty provisions.


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


Homelessness, the Law Center coordinated a short report and advocated with the HRC, ultimately obtaining two questions on criminalization in the List of Issues addressed to the U.S. government.\textsuperscript{169} Having thus ensured the discussion of criminalization at the review, the Law Center drafted recommendations for actions that the United States could take to implement the ICCPR. It emphasized that if the government took these steps, advocates would support the state before the HRC, but if it did not, advocates would call for accountability in a separate submission.\textsuperscript{170} These recommendations included three concrete demands addressed at particular agencies:

1. USICH should publicly oppose specific local criminalization measures, as well as inform local governments of their obligations to respect the rights of homeless individuals.

2. DOJ should investigate and challenge particular instances of local and state criminalization measures.

3. DOJ and HUD should better structure their funding by including specific questions in requests for funding proposals and giving points to applicants who create constructive alternatives to homelessness . . . .\textsuperscript{171}

The Law Center further leveraged the HRC review to convince USICH to convene the first-ever meeting of domestic agencies in the context of a human rights treaty review.\textsuperscript{172} While the United States response to the HRC, submitted on July 5, 2013, did not address the Law Center’s recommendations, it highlighted the HEARTH Act’s

\textsuperscript{169} Human Rts. Comm., List of Issues in Relation to the Fourth Periodic Report of the United States of America (CCPR/C/USA/4 and Corr. 1), Adopted by the Committee at its 107th Session (11–28 March 2013), ¶ 6, U.N. Doc. CCPR/C/USA/Q/4 (Apr. 29, 2013) (“Please provide information on the imposition of criminal penalties on people living on the streets. Please also provide information on the implementation of the 2009 Helping Families Save Their Home Act and the creation of durable alternatives to criminalization measures to address homelessness.”).


\textsuperscript{171} Id. at 17.

\textsuperscript{172} See USICH, Human Rights & the Criminalization of Homelessness Agenda (on file with authors). The July 17, 2013 meeting, titled “Human Rights and the Criminalization of Homelessness,” was led by USICH together with the State Department, and also involved the DOJ, HUD, the Department of Health and Human Services, and the Veterans Administration (along with the Law Center).
mandate for USICH to develop alternatives to criminalization, the meeting held in December 2010, and *Searching Out Solutions*. 173

The Law Center further engaged in international advocacy as part of the treaty review process. In September, in partnership with the Housing & Homelessness Working Group, the Law Center submitted a shadow report to the HRC, which underscored previously obtained statements of the Special Rapporteurs characterizing criminalization as CIDT. 174 The report also strategically noted USICH’s acknowledgment in *Searching Out Solutions* that criminalization of homelessness may violate the ICCPR, making it easier for the HRC to confront the United States on the issue and to confirm the treaty violation. 175 At the March 2014 formal hearing on the United States report, 176 the USHRN coordinated a series of briefings with the HRC in Geneva, as well as meetings with the U.S. delegation. 177 For these meetings, the Law Center developed a one-page, double-sided advocacy document, mixing personal testimony and case studies with human rights commentary, the United States’ own words on criminalization, and specific recommendations. 178

The HRC directly addressed the criminalization of homelessness in the United States in its review. During its oral review, HRC member

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

175 CRUEL, INHUMAN, AND DEGRADING, supra note 170, at 6.


178 NAT’L L. CTR. ON HOMELESSNESS & POVERTY, 2014.3.5 HRC One Pager (Mar. 2014) (on file with authors).
Walter Kaelin drew from the Law Center’s recommendations, referring to criminalization as “cruel, inhuman, and degrading” and asking about the steps the government was taking to end it. The HRC Chair, the late Sir Nigel Rodley, a former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, stated:

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

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

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

In addition to participating in the treaty review process, the Law Center also engaged with the HRC’s “General Comment” function to ensure a broad definition of the right to life that incorporates access to housing.

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182 Id.

183 Early drafts of General Comment 36, providing guidance on the right to life, had excluded a broader definition of this right incorporating access to housing and other necessities. However, thanks to advocacy by the Law Center and others, the final 2018 version includes this standard. See E-mail from Bruce Porter, to Human Rights Committee members (Mar. 23, 2018, 9:06 PM) (on file with authors); CCPR General Comment 36, supra note 47, ¶ 26 (“The duty to protect life
The Law Center used the ICCPR review to build an unprecedented human rights narrative within USICH. In the midst of the review, in observance of Human Rights Day on December 10, 2013, USICH hosted a blog series, entitled “I Believe in Human Rights.” This included blog posts from the HUD Secretary, the Executive Director of USICH, the Law Center, and other advocates.184 A USICH staff member shared her enthusiasm for engagement with advocates through the treaty review process:

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

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


2. The Committee on the Elimination of Racial Discrimination

The Law Center and its partners similarly engaged with CERD, the committee charged with monitoring implementation of the ICERD,\(^{187}\) leveraging the treaty review processes to prompt conversations with federal government officials. In February 2013, the Law Center and USHRN coordinated a meeting with federal officials to inform the content on housing and homelessness content in the official U.S. report.\(^{188}\) The United States then submitted its report to CERD in June 2013, which, while addressing homelessness generally, did not address the disparate impact of criminalization of homelessness on communities of color.\(^{189}\) While in Geneva for the HRC review in March 2014, the Law Center met with CERD officials to encourage them to include the disparate racial impact of criminalization in their List of Themes (CERD’s equivalent to the List of Issues), which they did in July 2014.\(^{190}\)

A major advantage of the ICERD is that it explicitly requires remedying not only intentional discrimination but also policies with disparate impacts.\(^{191}\) The Housing & Homeless Working Group’s shadow report to CERD built on all of the previously developed human rights standards around criminalization but also focused specifically on the fact that “[h]omelessness and the lack of affordable housing in the United States of America have a disparate racial impact.”\(^{192}\) The history of slavery, Southern Jim Crow, Northern redlining, and federal discrimination in mortgages has resulted in racially and economically segregated neighborhoods that persist to this day.\(^{193}\) These poor,

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\(^{187}\) ICERD, supra note 35, at art. 8.
\(^{188}\) See E-mail from CERD to David V. Truong (July 2, 2014, 11:36 AM) (on file with authors).
\(^{190}\) Comm. on the Elimin. of Racial Discrim., List of Themes in Relation to the Combined Seventh to Ninth Periodic Reports of United States of America (CERD/C/USA/7–9), ¶ 2(c), U.N. Doc. CERD/C/USA/Q/7–9 (July 7, 2014).
\(^{191}\) ICERD, supra note 35, at art. 2(1)(c).
\(^{193}\) Jeffrey Olivet, Marc Dones, Molly Richard, Catriona Wilkey, Svetlana Yampolskaya, Maya Beit-Arie, & Lunise Joseph, Supporting Partnerships for Anti-Racist Communities: Phase One Study Findings, CTR. SOC. INNOVATION 12 (2018), https://center4si.com/wp-content/uploads/2016/08/SPARC-Phase-1-Findings-March-2018.pdf [https://perma.cc/E6LG-DZY7]; LAW CTR., HOUSING NOT HANDCUFFS, supra note 5, at 32 (“Today, 70% of poor Blacks and 63% of poor Hispanics live in high-poverty communities as compared with only 35% of poor Whites.”); Ta-
principally minority neighborhoods are in turn over-policed, particularly for minor misdemeanors, such as laws criminalizing homelessness, and allow officers significant discretion in enforcement, leading to a large and persistent racial disparity in incarceration. This creates a vicious cycle, as criminal convictions carry collateral consequences that make obtaining housing and employment more difficult, if not impossible. Additionally, fines and fees make it harder to save funds for a first month of rent and security deposit, thus maintaining racial disparities in housing and homelessness. The Law Center, in coordination with the USHRN, highlighted these concerns and pushed for remedies at a consultation hosted by the State Department with the participation of many government agencies.

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

3. The Committee Against Torture

The CAT Committee, which monitors implementation of CAT, was the final treaty body to review the United States in November 2014. The CAT Committee adopts its List of Issues Prior to Review at the


195 See LAW CTR., HOUSING NOT HANDCUFFS, supra note 5, at 32–36.
196 See E-mail from Salimah Hankins, CERD Coordinator, to Ejim Dike & Rebecca Landy (July 7, 2014, 2:52 PM) (on file with authors).
197 Comm. on the Elimin. of Racial Discr., Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America, ¶ 12, CERD/C/USA/CO/7–9 (Sept. 25, 2014).
198 CAT, supra note 34, at art. 17.
midway point between a state party’s last report and its next due report, which occurred in 2010. The Law Center, focused on the Special Rapporteurs at the time, did not participate in advocacy around the List of Issues, and, consequently, no question on the criminalization of homelessness was posed. This made it an uphill battle to get the issue addressed as part of the oral review. But, given that the United States had explicitly noted that CAT may be violated by criminalization of homelessness in Searching Out Solutions, advocates decided to attempt it. Again, in collaboration with the USHRN Working Group, the Law Center submitted a shadow report to the CAT Committee in 2014, sharing references from the Special Rapporteur and other treaty bodies. This led the Committee to raise the issue of criminalization of homelessness twice during the oral review, but the United States did not respond, and the Committee ultimately did not include the issue in its Concluding Observations.

Despite this, the treaty review process provided a useful platform for advocacy with the federal government. During a meeting with the government prior to the review, the Law Center requested that the DOJ file a statement of interest brief supporting the position that criminalization of homelessness violates the Eighth Amendment, as well as human rights treaty obligations. Then Chief of the Special Litigation Section of the Civil Rights Division of the DOJ, Jonathan Smith, asked about cases ripe for intervention. Several months later, the DOJ filed its brief in Bell (now Martin) v. Boise, and it had an immediate as well as long-term, nationwide impact.

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directly cite international human rights law, following further advocacy, in 2016, the DOJ later affirmed that its position in Bell was an “acknowledgement of the human rights of people experiencing homelessness.” The DOJ statement affirming criminalization of homeless as a constitutional violation received national news attention and led to several cities outside of Boise preemptively repealing their ordinances or modifying their enforcement, as well as courts adopting the DOJ’s position.

The DOJ’s brief featured prominently in arguments in the Law Center’s Ninth Circuit appeal of the case, and the 2018 decision adopts the Brief’s position. It states an affirmative answer to the question, “Does the Cruel and Unusual Punishments Clause of the Eighth Amendment preclude[s] the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter?” Although the City submitted a petition for en banc review, that petition was denied in April 2019, as was a petition to the Supreme Court in December 2019. The Martin case, consistent with international human rights recommendations, now


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


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

Martin v. City of Boise, 902 F.3d 1031, 1046 (9th Cir. 2018), amended by 920 F.3d 584. Petition for a Writ of Certiorari, Martin, 902 F.3d 1031 (No. 15-35845).

Petition for a Writ of Certiorari, Martin, 902 F.3d 1031 (No. 15-35845).

Martin v. City of Boise, 920 F.3d 584, 588 (9th Cir. 2019).

City of Boise v. Martin, 140 S. Ct. 674 (2019).
stands as the law of the land in the Ninth Circuit, and cities there and beyond have begun to implement it.212

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

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

The timing of the United States’ second UPR in 2015 was ideal. Having laid a base with the Special Rapporteurs and developed a normative framework with the treaty bodies over the past four years, the Law Center used the opportunity of the UPR to compile all these pieces, generating further pressure on the United States to take concrete steps towards implementation. Coordinating with the USHRN, the Law Center led the Housing & Homelessness Working Group in arranging a series of consultations with senior government officials from spring 2014 through winter 2014–15.217 Although these meetings did not produce a strong response from the United States in its official UPR...

214 Id.
215 Id.
217 See, e.g., 2014.4.1 Access to Justice One Pager FINAL (on file with authors); NAT’L L. CTR. ON HOMELESSNESS & POVERTY, IN JUST TIMES (2015), https://nlchp.org/wp-content/uploads/2018/12/2015February.pdf [https://perma.cc/1Z2Z-CQAA]; see also E-mail from Toussaint Losier to Eric Tars (Dec. 4, 2014, 12:02 PM) (on file with authors).
submission, they flowed into conversations with the DOJ begun through the CAT review process, building new allies within the Department’s Access to Justice Initiative, which ultimately led to the DOJ’s statement of interest brief in *Bell v. Boise*.

From the fall of 2014 through spring 2015, in parallel with this domestic advocacy, the Law Center coordinated a Working Group submission to the Council, as well as lobbied governments to raise the issues it highlighted during the review. At an April briefing coordinated by the USHRN, a chance meeting with an early-arriving Egyptian representative provided an opportunity for an extended conversation, which eventually led to a strong UPR recommendation the following month, demonstrating the effectiveness of lobbying in the United States even if one cannot visit Geneva. Additionally, as the UPR is conducted by the political representatives of other nations rather than independent experts, it was useful to point out again that the United States had already accepted that criminalization of homelessness may constitute a human rights violation in *Searching Out Solutions*,

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

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

221 See E-mail from Eric Tars to Jeremy Rosen (May 18, 2015) (on file with authors).
making it less politically risky to raise this issue.\textsuperscript{222} This was amplified by the fact that in October 2014, in the midst of the treaty reviews, HUD’s Office of Special Needs Assistance Programs (SNAPS) published guidance that outlined policy reasons why criminalization is a poor approach, reiterating that “\textit{Searching Out Solutions} emphasizes a human rights approach to ending homelessness and points out that criminalization measures are not aligned with this approach.”\textsuperscript{223}

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

\begin{itemize}
\item \textsuperscript{222} See \textit{Searching Out Solutions}, supra note 26.
\item \textsuperscript{226} Since at least the early 2000s round of treaty reviews, and up through the 2015 UPR, advocates, including the Law Center, have been calling for a permanent institutionalization of the informal interagency working group where domestic agencies and the State Department could engage in an ongoing dialogue between the international human rights system and domestic implementation of human rights standards. \textit{E.g., Catherine Powell, \textit{Human Rights at Home: A Domestic Policy Blueprint for the New Administration} (2008), http://www.nlginternational.org/report/adminblueprint.pdf [https://perma.cc/YBC5-LKZ3]; Human Rights to Human Reality, supra note 128, at 7. While it never operated as robustly as hoped, the Law Center was able to take advantage of the structures provided by the convening powers of the Domestic Policy Council, Justice Department, and State Department, which organized the Equality Working Group (EWG) and which emerged as the structure through which the federal government addressed human rights monitoring. See Reut Cohen, \textit{Real
Egypt’s recommendation.\textsuperscript{227} Disappointingly, the United States hedged its answer, stating, “We disagree with some of this recommendation’s premises, but are committed to helping communities pursue alternatives to criminalizing homelessness. We believe our laws are consistent with our international obligations.”\textsuperscript{228}

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


\textsuperscript{228} Id.


\textsuperscript{230} USICH, OPENING DOORS, supra note 8, at 53

\textsuperscript{231} HOME TOGETHER, supra note 229, at 5.

\textsuperscript{232} Id. at 18.
In August 2015, less than a week after the DOJ submitted its landmark brief in the *Bell v. Boise* case,233 USICH issued *Ending Homelessness for People Living in Encampments: Advancing the Dialogue.*234 This new guidance takes a blunt anti-criminalization position: “The forced dispersal of people from encampment settings is not an appropriate solution or strategy, accomplishes nothing toward the goal of linking people to permanent housing opportunities, and can make it more difficult to provide such lasting solutions to people who have been sleeping and living in the encampment.”235

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

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

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

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


238 Alan Pyke, Local Officials Have Pushed to Criminalize Homelessness for Years. The Feds Are Starting to Push Back, THINKPROGRESS (Aug. 18, 2015, 12:00 PM), https://thinkprogress.org/local-officials-have-pushed-to-criminalize-homelessness-for-years-the-feds-are-starting-to-push-back-c71b2feff45 [https://perma.cc/GT8K-G7EH].

239 See SCORING POINTS, supra note 236, at 6.

240 Decriminalizing Homelessness, HUD EXCHANGE, https://www.hudexchange.info/homelessness-assistance/alternatives-to-criminalizing-homelessness [https://perma.cc/3RHMC6R] (“Although individuals experiencing homelessness should be afforded the same dignity, compassion, and support provided to others, criminalization policies further marginalize men and women who are experiencing homelessness, fuel inflammatory attitudes, and may even unduly restrict constitutionally protected liberties and violate our international human rights obligations.”). In November 2015, the Law Center was also able to get HUD and the DOJ to co-sponsor a viewing of the film Under the Bridge: The Criminalization of Homelessness and host a post-film discussion with the director and the Law Center. Flyer, HUD Off. of Fair Hous. and Equal Opportunity et. al., Under the Bridge: The Criminalization of Homelessness Film Screening and Discussion (Nov. 30, 2015) (on file with authors).

241 Tars & Osborn, supra note 225.

242 Id.

243 Id.

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

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


247 Press Release, White House Off. of the Press Sec’y, Fact Sheet: Launching the Data-Driven Justice Initiative: Disrupting the Cycle of Incarceration (June 30, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/06/30/fact-sheet-launching-data-driven-justice-initiative-disrupting-cycle [https://perma.cc/HAA7-L3GU]. In June 2016, the Obama White House also launched the Data-Driven Justice Initiative (DDJI), with the Law Center as a founding non-governmental partner. DDJI is a bipartisan coalition of over 140 city, county, and state governments who have “committed to using data-driven strategies to divert low-level offenders with mental illness out of the criminal justice system and change approaches to pre-trial incarceration, so that low-risk offenders no longer stay in jail simply because they cannot afford a bond.” Id. Following the change of administration, the DDJI is now being carried forward by the National Association of Counties. Data-Driven Justice, NAT’L ASS’N OF CNTYS., https://www.naco.org/node/129601 [https://perma.cc/2VDS-WUPM]. Compare U.S. DEP’T HOUS. & URB. DEV., NOTICE OF FUNDING AVAILABILITY (NOFA) FOR THE FISCAL YEAR (FY) 2016 CONTINUUM OF CARE PROGRAM COMPETITION TECHNICAL CORRECTION 1, 35 (2016), https://www.hudexchange.info/resources/documents/FY-2016-CoC-Program-NOFA.pdf
fact, the *Martin* decision and HUD funding requirements likely influenced the Trump Administration to shelve plans to issue an executive order that would have potentially forcibly evicted and incarcerated people experiencing homelessness in mega-tent facilities. Having succeeded in influencing policies at the federal level, the Law Center and its partners turned their attention to implementing these standards at the state and local levels, as well as pushing beyond anti-criminalization policies to address the underlying human right to adequate housing.

**E. Lessons Learned**

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

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

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the broad international recommendations it helped generate—notably that the U.S. should take action to abolish criminalization of homelessness—into agency-specific actions as follows: “DOJ and HUD should better structure their funding by including specific questions in requests for funding proposals and giving points to applicants who create constructive alternatives to homelessness, while subtracting points from applicants who continue to criminalize homelessness,” and the “[DOJ] should investigate and challenge particular instances of local and state criminalization measures.”249 It was “not anyone meeting that made the difference, but the repeated interaction with HUD, USICH, DOJ and other agencies, consistently engaging them through the human rights framework, that slowly built their familiarity with, and sense of accountability to, the standards.”250 The tipping point came when USICH convened its own meeting and developed its own blog series on human rights, engaging with the human rights framework on its own.251

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

It is also important to use human rights standards creatively and expansively outside bringing a cause of action in court. Although the Law Center referenced the CIDT standard developing internationally in its legal briefs in the hopes of influencing judges to draw on it in interpreting the Eighth Amendment, less legalistic engagement with the human rights system led to broader impact. While the Law Center was not able to obtain a reference to international law in the lower court’s


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

251 Id. at 23–24. “In the past, it had been [the Law Center] working to hold the government accountable to our demands; now it was the USICH [a federal agency] working with us and reaching out to its member agencies.” Id. at 18.
decision in the *Boise* case, even if it had, it would have been only one footnote in an Idaho District Court case.\(^{252}\) However, consistent meetings with the DOJ through international processes led to the department’s intervention in this case, which garnered national attention and caused even communities not being sued to alter their policies. This built a record that ultimately led to victory at the Ninth Circuit, preserved by the Supreme Court’s denial of certiorari.\(^{253}\)

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

**IV. OPPORTUNITIES MOVING FORWARD**

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

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\(^{253}\) Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2019); City of Boise v. Martin, 140 S. Ct. 674 (2019).

\(^{254}\) *Human Rights to Human Reality*, *supra* note 128, at 15.

\(^{255}\) *Id.*

\(^{256}\) *Id.*

\(^{257}\) *Id.*

\(^{258}\) *Id.* at 15–16.
human right to adequate housing is already apparent in public discourse.

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

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

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

\textsuperscript{259} See \textit{supra} note 237 and accompanying text (These added questions provide an incentive for municipalities to remove laws criminalizing homelessness as a condition of their continuum of care networks receiving certain HUD funds.).

\textsuperscript{260} \textit{Martin v. City of Boise}, 902 F. 3d 1031 (9th Cir. 2018) (banning cities from criminalizing sleeping or camping in public in the Ninth Circuit).

\textsuperscript{261} A report released by the Law Center found that since the change in HUD’s questionnaire, the number of surveyed COCs that reported zero strategies to prevent the criminalization of the homeless declined from “nine to only one.” Furthermore, the report found that from 2015 to 2017, the number of surveyed CoCs reporting community-wide plans to decriminalize homelessness increased by 11.9 percent. \textit{SCORING POINTS}, \textit{supra} note 236, at 6.


\textsuperscript{263} Homeless Person’s Bill of Rights, CONN. GEN. STAT. § 1-500 (2013).
Illinois,\textsuperscript{264} Puerto Rico,\textsuperscript{265} and Rhode Island.\textsuperscript{266} Several other states, like California, Colorado, and Oregon, have considered similar right to rest bills, which protect many, but often not all, of the rights under a typical HBoR. They also affirmatively state a right to shelter in the absence of adequate alternatives.\textsuperscript{267} Additionally, a number of municipalities have either passed or are seriously considering passing similar laws.\textsuperscript{268}

Each HBoR has its particularities, but most generally protect negative rights,\textsuperscript{269} which prevent a government from engaging in prohibited conduct, rather than positive rights, which compel government action.\textsuperscript{270} Accordingly, existing HBoRs, excepting Puerto Rico,\textsuperscript{271} follow the Rhode Island model, which protects seven negative rights for people experiencing homelessness: (1) the right to move freely in public spaces; (2) the right to equal treatment from all state and municipal agencies; (3) the right to be free from employment discrimination based on housing status; (4) the right to receive emergency medical care; (5) the right to vote; (6) the right to protection from disclosure of information provided to shelters or other public organizations; and (7) the right to a reasonable expectation of privacy for personal property.\textsuperscript{272} The bills also provide a judicial cause of action


\textsuperscript{265} P.R. LAWS ANN. tit. 8, § 1006c (2007); see also Sara K. Rankin, A Homeless Bill of Rights (Revolution), 45 SETON HALL L. REV. 383, 410 (2015).

\textsuperscript{266} 34 R.I. GEN. LAWS § 34-37.1-3 (2012).


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

\textsuperscript{270} See Tamar Ezer, A Positive Right to Protection for Children, 7 YALE HUM. RTS. & DEV. L.J. 1, 4 (2004) (discussing the difference between positive and negative rights).

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

\textsuperscript{272} Id.; see tit. 34, § 34-37.1-3; see also tit. 775, § 45/10; § 1-500.
for people experiencing homelessness whose rights have been violated and outline recoverable damages, allowing them to file suit against state or municipal governments for relief.\(^{273}\)

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

The main criticism of HBoRs is that they make promises that are, in practice, difficult to enforce. Creating a judicially enforceable cause of action for people experiencing homelessness whose rights are violated relies on the assumption that people experiencing homelessness can file suit against violators.\(^{277}\) However, people experiencing homelessness lack the financial resources to pursue legal action on their own and may not be able to access free legal representation.\(^{278}\) Moreover, much of “their day is spent trying to survive—searching for food, clothing, shelter, and employment”—life-sustaining activities that make attending court appearances and legal

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\(^{273}\) tit. 34, § 34-37.1-3.


\(^{277}\) See Rankin, supra note 265, at 420–21.

The existence of the Martin decision, protecting the right to shelter oneself in the absence of adequate alternatives, may make HBoRs less necessary in the coming years. Alternatively, some advocates are looking to HBoRs as a means of legislatively implementing the Martin decision and helping clarify some areas it has left unaddressed. Ultimately, advocates hope to move beyond the need for HBoRs by ensuring everyone is adequately housed, so that people are not on the streets to be criminalized in the first place.

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

Using the human rights framework to end the criminalization of homelessness is a first step towards a more holistic approach that encompasses full enjoyment of the right to adequate housing. The Law Center noted that “by using human rights norms to affirm the rights of homeless people not to be penalized for their lack of housing, we also affirm the framework that holds that government has a positive obligation to ensure the right to housing.”

This entails recognition that homelessness is merely a downstream consequence of a lack of housing and that advocates must transition from a civil and political rights lens—focused on decriminalization of homelessness—to a more robust social and economic rights lens—focused on the right to adequate housing. In the United States, some communities are moving first toward a right to shelter, while many have jumped straight to adoption of a Housing First framework as a matter of policy, even if not recognized as a right. Additionally, creative local initiatives are advancing other components of the right to adequate housing. This includes legal security of tenure through a right to counsel in eviction court, and habitability through laws around the right to water.

One step on the road to the right to adequate housing is the right to shelter, which guarantees people experiencing homelessness a right to basic and often temporary indoor shelter. The first case finding a legal right to shelter was the 1979 New York State case, Callahan v. Carey, in which the court located this right in the state’s constitutional duty to provide social welfare for the needy. The outcome of this case was a consent decree, expanded on multiple occasions, requiring New

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280 HUMAN RIGHTS TO HUMAN REALITY, supra note 128, at 15.

281 Callahan v. Carey, No. 79-42582, at *10 (N.Y. Sup. Ct. 1979); see N.Y. CONST. art. XVII, § 1.
York City to provide shelter for all people experiencing homelessness who meet the welfare standard or who are physically or mentally disabled. This right has significantly reduced unsheltered homelessness in New York City and provided many people experiencing homelessness at least some protection against the dangers of living on the streets.

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

While the right to shelter is a step in the right direction, it falls short of a right to adequate housing, as it does not guarantee a permanent residence for people experiencing homelessness, nor does it mitigate many of the negative effects of transient homelessness. While shelters can be a step up from living on the streets, many individuals experiencing homelessness find themselves more at risk of theft, disease, sexual violence, and other conditions not conducive to mental

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


health while in shelters. Finally, it is extremely expensive to maintain a right to shelter with individuals cycling in and out of homelessness. These reasons are perhaps why New York City has been recently moving towards providing permanent housing to people experiencing homelessness and investing in preventing homelessness through a Housing First approach.

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

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

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

Housing First models, which focus on quick access to housing, are both cheaper and more effective in the long term in addressing

289 HEARTH Act, supra note 140.
290 USICH, OPENING DOORS, supra note 8, at 14.
291 Id. at 29; LAW CTR., HOUSING NOT HANDCUFFS, supra note 5, at 20.
homelessness.\textsuperscript{292} Communities that implemented a Housing First framework have reaped benefits such as reduced arrests, decreased spending, fewer emergency room visits, and elimination of chronic homelessness.\textsuperscript{293} USICH reported: “In Seattle, Washington, a permanent supportive housing site using Housing First practices experienced an average savings of $2,449 per person per month in public service costs after 6 months of intervention (including jail, hospitalizations, detoxification treatment, emergency, and Medicaid-funded services).”\textsuperscript{294}

As the Law Center remarked:

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

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

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

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

\textsuperscript{293} LAW CTR., HOUSING NOT HANDCUFFS, supra note 5, at 20–22

\textsuperscript{294} USICH, OPENING DOORS, supra note 8, at 7 (citation omitted).

\textsuperscript{295} LAW CTR., HOUSING NOT HANDCUFFS, supra note 5, at 86.


\textsuperscript{297} CESCR, General Comment 4, Right to Adequate Housing, supra note 77, ¶ 7.
HBoRs further at the city level to include elements of a right to adequate housing.

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

New York City’s tenant right to counsel was the first in the United States, starting in 2017, and it has already had a significant impact in protecting tenant rights. This program is being rolled out over five years, zip code by zip code. According to a Community Service

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298 John Whitlow, Gentrification and Countermovement: Right to Counsel and New York City’s Affordable Housing Crisis, 46 FORDHAM URB. L.J. 1081, 1087–93 (2019).
299 Id. at 1092–93.
300 Id. at 1092 (noting that “90% of landlords have historically been represented by counsel, as compared to 5–10% of tenants”).
301 See generally id.
305 Oksana Mironova, NYC RIGHT TO COUNSEL: FIRST YEAR RESULTS AND POTENTIAL FOR EXPANSION 3 (2019), https://d3n8a8pro7vhmx.cloudfront.net/righttocounselnyc/pages/23/
Society report, New York City zip codes with a tenant right to counsel saw an eleven percent decrease in evictions between 2017 and 2018. Although falling short of a full right to counsel, simply providing tenants with the assistance of “court navigators” has had a beneficial impact in New York City. These non-lawyer “court navigators” help tenants to fill out complicated paperwork, understand the court system, and effectively advocate for themselves in court proceedings. Merely providing this service decreases the power and information asymmetry between landlords and tenants, leading to fewer evictions. For example, tenants assisted by navigators are almost twice as likely as unassisted tenants to have their defenses recognized and addressed by the housing court.

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

Communities are additionally using informal Special Rapporteur visits to address other aspects of the right to adequate housing, including access to water. While a Special Rapporteur has not officially visited the United States since 2017 (and the Trump Administration has indicated no official invitations are forthcoming), informal visits can also be useful. For instance, during the Flint and Detroit water crises in

306 Id.
307 Id.
308 Tamar Ezer, Medical-Legal Partnerships with Communities: Legal Empowerment to Transform Care, 17 YALE J. HEALTH POL’Y, L. & ETHICS 309, 322 (2017).
310 Id.
2014, the Law Center and its partners invited the Special Rapporteurs on Adequate Housing and on Water and Sanitation to host an informal tribunal in Detroit.\textsuperscript{312} Local, national, and international news outlets extensively reported on their advocacy efforts.\textsuperscript{313} Following the unofficial visit, the Rapporteurs issued a joint statement highlighting that “adequate housing and access to safe water are clearly essential to maintain life and health, and the right to life is found in treaties the United States has ratified, including the International Covenant on Civil and Political Rights.”\textsuperscript{314} Moreover, this statement recommended that “the City of Detroit provide . . . housing when people are unable, for reasons beyond their control, to cover the costs themselves.”\textsuperscript{315} While the tribunal was not legally binding, it added to the public pressure that ultimately brought some relief to the citizens of Flint and Detroit in addressing the environmental and economic factors impacting water access.

Furthermore, some municipalities are pushing for local HBoRs that give people experiencing homelessness positive protections. Traverse City, Michigan, where there is also no statewide HBoR, went a step beyond the Rhode Island model by including positive guarantees to “[a]ccess basic requirements necessary for sustaining life, including


\textsuperscript{314} Joint Press Statement by the Special Rapporteurs on Adequate Housing and Safe Drinking Water and Sanitation, supra note 312.

\textsuperscript{315} Id.
shelter, sanitation, medical care, clothing and food.\textsuperscript{316} While Connecticut already has a statewide HBoR, advocates in New Haven, CT are petitioning the local government to adopt a local HBoR that would go further and contain rights to adequate housing and medical care.\textsuperscript{317} The bill is currently being introduced in the city legislature and, if passed, could become a model for other municipalities.\textsuperscript{318}

Moreover, states and localities have taken important steps to realize the right to housing in addressing the COVID-19 pandemic. As the U.N. Special Rapporteur on Adequate Housing explained: “Housing has become the frontline defence against the coronavirus. Home has rarely been more of a life or death situation.”\textsuperscript{319} Los Angeles,\textsuperscript{320} San Francisco,\textsuperscript{321} and New York City\textsuperscript{322} have taken steps to house people experiencing homelessness in vacant hotels, although San Francisco and New York also continue to sweep people experiencing homelessness from the streets.\textsuperscript{323} Many cities and states have further


\section*{C. A Cultural Shift Toward the Human Right to Adequate Housing in Public Discourse}

While shifting law and policy toward the human right to adequate housing is important, equally critical is moving the cultural conversation in this direction. \textit{Brown v. Board} and the Civil Rights Acts would not have happened without marches in the streets and a shift in public opinion, and while once racial segregation was an accepted part of American life, most Americans now look back and wonder how this ever could have been.\footnote{326 See Elahe Izadi, \textit{Black Lives Matter and America’s Long History of Resisting Civil Rights Protesters}, WASH. POST (Apr. 19, 2020), https://www.washingtonpost.com/news/the-fix/wp/2016/04/19/black-lives-matters-and-americas-long-history-of-resisting-civil-rights-protesters [https://perma.cc/2WKT-ZWJL] (discussing how “[t]oday, sit-ins, freedom rides and marches for voting rights are viewed with historical reverence. . . . But in their day, activists were met with widespread disapproval. A review of polling data from the 1960s paints a picture of an America in which the majority of people felt such protest actions would hurt, not help, African Americans’ fight for equality.”).} In the same way, housing advocates are now pushing for the cultural acceptance of the human right to adequate housing in the hopes that one day Americans will look back and wonder, “how did we ever let homelessness happen to our fellow Americans?” We end this Article on the hopeful note that this shift has already started to take place in the political discourse and media.

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

Advocates built on this breakthrough, and discussion of homelessness featured prominently in the presidential election with mainstream political candidates, for the first time, using a human right to housing framing. Following the Special Rapporteur’s report, the

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328 Id. ¶¶ 42–45.
329 Id. ¶ 44; see Emergency Sanitation Standards, UNHCR UN REFUGEE AGENCY, https://emergency.unhcr.org/entry/33015/emergency-sanitation-standard [https://perma.cc/3UV9-CHQ5].
332 Pilkington, supra note 311.
Law Center and its partners hosted a congressional briefing on its implications for federal policy to a standing-room-only crowd of more than 100 congressional staffers, calling for elected officials to refer to adequate housing as a human right.334 Through follow-up meetings prompted by the briefing, numerous Presidential-nominee candidates, including Senators Cory Booker, Kamala Harris, Bernie Sanders, and Elizabeth Warren, as well as Joe Biden, Julian Castro, Andrew Yang, and Tom Steyer, all stated they believe that “housing is a human right,” with some explicitly including this standard in their platform proposals.335 One candidate’s mention of housing as a human right would have been a unprecedented step forward, but seven leading candidates regularly using human rights language around housing, including in their formal platforms, entailed a quantum leap in public discussion. Moreover, other representatives, including members of “the Squad,” have been regularly using human right to housing framing and introducing bills on this basis.336


Human Right to Housing Act of 2020 at the federal level and a proposed amendment to the California Constitution to recognize housing as a human right at the state level. Additionally, President Joe Biden’s website asserts that “[h]ousing should be a right, not a privilege,” and he has posted a similar message to his Twitter account. Clearly, the moment for the political mainstreaming of a human-rights-based approach to housing has arrived.

Media is likewise discussing homelessness in the context of a right to adequate housing. Media across the country widely covered the DOJ’s intervention in *Martin v. Boise*, shifting discussion against the criminalization of homelessness. There are also many examples of local media directly discussing a right to adequate housing. Unfortunately, some coverage has come in the context of President Trump’s recent steps away from housing and toward a potential

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criminalization approach.\textsuperscript{340} However, this may have also prompted Senator Warren, Senator Castro, and Tom Steyer to have all explicitly condemned criminalization of homelessness.\textsuperscript{341} Senator Castro even joined a rally against a Las Vegas anti-camping ordinance and remarked, “it may seem that if you get homeless folks out of sight, and perhaps out of mind, that is an improvement, but that is a lie.”\textsuperscript{342} Moreover, in responding to the Trump Administration, California is now considering a bill that would implement a full right to adequate housing for families and children, as well as a ballot measure that would compel local governments to create adequate affordable housing.\textsuperscript{343}

Additionally, social media is playing an increasingly important role in sharing personal stories to humanize the issue of homelessness and promote a human rights culture. An example of this is the Invisible People project, which posts videos of interviews with people experiencing homelessness, as well as supporting content.\textsuperscript{344} The project was created by Mark Horvath, who has experienced homelessness and uses the video format to allow a firsthand perspective.


\textsuperscript{342} Luschek, supra note 341.


\textsuperscript{344} \textit{About Invisible People}, INVISIBLE PEOPLE, https://invisiblepeople.tv/about [https://perma.cc/GG65-GCSS].
of homelessness. Starting with the experiences of those directly impacted by human rights violations is an essential component of the human rights approach, and generating empathy through narrative can help transform the cultural discourse.

CONCLUSION

Work to address the criminalization of homelessness reveals how international human rights advocacy can serve as a powerful tool to challenge domestic injustice. The international human rights framework provides a rich source of norms, levers for shaping standards and exerting political pressure, and opportunities for building advocacy coalitions and relations with officials. However, to be effective, international advocacy must entail constant connection to the domestic sphere and a specific focus with consistent engagement across human rights bodies. Moreover, it is important to look beyond litigation at opportunities to influence law and policy through concrete demands targeted at particular agencies, and steps must be taken to translate federal gains to the state and local levels. The human rights framework further provides an opening for a deeper cultural shift and a more holistic, rights-oriented approach that, with wider use, will result not only in recognizing a basic right to adequate housing for all, but the full range of universal human rights.

345 Id.