

## ESSAYS

# Challenging Racial Injustice in the Criminalization of Homelessness in the United States: A Human Rights Approach

DAVID BERRIS,<sup>\*</sup> JOSEPH CANDELARIA,<sup>\*\*</sup> TAMAR EZER,<sup>\*\*\*</sup>  
LILY FONTENOT<sup>\*\*\*\*</sup> & JESSICA SANTOS<sup>\*\*\*\*\*</sup>

*The criminalization of homelessness in the United States perpetuates a cycle of racial injustice and violates fundamental human rights. Longstanding discrimination in housing and law enforcement have resulted in disproportionate homelessness among Black Americans. Thus, laws and policies that criminalize life-sustaining behaviors, such as sleeping, in public further exacerbate racial disparities, punishing people for homelessness rather than addressing root causes. Criminalization results in fines that people cannot pay and criminal records, driving employment and housing out of reach and circulating individuals from the street to the criminal justice system and back. The criminalization of homelessness also directly violates international human*

---

\* David Berris is a current second-year law student and intern with the Human Rights Clinic of the University of Miami School of Law.

\*\* Joseph Candelaria is a current second-year law student and intern with the Human Rights Clinic of the University of Miami School of Law.

\*\*\* Tamar Ezer is the Acting Director and a Lecturer in Law with the Human Rights Clinic of the University of Miami School of Law.

\*\*\*\* Lily Fontenot is a current second-year law student and intern with the Human Rights Clinic of the University of Miami School of Law.

\*\*\*\*\* Jessica Santos is a current second-year law student and former intern with the Human Rights Clinic of the University of Miami School of Law.

*rights to equality and non-discrimination, freedom from torture and ill-treatment, liberty and security of person, freedom of movement, life, and housing. To rectify these violations, the United States must decriminalize homelessness and take concrete steps to realize a right to housing for all its residents. Otherwise, we evade our responsibilities on the domestic and international stage and remain trapped in a cycle of racial injustice.*

INTRODUCTION .....	117
I. THE CRIMINALIZATION OF HOMELESSNESS PERPETUATES RACIAL INJUSTICE.....	119
II. THE CRIMINALIZATION OF HOMELESSNESS VIOLATES FUNDAMENTAL HUMAN RIGHTS .....	124
III. STEPS THE U.S. CAN TAKE TO RESPECT, PROTECT, AND FULFILL THESE FUNDAMENTAL HUMAN RIGHTS .....	131
CONCLUSION.....	135

## INTRODUCTION

In the United States, homelessness is closely intertwined with racism. Black people comprise approximately 13% of the general population in the U.S., but 40% of people experiencing homelessness are Black.<sup>1</sup> This disparity stems from long-standing discriminatory housing and law enforcement policies.<sup>2</sup> International human

---

<sup>1</sup> NAT'L L. CTR. ON HOMELESSNESS & POVERTY, RACISM, HOMELESSNESS, AND THE CRIMINAL AND JUVENILE LEGAL SYSTEMS 1 (2020) [hereinafter HOMELESSNESS AND POVERTY], <https://nlchp.org/wp-content/uploads/2020/08/Racism-Homelessness-And-Criminal-Legal-Systems.pdf>.

<sup>2</sup> See Dima Williams, *A Look at Housing Inequality and Racism in the U.S.*, FORBES (June 3, 2020), <https://www.forbes.com/sites/dimawilliams/2020/06/03/in-light-of-george-floyd-protests-a-look-at-housing-inequality/?sh=5171e80139ef>. (explaining that housing inequality and segregation were normal in the twentieth century, both before enactment of Fair Housing Act of 1968 and after it went into effect, through restrictive covenants to keep white neighborhoods white, redlining to sway investors away from Black neighborhoods, and creation of low income public housing projects in inner cities); see also Richard A. Opiel, Jr. et al., *Minneapolis Police Use Force Against Black People at 7 Times the Rate of Whites*, N.Y. TIMES (June 3, 2020), <https://www.nytimes.com/interactive/2020/06/03/us/minneapolis-police-use-of-force.html> (establishing that in an

rights standards provide a powerful framework for addressing this injustice.

This Essay takes a human rights approach to address racism inherent in the criminalization of homelessness. Part I discusses how the criminalization of homelessness perpetuates racial injustice. Part II then analyzes how the criminalization of homelessness violates fundamental human rights, notably, the rights to equality and freedom from racial discrimination;<sup>3</sup> freedom from torture and cruel, inhuman, or degrading treatment or punishment (“CIDT”);<sup>4</sup> liberty and security of person;<sup>5</sup> freedom of movement;<sup>6</sup> life;<sup>7</sup> and housing.<sup>8</sup> Part III concludes by discussing potential steps the U.S. could take to respect, protect, and fulfill these basic rights.

---

examination done after the death of George Floyd, researchers found that while Black people make up 19% of the Minneapolis population, they were reported to be involved in 58% of the city’s police use-of-force incidents).

<sup>3</sup> Universal Declaration of Human Rights, art. 7, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR]; International Convention on Civil and Political Rights, art. 4(1) and art. 26, ratified June 8, 1992, 1996, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, ratified Oct. 21, 1994, 660 UNTS 195, 212 [hereinafter ICERD].

<sup>4</sup> UDHR, *supra* note 3, art. 5; ICCPR, *supra* note 3, art. 7; Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment art. 16, ratified Oct. 21, 1994, 1465 UNTS 85, 113 [hereinafter CAT].

<sup>5</sup> UDHR, *supra* note 3, art. 3; ICCPR, *supra* note 3, art. 9(1); ICERD, *supra* note 3, art. 5(b).

<sup>6</sup> UDHR, *supra* note 3, art. 13; ICCPR, *supra* note 3, art. 12; ICERD, *supra* note 3, art. 5(d)(i); Convention on the Elimination of All Forms of Discrimination Against Women, art. 14(2)(h), signed July 17, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW].

<sup>7</sup> UDHR, *supra* note 3, art. 3; ICCPR, *supra* note 3, art. 6.

<sup>8</sup> UDHR, *supra* note 3, art. 25(1); ICERD, *supra* note 3, art. 5(e)(iii); International Covenant on Economic, Social, and Cultural Rights art. 11(1), Oct. 05, 1977, 993 U.N.T.S. 3 [hereinafter ICESCR].

I. THE CRIMINALIZATION OF HOMELESSNESS PERPETUATES RACIAL INJUSTICE

*“We cannot talk about this [homelessness] crisis without addressing race.”* — Va Lecia Adams Kellum, CEO of the St. Joseph Center in Los Angeles.<sup>9</sup>

Long-standing laws and policies that adversely affect Black communities have resulted in disproportionate homelessness on the basis of race.<sup>10</sup> Black people thus experience the criminalization of homelessness particularly severely. This Part examines the ways criminalizing homelessness perpetuates racial injustice through both a national lens, as well as through a local lens focusing on Miami-Dade County (“MDC”) as a case study.

Black people are overrepresented among people experiencing homelessness, making up 40% of all people experiencing homelessness in 2019, while only comprising 13% of the U.S. population.<sup>11</sup> This is due to laws and policies that have disparate racial impacts. The legacy of slavery, southern Jim Crow laws, northern redlining, and federal discrimination in mortgages have resulted in decreased access to housing for Black people.<sup>12</sup> Segregated Black neighborhoods are over-policed, resulting in a disproportionate rate of incarceration and imposition of fines and fees, making housing and

---

<sup>9</sup> Va Lecia Adams Kellum, *The Intersection of Homelessness, Race, and the COVID-19 Crisis*, NAT’L ALL. TO END HOMELESSNESS (Apr. 7, 2020), <https://endhomelessness.org/the-intersection-of-homelessness-race-and-the-covid-19-crisis/>.

<sup>10</sup> U.S. DEP’T OF HOUS. & URB. DEV., THE 2019 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 1 (2019), <https://www.huduser.gov/portal/sites/default/files/pdf/2019-AHAR-Part-1.pdf>.

<sup>11</sup> *Id.* This Essay focuses specifically on racial disparities impacting Black communities, but many other racial disparities exist among populations experiencing homelessness in the U.S.

<sup>12</sup> See Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>; see also JEFFREY OLIVET ET AL., CTR. FOR SOC. INNOVATION, SUPPORTING PARTNERSHIPS FOR ANTI-RACIST COMMUNITIES: PHASE ONE STUDY FINDINGS 12 (2018), <https://center4si.com/wp-content/uploads/2016/08/SPARC-Phase-1-Findings-March-2018.pdf> (highlighting that, today, 70% of poor Blacks and 63% of poor Hispanics live in high-poverty communities as compared with only 35% of poor whites).

employment more difficult to obtain.<sup>13</sup> Because people of color are policed at greater rates, “fines and fees are imposed on and collected more frequently from them, creating a cycle of debt and incarceration.”<sup>14</sup> The Black Lives Matter movement (“BLM”),<sup>15</sup> along with homelessness advocates, have shed light on how the criminal justice system fails to address homelessness and how it disproportionately affects Black people through decades of public divestment in housing, in addition to structural racism in housing access, wealth, and employment.<sup>16</sup>

Despite BLM’s call for cities to defund police departments,<sup>17</sup> states have increased law enforcement’s authority to criminalize life-sustaining activities among homeless populations, such as sleeping in public. According to a study conducted by the National Law Center on Homelessness and Poverty (now the National Homelessness Law Center, (the “NHLC”)), of the 187 city codes of urban and rural U.S. cities in 2019 reviewed, 51% have at least one law

---

<sup>13</sup> See Coates, *supra* note 12; Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277, 282, 287 (2011); NAT’L L. CTR. ON HOMELESSNESS & POVERTY AND L.A. COMM. ACTION NETWORK, RACIAL DISCRIMINATION IN HOUSING AND HOMELESSNESS IN THE U.S. 1 (2014), [https://nlchp.org/wp-content/uploads/2018/10/CERD\\_Housing\\_Report\\_2014.pdf](https://nlchp.org/wp-content/uploads/2018/10/CERD_Housing_Report_2014.pdf); see also Megan T. Stevenson et al., *The Scale of Misdemeanor Justice*, 98 B.U. L. REV. 731, 735 n.17 (2018).

<sup>14</sup> Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, BRENNAN CTR. JUST. 13 (2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

<sup>15</sup> John Eligon, *Black Lives Matter Grows as Movement While Facing New Challenges*, N.Y. TIMES (Sept. 3, 2020), [https://www.nytimes.com/2020/08/28/us/black-lives-matter-protest.html?name=styl-n-george-floyd&region=TOP\\_BANNER&variant=1\\_Show&block=storyline\\_menu\\_recirc&action=click&pgtype=Article&impression\\_id=535c3610-ea65-11ea-80a5-9962c977d6ec](https://www.nytimes.com/2020/08/28/us/black-lives-matter-protest.html?name=styl-n-george-floyd&region=TOP_BANNER&variant=1_Show&block=storyline_menu_recirc&action=click&pgtype=Article&impression_id=535c3610-ea65-11ea-80a5-9962c977d6ec) (noting that, most recently, BLM sparked massive protests in response to continued police brutality in wake of George Floyd’s murder on May 25, 2020; BLM is at forefront of effort to bring attention to Black people experiencing homelessness).

<sup>16</sup> Coates, *supra* note 12; Sarah Gillespie et. al., *Addressing Chronic Homelessness Through Policing Isn’t Working. Housing First Strategies Are a Better Way*, URB. INST. (June 29, 2020), <https://www.urban.org/urban-wire/addressing-chronic-homelessness-through-policing-isnt-working-housing-first-strategies-are-better-way>.

<sup>17</sup> Eligon, *supra* note 15.

prohibiting sleeping in public.<sup>18</sup> Moreover, since 2006, the NHLC found that criminalization policies have been on the rise, with cities enacting more each year.<sup>19</sup>

However, criminalizing life-sustaining activities exacerbates racial disparities and is counterproductive. For example, a study in Austin, Texas showed that Black individuals experiencing homelessness were ten times more likely than their white counterparts to receive a camping citation.<sup>20</sup> As the United Nations Special Rapporteur on racism noted after visiting the U.S., “the enforcement of minor law enforcement violations . . . take a disproportionately high number of African American homeless persons to the criminal justice system.”<sup>21</sup> Moreover, criminalization perpetuates a cycle of homelessness, further impacting Black communities. It shuffles people experiencing homelessness around cities, resulting in many receiving fines they cannot pay or felony records that make it virtually impossible to secure employment and housing.<sup>22</sup> The U.S. Interagency Council on Homelessness (“USICH”) has recognized that “criminalization creates a costly revolving door that circulates

---

<sup>18</sup> NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 12, 38, 42 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> [hereinafter HOUSING NOT HANDCUFFS] (highlighting that, in same study, of 187 city codes of urban and rural cities around the United States in 2019, 72% also have at least one law restricting camping in public and 55% have at least one law prohibiting sitting and lying in public); *see id.* at 109 (stating that, as of 2019 in Miami-Dade County, prohibited conduct includes: sleeping in public, camping in public, camping in particular public places, sitting/lying in particular public places, lodging, living or sleeping in vehicles, loitering/vagrancy, begging in public places and begging in particular public places).

<sup>19</sup> *See id.* at 11.

<sup>20</sup> HOMELESSNESS AND POVERTY, *supra* note 1 at 3.

<sup>21</sup> Hum. Rts. Council, Rep. of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diene, Mission to the United States of America, ¶ 64, U.N. Doc. A/HRC/11/36/Add.3 (Apr. 28, 2009).

<sup>22</sup> Nicole Weissman & Marina Duane, *Five Problems with Criminal Background Checks*, URB. INST. (Mar. 13, 2007), <https://www.urban.org/urban-wire/five-problems-criminal-background-checks>; *see* Hum. Rts. Council, Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America, ¶ 45, U.N. Doc. A/HRC/38/33/Add.1.

individuals experiencing homelessness from the street to the criminal justice system and back.”<sup>23</sup>

With the COVID-19 pandemic, policing of public space has increased greatly, aggravating racial disparities. Local governments across the country instituted stay-at-home orders, particularly impacting Black people experiencing homelessness.<sup>24</sup> The San Francisco Coalition on Homelessness pointed out that these curfews “result in increased surveillance, targeting & criminalization of unhoused” people, who are “disproportionately Black—who have no choice but to sleep on the streets.”<sup>25</sup> Although many states and cities had some exemptions, people experiencing homelessness have no way to disclose their housing status to officers arresting for curfew violations.<sup>26</sup> As Congresswoman Alexandria Ocasio-Cortez stated, “without a plan, the homeless will be subject to violence.”<sup>27</sup>

The criminalization of homelessness in MDC exemplifies the intersection between race and homelessness. In MDC, Black people account for 56% of all people experiencing homelessness, but only make up 18% of the county’s population.<sup>28</sup> Miami has the second-worst income and poverty level in America, and its residents spend the nation’s highest share of their income on rent<sup>29</sup> with 60% of employed residents spending more than 30% of their income on housing.<sup>30</sup> This income gap disproportionately impacts the Black

---

<sup>23</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 7 (2012), [https://www.usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf) [hereinafter CONSTRUCTIVE ALTERNATIVES].

<sup>24</sup> Kira Lerner, *The Toll That Curfews Have Taken on Homeless Americans*, APPEAL (June 10, 2020), <https://theappeal.org/police-brutality-protest-curfews-homeless/>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> FLA. DEPT. HEALTH MIAMI-DADE CNTY., 2019 COMMUNITY HEALTH ASSESSMENT, 170 (2019), <https://www.healthmiamidade.org/wp-content/uploads/2019/07/Miami-Dade-County-Community-Health-Assessment-2019.pdf>.

<sup>29</sup> Jerry Iannelli, *Five Stories That Show Wages in Miami Are Far Too Low*, MIA. NEW TIMES (Sept. 24, 2017) <https://www.miaminewtimes.com/news/five-stories-that-show-miami-wages-are-too-low-9692642>.

<sup>30</sup> RICHARD FLORIDA & STEVEN PEDIGO, MIAMI’S HOUSING AFFORDABILITY CRISIS, 4 (2019), [https://carta.fiu.edu/mufi/wp-content/uploads/sites/32/2019/03/Miamis\\_Housing\\_Affordability\\_Crisis\\_FNL.pdf](https://carta.fiu.edu/mufi/wp-content/uploads/sites/32/2019/03/Miamis_Housing_Affordability_Crisis_FNL.pdf).

population, which, between 2014 and 2018, comprised 26.6% of households below the poverty line in MDC.<sup>31</sup> Florida law essentially outlaws rent control,<sup>32</sup> and MDC provides tenants with few rights.<sup>33</sup> Moreover, Black communities have been pushed out of their neighborhoods by gentrification<sup>34</sup> and zoning laws that have allowed developments to move forward without a public hearing or community participation.<sup>35</sup>

Since Black people account for the majority of people experiencing homelessness in MDC, they are disproportionately affected by laws that criminalize homelessness. MDC criminalizes life-sustaining activities, including sleeping in public<sup>36</sup> and living or sleeping in vehicles.<sup>37</sup> MDC has also recently taken steps to increase

---

<sup>31</sup> See *People Living Below Poverty Level*, MIA. MATTERS, <http://www.miamidadematters.org/indicators/index/view?indicatorId=347&localeId=414&localeChartIdxs=1|4> (last visited May 7, 2021) (reporting percentage of people living below poverty level in MDC between 2014 and 2018); Ali R. Bustamante, *State of Working Florida 2017*, FLA. INT'L UNIV. CTR. FOR LAB. RSCH. & STUD., <https://riseup.fiu.edu/state-of-working-florida/state-or-working-florida-2017.pdf>.

<sup>32</sup> FLA. STAT. § 125.0103(1)(a)(2020) (“[N]o county, municipality, or other entity of local government can impose price controls upon a local business activity . . . that is not part of a government agency.”) This includes home and apartment prices which essentially outlaws any potential local rent control. *See id.*

<sup>33</sup> Ann. M. Piccard, *Residential Evictions in Florida: When the Rent is Due, Where is the Process?* 36 STETSON L. REV. 149, 149–50 (2006).

<sup>34</sup> Tony Roshan Samara & Grace Chang, *Gentrifying Downtown Miami*, 15 RACE, POVERTY & ENV'T 14,15 (2008).

Jesse M Keenan et al., *Climate Gentrification: From Theory to Empiricism in Miami-Dade County, Florida*, 13 ENV'T RSCH. LETTER 1, 2 (2018).

<sup>35</sup> Daniela A. Tagtachian et al., *Building by Right: Social Equity Implications of Transitioning to Form-Based Code*, 28 J. AFFORDABLE HOUSING & CMTY. DEV. L. 71, 84–85 (2019).

<sup>36</sup> MIA., FLA., CODE 2020 § 37-3 (“It shall be unlawful for any person to sleep on any of the streets, sidewalks, public places, or upon the private property of another without the consent of the owner thereof.”).

<sup>37</sup> MIA., FLA., Code 2020 § 37-4. In its entirety, section 37-4 reads as follows:

Other than the area at the Marine Stadium designated for use by self-contained camper trailers, it shall be unlawful for any person within the city to park any vehicle on public rights-of-way, public properties or private parking lots, for the purposes of:

- (1) Living;
- (2) Sleeping;
- (3) Cooking;



criminalization and decrease protections for people experiencing homelessness. In 2017, Miami Beach hired a special prosecutor for the sole purpose of prosecuting individuals charged with “nuisance” crimes, such as consuming alcohol, urinating in public, jaywalking, and loitering.<sup>38</sup> Two-thirds of defendants from cases brought by this prosecutor identified as someone experiencing homelessness.<sup>39</sup> Furthermore, in February 2019, the City of Miami successfully moved to dissolve the consent decree from *Pottinger v. City of Miami*,<sup>40</sup> which protected people experiencing homelessness from police harassment and arrest for “life sustaining conduct misdemeanors,” as well as enabled monitoring of city conduct and accountability for violations.<sup>41</sup> Finally, in June 2020, the City of Miami adopted Ordinance 13907, which criminalizes “large group feedings” at public places in the city, specifically targeting the homeless population.<sup>42</sup> These laws and policies have increased the criminalization of the City’s Black homeless population.

## II. THE CRIMINALIZATION OF HOMELESSNESS VIOLATES FUNDAMENTAL HUMAN RIGHTS

The criminalization of homelessness violates international human rights standards. This includes the fundamental rights to

- 
- (4) Bathing; or
  - (5) Housekeeping.

*Id.*

<sup>38</sup> Joey Flechas, *Tired of Nuisance Crimes Going Unpunished? Miami Beach Is About to Crack Down*, MIA. HERALD (Jan. 3, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article192826269.html>.

<sup>39</sup> Joey Flechas, *Tourists Are Rarely Jailed for Breaking Miami Beach Laws. Not So for the Homeless*, MIA. HERALD, (Jan. 5, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article224019710.html>.

<sup>40</sup> *Pottinger v. City of Miami*, 359 F. Supp. 3d 1177, 1201 (S.D. Fla. 2019).

<sup>41</sup> *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992); Order Approving Settlement Agreement at 2, *Pottinger v. City of Miami*, No. 88-2406-CIV-ATKINS (S.D. Fla. Oct. 1, 1998).

<sup>42</sup> MIA., FLA., Code 2020 § 25-25 (prohibiting the feeding of people experiencing homelessness in large groups in public places without a permit and at non-designated feeding locations, which only leaves five inconvenient feeding locations in City of Miami).

equality and non-discrimination, freedom from torture and CIDT, liberty and security of person, freedom of movement, life, and housing.

This Essay's analysis relies on six key instruments. This includes the founding document of the international human rights system, the Universal Declaration of Human Rights (the "UDHR"),<sup>43</sup> and three core human rights treaties ratified by the U.S., the International Covenant on Civil and Political Rights (the "ICCPR");<sup>44</sup> the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "CAT");<sup>45</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination (the "ICERD").<sup>46</sup> Additionally, this Essay draws on the International Convention on Economic, Social, and Cultural Rights (the "ICESCR")<sup>47</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women (the "CEDAW"),<sup>48</sup> which were signed but not yet ratified by the U.S. Although the UDHR is a declaration and not a binding treaty, it has important normative status, and some parts of it are customary law.<sup>49</sup> Moreover, the U.S. played a critical role in its drafting, with Eleanor Roosevelt chairing the Human Rights Commission that developed it, and voted in its favor upon adoption by the U.N. General Assembly in 1948.<sup>50</sup> Having ratified the ICCPR, CAT, and ICERD, the U.S. is legally bound to implement them.<sup>51</sup> Given that the U.S. is only a signatory to ICESCR

---

<sup>43</sup> UDHR, *supra* note 3.

<sup>44</sup> ICCPR, *supra* note 3.

<sup>45</sup> CAT, *supra* note 4.

<sup>46</sup> ICERD, *supra* note 3.

<sup>47</sup> ICESCR, *supra* note 8.

<sup>48</sup> CEDAW, *supra* note 6.

<sup>49</sup> Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 289 (1996).

<sup>50</sup> *History of the Document*, UNITED NATIONS, <https://www.un.org/en/sections/universal-declaration/history-document/index.html> (last visited May 7, 2021); *see* UDHR, *supra* note 3.

<sup>51</sup> RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 304 (AM. LAW INST. 2018); *What is the Difference Between Signing, Ratification and Accession of UN treaties?*, DAM HAMMARSKJÖLD LIBR. [hereinafter DAM HAMMARSKJÖLD LIBR.], [ask.un.org/faq/14594](https://ask.un.org/faq/14594) (last visited May 7, 2021); Stephen P. Mulligan, *International Law and Agreements: Their Effect upon U.S. Law*, CONG. RSCH. SERV., 16 (Sept. 19, 2018), <https://fas.org/sgp/>

and CEDAW,<sup>52</sup> it has no obligation to implement these conventions, but the U.S. must “avoid actions which could render impossible the entry into force and implementation of the, or defeat [the treaties’] basic purpose[s] . . . .”<sup>53</sup> Moreover, in 2015, MDC passed an ordinance to “locally adopt the spirit underlying the principles of CEDAW,”<sup>54</sup> joining the “Cities for CEDAW” movement throughout the U.S.<sup>55</sup>

Racism is embedded within the criminalization of homelessness and violates the right to equality and freedom from racial discrimination under the UDHR, ICCPR, and notably, under ICERD.<sup>56</sup> Black people are much more likely than other groups to experience homelessness in the U.S., and a higher number of Black people are fined or incarcerated for violating laws that prohibit life-sustaining activities.<sup>57</sup> While one must show discriminatory intent or animus to

---

crs/misc/RL32528.pdf; see also Vienna Convention on the Law of Treaties, art. 14(2), Apr. 24, 1970, 1155 U.N.T.S. 331 [hereinafter Vienna Convention] (“The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification.”). Upon ratification of these human rights treaties, however, the U.S. also entered a declaration that they are not self-executing, meaning they do not on their own create a private right of action directly enforceable in U.S. courts. Catherine Powell, *Dialogic Federalism, Constitutional Possibilities for Incorporation of Human Rights Law in the United States*, 150 U. PA. L. REV. 245, 258–259 (2001); Hum. Rts. Comm., United States of America Initial Report to the Human Rights Committee, para. 8, CCPR/C/81/Add.4 (Aug. 24, 1994).

<sup>52</sup> Marie Wilken, *U.S. Aversion to International Human Rights Treaties*, GLOB. JUS. CTR. BLOG (June 22, 2017), <https://globaljusticecenter.net/blog/773-u-s-aversion-to-international-human-rights-treaties>.

<sup>53</sup> RESTATEMENT (FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, *supra* note 51 at § 304 cmt. e; DAM HAMMARSKJÖLD LIBR., *supra* note 51; see also Vienna Convention, *supra* note 51 at art. 18(a) (“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty.”).

<sup>54</sup> MIA., FLA., Code 2020 § 2-271.

<sup>55</sup> See *About Us: Cities for CEDAW*, WOMEN’S INTERCULTURAL NETWORK, <http://citiesforcedaw.org/about-cedaw/> (last visited May 7, 2021).

<sup>56</sup> UDHR, *supra* note 3, art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection under the law.”); ICCPR, *supra* note 3, art. 26 (“All are equal before the law and are entitled without any discrimination to equal protection under the law.”); ICERD, *supra* note 3, art. 5 (stating that state parties to convention must “prohibit and eliminate racial discrimination in all its forms”).

<sup>57</sup> See HOMELESSNESS AND POVERTY, *supra* note 1 at 3.

prevail on a discrimination claim under U.S. law,<sup>58</sup> the international human rights law standard is broader and also requires states to address disparate impacts.<sup>59</sup> The Committee on the Elimination of Racial Discrimination (“CERD”), which monitors the implementation of ICERD, called on States to “[r]eview and enact or amend legislation . . . in order to eliminate . . . all forms of racial discrimination against people of African descent” and “eradicate the poverty and marginalization of people of African descent so that they can enjoy their rights in the areas of housing, employment, and health.”<sup>60</sup> In criminalizing homelessness, however, U.S. cities are creating racist results and exacerbating Black poverty and marginalization. CERD specifically called on the U.S. to “[a]bolish laws and policies making homelessness a crime” and urged the federal government to provide “financial support to local authorities that implement alternatives to criminalization, and withdraw[] funding from local authorities that criminalize homelessness.”<sup>61</sup>

The U.S. is also violating the international prohibition against torture and CIDT under the UDHR, ICCPR, and CAT by criminalizing life-sustaining activities.<sup>62</sup> The Human Rights Committee,

---

<sup>58</sup> Aziz Z. Huq, *What is Discriminatory Intent?*, 103 CORNELL L. REV. 1211, 1212 (2018) (stating that “discriminatory intent is a central term in judicial interpretation of constitutional clauses requiring the equal treatment of person without regard to their race, ethnicity, or religion” and one must meet this standard to prevail on multiple types of constitutional claims, such as a violation of equal protection clause under Fourteenth Amendment).

<sup>59</sup> See Hum. Rts. Comm., *General Comment No. 18: Non-Discrimination*, ¶¶ 6, 8, 10, U.N. DOC. HRI/GEN/1/Rev.9 (Vol. I) (Nov. 10, 1989) (explaining that right to equality and freedom of racial discrimination outlined in ICCPR should be interpreted broadly, requiring state parties to address disparate impacts of discriminatory conduct on part of either government agencies or private entities in addition to discriminatory intent of actions).

<sup>60</sup> Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 34: Racial Discrimination Against People of African Descent*, ¶¶ 10, 50–51, U.N. DOC. CERD/C/GC/34 (Oct. 3, 2011).

<sup>61</sup> Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, ¶ 12, U.N. DOC. CERD/C/USA/CO/7–9 (Aug. 29, 2014).

<sup>62</sup> UDHR, *supra* note 3, art. 5 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); ICCPR, *supra* note 3, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); CAT, *supra* note 4, art. 16 (“Each State Party shall

which monitors implementation of the ICCPR, noted in 2014 that the criminalization of homelessness in the U.S. “raises concerns of discrimination and cruel, inhuman or degrading treatment.”<sup>63</sup> The Committee Against Torture, which monitors implementation of CAT, also expressed concern over increasing incidents of police brutality against people of color in the US.<sup>64</sup> Investing in police as a front-line response to homelessness will continue to exacerbate racially motivated policing practices.<sup>65</sup>

Additionally, U.S. federal courts have found that laws criminalizing homelessness violate the Constitution’s analogue to the prohibition against CIDT: the Eighth Amendment’s prohibition on “cruel and unusual punishment.” The Ninth Circuit “precluded the enforcement” of a camping and disorderly conduct ordinance in Boise, Idaho, for violating the Eighth Amendment.<sup>66</sup> The Southern District of Florida, the federal district court in which the City of Miami is located, held in *Pottinger* that the practice of arresting people experiencing homelessness for inoffensive conduct when they have no place to go is “cruel and unusual and in violation of the Eighth amendment.”<sup>67</sup> These courts reasoned that these laws violated the rights of people experiencing homelessness, as their actions were

---

undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.”).

<sup>63</sup> Hum. Rts. Comm., *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. DOC. CCPR/C/USA/CO/4 (2014) (stating that “[t]he Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman or degrading treatment”) [hereinafter HRC Concluding Observations] (“The Committee notes that such criminalization raises concerns of discrimination and cruel, inhuman or degrading treatment.”).

<sup>64</sup> Comm. Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, *Concluding observations on the combined third and fifth periodic reports of the United States of America*, ¶ 26, U.N. DOC. CAT/C/USA/CO/3-5 (Dec. 19, 2014).

<sup>65</sup> *National Housing Advocates Statement on Policing and Black Communities*, NAT’L LOW INCOME HOUSING COAL. (Jun. 30, 2020), <https://nlihc.org/news/national-housing-advocates-statement-policing-and-black-communities>.

<sup>66</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1049 (9th Cir. 2018). *Martin* followed up an earlier ruling in the Ninth Circuit in which the court determined that a municipal code in Los Angeles, California, which banned sleeping in public, violated the Eighth Amendment; however, that case was later vacated pursuant to a settlement agreement with the city. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1120 (9th Cir. 2006), *vacated* 505 F.3d 1006 (2007).

<sup>67</sup> *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992).

considered to be involuntary and unavoidable as consequences of being human and without shelter.<sup>68</sup>

Furthermore, the U.S. violates the right to liberty and security of person under the UDHR, ICCPR, and ICERD through the criminalization of homelessness.<sup>69</sup> Ordinances that arrest people for engaging in life-sustaining activities violate the right to liberty and security of person and subject people experiencing homelessness to arbitrary arrests and citations.<sup>70</sup> For instance, in Denver, Colorado, police conduct thousands of “street checks” looking for violations of the city’s anti-camping law, which “amounts to use of threats by police to ticket or arrest homeless people unless they dismantle their camps.”<sup>71</sup>

Because it arrests people experiencing homelessness for their presence in public places and forces them to relocate, the U.S. violates the right to freedom of movement under the UDHR, ICCPR, ICERD, and CEDAW.<sup>72</sup> For example, cities like New York City have enforced discriminatory “move along” orders that require people experiencing homelessness to move away just for being on the

---

<sup>68</sup> *Id.*; *Martin*, 902 F.3d at 1049; *Jones*, 444 F.3d at 1138.

<sup>69</sup> UDHR, *supra* note 3, art. 3 (“Everyone has the right to life, liberty and security of person.”); ICCPR, *supra* note 3, art. 9(1) (“Everyone has the right to liberty and security of person [and] [n]o one shall be subjected to arbitrary arrest or detention.”); ICERD, *supra* note 3, art. 5(b) (“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.”).

<sup>70</sup> NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2018: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 42 (2018), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>.

<sup>71</sup> *Id.* at 11 (noting that, since 2012, 6,789 individuals and families have been forced to dismantle their camps in Denver).

<sup>72</sup> UDHR, *supra* note 3, art. 13 (“Everyone has the right to freedom of movement and residence within the borders of each state.”); ICCPR, *supra* note 3, art. 12 (“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.”); ICERD, *supra* note 3, art. 5(d)(i) (“The right to freedom of movement and residence within the border of the State.”); CEDAW, *supra* note 6, art. 15(4) (“State [p]arties 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.”).

street.<sup>73</sup> “Individuals who refuse to follow these ‘move along’ orders are often told they will be arrested, taken to a psychiatric hospital or that their belongings will be destroyed[,]”<sup>74</sup> violating their right to freedom of movement.

Prohibiting people experiencing homelessness from engaging in life-sustaining activities additionally violates the right to life under the UDHR and ICCPR.<sup>75</sup> These laws negate the right to existence of people experiencing homelessness.<sup>76</sup> The Human Rights Committee mandates that countries address “general conditions in society that . . . prevent individuals from enjoying their right to life with dignity.”<sup>77</sup> Thus, states must “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 programmes.”<sup>78</sup> The City of Miami’s Ordinance 13907, which criminalizes food sharing and limits access to food for people experiencing homelessness, directly contravenes this right, disproportionately impacting Miami’s Black community.

The aforementioned rights violations are direct consequences of the U.S.’s refusal to recognize an affirmative right to adequate housing under the UDHR, ICESCR, ICERD, and CEDAW.<sup>79</sup> Here, it is

---

<sup>73</sup> See *Fighting Illegal “Move Along” Orders*, PICTURE THE HOMELESS, <https://www.picturethehomeless.org/fighting-illegal-move-along-orders/> (last visited May 7, 2021).

<sup>74</sup> *Id.*

<sup>75</sup> UDHR, *supra* note 3, art. 3 (stating that “[t]he right to life, liberty, and security of person” while Article 6 of the ICCPR states that “[n]o one shall be arbitrarily deprived of his life”) ICCPR, *supra* note 3, art. 6(1).

<sup>76</sup> Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. REV. 295, 300 (1991).

<sup>77</sup> Hum. Rts. Comm., *CCPR General Comment No. 36: Art. 6 (Right to Life)*, ¶ 26, U.N. Doc. CCPR/C/GC/36 (2019).

<sup>78</sup> *Id.*

<sup>79</sup> UDHR, *supra* note 3, art. 25(1) (“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 and medical care and necessary social services.”); ICESCR, *supra* note 8, art. 11(1) (“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.”); ICERD, *supra* note 3, art. 5(e)(iii) (“State [p]arties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law,

important to recognize, as the Committee on Economic, Social and Cultural Rights, which monitors implementation of the ICESCR, clarified that the right to adequate housing is not merely a right to shelter.<sup>80</sup> At the same time, as the Committee explained, the ICESCR does not require that governments provide a house to every person free of charge; instead, it requires that governments take steps to ensure all people are able to house themselves with dignity.<sup>81</sup> This obligation entails protection against forced eviction and the promotion of housing that is affordable, habitable, accessible, well-located, and culturally adequate.<sup>82</sup>

### III. STEPS THE U.S. CAN TAKE TO RESPECT, PROTECT, AND FULFILL THESE FUNDAMENTAL HUMAN RIGHTS

International human rights law obligates U.N. member states to respect, protect, and fulfill the human rights of their residents.<sup>83</sup> The respect element requires states to “refrain from interfering with or curtailing the enjoyment of human rights.”<sup>84</sup> The “protect” element entails state prevention of third parties from violating human rights.<sup>85</sup> Lastly, the “fulfill” obligation means that “[s]tates must take steps to progressively realize human rights for its residents.”<sup>86</sup>

With respect to the criminalization of homelessness, the U.S., including its state and city governments, have failed to fulfill any of these three obligations. To “respect” the fundamental

---

notably the enjoyment of the following rights: . . . Economic, social and cultural rights in particular: . . . (iii) The right to housing.”); CEDAW, *supra* note 6, art. 14(2)(h) (stating that state parties are required to ensure that “on a basis of equality of men and women, that they participate in and benefit from rural development, and in particular, shall ensure to such women the right: (h) To enjoy adequate living conditions, particularly in relation to housing”).

<sup>80</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, ¶ 7, U.N. Doc. E/1992/23 (1991) [hereinafter CESCR General Comment No. 4].

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at ¶ 8.

<sup>83</sup> *International Human Rights Law*, U.N. HUM. RTS. OFF. HIGH COMM’R, <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx> (last visited May 7, 2021).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*



aforementioned rights, the U.S. can take immediate steps to decriminalize homelessness. To fulfill its obligations to people experiencing homelessness, the U.S., at all levels of government, should invest in alternative policing methods that focus on care rather than punishment. Additionally, the U.S. should work toward recognizing the right to adequate housing and adopting a Housing-First policy. To protect these basic human rights, the U.S. should further regulate third parties, such as landlords, developers, and private equity firms to prevent rights violations resulting in homelessness.

First, the U.S., at all levels of government, should respect the basic human rights of people experiencing homelessness by either repealing or not enforcing statutes that prohibit life-sustaining activities in public when the government cannot offer alternative shelter or services. The Ninth Circuit rulings in *Martin v. City of Boise* and *Jones v. City of Los Angeles*, finding that statutes prohibiting life-sustaining activities violated the cruel and unusual punishment standard under the Eighth Amendment, already point in the right direction.<sup>87</sup> Municipalities should further monitor compliance of officers to ensure they are not harassing people experiencing homelessness and establish mechanisms for accountability.

At the federal level, the U.S. government should utilize its spending power to incentivize local governments to stop criminalizing homelessness. For example, in 2015, the Department of Housing and Urban Development added questions to its annual Continuum of Care (“CoC”) Program Notice of Funding Application that gave funding points to CoC’s that “implemented specific strategies to prevent criminalization of homelessness within CoC’s geographic area.”<sup>88</sup> This federal practice should be continued and expanded upon.

Second, the U.S. must take steps to fulfill basic rights by adopting alternative policing methods and a Housing-First approach, as well as recognizing the right to adequate housing. Police are ill-

---

<sup>87</sup> *Martin v. City of Boise*, 902 F.3d 1031, 1049 (9th Cir. 2018); *Jones v. City of Los Angeles*, 444 F. 3d 1118, 1138 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (2007).

<sup>88</sup> U.S. DEP’T HOUS. URB. DEV., NOTICE OF FUNDING AVAILABILITY FOR THE 2016 CONTINUUM OF CARE COMPETITION 35 (2016), <https://www.hudexchange.info/resources/documents/FY-2016-CoC-Program-NOFA.pdf>.

equipped to provide psychosocial services needed in a crisis.<sup>89</sup> Crisis response teams need mental health, harm reduction, and psychosocial service expertise.<sup>90</sup> Cities should look to the crisis response team model used by the CAHOOTS (Crisis Assistance Helping Out in the Streets) in Eugene, Oregon, a community-based public safety policing initiative to provide mental health responses first in crises on the streets.<sup>91</sup> At the federal level, USICH itself highlights the importance of law enforcement collaboration with behavioral health and social service providers.<sup>92</sup> The federal government should provide funding incentives for state and municipalities to collaborate with social service providers to serve as first responders in-line with USICH guidelines.

The U.S. government, at all levels, should further invest in Housing-First programs. These programs prioritize providing permanent affordable housing to people experiencing homelessness before addressing issues of unemployment or substance abuse with the goal of improving one's quality of life.<sup>93</sup> These programs are effective because housing provides stability and security, satisfying basic needs and enabling people to then focus on improving other aspects of their lives.<sup>94</sup> Moreover, investing in housing is more cost-effective than criminalization. A study conducted by Creative Housing Solutions noted that diverting public financial resources to law enforcement costs taxpayers substantially more than it would to

---

<sup>89</sup> Roge Karma, *We Train Police to Be Warriors — and Then Send Them Out to Be Social Workers*, VOX (July 31, 2020), <https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training> (“In almost half of police killings of unarmed civilians in the US [in 2015], the person killed was revealed to be or suspected of experiencing either a mental health crisis or narcotic intoxication.”).

<sup>90</sup> CONSTRUCTIVE ALTERNATIVES, *supra* note 23 at 24–25.

<sup>91</sup> *What is Cahoots?*, WHITE BIRD CLINIC (June 29, 2020), <https://www.whitebirdclinic.org/what-is-cahoots/> (noting that CAHOOTS deploys two-person mobile teams consisting of a medic and a crisis worker who has substantial training and experience in the mental health field. This enables them to deal with a range of mental-health related crises, such as suicide threats and substance abuse, that people experiencing homelessness may be facing through trauma-informed de-escalation and harm reduction techniques).

<sup>92</sup> CONSTRUCTIVE ALTERNATIVES, *supra* note 23 at 24–25.

<sup>93</sup> *Housing First*, NAT'L ALL. TO END HOMELESSNESS (Apr. 20, 2016), <https://endhomelessness.org/resource/housing-first/>.

<sup>94</sup> *Id.*

provide people experiencing homelessness with affordable housing.<sup>95</sup> Specifically, the study noted that investing in providing people experiencing homelessness with permanent housing would substantially decrease costs taxpayers bear with respect to the arrest, incarceration, medical, and psychiatric emergency room use and inpatient hospitalizations of people experiencing homelessness in any given year.<sup>96</sup>

Additionally, all levels of government should recognize a right to adequate housing. This entails implementing protections against forced evictions and ensuring the availability of housing that is affordable, habitable, culturally adequate, and accessible.<sup>97</sup> As the New York City Bar emphatically stated, “*Homelessness is the most extreme deprivation of the right to adequate housing.*”<sup>98</sup> Rather than criminalization, it is time to tackle the root causes of homelessness. The U.S. must increase its efforts to enforce fair housing through the Fair Housing Act of 1968 to root out discrimination against Black people that leads to homelessness.<sup>99</sup> Governments should consult with communities, particularly Black communities, to adopt policies that best serve their particular needs. This can include social housing, subsidized housing, renters’ tax credits, community land trusts, or rent control, as well as incentives for private development of affordable housing through simplified building codes, inclusionary zoning, or the Low-Income Housing Tax Credit.<sup>100</sup>

Finally, the U.S. must uphold its obligation to protect basic rights from third-party violations. In order to protect tenants from exploitation, the U.S. needs to ensure habitable conditions through

---

<sup>95</sup> CENT. FLA. COMM’N ON HOMELESSNESS, THE COST OF LONG-TERM HOMELESSNESS IN CENTRAL FLORIDA 34 (2014), <https://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf>.

<sup>96</sup> *Id.* at 20.

<sup>97</sup> See CESCR General Comment No. 4, *supra* note 80 at ¶8.

<sup>98</sup> INT’L HUM. RTS. COMM. N.Y.C. BAR ASS’N, ADVANCING THE RIGHT TO HOUSING IN THE UNITED STATES: USING INTERNATIONAL LAW AS A FOUNDATION 12 (2016) (emphasis added), <https://www2.nycbar.org/pdf/report/uploads/20072632-AdvancingtheRighttoHousingIHR2122016final.pdf>.

<sup>99</sup> See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 441–444 (1968).

<sup>100</sup> See, e.g., *Miami Homes for All & the City of Miami*, CONNECT CAP. MIA. (2019), [https://drive.google.com/file/d/1Hlq4QfTV2v\\_Wu7TbCR7HUPLI-jgYPDOVX/view](https://drive.google.com/file/d/1Hlq4QfTV2v_Wu7TbCR7HUPLI-jgYPDOVX/view). Miami currently has a plan to create and preserve 12,000 affordable homes by 2024. Stakeholders emphasize the importance of transparency in holding the city accountable to this goal’s achievement. *Id.*

housing codes and regular inspections. Municipalities should provide legal representation to assist those facing eviction or foreclosure.<sup>101</sup> To prevent a rise in homelessness during the COVID-19 pandemic, the U.S. should place a moratorium on evictions and remove late fees on tardy rental or mortgage payments. Moreover, cities should require public hearings in neighborhoods where new developments are being proposed, and developers should prepare community impact assessments and mitigation plans for displacing vulnerable populations. Lastly, all levels of government should redesign housing, finance, and investment programs, in collaboration with affected communities and financial institutions, to ensure that all community members are able to access adequate housing.<sup>102</sup>

### CONCLUSION

The criminalization of homelessness is a catalyst for racial injustice and violates fundamental human rights. Investing in police as a front-line response to homelessness does not address the structural causes of homelessness and only opens the door to more brutality and discrimination. Racial justice is best served by a human rights approach, drawing on international law. This approach calls for the decriminalization of homelessness, a focus on underlying causes, the recognition of a right to adequate housing, and a movement to treat all our country's residents with dignity.

---

<sup>101</sup> See, e.g., Kriston Capps, *New York Guarantees a Lawyer to Every Resident Facing Eviction*, CITY LAB, (Aug. 14, 2017), <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.

<sup>102</sup> Hum. Rts. Comm., *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*, ¶ 75, U.N. Doc. A/HRC/34/51 (2017).