

ATTN:  
Professor Philip Alston,  
U.N. Special Rapporteur on Extreme Poverty and Human Rights

*Re: Call for input – Visit to the United States (4-15 December 2017)*

Professor Alston,

In the call for input regarding your upcoming visit to the United States, you requested that respondents focus on certain issues. In this document, I outline three particular aspects relating to your call for input:

1. *What are the most severe human rights violations that people living in poverty and extreme poverty in the United States experience? Please exemplify by referring to specific cases and relevant norms of international human rights law.*

As you are well aware, there are a variety of important issues that relate to the intersection of poverty and human rights. For instance, increasing attention has been given to civil asset forfeiture<sup>1</sup> (raising concerns regarding arbitrary deprivations of property<sup>2</sup>) evictions of low income tenants<sup>3</sup> (raising concerns regarding the right of access to an adequate standard of living<sup>4</sup>), and lack of access to affordable housing more generally.<sup>5</sup> While these are very important issues in their own right, I am writing to suggest that one of the most enduring and problematic aspects at the intersection of poverty and human rights relates to the disproportionate regulation and punishment of homeless people through quality of life offences.<sup>6</sup>

This is a particularly important issue because quality of life offences regulate basic human acts that everyone must engage in (such as sleeping, urinating, sitting, defecating). However, because homeless people have no default private place where they can do these acts (at least

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<sup>1</sup> See e.g.: Marian Williams et. al, “Policing for Profit: The Abuse of Civil Asset Forfeiture” (Arlington: Institute for Justice, 2010).

<sup>2</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), art. 17(2) [hereafter UDHR],

<sup>3</sup> See e.g.: Matthew Desmond, “Eviction and the Reproduction of Urban Poverty” (2012) 118 American Journal of Sociology 88.

<sup>4</sup> UDHR, art 25(1).

<sup>5</sup> See e.g.: Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Crown, 2016).

<sup>6</sup> Maria Foscarinis, “Downward Spiral: Homelessness and its Criminalization” (1996) 14 Yale L. & Pol’y Rev. 1.

without others' permission in many cases), quality of life offences disproportionately impact them because they live in public spaces where these laws are enforced.<sup>7</sup>

Although a lack of access to housing can itself undermine one's dignity because a person lacks the privacy and security that housing provides, there is something morally problematic in then punishing people for doing basic acts in public because they lack housing.<sup>8</sup> For instance, in cases where laws completely ban erecting tents in public places and there is insufficient shelter space to accommodate the number of homeless people, homeless individuals must choose between violating a rule and risking punishment, or risk their physical and mental health by remaining unsheltered and obeying the law.

Moreover, fines and citations can result in a person being entrenched in homelessness, where they continually violate quality of life offences insofar as cities lack public resources available for the homeless.<sup>9</sup> The entrenchment in homelessness can occur through civil consequences that result from unpaid fines and that are compounded onto non-payment fees.<sup>10</sup> For instance, in the City of Seattle, Washington, unpaid citations are divulged to debt-collection agencies that can recuperate the fine for a period of ten years, rendering any income homeless people secure towards housing vulnerable to debt collection.<sup>11</sup>

Why is the regulation of homeless people with quality of life offences such an important issue? In short, cities are increasingly regulating public spaces and public displays of need-alleviating acts, such as sleeping, camping, urinating, and defecating.<sup>12</sup> At the same time, several structural factors risk increasing the number of homeless people in the U.S. in the near future. These structural factors include the affordable housing crisis, the stagnation of minimum wage, and the rise of automation and its potential to eliminate different forms of unskilled labor. The problem is not only that this risks increasing the number of homeless people and individuals who risk punishment for alleviating their needs. Rather, it also renders homeless people increasingly dependent on private property owners to allow homeless people to use their property and allevi-

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<sup>7</sup> Jeremy Waldron, "Homelessness and the Issue of Freedom" (1991-1992) 39 UCLA L. Rev. 295.

<sup>8</sup> *Ibid*, p. 320.

<sup>9</sup> National Law Center on Homelessness and Poverty, "No Safe Place: The Criminalization of Homelessness in U.S. Cities" (Washington, 2013), p. 7.

<sup>10</sup> Terry Skolnik, "Rethinking the Punishment of Homeless Offenders who Commit Quality of Life Offences" (2019) 22 New Criminal Law Review (forthcoming). Draft available upon request.

<sup>11</sup> Seattle University School of Law, "Homeless Rights Advocacy Project, Washington's War on the Visibly Poor: A Survey of Criminalizing Ordinances & Their Enforcement" (Seattle, 2015), p. 16, note 64.

<sup>12</sup> National Law Center on Homelessness and Poverty, "Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities" (Washington: 2016).

ate their needs without risking punishment.<sup>13</sup> For this reason, it is important to reconsider the ways in which homeless people are regulated in order to minimize human rights violations when people undertake the most basic human acts, and do so insofar as the United States does not recognize a right to housing.<sup>14</sup>

One of the most severe violations of human rights occurs where homeless people are punished for sleeping or camping in public where there is insufficient shelter space.<sup>15</sup> While some courts have deemed such instances to constitute cruel and unusual punishments contrary to U.S. constitutional law<sup>16</sup> (while it would also be contrary to international human rights law<sup>17</sup>), a variety of cities continue to punish sleeping in all public places. For instance, in Dallas Texas, a law continues to prohibit sleeping in all public spaces within the city, despite the high proportion of homeless people.<sup>18</sup> In Dallas, however, it remains unclear the extent to which there is sufficient shelter space to accommodate the homeless.

In order to minimize the most severe violations of human rights, cities ought to determine the number of homeless people and the number of shelter spaces in any case where laws ban sleeping or camping in public, and demonstrate that people can obey these rules. Otherwise, the rules risk constituting cruel and unusual punishments in both domestic and international human rights law. A list of cities currently comprehensively banning sleeping and camping in public is annexed to the National Law Center on Homelessness and Poverty's 2016 annual report.<sup>19</sup>

(ii) Could you specify how poverty and extreme poverty in the United States intersect with civil and political rights (such as for example the right to political participation or the right to equality before the law)?

While the right to housing is traditionally considered an economic or social right, the increasing regulation of public space and individuals lacking access to housing can explain why access to housing can increasingly be conceptualized as a civil right in the U.S. Those with ac-

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<sup>13</sup> Christopher Essert, "Property and Homelessness" (2016) 44 *Philosophy & Public Affairs* 44, pp. 276-7.

<sup>14</sup> *Lindsey v. Normet*, 405 US 56 (1972), p. 74.

<sup>15</sup> Terry Skolnik, "Homelessness and the Impossibility to Obey the Law" (2016) 43 *Fordham Urban Law Journal* 741

<sup>16</sup> *Pottinger v. City of Miami*, 810 F. Supp. 1551 (Dist. Court, SD Florida 1992), p. 1565; *Jones v. City of Los Angeles*, 444 F. 3d 1118 (Court of Appeals, 9th Circuit 2006), p. 1138.

<sup>17</sup> UDHR, art. 5.

<sup>18</sup> Dallas, TX., *Mun. Code*, §31-13.

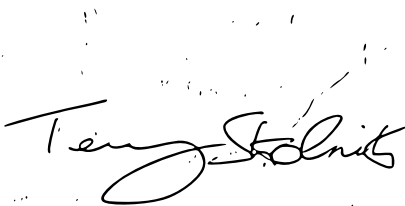
<sup>19</sup> *Supra*, note 12.

cess to housing are afforded more protection against police coercion and punishment, because quality of life offences generally do not regulate private acts done within the privacy of one's home. Thus, it may be worth thinking of the right to housing also in terms of a right to a place that protects individuals from police coercion and regulation of how a person alleviates their basic needs.

(iii) What are potential areas (States, territories, regions, cities, municipalities) in the United States that the Special Rapporteur should visit given the severity of poverty and intersecting human rights issues in these places?

I believe that it would be crucial for the Special Rapporteur to visit areas of California where there is the largest number of homeless people in the U.S. Most notably, it would be worth visiting San Francisco and Los Angeles, (notably Skid Row). However, it would also be important to visit other areas with large homeless populations that media attention and scholarship can overlook, including Dallas (Texas), Honolulu (Hawaii), and Denver (Colorado).

For further information, please feel free to contact me via email or telephone.



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