

GRADING THE U.S. RESPONSE TO HOMELESSNESS

THE 2016 HUMAN RIGHT TO HOUSING REPORT CARD

Student: United States of America

CATEGORY	2016
Security of Tenure	
Renters	<i>F</i>
Homeowners	<i>D</i>
Access to Counsel	<i>D</i>
Criminalization of Homelessness	<i>B+</i>
Domestic Violence	<i>B</i>
Availability of Services, Materials & Infrastructure	<i>D</i>
Affordability	<i>F</i>
Accessibility	<i>B-</i>
Habitability	<i>D</i>
Location	<i>B-</i>
Cultural Adequacy	<i>D-</i>
Overall	<i>D</i>

CRITERIA

We reviewed the federal response to homelessness over the past year and assigned grades to key actions (or failures to act) by executive agencies, Congress, and federal courts in protecting and advancing the human rights of homeless Americans. The eleven categories are derived from the UN Committee on Economic, Social & Cultural Rights framework defining the human right to housing. Grades were assigned based on the federal government's actions (laws passed, regulations issued, enforcement actions taken, resources provided) or inactions, and are current as of December 1, 2016. Starting with a "neutral" C grade, points were added or taken away based on these criteria, with + or - used to reflect nuance such as the significance of a law, the magnitude of harm, or the cost of inaction or inadequate action in the face of the ongoing crisis of homelessness. We do not grade specific states or localities, but activity at the state or local level, and the federal government's response or lack thereof, does impact the grades given.

EXECUTIVE SUMMARY

The Current Context is Dire...

In 2016, the United States continued to face a crisis of homelessness, brought on by a severe shortage of affordable housing. While according to some recent estimates certain types of homelessness have gone down in some regions of the country, overall homelessness remains an urgent national crisis.¹

- Close to 1.4 million school children were homeless during the 2013-2014 school year—and almost 2.5 million children overall were homeless in 2013.² The school numbers represent an 8% increase since the previous year, and have almost doubled since the beginning of the economic crisis in 2007.³
- 7 million people were doubled up, sleeping on the floors or couches of family or friends because they cannot afford their own housing, 52% higher than before the recession in 2007.⁴
- Across the country, there are fewer shelter beds than homeless people, and shelters are often over capacity.⁵
- Homeless encampments have been reported in every state in the country.⁶

Moreover, many communities have responded to the growth of homelessness not with more housing, but by increasing enforcement of laws criminalizing homelessness. A November 2016 National Law Center on Homelessness & Poverty report, *Housing Not Handcuffs*, documented a 69% increase in city-wide bans on camping, 52% increase in city-wide bans on sitting or lying down, and a 143% increase in bans on sleeping in vehicles over the past ten years.⁷ These policies are tremendously expensive for communities, but result in further entrenching homelessness because the time and cost of interacting with the criminal justice system set people further back from having the resources to escape homelessness, and criminal records make it even harder for people experiencing homelessness to find a job or housing.⁸ In response, the Law Center, together with more than

100 other organizations, launched the [Housing Not Handcuffs Campaign](#) this fall to end the criminalization of homelessness and promote the human right to housing for all.

...So While the U.S. Government Took Some Steps in 2016...

Years of advocacy at the domestic and international levels continued to pay dividends this year as the federal government took further significant steps to fulfill its obligation to end the criminalization of homelessness and address race and sex discrimination in housing.⁹ The U.S. also received and accepted further recommendations from the international level to address criminalization and the human right to housing.

Of particular note in 2016:

1. Federal agencies and the judiciary continued implementing human rights obligations to end the criminalization of homelessness. Human rights standards require legal protection against forced evictions, harassment, and other threats regardless of housing status. As stated above, criminalization of homelessness continued to rise in the United States, but the federal government took meaningful steps to reverse this tide.

- In July, the U.S. Department of Housing and Urban Development (HUD) issued its annual application for funding for \$1.9 billion in federal homeless assistance grants, increasing the points awarded to a question requiring applicants to explain “how they are reducing criminalization of homelessness,” and providing new guidance on specific suggested strategies.¹⁰
- The U.S. Department of Education (ED) issued guidance in July 2016 that, for the first time, advises education officials to coordinate with state and local legislatures to ensure local laws and policies, including those that criminalize homelessness, are not interfering

with homeless students' ability to get to school and learn.¹¹

- The U.S. Department of Justice (DOJ) reiterated its opposition to criminalization of homelessness, specifically referencing human rights language, in a comment letter to Seattle's City Council.¹²
- The White House launched the Data-Driven Justice Initiative, a bipartisan coalition of 130 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."¹³
- Certain federal and municipal courts adopted the position of the DOJ brief in *Bell v. Boise*, which explained how criminally punishing homeless persons for their lack of housing where no alternative housing exists violates the Eighth Amendment protection against cruel and unusual punishment.¹⁴
- Federal courts have similarly followed the 7th Circuit precedent in *Norton v. Springfield*, by ruling that anti-pauper ordinances violate the First Amendment protection of freedom of speech.¹⁵

2. Federal agencies strengthened civil and human rights protections related to discrimination in housing. Human rights standards require the implementation of the right to housing on a non-discriminatory basis, which may require specific protections for historically-marginalized groups. In the United States, both housing discrimination and housing segregation on the basis on race, gender and other protected characteristics continues at a meaningful level.¹⁶

- HUD published final regulations implementing the housing protections included in the 2013 Reauthorization of the Violence Against Women Act, specifically referencing them as implementing our human rights obligations;¹⁷

- HUD published final regulations protecting tenants and others from sexual and other harassment in housing;¹⁸
- HUD published final regulations ensuring transgender access to HUD-funded shelter and housing;¹⁹
- HUD issued guidance that limits the use of criminal records in housing decisions;²⁰
- HUD issued guidance and tools on Affirmatively Furthering Fair Housing;²¹ and
- HUD and DOJ issued joint guidance on exclusionary zoning.²²

3. The federal government committed to take action based on new U.N. Recommendations about criminalization of homelessness and the right to adequate housing. The U.S. attended a major international conference on housing and hosted official mission visits of several U.N. human rights experts.

- At the UN Habitat III conference, the U.S. signed on to the New Urban Agenda, "commit[ing] to promote national, sub-national, and local housing policies that support the progressive realization of the right to adequate housing for all," and "to combat homelessness as well as to combat and eliminate its criminalization through dedicated policies and targeted active inclusion strategies, such as comprehensive, inclusive and sustainable housing first programmes."²³
- The U.S. hosted an official mission visit from the U.N. Working Group on People of African Descent which critiqued ongoing racial segregation and racial disparities in housing and homelessness (including the police response to homelessness).²⁴ It made recommendations to reform police conduct and uphold the right to adequate housing.²⁵
- The UN Special Rapporteur on Freedom of Assembly and Association also conducted an official mission visit to the U.S., noting

“a number of cities have ordinances which prevent homeless people from gathering in certain public places, despite the fact that most have literally nowhere else to go.”²⁶

- Both the DOJ and HUD hosted consultations with participation from civil society organizations and government officials to follow up on recommendations from previous human rights reviews, including those around criminalization of homelessness and the right to housing.²⁷

...Overall, the United States Government Continued to Fail to Ensure Adequate, Affordable Housing...

Years of neglecting affordable housing development at the local level compounded by ongoing Congressional budget cuts to HUD and other federal agencies have threatened the basic safety net for many people living in poverty even as real wages continue to drop.

- Congress’ failure to appropriate adequate funding means only one in four of those poor enough to qualify for low-income housing assistance receive some kind of assistance.²⁸
- HUD and the federal General Services Administration (GSA) have stymied efforts under Title V of the McKinney-Vento Act to convey vacant federal properties to homeless service providers, and Congress has, so far, failed to pass bills which would strengthen and streamline the application process.²⁹
- Congress’ failure to either adequately raise minimum wages and social security benefits, publicly fund affordable housing, or create proper incentives for private development of affordable housing means the number of cost-burdened households (paying more than 30 percent of income for housing) was 21.3 million in 2015, an increase of 3.6 million since 2008, and the number with severe burdens (more than 50% of income for housing) jumped to a record 11.4 million in 2015, an increase of 2.1 million since 2008.³⁰ A renter earning the federal minimum wage of

\$7.25 per hour would need to work 90 hours per week to afford a one-bedroom apartment,³¹ and the national average monthly rent for of a one-bedroom apartment is more than an individual relying on Supplemental Security Income (SSI) entire monthly benefit.³²

...Thus, When We Judge the U.S. Response to Homelessness against the Human Right to Adequate Housing, the U.S. Is Passing, but Just Barely.

According to international standards, the human right to housing consists of seven elements:

- i. security of tenure:** everyone needs legal protection against forced eviction and harassment—we examine separately renters, homeowners, and persons in emergency circumstances (homelessness generally and for those fleeing domestic violence)—as well as for access to legal counsel;
- ii. availability of services, materials, and infrastructure:** adequate housing includes access to sanitation and emergency services, plumbing and electricity, etc.;
- iii. affordability:** housing costs should not force people to choose between paying rent and paying for other basic needs (food, health, etc.);
- iv. habitability:** housing must provide adequate space to protect against internal dangers (overcrowding) and external ones (weather, insects, hazards like lead, etc.);
- v. accessibility:** accessibility of housing means physically accessible (for those facing disabilities, for example) and practically accessible (no discriminatory barriers for marginalized groups);
- vi. location:** housing is more than four walls and a roof, but must exist in an environment with access to jobs, medical care, schools, etc., as well as not be threatened by pollution; and
- vii. cultural adequacy:** housing and land use must

respect the cultural traditions of inhabitants, particularly, for example of indigenous persons.³³

Each of these elements is interdependent with the others, and for too many, it remains elusive.

Matthew Desmond’s 2016 bestseller, *Evicted: Poverty and Profit in the American City*, brought to light this multi-dimensional housing crisis faced by too many communities. In it, Desmond illustrated how lack of affordability combined with renters’ limited legal rights led to uninhabitable conditions, housing instability, and homelessness through a vicious cycle of evictions.³⁴ Homeowners in the U.S. continue to face foreclosures, and in some areas, the cost of water and sanitation are threatening residents’ ability to

stay housed.³⁵ The failure to remedy these violations demonstrate the opposite of a human rights-based approach to housing.

A rights-based approach would ask, “What is the need, and how can we progressively meet it, through a combination of spending, regulation, or other tools?” Instead, we are faced with retrogressive cuts to already inadequate resources, with no proposed compensatory changes to other laws or regulations, that will certainly lead us further from full enjoyment of the right to housing.

The United States has taken important steps toward ensuring the right to adequate housing, but not enough of them, earning a collective grade of D.

Category	2011	2012	2013	2014	2015	2016
Security of Tenure						
Renters	B-	C-	C	F	F	F
Homeowners	D+	D	D	D	D	D
Access to Counsel	D	F	D-	D-	D-	D
Criminalization of Homelessness	F	D-	D	D+	B+	B+
Domestic Violence	B-	C	A-	B	C	B
Availability of Services, Materials & Infrastructure	D	D	D	D	D-	D
Affordability	D	D	F	F	F	F
Habitability	C-	C-	D	D-	D	D
Accessibility	C-	C-	C-	C	C	B-
Location	D	D	D	D	B	B-
Cultural Adequacy	D	D	D	D	D	D-
Overall	D	D-	D	D	D+	D

SUMMARY OF RECOMMENDATIONS FOR INCOMING TRUMP ADMINISTRATION AND 115TH CONGRESS

In 2017, a new Congress begins and the Trump Administration will move into the White House in the context of an ongoing affordable housing crisis and widespread homelessness. Congress and the Administration must take affirmative steps to improve Americans' enjoyment of their fundamental right to affordable, safe, appropriate housing. To improve the U.S.'s score, we make the following recommendations to the incoming Administration and Congress in 2017:

1. Congress and HUD should allocate at least \$1 billion in new money per year to homelessness prevention programs, and expand HUD's definition of homelessness, consistent with ED, HHS, and other agencies, to include those living in doubled-up situations or in motels due to loss of housing or economic hardship.
2. Congress and HUD should ensure no person need pay more than 30 percent of their income on housing through a combination of new construction of subsidized units, universal vouchers, and funding the National Housing Trust Fund at a minimum of \$1 billion per year.
3. Congress and HUD, GSA, and the U.S. Department of Health & Human Services (HHS) should comply with, protect, and strengthen Title V of the McKinney-Vento Act, which requires vacant or underutilized federal property to be made available to homeless service providers at no cost, by increasing the number of useful properties made available and easing the application process.
4. Congress, state and local governments must work together to ensure no person loses access to water or sanitation due to inability to pay, or loses their home due to an inability to pay a utility bill.
5. Congress, state, and local governments should pass protections for renters including just-cause eviction laws and the Permanently Protecting Tenants at Foreclosure Act, including a private right of action, and vest authority in the Consumer Protection Financial Bureau to regulate and enforce compliance.
6. Congress, state, and local governments should ensure a right to counsel in all civil cases involving the potential loss of housing or inadequate housing conditions, and significantly expand funding for legal aid services to facilitate the implementation of this right.
7. HUD, DOJ and other agencies should take concrete steps to stop local criminalization efforts by providing further incentives for constructive alternative approaches and decriminalization and aggressively pursuing enforcement action. States should support and enact Homeless Bills of Rights; local governments should stop enforcing laws that criminalize homelessness in the absence of shelter or housing, and provide adequate notice and adequate alternative housing before evicting homeless persons living in encampments.
8. HUD, the U.S. Department of Agriculture, and U.S. Department of the Treasury should fully implement the Violence Against Women Act's housing protections through regulation, guidance, and effective enforcement, and encourage states and municipalities to expand the Act's protections to housing that has no federal subsidy.
9. HUD should fully implement Affirmatively Furthering Fair Housing and fund efforts to support compliance and enforcement.
10. Congress should increase the minimum wage and Supplemental Security Income benefits, so that both working and low-income disabled people can afford adequate housing as well as meet other basic needs while paying no more than 30 percent of their income for housing.

ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

The National Law Center on Homelessness & Poverty is the only national organization dedicated solely to using the power of the law to end and prevent homelessness. We work with federal, state and local policymakers to draft laws that prevent people from losing their homes and to help people out of homelessness. We have been instrumental in enacting numerous federal laws, including the McKinney-Vento Act, the first major federal legislation to address homelessness. We helped enact the federal program that makes vacant government properties available at no cost to non-profits for use as facilities to assist people experiencing homelessness, and we ensure it is enforced including through litigation. We have won federal legal protections for tenants affected by the foreclosure crisis and we are working to make sure lenders comply with it.

We aggressively fight laws criminalizing homelessness and promote measures protecting the civil rights of people experiencing homelessness. We are advocating for proactive measures to ensure that those experiencing homelessness have access to housing, jobs, and public benefits even though they have no address so that they can escape homelessness. We are also upholding the right to vote for those who are experiencing homelessness. We work to improve access to housing for domestic violence survivors and their children and we were instrumental in adding landmark housing rights amendments to Violence Against Women Act.

We invalidate laws that prevent other charitable organizations from distributing food and social services to people experiencing poverty and homelessness.

We protect the right of children and youth experiencing homelessness to stay in school and get the support they need to succeed.

For more information about our organization, access to publications, and to contribute to our work, please visit our website at www.nlchp.org.

ACKNOWLEDGMENTS

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This report card is an annual evaluation based on our 2011 report “Simply Unacceptable: Homelessness & the Human Right to Housing in the United States.” That report and this update were drafted by Eric S. Tars. Esther Birkin-Spake provided assistance in researching and updating this edition, and Janelle Fernandez, Janet Hostetler, Michael Santos, and Maria Foscarinis provided expert editorial guidance.

Parts of this report are drawn from the 2014 report *Housing and Homelessness in the United States of America: Submission to the United Nations Universal Periodic Review of the United States of America*, coordinated by the Law Center, which had sections drafted by Toussaint Losier, Chicago Anti-Eviction Campaign; Michael Stoops, National Coalition for the Homeless; Jorge Soto, National Fair Housing Alliance; Sham Manglik and Linda Couch, National Low Income Housing Coalition; and Anne Holcomb, Unity Parenting and Counseling, Inc. John Pollock, National Coalition for a Civil Right to Counsel, drafted the section on access to counsel. We thank our partners for their contributions!

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INTRODUCTION

This report card assesses the current level of U.S. compliance with the international human right to housing in its response to homelessness. In doing so, we primarily consider the steps the federal government has taken to end and prevent homelessness, with reference to state and local practices where relevant. It is not, and is not intended to be, a comprehensive review or assessment of implementation of all aspects of the right to housing, which is interconnected and interdependent with the enjoyment of many other civil, political, economic, social, and cultural rights. Our much more comprehensive 2011 report, *Simply Unacceptable: Homelessness & the Human Right to Housing in the U.S.*, goes into more depth in its analysis.³⁶

HOMELESSNESS AND THE HUMAN RIGHT TO HOUSING UNDER INTERNATIONAL STANDARDS

The U.N. Committee on Economic, Social, and Cultural Rights, made up of leading global experts, has provided the following framework to define the human right to housing according to seven elements:

³⁷

- (1) **security of tenure:** everyone needs legal protection against forced eviction and harassment—we examine separately renters, homeowners, and persons in emergency circumstances (homelessness generally and for those fleeing domestic violence)—as well as for access to legal counsel;³⁸
- (2) **availability of services, materials, and infrastructure:** adequate housing includes access to sanitation and emergency services, plumbing and electricity, etc.;³⁹
- (3) **affordability:** housing costs should not force people to choose between paying rent and paying for other basic needs (food, health, etc.);⁴⁰
- (4) **habitability:** housing must provide adequate space to protect against internal dangers (overcrowding) and external ones (weather,

insects, hazards like lead, etc.);⁴¹

- (5) **accessibility:** accessibility of housing means physically accessible (for those facing disabilities, for example) and practically accessible (no discriminatory barriers for marginalized groups);⁴²
- (6) **location:** housing is more than four walls and a roof, but must exist in an environment with access to jobs, medical care, schools, etc., as well as not be threatened by pollution;⁴³ and
- (7) **cultural adequacy:** housing and land use must respect the cultural traditions of inhabitants.⁴⁴

Human rights standards require that countries take progressive steps to respect, protect, and fulfill the right, to the maximum of the country's available resources, in a non-discriminatory manner.⁴⁵ The government can use a wide variety of measures, from market regulation to subsidies, public-private partnerships to tax policy, to help ensure the right. Implementing the human right to housing would *not* require the government to immediately build a home for each person in America or to provide housing for all, free of charge. But it does require much more than the U.S. is doing now, and more than a mere provision of emergency shelter—it requires affirmative steps to be taken to ensure fully adequate housing, based on all the criteria outlined above.

HOLDING THE UNITED STATES ACCOUNTABLE

While this report card is based on a qualitative rather than a quantitative assessment, it endeavors to assess the nation's performance based on available quantitative data. The Economic and Social Rights Fulfillment (ESRF) Index assesses how well countries perform in meeting economic and social rights, such as the right to housing, in light of their available resources.⁴⁶ In 2013, the most recent year for which housing data is available, out of the 21 high-income countries analyzed, the U.S. received one of the worst scores, fulfilling only 76.38% of their obligations, a decrease from 78.72% in 2012.⁴⁷ The fulfillment of

obligations differed significantly between states and across racial groups.⁴⁸ In a state-by-state assessment, Wyoming fulfilled 79.12% of its obligations in regard to adequate housing, while California fulfilled only 11.68% of its obligations.⁴⁹ The fifty states, on average, fulfilled just over 45% of their adequate housing obligations.⁵⁰

Consistent with these findings, our report card shows there is much work for the U.S. to do in its response to homelessness in order to realize the right to housing. We reviewed the federal response to homelessness over the past year and assigned grades to key actions (or failures to act) by executive agencies, Congress, and federal courts in protecting and advancing the human rights of homeless Americans. Grades were assigned based on the federal government's actions (laws passed, regulations issued, enforcement actions taken, resources provided) or inactions, and are current as of December 1, 2016. We have given a letter-grade ranking for the current status of each aspect of the right. Grades were assigned based on the following criteria:

- 1) Was a law passed or policy adopted that protects the right to housing?
- 2) Are laws that are in place to protect the right to housing being implemented and enforced?
- 3) Have laws been enacted or are laws being enforced that undermine the right to housing?
- 4) Have resources to further the right to housing been added or are they being taken away?

We do not grade specific states or localities, but activity at the state or local level, and the federal government's response, or lack thereof, does impact the grades given. Starting with a "neutral" C grade, points were added or taken away based on these criteria, with + or – used to reflect nuance such as the significance of a law, the magnitude of harm, or the cost of inaction in the face of the ongoing crisis of homelessness.

We recognize that for many Americans, the overall enjoyment of housing rights is better in the U.S. than it would be in some developing nations, but the human

right to housing is one that is progressively realized based on the resources available to the country. Given that the U.S. is still the wealthiest nation in the world, with a well-developed democratic and judicial system, we need to hold ourselves to a higher standard. Our failure to meet those standards is reflected in the grades assigned in this report.

CURRENT CONTEXT

In 2016, the United States continued to face a crisis of homelessness, brought on by a severe shortage of affordable housing. Even before the foreclosure crisis and economic recession starting in 2007, an estimated 2.5 to 3.5 million men, women, and children were experiencing homelessness annually, including at least 1.35 million children, and over a million people working full- or part-time but unable to pay for housing.⁵¹

Since then, while the recession technically ended in 2009,⁵² the affordability crisis has continued to deepen:

- According to a 2016 report by the Joint Center for Housing Studies at Harvard University, the number of cost-burdened households (paying more than 30 percent of income for housing) was 21.3 million in 2015, an increase of 3.6 million since 2008, and the number with severe burdens (more than 50 percent of income for housing) jumped to a record 11.4 million in 2014, an increase of 2.1 million since 2008.⁵³ The number of cost-burdened renters has increased each year since 2008.⁵⁴
- The safety net has failed to support needy families in this atmosphere of dire housing need. Only one in four of those poor enough to qualify for low-income housing assistance receive some kind of assistance.⁵⁵ Close to 1.4 million school children were homeless during the 2013-2014 school year—and almost 2.5 million children overall were homeless in 2013.⁵⁶ The school numbers represent an 8% increase since the previous year, and have almost doubled since the beginning of the economic crisis in 2007.⁵⁷
- Homeless encampments now exist in every state

in the country.⁵⁸

- The number of people who have lost their homes and are living doubled up with family or friends due to economic necessity stood at 7 million people in 2014, a slight decline since 2013, but still 52% higher than before the recession in 2007.⁵⁹ While the Department of Housing and Urban Development reported an overall decline of 2% in homelessness nationally based on a single night's count in 2015,⁶⁰ this count is based on a severely limited and flawed method that almost certainly misses large numbers of homeless people.⁶¹

Moreover, many communities have responded to the growth of homelessness not with more housing, but by increasing enforcement of laws criminalizing homelessness. A November 2016 Law Center report, *Housing Not Handcuffs*, surveyed 187 cities across the country and documented a 69% increase in city-wide bans on camping, 52% increase in city-wide bans on sitting or lying down, and a 143% increase in bans on sleeping in vehicles over the past ten years.⁶² These policies are tremendously expensive for communities, but result in further entrenching homelessness because the time and cost of interacting with the criminal justice system set people further back from having the resources to escape homelessness, and criminal records make it even harder for people experiencing homelessness to find jobs or housing.

THE UNITED STATES GOVERNMENT AND THE HUMAN RIGHT TO HOUSING

In 1948, the U.S. was an international leader in promoting the human right to housing. It led the world in shaping the Universal Declaration of Human Rights, which provides, among other things, that “everyone has the right to an adequate standard of living... including the right to housing.”⁶³ The following year, the 1949 Federal Housing Act stated a *goal* of “a decent home and suitable living arrangement for every American family,” but that goal was never enshrined as a *right* for every American in domestic law.⁶⁴

The United States signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1979, recognizing the human right to housing, but

the Senate has not yet ratified that treaty.⁶⁵ Under international law, countries that sign a treaty are obligated to refrain from actions that would defeat the “object and purpose” of that treaty, even before ratification.⁶⁶

More recently, the U.S. has hinted at signs of its possible interest in revitalizing the human right to housing. In 2010, President Obama stated that it is “simply unacceptable for individuals, children, families and our nation’s veterans to be faced with homelessness in this country.”⁶⁷ In March 2011, the U.S. acknowledged for the first time that rising homelessness implicates its human rights obligations and made commitments to the United Nations (U.N.) Human Rights Council to “reduce homelessness,” “reinforce safeguards to protect the rights” of homeless people, and continue efforts to ensure access to affordable housing for all.⁶⁸ In 2015, the U.S. government supported, in part, a recommendation from the Human Rights Council to “Guarantee the right by all residents in the country to adequate housing, food, health and education, with the aim of decreasing poverty, which affects 48 millions of people in the country.”⁶⁹

In 2015, the U.S. also signed on to the U.N. Sustainable Development Goals, including goal 11 on Sustainable Cities and Communities pledging to make cities inclusive, resilient, safe and sustainable.⁷⁰ And in October 2016, the U.S. signed on to the New Urban Agenda, the outcome report of the U.N. Habitat III conference.⁷¹ The signatories “commit to promote national, sub-national, and local housing policies that support the progressive realization of the right to adequate housing for all as a component of the right to an adequate standard of living, that address all forms of discrimination and violence, prevent arbitrary forced evictions, and that focus on the needs of the homeless, persons in vulnerable situations, low income groups, and persons with disabilities, while enabling participation and engagement of communities and relevant stakeholders, in the planning and implementation of these policies including supporting the social production of habitat, according to national legislations and standards.”⁷² The Agenda also stated “we commit to combat homelessness as well as to combat and eliminate its criminalization through dedicated policies and targeted active inclusion strategies, such as comprehensive, inclusive and sustainable housing first programmes.”⁷³

Domestically, the government has missed great opportunities to fully embrace a rights-based approach to housing. Internationally, the government has acknowledged housing as a “right” to be implemented progressively while qualifying our lack of legal obligations. However, despite lack of ratification of the ICESCR, we retain a legal obligation not to undermine the object and purpose of that treaty.⁷⁴ Thus, while not fully embracing a legally binding human right to housing framework, the federal government has a basic legal responsibility not to undermine the right to housing.

A. SECURITY OF TENURE

Legal security of tenure refers to a tenant’s guarantee of legal protection against forced eviction, harassment and other threats.⁷⁵ According to the Committee on Economic, Social, and Cultural Rights:

Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.⁷⁶

This section will examine U.S. laws and policies that affect the legal security of tenure of tenants and homeowners—and specifically their access to legal counsel—and persons facing emergency and dire circumstances, including persons experiencing homelessness who are facing criminalization for simply trying to survive outdoors, and those fleeing domestic violence, to evaluate successes and failures of U.S. protection of this aspect of the human right to housing.

RENTERS: F

In 2016, Matthew Desmond’s *Evicted: Poverty and Profit in the American City* shone a new light on the extreme challenges faced by low-income renters in America.⁷⁷ The best-selling book built on academic work looking at the intersectional nature of the low-income rental crisis where, for far too many U.S. households, housing is unaffordable, uninhabitable, and unstable.⁷⁸ There is a shortage of legal protections for many renters. In a few cities and states, landlords are limited to evictions for “just cause” (nonpayment of rent or other breach of the lease), but in many, renters can be evicted for no cause whatsoever.⁷⁹ Even where legal protections exist, often they can be circumvented by informal eviction measures or landlords bank on the lack of legal knowledge and assistance to tenants to make these protections moot.⁸⁰

Rental properties constitute 20% of all foreclosures, and of families facing eviction due to foreclosure, approximately 40% are renters.⁸¹ Many of these renters are completely unaware that their building owners have received foreclosure notices until a new owner evicts them. “I came home from work last night and the locks were changed,” reported one tenant, who had paid his rent on time and was unaware of any pending foreclosure.⁸² Some states have enacted protections for tenants in these situations.⁸³ The landmark federal law, Protecting Tenants at Foreclosure Act (PTFA), provided some crucial federal protections for renters in foreclosure when it was in effect from 2009-2014. Bills aiming to make the PTFA permanent have been introduced in the House and Senate, but they have yet to pass.⁸⁴ Consequently, many renters, who are disproportionately low income and people of color, continue to lose their homes—and face homelessness—due to their landlords’ foreclosures.⁸⁵

Due to the desperate crisis in rental affordability, which compounds problems with renters security of tenure, and Congress’ failure to take action on the PTFA, the U.S. receives an “F.”

HOMEOWNERS: D

From 2008 until May 2014, there were over 5 million foreclosures, representing 10% of all homes with a mortgage.⁸⁶ In September of 2016 alone, foreclosure notices were filed against one in every 1592 housing units⁸⁷—in Delaware, this rate is as high as one in every 674 units.⁸⁸ This rate has improved since its peak in 2010, but it is still much higher than the rate in 2006 before the crisis.⁸⁹ Whereas the national foreclosure inventory went down 25.9% between June 2015 and 2016 and completed foreclosures went down by 4.9%, there were still 38,000 completed foreclosures between June 2015 and June 2016.⁹⁰

Many of these foreclosures were preceded by predatory lending practices, which target primarily poor and minority borrowers with agreements that incorporated *insecure* tenure by their terms, due to payment conditions borrowers could not sustain.⁹¹

During the foreclosure crisis, many banks received billions in public dollars to maintain their financial stability, with no corresponding commitment to keeping victims of foreclosure in their homes, thereby spending the nation's "available resources," but not in a way that progressively realizes the human right to housing.⁹²

Although federal and state governments reached a National Mortgage Settlement in February 2012 to bring \$26 billion in relief to nearly two million current and former homeowners, this settlement did not address the targeting of minority borrowers. Moreover, this settlement excluded government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac, thereby leaving out half of the mortgages in the U.S.⁹³ By exempting the majority of mortgages, this settlement failed to address the dire housing concerns of millions of families who have suffered from illegal lending practices and face potential homelessness, even though the federal government could easily intervene in the foreclosure process through the Federal Housing Finance Agency.⁹⁴

The U.N. Working Group On People of African Descent, in its report on its 2016 mission to the U.S., specifically noted its concern that "African Americans in many cities are facing a housing crisis, in which people are not able to pay their rents or mortgages, and even

less to purchase a new house, and are subsequently subject to de facto gentrification."⁹⁵

While the number of foreclosures is slowing, the federal government's ongoing failure to take adequate steps to help keep people in their homes results in a "D" grade.

ACCESS TO COUNSEL: D

For both homeowners and renters, a major hurdle in protecting an individual or family's right to legal security of tenure is the lack of access to legal counsel. One cannot effectively fight evictions, foreclosures or other disputes with landlords or banks without the aid of someone knowledgeable with the intricacies of the legal system. The Committee on Economic, Social and Cultural Rights has noted that ensuring effective judicial remedies (including by providing access to counsel) for the right to adequate housing is an immediate obligation of States, since there cannot be a right without a remedy to protect it.⁹⁶

Because racial minorities are disproportionately poor, their housing needs suffer the greatest from the lack of civil counsel. In its Concluding Observations in the 2008 U.S. report, the Committee on Elimination of Racial Discrimination recognized these effects and recommended that the U.S. "allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs, such as housing, health care, or child custody, are at stake."⁹⁷

With one limited exception, no court or legislature anywhere in the U.S. has recognized a right to counsel in housing matters such as evictions, foreclosures, or housing discrimination.⁹⁸ This has led to a situation where, in many areas of the country, more than 90% of foreclosure and eviction defendants are unrepresented, while landlords and mortgage holders are represented 90% of the time.⁹⁹ Lack of access to counsel leads to insecure tenure and wrongful foreclosures and evictions for many low-income homeowners and tenants in the U.S.,¹⁰⁰ which in turn can lead to homelessness, increased health concerns, job loss, loss of child custody, encounters with the criminal justice system, and destabilized educational

opportunities for children.¹⁰¹

This justice gap is particularly stark when compared to other countries. The World Justice Project's Rule of Law Index, which measures experience of the rule of law through 100,000 individual and 2,400 expert surveys in countries around the globe, routinely ranks the U.S. at or near the bottom of industrialized countries for accessibility and affordability of the civil justice system. The 2016 Rule of Law Index placed the United States 94th overall out of 113 countries on accessibility and affordability of civil justice, dropping 30 places since last year, and below every country in Europe, and many in the rest of the world.¹⁰²

Bills introduced in New York City and Washington, DC would provide a right to counsel for low-income residents in eviction and foreclosure proceedings.¹⁰³ In New York, a veto-proof majority of the City Council has signed on to the bill, and it has received endorsements from the City Comptroller¹⁰⁴ and the Chief Judge of the New York Courts.¹⁰⁵ The bill received its first committee hearing on September 26, 2016, at which 70 people testified in favor of the bill. Bills were also introduced that would provide a right to counsel statewide in housing cases, although they are not predicted to become law this year.¹⁰⁶ In June 2015 New York City created the Office of Civil Justice.¹⁰⁷ In their first annual report they found that the increase in the legal services investments concerning housing (resulting in 27% of tenants being represented, compared to 1% prior to the investment) has already had an impact.¹⁰⁸ Compared to 2013, residential evictions by city marshals have already declined by 24% in 2015. Furthermore, orders to show cause by tenants have declined "nearly 14%, while the volume of residential eviction cases filed remained largely stable."¹⁰⁹ These numbers suggest higher efficiency in courts due to broader legal representation.¹¹⁰ Washington, D.C. has also introduced a bill that would create a right to counsel in eviction hearings for low income residents.¹¹¹ The bill had its first hearing on October 19, 2016.¹¹²

In Pennsylvania, a bill was introduced in 2016 that would guarantee representation for indigent defendants in civil forfeiture proceedings where the property subject to forfeiture is real property.¹¹³

At the federal level, the White House created the Legal Assistance Interagency Roundtable in late 2015, charging it specifically with implementing Goal 16 of the U.N. Sustainable Development Goals on access to justice.¹¹⁴ The Roundtable held a consultation with non-governmental organizations in September of this year to inform measures for marking progress on implementing Goal 16.¹¹⁵ However, to date, no draft has been forthcoming, so while promising, much remains to be seen on how the government will work to ensure the goal is being met.

Pilot projects and new proposed laws focused on improving access to counsel in housing cases and the White House's positive initial steps on implementing Goal 16 of the Sustainable Development Goals, push the U.S. to a "D" rather than an "D-" this year, but the lack of tangible improvement for the vast majority of jurisdictions keep the grade from going higher.

CRIMINALIZATION OF HOMELESSNESS: B+

Under international human rights standards, where individuals have no legal home, their legal security of tenure attaches to wherever they are in their emergency and dire circumstances, and requires, at a minimum, that they be free from forced eviction, harassment, or other threats.¹¹⁶ Numerous human rights monitors have recently condemned criminalization of homelessness as violation the rights to be free from cruel, inhuman, and degrading treatment; liberty; non-discrimination; and other rights.¹¹⁷ In 2016, the U.N. Special Rapportuer on the right to adequate housing focused her annual report on homelessness and stated to comply with human rights law:

- ...(e) Any and all laws or measures that criminalize, impose fines on or restrict homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces, must be immediately repealed;
- (f) Homeless people must be recognized as a protected group in all relevant domestic anti-discrimination and hate-crime laws, including where relevant in national Constitutions, national and subnational human rights legislation and in city charters;

(g) A careful review of existing legislation and policies must be undertaken to ensure that those that include discriminatory intent or effect against people who are homeless are repealed or amended, in compliance with international human rights law. Funding or transfer payments for local programmes should be made conditional on the elimination of all laws that criminalize or discriminate against homeless persons;...¹¹⁸

However, despite a dire lack of adequate shelter and affordable housing, homeless persons in the U.S. increasingly face just such evictions and harassment as they are criminalized for engaging in necessary, life-sustaining activities—like sleeping and sitting—that they often have no choice but to perform in public spaces.¹¹⁹ Over the past ten years, laws criminally or civilly punishing camping in public throughout entire cities has increased by 69%.¹²⁰ Worse yet, laws prohibiting people from living in their vehicles have increased by 143% since that period.¹²¹ Moreover, communities routinely engage in forced evictions or “sweeps” of homeless encampments with little notice and no provision of alternative housing, often destroying important documents, medicines, and what little shelter the victims have.¹²²

Not only does criminalization fail to address the root causes of homelessness, it is actually counterproductive. It saddles homeless individuals with criminal records, making it more difficult for them to secure or maintain employment, housing, and benefits; burdens the criminal justice system; and violates homeless individuals’ civil and human rights.¹²³

In the face of ongoing attacks, a few cities and states have provided affirmative protections for homeless persons. In February 2016, Indianapolis became the first city to require by law that adequate alternative housing be offered before a homeless encampment can be evicted.¹²⁴ Three states have passed homeless bills of rights in response to discrimination against homeless persons, but their coverage is limited and enforcement is uncertain.¹²⁵ New proposals have been introduced in California, Colorado, Delaware, Hawai’i, and Oregon, but have faced challenges in their enactment.¹²⁶ At the national level, the Law Center, together with more than 100 other organizations, launched the Housing Not Handcuffs Campaign this fall to end the criminalization of homelessness and

promote the human right to housing for all.

Moreover, the degrading and dehumanizing climate produced by criminalization ordinances promotes hate crimes and violence against people experiencing homelessness by private individuals. Criminalization makes homeless persons less likely to seek assistance from law enforcement when homeless individuals face threats, and the stigma attached to criminalization promotes the dehumanization of homeless individuals and tacitly encourages private attacks against them. From 1999-2015, housed individuals perpetrated 1,657 acts of violence against homeless individuals¹²⁷ in 48 states, Puerto Rico, and the District of Columbia, resulting in 428 deaths,¹²⁸ though many more may go unreported.¹²⁹ The federal government does not currently recognize homelessness as a protected class under its hate crimes statute, but several states have done so, for sentencing and/or tracking purposes.¹³⁰ These crimes, including an array of atrocities from murder to beatings, rapes, and even mutilation, are believed to have been motivated by the perpetrators’ biases against homeless individuals or by their ability to target homeless people with relative ease. The most crimes occur in states with the highest rates of criminalization, including California, with 25% of the attacks against persons experiencing homelessness in 2014-15, and Florida, with 18%.¹³¹ Lack of access to housing and services for homeless youth also places them at higher risk for violence. A survey of unaccompanied homeless youth in Illinois found 61% reported being victims of violent crimes, including theft, burglary, and physical or sexual assault.¹³²

The international community has developed a clear and consistent record condemning the criminalization of homelessness in the U.S. as violating our human rights obligations.¹³³ In 2016, the U.S. hosted two official mission visits from UN experts and that build that record:

- The U.N. Working Group on People of African Descent critiqued the police response criminalizing those experiencing homelessness.¹³⁴ In many communities, homelessness disparately affects racial minorities, and because homeless individuals must spend their lives in public, they are particularly exposed to profiling and disparate enforcement by police.¹³⁵ In 2015, the Department of Justice published the 21st Century

Policing Task Force report, encouraging police to adopt a “guardian” rather than “warrior” approach, providing an opening for advocates to address homeless persons concerns, along with other issues as police departments work to implement the report’s recommendations.¹³⁶ The Working Group made recommendations to reform police conduct according to the 21st Century Policing Guidelines, eliminate pre-trial detention and fines based upon inability to pay, uphold the right to adequate housing, and halt the demolition of public housing unless alternative affordable units are ensured.¹³⁷

- The U.N. Special Rapporteur on Freedom of Assembly and Association commented specifically on the intimidation of marginalized groups such as homeless people, and noted “a number of cities have ordinances which prevent homeless people from gathering in certain public places, despite the fact that most have literally nowhere else to go.”¹³⁸

Additionally, the U.N. Special Rapporteur on the Rights to Water and Sanitation noted in his report on gender and access to water and sanitation his concern that “Some countries criminalize open defecation while at the same time closing down public sanitation facilities. Public urination and defecation is often criminalized and laws that aim to keep cities clean may discriminate against homeless persons who have no other option but to relieve themselves in the open. Among them are many women and girls in desperate need of an adequate facility that offers privacy.”¹³⁹

At the U.N. Habitat III conference, the U.S. signed on to the New Urban Agenda, “commit[ing] to combat homelessness as well as to combat and eliminate its criminalization through dedicated policies and targeted active inclusion strategies, such as comprehensive, inclusive and sustainable housing first programmes.”¹⁴⁰

This year we are happy to report another strong year of federal government action to reduce criminalization of homelessness, in response to international attention and domestic advocacy. Following a 2009 congressional mandate that it address the issue, the U.S. Interagency Council on Homelessness (USICH)

issued a report, *Searching Out Solutions*,¹⁴¹ in 2012, and since that time has referred to criminalization of homelessness as a human rights violation.¹⁴²

U.S. Department of Housing & Urban Development (HUD). In July, HUD issued its annual application for funding for \$1.9 billion in federal homeless assistance grants, increasing the points awarded to a question requiring applicants to explain “how they are reducing criminalization of homelessness,” and providing new guidance on specific suggested strategies.¹⁴³ Additionally, the May 2016 phone meeting for the Mayor’s Challenge to End Veteran Homelessness focused on criminalization of homelessness, with HUD Secretary Julian Castro and other top officials reiterating to participating mayors that they will not succeed in ending veterans homelessness if they continue to pursue criminalization approaches.¹⁴⁴

U.S. Department of Justice (DOJ). In August 2015, the DOJ filed a brief stating its position that criminalization of homelessness can be unconstitutional,¹⁴⁵ and this year affirmed that this position was an “acknowledgement of the human rights of people experiencing homelessness.”¹⁴⁶ The DOJ made this statement in a letter to Seattle’s City Council, commending a proposed bill that ensures homeless persons living in encampments are placed into housing or safe, secure alternative accommodations before a homeless encampment is evicted.¹⁴⁷

Additionally, just following the issuance of last year’s Report Card, DOJ’s Community Oriented Policing Services December 2015 newsletter was dedicated to positive alternatives to the criminalization of homelessness, and an article by the USICH Director discussed “[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.’”¹⁴⁸ Further, DOJ issued guidance and grants to discourage the excessive use of fines and fees, and their non-payment as a reason for incarceration,¹⁴⁹ and filed a statement of interest brief in *Walker v. Calhoun*, stating bail practices of detaining indigent defendants before trial without a court’s meaningful consideration of the individual’s ability to pay violate the 14th Amendment.¹⁵⁰

U.S. Interagency Council on Homelessness (USICH). USICH continued to coordinate federal agencies against criminalization, listing its commitment to “engage communities to reduce the criminalization of homelessness and criminal justice involvement among people experiencing homelessness” as among its top priorities in 2016.¹⁵¹ Included in its 10 Strategies to End Chronic Homelessness, was a recommendation to partner with law enforcement, prisons, jails, and hospitals to conduct both in-reach and outreach to reduce the cycle between homelessness and criminal justice system involvement.¹⁵²

U.S. Department of Education (ED). This year, for the first time, the Department of Education contributed to the cross-agency push against criminalization with its July 2016 guidance on implementing the new provisions of the Every Student Succeeds Act. The guidance specifically advises education personnel to coordinate with state and local legislatures to ensure local laws and policies, particularly status offense laws and other laws that serve to criminalize homelessness, are not interfering with homeless students’ ability to get to school and learn.¹⁵³

White House

In June 2016, the White House launched the Data-Driven Justice Initiative, a bipartisan coalition of 130 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.”¹⁵⁴ The Law Center together with other organizations are supporting the Initiative’s cities and counties in reforming laws and policies that unnecessarily entangle homeless persons in the criminal justice system.

Federal Courts

In addition, numerous courts have continued to follow the position of the DOJ brief in *Bell v. Boise*, ruling that criminally punishing homeless individuals for sleeping or other life-sustaining behavior in the absence of adequate alternatives is cruel and unusual punishment.¹⁵⁵ Courts have similarly followed the 7th Circuit precedent in *Norton v. Springfield* in the

overturning of panhandling laws across the country as overly restrictive of freedom of speech.¹⁵⁶

The combined legal and policy actions from DOJ, HUD’s increased funding incentives, ED’s guidance, and the USICH guidance put the enforcement teeth of the federal government into the longstanding policy against criminalization. Several communities have already announced they would be amending laws on the books, or discarding proposed criminalization ordinances, but other communities continue to enact ordinances. We reward the continued federal actions by keeping the grade at B+ this year, but the federal government can still be doing more, and until we see the full impact of these actions at the local level, we cannot increase the grade further.

DOMESTIC VIOLENCE: B

According to the U.N. Office of the High Commissioner for Human Rights, “All women should possess a legal degree of security of tenure that guarantees protection against forced eviction caused by ... domestic or household violence....It is incumbent upon States parties to take into account any discriminatory effects of apparently sex-neutral laws, policies and programmes, develop monitoring systems, and design and implement programmes that give long-term effect to women’s economic, social and cultural rights.”¹⁵⁷ The U.N. Special Rapporteur on Violence Against Women noted: “In order to flee violent situations, women and girls must have the right to adequate housing enforced. Adequate housing refers not only to sufficient housing options, but also to secure ones. Lack of access to and availability of housing options for women seeking security puts women’s lives at risk.”¹⁵⁸

Domestic violence is a leading cause of homelessness in the U.S., particularly for women and children. More than 90% of homeless women report having experienced severe physical or sexual abuse, and many victims of abuse become homeless after escaping violence because adequate housing is not available.¹⁵⁹ For those survivors of economic abuse, escape from a dangerous situation can mean facing homelessness because there are no housing options available to someone with a ruined credit history, eviction record, or criminal record, even if those records are a direct result of being a victim of

relationship violence.¹⁶⁰ Even worse, victims who seek police or medical assistance are sometimes evicted due to nuisance ordinances, forcing survivors to have to choose between staying with their abuser or becoming homeless.¹⁶¹

The Violence Against Women Act (VAWA) of 2005 created new housing rights for survivors in some federally subsidized housing. The 2013 reauthorization of the law expanded these protections to over 4 million additional federally subsidized housing programs; included survivors of sexual assault as a protected group; added a requirement that public housing authorities provide notice to tenants of their housing rights; and created an emergency transfer policy. In October 2016, HUD finalized its VAWA implementation regulations, taking into account many of the comments and recommendations proposed by advocates, including key ones to ensure economic abuse survivors are protected.¹⁶² In an unprecedented step, the regulations state: “The implementation of the policies laid out in this rule will help to enforce this basic human right,” the first time regulations have directly referenced their role in enforcing human rights standards.¹⁶³ As important as these federal protections are, they only cover the 4.9 million federally-funded rental households—just 12% of the estimated 41 million rental households in the United States.¹⁶⁴

HUD also continued to use its enforcement authority under the Fair Housing Act to combat housing discrimination against victims of domestic violence.¹⁶⁵ In September 2016, HUD issued guidance targeting local nuisance and crime-free housing ordinances that penalize victims when police are called “too often” to a certain residence.¹⁶⁶ The guidance explains how nuisance ordinances as applied to victims may violate the Fair Housing Act. HUD also issued guidance formalizing legal standards for harassment in housing, including sexual harassment, as prohibited under the federal Fair Housing Act.¹⁶⁷

Nearly every state has enacted some protections that expand housing protections for survivors, but it is important to note that only few states have expanded VAWA’s non-discrimination provisions to private landlords, leaving many households still unprotected.¹⁶⁸ State and local protections include providing a defense from eviction due to the abuse, allowing early lease termination due to domestic

violence, changing locks to protect survivors from abusers, obligating abusers to provide for the survivor, and protecting the confidentiality of survivors’ records.¹⁶⁹

While efforts by HUD and individual states are commendable, there is still a lot of work to be done to fill legal gaps and to ensure proper implementation of VAWA 2013. HUD still needs to provide additional guidance technical assistance, and training. Furthermore, HUD has not yet announced the official process for enforcing VAWA 2013 across the multiple programs affected.

The U.S. Department of Agriculture and U.S. Department of Treasury still need to promulgate regulations to fulfill their responsibilities toward VAWA implementation. Furthermore, interagency collaboration and coordination at federal, state, and local levels remain to be seen.

The excellent new HUD regulations for implementing VAWA, as well as the guidance on nuisance and crime-free housing ordinances have great potential to keep survivors safe, help victims heal, prevent homelessness, and move them towards self-sufficiency and merit an increase from last year’s “C” grade. However, the continued, lengthy delay on implementing regulations from Treasury and Agriculture, and HUD’s lack of guidance and enforcement process keep the grade at a solid “B.”

B. AVAILABILITY OF SERVICES, MATERIALS, AND INFRASTRUCTURE: D

The Committee on Economic, Social and Cultural Rights (CESCR) has stated that adequate housing must provide inhabitants with not only basic facilities to reside safely within, but also access to essential services, materials, facilities and infrastructure. The CESCR defines and explain these elements of adequate housing as follows:

An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and

washing facilities, means of food storage, refuse disposal, site drainage and emergency services.¹⁷⁰

Existing infrastructure (or lack thereof) in the U.S. inextricably links housing or other facilities with access to water, sanitation, and other basic services. Two ways in which this lack of infrastructure plays out are (1) a lack of shelter and (2) a lack of access to water and sanitation.

Surplus Property

In many areas of the country, federal vacant properties are potential infrastructure that could be used to provide urgently needed emergency shelter and services for homeless individuals, as well as potentially longer-term housing options.¹⁷¹ Emergency shelters in 76 percent of cities surveyed by the U.S. Conference of Mayors had to turn away homeless families with children, and 61 percent had to turn away unaccompanied individuals.¹⁷² But the federal government has failed in its statutory duty to use its existing resources to improve the availability of services and infrastructure to homeless individuals. Title V of the McKinney-Vento Act requires government agencies to make available vacant federal properties to homeless service agencies to provide housing and other services, before they can be otherwise transferred or sold. In March 2013, following litigation, a court found that many government agencies have not been complying with the law and mandated additional steps for compliance.¹⁷³ The program continues to be hindered by federal agency non-compliance with the law, an overly burdensome application process, and inadequate advertisement and outreach. But some positive steps have been taken by Congress that will hopefully lead to improved transparency into the federal government's real property holdings, and to make explicit that unused federal property can be used to permanently house homeless people without conditions. The Federal Assets Sale and Transfer Act of 2016, H.R. 4465, that would make these important improvements to the Title V program passed the U.S. House of Representatives in May 2016, and its Senate companion has a chance of passing in 2016 after this report is written but before the end of the year.¹⁷⁴

Water and Sanitation

For poor persons, water disconnections often happen when people have to choose between paying for water or rent, resulting in a violation of both the right to adequate housing and the right to water.¹⁷⁵ In October 2015 and April 2016, the Inter-American Commission on Human Rights held hearings on the violations of the right to water in the U.S.¹⁷⁶ Testimony from Detroit shared how residents are losing their homes due to unpaid water bills.¹⁷⁷ Residents of poor rural communities shared that they are even threatened with criminal sanctions for not being able to afford sewage treatment, although assistance programs are severely lacking.¹⁷⁸ Furthermore, at least one bankruptcy court ruling stated access to water is not a right, in clear contradiction to international standards.¹⁷⁹ On a more positive note, Philadelphia advocates shared model legislation passed in late 2015, requiring income-based billing and providing housing protections when water bills are not paid.¹⁸⁰

For homeless individuals, lack of shelter often means lack of access to water and sanitation infrastructure.¹⁸¹ Kelly Miller, a homeless woman living on the streets of Washington, D.C., highlighted the challenges faced by all homeless persons, and in particular, homeless women, in their lack of access to regular sanitation in testimony to the Commission.¹⁸² Relatedly, the UN Special Rapporteur on the rights to water and sanitation focused his annual report on gender issues, and specifically recommended, "The sanitation and menstrual hygiene needs of homeless women and girls are almost universally unmet and the needs of that group are rarely reflected in water and sanitation policies. Human rights law demands that States place a particular focus on the needs of the most marginalized; hence, States should ensure that homeless women and girls have access to facilities."¹⁸³ In October, New York City passed landmark legislation guaranteeing access to free menstrual hygiene products in schools, jail and shelters.¹⁸⁴ But in much of the rest of the country, women face the unhealthy and demeaning prospect of dealing with their monthly period without access to adequate facilities or supplies.¹⁸⁵

The House of Representatives' good work in passing H.R. 4465 increases the grade slightly this year, but until the Senate passes it and we see it implemented, the federal government's failure to make vacant

properties fully accessible, and the lack of significant federal steps to either directly address the ongoing crisis in affordable water and sanitation for poor and homeless persons or promote adequate solutions at the local level prevent us from raising the grade above “D” this year.

C. AFFORDABILITY: **F**

In General Comment 4, the CESCR defines affordability in housing as follows:

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials.¹⁸⁶

Over half of all American renters pay more than 30% of their income for housing.¹⁸⁷ For extremely low-income (ELI) households, 75% are paying *more than half* of their income in rent.¹⁸⁸ Since 1991 the number of poor families that have to spend more than half of their income on housing costs has risen by 10%.¹⁸⁹ Average rents have increased for 23 straight quarters, and were 15.2% higher in 2014 than in 2009.¹⁹⁰

This problem is caused in part by the lack of available, affordable housing for low-income renters. On top of the existing gap in availability of affordable units, the supply of low-cost rental units has declined since 2007.¹⁹¹ While ELI renter households may qualify for federal and local subsidy programs, demand for these programs far exceeds the supply: *there is only enough funding for one in four eligible renters to receive assistance*.¹⁹² The remaining three-fourths of eligible ELI households desperately in need of housing find

themselves on multi-year waiting lists, or find that waiting lists for affordable housing in their area are closed altogether.¹⁹³ While the affordable housing stock declines each year and more families and individuals are unstably housed, the rental market for higher-income households continues to grow, foreclosed homes stand vacant, and abandoned government-owned properties remain empty.¹⁹⁴

Lack of affordable housing is the primary cause of homelessness, and the ongoing crisis has led to an increase in the numbers of people experiencing homelessness. While HUD’s point-in-time count of homeless persons living in shelters and public places has decreased over the past six years,¹⁹⁵ this number is almost certainly a significant undercount of homelessness.¹⁹⁶ It does not include people living doubled up with family or friends. The number of people living doubled up was 7 million people in 2014; since 2007 there has been an increase of 52%.¹⁹⁷ Moreover, close to 1.4 million school children were homeless during the 2013-2014 school year—and almost 2.5 million children overall were homeless in 2013.¹⁹⁸ The school numbers represent an 8% increase since the previous year, and have almost doubled since the beginning of the economic crisis in 2007.¹⁹⁹

The HUD budget has decreased by more than 56% since its high point in 1978, leading to the loss of approximately 10,000 units of federally-subsidized low income housing each year.²⁰⁰ This loss comes on top of the failure to produce any new units of affordable housing, reversing the trend of keeping pace with need that preceded 1978, and that prevented homelessness from being a widespread phenomenon.²⁰¹ In the meantime, subsidies to upper income housing through the Mortgage Interest Deduction (MID) have grown to such an extent that the entire \$32.8 billion HUD budget benefitting low-income renters in 2014 was dwarfed by the \$101.5 billion expenditure on the MID, with 72% of the benefit going to homeowners making more than \$100,000/year.²⁰²

The National Housing Trust Fund (NHTF), established in 2008, was designed to be a permanent, dedicated funding source to increase and preserve the supply of rental units and increase homeownership for the lowest income households. The NHTF is funded by a modest fee on government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac.

When the GSEs were taken into conservatorship by the Federal Housing Finance Administration (FHFA) in September 2008, their obligation to fund the HTF was suspended.²⁰³ Fortunately, FHFA Director Mel Watt announced he was lifting the suspension on December 11, 2014 and directed Fannie and Freddie to begin setting aside the funds in 2015.²⁰⁴ HUD announced that nearly \$174 million in NHTF funds were available to states in 2016.²⁰⁵ While these funds represent a promising start to the NHTF, more funding is necessary to address the shortage of affordable rental units nationwide.

The ongoing failure to fund federal housing safety net programs at adequate levels keep this grade at an “F”.

D. HABITABILITY: D

With the advent of housing codes, modern construction techniques, and the implied warranty of habitability,²⁰⁶ the quality of contemporary housing has improved dramatically and the number of substandard dwellings in the United States’ housing market has decreased.²⁰⁷ Still, overcrowding and other issues ranging from bed bugs, mold, and lead paint remain.²⁰⁸ Moreover, the risks associated with poor housing conditions are borne disproportionately by racial minority and low-income individuals.²⁰⁹ Those living below the federal poverty line, for example, are three times more likely to have substandard quality housing than those who are not poor.²¹⁰ According to international standards, adequate housing must be habitable, providing the inhabitants with “adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.”²¹¹

While much of the U.S. enjoys high quality housing stock, many poor families experience dangerous or unhealthy conditions. Between 2007 and 2012, the number of shared households increased by 13.2%, totaling 22.3 million households in 2012.²¹² Doubled-up living situations are often unstable, overcrowded, and potentially unsafe if families or youth living on their own are forced to move into inadequate or abusive households to avoid living on the streets.

Beyond doubling up, low-income housing units are often poorly maintained—in violation of housing

codes that lack adequate enforcement mechanisms. Many violations go unpunished and un-remedied, leading to a broad range of health problems for residents, including “dermatitis, respiratory distress, asthma, lead poisoning, and injuries.”²¹³ While Flint, Michigan has received much deserved attention to its lead crisis, millions of tenants nationwide live in lead-contaminated housing.²¹⁴ 9% of all tenants experience other deficiencies in plumbing, electricity, structural integrity, or heating.²¹⁵ And the lack of counsel by attorneys shared above means that many poor renters find themselves on the streets after attempting to get these issues fixed.²¹⁶

In a chapter entitled “Rat Hole,” Matt Desmond documented a representative sample of living conditions using a real life story of twelve people living in a two bedroom apartment, with “the rear door...off its hinges...walls pockmarked with large holes...bathroom...ceiling sagged from an upstairs leak and a thin blackish film coated the floor. The kitchen windows were cracked....[and the apartment] was without power. Everything in the refrigerator spoiled....the roaches were there when the Hinkstons moved in: crawling the sinks, the toilet, the walls, filling kitchen drawers...”²¹⁷ But, “when tenants fell behind [on rent], [habitability] protections dissolved. Tenants in arrears were barred from withholding or escrowing rent; and they tempted eviction if they filed a report with a building inspector.”²¹⁸

This year, HUD published a proposed rule on lead paint in federal subsidized properties.²¹⁹ While the proposed rule greatly improves HUD’s approach to lead poisoning in federally assisted housing, the rule fails to prevent lead poisoning because children still must be lead poisoned and suffer permanent neurological damage before interventions are triggered in certain categories of federally assisted housing.²²⁰ The final rule should increase prevention practices, enforcement, oversight, and reporting requirements and require client-centered services, and mandate expeditious adoption of changes.²²¹

The unmet behavioral health needs of some homeless persons start with adequate housing but also include supportive service and health care. The expansion of healthcare access under the Affordable Care Act offers promise, but 19 states have not yet expanded Medicaid, the government subsidized healthcare program for low-income individuals, leaving millions

of Americans in a “coverage gap.”²²² This will mean that some states will be left behind in treating homeless and poor persons with mentally illness and addiction.

Congress and HUD’s overall lack of measures to ensure habitable housing keep this grade at a “D” this year.

E. ACCESSIBILITY: B-

Housing must be accessible to everyone. Often the disadvantaged need proactive protection to make housing truly accessible to them. Housing law and government policy should ensure that the housing needs of vulnerable groups are met and that avenues of recourse are open in the event that discrimination against them occurs. The CESSCR defines the element of accessibility as follows:

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups.²²³

Many Americans experience significant difficulties in accessing adequate housing. First, HUD’s definition of homelessness is overly narrow, blocking some homeless persons from government aid. Furthermore, housing applicants experience discrimination based on criminal history, race, disability, sex, source of income, and other statuses.

Definition Barriers

A major barrier to many people accessing federal housing resources is the restrictive and sometimes confusing definitions used to define homelessness for the purposes of determining eligibility for federal housing and benefits programs. HUD’s overly restrictive definition of homelessness excludes persons living in doubled-up situations or low-cost

motels with no other place to go.²²⁴ This eliminates the eligibility of many in need of resources to receive housing aid, even though they are eligible for federal homeless assistance from other federal agencies, such as the U.S. Department of Education.²²⁵ Many state and local education officials tasked with providing services to homeless students (using ED’s broader definition), for example, express frustration with the lack of coordination and collaboration with other agencies which do not serve their students and families.

Criminal History Barriers

Both private landlords and public housing authorities frequently deny people with criminal convictions or even arrest records access to housing, leading 1 in 11 prisoners to be released into homelessness.²²⁶ In 2011, following years of advocacy, including the 2010 UPR recommendations to increase affordable housing access, HUD issued a letter to public housing authorities encouraging them to reduce these restrictions.²²⁷ 2015 and 2016 marked the years that HUD finally put teeth into these recommendations by issuing important guidance to both public and private housing providers on criminal records, recognizing the racially disparate impact of criminal justice policies. For public housing authorities, arrest records alone may not be the basis for denial, authorities are encouraged to use their discretion where circumstances warrant, and they must comply with overall fair housing laws.²²⁸ In a broader piece of guidance, HUD emphasized that overbroad blanket bans by landlords are not permitted by the Fair Housing Act. While landlords are permitted to use information about criminal history, “criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another (i.e., discriminatory effects liability).”²²⁹ These are important steps forward but more time is needed to see whether these steps will ensure formerly incarcerated individuals are not forced to be homeless after paying their debts to society.

Race and Gender Barriers

HUD took other positive steps in 2016. First, it finalized a new rule which would revise the way fair

market rents are calculated to allow voucher holders more access to rentals in higher-income areas.²³⁰ Second, it built on the Equal Access Rule by requiring housing and homeless service providers to “provide all individuals, including transgender individuals and other individuals who do not identify with the sex they were assigned at birth, with access to programs, benefits, services, and accommodations in accordance with their gender identity without being subjected to intrusive questioning or being asked to provide documentation.”²³¹ Third, it issued a regulation to protect against sexual, and other, harassment in housing.²³²

Even where needy applicants are able to access affordable housing or obtain housing assistance, they face discrimination in the private housing market on the basis of race, disability, gender, source of income, or other status, despite some strong protections on paper. There were 27,994 complaints of housing discrimination registered in 2015, a minority of the estimated total amount of housing discrimination.²³³

In 2016, HUD delivered on many overdue promises with efforts to reduce the racially disparate impact of criminal records and the limitations of housing vouchers are reduced, however its failure to recognize the full scope of homelessness, limited action on lending policies, and questionability of enforcement practices with its new policies keeps this grade from rising to more than a “B-” this year.

F. LOCATION: B-

Adequate housing requires more than four walls and a roof; it also must be in a location that makes it possible to access necessary resources. According to the CESC, location includes the following aspects:

Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.²³⁴

Too often in the United States poverty is segregated, often along racial lines, so poor families and families of color have significantly reduced access to quality schools, good jobs, healthy housing, and safe neighborhoods.²³⁵

Despite laws against racial segregation, governments at all levels in the United States continue to develop and perpetuate segregation through zoning laws, affordable housing decisions, and more.²³⁶ HUD historically has failed to sufficiently enforce its obligations, as well as state and local requirements, under the Affirmatively Furthering Fair Housing (AFFH) provision of the Fair Housing Act, which is intended to eliminate entrenched patterns of segregation by requiring federal, state, and local governments to take proactive measures to undo segregation.²³⁷

This year, HUD published tools and guidance,²³⁸ building on a 2015 final regulation requiring Public Housing Authorities (PHAs), and state and local governments that receive HUD funds to incorporate regional analyses of residential segregation into their planning.²³⁹ The rule requires an analysis of how patterns of segregation are related to opportunity indicators, including good schools, job opportunities, and transportation.

Also in 2016, HUD and DOJ issued joint guidance on zoning codes and other land use laws.²⁴⁰ This guidance should help communities grappling with how to address segregation.

The federal government has continued to move forward after major steps last year. Now we must see whether these new policies result in better lives for extremely low-income individuals and their children. This is progress, but still tenuous and unfinished, warranting a “B-” grade.

G. CULTURAL ADEQUACY: D-

According to the CESC, adequate housing must be culturally adequate:

The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

Although many groups face challenges of maintaining their culture, the poor state of housing for Native Americans violates not only human rights, but also tribal treaty obligations. Inadequate housing for Native Americans creates negative impacts on cultural and social practices—through overcrowding, lack of maintenance, and destruction of historical cultural connections to land and traditional settlement patterns.²⁴¹ Congress has reduced funding for the Indian Housing Block Grant (IHBG) program by close to one-quarter between 2000 and 2015, despite the IHBG's existing lack of adequate resources.²⁴² HUD is developing a report, now expected to be released in December 2016, on the housing needs of Native Americans, Alaska Natives, and Native Hawaiians, which could bring much-needed attention to this ongoing issue.²⁴³

Last year, USICH and several lead agencies signed an agreement to work together on a few key actions that will begin to address Native American homelessness both on and off tribal lands.²⁴⁴ Based on this agreement, HUD and VA announced \$5.9 million in funding for HUD to provide vouchers for rental housing and the VA to provide supportive services for Native American veterans, an extension to rural and reservation areas of a program that had formerly only been available in urban areas.²⁴⁵

The new attention from HUD, VA, and USICH is welcome, but while the federal government has taken limited steps to ensure culturally adequate housing for Native Americans, the scope of the crisis is desperate, and much more can be done, necessitating a slide back to a "D-" grade this year.

RECOMMENDATIONS

In 2017, a new Congress begins and the Trump Administration will move into the White House and executive agencies in the context of an ongoing affordable housing crisis and widespread homelessness. Congress and the Administration must take affirmative steps to improve Americans' enjoyment of their fundamental right to affordable, safe, appropriate housing. Our country's economic struggles are not a reason to defer taking action to realize this vital goal. Rather, it is precisely now that the need to do so is most acute, and a rights-based approach to budgeting and policy decisions would help generate the will to protect people's basic human dignity first, rather than relegating it to the status of an optional policy.

Many steps that require few additional resources would bring the U.S. closer to compliance with its human rights obligations, including laws and regulations to rebalance rights within the private housing market. Where additional public resources are required, framing these expenditures as part of our government's basic obligations to its citizens—the same as its duty to ensure freedom of speech or a fair trial—allows it to establish a new baseline as budget debates intensify.

Because the human right to housing framework itself is so broad, the list of remedies to present violations is similarly broad. We have highlighted the ten most critical—and most relevant—first steps to ending and preventing homelessness:

INCREASE HOUSING FUNDING AND ACCESS TO RESOURCES

1. Congress and HUD should allocate at least \$1 billion in new money per year to homelessness prevention programs, and expand HUD's definition of homelessness to include those living in doubled-up situations or in motels due to loss of housing or economic hardship—as other federal agencies have done.

2. Congress and HUD should ensure every person can afford adequate housing through a combination of new construction of subsidized units, universal vouchers, and funding the National Housing Trust Fund at a minimum of \$1 billion per year.
3. Congress and HUD, HHS, and GSA should protect and strengthen Title V of the McKinney-Vento Act, which requires vacant or underutilized federal property to be made available to homeless service providers at no cost, by increasing the number of useful properties made available and easing the application process.
4. Federal, state and local governments must work together to ensure no person loses access to water or sanitation due to inability to pay, or loses their home due to an inability to pay a utility bill.

STRENGTHEN RIGHTS

5. Congress and the Administration should pass the Permanently Protecting Tenants at Foreclosure Act, including a private right of action, and vest authority in the Consumer Protection Financial Bureau to regulate and enforce compliance.
6. Congress, state, and local governments should ensure a right to counsel in all civil cases involving the potential loss of housing or inadequate housing conditions, and significantly expand funding for legal aid services to facilitate the implementation of this right.
7. HUD, DOJ and other agencies should take concrete steps to stop local criminalization efforts by providing further incentives for constructive alternative approaches and decriminalization and aggressively pursuing enforcement action. States should support and enact Homeless Bills of Rights; local governments should stop enforcing laws that criminalize homelessness in the absence of shelter or housing, and provide adequate notice and adequate alternative housing before evicting homeless persons living in encampments.

8. HUD, the Department of Agriculture, and Treasury should fully implement the Violence Against Women Act's housing protections through regulation and other guidance and encourage states and municipalities to expand the Act's protections to housing that has no federal subsidy.
9. HUD should fully implement Affirmatively Furthering Fair Housing and fund efforts to support compliance and enforcement.

IMPROVE ECONOMIC JUSTICE AND FAIRNESS

10. Congress should increase the minimum wage and Supplemental Security Income benefits, so that both working and low-income disabled people can afford adequate housing as well as meet other basic needs while paying no more than 30 percent of their income for housing.

(Endnotes)

- 1 While the Department of Housing and Urban Development reported an overall decline of 2 % in homelessness nationally based on a single night's count in 2015, this count is based on a severely limited and flawed method that almost certainly misses large numbers of homeless people. On a single night in January, 2015, the Department of Housing and Urban Development counted 564,708 people experiencing homelessness living in shelters and public places (the "HUD definition" of homelessness) a difference of 13,716 people from 2014; 206,286 of those people were in families. See U.S. Department of Housing & Urban Development, THE 2015 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS, PART 1 POINT-IN-TIME ESTIMATES OF HOMELESSNESS (2015), <https://www.hudexchange.info/resources/documents/AHAR-2014-Part1.pdf> (hereinafter "HUD PIT 2015"); see also, Maria Foscarinis, *Homeless problem bigger than our leaders think: Column*, USA TODAY (Jan.16, 2014), <http://www.usatoday.com/story/opinion/2014/01/16/homeless-problem-obama-america-recession-column/4539917/>. (hereinafter "Foscarinis, *Homeless problem bigger*").
- 2 U.S. Department of Education, TOTAL NUMBER OF HOMELESS STUDENTS ENROLLED IN LEAs WITH OR WITHOUT MCKINNEY-VENTO SUBGRANTS (2015), <http://eddataexpress.ed.gov/data-element-explorer.cfm/tab/data/deid/5353/> (hereinafter "ED Count 2015"); American Institutes for Research, AMERICA'S YOUNGEST OUTCASTS: A REPORT CARD ON CHILD HOMELESSNESS, 6 (2014).
- 3 See, *id.*
- 4 National Alliance to End Homelessness, THE STATE OF HOMELESSNESS IN AMERICA 2015, 3 (2015), http://www.endhomelessness.org/page/-/files/State_of_Homelessness_2015_FINAL_online.pdf.
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- 6 See National Coalition for the Homeless, SWEEP AWAY: REPORTING ON THE ENCAMPMENT CLOSURE CRISIS, 5 (2016) (hereinafter "SWEEP AWAY"); National Law Center on Homelessness & Poverty & Yale University Law School Allard K. Lowenstein Human Rights Clinic, WELCOME HOME: THE RISE OF TENT CITIES IN THE UNITED STATES (2013) (hereinafter "WELCOME HOME"), http://nlchp.org/documents/WelcomeHome_TentCities. WELCOME HOME documented media reports of tent cities in 46 states across the country, and we have since documented reports in all other states.
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- 9 See Eric Tars and Liz Osborn, *Leading By Example on the Human Rights of People Experiencing Homelessness*, US Interagency Council on Homelessness Blog (Oct. 13, 2015), <http://usich.gov/blog/leading-by-example-on-human-rights-of-people-experiencing-homelessness>; U.S. Dept. of Housing & Urban Development, *Alternatives to Criminalizing Homelessness*, <https://www.hudexchange.info/homelessness-assistance/alternatives-to-criminalizing-homelessness/>; United States Interagency Council on Homelessness, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS, 8 (2012).
- 10 U.S. Dept. of Housing & Urban Development, NOTICE OF FUNDING AVAILABILITY FOR THE 2016 CONTINUUM OF CARE PROGRAM COMPETITION, 35 (2016), <https://www.hudexchange.info/resources/documents/FY-2016-CoC-Program-NOFA.pdf>; (hereinafter "HUD NOFA"). National Law Center on Homelessness & Poverty, *The Cost of Criminalizing Homelessness Just Went Up By \$1.9 Billion* (2015), http://www.nlchp.org/press_releases/2015.09.18_HUD_NOFA_criminalization.
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- 29 See *Saving Taxpayer Dollars in Federal Real Estate: Reducing the Government's Space Footprint: Hearing Before the Subcommittee on Economic Development, Public Buildings and Emergency Management of the House, Committee on Transportation & Infrastructure*, 114th Cong. (2015) (statement of Maria Foscarinis), https://www.nlchp.org/TitleVtestimony_June2015.
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- 37 General Comment 4, *supra*, note 33.
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against forced eviction, harassment and other threats. States are therefore required to take immediate measures to confer legal security of tenure for those lacking such protection, following genuine consultation with affected persons and groups.”).

- 39 *Id.* at ¶ 8(b). (“All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”).
- 40 *Id.* at ¶ 8(c). (“All costs associated with housing should be at a level sufficient to ensure that the attainment and satisfaction of other basic needs are not threatened or compromised. Housing subsidies should be available for those unable to obtain affordable housing, and tenants have to be protected from unreasonable rent levels”).
- 41 *Id.* at ¶ 8(d). (Adequate housing implies that inhabitants are provided with adequate space, and protected from the elements and other threats to health such as structural hazards and disease. Physical safety of the occupants must be guaranteed.)
- 42 *Id.* at ¶ 8(e) (“Adequate housing must be accessible to those entitled to it. Disadvantaged groups such as the elderly, children, physically disabled persons, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be assured of some degree of priority consideration in the housing sphere.”)
- 43 *Id.* at ¶ 8(f). (“Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.”)
- 44 *Id.* at ¶ 8(g). (“The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, *inter alia*, modern technological facilities, as appropriate are also ensured.”)
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- 49 *Id.* at 40.
- 50 See *id.*
- 51 See National Alliance to End Homelessness, *HOMELESSNESS LOOMS AS POTENTIAL OUTCOME OF RECESSION* (2009).
- 52 National Bureau of Economic Research, Business Cycle Dating Committee, National Bureau of Economic Research (Sept. 10, 2010), <http://www.nber.org/cycles/sept2010.html>.
- 53 See STATE OF THE NATION’S HOUSING, *supra* note 30, at 4.
- 54 *Id.* at 4.
- 55 *Id.* at 5.
- 56 ED Count, *supra* note 2; AMERICA’S YOUNGEST OUTCASTS, *supra* note 2, at 6.
- 57 See *id.*
- 58 See *SWEPT AWAY*, *supra* note 6, at 5; *WELCOME HOME*, *supra* note 6. *WELCOME HOME* documented media reports of tent cities in 46 states across the country, and we have since documented reports in all other states.
- 59 THE STATE OF HOMELESSNESS IN AMERICA 2015, *supra* note 4, at 3.
- 60 On a single night in January, 2015, the Department of Housing and Urban Development counted 564,708 people experiencing homelessness living in shelters and public places (the “HUD definition” of homelessness) a difference of 13,716 people from 2014; 206,286 of those people were in families. See HUD PIT 2015, *supra* note 1.
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- 64 The Housing Act of 1949 (Title V of P.L. 81-171).
- 65 See International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, art. 11(1), 993 U.N.T.S. 3, 5 (entered into force Jan. 3, 1976); Ratification/Signature Status of the International Covenant on Economic, Social and Cultural Rights, at http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_3html. (Under the U.S. Constitution, the President signs treaties, and the Senate must ratify them by a 2/3 vote. See U.S. CONST. Art. II, Sec. 2).

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