

Housing and Homelessness
in the United States of America

Submission to the United Nations Universal Periodic Review of
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Coordinating organization description:

The National Law Center on Homelessness & Poverty was founded in 1989 as a nonprofit organization based in Washington, D.C., and is the only national legal group in the United States dedicated to ending and preventing homelessness. We operate programs across the United States that serve America's more than 3.5 million homeless families, children and individuals. We believe that the right to adequate housing, healthcare, food, and education lie at the heart of human dignity and we envision a world where no one has to go without the basics of human survival. The Law Center has actively participated in international human rights advocacy since the 1996 Habitat II conference in Istanbul, and was ECOSOC-accredited in 2014.

I. Executive Summary

1. The United States of America recognized the human right to housing in the Universal Declaration of Human Rights as well as a number of other international covenants and declarations, and accepted the following recommendations during the 2015 Universal Periodic Review¹ 1) progressive recognition of the right of all residents in the country to adequate housing, food, health and education, with the aim of decreasing poverty; 2) invest further efforts in addressing the root causes of recent racial incidents and expand its capacity in reducing poverty in neighbourhoods experiencing sub/par public services, including access to adequate housing and public safety, and 3) amend laws that criminalize homelessness.²
2. Since the 2015 Review, the U.S. has received findings and recommendations on its failure to address uphold the right to housing or protect the rights of homeless persons as well failure to address shortcomings in basic social protections, criminalization of the homeless, unfair treatment of the poor in the criminal justice system, and persistent discrimination and poverty as it relates to people of color, women and indigenous people -- from the Special Rapporteur on extreme poverty and human rights³ and the rights of indigenous people.⁴
3. With regards to the housing-specific recommendations accepted by the U.S., since 2015:
 - a. Homelessness has not been reduced, and is on the rise in many urban areas. U.S. law provides no entitlement to housing assistance for low income people; recognition of a right to even basic shelter is extremely limited to a few communities. Reports of homeless encampments have increased more than 1300% since 2007; $\frac{3}{4}$ of these have no legal protection and are under constant threat of eviction. Due to regulatory barriers, thousands of federal, state, and local government-owned properties remain vacant even as families are forced onto the streets. Domestic violence remains a leading cause of homelessness among women. More than 1.3 million homeless students were identified in 2016, but they continue to face barriers to their education. Lack of a right to counsel in civil cases concerning housing leads to wrongful evictions and foreclosures.
 - b. Homeless persons remain vulnerable to threats. Despite the lack of adequate housing or even shelter, many homeless people in the United States regularly face the degradation of performing basic bodily functions – sitting, eating, sleeping, and going to the bathroom – in public, a condition which is compounded when they are criminally punished for doing so. Homeless people living in encampments are routinely evicted with no provision of alternative housing. The President has called for razing of encampments, while using demeaning language, expressing more sympathy for the supposedly depressed home values of wealthy

foreign investors than the human beings forced to live on the streets. All this leads to a climate which permits brutal violence against homeless persons to take place.

- c. Housing affordability remains at crisis levels. In only a handful of U.S. jurisdictions can a person working full time at the federal minimum wage afford a one-bedroom apartment. Due to lack of funding, only one quarter of renters eligible for federal housing assistance actually receive it, more than 18 million Americans are paying more than 50% of their income on housing each month, and the federal budget for developing and maintaining public housing and providing for low-income housing subsidies has decreased. No binding requirements exist for jurisdictions to plan for and create incentives for the production of sufficient adequate, affordable housing for low-income persons.
 - d. Discrimination on the basis of race, disability, gender, national origin, criminal background, and a number of other characteristics remains persistent in the housing market. The Trump Administration has delayed implementation of the Affirmatively Furthering Fair Housing regulations to affirmatively desegregate communities, and has proposed a revised “public charge” rule which will force an estimated 55,000 immigrant families to withdraw from federal housing assistance and face homelessness.
4. To comply with its human rights obligations, the U.S. must:
- a. Acknowledge housing as a human right and create comprehensive policies to guarantee all aspects of the right;
 - b. Reduce homelessness by ensuring no family or individual is evicted without a place to go: prohibit evictions of homeless encampments without providing adequate alternative housing; provide a right to counsel in all civil cases involving the potential loss of housing; and reauthorize the Violence Against Women Act and promulgate strong regulations to implement its expanded housing;
 - c. Better protect homeless persons: strengthen federal funding incentives to discourage criminalization of homelessness; pass homeless bills of rights; track hate crimes against homeless persons; and increase funding to implement homeless students’ right to education;
 - d. Ensure adequate, affordable housing: increase funding for homelessness prevention and affordable housing programs, including by adequately and permanently funding the National Housing Trust Fund; and reduce barriers to accessing housing benefits, including the limited definition of homelessness; and eliminate regulatory barriers to granting vacant federal properties to housing service providers; and

- e. End housing discrimination: increase enforcement of anti-discrimination laws; reverse the delay in implementation of the Affirmatively Furthering Fair Housing regulation; and reverse proposed changes to the public charge rule.

II. Background and Framework

5. Scope of International Obligations:

The United States is under obligations to protect the human right to adequate housing under numerous treaties and declarations.⁵ It specifically accepted, at least in part, recommendations during the 2015 Universal Periodic Review 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,”⁶ “Invest further efforts in addressing the root causes of recent racial incidents and expand its capacity in reducing poverty in neighbourhoods experiencing sub/par public services, including access to adequate housing and public safety,”⁷ and “Amend laws that criminalize homelessness and which are not in conformity with international human rights instruments,”⁸ In 2018, the U.S. received specific recommendations regarding the right to adequate housing and protection of homeless persons from criminalization from the Special Rapporteur on extreme poverty and human rights.⁹ To date, no comprehensive or specific action plan addressing the concerns and recommendations raised by any of these human rights monitoring bodies has been proposed by the Administration.

6. Constitutional and Legislative Framework:

At both the federal and local levels, the U.S. has included as legislation and/or policy some of the elements of the right to housing. However, many significant elements are missing, and others are under-funded and under-implemented. Housing is not protected as a right in the Constitution or by legislation, though legislation, including the 1949 Housing Act, the 1968 Fair Housing Act, and the 1987 McKinney-Vento Homeless Assistance Act, has improved access to housing for some. Legislative programs include funding for subsidized housing, protections for the security of tenure of residents, housing codes, creation of housing discrimination enforcement bodies, and resources for homeless assistance programs. However, the Department of Housing and Urban Development (HUD) budget has decreased by more than 54% since its high point in 1978,¹⁰ and the Administration has proposed further dramatic cuts.¹¹ The U.S. Interagency Council on Homelessness (“USICH”) has issued a federal strategic plan to prevent and end homelessness,¹² and a report on constructive alternatives to the criminalization of homelessness,¹³ but neither provides funding for their implementation. On a positive note, for the first time in 2019, a growing number of leading U.S. political figures,

including presidential candidates, have started addressing housing explicitly as a human right, some including it in their policy platforms and others introducing legislation to implement parts of the right.¹⁴

7. Institutional and Human Rights Infrastructure:

Housing program infrastructure is discussed below. In terms of human rights infrastructure, under the previous administration, there was an inter-agency working group on human rights; currently this working group has either disbanded or is not active, and no formal mechanism exists to transmit the recommendations of human rights bodies to the domestic agencies or legislative bodies at the federal, state, or local level which would implement them.

8. National Jurisprudence:

There is no judicially enforceable right to housing or housing assistance, even where homeless individuals are evicted from temporary dwellings into further homelessness. In September 2018, the 9th Circuit Court of Appeals ruled that homeless persons cannot be criminally punished for undertaking basic life-sustaining activities such as sleeping in public when they lack adequate alternatives;¹⁵ this case is currently being considered for appeal to the Supreme Court.¹⁶ There is also no federal right to a lawyer in eviction or foreclosure.

9. National UPR Consultative Process:

Despite inquiries from civil society, the Administration did not engage in any consultations under the UPR process.

III. Promotion & Protection of Human Rights on the Ground

10. The U.S. has failed to uphold its obligations to protect the human right to adequate housing, under international law and its specifically accepted recommendations on the right to housing and protection of homeless persons from the 2015 Review. According to the Committee on Economic, Social, and Cultural Rights, the human right to housing consists of seven elements: security of tenure; availability of services, materials, and infrastructure; affordability; accessibility; habitability; location; and cultural adequacy; each of which must be implemented on a non-discriminatory, progressive basis.¹⁷ Each aspect will be discussed below.

A. Security of Tenure:

11. According to international standards, all persons — whether renters, homeowners or those in emergency or dire circumstances — should possess legal protection against forced eviction and harassment.

a. Renters

12. Rental affordability, discussed more below, is at crisis levels, with over 10 million renter families paying more than 50 percent of their income on housing.¹⁸ Without adequate assistance, these households have very little money for other expenses, leading to insecure tenure and homelessness.¹⁹

13. In 2015, more than 20% of rental households received eviction notices and 5.6% of tenants received judgments or were forcibly removed from their homes; in some areas, over 40% of renters received eviction notices and 15% received judgments or were forcibly removed.²⁰ A report issued by the Institute for Children, Poverty and Homelessness in 2017 found that eviction is the 2nd leading cause of homelessness in New York City among families with children, with as many as 33% of families citing eviction as the reason for their homelessness.²¹

14. Because of historical and continuing wage disparities and other barriers to homeownership, 20% of Black households and 16% of Hispanic households are extremely low income renters, compared to 6% of white households.²²

15. Lack of access to counsel leads to insecure housing tenure and wrongful evictions for many low-income tenants in the United States.²³ In most areas of the country, it is estimated that more than 90% of eviction defendants are unrepresented, while landlords are represented 90% of the time.²⁴ This is part of a larger access to justice crisis in the country: the World Justice Project's 2019 Rule of Law Index routinely ranked the U.S. 99th out of 126 countries for accessibility and affordability of the civil justice system.²⁵ The results of eviction are devastating: eviction frequently leads to homelessness, which in turn can lead to arrest/incarceration, loss of employment, child custody issues, and serious health concerns.²⁶ A 2016 report from New York City estimated that 47% of those in homeless shelters were there because of eviction.²⁷

16. At the same time, numerous studies have demonstrated that counsel makes a dramatic impact on outcomes for tenants and result in significant cost savings for cities.²⁸ New York City, which in 2017 became the first jurisdiction in the country to establish a right to counsel for tenants facing eviction, found that in year one of the right to counsel program, 84 percent of represented tenants were able to stay in their homes.²⁹ In San Francisco, a report estimated that of 752 tenants provided with representation in their pilot project, 609, or 81%, were more likely to avoid homelessness, saving the city \$1,096,200 in homelessness services, given that the average shelter stay for individuals in San Francisco is estimated to be 60 days at \$30/night.³⁰
17. After years of tireless advocacy, New York City enacted a right to counsel for tenants facing eviction in 2017; San Francisco and Newark followed suit in 2018,³¹ and similar legislation is pending in four cities and three states.³² Additionally, bills are being introduced at the federal level that would provide substantial federal funding for states or cities that establish or pursue a right to counsel for tenants, while the housing plans of several presidential candidates contain similar proposals.³³ Finally, a number of national organizing campaigns, such as those run by the Center for Democracy and People’s Action, have included an eviction right to counsel in their comprehensive housing reform proposals.³⁴ While promising, the vast majority of the country does not yet enjoy these protections, however.
18. An additional bright spot for renters in 2018 was the permanent extension of the Protecting Tenants at Foreclosure Act (PTFA), which provides most renters 90 days’ notice prior to eviction following a foreclosure.³⁵ Prior to its passage, many renters were evicted with little to no notice following their landlord’s foreclosure.

b. Homeowners

19. From 2007 until 2018, over 9 million homes have been lost to foreclosures, short sales, and deeds in lieu of foreclosure.³⁶ According to a June 2019 report, one in five agencies estimates that more than 40% of their clients became homeless because of a foreclosure.³⁷ While foreclosures have slowed, the rate remains twice the national average before the housing crisis.³⁸
20. Many of these foreclosures were preceded by predatory lending practices, which target primarily poor and minority borrowers (who may have no other options) with agreements that incorporate insecure tenure by their terms, due to interest rates that explode to unsustainable levels.³⁹

d. Emergency and Dire Circumstances

i. Criminalization of homelessness

21. As noted in the 2018 Report of Special Rapporteur on Extreme Poverty and Human Rights, despite a dire lack of adequate shelter and affordable housing, homeless persons are increasingly criminalized for engaging in necessary, life-sustaining activities – like sleeping and sitting – that they often have no choice but to perform in public spaces.⁴⁰ Homeless and poor persons are further punished as the enforcement laws provide for fines, charges and bails that they cannot afford.⁴¹
22. To its credit, following the government’s acceptance of the 2015 UPR recommendations to “amend laws that criminalize homelessness and which are not in conformity with international human rights instruments,” HUD included large incentives to reduce criminalization in its competitive grant application for nearly \$2 billion in federal funding for shelter and homeless housing for local communities;⁴² the Department of Justice submitted a statement of interest brief in a case supporting the argument that homeless persons should not be penalized for acts of survival;⁴³ and the U.S. Interagency Council on Homelessness’ Federal Plan to End Homelessness included statements emphasizing criminalization is counter-productive to the goal of ending homelessness.⁴⁴
23. Despite these positive strides, recent federal steps are extremely concerning: President Trump has recently made dehumanizing remarks regarding homeless people and was reportedly considering razing their encampments.⁴⁵ Pursuant to these statements, a recent paper by the White House Council of Economic Advisors contradicts other federal policy and appears to try to lay a policy basis for encouraging criminalization.⁴⁶
24. At the local level, as of 2016, city-wide bans on camping in public had increased by 69% over the previous 10 years; city-wide bans on begging/panhandling in public have increased by 43%; city-wide bans on loitering, loafing, and vagrancy have increased by 88%; city-wide bans on sitting or lying down in particular public places have increased by 52%; and bans on sleeping in vehicles have increased by 143%.⁴⁷ 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.⁴⁸
25. As noted in the separate report on Housing and Homelessness in Miami-Dade County, Florida, for 20 years, homeless individuals in Miami were protected from being arrested by the police for engaging in life-sustaining activities without first being offered shelter and from their property being destroyed without notice under the *Pottinger* consent decree.⁴⁹ However, in early 2019, a federal court terminated this consent decree, leaving homeless individuals throughout the city and county without any protections against arrest and property destruction by city employees.⁵⁰

26. The degrading and dehumanizing climate produced by criminalization ordinances promotes hate crimes and violence against people experiencing homelessness, by private individuals. During 2016 - 2017, 112 attacks were perpetrated against the homeless across 30 states and the District of Columbia, resulting in 48 deaths, though many more may go unreported.⁵¹ Over the last 18 years, there have been at least 1,769 incidents of crime against the homeless across 48 states, Puerto Rico and the District of Columbia. 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.⁵² These atrocities range from murder to beatings, rapes, and even mutilation. Six hundred of those incidents occurred in California and Florida, states with the highest rates of criminalization,⁵³ and where homeless persons are often more visible.⁵⁴ Among these incidents was the killing of an elderly San Francisco man, who was found dead floating in a pond after he had suffered through a 3 day long beating at the hands of two men and two women,⁵⁵ and an Albuquerque, New Mexico homeless man was found naked, decapitated and missing his genitals behind a Walmart.⁵⁶

ii. Women

27. Domestic violence is a leading cause of homelessness, particularly for women. 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.⁵⁷ In just one day in 2015, over 31,500 adults and children running domestic violence found safety in a domestic violence emergency shelter or transitional housing program,⁵⁸ but over 12,197 requests for services were turned away because of a lack of funding, staffing, or other resources, 63% of which (7,728) were for housing.⁵⁹
28. The Violence Against Women Act (VAWA) of 2006 created new housing rights for survivors in some federally subsidized housing, and the 2013 reauthorization of the law expanded these protections to nearly all federally funded housing. Of the three agencies tasked with implementing VAWA's housing protections, only HUD⁶⁰ and the U.S. Department of Agriculture (USDA)⁶¹ have issued implementing regulations (and those many years late).⁶² Despite the inclusion of the Treasury Department's low income housing tax credit (LIHTC) program in VAWA 2013—the nation's largest source of affordable housing—the agency has not issued regulations, leaving state agencies to interpret VAWA on their own or not act at all.⁶³ However, at this point, the regulations or lack thereof is moot for the time being, as VAWA expired in 2018 and has not been reauthorized.⁶⁴
29. And as important as the federal protections are, they only cover the 4.9 million federally-funded rental households - just 12 percent of the estimated 41 million rental households in the United States.⁶⁵ Nearly every state has enacted some protections that expand housing protections for survivors, but only thirteen have expanded VAWA's non-discrimination provisions to private landlords, leaving many households without protection.⁶⁶

iii. Youth

30. Youth are especially vulnerable to homelessness. According to HUD's 2014 Point-in-Time Report, 34% of the total homeless population is under 24 years of age.⁶⁷ More than 3.5 million young adults ages 18 to 25 experience a form of homelessness in the course of a year — 1 of every 10 young adults.⁶⁸ At least 700,000 adolescent minors ages 13 to 17 experience a form of homelessness in the course of a year — 1 of every 30.⁶⁹ LGBTQ youth are at more than double the risk of homelessness than their non-LGBTQ peers, and had over twice the rate of early death among all youth experiencing homelessness.⁷⁰ Black or African American youth had an 83% higher risk of homelessness. Hispanic, nonwhite youth had a 33% higher risk of homelessness.⁷¹
31. Lack of access to housing and services for homeless youth places them at higher risk for violence. However, runaway and homeless youth are vulnerable to multiple threats, including hunger, untreated mental health disorders, substance use, sexually transmitted diseases and HIV infection, sexual exploitation (including survival sex to meet basic needs), physical victimization and suicide.⁷² Homeless youth often experience a significant disruption in their education due to the transient nature of living on the streets.⁷³ Homeless youth report incidents of sexual abuse at a rate of 21–42%, compared to 1-3% in the general population.⁷⁴ A survey of unaccompanied homeless youth in Illinois found 61% reported⁷⁵ being victims of violent crimes, including theft, burglary, and physical or sexual assault, during the previous 12 months.⁷⁶

B. Availability of Services, Materials, and Infrastructure

32. Existing infrastructure in the U.S. inextricably links housing or other facilities with access to water, sanitation, and other basic services. For homeless individuals, lack of shelter often means lack of these basic resources, for example the limitation to nine public toilets for the 1,800 homeless individuals on Skid Row in Los Angeles, cited by the Rapporteur on Extreme Poverty and Human Rights in his 2018 report.⁷⁷
33. 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. Since the inception of Title V through October 2018, organizations servicing the homeless have received 500 buildings on 900 acres in over 30 states under Title V to provide services to over 2 million people.⁷⁸ 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.⁷⁹ In 2016, Congress passed the Federal Assets Sale and Transfer Act, which should have increased transparency and streamlined the application process,⁸⁰ but bureaucratic barriers continue to prevent service organizations from receiving these properties.⁸¹

C. Affordability

34. Over half of all American renters pay more than 30% of their income for housing.⁸² For extremely low-income (ELI) households, the percentage paying more than half of their income in rent jumps to 71 percent.⁸³ In only 28 out of more than 3,000 U.S. counties nationwide can a full-time minimum wage employee afford a 1 bedroom rental home at fair market rent.⁸⁴ There is a 7 million unit shortage of rental housing that is affordable and available to ELI households.⁸⁵ Nationally, there are only 35 affordable and available units for every 100 ELI households who need the units; in Los Angeles, CA, there are only 16 affordable and available units for every 100 ELI renters.⁸⁶
35. There is only enough federal funding for one in four income-eligible renters to receive assistance.⁸⁷ The remaining three-fourths of eligible 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.⁸⁸
36. Lack of affordable housing is a primary cause of homelessness, and the ongoing crisis has led to an increase in the numbers of homeless persons. HUD's point-in-time count of homeless persons living in shelters and public places was roughly 553,000 in 2018, an increase for the second year in a row, by 2%.⁸⁹ This number is almost certainly a significant undercount of homelessness.⁹⁰ It does not include people living doubled up with family or friends. In 2017, 4.4 million people in low income households were "doubled-up". While this is fewer people than in 2016, it is still 25 percent more than the number of people living doubled up in 2007.⁹¹ Moreover, in the 2016-17 school year, 1,355,821 million school children were homeless — an increase of 7% over a 3 year period.⁹²
37. Black people represent 39% of all homeless people, yet they only make up 13% of the general population. Hispanic people comprise 22% of the homeless population, yet make up less than 18% of the general population.⁹³
38. The Department of Housing and Urban Development (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.⁹⁴ The proposed HUD budget for fiscal year 2020 is a continual of the trend and reflects a 18% decrease from the 2019 funded budget.⁹⁵
39. The National Housing Trust Fund 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. While a previous suspension of funding was set aside in 2015, funding remains inadequate to the scale of need.⁹⁶

d. Accessibility

40. HUD's overly restrictive definition of homelessness excludes persons living in doubled up situations or low-cost motels.⁹⁷ This eliminates the eligibility of many in need of resources to receive aid, despite other government agencies recognizing these populations as homeless.⁹⁸

41. Both private landlords and public housing authorities frequently deny people with criminal convictions or even arrest records access to housing, leading 1 in 11 released prisoners into homelessness.⁹⁹ Following the 2015 UPR, HUD’s Office of General Counsel issued “Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions”.¹⁰⁰ Unfortunately, while the above HUD guidance is still effective, in August 2019, HUD issued a proposed revision to the guidance that would significantly change the elements of a disparate impact claim.¹⁰¹ Beyond issuing the above guidance, HUD has not taken significant further action to ensure that ex-offenders are housed.
42. 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 de jure protections. From 2000 to 2017, 20,000 and 31,000 housing discrimination complaints were filed annually, with the number of complaints slightly increasing in the past few years,¹⁰² but HUD itself estimates this is only one percent of all housing discrimination cases that happen.¹⁰³
43. Continued residential segregation and the history of excluding racial minorities from access to sustainable mortgage credit created model conditions for predatory lending to poor households in communities of color.¹⁰⁴ This has led to the loss of wealth built over generations in neighborhoods of color, representing over half of the total cost of the foreclosure crisis in the United States.¹⁰⁵ Government policies contributed to the decline of wealth in communities of color and are currently exacerbating the devastation of the crisis for racial minorities.
 - a. Migrants:
44. In October 2018, Trump Administration proposed a new interpretation of the “public charge” rule, which would limit legal immigrants’ (and their U.S. citizen children) ability to access crucial housing assistance.¹⁰⁶ This rule is scheduled to go into effect in October 2019, unless a legal challenge, currently pending, stops it. The rule will affect tens of thousands of immigrant families, forcing them to choose between housing benefits which would support their immediate health and safety and their ability to adjust their immigration status and eventually become U.S. citizens.

E. Habitability

45. While much of the U.S. enjoys high quality housing stock, many poor families experience dangerous or unhealthy conditions. As of 2017, 1/3 of adults lived in shared households: 12% lived with their parents, 10% lived with their adult child, 10% lived with extended family and 5% lived with other roommates.¹⁰⁷ 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 health problems for residents – particularly low-income youth, who experience double the rate of asthma of their moderate-income peers.¹⁰⁸ Most cities do not have universal access to shelter, meaning more people are forced to live on the streets or in unsafe places.¹⁰⁹

f. Location

46. 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. For poor families, location can be a major disadvantage to education, employment, and access to services – for example, poor families who live in metro areas and take public transportation face 70 percent longer commutes to work than their neighbors with other transportation options.¹¹⁰
47. Children who are homeless face frequent disruptions in education, which can negatively impact cognitive development.¹¹¹ Although Title VII of the McKinney-Vento Homeless Assistance Act (the “McKinney-Vento Act”) requires schools to keep homeless students enrolled in the last school where they were permanently housed, if that is in the child’s best interest, lack of available shelter or housing within the district often forces students to face long transit rides at high costs to the district, or even transfer to new schools – where educational progress can be interrupted.¹¹² The Every Student Succeeds Act of 2015 (ESSA) amended both the McKinney-Vento Act to support education access to the homeless children, but the program remains under-funded and under-enforced, and homeless students continue to receive inadequate assistance.¹¹³
48. HUD historically has had a very limited enforcement program for ensuring state and local compliance with the Affirmatively Furthering Fair Housing (AFFH) obligation of the Fair Housing Act, which is intended to eliminate entrenched patterns of segregation. In 2015, HUD issued additional regulations in the form of a final rule for AFFH with clear guidelines and timetables to demonstrate the “affirmative furthering” of fair housing. However, earlier this year HUD rescinded these deadlines, giving most grantees until after 2025 now to comply.¹¹⁴

g. Cultural Adequacy

49. The poor state of housing for Native Americans violates not only human rights, but also tribal treaty obligations – through overcrowding, lack of maintenance, and destruction of historical cultural connections to land and traditional settlement patterns – creating negative impacts on cultural and social practices.¹¹⁵
50. Homelessness has a disparate impact on indigenous persons. For example, in 2015, indigenous Hawaiians and other Pacific islanders accounted for only 10 percent of the overall population in Hawaii, but for 39 percent of the 7,620 people experiencing homelessness there.¹¹⁶ These numbers continue to grow as the cost of living increases and tourism development forces them to leave their homelands.¹¹⁷ Also, in Hawaii, indigenous populations have almost twice the rate of overcrowding (15 percent) compared with the broader population.¹¹⁸

IV. Recommendations

1. The U.S. should improve security of tenure by:
 - a. Funding incentives for communities to create a right to counsel in all civil cases involving the potential loss of housing or inadequate housing conditions;
 - b. Increasing federal funding incentives for constructive alternative approaches and decriminalization, including requiring communities to provide adequate notice and adequate alternative housing before evicting homeless persons living in encampments;
 - c. Collecting statistics on criminalization of homelessness and hate crimes against homeless persons;
 - d. Reauthorizing the Violence Against Women Act’s housing protections and implementing them through regulations and encouraging states and municipalities to expand the Act’s protections to housing that has no federal subsidy.
2. The U.S. should increase the availability of services, materials, and infrastructure by:
 - a. Increasing the number of useful vacant properties made available to homeless service providers under Title V of the McKinney-Vento Act and easing the application process;
 - b. Addressing infrastructure needs in traditionally underserved areas.

3. The U.S. should improve housing affordability by:
 - a. Increasing federal funding to homelessness prevention programs and expanding HUD’s definition of homelessness to include doubled-up families and those in motels, as other federal agencies have done;
 - b. Ensuring that every person can afford adequate housing, through a combination of new construction of subsidized and affordable units, expanded funding for Section 8 and other subsidies, and the creation of a permanent, adequate funding source for the National Housing Trust Fund at a minimum of \$1 billion per year.
4. The U.S. should improve housing accessibility by:
 - a. Increasing enforcement of existing fair housing and lending laws;
 - b. Withdrawing the proposed public charge rule and similar proposals to reduce immigrant families’ ability to access housing supports.
5. The U.S. should improve housing habitability by providing funding for improved code enforcement.
6. The U.S. should improve housing location by:
 - a. Adequately funding Title VII of the McKinney-Vento Act to ensure homeless students can access education; and
 - b. Withdraw the extension of implementation of the Affirmatively Furthering Fair Housing rule and adequately enforce the rule.
7. The U.S. should improve the cultural adequacy of housing by:
 - a. Adequately funding Native American housing programs; and
 - b. Respecting treaty rights, historical connections to land and the relationship of settlement patterns to cultural and social practices.

V. References

¹ United Nations General Assembly Human Rights Council Report of the Working Group on the Universal Periodic Review, May 4, 2015.

² Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/30/12, ¶ 176.309 (July 20, 2015). In explaining its partial acceptance of the above recommendation, the U.S. stated “[t]he U.S. is not a party to the ICESCR, and we understand the rights therein are to be realized progressively ... We continue to improve our domestic laws and policies to promote access to housing, food, health, and safe drinking water and sanitation, with the aim of decreasing poverty and preventing discrimination.” Report of the Working Group on the Universal Periodic Review, United States of America, *Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, A/HRC/30/12/Add.1, ¶ 12 (Sept. 14, 2015).

³U.N. Human Rights Council, *Report of the U.N. Special Rapporteur on Extreme Poverty and Human Rights on his mission to the United States of America*, A/HRC/38/33/Add.1 (2018), available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/33/Add.1 (hereinafter “SR Poverty Report”).

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