



**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
THEMATIC HEARING ON THE SITUATION OF HOUSING AS A HUMAN RIGHT
IN THE UNITED STATES**

**OUTCOME STATEMENT
March 3, 2022**

INTRODUCTION

On December 16, 2021, the Center for Human Rights & Humanitarian Law, joined by the National Homelessness Law Center, the American Civil Liberties Union of Northern California, and the American Civil Liberties Union of Southern California, testified before the Inter-American Commission on Human Rights (IACHR) on the topic of housing as a human right in the United States. Representatives from the Departments of State and Housing and Urban Development appeared before the Commission on behalf of the United States Government (USG).

This document presents a summary of the proceedings and is intended to capture key statements from USG representatives and IACHR Commissioners relevant to human rights advocates working in the area of housing rights. A recording of the hearing with captions can be accessed here: <https://www.youtube.com/watch?v=APXo6kmCWLw>.

This hearing was the first-ever thematic hearing on the topic of housing as a human right focused solely on the U.S. before the IACHR, and it allowed civil society to articulate the legal nature of housing as a human right, which must be guaranteed to each person without discrimination. The applicant organizations demonstrated how, in failing to provide adequate shelter and housing to individuals, unhoused persons are experiencing violations to numerous fundamental human rights, e.g., the rights to personal security, health, property, and the right to be free from torture and other ill-treatment. The civil society delegation also provided the Commission and key actors within the USG with critical information and socio-legal context related to housing and related rights at a time when the United States is confronting massive and detrimental economic and social impacts associated with the COVID-19 pandemic.

Accordingly, the applicant organizations developed the following objectives:

- a) To make visible the scale, impact, and gravity of the violations occurring as a result of the failure to ensure housing as a human rights and criminalization of homelessness;
- b) To articulate the full scope of harms and violations occurring in this context, as well as the specific rights affected by inadequate shelter and criminalization;
- c) To build coalitions and dialogue around the effort to identify solutions and measures as informed by human rights law and in accordance with the United States' obligations;
- d) To amplify and center the voices of those most affected by the criminalization of homelessness to better inform policies designed to address their situation.

TESTIMONY FROM CIVIL SOCIETY

Ms. Catherine Moore provided testimony of her lived experience as a person experiencing homelessness and the direct impact of the United States' failure to ensure housing as a human right. She underscored the pervasive discrimination and inhumane treatment she has experienced based on her housing status. She described how difficult it is to maintain personal property and the practice of Public Works employees raiding encampments: "While homeless on the streets, I had no door to lock to keep me safe at night. I had to stay vigilant, sometimes staying up all night. I was constantly worrying about homeless sweeps, where the Public Works employees would raid homeless encampments, confiscating and destroying property, leaving many with just the clothes on their backs. I once argued with a Public Works employee that the bicycle they were trying to confiscate was actually mine and not abandoned property. It was nerve racking enough to have to fight daily to keep the few possessions I had left from being taken."

Ms. Moore also highlighted the gender discrimination and sexual harassment she experienced in shelters, and lack of response to her complaints. She was subjected to invasive searches by shelter security where security guards inappropriately touched her body without consent as part of the shelter entry process. Ms. Moore also reported that male staff would intentionally enter the women's dorm unannounced. In conclusion, Ms. Moore added that as a survivor of sexual violence, these incursions on her privacy and were extremely triggering and harmful.

Ms. Kate Holcombe of the Center for Human Rights & Humanitarian Law next articulated the full scope of the United States' obligations, as well as the rights it must ensure based on its treaty obligations under international human rights law. She noted that the United States has adopted the American Declaration of the Rights and Duties of Man (American Declaration), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Cultural, and Social Rights (ICECSR), and the International Covenant on the Elimination of All forms of Racial Discrimination, all of which recognize the right to be free from discrimination—including in housing—on the basis of race, gender, disability, and other status. Further, the United States is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

which protects individuals from torture and other cruel, inhuman and degrading treatment, including the criminalization of homelessness. She concluded that the US has an obligation to affirmatively address the “general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.” Accordingly, it is not only obliged to protect citizens against violations of their right to life but must also facilitate adequate general conditions and access to effective social housing programs.

Representatives from the ACLU of Northern California and Southern California then testified to how the USG’s failure to ensure housing as a human right is manifesting on the local level.

Ms. Eve Garrow of the ACLU of Southern California provided an overview of California’s discriminatory policies around housing and its use of criminalization as a response to housing shortages and the impacts of these policies. Ms. Garrow highlighted how affordable housing wait lists can last up to a generation, and the gap between the cost of rent and what most people can afford to pay continues to widen. She noted that California represents 12% of the US population but over 50% of all unsheltered US residents. Further, seventy percent of the state’s unhoused population lives in places unfit for human habitation, like parks, sidewalks, riverbeds, and cars. Ms. Garrow also underscored how local governments are waging war against unhoused persons by citing and jailing them, banishing them to remote and dangerous locations, confiscating and destroying their property, and withdrawing resources, like food, restrooms, and water, that people without housing need to survive. She noted that these strategies are violent, exclusionary, and, like all human rights violations, corrosive to the common good and are resulting in great harm and death.

Mr. Brandon Greene of the ACLU of Northern California provided further detail on California’s policies and their disproportionate impacts on Black, brown, and indigenous people. Approximately 30-50% of all unhoused people in the state of California are Black. Mr. Greene also expanded on the disproportionate cost burdens on Black Californians. Nearly 50% of Black Californians live in households that were cost burdened in 2018 and nearly a quarter paid more than 50% of their income towards housing costs. Rental burdens have not only pushed Black families closer to houselessness but have also pushed Black families further into the suburbs. Mr. Greene also highlighted how Black people are overrepresented in the carceral system, underscoring the relevance between homelessness and the carceral system.

Mr. Eric Tars of the National Homelessness Law Center provided a national overview of federal laws on housing, highlighting the policy statements of the Biden Administration regarding housing as a human right. He observed that even before the pandemic, the federal government was only meeting the affordable rental needs of 1 in 4 poor renters, meaning 3 in 4 renters were paying unaffordable rates. Mr. Tars also emphasized that like in California, affordability disparately impacts Black, Indigenous, and other People of Color, or BIPOC communities, due to a centuries-long legacy of discrimination and wealth-extraction from these communities. For example, although Black Americans make up 13% of the overall population, they make up 26%—double their rate in the population—of people in poverty. But then they make up 40% of people experiencing homelessness,

almost doubling again. Mr. Tars also highlighted the impact of the COVID-19 pandemic, which exacerbated access to adequate and affordable housing, wrestling in more than 30 million people now at risk of eviction and homelessness.

Mr. Tars also outlined the Biden Administration's official platform stating housing should be a right, not a privilege, for every American, echoed by HUD Secretary Fudge. He also noted that the US Interagency Council on Homelessness established the right to housing as a core value in shaping its plan to end homelessness. Further, Congress is poised to enact the Build Back Better Act, which would make the biggest investment in affordable housing in four decades. Mr. Tars concluded that while these policies are a step in the right direction, they would not cure the previous four decades of disinvestment, let alone make reparations for the centuries of stealing land from, and preventing homeownership for, BIPOC communities. In conclusion, he called on the Commission to hold the U.S. accountable to ensure it makes a formal, equitable plan to implement the human right to adequate housing and end the criminalization of homelessness for all Americans.

STATEMENTS FROM THE UNITED STATES GOVERNMENT

The hearing also captured important statements from the primary U.S. government offices responsible for implementing housing policies.

Ms. Hickman, the alternate representative to the U.S. Mission to the Organization of American States acknowledged the U.S. has “long recognized the importance of housing to the enjoyment of human rights” and “that more work needs to be done to ensure that all Americans have equitable access to quality and affordable housing.” This is a view shared by the Biden-Harris Administration, which holds the “unequivocal belief that housing should be a right and not a privilege.” Ms. Hickman also noted that “[t]he United States strongly supports the work of the IACHR” and “regards the institution as vital to the promotion and protection of human rights in the Western Hemisphere.” Ms. Hickman also articulated that the “United States recognizes and supports the promotion of economic, social, and cultural rights around the world, including to the extent that it asks us to improve access to adequate housing in a fair and equitable manner.” However, she qualified her statement by adding that there “is no right to housing under which the United States has legal obligations arising from international instruments.”

Mr. Richard Cho, Senior Advisor for Housing and Services at Housing and Urban Development, likewise emphasized that housing is a human right and the essentiality of housing to the enjoyment of other rights: “Both President Biden and [HUD] Secretary Fudge have stated their unequivocal belief that housing should be a right and not a privilege and that homelessness has no place in their vision for America. Housing is essential to health and to success in one's educational attainment, economic and financial success, and other life goals. And the cost of housing should not be so crushing and to take away families' ability to put food on the table or to cover other essential needs. In the greatest nation in the world, not one single person should have to sleep night after night in a homeless shelter,

on the street, in their vehicles, or in other places not meant for human habitation. And yet, our national data shows that an estimated 580,466 on any given night were experiencing homelessness in America. That was from January 2020.”

Mr. Cho also expanded on COVID-19’s impact on access to shelter and housing: “COVID-19 has brought to light the growing crisis of homelessness and housing insecurity in America and has made even clearer that homelessness and housing insecurity are a public health crisis, and the existence of these crises threatens the health and safety of the entire nation.” He further acknowledged that “many communities have reduced their homeless shelter capacity, and COVID-19 itself has also affected the community’s ability to provide homeless services as well as housing assistance.” “As a result [of resource constraints], more people have become homeless in the last years than have been assisted to exit homelessness.”

Addressing the use of aggressive tactics involving law enforcement and public works to clear homeless encampments, “to displace residences, to seize and remove property as well as enforced laws prohibiting sleeping, lying down, or performing other basic human functions outside,” Mr. Cho clarified that “HUD and the U.S. government’s position is clear that the civil and human rights of people experiencing homelessness must be protected. Under the Eighth Amendment, all Americans have protection against cruel and unusual punishment and arresting and jailing people for performing basic human functions like sleeping outside, when they lack other options, is a violation of constitutional rights. Moreover, we affirm that people experiencing homelessness are protected under the Fourth Amendment from unreasonable and warrantless seizure and destruction of personal property and possessions.”

The timeliness and impact of the hearing were also acknowledged by Mr. Cho, who characterized the Build Back Better campaign as a “once in a lifetime opportunity to realize the President's vision and belief that housing should be a right, not a privilege. Ultimately, the Administration believes that the best way to combat the criminalization of homelessness is to end it. Specifically, by helping people to stay in their homes and avoid housing loss or when we cannot prevent housing loss, to help people re-enter permanent housing with access and services as quickly as possible.”

The hearing also focused on the disproportionate and discriminatory impacts of U.S. housing policies, which have inadequately addressed the needs of vulnerable and minority groups. Testimony from civil society highlighted, inter alia, the disproportionate impact of criminalization of homelessness on Black and other minority groups and Ms. Catherine Moore testified to her lived experience as a woman experiencing homelessness.

STATEMENTS & QUESTIONS FROM THE COMMISSION

Commissioner Flávia Piovesan reminded participants that “[t]he transformative mandate of the Inter-American Commission has this ambition to give voice, to raise the voice of the voiceless, and to

give visibility to the most invisible and the most vulnerable in our society.” Commissioner Piovesan further noted that she had “listened to civil society representatives and also the State representatives” observing that Afro-descendants...are 40 percent, almost a half, of the ones who lack access to adequate housing,” which evidences “a strong pattern of discrimination.” The Commissioner requested more information to better understand the United States’ public policies to repair and revert this strong pattern of discrimination, adding that she believed there is “a pattern of indirect discrimination.” Commissioner Piovesan also noted that the information and data received by the Commission reflects two phenomena: “the feminization of poverty and the ethnicization of poverty.”

Commissioner Piovesan’s remarks opened the door for important statements from HUD regarding its position on how to address discrimination in the context of housing and scope of its legal obligations.

On behalf of HUD, **Mr. Cho** acknowledged disproportionate impacts of housing policies and criminalization of homelessness on Black and indigenous Americans, noting that “[w]hile Black Americans represent only 12 percent of the United States general population, they comprise nearly 40 percent of the homeless population. Native Americans are overrepresented in homelessness at a rate almost twice their rate in the general population.” He further noted that “[e]nsuring access to adequate housing in America also entails addressing discrimination and ensuring equal access. There is more work to do ahead to ensure that all Americans have access to housing that is both affordable and adequate and to protect Americans from housing loss and discrimination.”

Mr. Cho also recalled President Biden’s executive order, “which calls on all of the federal government to look at ways that we can address the inequities experienced by a variety of groups that have experienced historical marginalization, including Black Americans and persons of color as well as other groups and as part of that we are taking a systematic look at the ways that policies in the federal government both contribute to and or can help to reverse racism and racial inequalities.” Notably, he added that USG and HUD’s work “is just the beginning. We recognize that it will be a long process, we are undoing many decades of policies that have led to those disparities and discrimination and I will say that as part of the President’s Build Back Better plan, we are committed to ensuring, if enacted, those programs would be implemented with a focus on addressing and advancing equity.”

With respect to discrimination on the basis of gender in the context of housing, he added that HUD is “committed to addressing the needs of people who have experienced and women who have experienced violence, domestic violence, dating violence, sexual assault, and or have been victims of human trafficking.”

Commissioner Julissa Mantilla also reminded participants of the indivisibility of rights and principle of non-discrimination to the enjoyment of all rights. For instance, article 11 of the American Declaration for Human Rights provides that every person has a right to have their health protected with social measures, which includes housing, clothing, and healthcare.

Similarly, **Commissioner Flávia Piovesan** noted that the Commission recognizes the right to housing as a “condition to the full exercise of other rights, such as right to health, right to be safe and free from violence, right to water.” She added that the “transformative mandate of the Inter-American Commission has this ambition to give voice, to raise the voice of the voiceless, and to give visibility to the most invisible and the most vulnerable in our society.”

The hearing concluded with a statement from **Ms. Soledad García-Muñoz**, Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (REDESCA), indicating that she was interested in holding a working visit to the United States. In particular, she noted that a visit to California would be valuable where she could observe the experience and situation of people living in the streets and contribute to improving their situation through recommendations.

Commissioner García-Muñoz also acknowledged the “sincerity of the State” with reference to Mr. Cho’s statement that ‘[h]ousing should be a right, not a privilege,’ noting that “this is the goal the Commission shares.”

OUTCOMES

The civil society delegation emphasized how the lack of guarantees for the right to housing in the United States has been growing significantly, especially since the pandemic (resources linked below). In this scenario, people living on the streets, in addition to criminalization and discrimination, would face violations of their human rights, including personal integrity, health and property, as well as the right not to suffer torture, cruel, inhuman or degrading treatment. Likewise, it was indicated that this situation would have a differential and disproportionate impact on people of African descent, indigenous people, women, and other people in situations of vulnerability. The civil society delegation also stressed the source of the United States’ legal obligations, and scope of these obligations, stemming from its treaty obligations.

For its part, the State recognized that this is a matter of special attention, against which measures have been taken in order to protect adequate and affordable housing for all people and prevent the criminalization of those living on the streets. The USG representatives stressed that the right to housing is fundamental for the protection of other rights and indicated its willingness to gradually recognize the nature of the right. However, the USG also stated that in its view, it does not have an international obligation regarding this right.

The IACHR and REDESCA welcomed the opportunity for dialogue between the parties. Likewise, they reiterated that the guarantee of the right to housing is a condition for the full exercise of human rights. Similarly, they emphasized that it is a priority to ensure the principle of non-discrimination and the principle of the indivisibility of human rights. The Commissioners reminded the parties that the OAS Charter and the American Declaration contemplate provisions that recognize the right to

housing. The Special Rapporteur on Economic, Social, Cultural, and Environmental Rights, **Ms. Soledad García-Muñoz**, indicated that her office would like to organize a site visit to observe the situation of unhoused persons in the United States.

FUTURE ADVOCACY DIRECTION

To fully realize the right to housing in the United States, the Center for Human Rights & Humanitarian Law, National Homelessness Law Center, ACLU of Northern California, and ACLU of Southern California will continue to explore ways to protect and defend the right to housing. The following recommendations for legal and policy reform were submitted through the coalition's testimony and supplemental materials submitted to the Commission:

- **The United States** must ensure that reasonable and adequate housing is available and accessible to all in accordance with its international and domestic obligations.
- **The United States** should immediately implement effective affirmative action programs to address structural discrimination and give special protection and assistance to marginalized populations that are disproportionately impacted by the USG's failure to implement housing policies and practices in accordance with its human rights obligations.
- **The United States, and all members of the Organization of American States**, should recognize people experiencing homelessness as an identifiable group. Measures which discriminate against this population should be unlawful in accordance with well-established principles of international human rights law.
- **The United States** should abolish unlawful anti-homeless ordinances and reduce obstacles for those already fined or convicted of crimes under anti-homeless ordinances. For people who have already been fined or convicted of crimes under these ordinances, obstacles to access to the justice system and social services should be removed. For example, the requirement of an address for parole and probation, court notices, and other legal action should be eliminated and replaced with an alternative suitable for people experiencing homelessness, including electronic options such as a site or account that can be logged into from a public library to identify pending court actions. Options for pretrial release and reduced bail for people experiencing homelessness should also be implemented.
- **The United States** should ensure that cities are not using punitive approaches to homelessness and repeal, defund, and stop enforcing laws that criminalize homelessness through federal legislation.
- **The Commission** should call on the United States to require that cities and other municipalities provide temporary housing when outdoor conditions become life-threatening

from cold, heat, smoke, or other circumstances. In all cases where outdoor living conditions become life threatening, temporary housing must be made available. Hotels and other vacant housing have been used for this purpose during the COVID-19 pandemic and must be used when cold, heat, smoke or other life-threatening conditions exist outdoors. Although permanent supportive housing (PSH) and subsidized affordable housing should be established as the long-term solution, in the meantime, it is necessary to protect the right to life of people experiencing homelessness by requiring cities and states to provide every unhoused person temporary housing for the duration of those conditions.

- **The Commission** should call on the United States to fund best-practice homeless assistance approaches, such as Permanent Supportive Housing (PSH) and subsidized affordable housing as an entitlement.
- **The United States federal agencies** should ensure that no grant dollars go to communities that criminalize homelessness. Agencies should better structure their funding applications for competitive grants by including specific questions about criminalization, and by giving points to applicants who create constructive alternatives to homelessness while subtracting points from applicants who continue to criminalize homelessness. For non-competitive grants, funding streams should include a certification that communities receiving funds will not use them to criminalize homelessness.
- **The U.S. Department of Justice (DOJ)** should ensure that its community policing grants are not funding criminalization practices. Instead, DOJ should invest in community-based solutions that do not involve the police. DOJ should investigate police departments for civil rights violations connected with the criminalization of homeless people. DOJ should identify opportunities for filing Statement of Interest briefs where evidence of civil and human rights violations related to the criminalization of homelessness is present. DOJ should ensure that its guidance documents discourage criminalization of homelessness and instead recommend the positive police practices noted in this report. DOJ and HUD should take additional steps to ensure that federally-subsidized housing providers use their discretion to accept people with criminal histories unless federal law requires their exclusion.
- **The U.S. Interagency Council on Homelessness (“USICH”)** should publicly oppose specific local criminalization measures, as well as inform local governments of their obligations to respect the rights of homeless individuals. USICH should continue to talk about housing as a human right and to promote constructive alternatives to criminalization.
- **The U.S. Congress** must pass housing finance reform that ensures subsidized affordable housing is a right and expands with need. Additionally, states and municipalities should enact laws prohibiting discrimination based on housing status, as well as source of income. Source

of income discrimination laws should specifically include Section 8 and other government subsidies.

- **State Governments** should enact and enforce Homeless Bill of Rights legislation that prohibits the criminalization of homelessness.
- **Local Governments** should cease enforcement of and abolish existing criminalization laws and stop passing new ones. Local governments should dedicate sources of funding to provide needed housing and supportive services. Local governments should improve coordination of existing services for homeless persons. Local governments establish response strategies that center humanitarian aid and social services.

RESOURCES SUBMITTED BY THE APPLICANT ORGANIZATIONS

- [Banished and Abandoned: Criminalization and Displacement of Unhoused People in Lancaster](#)
- [Comment on US Interagency Council on Homelessness Federal Strategic Plan](#)
- [Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities](#)
- [Housing Not Handcuffs 2021: State Law Supplement](#)
- [Outside the Law: The Legal War Against Unhoused People](#)
- [This Place is Slowly Killing Me: Abuse and Neglect in Orange County Emergency Shelters](#)