newsletter

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Editorial

Dear Readers,

this edition of the Housing Rights Watch newsletter brings you insights from Europe and beyond. In their article Marc Uhry and Claire Zoccali chart the strategic litigation in France to claim the right to emergency accommodation. The campaign to have the courts force the government to recognise and act on the right to emergency accommodation has been successful, to a degree. More than a year into this strategy, Uhry and Zoccali reflect on some undesired affects: that the courts are now basing their decisions on politics rather than simply the facts of the cases before them.

Turning our attention across the Atlantic, Tracy Heffernan's article passionately describes a tenacious struggle to call the Ontario and federal governments to account in Canada. Bringing together a broad and dedicated coalition of partners, including several households who are homeless, the Canadian coalition for the right to housing launched a challenge to Canada's Charter of Rights claiming that the government is at fault for its failure to develop and implement a housing strategy. People's rights are violated because they are forced to live in inhuman conditions. The challenge made it to court and you can read how it unfolded in Heffernan's article.

Eric Tars and Kristin Blume of the National Law Center on Homelessness and Poverty write about their shadow report on the US government's review before the UN's Human Rights Committee. The Law Centre argues eloquently that the criminalisation of homelessness is a violation of human rights under the UN Convention on International Civil and Political Rights. If the UN committee finds that the US has violated the ICPR, this decision can be used to support challenges to criminalising homelessness in all countries that have signed the convention. We will be watching avidly for the decision from the UN in 2013 or early 2014.

This edition also includes an article about Rachel Rolnik's visit to the United Kingdom at the end of summer 2013. As the UN's Special Rapporteur on the right to adequate housing, Rachel Rolnik visited the UK with the government's approval and met with service providers, activists and government officials. The UK's new 'bedroom tax' – a cut in benefits for people who are deemed to be living in social housing that is too large for their needs – proved to be a highly controversial topic during her visit. Activists, lawyers and homeless service providers feared and then saw the disastrous consequences of this ill-thought through policy when it came into force in April 2013. Ms Rolnick remarked on its impact and didn't mince her words, and as a result, unleashed a media furore. Our short report highlights the key issues as well as one successful legal challenge to the policy.

Criminalisation of Homelessness in Europe

Mean Streets: A Report on the Criminalisation of Homelessness in Europe was published in October 2013. This is the first examination of the nature and scope of penalisation and criminalisation of homelessness in Europe and includes examples of best practice and policy recommendations for the European Union, national and local governments. Coordinated by Housing Rights Watch correspondent, Guillem Fernandez, this report provides crucial insight into an alarming trend across the European Union. Contact Samara.jones@feantsa.org to order your copy.

Housing Rights Watch – on the web!

In addition to our social media on Facebook and Twitter, Housing Rights Watch is proud to launch our very own website: www.housingrightswatch.org on 18 October. Visit the site for:

- interactive jurisprudence database on decisions from the Court of Justice of the European Union, the European Court of Human Rights;
- information on housing rights, campaigns and strategic litigation country by country
- latest news on housing rights
- valuable resources including legal analysis of anti-social behaviour laws in over 20 EU Member States, legal advice and information, campaigning materials includind the poverty is not a crime campaign;
- podcasts, posters and more

As always, we welcome your suggestions for articles as well as your comments. Please write to samara.jones@feantsa.org.

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Changing the Paradigm: Addressing the Criminalization of Homelessness in the United States through the UN Human Rights Committee Review

By ERIC TARS AND KIRSTEN BLUME, *National Law Center on Homelessness & Poverty,*
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Introduction

Criminalization of homelessness will be in the international spotlight as hundreds of advocates join top government officials from the United States in Geneva, Switzerland, October 17-18, 2013, for the Human Rights Committee (HRC) Hearing on U.S. compliance with the International Covenant on Civil and Political Rights (ICCPR). As a result of strategic advocacy by the National Law Center on Homelessness and Poverty (the Law Center), not only will the government be held accountable by the HRC at the hearings, but the process as a whole has already been used to advance the domestic policy conversation around criminalization.

There is no legal right to housing in the U.S. Annually more than 3.5 million people in the U.S. experience homelessness.[1] U.S. policies and laws criminalizing homelessness continue to grow as local communities experience increases in homelessness and as more visible homeless populations emerge. A significant number of U.S. jurisdictions routinely and discriminately target homeless people under ordinances which prohibit particular behavior such as obstructing sidewalks, loitering, panhandling, begging, trespassing, camping, and sitting or lying in particular areas.[2] These policies can deprive individuals of safe, legal, and dignified opportunities to perform necessary human functions such as sleeping, eating, and even going to the bathroom. At the same time, foreclosures continue and government funding for housing has declined leaving few viable alternatives.

The Law Center is strategically using the opportunity of the ICCPR review to complement its domestic policy advocacy and litigation efforts to combat criminalization of homelessness, promote constructive alternatives, and work toward a human rights approach to homelessness which ultimately will ensure enjoyment of the human right to adequate housing. This includes opportunities for drawing international and domestic attention in connection with the UN review; creating, and holding the U.S. government accountable to, specific human rights standards on criminalization; and engaging with the government at the federal and local level through the review process.

Overview of HRC Review

Timeline of Review

US report	December, 2011
USICH report on criminalization	May, 2012
Law Center report to the HRC to inform list of issues	December, 2012
HRC list of issues	March, 2013
US response to list of issues	June, 2013
USICH meeting on criminalization	July, 2013
Law Center shadow report to HRC	August, 2013
HRC Hearing on the US	October, 2013

1 National Law Center on Homelessness and Poverty, Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil and Political Rights, 5 (Aug. 23, 2013), *available at*, http://www.nlchp.org/content/pubs/Cruel1.pdf.

2 *Id* at 6.

3 Eric Tars, *Who Knows What Lurks in the Hearts of Human Rights Violators? The Shadow (Reporter) Knows: Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice*, 42 Clearinghouse Rev. 475 (Jan-Feb 2009), http://www.nlchp.org/content/pubs/ShadowReportArticleCR.pdf.

US Report to the HRC

The U.S. Senate ratified the ICCPR in 1992. A ratified treaty is "Supreme Law of the Land" under Article VI(2) of the U.S. Constitution.[3] However, in ratifying the treaty the U.S. Senate attached reservations that make the treaty less actionable in U.S. courts. In turn, applying international civil and political rights laws at the federal and local levels requires additional advocacy by non-governmental organizations such as the Law Center.[4]

Countries which ratify the ICCPR are required to submit a report to the HRC every four years regarding compliance. The U.S. issued its fourth periodic report on its ICCPR compliance on December 30, 2011.[5] The 400 page report made numerous references to human rights issues related to topics such as fair housing and foreclosures but failed to address the depth and scale of homelessness. For instance, while lauding the Obama Administration's stimulus funding for housing, the report does not mention the number of foreclosures or the inadequate assistance given to those seeking to avoid foreclosures and homelessness. The report also neglected to mention the various ways that numerous U.S. jurisdictions have turned to policies of criminalization to resolve the increased visibility of homelessness.

Using the HRC Review for Domestic Advocacy

The Law Center's advocacy on criminalization of homelessness as an issue under the ICCPR notched one victory before the review process fully began. Following consultations on criminalization hosted by the U.S. Interagency Council on Homelessness (USICH) and Department of Justice (DOJ) in 2011 in which the Law Center promoted accountability to human rights standards, in May 2012, the USICH issued a report, *Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness*, which recognizes that, in addition to possible violations under the U.S. Constitution, the criminalization of homelessness may implicate our human rights treaty obligations under the ICCPR and the Convention Against Torture.[6] This was a huge achievement – it was the first time any U.S. domestic agency recognized any domestic practice as a potential treaty violation. However, this made it even more important for us as advocates to ensure the point was confirmed by the HRC as the official arbiters of the ICCPR.

After receiving a country's report, the HRC responds with its own List of Issues which highlight the areas of its primary concern in preparation for the hearings on the report. As part of a NGO effort to influence this list of issues, the Law Center, in collaboration with the effort coordinated by the US Human Rights Network, submitted a brief report to the Committee explaining its concerns with the criminalization of homelessness under the ICCPR, and suggesting a question for the Committee's List of Issues.[7]

In its report to the HRC, the Law Center focused on ICCPR Articles 7 and 26 as they apply to the criminalization of homelessness. Article 7 of the ICCPR provides that "no one shall be subjected to…cruel, inhuman or degrading treatment."[8] Some U.S. courts have found that criminally punishing individuals for basic life-sustaining activities such as sleeping, eating, or eliminating bodily wastes when no legal alternative exists is cruel and unusual under the U.S. Constitution, so the Law Center wants complementary international language to further establish this norm. The Law Center also argued that Article 26's protection from discrimination is violated by the disparate enforcement of the facially neutral laws against homeless individuals, often discriminating on multiple, intersecting grounds, including race, gender and disability status.[9]

The report cites the international record on criminalization of homelessness the Law Center has been systemically building through other U.N. human rights monitors. In recent years, the U.N. Special Rapporteurs on the right to adequate housing, on racism, on extreme poverty and human rights, and on the right to water and sanitation have all made comments in country mission or thematic

4 *Id.*

5 United States of America, Fourth Periodic Report to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, Dec. 30, 2011, *available at,* http://www.state.gov/j/drl/rls/179781.htm.

6 Interagency Council on Homelessness, Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness, 8 (2012) (USICH and the Access to Justice Initiative of the U.S. Dep't of Justice, with support from the Department of Housing and Urban Development, convened a summit to gather information for this report), *available at,* http://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.

7 National Law Center on Homelessness and Poverty, Criminalization of Homelessness in the United States of America, 3 (Dec., 2012), *available at,* http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_14566_E.pdf.

8 International Covenant on Civil and Political Rights, Art. 7, *available at,* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

9 International Covenant on Civil and Political Rights, Art. 26, *available at,* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

reports on the criminalization of homelessness in the U.S., with increasing recognition that criminalization may present a violation of the right to be free from cruel, inhuman and degrading treatment. The Law Center has publicized these standards, and hosted meetings with the Rapporteurs and government officials to discuss their findings.

As a result of the advocacy report, the HRC included the criminalization of homelessness in its list of issues published in March, 2013, obligating the U.S. to respond both in written form and at the oral hearing in Geneva.[10] However, the HRC only listed the issue under Art. 2 and 26 (nondiscrimination), and not under Art. 7 (cruel, inhuman and degrading treatment), an important goal for the Law Center.

The Law Center then sought to leverage the inclusion of criminalization as a key issue on the HRC list to advance its federal policy advocacy. Knowing the government would have to prepare a written response to the HRC (and would want to look good), the Law Center proposed working with the USICH to convene a meeting of its agencies, including the DOJ, Housing and Urban Development (HUD), Health and Human Services, and Veterans Affairs to discuss both substantive responses as well as how it would reply in writing. Although the USICH was unable to convene its meeting before the U.S. issued its written response to the HRC, the Law Center was able to share a proposed draft of language it hoped the government would adopt. However, the U.S.'s written submission did not reflect much of this language.[11]

The USICH, with Law Center support, hosted its convening on criminalization in July, 2013. The meeting focused on each agency's policies to address criminalization of homelessness with a heavy emphasis on framing the lack of federal efforts in this area as potential violations of both stated domestic policy and U.S. ICCPR treaty obligations. Although criminalization laws are primarily implemented on state and local levels, the federal government has an important role to play, and the Law Center shared numerous policy recommendations for the agencies that they could implement to fulfill their obligations.[12] These include the federal government taking proactive stances against proposed criminalization ordinances; supporting communities in constructive alternatives to criminalization and discouraging criminalizing practices through the use of funding incentives; and increasing investigations into local criminalization policies. While the agencies did not respond to all the Law Center's recommendations on the spot, the USICH tasked all agency delegates to respond at the next USICH inter-agency policy meeting in September, 2013. The Law Center also shared a draft of its planned shadow report to the Committee (discussed further below) with the USICH, and received substantive feedback from the government on the content of the report. For the USICH to engage in this level of internal accountability with itself and other government agencies in the context of a treaty review represents unprecedented progress.

On August 30, 2013, again in coordination with the US Human Rights Network, the Law Center submitted its full shadow report to the HRC entitled *Cruel, Inhuman, and Degrading: Criminalization of Homelessness in the U.S. under the International Covenant on Civil and Political Rights*.[13] Shadow reports, a kind of amicus brief for the committee, give the committee additional information on which to question the U.S. during the hearing and suggests language for Concluding Observations.[14] Concluding Observations are the committees' final authoritative statements expressing concerns about rights violations and recommendations for corrective action.[15]

The Law Center's shadow report, co-authored with the Yale Law School Allard K. Lowenstein International Human Rights Clinic, and endorsed by two dozen other organizations, presents a full case of how government policies toward homeless persons in the U.S. violate, in addition to Art. 2, 7, and 26, the right to liberty and security of the person (Article 9), the right to privacy (Article 17), the right to the family (Article 17 and 23), the right to freedom of expression (Article 21), and voting rights (Article 25).[16] The Law Center shared its report widely with the non-governmental community and with U.S. governmental agencies.

10 *See* NLCHP, Cruel, Inhuman, and Degrading, *supra* note 1, at 5.

11 UN Human Rights Committee, List of Issues in Relation to the Fourth Periodic Report of the United States of America, March, 2013, *available at*, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/CCPR_C_USA_Q_4_Add-1_14642_E.pdf.

12 National Law Center on Homelessness and Poverty, Criminalization Briefing Paper, (July 7, 2013), *available at*, http://nlchp.org/content/pubs/2013%2007%2018%20Criminalization%20Briefing%20Paper.pdf.

13 *See* NLCHP, Cruel, Inhuman, and Degrading, *supra* note 1.

14 *See* NLCHP, Human Rights Shadow Reporting, *supra* note 3, *at* 477.

15 *Id.*

16 *See* NLCHP, Cruel, Inhuman, and Degrading, *supra* note 1, *at* 5.

On World Habitat Day 2013 (October 7th) NLCHP will host a webinar regarding the substance of the report with the hope of raising awareness about the importance of these advocacy efforts prior to the HRC hearings. The Law Center invited the USICH to participate in the webinar, both as an opportunity for USICH to show steps they and the government are taking to respond to our recommendations, and as an additional incentive for them to actually take those steps, so they have something to share..

Goals for the HRC Hearings in Geneva

At the hearings in Geneva, HRC committee members convene informal meetings with organizations before holding the two day official review of the U.S. government.[17] While working on all the issues covered in the shadow report, the Law Center's primary objectives with the Committee will be to ensure targeted questions to the U.S. delegation on criminalization and to emphasize the vital importance of a strong Concluding Observation on the criminalization of homeless under not only Articles 2 and 26, but also Article 7 (as well as Arts. 9, 17 and 21). The recognition under Article 7 is significant for domestic advocates, as it parallels the language of the 8th Amendment of the U.S. Constitution, but also for advocates in other countries, as it will further entrench the emerging international norm of criminalization of homelessness as cruel, inhuman, and degrading treatment.[18]

Assuming those strong Concluding Observations emerge, the Law Center will publicize them and pursue further meetings with the U.S. government to implement the HRC Concluding Observations via the Law Center's policy recommendations.

Conclusions

The Law Center's engagement thus far has already produced successes at the federal and local levels in applying international law to domestic policy. At the federal level, as noted above, the USICH efforts to hold itself and its agencies accountable to international human rights review is an unprecedented and a significant step forward toward domestic policy reform. The Law Center's strategic approach to engage the USICH in holding a meeting of its agencies and to monitor those agencies on their progress demonstrates the importance of advocacy in the HRC review process. For the first time, the federal government is monitoring itself and its agencies on the topic of criminalization, in the context of a human rights treaty review.

Moreover, the Law Center has successfully used the HRC review in its local advocacy against a disturbing plan to ban homeless persons from the downtown area of Columbia, South Carolina and force their relocation to a remote shelter, with police preventing their return to downtown without an appointment.[19] Local lawyers from the South Carolina Appleseed Legal Justice Center were overjoyed when the Law Center shared with them that Columbia Mayor Steve Benjamin sponsored a resolution at the U.S. Conference of Mayors Annual Meeting promoting the implementation of international human rights treaties in their cities.[20] The Law Center included the Columbia proposal as an example of criminalization in its shadow report, so it could then advocate with the mayor and council that this was part of the international review. Additionally, the USICH stepped up its public opposition to the proposal, one of our recommendations in our shadow report. Following a meeting with Appleseed and other local advocates, the mayor withdrew his support for the proposal, forcing the council to examine other more constructive approaches.

The Law Center's engagement with the HRC review is the latest step in its long-term campaign to integrate international human rights standards into the domestic policy discourse on issues of homelessness. Moreover, it is working to share the model of accountability it is developing with advocates working on other issues through its leadership in the Human Rights at Home (HuRAH) Campaign, so that human rights accountability becomes the norm.[21] We hope it provides support for similar campaigns in Europe, and welcome opportunities to collaborate in pushing both international and domestic standards to preserve the basic human dignity of homeless persons, and ultimately, provide the enjoyment of the human right to housing for all.

17 *See* Tars, Human Rights Shadow Reporting, *supra* note 3, *at* 477.

18 National Law Center on Homelessness and Poverty, Yale Law Allard K. Lowenstein International Human Rights Law Clinic, and UC Irvine School of Law International Human Rights Clinic, Report to the UN HRC on Criminalization of Homelessness in the United States, March, 2013, *available at*, http://www.nlchp.org/content/pubs/USICONHomelessness_ListofIssues3.pdf?utm_source=February+2013+IJT&utm_campaign=IJT&utm_medium=email.

19 Cliff LeBlanc, *Being Homeless in Columbia Could Get You Arrested*, The State, South Carolina (Aug. 10, 2013).

20 United States Conference of Mayors, Resolution No. 57 Promoting and Encouraging International Human Rights, 81st Annual Meeting, 89 (June 21-24, 2013), *available at*, http://usmayors.org/81stAnnualMeeting/media/proposed-resolutions.pdf.

21 *See* http://hurahcampaign.org.

EXCERPTS FROM:

Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil & Political Rights

Prepared By: National Law Center on Homelessness & Poverty and Yale Law School Allard K. Lowenstein Human Rights Clinic

Submitted to the U.N. Human Rights Committee - August 23, 2013

Full document available at: http://www.nlchp.org/content/pubs/Cruel2.pdf

Executive Summary

This report details violations of the International Covenant on Civil and Political Rights (ICCPR) stemming from U.S. policy toward the more than 3.5 million people who experience homelessness in the U.S. annually. While the U.S. government should be commended for recognizing that the imposition of criminal penalties on homeless people is counterproductive public policy in violation of the ICCPR and Convention Against Torture (CAT),[22] the criminalization of homelessness at the state and local levels continues to cause significant rights violations.[23] The Committee's List of Issues for the United States' fourth periodic review requested information on criminalization as it relates to the right to be free from discrimination under Articles 2 and 26 of the ICCPR.[24] Explicit recognition that criminalizing of homelessness is discriminatory and constitutes cruel, inhuman, and degrading treatment would be a powerful affirmation for advocates working to safeguard the fundamental rights of homeless people in the United States.

This report describes how state policies of criminalization routinely penalize people for their involuntary status in violation of Articles 2 and 26. Penalization contributes to violations of many other rights, including the right to be free from cruel, inhuman and degrading treatment (Article 7), the right to liberty and security of the person (Article 9), the right to privacy (Article 17), the right to the family (Articles 17 and 23), the right to freedom of assembly (Article 21), and voting rights (Article 25). Discrimination against homeless people further entrenches the laws and social norms that allow systemic violations of these rights. As a consequence of state policies, a family that loses its home may soon experience increased physical and psychological insecurity and separation from one another, and people experiencing homelessness are disproportionately likely to suffer from electoral disenfranchisement, violence, and many other harms.

Criminalization inflicts indignities and violations on homeless people generally, but its harms are particularly acute for homeless people who experience one or multiple intersecting forms of discrimination in U.S. society. The violations described in this report, from voter disenfranchisement to family dissolution, are especially severe for people of color, immigrants, gay, lesbian, bisexual, and transgender (LGBT) people, people with disabilities, and others who are especially subject to discrimination by private actors and law enforcement officials. These populations are among the most likely to be rendered homeless, and are often subject to the harshest treatment when that occurs.

Left with minimal state protection in extremely vulnerable positions, many homeless people must undertake self-made solutions, such as forming alterative communities like tent cities,[25] creating self-designed sanitation processes,[26] or using public space to perform basic bodily functions when there is nowhere else to go. And yet indi-

22 United States Interagency Council on Homelessness, Searching Out Solutions: Constructive Alternatives to the Criminalization of Homelessness (2012), *available at* www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf [hereinafter USICH, Searching Out Solutions].

23 *See, e.g.*, National Law Center on Homelessness and Poverty, Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities (2011) [hereinafter NLCHP, Criminalizing Crisis].

24 Human Rights Committee, *List of Issues to be Taken up in Connection with the Consideration of the Fourth Periodic Report of the United States of America (CCPR/C/USA/4), Adopted by the Committee at its 107th Session, 11-28 March 2013* (advance unedited version), ¶ 6.

25 Julie Hunter, Paul Linden-Retek & Sirine Shebaya, Welcome Home: The Rise of Tent Cities in the United States, National Law Center on Homelessness and Poverty & Allard K. Lowenstein International Human Rights Clinic (2012).

26 *See, e.g.*, U.N. Human Rights Council, *Report of the U.N. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Addendum: Mission to the United States of America*, ¶ 58, A/HRC/18/33/Add.4 (2011), *available at* www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf [hereinafter UNHRC, *Report of Albuquerque*].

viduals engaging in self-help measures are often penalized through ordinances that prohibit the use of public space for these activities,[27] seek to render homelessness invisible,[28] and aim to dissolve communities created by homeless people to counter the isolation and vulnerability they often face.[29] Given the relative wealth of the United States,[30] the consistent lack of support afforded to this deeply vulnerable population is particularly troubling. It is even more troubling that homeless people, when failed by the lack of a state safety net, are routinely penalized for designing self-help solutions to ensure their basic survival. Indeed, the criminal penalties associated with the activities of homelessness deepen vulnerabilities, making it more difficult for homeless people to find adequate housing or economic opportunity. The U.S. government has already recognized that criminalization is poor public policy, and some states have taken positive steps in passing "Homeless Bills of Rights," but punitive laws and ordinances persist at local levels.[31] Ending criminalization by state and local governments is a key step in reducing this vulnerability; ensuring the human right to adequate housing is the ultimate solution.

Recent statements by U.N. Special Rapporteurs represent a growing international consensus that criminalization of homelessness is both discriminatory and raises concerns of cruel, inhuman, or degrading treatment.[32] We respectfully suggest the Committee join this consensus and make the following Concluding Observations on the U.S. government report:

A. Positive aspects: The Committee welcomes the report of the USICH, *Searching Out Solutions* (2012), acknowledging that criminalizing of homelessness constitutes discrimination and cruel, inhuman, and degrading treatment or punishment in violation of the ICCPR and CAT.

B. Principle subjects of concern and recommendations: The Committee notes with concern reports that homeless people in the United States are routinely and disproportionately criminalized for essential human functions and behaviors they have no choice but to perform in public due to lack of available housing or shelter space (Articles 2, 7, 9, 17, 21 and 26). The State Party should take immediate measures to eliminate the criminalization of basic life activities where homeless people have no choice but to perform them in public, and cease disparate enforcement of other laws that adversely affect homeless people. Federal agencies should promulgate guidance for communities emphasizing the negative consequences of criminalization, provide incentives for decriminalization and constructive alternative approaches, discontinue their funding of local law enforcement practices that criminalize homelessness, and investigate and prosecute criminalization policies or enforcement wherever they occur.

27 USICH, Searching Out Solutions, *supra* note 1, at 6-7 (citing National Law Center on Homelessness and Poverty & National Coalition for the Homeless, Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities (2009) [hereinafter NLCHP, Homes Not Handcuffs]).

28 "[M]unicipalities have a variety of objectives in passing laws that criminalize homelessness. The objectives most frequently cited are the desire to maintain public safety, to improve the city's image, and to meet the desires of middle- and upper-class elites who experience compassion fatigue . . . Underlying this compassion fatigue and NIMBY-ism ['not in my backyard'] is likely a psychological desire of elites simply to make the homeless invisible . . ." Donald Saelinger, *Nowhere to Go: the Impacts of City Ordinances Criminalizing Homelessness*, 13 Geo. J. on Poverty L. & Pol'y 545, 558 (2006) (citing Neil Smith, *New Globalism, New Urbanism: Gentrification as Global Urban Strategy*, 34 Antipode 427 (2002)).

29 *See, e.g.*, Hunter, Linden-Retek & Shebaya, *supra* note 4, at 98 ("Homeless encampments, while of course often a matter of necessity, are also a form of protest—a refusal to remain invisible. In tent cities, homeless individuals are able to constitute a community in which they can find companionship, respect, safety, autonomy, and a sense of dignity.").

30 For 2011, UN data ranked the U.S. GDP per capita as the twenty-first highest, out of 211 countries for which data was available. UN Data, *Per Capita GDP at Current Prices – US Dollars*, http://data.un.org/Data.aspx?q=per+capita+gdp&d=SNAAMA&f=grID%3a101%3bcurrID%3aUSD%3bpcFlag%3a1 (last visited Apr. 27, 2013) (using data filter to select 2011 values only).

31 R.I. Gen. Laws § 34-37.1-3 (2013); *Homeless Bills of Rights Gaining Momentum Across the Country*, National Law Center on Homelessness and Poverty, http://homelessnesslaw.org/2013/06/homeless-bills-of-rights-pass-gaining-momentum-across-the-country (last visited July 24, 2013); USICH, Searching Out Solutions, *supra* note 1.

32 *See* U.N. Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Raquel Rolnik, Mission to the United States of America*, ¶ 95, U.N. Doc. A/HRC/13/20/Add.4 (Feb. 12, 2012) [hereinafter UNHRC, *Report of Raquel Rolnik*]; U.N. Human Rights Council, *Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, Submitted by the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶¶ 65, 66(c), U.N. Doc. A/HRC/21/39 (July 18, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, ¶¶ 48-50, 78(c), U.N. Doc. A/67/278 (Aug. 9, 2012); Special Rapporteurs on the Rights to Adequate Housing, Water and Sanitation, and Extreme Poverty and Human Rights, *USA: "Moving Away from the Criminalization of Homelessness, A Step in the Right Direction"* (Apr. 23, 2012), http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12079&LangID=E.

Are We Too Timid? Fighting for the Right to Housing in Canada

By TRACY HEFFERNAN, *Lawyer, Advocacy Centre for Tenants Ontario,* www.acto.ca

A Snapshot

"Charity is what is left when there is neither kindness nor justice," wrote the Portuguese author José Saramago. These days even charity seems hard to come by in Canada.

We're in the midst of an alarming narrative being played out across the globe. Taxes are cut for the wealthy and corporations. Deficits are announced. In Ontario, the province where I live and work, the amount we have lost to tax cuts over the last 20 years is almost directly proportional to our current deficit. The deficit is used as an excuse to make further cuts to social programs. Inequality rises: in Canada in 1980 the average CEO made 25 times that of the average worker; in 2013 it's 250 times. And the number of those homeless and inadequately housed grows exponentially.

I am unable to give you the exact number of homeless people in Canada because our government refuses to keep track. It is somewhere in the environs of 200,000-300,000 openly homeless, another 400,000- 950,000 in the ranks of the hidden homeless, and 1.3 million in substandard housing. This, in a country with vast wealth and cruel winters.

Most tenants in Ontario lose their housing because they're poor. The majority live in apartments in the private rental market. They simply cannot afford the ever escalating rents, a result of the provincial government's decision to axe rent control provisions, combined with federal and provincial cuts to social programs and a stagnant minimum wage. Canada has only 5% social housing stock as compared to, say, Scotland (26%) or the Netherlands (40%). In Ontario alone there are over 156,000 households on the wait list for social housing. Extrapolated to Canada this amounts to 500,000 across Canada. It is a stark reality: low income tenants have nowhere to go.

In 1973, then housing minister, Ron Basford, called housing a social right, a right that included not just a home but a community, in which individuals could live and grow and flourish. The government acted on this: money was invested in housing construction across the country, directed at people with limited incomes. But by the mid-1980s radical defunding of these programs began, the same time we began to experience the current crisis of homelessness in Canada. Aboriginal peoples faced the most severe impact, followed by racialized communities, single parents and people with mental and physical disabilities. In a cri de couer in 2009, Miloon Kothari, the UN Special Rapporteur on Housing, called the housing and homelessness crisis in Canada a "national emergency".

Nascent thoughts about the right to housing

Ontario has a robust system of community legal clinics across the province that offer legal, law reform, and community organizing services to low income people. For several years, from the late nineties until about 2007, I worked as a lawyer on the front lines of a neighbourhood clinic in Toronto. With social assistance being gutted and rent control eliminated the times were desperate. For families on social assistance the choice was Manichean: pay the rent or feed the kids?

I worked with tenants to prevent eviction but, despite our best efforts, watched many slide onto the streets. So, I worked harder. But eventually I understood that clinics were becoming cogs in the wheel. Pooling all of our resources we tried, often in vain, to assist individuals. In turn, we sapped our energy to think systemically, to organize, protest, perhaps even revolt! In the words of Arundhati Roy, we were blunting the edge of political resistance.

In 2002 our highest court, the Supreme Court of Canada, issued a heartless decision. *Gosselin v. Quebec* concerned whether it was contrary to the *Canadian Charter of Rights and Freedoms* to deny young people on social assistance an amount even remotely adequate for basic survival (the inadequacy led to homelessness, work in the sex trade to survive, malnutrition) simply because they were young. In an eloquent decision Madame Justice Arbour found this denial to be contrary to the *Charter.* Unfortunately she was writing in dissent. Justice Arbour resigned from the Court shortly thereafter.

In 2005 Ms. Arbour gave a speech entitled "Freedom from Want: From Charity to Entitlement". She queried whether judges, lawyers and litigants were too timid in fighting for the recognition of socio-economic rights in Canada. By coincidence I had begun to learn about the work in France and Scotland to have the right to adequate housing recognized. Perhaps the time was ripe in Canada?

Four of us (two lawyers, two activists) organized a workshop, posing the question: could we have a right to housing in Canada? If so, how would we realize it? What would it look like? Despite the fact the workshop was scheduled early on a Saturday morning, the room was filled to capacity. It was the start of a lively discussion.

I changed jobs, accepting one at a provincial legal clinic, the Advocacy Centre for Tenants Ontario (ACTO). ACTO's mandate is to launch and/or support organizing, law reform and litigation that have a systemic component related to housing and homelessness.

Following the workshop, ACTO initiated a Right to Housing coalition. Many organizations and individuals joined, including the Dream Team (psychiatric survivors who advocate for supportive housing), Nellie's (a shelter for women fleeing domestic violence), the Centre for Equality Rights in Accommodation, Holland Bloorview Kids Rehabilitation Hospital, the June Callwood Centre for Young Women, the Toronto Disaster Relief Committee, Sistering (a drop in for homeless women), the Social Rights Advocacy Centre, academics and lawyers. For a full year we discussed whether we should bring a legal challenge to assert the right to adequate housing. We debated and argued about the legal grounds and process. When four extraordinary individuals and one organization stepped forward as applicants, we decided to proceed.

The Applicants bring a claim against the government

The case was brought by five applicants:

Ansar suffered a catastrophic industrial accident rendering him unable to work. Of his four children, one child has severe cerebral palsy and must use a wheelchair and another is autistic. The family of six lives in a two bedroom non-accessible apartment. They are on the wait list for an affordable accessible home. It will likely take twelve years before they are housed. The child with cerebral palsy, who currently must be carried from room to room as his wheelchair is too wide for the hallways, will be twenty years of age.

Janice found herself homeless with her two young sons after her husband died suddenly and she lost her house. She and her children couch surfed for ten months with neighbours but eventually their welcome ran out. They ended up in a shelter. Shelters for the homeless are mostly horrific places in Canada: there is violence, a lack of privacy, bedbugs, and theft: often people lose all their belongings. Heartbroken, Janice sent her children to live with her parents 2000 kilometres away. She fell into substance abuse and was forced, at times, to exchange sex for a place to sleep. She is now housed, but given that her rent consumes 64% of her modest income, it is very precarious.

Jennifer is a young single mother who was taken into state care at the age of 12. When I met her she was a straight A college student with high hopes for her future and that of her young children. She was spending her entire social assistance cheque on rent and trying to subsist on a child tax benefit to feed herself and her children, buy clothes, and pay for transportation. She lives in fear of becoming homeless.

Brian lives on the streets of Toronto. He lost his job when he was diagnosed with cancer and became severely depressed. Without a pay cheque he could no longer pay his rent. He lost his home.

The Centre for Equality Rights in Accommodation tackles housing and human rights issues across the province by working with low income and homeless people, providing advice, direct services and public education.

The applicants served a legal Notice on the provincial and federal governments. They argued that the governments' action and inaction with regard to housing and homelessness violates not only several international treaties and covenants to which Canada is a party, but also violates two sections of the *Charter*: section 7, the right to life, liberty and security, and section 15, the right not to be discriminated against on the basis, among others, of race, gender, family status and physical or mental disability. They requested a modest remedy: that the federal and provincial governments work together to devise, in consultation with groups directly affected, a national housing strategy.

Shocking, but true. Canada is one of the only countries in the Western world that does not have a national housing strategy.

The government response: Motion to Strike

On a shoestring budget, with lawyers working *pro bono* and experts giving freely of their time, the legal team compiled 10,000 pages of expert witness testimony as evidence of the s. 7 and s. 15 violations and served it on the governments. The governments' response was to bring a motion to strike, a legal proceeding in which no evidence can be relied upon (thus, while the government has reviewed the 10,000 pages of evidence, the court cannot). The governments argue that we have no legal basis to our claim, that this is a political, not a legal, matter, and that it should not be heard by the court. This is a tired argument, used by the government whenever socio-economic rights are at stake.

Several organizations applied to the court to intervene on the motion to strike, from disability rights groups to people with HIV/AIDS to low income tenants. After commenting that he would prefer "more academic" and "less partisan" intervenors - the inference being that if you are poor you are somehow partisan, a label which corporations, for instance, seem to escape entirely - the judge permitted the following interveners: Amnesty International, the Charter Committee on Poverty Issues, Pivot Legal Society, the Income Security Advocacy Centre, Justice for Girls, International Network for Economic, Social and Cultural Rights, and The David Asper Centre for Constitutional Rights.

Over three days in May 2013 the motion was heard. On several occasions the judge worried aloud about whether the case was too "political". On September 6, 2013 Justice Lederer issued a 52 page decision allowing the motions to strike and dismissing our application. In a shameful statement, he said that questions which reference the level of assistance to those in poverty, the basis for eviction, or the treatment of those with psycho-social and intellectual disabilities should not be entertained in a court room. His decision raises a fundamental question of access to justice for the poor in Canada.

Next stop is the Ontario Court of Appeal. We're hoping that, at a minimum, the Court of Appeal will agree that the application should be heard in its entirety on the basis of a full evidentiary record. Surely poor people have the right to be heard.

Concluding Thoughts

Our coalition has expanded and contracted, some organizations have become less active, others more so, and new groups have joined. It has been an organic process.

Litigation is often a strategy of last resort but in our coalition it is just one of many. We have participated in demonstrations to call for affordable housing with groups across the country. We've been involved in postcard campaigns to have housing recognized as a human right. We've provided workshops to students and community organizations across Canada about the right to housing.

We've also advocated for two bills before the federal parliament that would provide for a national housing strategy, the very remedy we are seeking from the courts. The first bill was about to pass when the minority Conservative government prorogued the parliament, a curiously Canadian way of quashing scandal, on the eve of the final vote. In the second round the bill was defeated by the current majority Conservative government.

Given that our government professes concern about fiscal restraint, this is an odd result. That it costs far more to keep people homeless than it does to provide housing is old news; moreover, it is news of which the government is well aware.

But even in the face of powerful government opposition our coalition has made a choice. Enough timidity! We're fighting for the right to adequate housing in Canada, a struggle rooted in justice, not charity.

"The CLJF is supported by the Law Foundation of Ontario but the findings of this research do not necessarily reflect the views of the Foundation"

For more information on the challenge:

http://www.acto.ca/en/cases/right-to-housing.html

http://righttohousing.wordpress.com/

https://www.facebook.com/R2HCoalition

The right to emergency accommodation, a breach in the dam of fundamental rights ?

By MARC UHRY, *Fondation Abbé Pierre* and CLAIRE ZOCCALI, *Lyon Bar*

In recognising that the right to emergency accommodation is a fundamental freedom, administrative courts delineate its boundaries, drawing a distinction between the right holders liable to cite the state as negligent in court when this right is ignored and the others, those who are unable to claim this right.

For a long time, access to emergency accommodation, for those living in extreme hardship, was unconditional. Then, gradually, during the first decade of the new millennium, the idea of subjecting this access to certain conditions was raised, as two forms of pressure came to bear on the shoulders of the authorities concerned.

The first source of pressure prompting this change was the fact that the legal status of migrants was growing ever more complex. This led to an increase in the number of people allowed to remain on French soil but unable either to work or to seek assistance from the usual solidarity mechanisms. As a result, these individuals had no other option but to turn to the 'unconditional emergency mechanisms' for support. The number of temporary residence permits granted increased, authorising stays of between 3 months and 1 year. At the same time, it became more difficult to obtain either permanent leave to remain or French nationality, the concept of natural entitlement dissolved and that of state discretion took its place. The successive waves of new EU citizens entitled to move freely within the Union's borders found their right to work in France restricted for periods of up to seven years in length.

The second factor behind the change was the entry into force, of the Dalo[1] Law, on March 5th 2007. This law made it possible for individuals to take the state to court and claim the right to emergency accommodation. The text stated that temporary accommodation structures were a valid resource with which the state could fulfil its obligation to house those individuals deemed priority cases by Mediation Committees. In order to create the space necessary for the state to do so, those who entered these structures ultimately need to be able to leave.

Logic would therefore dictate that in a smoothly functioning system, those who entered temporary state accommodation would be eligible for support allowing them to leave. Eligible, namely, for social housing, the access to which is currently subject to ever more stringent conditions of residence.

1 Droit au Logement Opposable – the enforceable right to housing

Following a literal interpretation of the Dalo Law, France's administrative courts concluded that no condition of residence could affect the right of an individual to claim emergency accommodation from the state in court. However, in a judgement issued on March 7th 2011, Lyon's Administrative Court enshrined a logic of contagion in accommodation eligibility criteria, making the right to take the State in order to receive housing conditional upon the possession of a valid residence permit.

On February 10th 2012, a ruling issued by the Council of State declared : '*it is incumbent upon state authorities to ensure that the right of any homeless person in a situation of medical, psychological or social distress to emergency accommodation as recognised by law is enjoyed in practice*' and stated that *'blatant negligence in performing this task can constitute (…) a serious and manifestly illegal violation of a fundamental freedom, should this negligence have serious consequences for the person concerned.'*

This statement from the administrative judge placed the right to emergency accommodation among the ranks of the fundamental freedoms to be enjoyed in France. Given that this right must be recognised and guaranteed by the authorities, it prompts decisions on the part of the administration which are then validated by a judge. Given that the right to emergency accommodation is a fundamental right, in emergency situations, cases in which the state is challenged on account of its failure to provide such housing can be fast-tracked through the courts. These courts have the means to force the authorities into action.

With this statement, the right to emergency accommodation, previously something of an afterthought in the field of social rights, became a positive right - the state is now bound to take positive action in order to ensure it is enforced.

The Council of State has spoken: the very survival of the individuals concerned depends upon the enjoyment of this right - at the very least their dignity is at stake. It is impossible to compromise on the right to life and to live in dignity – a right of every human being. Nevertheless, through two of its rulings on the constitutional and fundamental right of asylum – 'Nzuzi' and 'Panokheel' in 2010 - the Council of State stipulates that there are conditions which must be fulfilled before an individual's homelessness can be deemed a failure of the state: the rulings state that the consequences of this homelessness must be particularly serious, in view of the age, health and family situation of the claimant.

When a case is brought before the emergency judge, the judge will examine its particulars and decide whether the claimant's situation of distress is liable to make the state responsible and thus oblige the state to house him.

In spring 2012, the end of the 'Winter Plan' which seeks to ensure all homeless people are accommodated during the winter months, saw a reduction in the capacity of emergency accommodation structures. This reduction culminated, as it always has done, in evictions (in the absence of a dispute settlement procedure, violent evictions became common practice in the housing sector…) and in the suspension of housing access services in order to facilitate the closure of a number of centres which opened on a sporadic basis.

Almost immediately, several petitions for injunctions or interim suspension orders were filed by individuals who were either homeless or at risk of homelessness. These were individuals who had called upon emergency social services for support, but who had found these services unable to grant their request.

In simple terms, in order for a claimant to argue successfully in court that the state had failed to fulfil its responsibility to provide accommodation, it was originally sufficient to compare the claimant's careful steps to find accommodation with the state's efforts to meet its obligation to house the individual in question. The majority of claimants saw their claims upheld. Others saw their cases thrown out of court, namely when they had received offers of assistance whose terms they had failed to obey, or when it was deemed that that they had played too large a part in causing their own homelessness.

In spring 2013, against a backdrop of new cuts to emergency housing services, along with a new, hard-line policy on makeshift housing (squats, shantytowns), a new wave of petitions for interim suspension orders and injunctions flooded into the administrative courts.

From that point on, the decisions taken by the courts and the justifications provided became more complex, riddled with inconsistencies and the legal texts of reference on which they were based were grossly over-simplified.

The administrative courts rejected claims when the claimant in question was a single man either in rude

health or deemed insufficiently sick, holding the view that the fact that these men were on the street, with no possible way out of the situation despite having turned to the emergency social services for support, did not in itself constitute a situation of distress serious enough to declare the state negligent.

At the same time, families with children saw the legitimacy of their claim acknowledged:

> *'The details of the case make it clear that, given the family situation of this couple, the state's negligence of its obligation to provide emergency accommodation to homeless persons is blatant and constitutes a serious and manifestly illegal violation of one of the fundamental freedoms of the claimants. As a result, there are grounds on which to order the Prefect of the Rhône department to offer the couple and their children emergency accommodation, within four days of receiving this notification.' (Lyon Administrative Court, 4 April 2013, n°1302164).*

The state was also deemed negligent in the case of a sick woman living alone.

> *'The examination of this case reveals that this woman has been diagnosed with Cushing Syndrome; that the consequences of this illness include significant weight gain, extreme fatigue, pain and the aggravation of her diabetes. Consequently, as far as the circumstances of the case are concerned, despite the fact that this lady benefited from state-funded accommodation until 31 May 2013 and a further week of accommodation paid for by a housing charity, her severe medical situation means that she must be housed as a matter of urgency.' (Lyon Administrative Court, 5 August 2013, n°1305450).*

The distinction drawn between families and those living alone, between the healthy and the sick, subsequently became more complex still.

Confronted with cases regarding the fundamental freedom of the right to emergency accommodation, judges were prompted to determine whether or not a complainant's presence on French soil was legitimate, despite the fact that such decisions fall under the scope of other legal procedures.

In order to establish whether or not the state's negligence constituted a grave violation of the fundamental right to emergency accommodation, the situation of distress of a given individual began to be examined in the light of his administrative status as a foreign national where the right to live in France was concerned. Consequently, homeless families saw their claims thrown out of court, on the grounds that they were unable to demonstrate that it was impossible for them to return to their country of origin and remedy their distress.

> *'The new medical certificate, dated 6 May 2013 and produced by the claimants, confirms the seriousness of their daughter's handicap but nevertheless, fails to contradict the opinion issued by the regional health agency. Furthermore, the claimants, who were housed until May 13 2013, have not taken any steps to comply with the decision obliging them to leave the country. Consequently, there are no grounds on which the claimants can maintain that the Prefect of Lyon is guilty of a serious and manifestly illegal violation of their fundamental freedoms.' (Lyon Administrative Court, 7 June 2013, n°1303654).*

> *'The claimants are not without connections in Romania where the gentleman was working in the construction sector and have failed to prove that they are unable to return to their country of origin. At the same time, they do not contest the fact that they are residing illegally on French soil and doing so entirely at the expense of the emergency social service. Pending the definitive resolution of their case, the family may benefit from itinerant social support (…)' Lyon Administrative Court, 5 August 2013, n°1305451*

Through a judgement issued on September 18 2013, the Council of State enshrined in French law the principle of excluding foreigners residing illegally on French soil from the right to claim the fundamental right to emergency state accommodation in court. The right of a homeless foreign national in a situation of medical, psychological or social distress to live in dignity is now dependent on his possession of the right to reside on French soil, unless he can demonstrate that the situation of distress is such that it prevents a return to his country of origin.

> *'It is incumbent upon the judge at a court of interlocutory proceedings to assess in each case the efforts made by the authorities in view of both the resources at their disposal and the age, health and family circumstances of the party concerned. Regarding foreign nationals whose application for asylum has been definitively rejected and who are obliged to leave national territory having exhausted all possible channels of appeal, these individuals cannot legitimately claim the right to emergency accommodation unless their particular circumstances are such that whilst they reside on French soil for the period strictly necessary for the preparation of their departure, a situation of distress serious enough to prevent this departure arises.' (Council of State, 18 September 2013, n°372229).*

Consequently, through case by case analysis, the decisions taken by the courts establish various categories of people entitled to take the state to court and claim the right to emergency accommodation. According to these decisions, those living alone are excluded from these categories, unless suffering from a particular illness, along with families not in possession of a residence permit. The dividing line between families and persons living alone, between the sick and the healthy, between nationals and foreign nationals and between those with leave to remain and those without is not enshrined in any legal text and is nevertheless decisive in verdicts issued by the courts.

It is highly likely that it will be a long time yet before we know how the Court of Justice of the European Union (EUCJ) will interpret the decisions taken by French administrative courts. There is no doubt that these decisions could prompt requests for the EUCJ to issue preliminary rulings in an attempt to deal with areas of tension between domestic law and the law of the European Union. However, judges in French administrative courts have thus far shown no desire to seek such clarification.

It is highly likely that it will be a long time yet before we can read the opinion of the European Court of Human Rights on these distinctions drawn between categories of individuals, established by practice rather than law, as part of the exercising of a fundamental freedom. This fundamental freedom is attached to the status of being a human individual, insofar as it forms part of the right to life, family life and private life and must be enjoyed without discrimination on the grounds of nationality, health and family situation…

Examining individual situations on a case by case basis rather than issuing one-size-fits-all rulings was one of the major pieces of legal protection acquired in the 19th century and it is important that this principle be protected. However, this principle is abused the moment it begins to function as a pretext with which to sort the wheat from the chaff through the establishment of sub-categories which facilitate the erosion of State responsibility where the guaranteeing of a fundamental freedom is concerned.

The difficulties inherent in managing these cases cannot alone be sufficient to restrict the universality of access to services on which the enjoyment of fundamental rights depends. This is due to the fact that at stake in this debate is one of the most powerful pillars upon which the legitimacy of the Republican system is built: human rights. It is this very concept of imprescriptible universality which forms the core of our political and institutional identity.

The challenge facing us today is therefore that of establishing a public policy which will allow the state to shoulder its obligations regarding the fundamental right to emergency accommodation, whatever the means or the end. The right to reside in France or the family situation of any given individual should not influence, even indirectly, their access to the right of emergency accommodation, in view of the fact that this is recognised as a fundamental freedom.

We are in no way obliged to await rulings from High Courts in order to stoke the flames of a substantive debate. The judiciary has a role to play in the strategic function of the law where the development of policy is concerned, but this is a role which it must play alongside others. In the face of such a complex situation, it is most likely not in the courts that this tension will be resolved, but rather within public debate - a debate which all defenders of fundamental rights and freedoms are responsible for keeping alive. To use that famous phrase which came from the lips of Cicero 2000 years ago, where the source of law is concerned, it is a matter of understanding the extent to which Society will take it upon itself 'to protect a human being for no other reason than that he is a human being.'

Not only does the Bedroom Tax push people into poverty, it also in violation of the Right to Housing

By THOMAS BIGNAL, *policy assistant, FEANTSA*

Following a 14 day official visit to the United Kingdom, the UN's Special Rapporteur on Adequate Housing (as a component of the right to an adequate standard of living and to non-discrimination in this context), Ms. Raquel Rolnik, issued a Press Statement which despite praising many aspects of the UK's provision of affordable housing was also highly critical of certain recent developments, and in particular the controversial so-called "bedroom tax".

Between the 29 August and 11 September 2013, upon invitation by the UK Government[1], Ms Raquel Rolnik met with a rather broad spectrum of government officials and stakeholders. She also visited various cities throughout England, Scotland and Northern Ireland to "assess the country's achievements and challenges in guaranteeing the right to adequate housing and non-discrimination (…) in accordance with existing international human rights standards"[2].

The "bedroom tax" is essentially a decrease in the amount of benefit paid to people if the property they are renting in the social housing sector is considered under occupied. As is the case throughout Europe, there is a serious lack of social or affordable housing in the UK. The primary goal of this policy change is thus to free up under-occupied housing so that families which have need of these rooms can move in. It is also due to save the British state up to £465m a year.

However, Ms Rolnik argued that the purpose of this measure was built on a misunderstanding of the right to housing which "is not about a room anywhere, at any cost, without any social ties" but "about (…) allowing them to exercise all other rights, like education, work, food or health". Rolnik continued by stating that "in only a few months of its implementation the serious impacts on very vulnerable people have already been felt", before suggesting that the bedroom tax "be suspended immediately".

Rolnik's view is supported by a recent report by the Trades Union Congress's False Economy Group, which was based on information from over 100 British local councils. The responses revealed that 50,000 households are no longer able to pay for their accommodation since the implementation of the "bedroom tax" on 1 April 2013. This is confirmed by the National Housing Federation (NHF) which discovered in a study that a quarter of people in social housing properties hit by the policy have been pushed into rent arrears since April.

Yet despite this evidence, Rolnik received her most "aggressive" criticism to date by members of the British Government, despite having previously carried out similar missions in countries such as the USA, Maldives, Kazakhstan, Croatia, Algeria, Argentina, Rwanda, Israel/Palestine and Indonesia.

Iain Duncan Smith, the Work and Pensions secretary argued that she had undermined the impartiality of the UN by coming to her conclusions without access to official information; even though her agenda had been organized by the UK government and in accordance to strict UN protocol[3]. Grant Shapps, the former Housing minister and current Conservative Party chairman, took a step further by writing to the UN Secretary General, Ban Ki-moon, accusing Rolnik of political bias and calling for her report to be withdrawn. One can question such a strange demand since the UN has no direct authority over her precisely because Rolnik is an independent expert appointed by the UN Human Rights Council for her academic and professional expertise on housing issues. The right-wing press and tabloids went even further by viciously dubbing her a "Brazil nut" and a "dabbler in witchcraft who offered an animal sacrifice to Marx", referring to her nationality and religious beliefs[4].

1 A UN special rapporteur cannot carry out a mission (ie a formal visit) to a state without being invited. This is set out in the code of conduct for such appointment-holders (also known as "special procedures"). http://www.ohchr.org/Documents/HRBodies/SP/CodeofConduct_EN.pdf

2 http://www.theguardian.com/world/interactive/2013/sep/11/full-statement-special-rapporteur-raquel-rolnik

3 http://www.theguardian.com/society/2013/sep/11/bedroom-tax-housing-benefit

4 An apparent follower of Candomble, an African-Brazilian religion that originated during the slave trade.

The Rapporteur firmly responded to these claims by arguing that she did not come to the UK to investigate the bedroom tax but on a normal country mission to assess the situation. In response to the allegations that she had failed to meet government officials, she claimed that "this is absolutely not true" arguing that she had met senior members of the Department for Work and Pensions twice, as well as personal meetings with Communities secretary Eric Pickles and under-secretary Don Foster[5].

The Labour Party has recently clarified its position with regard to the "tax" and its leader, Ed Miliband, recently stated that a future Labour government would abolish the "bedroom tax" calling it "a symbol of an out-of-touch, uncaring government standing up for the interests of the privileged few…". Liam Byrne, shadow Work and Pensions minister, confirmed Labour's intention by claiming that the party was working on proving the policy is costing more than it saves. Indeed, whereas the Conservative/Liberal Democrat Coalition argues that the under-occupancy penalty will free up spare bedrooms for overcrowded families, critics such as Labour argue that it will either increase the debt of those most in need or force residents deemed to be under-occupying their homes into the more expensive private-rented sector, which, in turn, will increase the housing benefit bill.

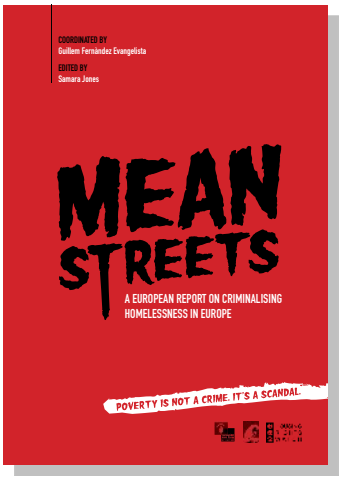
Opponents are taking to the courts to challenge the policy. For example, Barrister Surinder Lall recently won his appeal against the imposition of the bedroom tax. Mr Lall, who is blind, successfully argued to a tribunal that a room classified in his flat as a second bedroom had never been used as one and had always been used to store essential equipment helping him to lead a normal life. Lall argued that his use of an additional room for equipment required for a disabled person fell outside the scope of the regulations and should stop local housing departments simply using the term bedroom in tenancy agreements to cut benefits. Indeed, the number of bedrooms in the property is determined by the landlord's tenancy agreement, so that one cannot claim a bedroom is actually a living room. Similar cases in Scotland have also drawn to the same conclusions. As these legal cases against the "tax" demonstrate, the problem is that the mechanism lacks precision on the individual specificities of each person receiving social housing support.

In reality, this shows that the "bedroom tax" targets housing benefits claimants as a whole rather than a group of distinct individuals with different requirements. The targeting of the most vulnerable as the root of the current economic and financial crisis has become the mantra of the Coalition Government. The result of this will only mean pushing those most vulnerable further into poverty and homelessness and consequently increasing the social benefits bill as a whole.

This only goes to show how poorly the "bedroom tax" was thought through in the first place. The studies by both TUC and NHF, as well as the successful legal cases against the "bedroom tax", support Ms Rolnik's assessment regarding the right to adequate housing and non-discrimination as based more on real facts than on political bias. This is why it is of utmost importance that the "bedroom tax" be withdrawn immediately in order to limit further harm to those already most vulnerable in Britain.

5 http://www.insidehousing.co.uk/regulation/un-expert-says-uk-government-most-aggressive-in-11-missions/6528551.article

New publication



Mean Streets: A Report on the Criminalisation of Homelessness in Europe

Coordinated by Guillem Fernandez Evangelista, Edited by Samara Jones

Published by Housing Rights Watch and FEANTSA, with the support of Fondation Abbé Pierre

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This is the first European report that examines the extent and nature of criminalization of homelessness in Europe. We were inspired by the National Law Center on Homelessness, Poverty in the United States that regularly monitors criminalisation of homelessness and advocates for the repeal of criminalising measures and campaigns for human rights for homeless people[1]. Housing Rights Watch and FEANTSA wanted to respond to the fears, discussions and questions posed by the specific experiences and problems of homeless people in their everyday lives in the European Union.

This report was coordinated by Guillem Fernàndez Evangelista who contacted experts across the European Union to contribute to articles. Samara Jones planned and designed the structure of the book and provided editorial support from FEANTSA's office in Brussels. A full list of expert contributors can be found at the beginning of the book. This report brings together articles from academics, activists, lawyers and NGOs on the topic of human rights and penalisation. Divided into three main sections, the report provides an important theoretical and historical background, highlightings examples of penalisation across the EU, and finally suggestings measures and examples for how to redress this dangerous trend.

Several case studies (Chapters 3 to 6) illustrate how homelessness is penalised, including the criminalisation of homeless people's everyday activities in Belgium, Poland and Hungary. Chapter 6 examines how homeless people are penalised, discriminated against and often prevented from accessing social services, social housing and shelters in France, England and The Netherlands.

PENALISATION AS A VIOLATION OF HUMAN RIGHTS

EU Member States have committed themselves to protecting and promoting human rights; the EU has a Charter of Fundamental Rights that reinforces this commitment. All EU Member States have signed on to the UN's International Covenant on Civil and Political Rights (ICCPR) and to the Council of Europe's (Revised) Social Charter, which enshrines economic and social rights.

However, as this report reveals, even when governments work to reduce homelessness (e.g. by implementing integrated homelessness strategies), to protect rights, and to ensure access to rights and justice, their inclusive social policies might be undermined by local, regional or even national policies and rules that criminalise and penalise homeless people.

In fact, these measures often violate international human rights treaties like the International Covenant on Civil and Political Rights (ICCPR) and the European Social Charter. Criminalisation and penalisation policies routinely penalise people for their involuntary status and violate individual's rights to be free from cruel, inhuman and degrading treatment (Article 7 ICCPR), the right to liberty and security of the person (Article 9), the right to privacy (Article 17), the right to the family (Articles 17 and 23), the right to freedom of assembly (Article 21) and voting rights (Article 25).

Discrimination against homeless people, based on their poverty and other factors, further entrenches the laws and social norms that allow systematic violations of these rights[2].

1 Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities, NLCHP, 2011 http://www.nlchp.org/content/pubs/11.14.11%20Criminalization%20Report%20&%20Advocacy%20Manual,%20FINAL1.pdf

2 Cruel, Inhuman and Degrading: Homelessness in the United States under the International Covenant on Civil and Political Rights, National Law Centre on Homelessness and Poverty, August 2013

This report reinforces the importance of taking a human rights-based approach when creating and delivering all policies––particularly social policy. The report reviews the history of human rights and the interdependency between economic, social and cultural rights and civil and political rights (Chapter 1). Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Human rights law obliges governments and other duty-bearers to do certain things and prevents them from doing others. So, in order to respect human rights (under a human rights-based approach), homeless policies are anchored in a system of rights and corresponding obligations established by international law.

How can policies be developed and implemented using a human rights-based approach? First of all, the risk factors and immediate, underlying and basic causes of the problems of homelessness must be assessed and all stakeholders brought together to build effective alliances. The strategies for eradicating homelessness should encourage the development of human rights because they must oversee and assess results as well as processes. Therefore, policy targets and goals should be measurable as they are basic components for programming and assessment. In

fact, strategies should ensure the accountability of all stakeholders, and include the participation of the people affected by homelessness as both a means and an end.

In other words, homeless people should be recognised as the main protagonists of their own development instead of being viewed as passive receivers of products and services. For some governments and service providers this may mean a radical change in the way that policies are developed and put into practice.

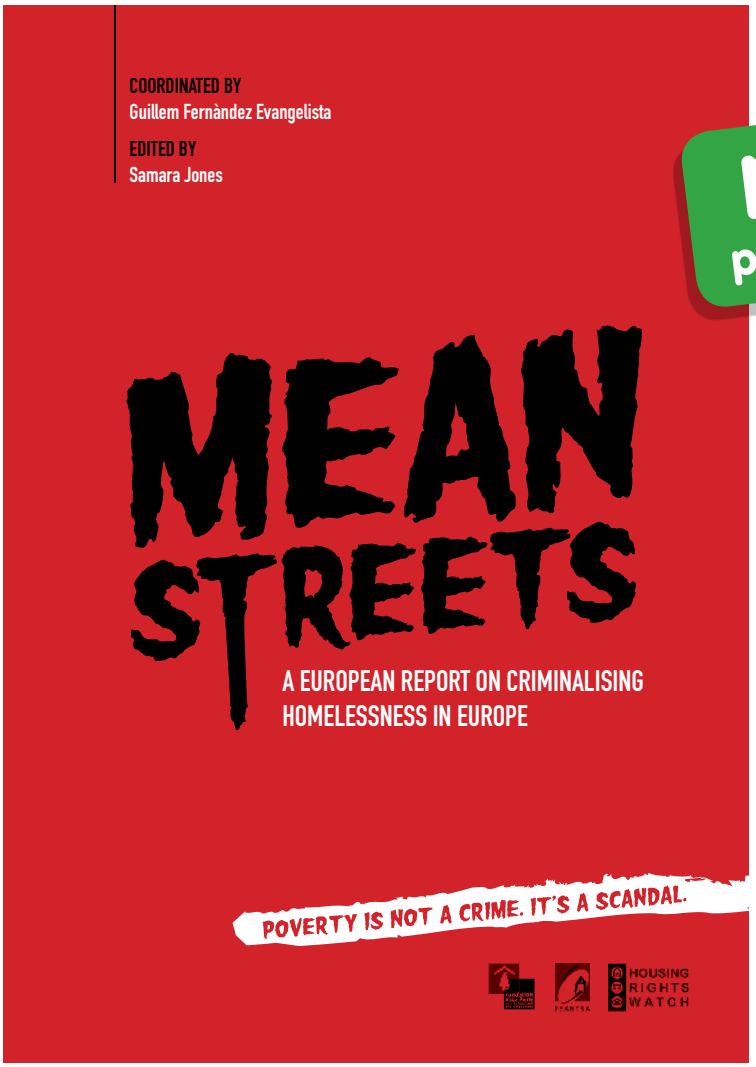
One of the findings of this report is that the development of national strategies for eradicating and preventing homelessness are good practices in this respect. The report highlights how homelessness strategies have a direct link to the human rights based approach. Unfortunately, a country that has a national strategy to eradicate homelessness may still have policies and practices that violate basic human rights. This is why awareness about criminalisation of homelessness is so important.

We also found that it is possible for a countries and cities that do not have a national homelessness strategy to develop programmes that respect and promote the human rights of homeless people. Building bonds with the long-term homeless and eschewing repressive or force-based measures are crucial to developing good, effective and successful policies that respect human rights.

Many service providers and NGOs are not used to taking a rights-based approach to their work. For most, including FEANTSA's member organisations, the immediate needs (housing, food, employment, etc.) of a person who is homeless are dealt with first, which means that social workers do not usually have time or, in some cases, the knowledge to consider whether a homeless person's rights have been violated.

This report includes interesting examples of collaboration between service providers and social NGOs and legal experts. For example, in Spain, NGOs work closely with university legal clinics to pursue cases and advocate for the rights of homeless people (Chapter 11). In France, Jurislogement brings together lawyers, activists, academics and NGOs to share information and collaborate on strategic litigation. Another valuable resource for NGOs and others working with homeless people are ombuds offices as described in Chapter 12.

Contact Samara Jones (samara.jones@feantsa.org) to order your copy and watch for the electronic version on the new Housing Rights Watch website: www.housingrightswatch.org.



NEW publication

MEAN STREETS:

A REPORT ON THE CRIMINALISATION OF HOMELESSNESS IN EUROPE

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