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# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

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## Homelessness and United States Compliance with the International Covenant on Civil and Political Rights

Submitted to the Human Rights Committee by the

**National Law Center on Homelessness & Poverty**

**May 31, 2006**

### Introduction

The National Law Center on Homelessness & Poverty (the “NLCHP”) submits the following shadow report to the Human Rights Committee.<sup>1</sup> Established in 1989, NLCHP’s mission is to serve as the legal arm of the nationwide movement to prevent and end homelessness in the U.S. Based in Washington, D.C., NLCHP works with thousands of local level advocacy and service provider groups across the country.

### Executive Summary

This shadow report focuses on homelessness in the United States. In particular, this report details the failure of the U.S. federal government, over a number of decades, to adequately address the need for affordable housing in this country and the impact that failure has had on the lives of millions of Americans. A number of concerns relevant to U.S. compliance with the International Covenant on Civil and Political Rights (the “Covenant”) arise as a result of the federal government’s approach to housing and homelessness. These concerns include:

- Article 6 of the Covenant: Right to Life

Homeless people suffer serious health problems that are directly related to their lack of housing. Being subjected to the elements contributes to illness and death among the homeless population.

- Article 23 of the Covenant: Right of Family

Without affordable housing, many families are unable to remain together while the federal and state governments have established programs to specifically

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prevent family separations due to lack of housing. These programs are underfunded and fail to meet the needs of homeless individuals.

- Article 24 of the Covenant: Barriers to Homeless Children’s Right to Education

Homeless children face many barriers to receiving an education in the U.S. The Department of Education has not taken an active role to ensure that state and local officials remove obstacles such as residency requirements and lack of transportation so that homeless children can attend school and obtain an education.

- Article 25 of the Covenant: Restrictions on the Right to Vote

Voting requirements established by federal, state, and local authorities effectively deprive homeless people of their right to vote.

- Article 26 of the Covenant: Discrimination Based on Property or Other Status

Local laws prohibiting sleeping, camping, and sitting in public places discriminate against homeless people based on their status. In addition, without a permanent residence, homeless people find it difficult to obtain identification cards, and therefore, housing, employment, and other services.

- Article 26 of the Covenant: Discrimination Based on Gender

Domestic violence is a leading cause of homelessness among women. When these women are denied housing or evicted from their residence because of the violent acts of their abusers, it constitutes a form of sex discrimination in housing.

## **Homelessness in the United States**

In the United States, some 840,000 people experience homelessness on any given night.<sup>2</sup> Over the course of a year, an estimated 2.5 to 3.5 million people experience homelessness; over the course of five years, the estimated number rises to 7 million people.<sup>3</sup> According to a telephone interview study conducted in 1994, as many as 12 million Americans, or 6.5% of the U.S. resident population in that year, had been homeless at some point in their lives.<sup>4</sup>

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<sup>2</sup> See Martha Burt, et al., *Helping America’s Homeless* (2001).

<sup>3</sup> Bruce Link, et al., *Life-time and Five-year Prevalence of Homelessness in the United States*, 65 *American Journal of Public Health* (1994).

<sup>4</sup> Link, *Homelessness in the U.S. 1995*, *supra* note 2, at 347–54.

The lack of affordable housing is a leading cause of homelessness. Some 13.7 million households, or 14% of all households, have “critical housing needs,” meaning that they spend more than 50% of their incomes on housing or live in substandard housing.<sup>5</sup> Inadequate incomes are directly linked to this problem: a person working a regular work week at the legal minimum wage still cannot afford the fair market rent, based on federal affordability guidelines (30% of income or less spent on rent), for a one-bedroom apartment anywhere in the United States.<sup>6</sup>

As evidenced by Hurricane Katrina in August 2005, natural disasters can also be a significant cause of homelessness.<sup>7</sup> In the aftermath of Hurricane Katrina, an estimated 1.5 million people became homeless. The federal government’s response to this natural disaster, or lack thereof, is well documented, and has only exacerbated the homeless situation that Hurricane Katrina created.<sup>8</sup> It should be noted that after failing to submit its mandatory reports to the UN Human Rights Committee as requested by the Covenant in October 2005, the U.S. submitted a combined second and third periodic report to the UN Human Rights Committee in response to pressure from litigation groups and U.S. human rights organizations. The combined report made no mention of the homelessness problems created by Hurricane Katrina.

The U.S. homeless population is diverse. According to data from a 1996 national survey commissioned by the federal government,<sup>9</sup> African-Americans are disproportionately represented, making up an estimated 40% of the homeless population; some 41% are Caucasian; 11% Hispanic; 8% Native American. The survey found that 34% are families with children, and that 44% of homeless adults worked at some point in any given month. According to the survey, 66% of homeless adults reported problems with mental illness, drug or alcohol abuse, or some combination of these problems.

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<sup>5</sup> Stegman et al., *Housing America’s Working Families at* [http://www.huduser.org:80/periodicals/urm/urm\\_12\\_2000/urm1.html](http://www.huduser.org:80/periodicals/urm/urm_12_2000/urm1.html) on August 2, 2001.

<sup>6</sup> National Low Income Housing Coalition, *Out of Reach* 2005.

<sup>7</sup> Other natural disasters that have caused a significant increase in the number of homeless people include the Northridge earthquake in 1994 and Hurricane Andrew in 1992.

<sup>8</sup> See “Hurricane Katrina: A Nation Still Unprepared,” Additional Views of Senators Lieberman, Levin, Akaka, Carper, Lautenberg and Pryor on White House Katrina Failures, Administration Lack of Cooperation with the Investigation, and Failure to Establish Unified Command (the “Report”), page 11. (“In fact, it seems as if President Bush and, consequently, the Administration, did not grasp that Katrina was a catastrophe until later in the day – a full day and a half after landfall – when Michael Brown informed President Bush, Vice President Cheney, Secretary Chertoff, and Deputy Chief of Staff Karl Rove in a telephone call that at least 90% of New Orleans’ population had been displaced and that responders “needed military assets; this was the big one.”)

<sup>9</sup> Homelessness: Programs and the People They Serve, Findings of the National Survey of Homeless Assistance Providers and Clients. Highlights. Interagency Council on the Homeless, December 1999.

Homelessness has a devastating effect. A 1996 survey revealed that 40% of homeless clients had gone a full day without eating within the last 30 days.<sup>10</sup> Forty-five percent (45%) reported one or more chronic health conditions, and 26% reported one or more acute infectious conditions such as bronchitis.<sup>11</sup> The Interagency Council on the Homeless reported in 1991 that “the death rate for homeless males in each age group is roughly five times that of non-homeless males.”<sup>12</sup> Two in five homeless people report that they have faced the threat of robbery and theft, 22% report being physically assaulted and 7% report being sexually assaulted at least once since being homeless.<sup>13</sup>

Homelessness also contributes to the breakdown of families. In a 25-city survey, 57% of cities surveyed reported that families may have to break up in order to be sheltered.<sup>14</sup> Homeless children suffer additional harms, including barriers to their education. In addition, they may also suffer serious emotional and developmental problems that can persist long after their homelessness ends.

Homelessness and the problems that homeless Americans face present several concerns relevant to U.S. compliance with the International Covenant on Civil and Political Rights. We summarize a few of these concerns below.

### **1. Article 6: Right to Life**

The staggering level of homelessness and poverty in the U.S. has led to serious health problems and even to death for some homeless persons, particularly in extreme weather conditions. For example, in July 2005, 21 homeless people living on the streets of Phoenix died in one week during a heat wave.

Instead of taking positive measures to address this serious problem, the federal government has consistently cut housing programs. For example, during President Reagan’s two terms in office, the federal housing program was severely cut. The U.S. Department of Housing and Urban Development’s (HUD) share of federal budget authority fell from over 7% in 1978 to less than 1% ten years later. New budget authority for housing assistance fell \$24 billion, or more than 80% between 1978 and 1987.<sup>15</sup> While the federal housing budget began to creep upward again during the Bush and Clinton administrations, between 1991 and 1997, approximately 370,000 affordable

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<sup>10</sup> Homelessness: Programs and People, supra note 7 at 22.

<sup>11</sup> Homelessness: Programs and People, supra note 7 at 23.

<sup>12</sup> Interagency Council on the Homeless, Annual Report 34 (1990), as quoted in *Moore v. Ganim*, 233 Conn. 557, n11 (1995).

<sup>13</sup> Homelessness: Programs and People, supra note 7 at 22.

<sup>14</sup> U.S. Conference of Mayors, 2005 Hunger and Homelessness Survey.

<sup>15</sup> Paul A. Leonard, Cushing N. Dolbeare, and Edward B. Lazere, *A Place to Call Home: The Crisis in Housing for the Poor* (Washington, D.C.: Center on Budget and Policy Priorities, 1989).

housing units were lost as old public-housing projects were retired and landlords opted out of HUD programs and upgraded properties to appeal to higher-income tenants.<sup>16</sup> In addition, from fiscal 1995 to 1998, Congress created no Section 8 vouchers, the government's main rental assistance program for low-income families.<sup>17</sup> Starting in 2004, the Bush administration has proposed deep cuts in the Section 8 voucher program. In its fiscal year 2004 and 2005 budget requests, the Bush administration requested from Congress less money than was required to guarantee renewal of existing vouchers in place - the first time in the 30-year history of Section 8 that an administration had proposed this. In fiscal year 2004, following vigorous protests, Congress restored \$900 million to the administration's request, averting a potential elimination of funding for 185,000 families.<sup>18</sup> In fiscal year 2005, the administration tried again, proposing to drop 250,000 families from Section 8 in 2005 and 600,000 by 2009 - a 30% reduction in the number of families served; again, Congress restored \$1.4 billion to the administration's request, with the aim of fully funding existing families in place.<sup>19</sup> For fiscal year 2006, the U.S. Congress has cut spending on Section 8 Housing Choice Vouchers, the government's main rental assistance program for low-income families, which could result in the loss of subsidies to 65,000 low-income households.

In response to Hurricane Katrina, FEMA, the federal organization whose mission is to provide assistance in response to large scale disasters, has failed to provide adequate assistance to the millions of people in need of housing. FEMA's policies and procedures for processing and distributing assistance, including requiring applicants to submit a SBA loan application in order for their housing assistance application to be considered and failing to promptly process applications, resulted in a class action lawsuit being filed against it.<sup>20</sup> FEMA's bureaucratic response has done much to worsen the plight of those made homeless by Hurricane Katrina and little to address their need for permanent housing.<sup>21</sup>

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<sup>16</sup> Shailagh Murray, Record 5.4 Million Households Need Aid on Rent, Cuomo Says in Plea to Congress, *The Wall Street Journal*, March 28, 2000.

<sup>17</sup> *Id.*

<sup>18</sup> Letter from the National Association of HUD Tenants to Santiago A. Canton, Esq. Executive Secretary, Inter-American Commission on Human Rights, Organization of American States, 1889 F Street NW, Washington, D.C. 20006 dated March 3, 2005.

<sup>19</sup> *Id.*

<sup>20</sup> See *McWaters v. FEMA*. In that case, Judge Duval, among other things, has issued orders requiring FEMA to (i) extend its short term lodging program, and (ii) not make the submission of an SBA loan application a condition precedent to applying for assistance.

<sup>21</sup> In their Report, Senators Lieberman, Levin, Akaka, Carper, Lautenberg and Pryor note that "several FEMA witnesses [acknowledge] that FEMA's budget was not sufficient to fulfill its mission." See page 27 of the Report.

In addition to cuts in housing programs, the federal government has also proposed cuts in the Medicaid program that will result in much larger co-payments for health care services for very low-income people. The co-payments for Medicaid recipients would go up from \$3 to up to \$100 for some health care services, making it more likely that recipients would forego necessary medical care. Such cuts not only make the homelessness problem worse, but threaten the lives of thousands of poor and homeless people throughout the country.

## **2. Article 23: Right to Family**

Because of the shortage of affordable housing, many families lack stable shelter. Unfortunately, many states and communities have laws and policies specifying that a parent's inability to provide shelter constitutes child neglect, and thus a basis for government agencies to remove children from their parents' care. These young people are placed in foster homes and institutions away from their parents, siblings, relatives, friends, and communities.

In 1990, the federal government established the Family Unification Program (FUP), a program that allows child welfare agencies to connect families with government housing assistance in order to prevent family separations due to a lack of shelter. Many states and communities have also established programs that provide government assistance to prevent evictions, establish new residences, or otherwise stabilize housing. However, these programs are grossly under-funded and fall tremendously short in meeting the needs of families living in poverty.

## **3. Article 24: Barriers to homeless children's right to education**

Some 1.35 million children are homeless in America. Of that number, about half are school aged. Many of these children face barriers in getting an education simply because of their status as homeless.

In some cases, schools require an address before homeless children may be enrolled. In other cases, the barriers are more subtle: homeless children move often, and transferring their records from one school to another takes time, and during that time they are out of school. In addition, they are likely to face transportation problems: if there is a school bus it may not stop at the shelter or other location where they are living. If there is no school bus, their parents may not be able to afford to pay for private transportation.

Further, homeless children who frequently change schools as they move are unlikely to get an adequate education. They also may be unable to participate in school activities or services such as special education classes. In addition, the instability of school changes will only add to the negative emotional impact caused by their housing instability.

Federal law enacted in 1987, and strengthened since then by amendment, requires state and local education agencies to ensure access to school for homeless children by

removing residency requirements, providing for quick transfers of records, and ensuring transportation. In addition, it allows homeless parents to keep their children in the original school if they so choose, thus promoting stability. But there is significant state and local noncompliance, and NLCHP has had to go to court to enforce the law. The U.S. Department of Education, the federal agency responsible for overseeing the law nationally, has not taken an active role in promoting state and local compliance.

#### **4. Article 25: Restrictions on the right to vote**

According to **Article 25**, every citizen shall have the right to vote. Poor people and people experiencing homelessness in the United States face many barriers to exercising this right. Due to lack of a stable residence or identification documents, homeless persons face obstacles to registering and voting. Obstacles include durational residency requirements, mailing address requirements, identification requirements, and the impact of felony convictions upon voting rights.<sup>22</sup> A growing trend among states, including Georgia and Indiana, is to require voters to have a photo identification card in order to vote. Since homeless persons have difficulty obtaining identification cards, such a requirement effectively denies thousands of poor and homeless persons the right to vote.

#### **5. Article 26: Discrimination based on property or other status**

Many cities across the country have enacted laws that criminally penalize homeless people based on their status. Such laws include prohibitions on sleeping, “camping,” lying, and even sitting in public places. These laws are often enacted specifically to remove homeless people from public places like parks, sidewalks, and downtown areas. For example, in Sarasota, Florida, a law prohibiting “lodging” in public specifically states that it applies to people with no other place to live. In some cases, cities enforce generally applicable laws in a discriminatory way, targeting only homeless people. For example, laws against loitering or drinking in public may be enforced only against homeless people.

Such laws sometimes focus on particular parts of a city, such as the downtown area, tourist destinations, or locations where city events are planned to take place. Police sometimes enforce the laws to carry out “sweeps” of particular locations before city events. For example, in St. Louis, Missouri, police “swept” homeless people out of the location of planned Fourth of July activities before the event. These laws and practices also constitute restrictions on the right to freedom of movement, raising concerns under **Article 12**.

Restrictions on begging are also prevalent, raising concerns under **Article 22**. Some are general restrictions; others prohibit begging in particular locations or in particular

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<sup>22</sup> For more information about barriers homeless persons face when voting, see NLCHP, Voter Registration and Voting: Ensuring the Voting Rights of Homeless Persons (2004).

manners. In a more recent trend, some cities prohibit people who are not homeless from serving food to homeless or poor people in public places.

The cities that enact these laws, however, have insufficient affordable housing for their residents; indeed, they also have insufficient emergency shelter space. These laws penalize homeless people for being in public spaces even though they have no other place to go. In either purpose or effect, they punish homeless people based on their status.

NLCHP, in collaboration with the National Coalition for the Homeless, published a report on this topic in January 2006. Titled *A Dream Denied*, the report includes information on 224 cities across the U.S. The report is available at

<http://www.nlchp.org/Pubs/index.cfm?FA=4&TAB=2>.

Other violations of **Article 26** in the U.S. include laws that make it difficult for homeless persons to take action that may help them move out of homelessness. For example, without a permanent residence, homeless people may not be able to obtain identification cards which severely hampers their efforts to find housing, employment, and other services. Stringent state requirements for issuance of identification cards make it virtually impossible for some homeless persons to obtain an identification card, as homeless persons do not have a permanent residence and may not have identification documents. For example, the State of Michigan requires a person to prove residency by providing a document that includes the applicant's name and a Michigan residence address, something a person living on the street, in a car, or doubled up in another person's home will not have.<sup>23</sup>

When homeless persons do not have identification, they are prevented from taking actions that help them move out of homelessness. Without identification, a homeless person may not be able to obtain housing or employment.

## **6. Article 26: Discrimination based on gender**

Domestic violence is a leading cause of homelessness among women.<sup>24</sup> Among cities surveyed in 2005, 50% identified domestic violence as a primary cause of local homelessness.<sup>25</sup> In varying regions, between 22% and 57% of homeless women reported that domestic violence was the immediate cause of their homelessness.<sup>26</sup> Ninety-two

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<sup>23</sup> For more information about barriers to obtaining identification cards and the consequences, see NLCHP, *Photo Identification Barriers Faced by Homeless Persons: The Impact of September 11 (2004)*.

<sup>24</sup> Much of the data regarding homelessness varies regionally and locally. Nevertheless, national data collected in 1996 indicated that while women made up a minority of both currently homeless individuals (32 vs. 68 percent) and formerly homeless individuals (46 vs. 54 percent), women made up a distinct majority of those homeless individuals who never had been homeless in the past (61 vs. 39 percent). See MARTHA BURT ET AL., *HELPING AMERICA'S HOMELESS: EMERGENCY SHELTER OR AFFORDABLE HOUSING?* 225, table 8.1 (2001).

<sup>25</sup> U.S. Conference of Mayors/Sodexo Survey on Hunger and Homelessness, 2005.

<sup>26</sup> Wilder Research Ctr., *Homeless in Minnesota 2003: Key Facts from the Survey of Minnesotans*



percent (92%) of homeless women have experienced severe physical or sexual abuse at some point in their lives,<sup>27</sup> and 63% have been victims of domestic violence as adults.<sup>28</sup> Currently, 38% of all domestic violence victims typically become homeless at some point in their lives.<sup>29</sup>

In some cases, victims become homeless when they are denied housing or evicted from their homes based on the violent acts of their abusers. Because such practices virtually always affect women, and because they have an adverse impact based on sex, they in fact constitute a form of sex discrimination in housing.

Under Title VII of the Civil Rights Act of 1964, also known as the federal Fair Housing Act (FHA), sex discrimination in housing is statutorily prohibited.<sup>30</sup> A violation of the FHA can occur if a landlord denies a tenant or prospective tenant housing, evicts her, or discriminates against her with regard to the “terms, conditions, or privileges” or “in the provision of services and facilities.”<sup>31</sup> However, compliance is significantly lacking, and these provisions are largely not enforced by the federal government.

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*without Permanent Housing* 22 (Feb. 2004); Ctr. for Impact Research, *Pathways to and from Homelessness: Women and Children in Chicago Shelters* 3 (Jan. 2004); Nat’l Ctr. on Family Homelessness & Healthcare for the Homeless Clinicians’ Network, *Social Supports for Homeless Mothers* 14, 26 (Oct. 2003); Inst. for Children & Poverty, *The Hidden Migration: Why New York City Shelters Are Overflowing with Families* (Apr. 2004); Homes for the Homeless & Inst. for Children & Poverty, *Ten Cities 1997-1998: A Snapshot of Family Homelessness Across America* 3 (1998); Virginia Coalition for the Homeless, *1995 Shelter Provider Survey* (1995) (out of print), cited in Nat’l Coalition for the Homeless, *Domestic Violence and Homelessness: NCH Fact Sheet #8* (1999).

<sup>27</sup> A. Browne & S. Bassuk, *Intimate Violence in the Lives of Homeless and Poor Housed Women: Prevalence and Patterns in an Ethnically Diverse Sample*, AM. J. ORTHOPSYCHIATRY, 67(2), 261-278 (Apr. 1997); A. Browne, *Responding to the Needs of Low Income and Homeless Women Who are Survivors of Family Violence*, J. AMER. MEDICAL ASS’N, 53(2), 57-64 (Spring 1998).

<sup>28</sup> *Id.*

<sup>29</sup> Charlene K. Baker et al., *Domestic Violence and Housing Problems: A Contextual Analysis of Women’s Help-Seeking, Received Informal Support, and Formal System Response, Violence Against Women* 9(7) 754-783 (2003).

<sup>30</sup> 42 U.S.C. § 3601 *et seq.*

<sup>31</sup> 42 U.S.C. § 3604(a), (b). See *Bouley v. Young-Sabourin*, 394 F.Supp.2d 675 (D. Vt. 2005); *Warren v. Ypsilanti Housing Commission* (E.D. Mich. 2003) (settled); *United States ex rel. Alvera v. C.B.M. Group*, No. CV 01-857-PA (D. Or. 2001) (consent decree); *Alvera v. Creekside Village Apartments*, No. 10-99-0538-8 (HUD 2001) (HUD Determination of Reasonable Cause); *Winsor v. Regency Property Management*, No. 94 CV 2349 (Wis. Cir. Ct. 7, 1995) (memorandum opinion).

## Conclusion

Based on the above facts, we respectfully request that the Human Rights Committee conclude that the Government of the United States is in violation of its obligations under Articles 6, 24, 25, and 26 of the International Covenant on Civil and Political Rights. Specifically, we respectfully request that the Committee conclude as follows:

- The Committee is concerned that homelessness has led to serious health problems and even to death, and that proposed further cuts to housing and health programs will exacerbate these problems. The Committee recommends that the State party take positive measures required by Article 6, including the allocation of more funds to federal housing programs, to address this serious problem.
- The Committee is concerned that the shortage of affordable housing and even emergency shelter has led to the separation of homeless children from their families due to homelessness. The Committee recommends that the State party fully fund the Family Unification Program and take other positive measures required by Article 23 to address this serious problem.
- The Committee is concerned that homeless children are being denied full access to their right to education. To address this problem, the Committee recommends that the State party require the U.S. Department of Education fulfill its responsibility by enforcing current federal laws and take other positive measures required by Article 24 to address this serious problem.
- The Committee is concerned that homeless adults are being denied their right to vote, in violation of Article 25. The Committee recommends that the State party take positive measures required by Article 25, such as prohibiting states from requiring that voters present a photo identification card in order to participate in elections.
- The Committee recommends that the State party take positive measures required by Article 26, to remove barriers to obtaining identification cards. The Committee recommends that the State party insure that both federal and state laws have provisions to help homeless persons obtain identification cards.
- The Committee is concerned that homeless people are being criminally punished based on their homeless status, in violation of Article 26. The Committee recommends that the federal government discourage penalizing homeless persons based on their status by not distributing certain federal funds to cities and localities that use such measures.
- The Committee is concerned that women victimized by domestic violence are unable to obtain and are being evicted from their housing based on gender discrimination, in violation of Article 26. The Committee recommends that the State party take positive measures required by Article 26, including more active

enforcement of Title VII of the Civil Rights Act of 1964, to address this serious problem.