

Criminalization of Poverty

In August of last year, the U.N. Special Rapporteur on Extreme Poverty and Human Rights issued her report to the U.N. General Assembly on the criminalization of poverty. We were struck by how many of the U.N. report's findings are echoed in recent critiques of policy here in the U.S. Below, we present excerpts from the Special Rapporteur's report, along with excerpts of recent studies by the National Law Center on Homelessness & Poverty and Professor Kaaryn Gustafson's work on criminalization in the welfare system.

Selected Excerpts from the U.N. Report of the Special Rapporteur on Extreme Poverty and Human Rights

Report prepared by Magdalena Sepúlveda Carmona, Special Rapporteur; transmitted 11 August 2011 by the Secretary General to the U.N. General Assembly.

The full report is available at <http://www.ohchr.org/EN/Issues/Poverty/Pages/PenalizationOfPoverty.aspx>.

Summary

In the present report, the Special Rapporteur on Extreme Poverty and Human Rights analyses several laws, regulations and practices that punish, segregate, control and undermine the autonomy of persons living in poverty. Such measures have been adopted with increasing frequency over the past three decades, intensifying in recent years owing to the economic and financial crises, and now represent a serious threat to the enjoyment of human rights by persons living in poverty.

The ways in which States and social forces penalize those living in poverty are interconnected and multidimensional, and cannot be analysed in isolation. For the purpose of this report, the Special Rapporteur identifies the following four areas of concern: (a) laws, regulations and practices which unduly restrict the performance of life-sustaining behaviours in public spaces by persons living in poverty; (b) urban planning regulations and measures related to the gentrification and privatization of public spaces that disproportionately impact persons living in poverty; (c) requirements and conditions imposed on access to public services and social

benefits which interfere with the autonomy, privacy and family life of persons living in poverty; and (d) excessive and arbitrary use of detention and incarceration that threatens the liberty and personal security of persons living in poverty.

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10. In every country, developed or developing, historical social divisions and power structures ensure that the poorest and most excluded are at a constant disadvantage in their relations with State authorities. Asymmetries of power mean that persons living in poverty are unable to claim rights or protest their violation.

29. Increasingly, States are implementing laws, regulations and practices limiting the behaviour, actions and movements of people in public space, which greatly impede the lives and livelihoods of those living in poverty. These measures vary considerably across and within States, with the common denominator being the penalization of actions and behaviours which are considered “undesirable” or a “nuisance” in public spaces. States justify these measures by classifying the prohibited behaviours as dangerous, conflicting with the demands of public safety or order, disturbing the normal activities for which public spaces are intended, or contrary to the images and preconceptions that authorities want to associate with such places.

36. These laws are being implemented in a context in which the eco-

nomie and financial crises have resulted in an unprecedented increase in foreclosures and evictions, forcing a growing number of families to live on the streets. Instead of using public funds to assist these families, States are instead carrying out costly operations to penalize them for their behaviour. Where there is insufficient public infrastructure and services to provide families with alternative places to perform such behaviours, persons living in poverty and homelessness are left with no viable place to sleep, sit, eat or drink. These measures can thus have serious adverse physical and psychological effects on persons living in poverty, undermining their right to an adequate standard of physical and mental health and even amounting to cruel, inhuman or degrading treatment.

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Elouise Cobell

We dedicate this issue of *Poverty & Race* to **Elouise Cobell**, who passed away in October. A member of the Blackfeet tribe, she was the consistent and ultimately effective force that has forced the federal government, via litigation and political pressure over a 15-year period, to agree to the largest class action settlement ever: \$3.4 billion, benefiting some 500,000 people, in compensation for mismanagement of Indian trust funds since the late 1800s.

49. It is becoming increasingly common for States to impose strict requirements and conditions on access to public services and social benefits. By imposing excessive requirements and conditions on access to services and benefits, and severe sanctions for non-compliance, States punish, humiliate and undermine the autonomy of persons living in poverty, exacerbating the challenges they face in overcoming their situation. Moreover, beneficiaries are kept in a state of uncertainty about their future and are unable to plan for the long term.

57. To ensure that beneficiaries comply with conditions and requirements, States often subject them to intensive examinations and intrusive investigations. Social benefit administrators are empowered to interrogate beneficiaries about a wide range of personal issues and to search their homes for evidence of fraudulent activity. Beneficiaries are required to report regularly and disclose excessive amounts of information whenever it is demanded of them. In some countries, they must even submit to mandatory screening for drug use. They must also give their consent to authorities to scrutinize every aspect of their lives and to question their friends, colleagues and acquaintances. Beneficiaries are encouraged to watch each other and report abuses to programme administrators through anonymous channels. These intrusive measures undermine beneficiaries' personal independence, seriously interfere in their right to privacy and family life, make them vulnerable to abuse and harassment, and weaken community solidarity.

61. Being excluded from social benefit assistance has an especially harsh effect on women, who make up the majority of social benefit beneficiaries, and who generally hold primary responsibility for the care of children and maintenance of the household. If women are denied access to social benefits, it will gener-

ally have implications for the whole family. Furthermore, there is an increased likelihood that women will remain in or return to abusive relationships, or be forced to live in other vulnerable situations, if they are unable to access social benefits.

68. The economic and social costs of detention and incarceration can be devastating for persons living in poverty. Detention not only means a temporary loss of income, but also often leads to the loss of employment, particularly where individuals are employed in the informal sector. The imposition of a criminal record creates an additional obstacle to finding employment. Detention and incarceration, even for minor non-violent offences, will often result in the temporary or permanent withdrawal of social benefits or the denial of access to social housing, for both the detainee and his or her family.

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23. In many cases, the cost of employing reactive penalization measures greatly outweighs the costs that would be incurred in addressing the root causes of poverty and exclusion. If resources dedicated to policing, surveillance and detention were instead invested in addressing the causes of poverty and improving access to public services, including social housing, States could drastically improve the lives of persons living in poverty and ensure that the maximum available resources are dedicated to increasing the levels of enjoyment of economic, social and cultural rights.

75. Measures that result in the penalization of those living in poverty do nothing to tackle the root causes of poverty and social exclusion. They serve only to entrench further the multiple deprivations faced by those living in poverty and create barriers to poverty reduction and social inclusion. Consequently, they greatly undermine the ability of States to comply with their obligations to respect, protect and fulfill human rights. □

Can We Think about Poverty without Thinking about Criminality?

by Kaaryn Gustafson

Every September, the Census Bureau releases updated statistics on the poverty rate in the United States. For a day or two I will read media reports about poverty, and then poverty disappears from the news until the next September. The poverty rate varies a bit from year to year but remains consistently—and shamefully—high.

According to a 2009 study drawing upon data from the Luxembourg Income Study, a project that gathers

comparative economic information from various nations, the only upper-income countries with child poverty rates equal to or higher than United States (22%) were Russia (also 22%) and Mexico (27%). Some level of economic inequality within a population may be inevitable, but poverty—and the stress, hunger, homelessness, and daily chaos that go with it—are not. How much attention a country gives poverty, how a country tolerates poverty, and how a country allocates the resources targeted for the poor are political decisions. The United States has become poverty-tolerant and, increasingly, tax dollars are going to police the poor rather than to address

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poverty.

There have been moments in American history when poverty has been an issue of public and political concern, but those moments are distant memories. Since the War on Poverty in the 1960s, the public and politicians have become complacent about ameliorating poverty. Political concern about the poor has, indeed, remained, but it has taken a new form. Over the last few decades, federal and state governments have instituted a host of policies and practices that equate receipt of certain public benefits with criminality, that police the everyday lives of the poor, and that weave the criminal justice system into the fabric of the welfare system.

The first few chapters of my recently released book, *Cheating Welfare: Public Assistance and the Criminalization of Poverty*, trace the ways that tactics for crime control have crept into welfare administration in the United States. From fingerprinting and mug shots to suspicionless home searches, from welfare bans on adults with drug convictions to aggressive prosecutions of welfare recipients

who underreport income, and from increased access of law enforcement officials to welfare records to a flurry of new legislative proposals to drug-test welfare recipients, we can see government policies that increasingly treat the poor as criminals.

The central chapters of my book, which draw upon interviews with welfare recipients in Northern California, examine the thoughts and experiences of adults who use public benefits. Their stories revealed that these parents needed the benefits they received but could not survive on welfare benefits alone. Many of them broke the rules—some of them knowingly, some of them unknowingly. They struggled to understand and follow the complicated welfare rules and requirements and also struggled to juggle family caretaking, job searches, employment obligations and unmet financial needs. What became clear during the study was that the federal welfare reforms instituted in 1996 were not serving to transition these parents from welfare to work. Moreover, some of the punitive aspects of the policies were making life for these parents and their children more difficult rather than providing a minimal

level of security.

Surprisingly, most of the welfare recipients I interviewed, even while breaking the welfare rules themselves, embraced popular beliefs about “welfare queens” and the need to have punitive welfare rules to police the poor. Rather than translating their own difficult experiences with the welfare system into critiques of the system, they instead neutralized their own rule-breaking and lodged their support for get-tough policies aimed at the poor. In short, even the poor could not talk about poverty without shifting the discussion to issues of criminality and punishment.

One of the questions the book raises is whether it is possible to disentangle criminalization, which includes latent assumptions of criminality among the poor and efforts to police them, from the issue of poverty. To have meaningful public conversations about how to address poverty and its effects, rather than discussions about how to punish the poor, would mark a dramatic shift in discourse. It is my hope that readers will avoid the distractions of the rhetoric of criminalization and become part of a new public conversation about poverty. □

The following is an excerpt from the National Law Center on Homelessness & Poverty's June 2011 report, "Simply Unacceptable: Homelessness & the Human Right to Housing in the United States 2011," available at http://nlchp.org/view_report.cfm?id=357. The excerpt, prepared by Eric Tars of the Center, had in its original submission nearly two dozen footnotes supporting the text; as P&R eschews footnotes, readers who want to obtain that can contact Tars at 202/638-2535, etars@nlchp.org, who will provide a copy of his original submission. Post-dating this report, the Law Center also organized a ground-breaking meeting with the U.N. Rapporteur and officials from the Departments of Housing & Urban Development, Justice, and State to discuss the Rapporteur's report and actions the U.S. can take domestically and abroad to implement its recommendations.

The Criminalization of Homelessness

Despite our nation's treaty commitments and obligations to uphold the basic human dignity of every person, many states have enacted laws or ordinances that target homeless individuals by making it illegal to sleep or sit on the sidewalk, ask for money or “camp” outside. These ordinances are being enacted even though nationally, as well as in cities enacting them, there is a severe shortage of shelter space to meet even the emergency needs of

the homeless population. Other ways that cities have criminalized homelessness include: sweeps of areas in which homeless people sleep, laws that restrict their freedom of movement, search and seizure of their personal property, selective enforcement of general provisions, and anti-panhandling laws.

In Orlando, Florida, for example, an anti-camping law prohibits camping on all public property without au-

thorization. “Camping” is defined as “sleeping or otherwise being in a temporary shelter out-of-doors, sleeping out-of-doors, or cooking over an open flame or fire out-of-doors.” Similarly, police in Fresno, California engaged in targeted sweeps of areas in which homeless individuals were known to congregate. In the sweeps, police destroyed homeless peoples' property, including medicine, identification

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documents, and clothing.

Many of the individual laws targeting homeless individuals have faced Constitutional challenges. In *Pottinger v. City of Miami*, for instance, homeless individuals brought a class action suit against the city of Miami, Florida, claiming that police were harassing them for performing life-sustaining activities in public when no alternative shelter or location was available. They argued in part that such harassment was unconstitutional under the Eighth Amendment bar against cruel and unusual punishment and a violation of the Equal Protection Clause of the Fourteenth Amendment, and the City of Miami was ordered to provide redress. The decision of the district court survived on appeal.

Similarly, in *Jones v. City of Los Angeles*, the Ninth Circuit Court of Appeals struck down as unconstitutional a Los Angeles city ordinance,

which prohibited sleeping, sitting or lying on the street at any time of day and was selectively enforced in the downtown area of Los Angeles known as “Skid Row.” The Ninth Circuit held that the ordinance violated the Eighth Amendment’s prohibition on cruel and unusual punishment for criminalizing conduct that is unavoidable.

Despite the decision in *Jones*, Los Angeles has continued its trend of criminalization of homelessness through the so-called “Safer Cities Initiative.” This policy has sent hundreds more police officers to Skid Row, but rather than addressing violent crime, the officers have been targeting homeless and poor African Americans for minor violations such as jaywalking and littering. This program has drawn the attention of both the UN Special Rapporteur on Racism and the Special Rapporteur on Housing, prompting recommendations to cease the disparate enforcement and allow homeless persons to shelter

themselves in public when there is inadequate shelter space.

During a mission in March, 2011, the UN Independent Expert on the Right to Water & Sanitation heard testimony from the Law Center and visited a homeless encampment in Sacramento, CA. The Independent Expert released her preliminary report on March 4. She noted the increase in criminalization of homelessness and detailed the story of Tim, a homeless man who facilitates the removal of hundreds of pounds of human wastes from the homeless encampment each week. The Expert stated, “The fact that Tim is left to do this is unacceptable, an affront to human dignity and a violation of human rights that may amount to cruel, inhuman or degrading treatment. An immediate, interim solution is to ensure access to restrooms facilities in public places, including during the night.” This is the strongest, clearest statement by a UN expert to date on the issue of criminalization, and given its condem-

Selected Resources

Catarina de Albuquerque, UN Independent Expert on the right to water and sanitation: Mission to the United States of America from 22 February to 4 March 2011, (Mar. 4, 2011), available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10807&LangID=E>, (last visited Mar. 31, 2011).

Gary Blasi et al., *Policing Our Way Out of Homelessness? The First Year of the Safer Cities Initiative on Skid Row* (Sept. 2007), available at <http://www.law.ucla.edu/docs/Skid%20Row%20Safer%20Cities%20One%20Year%20Report.pdf>.

Kaaryn Gustafson, *Cheating Welfare: Public Assistance and the Criminalization of Poverty* (New York University Press, 2011).

Rukmalie Jayakody, Sheldon Danziger, Kristin Seefeldt, & Harold Pollack, “Substance Abuse and Welfare Reform,” National Poverty Center Policy Brief (April 2004). Available at: http://www.npc.umich.edu/publications/policy_briefs/brief02/brief2.pdf

Lebron v. Wilkins, No. 6:11-cv-01473-Orl-35DAB, 2011 U.S. Dist. LEXIS 124818 (M.D. Fla. Oct. 24, 2011) (pending ACLU lawsuit against Florida Department of Children & Families challenging Florida Statute §414.0652, which requires drug-testing for each individual who applies for benefits under the federally-funded Temporary Assistance for Needy Families program).

Jones v. City of Los Angeles, 444 F.3d 1118 (9th Cir. 2006).

National Law Center on Homelessness & Poverty, “Simply Unacceptable: Homelessness and the Human Right to Housing in the United States 2011” (June 2011). Available at: <http://www.nlchp.org/content/pubs/SimplyUnacceptableReport1.pdf>

National Law Center on Homelessness & Poverty, “Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities” (2011), available at http://nlchp.org/view_report.cfm?id=366

Pottinger v. City of Miami, 40 F. 3d 1155 (11th Cir. 1994).

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, on her mission to the United States of America (22 October - 8 November 2009), U.N. Doc. A/HRC/13/20/Add4 (Feb. 12, 2010, at para. 95).

United States Inter-Agency Council on Homelessness, *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* (2010).

Loïc Wacquant, “The Penalisation of Poverty and the Rise of Neo-Liberalism,” 9 *European Journal on Criminal Policy and Research* 4, 401-412 (2001). Available at <http://loicwacquant.net/papers/on-penal-state/>

nation in terms similar to our own Eighth Amendment's protection from cruel and unusual treatment, one that may lend itself to protecting homeless persons rights in the courts.

In 2009, Congress passed the HEARTH Act, which required the Federal Interagency Council on Homelessness to produce a plan to end and prevent homelessness; that Plan was published in June, 2010. The Plan includes the following quote from Maria Foscarinis, Executive Director of NLCHP: "Criminally punishing people for living in public when they have no alternative violates human rights norms, wastes precious resources, and ultimately does not work. In a separate provision, the Act requires the Interagency Council to promote alternatives to the criminalization of homelessness. Although the Council has to date held a national Summit, bringing together cities, providers and advocates to discuss constructive alternatives to criminalization of

homelessness, it has to date not taken concrete steps to prevent their enactment.

Several cities have had great success in combating homelessness by finding creative alternatives to criminalization. "A Key Not a Card program," enacted by the city of Portland, Oregon, enables outreach workers at various city-funded agencies to offer permanent housing immediately to people living on the street. The funding is flexible and can be used to pay rent, back rent and security deposits. From the program's inception in 2005 through Spring 2009, 936 individuals in 451 households have been housed, including 216 households placed directly from the street. At twelve months after placement, at least 74% of households remain housed.

Puyallup, Washington responded positively to a national trend of "tent cities" by passing an ordinance that provides permits to religious organizations for the specific purpose of

hosting tent encampments for homeless individuals. The ordinance is part of a Comprehensive Plan drawn up by the Puyallup City Council describing various objectives for eliminating homelessness in Puyallup. The ordinance provides a critical first step because it offers religious organizations the ability to host one encampment for up to 40 people at any given time. However, there are numerous areas for improvement, such as granting this right to non-religious organizations as well as religious ones and expanding the size and number of the camps, given that one encampment of 40 individuals is insufficient to meet the needs of the hundreds of homeless individuals in Puyallup. Moreover, as advocates and the Comprehensive Plan make clear, legalized tent cities are not a long-term solution to homelessness—that is something only adequate, affordable housing can provide. □

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ing discrimination by the registrar without access to any of his records.

Judge Cox's barring testimony as to Lynd's predecessors had at least targeted the white population we had to reach. The yearbooks of Hattiesburg High School and of the county high school were obvious first steps. Testifying before the United States Civil Rights Commission three years later, Assistant Attorney General Burke Marshall referred to Bob Owen's and my being "in Hattiesburg for almost three weeks sifting through newspapers, graduation yearbooks, city directories and other documents in order to identify and locate white persons who were placed on the rolls by the Mississippi registrars."

FBI Assistance

With names from the yearbooks, we were ready to bring on special agents from the New Orleans office of the FBI to interview them. It was a

sensible division of labor. The FBI would get on better with white Southerners, and we certainly got on better with prospective black witnesses.

FBI reports needed direction, the dotting of every "i" and crossing of every "t". With Bureau Director J. Edgar Hoover no enthusiast for our work, that was the only way we could

The first witness sets the tone of the case.

ensure that the work product of his agents would be what we wanted. We set forth in a lengthy memorandum to the Bureau the exact language of every question we wanted asked, in the order we wanted them asked, from name and address to what was said to and by the women who serviced Theron Lynd's registration counter. Much of the New Orleans regional office of the Bureau was soon working the white residents of Forrest County, asking those questions about their registration experience, in order, in our words.

After we reviewed the reports of the Bureau interviews, we did some follow-up visits to whites we anticipated calling. About 7 p.m., the father of a 25-year-old man I was trying to interview ordered me out of their house in no uncertain terms. I did not delay, but decided to make one final stop, driving to the outskirts of the city to see a young man another Division lawyer had talked to briefly.

I was greeted by his angry parents, who accused four FBI agents, as well as my colleague, of having harassed their son, also 25, several times throughout the day. It took a long time, but finally they agreed with me that the agents had not intentionally ganged up on their son.

Bureau agents always worked in pairs (as we were also supposed to). It turned out that two agents had called on his brother in the morning, and two other agents had come back in the afternoon to see him. By the time I had agreed that they were all "100% Americans" and certainly not "out

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