

**DATE:** February 24, 2023

**TO:** United Nations International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement

**FROM:** Ending Community Homelessness Coalition (ECHO)

**SUBJECT:** Input on the Violation of the Human Rights of People Experiencing Homelessness in the Enforcement of Laws Against Public Camping in Austin, Texas

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## **Background**

In the last two years, state and municipal laws have targeted the rights and livelihoods of people experiencing homelessness in Austin, Texas. These laws, passed under the guise of promoting public safety, violate the human rights of people experiencing homelessness. Because people experiencing homelessness are more likely than the general public to interact with law enforcement and Black people are more likely than other racial groups to experience homelessness, these recently passed laws have a disproportionate effect on the rights of Black people in Austin. Therefore, these laws, while not explicitly racially discriminatory, constitute a form of indirect (i.e., *de facto*) discrimination against Black people experiencing homelessness and, consequently, will further exacerbate racial disparities in housing outcomes in Austin.

In May of 2021, voters in Austin voted to approve three local ordinances bundled into a single proposition on public camping, panhandling, and solicitations. This proposition, “Proposition B,” created a class C misdemeanor criminal offense for “camping in any public area not designated by the City for camping” (§ 9.4.11), “soliciting money or other thing of value at specific hours and locations in a public area of the City, as well as aggressively soliciting money or other thing of value in the City” (§ 9.4.13), and “sitting or lying down on a public sidewalk or sleeping outdoors in and near the downtown area or the area around the University of Texas campus” (§ 9.4.14).<sup>1</sup>

The following month, in June of 2021, Texas Governor Greg Abbott signed into law HB1925, which mirrors the Austin law statewide, creating a class C misdemeanor criminal offense and a fine of up to \$500 for “camping by homeless individuals.” The bill added that cities in Texas must comply with the ban and are prohibited to adopt any local policy that “prohibits or discourages the enforcement of any public camping ban.” The State camping ban applies as the minimum threshold for local policies, where cities may adopt stricter – but not looser – laws against camping.<sup>2</sup>

## **Violations of Article 3 of the Universal Declaration of Human Rights**

Enforcement of the aforementioned laws is in violation of Article 3 of the Universal Declaration of Human Rights, which states that all people have the right to “life, liberty, and security of person.”<sup>3</sup> HB1925 and Proposition B violate the human right to life and security of person of people experiencing homelessness by criminalizing behaviors that people experiencing

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<sup>1</sup> “Proposition B and Homeless in Austin | AustinTexas.Gov.” n.d. Accessed February 24, 2023. <https://www.austintexas.gov/propb-homeless>.

<sup>2</sup> “Texas Legislature Online - 87(R) History for HB 1925.” n.d. Accessed February 24, 2023. <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB1925>.

<sup>3</sup> United Nations. n.d. “Universal Declaration of Human Rights.” United Nations. United Nations. Accessed February 24, 2023. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

homelessness need to survive, such as sleeping, eating, and sheltering themselves from the elements. Further, these laws violate the human right to liberty of people experiencing homelessness, by limiting their freedoms of expression and movement.

In § 9.4.11 of Proposition B, camping is defined as “using public areas for living accommodations, including by: (1) Storing personal belongings for an extended period of time; (2) Making a camp fire; (3) Using a tent or shelter or other structure for a living accommodation; (4) Carrying on cooking activities; or (5) Digging or earth breaking activities.” This law specifies that these activities are prohibited in any public area “that is not designated by the city for camping,” and in doing so implies that there are areas where people are permitted to legally camp and others where they are not. To date, however, there are no areas where people may legally camp in Austin. For the City to designate such areas, the State would need to approve them, a process which has not occurred. The City also does not currently have shelter capacity to support the local population experiencing homelessness.<sup>4</sup> Even if the shelter system was operating at 100% capacity with zero available beds, over 3,500 people would be left living unsheltered.<sup>5</sup> These laws, by criminalizing the survival of people who are unsheltered, are *in effect* a violation of the human right to life. In other words, people experiencing homelessness must forego necessary survival measures to comply with these laws.

Approximately 75% of people pursuing permanent housing through the local Homelessness Response System report having “spent any amount of time in a juvenile or adult correctional facility, jail, prison, or detention center,” and about 50% report having “been denied access to employment and/or housing [or] opted out of applying for employment and/or housing” due to their criminal background.<sup>6</sup> Criminal justice system involvement is a common barrier to housing that people experiencing homelessness face. With laws prohibiting camping in place, people experiencing homelessness are more likely to accumulate additional charges on their records. These laws perpetuate a cycle between criminal justice system involvement and homelessness, each contributing to the other, increasing the risk of long-term homelessness. Long-term homelessness, especially for people who are unsheltered, is physically unsafe and potentially life-threatening. People experiencing homelessness in the United States are significantly more likely than people who are housed to have multiple chronic [health] conditions, and Austinites experiencing homelessness are no different.<sup>7,8</sup> Nationally, studies have shown that the life expectancy for a person experiencing homelessness is, in some parts of the U.S., around 53 years.<sup>9</sup> The safety and security of people experiencing homelessness is at risk whether or not they comply with the law. If they comply, they risk threats to their immediate survival, and if they do not comply, they risk threats to their long-term health.

People experiencing homelessness are not afforded other liberties that other members of the public in Austin have. The freedoms of expression and movement in public areas are limited if a

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<sup>4</sup> Goard, Alyssa. 2021. “Not Enough Beds for Austin’s Unsheltered Homeless, Provider Data Suggests.” KXAN Austin, April 1, 2021. <https://www.kxan.com/news/local/austin/not-enough-beds-for-austins-unsheltered-homeless-provider-data-suggests/>.

<sup>5</sup> “Homelessness Response System Dashboard.” n.d. ECHO. Accessed February 24, 2023. <https://www.austinecho.org/dashboard/>.

<sup>6</sup> 2023 data from the Homeless Management Information System (HMIS) database.

<sup>7</sup> Baggett, Travis P., Seth A. Berkowitz, Vicki Fung, and Jessie M. Gaeta. 2018. “Prevalence of Housing Problems Among Community Health Center Patients.” *JAMA* 319 (7): 717–19. <https://doi.org/10.1001/jama.2017.19869>.

<sup>8</sup> Central Health. 2023. “2022 Demographic Report.” Austin, TX. [https://www.centralhealth.net/wp-content/uploads/2023/02/2022\\_Demographic\\_Report.pdf](https://www.centralhealth.net/wp-content/uploads/2023/02/2022_Demographic_Report.pdf).

<sup>9</sup> Funk, Amy M., R. Neil Greene, Kate Dill, and Pia Valvassori. 2022. “The Impact of Homelessness on Mortality of Individuals Living in the United States: A Systematic Review of the Literature.” *Journal of Health Care for the Poor and Underserved* 33 (1): 457–77.

person engages in behaviors almost exclusively limited to people experiencing homelessness. Section 9.4.13 of Proposition B prohibits panhandling and solicitation of aid in specified public areas but not in others and only at specified times of day. The freedom to ask another person for aid is prohibited, for example, “near a marked crosswalk” through “written words,” making it illegal to hold a sign asking for change at a street corner at any location in the City at any time of day. Asking another person for aid is prohibited at any location between 7pm and 7am. Doing so in a manner that is deemed “aggressive” is prohibited at all times and in all locations. Solicitation in an “aggressive manner” is defined in vague language including: “following the person in a way that is intended to or likely to intimidate them to give money,” behavior which “causes the person fear of imminent bodily harm or the commission of a crime,” and “blocking the passage of the person being solicited in a way that requires them to take evasive action(s) to avoid contact.” Under this definition, if someone being asked for aid feels intimidated by the person asking, fears that the person asking might commit a crime toward them, or chooses to cross the street to avoid being in the presence of the person asking, the person asking is in violation of the law. Section 9.4.14 of Proposition B prohibits sleeping, sitting, or lying down outdoors in or near downtown Austin and areas near the University of Texas at Austin campus, with exceptions for (1) medical emergencies, (2) lawful operation of business on the sidewalk, (3) acting as a customer of a lawful business, (4) participating in a public event, (5) sitting on a chair or bench supplied by a public agency or private property owner, (6) sitting close to or within a bus stop, or (7) waiting in line for goods, services, or a public event. An unsheltered person who needs to rest without participating in or waiting for anything in particular is only permitted to do so in this area of the City if a designated seat is available for them at that time. The law is, *in effect*, creating a segregated area of the City where only people actively engaging in business activities are permitted to freely access without restrictions.

### **Negative Sentiments About Homelessness Among the General Public**

Proposition B was approved by Austin voters in a referendum. A majority of voters in the City agreed to pass a law which would violate the human rights of unsheltered residents of the City. This occurred, in part, because of widespread negative sentiments among housed people toward unhoused people. Per a 2023 survey, residents of Austin who feel less safe in the City were more likely to report a desire for a stricter enforcement of Proposition B.<sup>10</sup> Housed people may feel that their safety is threatened when they are in spaces occupied by people experiencing homelessness. This is a belief based on assumptions about people experiencing homelessness (a) that are not founded, and (b) that other laws protect them from already. It is reasonable for one to call for the enforcement of laws against the violation of their rights but being near people who are camping in public areas is not an example of such a violation.

- A. For decades, people experiencing homelessness have been more likely to be victims of violent crime than they are to be perpetrators of violent crime. Local crime data is no different: Austinites experiencing homelessness are more likely to be victims than perpetrators of violent crime.<sup>11</sup> The assumption that people experiencing homelessness are violent and that one should fear being a victim of a violent crime perpetrated by an unsheltered person is based primarily on stereotypes rather than facts.

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<sup>10</sup> Swiatecki, Chad. 2023. “Notley/Monitor Poll: Austinites Want Reinstated Camping Bans on the Homeless Enforced.” Austin Monitor. February 16, 2023. <https://www.austinmonitor.com/stories/2023/02/notley-monitor-poll-austinites-want-reinstated-camping-bans-on-the-homeless-enforced/>.

<sup>11</sup> Data from the Austin Police Department for the years 2014-2019 show that 2% of all violent crimes are of an unhoused person perpetrating a crime against a housed person, compared to 4% where a housed person is perpetrating a violent crime against an unhoused person.

- B. Regardless of the reason, many people may fear that they will be assaulted or harassed by people experiencing homelessness who are camping in areas they visit. Camping bans do not, however, protect people from being assaulted or harassed. There are other laws in place which prohibit such behaviors.

Proposition B and HB1925 enshrine laws that value the comfort of people who are housed over the lives of people who are unhoused. In addition to the laws themselves clearly targeting people experiencing homelessness, evidence suggests that law enforcement targets people experiencing homelessness. In interviews with cadets in the Austin Police Department, “multiple former cadets in separate, individual interviews confirmed that training staff made negative comments toward individuals experiencing homelessness and told cadets that if they are ‘having a slow day,’ they could seek out someone experiencing homelessness as an easy target for various citations.”<sup>12</sup>

### **Disproportionate Impact on Black People Living in Austin**

The enforcement of Proposition B and HB1925 is not only a human rights issue for all people experiencing homelessness. It is also a racial justice issue. Systemic racism is a root cause of homelessness in Austin. A Black person is six times as likely to experience homelessness as a white person.<sup>13</sup> Because of this, persons who are Black are disproportionately policed through the enforcement of laws that target people experiencing homelessness. Thus, we argue that the enforcement of these laws is not only a violation of Article 3 of the Universal Declaration of Human Rights but also a violation of Article 2, which states that all people are entitled to the human rights included in the Declaration, “without distinction of any kind, such as race [or] colour...”

Black people are more likely to be targeted by law enforcement in Austin because they are more likely to be unhoused and because people experiencing homelessness are more likely to be involved with law enforcement. On a single night in January 2023, the population experiencing homelessness comprised one third of the population occupying the jail system.<sup>14</sup> Given that the population experiencing homelessness only comprises approximately 0.4% of the population of Travis County,<sup>15</sup> people experiencing homelessness are more than 100 times as likely to be jailed than people who are housed. Thirty-six percent of the unhoused jailed population in January 2023 were Black. The citation and arrest of the Black unhoused population as a result of these laws will further exacerbate the inequities Black people experience when trying to attain housing.<sup>16</sup>

In qualitative interviews conducted by ECHO in 2022, Black people with lived experience of homelessness in the Austin area spoke about the treatment of Black unhoused people by law

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<sup>12</sup> Oaks, Brion. 2020. “Equity Assessment SWOT Analyses and Report on Racial Inequities within Austin Police Department.” <https://www.austintexas.gov/edims/pio/document.cfm?id=352525>.

<sup>13</sup> Burrus, Claire. 2022. “Austin/Travis County Continuum Of Care Racial Disparities.” Austin, TX: Ending Community Homelessness Coalition. <https://www.austinecho.org/wp-content/uploads/2022/07/2022-Racial-Disparities-Report.pdf>.

<sup>14</sup> Data provided to ECHO by the Travis County Sheriff’s Office for the night of January 27, 2023.

<sup>15</sup> “Homelessness Response System Dashboard.” n.d. ECHO. Accessed February 24, 2023. <https://www.austinecho.org/dashboard/>.

<sup>16</sup> Boshart, Abby. 2022. “How Tenant Screening Services Disproportionately Exclude Renters of Color from Housing.” Housing Matters (blog). December 21, 2022. <https://housingmatters.urban.org/articles/how-tenant-screening-services-disproportionately-exclude-renters-color-housing>.

enforcement.<sup>17</sup> One man expressed the following regarding how he was perceived by law enforcement while living on the streets in Austin:

“African American males have been demonized ever since we were brought to this country... A lot of times we’re perceived as criminals... When you see a Black person get stopped [by the police], we know how to behave. We know we have to say ‘yes sir.’ I put my hands up right off the bat... A white person can go off on the police and not have to really worry about it. If we go off, we’re hog-tied, bound to jail.”

## **Conclusion**

While recent laws in Austin and Texas criminalizing homelessness are purportedly race-neutral, their effects will fall disproportionately on Black people in Austin. These laws not only make it more difficult for all people experiencing homelessness to survive, but they serve to protect an overwhelming white population (i.e., the housed) from exposure to a disproportionately Black population (i.e., the unhoused). This will only contribute to further segregating the city and, in the process, exacerbate housing and wealth racial inequities. In short, laws which criminalize the life, liberty, and security of person of those unable to comply with them and whose enforcement has a disparate impact on members of a particular racial group are in violation of international human rights law.

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<sup>17</sup> Burrus, Claire, Akram Al-Turk, Lyric Wardlow, Quiana Fisher, Jenelle Adetunji, Dominique Peevy, and Maya Beit-Arie. 2023. “The Art Of The Heart Is To Hear With The Ear.” Ending Community Homelessness Coalition. <https://www.austinecho.org/wp-content/uploads/2023/02/Art-of-the-Heart-Report.pdf>.