

Criminalization of Homelessness in the Caribbean: A Baseline Assessment in the Dominican Republic, Haiti, Jamaica, and Puerto Rico

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Introduction

Throughout the globe, governments use petty offenses, such as vagrancy and loitering laws, to exert social control over poor and marginalized communities. Moreover, people experiencing homelessness regularly face the threat of criminal sanctions for fulfilling basic needs. These petty offenses enable the policing of public spaces to reinforce social hierarchies and rigid gender norms. Many of these laws are in place in the Caribbean, inherited as part of the colonial legacy that permeates its systems today.¹

This report provides a baseline assessment of the criminalization of homelessness in the Dominican Republic, Haiti, Jamaica, and Puerto Rico. The analysis thus focuses on four Caribbean localities with diverse histories connected to France, Spain, the United Kingdom, and the United States (U.S.). The report addresses both laws criminalizing vagrancy and loitering, as well as life-sustaining activities. It further examines the laws on the books, their implementation in practice, and their various impacts on people in each country.

This assessment benefits from both a literature review, as well as interviews with local experts and collaboration with at the Ciudad Alternativa in the Dominican Republic, KAYLA (Konbit Ayisyen pou Lojman Altènatif) in Haiti, Stand Up for Jamaica, La Fondita de Jesus in Puerto Rico, and the University of the West Indies' Rights Advocacy Project.

The first section of this report provides a human rights framework for analyzing the criminalization of homelessness. The second section then provides an assessment for each locality: the Dominican Republic, Haiti, Jamaica, and Puerto Rico. This includes background into the history and legal framework of each place and an overview of homelessness there, including its composition and causes. It then delves into the laws criminalizing homelessness, as well as laws protective of human rights. Finally, it addresses the impact of these laws. The third section follows these geography-specific assessments with an analysis of cross-cutting themes and reflections. The report then ends with an appendix with the text of the relevant laws in each locality.

I. A Human Rights Analysis of the Criminalization of Homelessness

The criminalization of homelessness violates fundamental human rights, recognized by both the international and Inter-American human rights systems. At the international level, key instruments that make up this body of law include the Universal Declaration of Human Rights (UDHR),² the foundational document of the international human rights system; the International Covenant on

¹ University of Miami School of Law, Human Rights Clinic, *Petty Offenses Symposium: Challenging the Criminalization of Poverty, Marginalization, and Gender Non-Conformity*, <https://miami.app.box.com/s/q891w54b661c6bismf190x23835kamsq> (Feb. 2020). Please also see the website of the Campaign to Decriminalise Poverty and Status at <https://decrimpovertystatus.org/>.

² Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

Civil and Political Rights (ICCPR);³ the International Convention on Economic, Social, and Cultural Rights (ICESCR);⁴ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);⁵ the International Convention on the Elimination of All Forms of Racial Discrimination;⁶ and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁷ In the Inter-American system, key instruments that make up this body of law include the American Declaration on the Rights and Duties of Man (American Declaration);⁸ the American Convention on Human Rights (Pact of San Jose);⁹ the Additional Protocol to the American Convention on Human rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador);¹⁰ the Inter-American Convention to Prevent and Punish Torture (Inter-American Convention on Torture);¹¹ and the Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance (Inter-American Convention Against Racism).¹²

Discrimination is often embedded in the criminalization of homelessness, violating the right to equality and freedom from discrimination.¹³ For instance, in the U.S., Black people are much more likely than other groups to experience homelessness, and a higher number of Black people are fined or incarcerated for violating laws penalizing life-sustaining activities.¹⁴ In the Dominican Republic, Haitian immigrants are more likely to experience homelessness in part due to

³ International Convention on Civil and Political Rights, art. 4(1) and art. 26, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁴ International Covenant on Economic, Social, and Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

⁵ Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, 1465 UNTS 85, 113 [hereinafter CAT].

⁶ International Convention on the Elimination of All Forms of Racial Discrimination 660 U.N.T.S. 195, 212 [hereinafter ICERD].

⁷ Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

⁸ American Declaration of the Rights and Duties of Man, *adopted* May 2, 1948, OEA/Ser.L./V.II.23, doc. 21, rev. 6 [hereinafter American Declaration].

⁹ American Convention on Human Rights *adopted* Nov. 22, 1969, O.A.S.T.S. No. 36 [hereinafter Pact of San Jose].

¹⁰ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, Nov. 17, 1988 [hereinafter Protocol of San Salvador].

¹¹ Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985 [hereinafter Inter-American Convention on Torture].

¹² Inter-American Convention Against All Forms of Discrimination and Intolerance, June 5, 2013 [hereinafter Inter-American Convention Against Racism].

¹³ UDHR, *supra* note 2, art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection under the law.”); ICCPR, *supra* note 3, art. 26 (“All are equal before the law and are entitled without any discrimination to equal protection under the law.”); ICERD, *supra* note 6, art. 5 (stating that state parties to convention must “prohibit and eliminate racial discrimination in all its forms.”); American Declaration, *supra* note 8, art 2 (“All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.”); Pact of San Jose, *supra* note 9, art. 24 (“All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”); Inter-American Convention Against Racism, *supra* note 12, art. 2 (“Every human being is equal under the law and has a right to equal protection against any form of discrimination and intolerance in any sphere of life, public or private.”).

¹⁴ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, RACISM, HOMELESSNESS, AND THE CRIMINAL AND JUVENILE LEGAL SYSTEMS 3 (2020) [hereinafter HOMELESSNESS AND POVERTY], <https://nlchp.org/Wp-Content/Uploads/2020/08/Racism-Homelessness-And-Criminal-Legal-Systems.Pdf>.

discriminatory laws and practices targeting them for evictions.¹⁵ International human rights law requires states to address disparate impact, not just discriminatory intent.¹⁶ Moreover, general vagrancy and loitering provisions, which “employ vague, unclear and imprecise language,” are particularly “prone to abuse” and discrimination against “marginalized sections of society,” as the African Court on Human and People’s Rights held in assessing the compatibility of vagrancy laws with human rights across the African continent.¹⁷ In the African context, as in the Caribbean, the Court recognized many of these vagrancy laws stem from a colonial past and “an outdated and largely colonial perception of individuals without any rights and their use dehumanizes and degrades individuals with a perceived lower status.”¹⁸

Laws criminalizing life-sustaining activities, which people living on the streets have no choice but to do in public, further violate the human right to freedom from torture and cruel, inhuman, and degrading treatment.¹⁹ The United Nations (U.N.) Human Rights Committee, which monitors implementation of the ICCPR, noted that the criminalization of homelessness in the U.S. “raises concerns of discrimination and cruel, inhuman or degrading treatment.”²⁰ Additionally, U.S. federal courts have ruled that laws criminalizing homelessness violate the Eighth Amendment’s prohibition on “cruel and unusual punishment,” the U.S. Constitution’s analogue to the prohibition against cruel, inhuman and degrading treatment.²¹ In *Martin v. Boise*, the Ninth Circuit concluded that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.”²² This is the case as the state “may not criminalize conduct that is an unavoidable conduct of being homeless,”²³ and “[a]s long as there is no option of sleeping indoors, the government cannot criminalize the indigent, homeless people for sleeping outdoors, on public property, on the false premise that they had a choice in the matter.”²⁴ Then, in *Johnson v. City of Grants Pass*, the Ninth Circuit echoed

¹⁵ See note 62 *infra*.

¹⁶ Hum. Rts. Comm., *General Comment No. 18: Non-Discrimination*, ¶¶ 6, 8, 10, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Nov. 10, 1989) (explaining that right to equality and freedom of racial discrimination outlined in ICCPR should be interpreted broadly, requiring state parties to address disparate impacts of discriminatory conduct on part of either government agencies or private entities in addition to discriminatory intent of actions).

¹⁷ Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Other Human Rights Instruments Applicable in Africa, No. 001/2018 Afr. Ct. Hum. People’s Rts., ¶ 71, (2020), http://www.african-court.org/en/images/Cases/Advisory%20Opinion/Advisory%20Opinions/001-2018_-_PALU-Advisory_Opinion.pdf.

¹⁸ *Id.* at ¶ 79.

¹⁹ UDHR, *supra* note 2, art. 5 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); ICCPR, *supra* note 3, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); CAT, *supra* note 5, art. 16 (“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.”). Pact of San Jose, *supra* note 9, art. 5 (“No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”); Inter-American Convention to Prevent and Punish Torture, *supra* note 11, art. 6 (calling for “effective measures to prevent and punish cruel, inhuman, or degrading treatment.”).

²⁰ Hum. Rts. Comm., *Concluding observations on the fourth report of the United States of America*, ¶ 19, U.N. Doc. CCPR/C/USA/CO/4 (2014).

²¹ U.S. CONST. amend. 8.

²² *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018); *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), *cert. denied* 2019 U.S. LEXIS 7571 (Dec. 16, 2019).

²³ *Id.*

²⁴ *Id.*

this reasoning in prohibiting the imposition of civil fines for people sleeping outside or in their vehicles when they have no other option.²⁵ Similarly, the Southern District of Florida held in *Pottinger* that punishing people experiencing homelessness for eating, sleeping, or engaging in other life-sustaining activities that they have no choice but to conduct in public “violates the Eighth Amendment ban against cruel and unusual punishment.”²⁶ The Court explained, “plaintiffs have no place else to go and no place else to be,” and “resisting the need to eat, sleep or engage in other life-sustaining activities is impossible.”²⁷

Additionally, punishing people for engaging in life-sustaining activities violates their right to life.²⁸ These laws cruelly negate people’s very existence. As Jeremy Waldron noted, as we are physical beings, “in order to exist, a person has to be *somewhere*,” and if a person experiencing homelessness is banned from public spaces, “such a person would not be permitted to exist.”²⁹ The Human Rights Committee requires countries to interpret the right to life broadly and address “general conditions in society that . . . prevent individuals from enjoying their right to life with dignity.”³⁰ Thus, states must “ensure access . . . to essential goods and services . . . and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective . . . social housing programmes.”³¹ The U.N. Special Rapporteur on Adequate Housing explicitly linked the right to life with adequate housing: “When courts approve evictions without ensuring alternative accommodation or fail to provide remedies for violations of the right to life caused by homelessness, they violate international human rights and the rule of law.”³²

Moreover, laws criminalizing homelessness violate the right to liberty and security of person.³³ Ordinances that arrest people for engaging in life-sustaining activities subject people experiencing

²⁵ *Johnson v. City of Grants Pass*, 50 F.4th 787, 813 (9th Cir. Sept. 28, 2022), (“[T]he City of Grants Pass cannot, consistent with the Eighth Amendment, enforce its anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there is no other place in the City for them to go”).

²⁶ *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992).

²⁷ *Id.*

²⁸ UDHR, *supra* note 2, art. 3 (stating that “[t]he right to life, liberty, and security of person” while Article 6 of the ICCPR states that “[n]o one shall be arbitrarily deprived of his life”) ICCPR, *supra* note 3, art. 6(1); American Declaration, *supra* note 8, art 1 (“Every human being has the right to life, liberty and the security of his person”); Pact of San Jose, *supra* note 9, art. 4 (“Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life”).

²⁹ See Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. REV. 295, 300 (1991).

³⁰ Hum. Rts. Comm, *CCPR General Comment No. 36: Art. 6 (Right to Life)*, ¶ 26, U.N. Doc. CCPR/C/GC/36 (2019).

³¹ *Id.*

³² Hum. Rts. Council, 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, *Access to Justice for the Right to Housing*, ¶ 19, U.N. Doc. A/HRC/40/61 (Jan. 15, 2019) [hereinafter Special Rapporteur on Adequate Housing].

³³ UDHR, *supra* note 2, art. 3 (“Everyone has the right to life, liberty and security of person.”); ICCPR, *supra* note 3, art. 9(1) (“Everyone has the right to liberty and security of person [and] [n]o one shall be subjected to arbitrary arrest or detention.”).

³³ UDHR, *supra* note 2, art. 3 (“Everyone has the right to life, liberty and security of person.”); ICCPR, *supra* note 3, art. 9(1) (“Everyone has the right to liberty and security of person [and] [n]o one shall be subjected to arbitrary arrest or detention.”); ICERD, *supra* note 6, art. 5(b) (“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.”); American Declaration, *supra* note 8, art 1 (“Every human being has the right to life, liberty and the

homelessness to arbitrary arrests and fines.³⁴ This is further a major problem with general vagrancy and loitering ordinances. As the African Court on Human and Peoples' Rights explained in ruling on their incompatibility with human rights, "One of the major challenges is that vagrancy laws do not, *ex ante*, sufficiently and clearly lay down the reasons and conditions on which one can be arrested and detained to enable the public to know what is within the scope of prohibition. In practice, therefore, many arrests for vagrancy offences are arbitrary."³⁵ The U.S. Supreme Court similarly held in *Papachristou v. Jacksonville*, that a vagrancy ordinance was void for vagueness by "fail[ing] to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute...and encourage[ing] arbitrary and erratic arrests and convictions, [making] criminal activities that, by the modern standards, are normally innocent, and [placing] almost unfettered discretion in the hands of the police."³⁶

At their core, these rights violations stem from a failure to realize the fundamental human right to adequate housing.³⁷ The criminalization of homelessness penalizes individuals for the lack of adequate housing. The U.N. Committee on Economic, Social and Cultural Rights, which monitors implementation of the ICESCR, explained that the right to adequate housing is not merely a right to shelter.³⁸ Rather, it requires the availability of housing that is affordable, habitable, accessible, well-located, and culturally adequate.³⁹ While this does not entail free housing for everyone, it requires government action to ensure all people are able to house themselves with dignity.⁴⁰

security of his person."); Pact of San Jose, *supra* note 9, art. 7 ("Every person has the right to personal liberty and security.").

³⁴ NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2018: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 42 (2018), <https://nlchp.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf>.

³⁵ Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments Applicable in Africa, No. 001/2018 Afr. Ct. Hum. People's Rts., ¶ 86, (2020), http://www.african-court.org/en/images/Cases/Advisory%20Opinion/Advisory%20Opinions/001-2018_-_PALU-Advisory_Opinion.pdf.

³⁶ *Papachristou v. City of Jacksonville*, 405 U.S. 156, 171, 92 S. Ct. 839, 848, 31 L. Ed. 2d 110 (1972); *see also* *City of Chicago v. Morales*, 177 Ill. 2d 440, 449, 687 N.E.2d 53, 60 (1997), *aff'd*, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999).

³⁷ UDHR, *supra* note 2, art. 25(1) ("Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services."); ICESCR, *supra* note 4, art. 11(1) ("The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."); ICERD, *supra* note 6, art. 5(e)(iii) ("State [p]arties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably the enjoyment of the following rights: . . . Economic, social and cultural rights in particular: . . . (iii) The right to housing."); CEDAW, *supra* note 7, art. 14(2)(h) (stating that state parties are required to ensure that "on a basis of equality of men and women, that they participate in and benefit from rural development, and in particular, shall ensure to such women the right: (h) To enjoy adequate living conditions, particularly in relation to housing"); American Declaration, *supra* note 8, art. 11 ("Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.").

³⁸ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, ¶ 7, U.N. Doc. E/1992/23 (1991).

³⁹ *Id.* at ¶ 8.

⁴⁰ *Id.* at ¶ 7.

Not only does the criminalization of homelessness violate human rights, but it is also counterproductive. Criminalization perpetuates homelessness by trapping people in a cycle of poverty. It results in fines people cannot pay, jail time, and criminal records, further impeding employment and housing.⁴¹ Moreover, diverting resources to law enforcement can cost two to three times more than it would to provide affordable housing.⁴² As the U.S. Interagency Council on Homelessness recognized, “[C]riminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”⁴³

II. The Dominican Republic

A. Background

1. Historical Background

Like many other Caribbean islands, the Dominican Republic was first inhabited by the native Taíno.⁴⁴ Upon Christopher Columbus’ arrival in 1492, the period of Spanish colonial rule began, along with the murder, conversion, and enslavement of its native peoples.⁴⁵ The Dominican Republic shares the island of Hispaniola with Haiti, a former French colony.⁴⁶ After Haiti gained its independence in 1804, there was a brief period of a unified Hispaniola.⁴⁷ However, the vastly differing cultures resulted in a power struggle between Haiti and the Dominican Republic and infighting between Haitians and Dominicans.⁴⁸ This led to the separation of the two with the independence of the Dominican Republic established in 1844.⁴⁹

2. Legal Framework

⁴¹ Nicole Weissman & Marina Duane, *Five Problems with Criminal Background checks*, URBAN INSTITUTE (March 13, 2007), <https://www.urban.org/urban-wire/five-problems-criminal-background-checks>; *Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America*, ¶ 45, U.N. Doc. A/HRC/38/33/Add.1; NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 12 (2019), <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>; NAT’L L. CTR. ON HOMELESSNESS & POVERTY, RACIAL DISCRIMINATION IN HOUSING AND HOMELESSNESS IN THE UNITED STATES 3 (2014).

⁴² *The Cost of Long-Term Homelessness in Central Florida: The Current Crisis and the Economic Impact of Providing Sustainable Housing Solutions*, CENTRAL FLORIDA COMMISSION ON HOMELESSNESS, 34 (2014); Gale Holland, *L.A. spends \$100 million a year on homelessness, city report finds*, L.A. TIMES (Apr. 16, 2015), <https://www.latimes.com/local/lanow/la-me-ln-homeless-cao-report-20150416-story.html>.

⁴³ U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS 7 (2012), https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf.

⁴⁴ *Historia Breve de la República Dominicana*, Consulado General de la Republica Dominicana, <http://cdrc.gov.do/dominicana/historia>.

⁴⁵ *Id.*

⁴⁶ Dominican Republic Country Profile, BBC News (Mar. 1, 2021), <https://www.bbc.com/news/world-latin-america-19246340>.

⁴⁷ *Historia Breve de la República Dominicana*, *supra* note 44.

⁴⁸ *Id.*

⁴⁹ *Id.*

The Dominican Republic is a civil law country. The island-nation's judicial system is comprised of the Supreme Court of Justice, Court of Appeals, Courts of First Instance, and Justices of the Peace.⁵⁰ Justices of the Peace hear small claims cases. Courts of First Instance are split into criminal and civil/commercial chambers; there can be multiple within one District, depending on its size. There is one Court of Appeal per judicial district, with 11 total. The Supreme Court of Justice consists of 16 magistrates elected by the National Judiciary Council and hears constitutional cases, causes of action against public officials, and appeals from the Courts of Appeals. There are also special courts that hear specific matters such as labor, land, tax, administrative, and police courts, among others.⁵¹

The Dominican Republic also has regional and international human rights obligations. It is a member of the Organization of American States and has ratified the Pact of San Jose and is thus subject to the jurisdiction of the Inter-American Court of Human Rights.⁵² The island-nation has also ratified various international human rights treaties including the ICESCR, the ICCPR, CAT, CEDAW, and ICERD.⁵³

3. Homelessness in the Dominican Republic

While homelessness exists in the Dominican Republic, it looks different than in many other locales. According to housing advocates on the island, it is rare to see an individual physically living in the street, but many live in inadequate housing that is not meant nor designed to sustain families or individuals long term. In cities particularly, people will often find an unoccupied area and build small structures where they can live; however, these structures are inadequate and unsafe.⁵⁴ Of about ten million people in the Dominican Republic, 35-70% experience some level of housing insecurity, and 55% have serious housing concerns.⁵⁵ In 2020 the Dominican Republic reported 296,591 people experiencing homelessness, a 0.2% decrease from the previous year and a 7% decrease from 2012, where the total count of people experiencing homelessness was 954,154.⁵⁶ While these statistics paint an optimistic picture, housing experts believe that the upcoming census is likely to reveal that over 500,000 people are living in inadequate housing.⁵⁷ The absence of a clear definition of homelessness further leads to undercounting and creates uncertainty as to who is and who should be included.

Certain groups are at greater risk of displacement and homelessness. A news article published in 2016 reported that 88% of people experiencing homelessness in the Dominican Republic suffered

⁵⁰ *Description of the Judicial System of the Dominican Republic*, FIU Steven J. Green School of International and Public Affairs, <https://caj.fiu.edu/national-cj-systems/caribbean/dominican-republic/>.

⁵¹ *Id.*

⁵² Organization of American States (OAS), *Member States*, https://www.oas.org/en/member_states/default.asp (last visited July 17, 2022); Pact of San Jose, *adopted* Jan 21, 1978, O.A.S.T.S. No. 36.

⁵³ ICESCR, *supra* note 4, *ratified* Jan. 4, 1978; ICCPR, *supra* note 3, *ratified* Jan. 4, 1978; CAT, *supra* note 5, *ratified* Jan. 24, 2012; CEDAW, *supra* note 7, *ratified* Sept 2, 1982; ICERD, *supra* note 6, *ratified* May 25, 1983.

⁵⁴ Interview with Juan Luis Corporan, Subdirector of Ciudad Alternativa (Dec. 23, 2022) [hereinafter Corporan interview].

⁵⁵ *Id.*

⁵⁶ Massiel de Jesus, *Indigencia: el drama socioeconómico de más de 296,500 dominicanos*, El Dinero (Dec. 21, 2020), <https://eldinero.com.do/131897/indigencia-el-drama-socioeconomico-de-mas-de-296500-dominicanos/>.

⁵⁷ Corporan interview, *supra* note 54.

from a physical ailment or mental illness.⁵⁸ Haitian immigrants, LGBTQ+ individuals, and single mothers are also particularly at-risk.⁵⁹ In fact, the majority of people experiencing homelessness or living in inadequate housing are Haitian immigrants and families.⁶⁰ Often, Haitians working in active construction projects live within the developments.⁶¹ They are permitted to live on the sites in exchange for serving as protection for construction projects.⁶² Haitian immigrants experience prejudice not only from individuals, but from state policies and discriminatory laws. For example, the Dominican government recently issued a decree where it gave police the power to evict Haitian families and people without a warrant or approval from a court.⁶³ This has enabled corruption, with individuals paying off police to carry out unjust evictions, as well as violence from anti-Haitian police officers, leaving people out on the street.⁶⁴

Mutual support and solidarity groups typically care for other Dominicans.⁶⁵ This is the result of community cooperation in the face of insufficient government services and the great need presented by situations like the climate disasters that often affect the Caribbean island.⁶⁶ Mutual support and solidarity groups are often based in schools, church and other social groups.⁶⁷ Prejudice excludes some from access to community support.

4. Causes of Homelessness

The root of housing insecurity in the Dominican Republic lies in laws and policies that fail to define title and tenancy of lands, as well as fail to protect those most vulnerable.⁶⁸ First, the majority of people at risk of homelessness, including the majority of poor people in the Dominican Republic, live on government lands.⁶⁹ As development increases, the value of these government lands increases, leading to the growth of privatization led by government sales of these lands to private actors. This has resulted in the sale of the government lands to investors, developers, and those with more resources while people are living on the lands and lack proper title.⁷⁰ The majority of people living in homes in the Dominican Republic lack formal title. Those who purchase the lands that are currently occupied have the legal right to evict the tenants on their land.⁷¹ This is true without regard to how long the individuals and families have occupied the land.⁷² Many have been evicted and are left without a home. There are often community and mutual support networks, but many times people find a new unoccupied plot and build provisional homes that do not meet

⁵⁸ *Indigentes ocupan espacios publicos de la capital*, EL NACIONAL (April 10, 2016), <https://elnacional.com.do/indigentes-ocupan-espacios-publicos-de-la-capital/>.

⁵⁹ Corporan interview, *supra* note 54.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Corporan interview, *supra* note 54.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Corporan interview, *supra* note 54.

⁷² *Id.*

adequate housing standards, but provide some sort of refuge.⁷³ The lack of legal title to land is a widespread problem in the Dominican Republic; so much so that the National Palace, or Palacio Nacional, which is the center of the executive branch of the Dominican government, recently had its title formalized in December 2022.⁷⁴ Moreover, people who are left without homes are being pushed further away from major economic centers, further reinforcing a cycle of poverty.⁷⁵

The privatization of government lands that is displacing many Dominicans is driven by expanding business. One of the industries that has been most active in buying government-owned lands is the sugar cane industry; this has been the case since the earliest colonization of the Dominican Republic.⁷⁶ The newest trend is the purchase of spaces by building developers who seek to construct on them. Poor people who currently occupy those lands do not have the option of selling their homes because they do not have alternate housing and do not possess legal title to sell.⁷⁷ Advocates note that the government's priority should be to implement a formalization process through which individuals and families can acquire legal title to the land and thus have the ability to stay or sell their land. However, there is insufficient political motivation to address the issue. At present, companies will purchase legal title to whole communities by approaching financial institutions and stating that they will provide the people who live in these communities the opportunity to buy legal title from them, knowing that this is unlikely to materialize due to economic constraints.⁷⁸ Companies ultimately evict the tenants. These evictions are also carried out by affluent private individuals. The communities that are destroyed as a result are well established, comprised of roads, public works, schools, churches, and other community resources.⁷⁹ Communities are rarely, if ever, consulted on the sale of the lands they occupy. Notice is sometimes given once formal legal title is granted to an individual or an entity. However, community members will often disregard eviction notices because of disbelief that they can be evicted from homes they built on lands they have occupied and nurtured for over 30 years, often spanning multiple generations of one family.⁸⁰ Evictions are often traumatic and violent, as people who do not believe the eviction notices or ignore them are generally in their homes when the new owners begin to tear down the structures.⁸¹ Courts emit notice, if any, while prosecutors, police, and hired workers physically tear down structures.⁸² The lack of time for consultation and ineffective notice only exacerbate the consequences once people are forcibly removed from their homes.⁸³

This displacement has led to protests, legal challenges, and organized resistance. For example, in December 2022, a neighborhood of 250 families was evicted less than ten days before Christmas.⁸⁴ In 2022, at least six entire neighborhoods were evicted.⁸⁵ This led to protests in front of the Palacio

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Corporan interview, *supra* note 54.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Corporan interview, *supra* note 54.

⁸⁴ *Id.*

⁸⁵ *Id.*

Nacional, with the media treating displaced families as invaders, even though they lived on these lands for over 15 or 20 years.⁸⁶ Moreover, displacement was before Dominican courts prior to the pandemic. A case was brought on behalf of a neighborhood of six thousand families whose lands the government sold. The families stewarded these lands since 1979.⁸⁷ The Dominican government sold the land to a private company. The sale included not just the families' homes, but the schools, businesses, and churches community members worked to establish over the years. The company attempted to negotiate the families out of the lands; in response, the neighborhood organized itself in protest and the sale was retracted.⁸⁸ This particular example was at a large scale, which is likely why the community's steadfast resistance was ultimately successful. This same situation displacement is occurring on a smaller scale across the country. However, due to the lack of media coverage, resources, and public outrage, achieving positive results is more difficult.⁸⁹

B. Laws on Homelessness in the Dominican Republic

1. Laws Criminalizing Homelessness

The penal code of the Dominican Republic defines criminal conduct and includes a provision that criminalizes vagrancy. Many other provisions criminalizing vagrancy have been repealed, but Article 269 remains in place, stating **“the law considers vagrancy a crime and punishes such with correctional penalties.”**⁹⁰

Begging is also illegal. If an individual begs in public spaces where there are organizations intended to receive people who are begging, it is punishable by three to six months of imprisonment.⁹¹ In areas where there are no such organizations “only those who, not being invalids, habitually beg will be punished.”⁹² The penalty under that law is also imprisonment for a period of one to three months, “increasing its duration from six months to two years, if they had been arrested, outside of the municipality of their residence.”⁹³ More specific provisions indicate that “the penalty of one to six months in prison will be imposed on “1st, beggars, whether or not they are invalids, who used threats to get into houses, into rooms or in fenced places, or who, without a license from the owner of the house or of the people who inhabit it, enter it; 2nd, those who feign ailments or sores that they do not have; 3rd, those who form meetings to beg, unless these are fathers and sons, or the blind and their drivers.”⁹⁴ These penalties can be imposed on any “vagabond” who is found in possession of items valued over 50 pesos (.94 USD) and cannot explain their origin.⁹⁵

Additionally, the penal code includes provisions that apply to both “vagabonds” and “beggars.” The penal code outlines additional punishments for those who carry weapons while begging,

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Corporan interview, *supra* note 54.

⁹⁰ Penal Code of the Dominican Republic, Art. 269.

⁹¹ Penal Code of the Dominican Republic, Art. 274.

⁹² Penal Code of the Dominican Republic, Art. 275.

⁹³ *Id.*

⁹⁴ Penal Code of the Dominican Republic, Art. 276.

⁹⁵ Penal Code of the Dominican Republic, Art. 278.

whether or not the weapon is actually used or used for a threat, and those who wear costumes.⁹⁶ These individuals will be punished with a three month to one year sentence.⁹⁷ The penal code further states that “vagabonds” who engage in an act of violence against another person will receive a penalty of six months to two years in prison, without regard to the nature of the act.⁹⁸ An attempt at an act of violence carries a lesser sentence.⁹⁹ People on whom these penalties are imposed are also subject to “vigilance” for an equal period of time after their sentences are completed.¹⁰⁰ Interestingly, the section including these criminalizing provisions is grouped together with provisions criminalizing the association of “wrongdoers,” thus creating a perception of closeness between vagrancy, begging, and “wrongdoers.”¹⁰¹

Life sustaining activities are criminalized by the penal code of the Dominican Republic. For example, Article 471 part 14 imposes a fine to “those who bathe in a public place, breaking the laws of decency.”¹⁰² Part four of the same article imposes a fine on “those who neglect the cleanliness of the streets or places of transit in the municipalities where the care of those falls to the inhabitants.”¹⁰³ Part five of the same article indicates that “those who hinder a public way, depositing or leaving on it, without necessity, materials or any other thing that hinder the liberty of transit or diminish its security,” will be subjected to a fine.¹⁰⁴ The penal code states that further fines will be issued to “those who throw or deposit in front of their buildings, materials and objects that by their nature may harm in its fall, or be harmful by its unhealthy exhalations.”¹⁰⁵ While these specific provisions do not expressly implicate people experiencing homelessness or life sustaining activities, the language is broad enough to be applied to such situations. The article further notes that a one to three day arrests can be simultaneously imposed with the fine for the violations depending on the circumstances and the judge’s discretion on whether the person deserves such punishment.¹⁰⁶ And where there is a repeat offense, the jail sentence becomes mandatory.¹⁰⁷

While these laws remain in place, they are rarely enforced.¹⁰⁸ This may be due to the large informal work sector in the Dominican Republic, which allows individuals experiencing homelessness and housing insecurity to find short term and informal work rather than implicating these laws by begging or engaging in vagrancy. Moreover, these provisions may also be unconstitutional.¹⁰⁹ The Dominican Constitution establishes the right to work.¹¹⁰ The right to work implicates the decision

⁹⁶ Penal Code of the Dominican Republic, Art. 277.

⁹⁷ *Id.*

⁹⁸ Penal Code of the Dominican Republic, Art. 279.

⁹⁹ Penal Code of the Dominican Republic, Art. 280.

¹⁰⁰ Penal Code of the Dominican Republic, Art. 282.

¹⁰¹ Penal Code of the Dominican Republic, Section 5.

¹⁰² Penal Code of the Dominican Republic, Art. 471, part 14.

¹⁰³ *Id.* at part 4.

¹⁰⁴ *Id.* at part 5.

¹⁰⁵ Penal Code of the Dominican Republic, Art. 471, part 8.

¹⁰⁶ Penal Code of the Dominican Republic, Art. 473.

¹⁰⁷ Penal Code of the Dominican Republic, Art. 474.

¹⁰⁸ Corporan interview, *supra* note 54.

¹⁰⁹ Interview with Jaime Luis Rodriguez Rodriguez, Attorney and Collaborator with Ciudad Alternativa (Feb. 1 2023) [hereinafter Rodriguez Rodriguez interview].

¹¹⁰ Constitution of the Dominican Republic, Art. 62.

of whether to work at all.¹¹¹ Thus, there are active conversations within the Dominican government to reform the civil code because the version in place at present is a verbatim translation of the French Napoleonic code and contradicts the protections afforded by the Dominican Constitution.¹¹² These conversations, however, are contentious, and there have been threats to exclude other vulnerable groups from protections, such as the LGBTQ+ community.¹¹³

2. Protective Laws

There is no robust legal framework specifically dedicated to protecting people experiencing homelessness in the Dominican Republic. Perhaps the most authoritative protection comes from **the Constitution of the Dominican Republic, which guarantees a right to housing.** Article 59 states “Everyone has the right to adequate housing with essential basic services. The State must establish the necessary conditions to make this right effective and promote plans for housing and human settlements of social interest. Legal access to titled property is a fundamental priority of public policies to promote housing.”¹¹⁴ This is accompanied by additional social and economic human rights provisions like the right to food, the right to health, the right to work, the right to education, and protections for children, older persons, and people with disabilities.

Some national policies and agencies intended to alleviate the housing insecurity crisis exist, although their impact is limited. The Dominican Republic has a National Institute of Housing that can be traced back as early as 1962.¹¹⁵ Law 5892 established the government-led institute that is dedicated to providing the Dominican people with adequate housing through urban and rural planning, programs to increase accessibility of housing, and other efforts.¹¹⁶ The National Institute of Housing is the predecessor of what is now the Ministry of Housing and Edifications, which has as its mission to “generate a sustained social impact that improves the quality of life of Dominican families and the entire nation, through the design and execution of housing and building policies. Integrating the public and private sectors, in a framework of transparency that ensures best practices and the efficient use of public resources.”¹¹⁷ These agencies are not directed towards protecting or assisting people experiencing homelessness specifically, although their mandates presumably apply to this population.

Recent policies have aimed to address the housing crisis currently underway in the Dominican Republic. A new housing law, Law No. 160-21, created a housing ministry meant to encourage “produccion social del habitat.”¹¹⁸ *Produccion social del habitat*, or social habitat production, advocates for community-led development that prioritizes the availability of adequate housing. This is critical in the Dominican Republic because 70 percent of housing is built by individuals as

¹¹¹ Rodriguez Rodriguez interview, *supra* note 109.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Constitution of the Dominican Republic, Art. 59.

¹¹⁵ Juan B. Sanchez, *Derecho a la vivienda*, El Nuevo Diario (Dec. 20, 2017), <https://elnuevodiario.com.do/derecho-la-vivienda-adorada-esposa-zoila-santana-astacio/>; Ley No. 5892, El Instituto Nacional de la Vivienda, El Consejo del Estado, https://invi.gob.do/documents/Ley_5892_Crea_Instituto_Nacional_de_la_Vivienda.pdf

¹¹⁶ *Instituto Nacional de la Vivienda*, Datos.gob.do, <https://datos.gob.do/organization/about/instituto-nacional-de-la-vivienda-invi>.

¹¹⁷ *Quienes Somos*, Vivienda y Edificaciones, mived.gob.do, <https://mived.gob.do/quienes-somos/>.

¹¹⁸ Corporan interview, *supra* note 54.

opposed to developers.¹¹⁹ The law is also meant to keep people from putting themselves in danger by building improvised housing on their own, to encourage participation in development, and facilitate the creation of cooperatives for building while following the applicable laws.¹²⁰ Despite these socially-conscious goals, at the same time, the individual who was named the minister of this new agency is a global businessman. Advocates note that this indicates that the law has been co-opted for the further development of immovable structures sector and not the realization of the rights of the people.¹²¹ The law converted the National Institute of Housing into the Ministry of Housing and Edifications and now handles additional functions like permitting and titling, which were previously under the Ministry of Public Works.¹²² This has distracted the Ministry from the topic of housing insecurity.¹²³ The practical implementation of this law is therefore lacking and has failed to achieve what it was originally intended to do.¹²⁴ This law, approved in 2021, is applicable to the entire Dominican Republic.¹²⁵

C. Impacts and Opportunities

The Dominican government should invest in its social safety net specifically for individuals experiencing or at-risk of experiencing homelessness. The government includes in its budget RD \$2,085.7 million to be distributed among 1,331 non-profit organizations, including some that work specifically with communities that have significant overlap with people experiencing homelessness such as people with disabilities, children, and older persons.¹²⁶ The programs implemented by these organizations, however, are seen as insufficient, with advocates calling for increased government action specifically relevant to housing.¹²⁷ An issue with existing shelters is that they have strict qualifying standards that often miss certain segments of the population.¹²⁸ Additionally, an investigation revealed **it is unclear what, if any, government agency is responsible for serving and working with people experiencing homelessness in the Dominican Republic.** The Ministry of Health previously had a department for coordination of social assistance which was disbanded.¹²⁹ There is also no established network of shelters, government or private.¹³⁰ There is a small quantity of government shelters but they are insufficient and only tailored to assist individuals who are affected by climate disasters, not those who are experiencing homelessness or housing insecurity for other reasons.¹³¹ The Dominican government

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Rodriguez Rodriguez interview, *supra* note 109.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Massiel de Jesus, *Indigencia: el drama socioeconómico de más de 296,500 dominicanos*, El Dinero (Dec. 21, 2020), <https://eldinero.com.do/131897/indigencia-el-drama-socioeconomico-de-mas-de-296500-dominicanos/>.

¹²⁷ *Id.*

¹²⁸ Adelaida Martinez, “*He durado hasta tres días sin comer*”, *el drama de 640,971 indigentes en República Dominicana*, Z Digital (July 29, 2018), <http://z101digital.com/he-durado-hasta-tres-dias-sin-comer-el-drama-de-640971-indigentes-en-republica-dominicana/>.

¹²⁹ *Id.*

¹³⁰ Rodriguez Rodriguez interview, *supra* note 109.

¹³¹ *Id.*

should ensure investment in organizations and policies that serve vulnerable populations, those who are most at-risk of homelessness, and those already experiencing homelessness.

The government should adopt a rights-centric approach to any policies relating to housing. A major gap currently exists in the normative framework for evictions. Legal evictions happen often in the Dominican Republic.¹³² However, **there are no government mandated processes or regulations to protect people who have been evicted from their homes.**¹³³ Evictions are often traumatic in the Dominican Republic, as they are carried out through the use of police, tractors, and excavators that literally demolish homes.¹³⁴ Regulations are non-existent and any efforts to create regulations are typically lost in the debate of the right to property versus the right to housing.¹³⁵ While there are efforts to adopt laws that will guarantee that families who have lived in homes on government land for 15 years or more will not be evicted, but rather would have an opportunity negotiate with the government, the efforts are insufficient and progress is stagnant.¹³⁶ The Dominican government has made efforts to shift the focus of its housing policy to affordable housing.¹³⁷ However, this “affordable housing” is cost prohibitive for the majority of individuals and families in the Dominican Republic.¹³⁸ The housing that has been developed as affordable housing is only accessible to those who comprise the middle class in the country, which excludes the majority of the population.¹³⁹ Advocates note that the government’s priority should be to implement a formalization process through which individuals and families can gain legal title to the land. This will give individuals and families the ability to decide whether to stay or sell their land. The government should also regulate evictions and develop policies for affordable housing that positively impact that largest portion of the population.

III. Haiti

[Analysis forthcoming]

IV. Jamaica

A. Background

1. Historical Background

The island of Jamaica was originally inhabited by the Arawak Indigenous Peoples, also known as Taíno.¹⁴⁰ Following the 1494 arrival of Christopher Columbus, a long history of genocide against

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Corporan interview, *supra* note 54.

¹³⁷ Rodriguez Rodriguez interview, *supra* note 109.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Government of Jamaica, *The History of Jamaica*, <https://jis.gov.jm/information/jamaican-history/> (last visited April 5, 2022).

Indigenous Peoples, colonization, and mass importation of enslaved African peoples ensued, the impacts of which are prevalent today.¹⁴¹ The British invaded Spanish-controlled Jamaica in 1655 and ultimately acquired it as a colony in 1670 through the Treaty of Madrid. After centuries of exploitation and resistance, Jamaica gained political independence from the British in 1962, adopting its own Constitution centered on ensuring the “equitable and humane treatment” of every Jamaican.¹⁴² Although Jamaica is an independent nation, it remains a part of the Commonwealth of Nations and has the British King, Charles III, as its head of state.

2. Legal Framework

Due to its membership in the Commonwealth and colonial history, Jamaica’s legal system is based upon the English common law system.¹⁴³ The Jamaican judicial system is based upon five tiers, ranging from the Petty Sessions Court to the Privy Council, Jamaica’s highest court of appeal, which is based in England.¹⁴⁴ Regionally, the Caribbean Court of Justice (CCJ) has jurisdiction over Jamaica as both a final appellate court and as an international court on matters relating to the economic cooperation of Caribbean states.¹⁴⁵ Since its inception in 2001 the CCJ has remained a controversial institution, with many Jamaicans advocating for it to replace the Privy Council,¹⁴⁶ due to a Caribbean-wide desire to sever the remnants of colonialism.¹⁴⁷

Internationally, Jamaica is a member of the Organization of American States (OAS), and the country has signed and ratified the Pact of San Jose.¹⁴⁸ Accordingly, Jamaica must adhere to regional human rights obligations. Under the OAS Charter, Jamaica is under the jurisdiction of the Inter-American Court of Human Rights, the principal accountability mechanism of the Inter-American human rights system monitoring the protection and promotion of rights within member states. Jamaica has also ratified several major human rights treaties, including the ICESCR, the ICCPR, CEDAW, and ICERD.¹⁴⁹

¹⁴¹ *Id.*

¹⁴² *Id.*; See also *Constitution of Jamaica* [Jamaica], 6 August 1962, available at: <https://www.refworld.org/docid/3ae6b4ed28.html> [accessed 9 April 2022].

¹⁴³ The Supreme Court of Jamaica, *The Court Structure and Hierarchy*, <https://supremecourt.gov.jm/content/court-structure-and-hierarchy> (last visited March 2, 2022).

¹⁴⁴ *Id.*; Jamaica Information Service, *The Judiciary*, <https://jis.gov.jm/government/the-judiciary/> (last visited March 28, 2022).

¹⁴⁵ The Caribbean Court of Justice, *About the CCJ*, <https://ccj.org/about-the-ccj/> (last visited March 2, 2022).

¹⁴⁶ See e.g. Andrew N. Maharajh, *The Caribbean Court of Justice: A Horizontally and Vertically Comparative Study of the Caribbean’s First Independent and Interdependent Court*, 47 CORNELL INT’L L.J. 735 (2014); The Honourable Mr. Justice Winston Anderson, Judge of the CCJ, *The Benefits to Jamaica and the Caribbean of Full Accession to the Caribbean Court of Justice* (Mar. 13, 2013), https://ccj.org/wp-content/uploads/2021/03/Remarks-by-the-Honourable-Mr-Justice-Winston-Anderson-at-the-Jamaica-High-Commission-in-London_20130115.pdf.

¹⁴⁷ Ezekiel Rediker, *Courts of Appeal and Colonialism in the British Caribbean: A Case for the Caribbean Court of Justice*, 35 MICH. J. INT’L L. 213 (2014); Salvatore Caserta & Mikael Rask Madsen, *Between Community Law and Common Law: The Rise of the Caribbean Court of Justice at the Intersection of Regional Integration and Post-Colonial Legacies*, 79 L. AND CONTEMPORARY PROBLEMS, 89, 115 (2016).

¹⁴⁸ Organization of American States (OAS), *Member States*, https://www.oas.org/en/member_states/default.asp (last visited April 4, 2022); American Convention on Human Rights, *adopted* Nov. 22, 1969, O.A.S.T.S. No. 36 [hereinafter *Pact of San Jose*].

¹⁴⁹ ICESCR, *supra* note 4, *ratified* Oct. 3, 1975; ICCPR, *supra* note 3, *ratified* Oct. 3, 1975; CEDAW, *supra* note 7, *ratified* Oct. 19, 1984; ICERD, *supra* note 6, *ratified* June 4, 1971.

3. Homelessness in Jamaica

It is difficult to ascertain the true conditions of homelessness in Jamaica. The government of Jamaica has no available data on people experiencing homelessness.¹⁵⁰ Advocates note that this is due to the fact that the government is not attending to this specific community in any way or even recording statistics.¹⁵¹ The Jamaican government is unresponsive to calls from advocates to monitor and investigate homelessness on the island.¹⁵² At the same time, advocates believe the number of people experiencing homelessness in Jamaica is significant and growing because shelters are consistently at capacity; estimates of people experiencing homelessness fall in the several thousands.¹⁵³ At this point it is impossible to determine with certainty who is experiencing homelessness in Jamaica.¹⁵⁴ There is, however, significant overlap between people experiencing homelessness in Jamaica and other marginalized groups in Jamaica.¹⁵⁵ For example, many LGBTQ+ people experience homelessness in Jamaica.¹⁵⁶ People with mental illnesses also make up a substantial portion of the population of people experiencing homelessness on the island.¹⁵⁷

4. Causes of Homelessness

Criminalization of marginalized communities, social stigma, and government inaction are key contributors to prevalent and rising homelessness in Jamaica. The historic continuous criminalization of homosexuality specifically has had long lasting impacts on Jamaican citizens. In 1864, the Offences Against the Persons Act (OAPA) criminalized “the abominable act of buggery”, sentencing men for up to ten years in jail for engaging in sexual acts with other men or animals.¹⁵⁸ Since then, Jamaica has not taken any steps to explicitly provide protections to LGBTQ+ individuals.¹⁵⁹ As a result of this law, LGBTQ+ individuals are denied access to services, leading to high rates of homelessness and HIV.¹⁶⁰ In 2020, approximately 30% of the gay male population of Jamaica was diagnosed with HIV.¹⁶¹ Jamaica even continues to criminalize consensual sex between two same sex individuals.¹⁶² This leads to heightened stigmatization for gay men because two women together is viewed as a lesser threat to masculinity.¹⁶³ There have been reports of families disowning gay youth who are then thrown to the street with no support, often engage in sex work, and live in the “gully,” or sewers, throughout Jamaica.¹⁶⁴

¹⁵⁰ Interview with Carla Gullotta, Executive Director of Stand Up for Jamaica, (July 10, 2022) [hereinafter Gullotta interview].

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Gullotta interview, *supra* note 150.

¹⁵⁷ *Id.*

¹⁵⁸ Human Rights First, *LGBT Issues in Jamaica*, <https://www.humanrightsfirst.org/sites/default/files/Jamaica-LGBT-Fact-Sheet.pdf>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Jamaica*, UNAids, (last visited Aug. 8, 2022) <https://www.unaids.org/en/regionscountries/countries/jamaica>.

¹⁶² Gullotta interview, *supra* note 150.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

Mental health is also highly stigmatized in Jamaica. Socially, Jamaican society finds it difficult to discuss mental health issues. Advocates have found that many individuals experiencing homelessness have experienced personal crises for which there has been no network or government infrastructure to assist in recovery, leading to a large number of individuals experiencing homelessness and mental health crises concurrently.¹⁶⁵ A study also found that “the most commonly expressed emotional response to the mentally ill and mental illness was fear... of dangerousness.”¹⁶⁶ Another study found that the reason for the social stigma against mental illness is that people associate mental health issues with the supernatural.¹⁶⁷ The social stigma against addressing mental health is perpetuating a lack of social services for mental health. According to WHO, in Jamaica, there is only one psychiatrist per every 100,000 people, compared to 13 psychiatrists per 100,000 people in the U.S.¹⁶⁸

The government has done little to mitigate these social stigmas, which have also infiltrated hospital systems that are technically tasked with assisting any individuals in need of medical care.¹⁶⁹ Hospitals even hesitate to admit people experiencing homelessness who are in need of care because the health authorities are concerned people experiencing homelessness are infested with fleas, disease, or other maladies that can cause harm to other patients in the hospital.¹⁷⁰ In fact, these hospitals operate under an unofficial policy to take in the least amount of people experiencing homelessness as possible and thus, people in need are denied necessary care.¹⁷¹

B. Laws on Homelessness in Jamaica

1. Laws Criminalizing Homelessness

Many laws criminalize homelessness in Jamaica. **The 1962 Constitution of Jamaica criminalizes vagrancy** in Section 15 by stating that “(1) No person shall be deprived of his personal liberty save as may in any of the following cases be authorised by law . . . in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community. . . .”¹⁷² **Jamaica’s Towns and Communities Act and Constitution expressly criminalize loitering and vagrancy.** Section three of Jamaica’s Towns and Communities Act states that “[e]very person who: (r) shall loiter in

¹⁶⁵ *Id.*

¹⁶⁶ Carlotta Arthur, et al., *Mad, Sick, Head Nuh Good: Mental Illness Stigma in Jamaican Communities*, 47(2) *Transcultural Psychiatry*, 252, 252-275 (April 2010) <https://journals.sagepub.com/doi/abs/10.1177/1363461510368912>.

¹⁶⁷ Carlotta Arthur and Rob Whitley, *Head take you: Causal attributions of mental illness in Jamaica*, 52(1) *Transcultural Psychiatry* 115, 115-132, (2015) <https://journals.sagepub.com/doi/abs/10.1177/1363461514557065>.

¹⁶⁸ Rob Whitley, *Mental Health and Mental Illness in Jamaica*, *PSYCHOLOGY TODAY* (September 27, 2021), <https://www.psychologytoday.com/us/blog/talking-about-men/202109/mental-health-and-mental-illness-in-jamaica>.

¹⁶⁹ Gullotta interview, *supra* note 150.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Are children criminalised for vagrancy, loitering, truancy or similar activities?*, Consortium for Street Children (Sept. 2019) <https://www.streetchildren.org/legal-atlas/map/jamaica/status-offences/are-children-criminalised-for-vagrancy-loitering-truancy-or-similar-activities/#:~:text=According%20to%20the%20Towns%20and,the%20same%20act%2C%20%22It%20shall;https://moj.gov.jm/sites/default/files/laws/Towns%20and%20Communities%20Act.pdf.;> See also Jamaica Information Service, *The Constitution*, <https://jis.gov.jm/media/Amendment-1962.pdf>.

any public place . . . shall be guilty of an offence and shall be liable to a penalty not exceeding one thousand dollars.”¹⁷³ Additionally, under Section 20 of the Act, a constable may take into custody any person who is "idle and disorderly" in a public place and who, upon being asked to "retire and disperse," refuses or neglects to immediately do so.¹⁷⁴ Section 7 of this Act states that “[i]t shall be lawful for any constable to take into custody, without a warrant, all drunken, loose, and disorderly persons whom he shall find disturbing the public peace, or disturbing any inhabitant or passenger, and all persons whom he shall find between the hours of nine at night and six in the morning lying or loitering in any highway, piazza, or other open place, and not giving a satisfactory account of themselves.”¹⁷⁵ Lastly, Section 21 of this Act provides sentencing guidelines where “the parties apprehended as aforesaid are known to be loose and idle, or disorderly persons, and without any visible means of subsistence . . .”¹⁷⁶ Under this Section, judges must “call upon such persons to find sureties for their good behaviour for three calendar months, in such sum or sums as they may deem sufficient, or to order that such persons be imprisoned with or without hard labour for a period not exceeding thirty days.”¹⁷⁷

Life-sustaining activities like urination are also criminalized. The National Solid Waste Management Act applies to life sustaining activities because urination and defecation may qualify as “litter.”¹⁷⁸ The Act defines litter as being “solid waste in any public place and includes any refuse, rubbish, bottles, glass, debris, dirt, rubble, ballast, stones, noxious or contained substances or waste matter or any other matter likely to deface, make untidy, obstruct or cause a nuisance in a public place.”¹⁷⁹

There are also laws that do not directly criminalize vagrancy or loitering, but are weaponized to criminalize people experiencing homelessness. For example, **public nuisance laws are often used in Jamaica to criminalize vagrancy.**¹⁸⁰ Jamaica’s “states of emergency” are utilized against

¹⁷³ *Are children criminalised for vagrancy, loitering, truancy or similar activities?*, Consortium for Street Children (Sept. 2019) <https://www.streetchildren.org/legal-atlas/map/jamaica/status-offences/are-children-criminalised-for-vagrancy-loitering-truancy-or-similar-activities/#:~:text=According%20to%20the%20Towns%20and,the%20same%20act%2C%20%22It%20shall;https://moj.gov.jm/sites/default/files/laws/Towns%20and%20Communities%20Act.pdf>.

¹⁷⁴ *Id.* (“It shall be lawful for any constable to take into custody any idle and disorderly persons who may, at any time, be found assembled in any thoroughfare, street, lane, or public place, or in front, or about, or in the neighbourhood of any house, wharf, tavern, or other premises, or in any street or other public place in any city or town in this Island, who, upon being desired by such constable to retire or disperse, and leave the place in which they shall have so assembled, shall refuse or neglect immediately to do so, and carry such persons, or any of them, before any Justice, who shall hold them, or any of them, to bail, to appear and answer any charge touching such offence that may be brought against them; and in default of security, he shall remand such persons in custody until they can be brought before the Justices in Petty Sessions for trial.”).

¹⁷⁵ Ministry of Justice, *Towns and Communities Act*, (November 24, 2014)

<https://moj.gov.jm/sites/default/files/laws/Towns%20and%20Communities%20Act.pdf>.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *161 Persons Issued Tickets for Urinating in Public*, JAMAICA INFORMATION SERVICE (July 20, 2007), <https://jis.gov.jm/161-persons-issued-tickets-for-urinating-in-public/>.

¹⁷⁹ Ministry of Justice, *National Solid Waste Management Act*,

<https://moj.gov.jm/sites/default/files/laws/National%20Solid%20Waste%20Management%20Act.pdf>.

¹⁸⁰ Interview with Terrence Williams, Attorney at The Public Law Chambers, (July 10, 2022).

vulnerable communities, such as people experiencing homelessness.¹⁸¹ States of emergency, also called states of public emergency, are defined as “a period during which a government declares that a public emergency exists and is empowered to enforce actions and policies not normally permitted in order to gain control of the situation.”¹⁸² A public emergency is “an extraordinary situation that poses a threat to the safety and security of a country.”¹⁸³ When the government of Jamaica, or parish governments, calls for a state of emergency, security forces in the nation are temporarily granted additional powers.¹⁸⁴ Additional powers include the power to search a person or building without a warrant, the power to arrest or detain an individual for up to seven days without a warrant, and others.¹⁸⁵ Curfews may also be implemented; persons in violation of curfews may be detained.¹⁸⁶ Reasons for the implementation of states of emergency in the past have included natural disasters, disease outbreak, and increases in crime.¹⁸⁷ While states of emergency are not specific to people experiencing homelessness, the powers that are granted by states of emergency are over enforced to the detriment of certain groups, people experiencing homelessness is certainly one of them.¹⁸⁸ These practices have been challenged, with one challenge reaching the Jamaica Supreme Court.¹⁸⁹ In that case a man alleged his human rights were violated after he was detained and held for months without trial under a state of emergency in 2018.¹⁹⁰ In June 2022, the Jamaica Supreme Court sided with the Challenger, ruling that the petitioner’s rights to liberty and free movement were violated by his arrest and detention.¹⁹¹ However, there is no indication that the government is eliminating or modifying these practices at this time.

Zones of special operation are also ripe for misuse.¹⁹² Zones of special operation may be declared by the government when there are reasonable grounds to believe there is “rampant criminality, gang warfare, escalating violence and murder and the threat to the rule of law and public order.”¹⁹³ These were introduced in a 2017 bill aimed at curbing rising crime and violence in Jamaica.¹⁹⁴ Similar to states of emergency, the law gives authorities additional powers in the zones of special operation, such as the power to “uphold the rule of law” and search a person without a warrant where there is reasonable suspicion of an offense, among other things.

2. Protective Laws

¹⁸¹ Interview with Janeille Matthews, Deputy Dean and Research Coordinator of the University of the West Indies, (Aug. 16, 2022) [hereinafter Matthews interview].

¹⁸² *Understanding States of Emergency*, JAMAICA INFORMATION SERVICE (July 1, 2022), <https://jis.gov.jm/information/get-the-facts/understanding-states-of-emergency/>.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*; Matthews interview, *supra* note 181.

¹⁸⁸ *Understanding States of Emergency*, *supra* note 182.

¹⁸⁹ Kate Chappell, *Jamaica Supreme Court sides with challenge to detentions under states of emergency*, REUTERS (June 17, 2022), <https://www.reuters.com/world/americas/jamaica-top-court-sides-with-challenge-detentions-under-states-emergency-2022-06-17/>.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Matthews interview, *supra* note 181.

¹⁹³ Act No. 15 of 2017, Law Reform (Zones of Special Operations) (Special Security and Community Development Measures), 2017 (available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=108377).

¹⁹⁴ *What Are ‘Zones of Special Operations’? – In Layman’s Terms*, DIG JAMAICA (July 12, 2017), <http://digjamaica.com/m/blog/what-are-zones-of-special-operations-in-laymans-terms/>.

Support and protection for people experiencing homelessness in Jamaica is extremely limited. **There is no legislative framework for the protection of people experiencing homelessness.**¹⁹⁵ There are, however, some initiatives being put in place by the government of Jamaica. Such initiatives include Drop-In Centres, which are “places where homeless persons receive food, clothing, a bath, and medical [or] mental care.”¹⁹⁶ Currently, there are 11 Drop-In Centres across the country.¹⁹⁷ Additionally, due to COVID, the government, working with municipal corporations, corporate Jamaica, churches, and other volunteers, implemented special feeding programs where meals and care packages are distributed to Drop-In Centres daily. The government also operates night shelters, which offer meals and nightly accommodations, and 11 transitional facilities. The transitional facilities house individuals for up to two years and provide help to individuals in developing skills and coping mechanisms.¹⁹⁸ The government also provides rental assistance through the Poor Relief Department based on an assessment of the individual’s living conditions.¹⁹⁹ Overall, since 2016, the Government of Jamaica has spent over \$500 million on new and improved facilities for people experiencing homelessness.²⁰⁰

C. Impacts and Opportunities

In Jamaica, several social and political factors are increasing the crisis of people experiencing homelessness. Advocates note that the current government initiatives are insufficient for the growing population of people experiencing homelessness.²⁰¹ Advocates estimate **there are over one hundred thousand people experiencing homelessness in Jamaica vying for assistance from very few government centers.**²⁰² While there are some private shelters, these do not receive government funding and are difficult to operate and maintain due to high demand and lack of funds.²⁰³ Further, **existing shelters are in a state of disarray and hospitals often disregard and are ill-equipped to assist people experiencing homelessness.**²⁰⁴ Advocates have conducted random visits to hospitals to examine the state of their operations and have found missing walls, animals roaming the halls, people with mental disabilities and people experiencing homelessness on the ground, and feces covering the facilities.²⁰⁵ The government should invest in social programs and enforce regulations on industries meant to serve people, such as the healthcare industry.

¹⁹⁵ Gullotta interview, *supra* note 150; Matthews interview, *supra* note 181.

¹⁹⁶ *Homelessness and Government Initiatives*, JAMAICA INFORMATION SERVICE (July 15, 2021), <https://jis.gov.jm/information/get-the-facts/homelessness-and-government-initiatives>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Local Government Minister Defends the Government’s Management of The Homeless Population; Says Programmes and Strategies to Improve Their Welfare and Security Will Continue*, Ministry of Local Government and Rural Development (Feb. 10, 2021) <https://www.localgovjamaica.gov.jm/local-government-minister-hits-defends-the-governments-management-of-the-homeless-population-says-programmes-and-strategies-to-improve-their-welfare-and-security-will-continue>.

²⁰¹ Gullotta interview, *supra* note 150.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

Moreover, the **social stigma against people experiencing homelessness has been deadly in Jamaica**. Extreme violence and premeditated murder against people experiencing homelessness by civilians is prevalent in Jamaica.²⁰⁶ In January of 2021, one news outlet reported that four people experiencing homeless were murdered in Jamaica in 2020.²⁰⁷ Some victims have even been burned.²⁰⁸ While this harm is not at the hands of the government, the state should take measures to ensure the safety of people experiencing homelessness, as they are more vulnerable than others due to their lack of housing and social stigma. In an attempt to address this violence, the government of Jamaica increased policing to protect people experiencing homelessness from attacks.²⁰⁹ However, this can be counterproductive, as police often arbitrarily detain people experiencing homelessness, and because this violence has affected already vulnerable communities, there is no one pushing for accountability for these horrific crimes.²¹⁰ These cases have seen no additional investigations or actions taken to protect people experiencing homelessness.²¹¹ The individuals affected are presumed to have no family and their identities were unknown.²¹² Thus, the crimes remain unresolved.²¹³

The number of people experiencing homelessness in Jamaica has in itself increased the criminalization of homelessness and violations of other human rights.²¹⁴ Although there are no official government statistics, advocates estimate that there are thousands of individuals experiencing homelessness in Jamaica, with the majority living in larger towns.²¹⁵ These larger towns have adopted various practices in an effort to control the growing population of people experiencing homelessness.²¹⁶ In Montego Bay, a town visited by many tourists, the parish government has taken to forcibly removing busses full of people experiencing homelessness from the city to the countryside, where there are even fewer resources and safe havens.²¹⁷ On other occasions where cities are hosting events or large amounts of tourists, police will be sent to arrest people experiencing homelessness to incarcerate them for the duration of the event.²¹⁸ Arbitrary detention is common for people experiencing homelessness.²¹⁹ This has led the decades-long detention of individuals for without a charge, proper defense, or trial.²²⁰ The government of Jamaica should ensure that people experiencing homelessness have access to all their rights and are not subject to further violations due to homelessness.

²⁰⁶ *Force homeless people to stay in shelters, Daley urges*, RADIO JAMAICA NEWS (Jan. 26, 2021), <http://radiojamaicanewsonline.com/local/force-homeless-people-to-stay-in-shelters-daley-urges>.

²⁰⁷ Andre Williams, *Homeless horror - Streets filled with trembling as four chopped to death in Kingston*, JAMAICA GLEANER (Jan. 26, 2021), <https://jamaica-gleaner.com/article/lead-stories/20210126/homeless-horror-streets-filled-trembling-four-chopped-death-kingston>.

²⁰⁸ Gullotta interview, *supra* note 150.

²⁰⁹ *Supra* note 196.

²¹⁰ Gullotta interview, *supra* note 150.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Gullotta interview, *supra* note 150.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

V. Puerto Rico

A. Background

1. Historical Background

Puerto Rico is an archipelago located in the northeastern Caribbean Sea.²²¹ Prior to its colonization by the Spanish, Puerto Rico was populated by the Taíno, a Caribbean Indigenous People.²²² In 1898, following the Spanish-American War, Puerto Rico was given to the U.S. by its previous colonial ruler, Spain.²²³ The Puerto Rico–Federal Relations Act (1950) governs U.S.–Puerto Rican relations.²²⁴ In 1917, Puerto Ricans were granted U.S. citizenship and can freely move between the island and the U.S.²²⁵ However, Puerto Ricans cannot vote for the U.S. president, and the Puerto Rican representative does not have a vote in Congress.²²⁶ Furthermore, Puerto Rico is self-governed through a local constitution that was approved by Congress in 1952.²²⁷ The constitution “may be altered by the commonwealth so long as its articles do not conflict with the U.S. Constitution or the Puerto Rico–Federal Relations Act.”²²⁸ In addition, Puerto Ricans elect their own governor, assembly, and senate.²²⁹ The governor, “who heads the executive branch, is elected by direct popular vote to a four-year term and may seek reelection.”²³⁰ Moreover, the island is “divided into 78 municipalities, each governed by a mayor and legislative council who are directly elected to four-year terms.”²³¹

2. Legal Framework

Puerto Rico’s justice system is “headed by the island’s Supreme Court (Tribunal Supremo), whose six justices are appointed to life terms by the governor with the advice and consent of the commonwealth Senate.”²³² However, a U.S. district court has “jurisdiction over the application of federal laws in Puerto Rico, and appeals may be carried to the U.S. Supreme Court.”²³³ Because Puerto Rico was originally colonized by the Spanish, a civil law country, and is now held by the U.S., a common law country, the resulting legal system is a mix between civil and common law

²²¹ Olga Wagenheim, *Puerto Rico*, BRITANNICA (last updated April 23, 2022), <https://www.britannica.com/place/Puerto-Rico>.

²²² *Puerto Rico*, HISTORY.COM (last updated Sept. 28, 2017), <https://www.history.com/topics/us-states/puerto-rico-history#:~:text=After%20centuries%20of%20Spanish%20rule,States%20and%20Afr%20Caribbean%20influence>.

²²³ Rachel Lewis, *Is Puerto Rico Part of the U.S? Here’s What to Know*, TIME (Sept. 26, 2017), <https://time.com/4957011/is-puerto-rico-part-of-us/>.

²²⁴ *Administration and social conditions: Puerto Rico*, BRITANNICA (last updated April 23, 2022), <https://www.britannica.com/place/Puerto-Rico/Finance-and-trade#ref54536> [hereinafter *Administration*].

²²⁵ Lewis, *supra* note 223.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Administration*, *supra* note 224.

²²⁹ Lewis, *supra* note 223.

²³⁰ *Administration*, *supra* note 224.

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

systems.²³⁴ “The private law is mainly based in Spanish Civil Law, and the public law is mainly based in US Common Law.”²³⁵

As a colonial possession of the United States, Puerto Rico is unable to sign or ratify any international or regional human rights instruments. However, because it is a U.S. jurisdiction, any treaties entered into by the U.S. apply to Puerto Rico. The U.S. is a party to the ICCPR, ICERD and CAT.²³⁶

3. Homelessness in Puerto Rico

As of January 2020, there are an estimated 2,500 people experiencing homelessness in Puerto Rico.²³⁷ This includes 62 families, 88 veterans, 46 unaccompanied young adults, and 668 individuals experiencing chronic homelessness, as well as over one thousand others.²³⁸ These statistics, like many efforts to quantify homelessness in the U.S., are likely undercounts.²³⁹ In addition, the U.S. Department of Education reports that approximately 4,700 public school students experienced homelessness during the school year.²⁴⁰ Less than 25 percent of these students are in shelters.²⁴¹ Non-governmental organizations (NGOs) working with people experiencing homelessness point to greater diversity in this population than that reflected by official statistics. This population includes migrant women, college students, domestic assault survivors, older persons, people with disabilities, those who have a roof on an inhabitable structure, people who use drugs, and many other groups.²⁴² In September 2022, a study from a non-profit funded by the U.S. Department of Housing and Urban Development counted 1,026 people experiencing homelessness in Puerto Rico. Of these, 95% are Hispanic or Latino, 43% are white, 26.7% are Black or African American, and 29.8% are multiracial.²⁴³ This distribution, however, likely does not paint a full picture of race and homelessness in Puerto Rico because there is a long history of “encouraging residents to identify as white,” when most Puerto Ricans can trace their

²³⁴ Commonwealth Caribbean Law Research Guide: Puerto Rico, FSU LAW RESEARCH CENTER (last visited Aug. 25, 2023) <https://guides.law.fsu.edu/caribbean/puertorico>.

²³⁵ Eduardo Colón Semidey, *Researching the Laws of Puerto Rico*, GLOBALEX (Feb. 2022), https://www.nyulawglobal.org/globalex/Puerto_Rico.html#:~:text=%5B13%5D%20Therefore%2C%20besides%20t%20he,based%20in%20US%20Common%20Law.

²³⁶ ICCPR, *supra* note 3, *ratified* June 8, 1992; ICERD, *supra* note 4, *ratified* Oct. 21, 1994; CAT, *supra* note 5, *ratified* Oct. 21, 1994.

²³⁷ *Puerto Rico Homelessness Statistics*, United States Interagency Council on Homelessness, <https://www.usich.gov/homelessness-statistics/pr/>.

²³⁸ *Id.*

²³⁹ *Don't Count On It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America*, Nat'l L.Ctr. on Homelessness and Poverty (2017).

²⁴⁰ *Supra* note 237.

²⁴¹ *Id.*

²⁴² Interview with Lourdes Díaz Pabón, Equity and Social Justice Coordinator of La Fondita de Jesus, (June 16, 2022) (hereinafter Díaz Pabón interview).

²⁴³ *Conteo de Personas Sin Hogar 2022*, Dept. de la Familia, <https://app.powerbi.com/view?r=eyJrIjoiZDcxMjYzOWUtNjcwNi00M2IyLWJlYjAtYTU5OTRjNDkxNjNlIiwidCI6IjQ2ZjQ1ZjE1LTAzOWEtNGI4NS1hZjc4LTYxNmUyNDg3MjVjNSIsImMiOiJ9>.

roots back to African and Indigenous populations as well.²⁴⁴ The same study revealed that almost 75% of people experiencing homelessness in Puerto Rico identify as male, 24% as female, and .6% as transgender or non-binary.²⁴⁵

People experiencing homelessness in Puerto Rico are often subjected to violence from many actors. “People experiencing homelessness have [] reported being victims of police violence and intimidation. One man reported that he has frequently been a victim of police violence including being assaulted with nightsticks and pepper sprayed for the fun of it and having his bicycle tires slashed while being mocked by police. Another man also reported verbal abuse by the police while they trashed the place where he slept.”²⁴⁶ Moreover, violence against women experiencing homelessness is prevalent in Puerto Rico. One instance is the 2019 murder of two women ‘*deambulantes*’ in the town of Cayey.²⁴⁷ In 2020, the brutal murder of Alexa Negrón Luciano, a transgender woman experiencing homelessness in Puerto Rico, sparked outrage and drew international attention.²⁴⁸

4. Causes of Homelessness

Major climate and political disasters have impacted and shaped homelessness on the Caribbean island. Puerto Rico has been hit with several natural disasters leading to an increase in issues related to homelessness. The most well-known was Hurricane Maria in 2017 which led to over 10,000 people to be displaced to shelters across the island. The total damage after Hurricane Maria was around \$100 billion.²⁴⁹ The island is still recovering from the aftermath, as thousands are still living in inadequate housing due to damage from the hurricane. More recently, an earthquake in early 2020 displaced many more individuals and increased the rates of homelessness.²⁵⁰ Even after Puerto Rico was able to restore power, 5,000 people remained in homeless shelters.²⁵¹ Many slept outside their homes during that time due to fear of aftershocks.²⁵² In 2022, Puerto Rico was once again struck by a destructive hurricane that left hundreds of families homeless. The increasingly severe climate events are a major driver of homelessness and displacement across the archipelago.

²⁴⁴ Natasha S. Alford, *Why Some Black Puerto Ricans Choose ‘White’ on the Census*, N.Y. Times (Feb. 7, 2020), <https://www.nytimes.com/2020/02/09/us/puerto-rico-census-black-race.html>.

²⁴⁵ *Supra* note 243.

²⁴⁶ *A Dream Denied: The Criminalization of Homelessness in U.S. Cities*, Nat’l Coalition for the Homeless & Nat’l Law Center on Homelessness & Poverty, 33, 34 (January 2006), <https://www.nationalhomeless.org/publications/crimreport/report.pdf>.

²⁴⁷ Cesiach López Maldonado, *Desgarradora Realidad De Las Mujeres Sin Hogar*, INICIATIVA COMUNITARIA (Aug. 19, 2019), <https://www.iniciativacomunitaria.org/desgarradora-realidad-de-las-mujeres-sin-hogar/?lang=en>.

²⁴⁸ Frances Robles, *Killing of Transgender Woman Sparks Outrage in Puerto Rico*, N.Y.T. (Feb. 26, 2020), <https://www.nytimes.com/2020/02/26/us/puerto-rico-alexa-transgender-killing.html>.

²⁴⁹ Jamal Patterson, *Earthquakes and Homelessness in Puerto Rico*, THE BORGEN PROJECT (Apr. 28, 2020), <https://borgenproject.org/homelessness-in-puerto-rico/>.

²⁵⁰ Sarah Ruiz-Grossman, *Puerto Rico Has Power Back, But Thousands Remain Homeless After Earthquakes*, HUFFINGTON POST (Updated Jan 14, 2020), https://www.huffpost.com/entry/puerto-rico-earthquakes-homeless-tourism_n_5e1cf697c5b6640ec3d98b17.

²⁵¹ *Id.*

²⁵² *Id.*

Puerto Rico’s political status also shapes the experience of homelessness.²⁵³ Puerto Rico has a unique and evolving political status as compared to other Caribbean jurisdictions, who all obtained independence from their respective colonizers. As a current colony, Puerto Rico continues to be subject to the laws and regulations of a foreign power that is unfamiliar with the distinct social, cultural, and political identities that make up the island. This in turn means federal government guidelines for addressing homelessness often fail to account for of local conditions.²⁵⁴ As such, NGOs working with people experiencing homelessness occupy a crucial role in filling those wide gaps and creating spaces to discuss the reality and challenges facing people experiencing homelessness in Puerto Rico.

Perhaps one of the biggest issues Puerto Ricans are facing at present is the government’s open encouragement of the displacement of the Puerto Rican people. Puerto Rico has seen an influx of short-term rental properties acquired and managed by outside investors, leaving Puerto Ricans with minimal options for housing.²⁵⁵ Investors, attracted to the island by tax haven laws, are also flocking to purchase beach view apartments, evicting long-time tenants, and remodeling to attract wealthy visitors.²⁵⁶ This has led to a housing crisis with a significant reduction in the availability of long-term rentals and increasing costs of property.

B. Laws on Homelessness in Puerto Rico

1. Laws Criminalizing Homelessness

Nineteen municipalities have criminalized vagrancy, including municipalities in the metropolitan area like San Juan, Santurce, and Rio Piedras, as well as less populated municipalities such as Cabo Rojo, Cayey, and Aibonito. It is unclear what the contents of these laws are and whether they are still active.²⁵⁷

Quality of life ordinances have also been used to criminalize homelessness. These are enacted by municipalities through the powers afforded to it by the Municipal Code. The Municipal Code is the law that grants municipalities the power to implement Public Order Codes to improve the quality of life in each municipality; these Public Order Codes can take the form of ordinances and may cover a range of subjects such as noise levels, alcohol consumption, and others that may result in the criminalization of poverty and homelessness.²⁵⁸ These take various forms in different municipalities. A 2006 National Homeless Law Center Report, written before Puerto Rico’s passage of the Homeless Bill of Rights, stated that at that time half of Puerto Rico’s 78 municipalities passed anti-homeless ordinances into law.²⁵⁹ Furthermore, the report mentioned that there were police sweeps in multiple cities where people were arrested for violating “quality of

²⁵³ Díaz Pabón interview, *supra* note 242.

²⁵⁴ *Id.*

²⁵⁵ Puerto Rico Short-Term Rental Growth Exacerbates Housing Crisis: Report, SKIFT (Dec. 19, 2022), <https://skift.com/2022/12/19/puerto-rico-short-term-rental-growth-exacerbates-housing-crisis-report/>.

²⁵⁶ Bianca Graulau, *Are Puerto Ricans being pushed out?*, YOUTUBE (Dec. 28, 2021), <https://www.youtube.com/watch?v=YGXtWpCOiC8>.

²⁵⁷ Criminalizing orders table provided by Glorín Ruiz Pastush (attached as Appendix A).

²⁵⁸ Código Municipal de Puerto Rico, Act No. 107 of 2020, Chapter V, Art. 3.040.

²⁵⁹ *A Dream Denied: The Criminalization of Homelessness in U.S. Cities*, *supra* note 246.

life ordinances.”²⁶⁰ Specifically, the sweeps took “place in Sicardo, Old San Juan, Caguas, Yabucoa, and Vega Baja, during which 17 homeless people were arrested” for violating the ordinances, with “at least five homeless deaths...attributed to these sweeps.”²⁶¹

At least 20 out of Puerto Rico’s 78 municipalities have also criminalized life-sustaining activities in some way through issuing orders criminalizing necessities like sleeping in public plazas, using fountain water to bathe, sleeping in public, camping in public spaces, and urinating/defecating in public.²⁶² San Juan, Puerto Rico’s capital, has even considered an order prohibiting people from looking in the trash.²⁶³ These prohibitions often result in fines, but some municipalities offer alternatives, such as accepting government assistance for substance abuse.²⁶⁴ Advocates note, however, that this alternative is misguided, as someone experiencing homelessness may not be ready to accept this assistance and may not be struggling with substance abuse at all.²⁶⁵

Further, Puerto Rico enacted significant restrictions on movement during the height of the COVID-19 pandemic. The state government-imposed curfews after certain hours and prohibited presence on public plazas.²⁶⁶ This inevitably criminalized people experiencing homelessness who had no where they could legally be during night hours.

2. Protective Laws

Puerto Rico has multiple laws in place intended to protect people experiencing homelessness. At the highest level, **the Puerto Rican Constitution explicitly provides for the right to housing**, stating: “The Commonwealth also recognizes the existence of the following human rights...The right of every person to a standard of living adequate for the health and well-being of himself and of his family, and especially to food, clothing, housing and medical care and necessary social services.”²⁶⁷ This provision has not been extensively litigated, however, and thus the scope of the obligations it imposes has not been fully adjudicated. Article II section I of the Puerto Rican Constitution also states that everyone is equal before the law, and no discrimination, whether on the base of race, color, sex, birth, social origin, or political or religious ideals is allowed.²⁶⁸

Puerto Rico is the only subject of this report that has a legal framework specifically tailored to the protection of the rights of people experiencing homelessness. In 2007, **Puerto Rico passed a Homeless Bill of Rights, which provides more detailed guidance on the country’s**

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Díaz Pabón interview, *supra* note 242.

²⁶³ Interview with Glorin Ruiz Pastush, Co-founder of La Fondita de Jesus, (June 15, 2022) (hereinafter Ruiz Pastush interview).

²⁶⁴ Díaz Pabón interview, *supra* note 242.

²⁶⁵ *Id.*

²⁶⁶ Ruiz Pastush interview, *supra* note 263.

²⁶⁷ Puerto Rico Constitution Art. II §20

²⁶⁸ Puerto Rico Constitution Art. II §1.

homelessness laws and policies.²⁶⁹ Act No. 250, the law preceding the homeless bill of rights, was enacted in 1998 to “provide services for the homeless and to implement a well-integrated public policy that will allow these persons to meet their basic needs and have their rights respected.”²⁷⁰ This act created a Commission within the Department of the Family to coordinate throughout government agencies, the private sector, and nonprofits to end homelessness.²⁷¹ Soon after, it became clear that although the rights were in place, many were unable to access them due to health, financial, or social conditions.²⁷² Thus, in 2000, Act 277 was passed, which allowed advocacy groups on the island to act on the behalf of individuals experiencing homeless during legal proceedings.²⁷³ The act also required the court system to waive all fees associated with homelessness proceedings as well as to try the cases in a more efficient manner.²⁷⁴ In 2007, the Legislative Assembly of Puerto Rico again realized that the prior acts had not sufficiently advanced the goal of eradicating homelessness. Thus, they repealed Act 250 and replaced it with Act 130, the homeless bill of rights.²⁷⁵ Act 130 aims “to achieve the goal of eradicating homelessness... [and] make Puerto Rico a place where all human beings have a roof over their heads, and prompt and sensitive access to the basic services every human being is entitled to receive.”²⁷⁶ The act establishes positive and negative rights for people experiencing homelessness, including the rights to shelter, nourishment, medical attention, all social services and benefits for which they qualify, workforce training, protection from law enforcement officers against any type of mistreatment, and free access to parks, town squares, and other public facilities.²⁷⁷ However, this law is not judicially enforceable.²⁷⁸ In fact, Article 5(b) of the Act relegates jurisdiction to an administrative body within the Department of the Family as opposed to providing full access to enforcing rights through the judicial system.²⁷⁹

Act 130 is an innovative law. Notably, all ten rights within Act 130 include specifications that aid in the progressive realization of the rights. For example, the right to nourishment includes three meals a day as well as vitamin supplements to ensure the well-being of individuals.²⁸⁰ The right to receive shelter is defined as “adequate and suitable for human habitation, with the appropriate toileting and restroom facilities, within a safe environment of dignity and respect.”²⁸¹ The right to receive medical attention not only includes preventative, clinical, and rehabilitative care, but also

²⁶⁹ Act No. 250, 13th Leg., 3d Sess. (P.R. 1998) (repealed 2007)). (More details on this page 400-01 in <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1669&context=faculty>.); Act No. 277, 13th Leg., 7th Sess. (P.R. 2000).

²⁷⁰ Act No. 250, 13th Leg., 3d Sess. (P.R. 1998) (repealed 2007)
<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1669&context=faculty>.

²⁷¹ *Id.*

²⁷² Sara Rankin, *A Homeless Bill of Rights (Revolution)*, 45 SETON HALL L. REV. 383, 401 (2015)
<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1669&context=faculty>.

²⁷³ Act No. 277, 13th Leg., 7th Sess. (P.R. 2000).

²⁷⁴ *Id.* at § 691-701.

²⁷⁵ Act No. 130, 15th Leg., 6th Sess. (P.R. 2007).

²⁷⁶ Rankin, *supra* note 272.

²⁷⁷ *Id.*; Act No. 277, *supra* note 273.

²⁷⁸ Rankin, *supra* note 272 at 402 (“It tasks the Council with responsibility for designing protocols to ensure agency implementation of the enumerated rights and with responsibility for enforcing compliance.”).

²⁷⁹ Act No. 130, *supra* note 275.

²⁸⁰ *Id.*

²⁸¹ *Id.*

mental health and substance abuse services.²⁸² **Act 130 also states that all homeless individuals have the right to free access to town squares, parks and all other public facilities.**²⁸³ These specifications further define the scope of rights and allow their realization to be measured. **Act 130 also requires every government agency to develop and implement protocols specifically for people experiencing homelessness who need their services.**²⁸⁴ **This provision is severely under-implemented with most government agencies ignorant of their obligations and lacking the mandated protocols.**²⁸⁵ Even those with protocols may fail to appropriately train their employees on their implementation.²⁸⁶ For example, the protocol of the Department of Transportation (CESCO, for its Spanish initials) dictates that a person may obtain a government-issued identification merely by showing they are currently experiencing homelessness.²⁸⁷ However, visits from NGOs and advocates to test the effectiveness of this protocol have shown that CESCO employees are unaware of its existence.²⁸⁸ This is one of the few agencies with protocols in place.²⁸⁹ Fulfilment of Act 130's provisions has required intervention from NGOs assisting in developing additional protocols; La Fondita de Jesus, an NGO serving people experiencing homelessness, is currently working on developing protocols for access to courts.²⁹⁰

Following the passage of Act 130, a few additional laws have been passed with the goal of combatting homelessness, although some may criminalize or violate other human rights in practice. The first of the two was Bill 3912, aimed at identifying and treating people experiencing homelessness and suffering from substance abuse, mental health, and physical issues.²⁹¹ The bill allows a judge to order the involuntary treatment of a person experiencing homelessness who may be dependent on the use of controlled substances.²⁹² The second is Act 199, which seeks to improve accountability of homeless service providers, including the government.²⁹³

Measures aimed at increasing awareness and engagement also exist in Puerto Rico. **Puerto Rico has declared the annual week of thanksgiving to be the “Week of Solidarity, Rehabilitation, Reintegration and Self-Determination of Vagrant People.”**²⁹⁴ The purpose of this week is to create awareness around the challenges those experiencing homelessness face. During this week, municipalities on the island must also “organize and carry out activities aimed at identifying the needs of the homeless and guide them regarding this problem so as to motivate them toward

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ Díaz Pabón interview, *supra* note 242.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Díaz Pabón interview, *supra* note 242

²⁹¹ Rankin, *supra* note 272, at 403.

²⁹² *Cámara aprueba Ley para Protección y Tratamiento de personas sin hogar*, TRIBUNA (June 26, 2012), <https://tribunapr.com/2012/06/26/camara-aprueba-ley-para-proteccion-y-tratamiento-de-personas-sin-hogar.html>;

The involuntary treatment of people who use drugs is not in accordance with human rights standards; treatment for drug use should always be voluntary, with informed consent, and with the guidance of health professionals.

²⁹³ Rankin, *supra* note 272, at 402.

²⁹⁴ P.R. Laws tit. 1, §5174.

rehabilitation and to obtain their full reintegration to daily life, achieving their self-sufficiency.”²⁹⁵ Moreover, these activities must provide those experiencing homeless with “moments of solace,” as well as “artistic and cultural activities that promote socialization,” that “allow the artistic abilities of the homeless to reach their potential, channeling their paintings, craftsmanship and other artistic productions towards the market.”²⁹⁶ The activities must also provide opportunities for individuals to receive information about housing, health, work, and safety.²⁹⁷ Finally, personal hygiene and clothing must be provided, “as well as transportation to transport the homeless to places designated for the performance of the activities.”²⁹⁸ While this level of engagement is notable, this approach, perpetuates a focus on individual responsibility for homelessness rather than addressing root systematic causes.

When faced with specific issues that affect people experiencing homelessness in particular ways, Puerto Rican law-makers have acted to address the issues. Two examples are hate crimes and the COVID-19 pandemic. Puerto Rico adopted a Hate Crimes Act, as amended by Act 193, in response to attacks against people experiencing homelessness without apparent provocation. The Act establishes an aggravating circumstance “when imposing penalty for committing an offense motivated by prejudice against the victim for the fact of being a homeless person.”²⁹⁹ People experiencing homelessness are socially disadvantaged and exposed to constant rejection, discrimination, ridicule, verbal, and physical violence from people who discriminate against them. While the recognition of homelessness as a targeting factor for hate crimes is an important step, there is little implementation of this law.³⁰⁰ Moreover, soon after the global pandemic began, the Governor of Puerto Rico further issued an emergency executive order acknowledging people experiencing homelessness as a vulnerable population that requires special attention.³⁰¹ This emergency order required centers to be established to provide assistance to people experiencing homelessness, including “basic diagnostic and medical care, personal hygiene facilities, food, laundry facilities, and other services aimed at preventing the infection and spread of COVID-19.”³⁰² The act also required that people experiencing homelessness be shown empathy, consideration, and respect at all times, as well as prohibiting any punitive approaches directed towards those experiencing homelessness.³⁰³

C. Impacts and Opportunities

While Puerto Rico is a leader in passing laws with the intention of protecting people experiencing homelessness, there is a significant gap between intention and implementation, as these laws are often ignored in practice.³⁰⁴ There is a deficit of government officials and

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ 2010 Puerto Rico Laws Act 193 (S.B. 1477).

³⁰⁰ Ruiz Pastush interview, *supra* note 263.

³⁰¹ Emergency Covid Order to Address Needs of People Experiencing Homelessness (March 17, 2020).

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ Ruiz Pastush interview, *supra* note 263.

lawyers willing to enforce these laws. Private organizations have pushed aggressively to increase compliance.³⁰⁵ The government should prioritize the enforcement of existing laws and pass additional laws to fully and holistically protect the rights of people experiencing homelessness.

Moreover, existing laws fail to address issues specific to Puerto Rico's history and political context, including the current housing shortage and massive waves of displacement that have affected the island in recent years as a result of government policies that disincentivize long-term renting and place home ownership further out of reach.³⁰⁶ Puerto Rico has 325 public housing developments for low income individuals and families under the Puerto Rico Housing Authority located throughout the island.³⁰⁷ This is subsidized housing at least partly funded by the U.S. Department of Housing and Urban Development. However, this remains insufficient to meet the needs of people at risk of homelessness, as public housing is also slowly being reduced and eliminated, further contributing to housing insecurity.³⁰⁸ Both the federal and state governments must engage with housing policy to address issues specific to the unique context of Puerto Rico, protect people at-risk of experiencing homelessness, and lift those experiencing homelessness out of poverty.³⁰⁹

VI. Conclusion

This analysis of the criminalization of homelessness in the Caribbean reveals four distinct systems, each with unique problems and paths towards the realization of rights. Despite shared geography and history, the context around housing insecurity and homelessness in the four localities varies, with each government engaging at a different level with homelessness and its root causes.

Policies motivated by profit and special interests have led to the displacement of locals and are at odds with the international and national commitments of all four localities. Moreover, inhumane treatment of people experiencing homelessness is often at the hands of state actors. In the Dominican Republic, the government has played an active role in worsening the housing crisis its inhabitants are currently facing. While in Jamaica, people experiencing homelessness are simply ignored, with no apparent efforts from the government to know who they are and why they are experiencing homelessness. Although Puerto Rico is progressive in its *de jure* protection of the rights of people experiencing homelessness, it is criminalizing homelessness in practice, failing to implement its own protective laws, and actively encouraging the displacement of its people.

At the same time, some threads are universal across the four Caribbean localities. While the differences in their approaches to homelessness and the protection of rights are marked, the persistent impact of colonialism cannot be ignored. Many of the criminalizing provisions found in

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ DEP'T DE LA VIVIENDA, <https://www.avp.pr.gov/residenciales-directorio.aspx?region=All>.

³⁰⁸ *Puerto Rico is Slowly Eliminating Public Housing*, PEOPLE LIVE HERE (Oct. 7, 2019), <https://peoplelivehere.press/2019/10/07/las-gladiolas-vive/>.

³⁰⁹ Ruiz Pastush interview, *supra* note 263.

their codes are derived from the laws of their respective colonizing country. In the Dominican Republic, the major issue of the informality of land title that is displacing many Dominicans today is an imposed colonial invention. The original stewards of that land did not follow the titling and ownership systems viewed as legitimate today—this problem simply did not exist before the colonization of the Dominican Republic. In Puerto Rico, its continued colonization by the U.S. has encouraged gentrification and land grabbing that is pricing locals out of the communities they have lived in for generations, thus increasing housing insecurity and homelessness. A decolonial and rights-centric approach to housing and homelessness is imperative.

Ensuring positive laws and policies is only a starting point. Fulfilling the rights of vulnerable communities, like people experiencing homelessness, requires a holistic approach with its base in empathy and a commitment to addressing the institutional causes of homelessness. A consistent aggravating factor of the criminalization of homelessness is social stigma—stigma against homelessness itself, and against qualities like race, migrant status, or LGBTQ+ membership. In each locality, the violence against and social exclusion of people experiencing homelessness serves only to further entrench poverty and alienate people from participating in society. As this investigation shows, addressing homelessness requires an understanding of the complex intersectional identities of people and social, economic, and political approaches focused on meeting community needs and protecting their human rights.