



Slavery as a Cause and Consequence of Homelessness in the United States

**Report to the
UN Special Rapporteur on contemporary forms of slavery, including its causes and its
consequences**

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Historical Slavery is A Cause of Modern Slavery, Poverty, and Homelessness

1. Homelessness, despite its variations, is defined as an individual lacking fixed, regular, and adequate nighttime residence. While homelessness most immediately refers to a lack of housing, its connections are multidimensional, hence popular claims that housing justice is economic justice, housing justice is a racial justice, housing is healthcare, and so on. At the core of these injustices is slavery, a state that transformed mental attitudes and dominant social theory into an operationalized system in the U.S. and around the globe. Despite the Emancipation Proclamation and 13th Amendment ending slavery in 1865, slavery's legacy has direct links to the injustice Black people and other persons of color face in accessing basic human rights, including the right to housing. These links are the premise of this report.
2. Slavery is deeply rooted in capitalism. It is sustained and thrives from individuals' productivity level, mindset, and willingness to participate in the system. Capitalism's core belief is that profit is more important than people. Capitalism based on slavery left Black people as a huge portion of the U.S. population with no rights to adequate wages or humane working conditions—legacies that continue today, with Black people lacking living wages, ultimately resulting in violations of the right to adequate housing, and homelessness, as well as concentration in jobs without union protection.
3. Similar to chattel slavery, modern-day slavery disproportionately impacts Black people through mass incarceration, poverty, and the racial wealth gap. While Black people in the United States make up 13.6% of the total population,² they account for approximately 40% of the prison population,³ 21% of the people living below the federal poverty line,⁴ and approximately 40% of the people experiencing homelessness. Moreover, studies show that Black women are the most educated group of people in the country—accounting for 12.7% of the general population,⁵ and consistently make up over 50% of the number of Black people who receive postsecondary degrees.⁶ Despite their educational attainment, Black women are still underpaid and concentrated in low-wage jobs. On average, they make less than 42% of white men annually, and the percentage of Black women who are full-time minimum-wage workers is higher than that of any other racial group.⁷

² United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/IPE120221>.

³ Ashley Nellis, PhD., The Color of Justice: Racial and Ethnic Disparity in State Prisons. The Sentencing Project. Oct 13, 2021, <https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/>.

⁴ National Alliance to End Homelessness, *Homelessness and Black History: Poverty and Income*, NAEH, February 26, 2021. <https://endhomelessness.org/blog/homelessness-and-black-history-poverty-and-income/#:~:text=Among%20all%20racial%20groups%2C%20Black,wealth%20that%20white%20families%20have>

⁵ United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/US/IPE120221>.

⁶ Nikki Katz, Black Women are the Most Educated Group in the US. ThoughtCo. (June 19, 2020), <https://www.thoughtco.com/black-women-most-educated-group-us-4048763>.

⁷ AAUW, Systemic Racism and the Gender Pay Gap, AAUW <https://www.aauw.org/resources/article/black-women-and-the-pay-gap/>.

Criminalization of homelessness has its roots in historical slavery and continues to have the same impact today

4. The structural racism against Black, Indigenous, and other people of color (BIPOC persons) presented today by the criminalization of homelessness is rooted in intentionally racist policies. Although the 13th Amendment banned slavery in the U.S., it contained a loophole of allowing forced labor as a punishment for criminal activity.⁸ Across the American South, anti-loitering and anti-vagrancy laws were a key component of post-slavery Black Codes and Jim Crow, enabling law enforcement to arrest formerly enslaved Black persons for the “crime” of not having employment or permanent housing and then send them right back to cotton fields from which they had just been freed in prison labor gangs.⁹ Today, given the lingering disparate racial impact of homelessness, as well as racialized stereotypes of homelessness, criminalization of homelessness serves similar purposes, if not as explicitly.
5. Criminalization of homelessness includes the loitering and vagrancy laws cited above, as well as bans on camping, sleeping, sitting or lying in public, or asking for donations.¹⁰ These laws are enforced close to ten times more against Black persons.¹¹ The Committee on the Elimination of Racial Discrimination (CERD) has expressed its “concern” “at the high number of homeless persons, who are disproportionately from racial and ethnic minorities...and at the criminalization of homelessness through laws that prohibit activities such as loitering, camping, begging, and lying in public spaces.”¹² For this reason the CERD called on the U.S to “Abolish laws and policies making homelessness a crime.”¹³
6. Once incarcerated, these homeless persons may join the close to 800,000 other incarcerated persons in the U.S. who are engaged in labor for little to no wages, with 76% report being forced to work or face additional punishment.¹⁴
7. Some communities have developed so-called “homeless courts” under a guise of “harm reduction” to process the enormous number of charges incurred by people facing homelessness. These courts purport to “eliminate fines and fees in the exchange for

⁸ U.S. Const., Amend. XIII.

⁹ See Black Code, Ferris State University, <https://www.ferris.edu/HTMLS/news/jimcrow/links/misclink/blackcode.htm>; Andrew Lee, The Jim Crow Roots of Loitering Laws, Anti-Racism Daily (May 31, 2022), <https://the-ard.com/2022/05/31/the-jim-crow-roots-of-loitering-laws/>.

¹⁰ NAT’L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 12 (2019), <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>.

¹¹ NLCHP RACIAL DISCRIMINATION, *supra* note 31. See also LAWYERS’ COMMITTEE FOR CIVIL RIGHTS, CITED FOR BEING IN PLAIN SIGHT 5-6 (2020), https://lccrsf.org/wp-content/uploads/2020/09/LCCR_CA_Inframation_report_4WEB-1.pdf.

¹² COMM. ON ELIMINATION RACIAL DISCRIMINATION, CONCLUDING OBSERVATIONS ON THE COMBINED SEVENTH TO NINTH PERIODIC REPORTS OF UNITED STATES OF AMERICA, ¶ 12, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014) [hereinafter CERD CO SEVENTH TO NINTH].

¹³ CERD CO SEVENTH TO NINTH, *supra* note 2 at ¶¶ 12(a)-(c).

¹⁴ American Civil Liberties Union, Captive Labor: Exploitation of Incarcerated Workers (2022), <https://www.aclu.org/report/captive-labor-exploitation-incarcerated-workers>.

voluntary community service.”¹⁵ While framed as “voluntary”, these homeless courts use the threat of law enforcement, fines and fees, jail time, and other legal consequences to force unhoused people into labor they would not otherwise undertake.

8. Criminalization is also used to coerce unhoused people into emergency shelters that have work requirements for staying in their facilities.¹⁶ Some shelter organizations even encourage the threat of law enforcement on the streets as means of forcing people into their programming.¹⁷

The first shelter I live at farmed us out for profit every single day. The next shelter worked us 6 1/2 days a week 10 to 12 hour days. We got Sunday afternoons off. If we complained or refused to do the work, they'd kick you out... Ten years ago at a pastors school, a preacher said in training “feed a bum and you can work them all day. If they complain, no one will listen to them”.¹⁸

Systems for distribution of public assistance require significant labor on behalf of applicants

9. Although proposals have been made for reparations for descendants of African slavery, with the exception of a few small local efforts, no national reparations have been given, systemically disadvantaging the entire descendant community.¹⁹ Not only have reparations not been provided, but public welfare systems, which could provide equitable relief to previously harmed communities, have been deliberately stigmatized, under-resourced, and made inaccessible, resulting in disparate poverty and homelessness for Black, Indigenous, and other people of color who require them.
10. As we examine the systems attempt to utilize public welfare resources to restabilize people experiencing homelessness we must also examine the impact on folks accessing them. People who access them are forced to exchange their basic human rights of autonomy/free will and privacy. In addition, they face a long-term sentence to reliance on those very resources. An example of that is through program rules that set requirements around income leaving limited opportunity for nonwhite communities to thrive and move beyond survival. Another example is the requirement to self-disclose.

¹⁵ Orange County Public Defender, Homeless Outreach Court, <https://www.pubdef.ocgov.com/programs/homeless-outreach-court>. See also Judicial Branch of Arizona in Maricopa County, *Valley's Regional Homeless Court Celebrates 10-year Anniversary* (Dec. 14, 2022), https://superiorcourt.maricopa.gov/media/7794/nr-homeless-court_12-14-2022.pdf.

¹⁶ See Theo Witcomb, *Between a Rock and a God Place*, The Baffler (May 5, 2021), <https://thebaffler.com/latest/between-a-rock-and-a-god-place-whitcomb>.

¹⁷ See, e.g. KFSN, *Homeless cannot be prosecuted for sleeping outside, court rules* (Apr. 2, 2019), <https://abc30.com/homeless-ban-sleeping-outside-city-ordinance-fresno-rescue-mission/5231344/>.

¹⁸ Email from Mark Horvath to Eric Tars (Mar. 7, 2023), on file with authors.

¹⁹ See Joan Kaufman, Maria Khan, Julia Mancini & Yvonne Summers White, *The Harm Is To Our Genes: Transgenerational Epigenetic Inheritance & Systemic Racism in the United States* (2021), <https://www.officialincobraonline.org/about-4>.

Criminalization and lack of emergency housing make unhoused youth vulnerable to trafficking and slavery

11. A Way Home America responds to the widely-recognized link between youth homelessness and trafficking in the *New Deal to End Youth Homelessness*, saying in “Transformative Justice Action 1”²⁰ that status offense laws such as curfew and runaway laws as well as the other laws criminalizing homelessness described above “often discourage youth from seeking out governmental assistance, and instead pushes them into more vulnerable situations.”
12. The National Clearinghouse on Homeless Youth and Families notes that runaway and homeless youth are incredibly vulnerable with high susceptibility to human trafficking and exploitation.²¹ Profit incentives like those from which chattel slavery emerged create a motivation for minimized labor costs resulting in vulnerable youth being preyed upon by labor traffickers who are modern enslavers. In a study conducted by Covenant House, “24% of LGBTQ youth were trafficked for sex, compared to 12% of non-LGBTQ youth.”²² Given the persisting linkage of race and economic exploitation, Black, Indigenous, other youth of color, and LGBTQIA+ youth must be prioritized in solutions to end these forms of slavery.
13. To address this lamentable circumstance, policy efforts must increase youth accessibility of “offramps” out of trafficking. According to a Polaris Project report, “emergency shelter makes up an overwhelming 47 percent of all crisis requests to the National Human Trafficking Hotline.” This suggests that accessible emergency housing for youth and adults will serve as a significant interruption in human trafficking.²³
14. Finally, criminal charges weaponized against people forced into these exploitative circumstances serve as a significant barrier to housing and employment access.²⁴ Our focus populations who are Black, Indigenous, people of color, and LGBTQIA+ youth and young adults are already disproportionately criminalized and are further disadvantaged by laws against nonviolent survival activities including, but not limited to: substance use, drug trade, and sex work.
15. These barriers repeatedly force young people into congregate shelters, further perpetuating cycles of poverty and instability. As we envision a future state, we must

²⁰ A Way Home America, *The New Deal to End Youth Homelessness*, <https://www.awayhomeamerica.info/>.

²¹ *The Overlap of Human Trafficking and Runaway and Homeless Youth*. (2020, July 16). Retrieved March 23, 2023, <https://www.rhyclearinghouse.acf.hhs.gov/blog/2020/07/overlap-human-trafficking-and-runaway-and-homeless-youth>.

²² <https://www.covenanthouse.org/sites/default/files/inline-files/Loyola%20Multi-City%20Executive%20Summary%20FINAL.pdf>

²³ <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking-Housing-and-Homelessness-Systems.pdf>

²⁴ Johnson, K. (2021). *Housing Access for People with Criminal Records*. Retrieved March 22, 2023, https://nlihc.org/sites/default/files/AG-2021/06-07_Housing-Access-Criminal-Records.pdf

disrupt the longstanding reliance on congregate shelters as our collective centerpiece solution *and* lower discriminatory requirements for vouchers to allow youth and young adults same-day access to crisis housing of their choice that offers privacy, dignity, and safety, ultimately leading to long-term housing of their choice within thirty days.

Recommendations

16. Slavery is embedded in the foundation of the United States. To fully eradicate slavery, and the homelessness that is a consequence of it, we have to dismantle the capitalist system that values property and profit over human rights. We understand to rebuild a new economic system will take time, so in the interim, in order to remedy the current consequences of slavery imposed on unhoused and unstably housed persons, States should:

- a. Provide financial reparations to descendants of African slavery to close the racial wealth gap.
- b. Raise minimum wages (including lower youth minimum wages), and social security and disability payments to family-sustainable wages that index to the cost of housing in each state and city.
- c. Ensure union access to all industries, in particular industries with sub-living wages and poor working conditions.
- d. Repeal laws criminalizing or penalizing persons experiencing homelessness, including homeless youth;
- e. Repeal laws criminalizing sex work;
- f. Redirect funding from criminal justice responses to crisis response teams with mental health, harm reduction, and other psychosocial service expertise, trauma-informed, no-barrier 24-hour accessible shelters and drop in centers with supportive services, and Housing-First programs. Trauma-informed, non-congregate shelters should serve as *temporary* residences and an entryway to rehousing as the ultimate goal. States should take a Housing-First approach that prioritizes providing people experiencing homelessness with permanent housing before addressing other quality of life issues.
- g. Abolish labor as a condition of conviction;
- h. Ensure wage and labor laws apply to homeless shelters;
- i. Ensure exit planning that includes housing before release from state institutions including incarceration, institutionalization, and foster care.

17. For more information, please contact Eric Tars, etars@homelesslaw.org.