

Criminalization of Homelessness in Denver, Colorado Constitutes Cruel, Inhuman, and Degrading Treatment

A Report to the U.N. Committee on Torture by Denver Homeless Out Loud (DHOL)

“I’m in a bad mental state for lack of sleep. Walking further means physical effects. I’m more negative. I worry about anyone approaching. I sleep less. It’s stressful. I can’t dream as much about my wife and I wake up too much. It’s hard to sleep when you don’t feel safe where you’re at. I have physical fatigue from lack of sleep.” ~*A homeless person in Denver, Colorado on the impact of the laws criminalizing homelessness*

Reporting Organization

Denver Homeless Out Loud (DHOL) (<http://bit.ly/denverhol>) works with and for people who experience homelessness, to solve the issues that arise from the experience of homelessness. We work to help protect and advocate for dignity, rights and choices for people experiencing homelessness. To these ends, we commit our efforts toward goals raised and affirmed by homeless people, within our organization and without. We strive to add our strengths together to create ways of living in which everyone has a place they can call home.

Issue Summary

1. Denver's Unauthorized Camping Ordinance (Sec. 38-86.2. of the Denver Municipal Code (<http://bit.ly/denmuncode>) passed May 23, 2012) makes it a crime for any person to shelter him or herself from the elements while residing on any public or private property, without appropriate permission. Under this law, it is illegal for homeless people to sleep, sit for extended periods, or store their personal belongings anywhere in Denver, if they use any form of protection other than their clothing (e.g., a blanket or a piece of cardboard to sit upon). Violations of the camping ban can bring penalties including fines of up to \$999 and a year in jail.
2. DHOL believes this ordinance that empowers the Denver Police Department to intervene in a homeless person’s survival act of sleeping and to impose criminal sanctions may constitute cruel, inhuman, and degrading treatment under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The United States of America signed this treaty in 1988 and it was ratified in 1994, making it legally binding.
3. We are submitting our report in conjunction with the shadow report written by the National Law Center on Homelessness & Poverty and partners that was filed with the U.N. Committee Against Torture on September 22, 2014 (<http://bit.ly/nlchpshadowreport>). We concur with the request in that report for the “Committee’s confirmation that criminalization of homelessness does violate the CAT and strong recommendations for remedial actions” (item 1).

4. We are attaching the survey report we completed with the homeless community in Denver six months after the City of Denver passed the Unauthorized Camping Ordinance (DHOLCriminalizationReport.pdf). The report is available online at <http://bit.ly/campingbanreport>. This survey report reflects the voices of 512 homeless people on the streets of Denver about their experience with the Unauthorized Camping Ban. The data analysis and report coordination were completed by professor Tony Robinson (Ph.D.) of the political science department at the University of Colorado Denver.

5. The key findings in the attached survey report demonstrate how Denver's Unauthorized Camping Ordinance may constitute cruel, inhuman and degrading treatment of the homeless community. These findings are summarized as follows:

I. Contact with the police is a way of life for the homeless. The most common result of police contact with homeless people regarding the camping ban is a warning to “move along,” or a citation or arrest for a different crime. Very rarely are police connecting camping ban violators to social services.

- 57% of survey respondents were contacted by police regarding violations of the camping ban.
- 83% of those were asked by police to “move along,” without being offered alternative services.
- 76% were issued a formal oral or written warning of camping ban violation; 26% were arrested or cited for other violations (the most common citations were violations of park curfew or trespassing on private property).
- Only 12% of respondents were advised by police of available social services; 4% of respondents said the police contacted an outreach worker to help them.

Examples of what homeless people wrote on the surveys:

“Prior to the ban, I had only one unprovoked contact with the police in 3 ½ years. In the five months since the ban, I’ve had cops roll up on me several times, asking stupid questions and for I.D.”

“They’re not even allowing us to have blankets out. We’re considered ‘campers’ just for sitting and enjoying the park. People lie out at the beach and look that way, and nobody assumes they’re camping. What’s the difference? I got a verbal warning, just for not wanting to sit in the dirt. It’s harassment, plain and simple.”

“It feels less safe because it feels like the police found another way to screw us. If I can’t find a shelter to get in, and I might have to sleep outside, then I’ll be ‘messed over,’ because now there’s a chance I might go to jail. I think there should be a better solution.”

II. The leading behavioral change of unsheltered homeless people since the ban went into effect has been seeking more hidden places to sleep outside, and/or moving into

outlying neighborhoods or cities. Most respondents have not been able to access dependable, indoor shelter.

- 52% of respondents who used to sleep downtown say they did so because that area was safe and well-lit.
- 66% of respondents who used to sleep downtown say they now usually sleep in more hidden and unsafe locations.
- 20% say they more often sleep in outlying neighborhoods or in surrounding cities, and travel long distances to get there.
- 40% have tried to get into shelters more often, but 63% say shelters are more crowded and harder to get into than they used to be.
- 73% report being turned away from shelters with some frequency.
- 37% say they have sometimes chosen not to cover themselves from the elements (such as by using a blanket) due to the camping ban.

Examples of some responses from the surveys:

“I now get little to no sleep at night due to harassment by the police. I’ve learned to avoid the police only by sleeping in hidden places, where I get harassed by the crack-heads.”

"I just got to find a place out of Denver’s reach. Everybody is being run out of any place they can hide."

“The police have made sleeping in a safe place unavailable. I’m now moving camp every day. I’m in constant movement.”

Interviewer: Do you mind describing the events prior to the officer approaching you?

Tom: There’s just a couple of us back there, not doing anything, just trying to sleep. We have all our stuff nice and neat. And then the police officer just comes up and tells us we have to go. “Here’s your trespassing tickets; just go.”

Interviewer: Do you feel you were approached because you were trespassing or because of the camping ban?

Tom: The camping ban.

Interviewer: And now where are you staying?

Tom: We found an OK spot- a little piece of sidewalk, on the heating grates. It’s kind of dangerous. I mean we burn ourselves, on the fingers, toes and arms, but it’s our only spot. It’s hot, but it’s what we got. We can’t stay on the Mall, and we have to stay dry.

III. The majority of homeless respondents say their life has become more challenging, more stressful, and less safe since the ban was enacted.

- 60% report that they get less sleep as they frequently are being “moved along” (or live in fear of this), and feel less secure in the new areas they are finding to sleep.

- 53% say they feel less safe with their new sleeping situation after the ban. (6% say they feel more safe.)
- 50% say their lack of safe sleep is leading to a worse quality of life.
- 58% say that it has become more necessary to avoid the police. (4% say the police have become more helpful.).

Examples of some responses from the surveys:

“Of course it’s worse now that people can’t stay in central areas, where it’s lit and safe. There really aren’t places for all these people to go, so we are hiding. And we are more alone. And that’s bad. People try hard to find ways to protect themselves. But there are always predators who try to use and abuse and assault people who are living marginally. We still have people who will go out and mistreat people who are disabled, who are mentally ill, who have any kind of problem, who look like they can’t take care of themselves. We have people who will come in and, because of human trafficking, exploit people who are really vulnerable - especially young people - who don’t have anywhere to go, so the traffickers will come out and enslave them. So is it better? NO. We are more vulnerable, and things are worse. People are more likely to try to hurt you if they think you are alone and you are vulnerable. And in Denver, it’s a lot harder to find a place of sanctuary now.”

“I’ve become more emotional. I needed a blanket, but the police officer said he didn’t have one and couldn’t give one. When I get cold, I get seizures.”

“I just keep walking. I’m tired of walking, but I hardly sleep anymore. It’s not safe. I’m tired a lot and I’m pissed off all day because of lack of sleep.”

Continued from interview in Part II, above...

Interviewer: So is the place you sleep now more safe, or more dangerous, or about the same as the Mall?

Sandy: It’s definitely more dangerous.

Interviewer: Describe that.

Tom: There’s people and things; these fools run around smoking their stuff and shooting their stuff. We don’t do none of that. We’re just trying to sleep and they come hassle us like we were criminals.

6. DHOL is now surveying people experiencing homelessness throughout the State of Colorado. Many of our conversations with the homeless community further confirm the conclusions of this report. We are using the expanded survey to gain input from the homeless community for the crafting of a Homeless Bill of Rights, an effort we are now leading at a statewide level. The results of our work in Denver and the state of Colorado provide specific local evidence for the larger trend of cruel, inhuman and degrading treatment of homeless persons in the United States through the proliferation of ordinances criminalizing homelessness. The larger trends are well documented in the September 22, 2014 National Law Center on Homelessness & Poverty and partners submission to the U.N. Committee Against Torture (<http://bit.ly/nlchpshadowreport>).

Questions for the United States Government

7. As those of us on the committee conduct our review, we respectfully concur with item 16 from the National Law Center on Homelessness & Poverty and partners submission to the U.N. Committee Against Torture which requests that the following questions and concerns be raised during the U.S. government's hearing:

16.
 - a. How do federal agencies ensure that the funds they distribute are not used to criminalize homelessness by state or local entities?
 - b. Will the State Party create funding incentives in its federal grants to decrease the criminalization of homeless persons?
 - c. Has the federal government taken any steps to work with local authorities to cease forced evictions and sweeps of outdoor encampments and instead ensure that homeless residents are provided with adequate alternative housing?
 - d. Does the Department of Justice (DOJ) have any plans to open investigations or to intervene in cases to challenge local criminalization practices?
 - e. What measures does the federal government take to challenge specific criminalizing ordinances or promote specific constructive alternative policies?

Recommended Concluding Observations

8. DHOL also concurs with items 17 & 18 from the same report:

17. The Committee welcomes the report of the U.S. Interagency Council on *Homelessness, Searching Out Solutions* (2012), acknowledging that criminalization of homelessness may constitute discrimination and cruel, inhuman, and degrading treatment or punishment in violation of the ICCPR and CAT.

18. The Committee notes with concern reports that homeless persons in the United States are routinely and disproportionately criminalized for essential human functions and behaviors they have no choice but to perform in public due to lack of available housing or shelter space. The Committee finds this constitutes cruel, inhuman, and degrading treatment (Article 16). The State Party should take immediate measures to eliminate the criminalization of basic life activities where homeless persons have no choice but to perform them in public, cease disparate enforcement of other laws that adversely affect homeless persons, and ensure homeless persons are provided with housing -- not punishment for their status. Federal agencies should take active steps to discourage criminalization, provide funding incentives for decriminalization and constructive alternative approaches, discontinue their funding of local law enforcement practices that criminalize homelessness, and investigate and prosecute criminalization policies or enforcement wherever they occur.

In addition, DHOL proposes adding the following recommended concluding observation:

The State Party and Federal agencies should actively support and encourage the federal government and states to adopt homeless bills of rights (such as those that would come out of the efforts currently underway in Colorado, California, and Oregon) that would prohibit laws that criminalize acts of survival in public, as well as the discriminatory application of laws that have the effect of punishing people for their homeless status.

Additional Questions

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