

---

## Rights of Homeless Persons in the Universal System of Protection of Human Rights

---

Submitted 19/10/21, 1st revision 02/11/21, 2nd revision 24/11/21, accepted 10/12/21

Bartosz Pacholski<sup>1</sup>

**Abstract:**

**Purpose:** *There is no doubt that homelessness is one of the greatest problems of the 21st century that has contributed to the deepening of social inequalities and discrimination, making extensive groups of people without a place to live vulnerable to being unable to exercise fundamental rights and freedoms. The aim of the paper is to answer the following research question—are rights of homeless persons protected under the universal system of human rights?*

**Design/Methodology/Approach:** *Basic research methods used in this study include the analytical method with a particular focus on the work of the Committee on Economic, Social and Cultural Rights. Additionally, the method of interpretation of norms of applicable law will also be used and aided by the statistical method.*

**Findings:** *The research results have confirmed that the public international law analyses include regulations that refer to the protection of homeless persons under the universal system. It is necessary for states to increase funds allocated to fight the adverse consequences of a lack of a place to live, and international organizations (most of all the UN and its specialized agencies) should play a special role in coordinating such tasks.*

**Practical Implications:** *The research presented in the paper is particularly important for the protection of fundamental human rights and as a result it specifies possible further support for persons in the homelessness crisis and new directions of development of relevant policies of states and international organizations, which has a crucial practical relevance.*

**Originality/Value:** *The research will allow a look at the international system of protection of human rights from the perspective of homeless persons, pointing to the scope of rights they are afforded and the possibility to exercise them.*

**Keywords:** *Homelessness, human dignity, public international law, human rights, international protection of human rights, social exclusion.*

**JEL codes:** *K33, K38.*

**Paper Type:** *Research article.*

**Acknowledgements:** *The author would like to express his gratitude to the Institute of Legal Studies, Faculty of Law and Administration, University of Szczecin (Poland) for the financial support given to this research.*

---

<sup>1</sup>University of Szczecin, Szczecin, Poland, <https://orcid.org/0000-0002-4328-4491>, [bartosz.pacholski@usz.edu.pl](mailto:bartosz.pacholski@usz.edu.pl);

## **1. Introduction**

In the realities of the 21st century, homelessness is one of the most noticeable social problems, regardless of the geographical part of the world. It does not matter whether we talk about capitals of developed countries or bigger or smaller cities of developing states, the problem stays valid in each case. The search for a solution requires relevant actions at the national level, but it seems that due to the concern's universal presence, it is becoming a possible plane of cooperation under public international law, especially as part of the work of international organizations.

We must note, that homelessness, despite its complex and unequivocal provenance, is not a subject of extensive analysis in the scholarly and commentary circles. The aim of this paper is to answer the following research question—are rights of homeless persons protected under the universal system of human rights? While analysing the regulations of the universal public international law, the answer to this question will allow us to identify what the relevant current legal status is like and what actions may be taken by public international law actors to strengthen the protection of homeless persons.

The discussion must be opened with the definition of the term “homelessness”, focusing also on the theoretical semantic meanders and relevant divisions. Then, the paper refers to the axiological basis that forms obligations of states in counteracting the occurrence of homelessness, also creating space for cooperation of the international community. After that comes the description of the universal system of protection of human rights, associated in particular with the activity of the United Nations.

The study takes a look at the regulations included in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights. The paper also presents a description of the activity of the Committee on Economic, Social and Cultural Rights in the context of protection of rights of homeless persons. The analytical method is the basic research method used in the paper. Additionally, the method of interpretation of norms of applicable law will also be used and aided by the statistical method.

## **2. The Essence of Understanding the Term “Homelessness”**

Starting from the possible meanings of the term “homelessness”, we need to note that to date there is no legal definition of this concept under public international law which would be accepted and applied by a majority of actors. The PWN Dictionary of the Polish Language defines the term homeless person as “somebody with no place to live”. Britannica (The Editors of Encyclopaedia Britannica, 2021) uses a similarly short definition of homelessness, according to which it is a state of having no home or permanent place of residence.

---

According to the Canadian definition of homelessness, it is “the situation of an individual, family, or community without stable, safe, permanent, appropriate housing, or the immediate prospect means and ability of acquiring it” (HomelessHub, 2021).

The legal definition of a homeless person in American law is stipulated in section 330(h)(5)(A) of the Public Health Service Act as “an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility (e.g., shelters) that provides temporary living accommodations, and an individual who is a resident in transitional housing” (VolState, 2021).

Moving onto the ground of international law, many documents emphasize the phenomenon of homelessness and thus its definitional difficulties. The definition adopted depends on the policy of a given international organization, civil society or the party currently in power. Social and cultural conditions in a given country are also not without significance. The paper also points out an insufficient scope of dictionary definitions, such as those quoted at the beginning of this paragraph, which do not take into account the loss of social bonds and social exclusion, which is part of homeless persons’ experience.

Definitions of homelessness used by UN Habitat, the Secretary-General of the United Nations, the Institute of Global Homelessness have all in common to include various forms of homelessness, persons living in the streets, in open spaces or cars, persons living in temporary emergency accommodation, in women’s shelters, in camps or other temporary accommodation provided to internally displaced persons, refugees or migrants, and persons living in severely inadequate and insecure housing, such as residents of informal settlements (The Office of the High Commissioner for Human Rights, 2021).

It is worth emphasizing that homelessness as a form of violation of human rights involves poverty, which constitutes violation of the fundamental category of human rights that safeguard human dignity. It is indisputable that dignity in itself is recognized as a source of human rights and freedoms independent of public authority and that this dignity is at the same time the essence of humanity.

Therefore, we may talk about the social dimension of dignity, that orders the state to take actions that ensure the minimum subsistence to every person and that prevents social exclusion (Brzostowski *et al.*, 2018).

This is why a fight against homelessness requires that states fulfil their positive obligations to prevent the deepening of this phenomenon and in the future to aim for its complete elimination.

### 3. Statistics on Homelessness around the World

Based on national reports, it is estimated that no less than 150 million people, or about 2 percent of the world's population, are homeless (Chamie, 2017). As has been mentioned earlier, the differences in definitions also determine problems in presenting reliable statistical data. The next issue that must be taken into account is the very problem of adequate data collection—most countries rely on data from non-governmental organizations that help homeless persons, but not all of them use such services. What is more, not all persons without a place of residence can be reached thus their number is difficult to estimate.

Table 1 below presents the most recent available data on the homeless persons-population of a given country ratio. It was compiled on the basis of the OECD Questionnaire on Affordable and Social Housing (QuASH, 2021; 2019; 2016) and other available sources (OECD - Social Policy Division, 2021). A few countries from various continents were picked to illustrate the universality of occurrence of homelessness in all corners of the world.

**Table 1.** *Number of homeless persons in selected countries and the ratio of homeless persons to the general population of a given country*

State	Number of homeless	Homeless as % of total population	Year of data collection
Australia	116,427	0.48%	2016
Canada	129,127	0.36%	2016
Costa Rica	3,387	0.07%	2020
Germany	337,000	0.41%	2018
Israel	3,471	0.04%	2020
Mexico	40,911	0.04%	2010
New Zealand	41,644	0.86%	2018
Poland	30,330	0.08%	2019
Sweden	33,250	0.33%	2017
United States	580,466	0.18%	2020

*Source:* Author's own compilation on the basis of OECD data.

The homelessness level does not exceed 1% of the population in any of the countries analysed. The highest numbers were recorded for New Zealand and Australia, which may be due to an extended definition of homeless persons (e.g., those who do not live in adequate conditions or those who live with family members not out of their choice). As emphasised by Busch-Geertsema, Culhane and Fitzpatrick example in Australia shows that the census authorities have played an important role in providing more reliable estimates on the scale of homelessness (Busch-Geertsema *et al.*, 2016). The low count of homeless persons in the cluster of developing countries, such as Costa Rica or Mexico, is puzzling. Certainly here too the nature of the research and not being able to reach all persons without a permanent place of residence is of great significance.

## **4. Protection of the Rights of Homeless Persons in the Universal System of Human Rights**

### **4.1 Universal Declaration of Human Rights**

Protection against homelessness is not directly articulated in documents that make up the universal system of protection of human rights. However, it seems that because of its translation onto the situation of entities under the law, we may notice a violation of standards of protection of rights and states' obligations for relevant action under the 1948 Universal Declaration of Human Rights.

Even though at the beginning the legal form of adoption of the Declaration (as a resolution of the UN General Assembly) meant that it was not binding for the UN member states, now it is largely seen as normative, as a customary source of norms in international law. As noted by Symonides, there is a corpus—a widespread practice of invoking provisions of the Universal Declaration in numerous acts of internal and international law, and an animus—clear recognition of these provisions as binding law (Symonides, 2008). Therefore, states must implement the Declaration's provisions.

The Universal Declaration of Human Rights sets forth in Article 1, that: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Additionally, Article 22 also applies to the situation of persons that do not have a place of residence: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

The basic assumption around which the system of protection of human rights is built is human dignity and the resulting right to a dignified life. A lack of a place to live leads to a violation of this rule, expressed in Article 1 of the Declaration. Similarly, when it comes to ensuring fundamental economic rights, homelessness impacts, among other things, being able to exercise the right to work, access to social assistance or even the use of the right to vote as persons concerned do not have the possibility to formally exercise it. It is worth noting that the problem of homelessness is one of the manifestations of social exclusion, which validates the linking of the scope of protection with human dignity.

### **4.2 The International Covenant on Economic, Social and Cultural Rights**

The next act of international law that indirectly addresses the subject matter of homelessness is the International Covenant on Economic, Social and Cultural

Rights, opened for signature at New York on 19 December 1966. The Covenant entered into force on 3 January 196 and now has 171 signatory countries (United Nations Treaty Collection, 2021). When comparing its provisions with the Declarations, the natural extension of the scope of rights that an individual may claim to exercise comes to the fore.

However, it is worth looking at the varied character of the obligations pertaining to this legal act, especially if compared with another document, its contemporary, on human rights—the International Covenant on Civil and Political Rights. Pursuant to Article 2(1), each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Such an approach directs the obligation of states to gradually move towards the goal, rather than to reach and maintain it, additionally weakening them with reference to “available resources”, which may make it difficult to assign countries with responsibility for failing to meet the obligations stipulated by the Covenant (Brzostowski *et al.*, 2018). At the same time, it needs to be noted that states must undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2(2)).

The basic provision analysed in the context of rights of homeless persons is Article 11(1) of the Covenant, which grants 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. The same angle must be taken on responsibilities under Article 12, which lays down that the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. These articles are the basis to expect countries to make all efforts to ensure that every person under their jurisdiction is able to exercise their right to housing, which results in establishing the states’ positive obligation to counteract homelessness.

#### **4.3 The activity of the Committee on Economic, Social and Cultural Rights in the Context of Protection of Rights of Homeless Persons**

Such reasoning is affirmed by the stance of the Committee on Economic, Social and Cultural Rights, a subsidiary body of the UN Economic and Social Council, established to assess reports submitted by states on their implementation of the Covenant’s provisions. In its 1990 Comment No. 3, the Committee reminds that “a State party in which any significant number of individuals is deprived of essential

foodstuffs, of essential primary healthcare, of basic shelter and housing, or of the most basic forms of education, is *prima facie*, failing to discharge its obligations under the Covenant”. This confirms the normative character of states’ obligation to ensure that each person has a safe place to meet their livelihood needs, which must also ensure an adequate level of privacy.

The Committee emphasises the meaning of the phrase “to the maximum of its available resources” (Article 2(1)), noting that in order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

This means that first and foremost countries are obliged to guarantee a place to live to all persons under their jurisdiction and only then may they support improvement of the living status of their citizens by means of social programmes (such as housing subsidies for those who already have a place of residence). The Committee’s reasoning also means that if states do not want to risk a challenge of non-compliance to both Article 2 and Article 11, they must demonstrate an actual lack of resources to eliminate homelessness, which may be a very difficult task.

In its 1991 General Comment No. 4, The Committee referred to the meaning of “adequate housing” for the purposes of the Covenant, naming aspects that countries are required to meet and that result from international law measures:

- a) Legal security of tenure;
- b) Availability of services, materials, facilities and infrastructure;
- c) Affordability;
- d) Habitability;
- e) Accessibility;
- f) Location;
- g) Cultural adequacy.

It was reserved, that regardless of the state of development of any country, there are certain steps which must be taken immediately and that states parties must give due priority to those social groups that live in unfavourable conditions by giving them particular consideration, which may be naturally applied to persons who have no place to live.

The 1997 General Comment No. 7 addressed the right to adequate housing: forced evictions, and it stipulated in the context of homeless persons that evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available

resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

The Committee’s views were also reflected in opinions issued since the entry into force on 5 May 2013 of the Optional Protocol to the ICCPR, which introduced a mechanism of control of the states’ implementation of the Covenant by means of an individual complaint. In *Maribel Viviana López Albán v Spain* (Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 37/2018) the case concerned the violation of Article 11 of the Covenant, that is the right to adequate housing through eviction of the author from her home.

The Committee argued, that a “State party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by private entities such as the owner of the property” (Section 9.3). The Committee held, that “in certain circumstances, States parties may be able to demonstrate that, despite having made every effort, to the maximum of available resources, it has been impossible to offer a permanent, alternative residence to an evicted person who needs alternative accommodation. In such circumstances, temporary accommodation that does not meet all the requirements of an adequate alternative dwelling may be used.

However, States must endeavour to ensure that the temporary accommodation protects the human dignity of the persons evicted, meets all safety and security requirements and does not become a permanent solution, but is a step towards obtaining adequate housing” (Section 9.4). This, therefore, clearly confirms the functional relationship between the protection of rights of homeless persons with the respect of human dignity, which is indeed the basis of the international system of protection of human rights. It is also emphasized that states must strive to ensure adequate housing, even if immediately after the eviction of a person without a place to live it is necessary to place them in a temporary facility which may not meet all the requirements of adequate housing.

## **5. Conclusion**

The subject matter of this discussion involved an attempt to define homelessness under the universal system of human rights protection, and most of all, a search for regulations that include international norms that protect the interest of persons that do not have a place of residence. It has also been noted that the source of these regulations lies in the protection of human dignity, functionally associated with being able to obtain a place of residence.

Pursuant to standards set by the International Covenant on Economic, Social and Cultural Rights, state-parties are obliged to ensure 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. The activity of the Committee on Economic, Social and Cultural Rights expresses hope that this right will not end up as one of the Covenant's articles without greater importance for states' practice, but that it will be truly implemented and adequately supported by the international community.

It is worth noting that the fight against the problem of homelessness has greatly strengthened, mainly through the activity on the UN forum. In 2016, a resolution adopted by the UN Human Rights Council called "to take all measures necessary to eliminate legislation that criminalized homelessness" and the New Urban Agenda approved at the UN Habitat III conference in November 2016 called to take measures intended to "prevent and eliminate homelessness", to "combat and eliminate its criminalization" and for "progressive realization of the right to adequate housing" (FEANTSA/Housing Rights Watch, 2017).

On 19 February 2020, the gavel fell on the 58th session of the UN Commission for Social Development, which agreed the text of the historical first United Nations resolution on homelessness (UNDESA Voice, 2020). This gives a basis to expect that subsequent relevant initiatives will change the situation of homeless persons in the coming years and will lead to a significant restriction of homelessness and its elimination from the world in the perspective of the next dozen years or so.

## References:

- Brzozowski, W., Krzywoń, A., Wiącek, M. 2018. *Prawa człowieka*. Wolters Kluwer, Warszawa.
- Busch-Geertsema, V., Culhane, D., Fitzpatrick, S. 2016. Developing a global framework for conceptualising and measuring homelessness. *Habitat International*, 55, 124-132. <https://doi.org/10.1016/j.habitatint.2016.03.004>.
- Chamie, J. 2017. *As Cities Grow, So do the Numbers of Homeless*. Yale University. <https://web.archive.org/web/20170721013718/https://yaleglobal.yale.edu/content/cities-grow-worldwide-so-do-numbers-homeles>.
- Commission for Social Development, Report on the fifty-eight session. 2019. <https://undocs.org/E/2020/26>.
- HomelessHub. 2021. What is Homelessness. <https://www.homelesshub.ca/about-homelessness/homelessness-101/what-homelessness>.
- Human Rights and Equal Opportunity Commission. 2008. Homelessness is a Human Rights Issue. <https://humanrights.gov.au/our-work/publications/homelessness-human-rights-issue>.
- International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
- OECD - Social Policy Division - Directorate of Employment, Labour and Social Affairs. OECD Questionnaire on Affordable and Social Housing. 2021. <http://oe.cd/ahd>.
- Słownik Języka Polskiego. 2021. PWN. <https://sjp.pwn.pl/szukaj/bezdomno%C5%9B%C4%87.html>.
- Symonides, J. 2008. *Powszechna Deklaracja Praw Człowieka (po 60 latach od jej przyjęcia)*.

- Państwo i Prawo 12, 3-16.
- The Editors of Encyclopaedia Britannica. 2021. Homelessness.  
<https://www.britannica.com/topic/homelessness>.
- The Office of the High Commissioner for Human Rights. 2021. Homelessness and human rights.  
<https://www.ohchr.org/en/issues/housing/pages/homelessnessandhumanrights.aspx>.
- UNDESA Voice. 2020. First-ever United Nations Resolution on Homelessness.  
<https://www.un.org/development/desa/dspd/2020/03/resolution-homelessness/>.
- UN Committee on Economic, Social and Cultural Rights. 1990. General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23. <https://www.refworld.org/docid/4538838e10.html>.
- UN Committee on Economic, Social and Cultural Rights. 1991. General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), E/1992/23. <https://www.refworld.org/docid/47a7079a1.html>.
- UN Committee on Economic, Social and Cultural Rights. 1997. General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions. <https://www.refworld.org/docid/47a70799d.html>.
- United Nations Treaty Collection. 2021.  
[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4#9](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4#9).
- Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A). [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/217\(III\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)).
- VolState Community College. 2021. What is the official definition of homelessness? <https://www.volstate.edu/homelessness>.