



**Housing and Homelessness in  
Miami-Dade County, Florida**

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## I. INTRODUCTION

1. In Florida, a January 2018 count estimated that 31,030 individuals experienced homelessness on any given day.<sup>1</sup> Of those 31,030 individuals, 56.8% were sheltered, while 43.2% remained unsheltered.<sup>2</sup> In Miami-Dade County (“MDC”), a 2018 count estimated approximately 3,516 individuals experiencing homelessness,<sup>3</sup> 384 of whom were chronically experiencing homelessness<sup>4</sup>—making it the county with the largest homeless population in Florida<sup>5</sup> and with the fourth-largest chronically homeless population.<sup>6</sup> Of those 3,516 individuals, approximately 71% were sheltered,<sup>7</sup> while 29% remained unsheltered.<sup>8</sup>

2. 1,091 individuals experiencing homelessness in MDC reported belonging to a family with children.<sup>9</sup> A review of 714 self-reported submissions indicated that 287 youth in MDC were in shelters or on the street, 390 were living alone (without a parent or guardian), 323 had temporary shelter—couch-surfing or “doubling up,” 103 were pregnant or already caring for children, and 227 were not in school.<sup>10</sup>

3. This report focuses on the successes and failures of MDC to address critical issues facing persons experiencing homelessness. MDC is composed of 34 municipalities that often (but do not always) work together, with the City of Miami being the largest. This submission specifically provides a human rights analysis of the criminalization of homelessness, access to health services, and access to housing, as well as provides recommendations to address these issues. While this submission focuses on MDC, the struggles that it highlights also reflect national concerns.

4. This submission relies on the following in its analysis:

- United Nations (UN) human rights treaties the United States (U.S.) has ratified: the International Covenant on Civil and Political Rights (ICCPR),<sup>11</sup> Convention Against

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<sup>1</sup> United States Interagency Council on Homelessness, *Florida Homelessness Statistics*, accessible at: <https://www.usich.gov/homelessness-statistics/fl>.

<sup>2</sup> U.S. Department of Housing and Urban Development, *The 2018 Annual Homeless Assessment Report (AHAR) to Congress, Appendix*, at 83 (Dec. 2018), accessible at: <files.hudexchange.info/resources/documents/2018-AHAR-Part-1.pdf>.

<sup>3</sup> Florida Council on Homelessness, *Annual Report*, 46 (2018), accessible at: <myflfamilies.com/service-programs/homelessness/docs/Council%20%on%20Homelessness%20Annual%20Report%202018.pdf>.

<sup>4</sup> *Id.* at 50.

<sup>5</sup> *Id.* at 46.

<sup>6</sup> *Id.* at 50.

<sup>7</sup> *Id.* at 47.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 52.

<sup>10</sup> Miami Homes For All, iCount Miami, *iCount Miami: Miami Dade County’s Youth Point-in-Time Count: Census of Youth Experiencing Homelessness* (Jan. 25, 2019 – Jan. 31, 2019), accessible at: <orange-chimes-xz5t.squarespace.com/icount-miami>. See also Shimberg Center for Housing Studies, *Homelessness and Education in Florida: Impacts on Children and Youth Fact Sheet*, University of Florida (2017). [http://www.shimberg.ufl.edu/publications/homeless\\_education\\_MIAMI171010\\_RGB.pdf](http://www.shimberg.ufl.edu/publications/homeless_education_MIAMI171010_RGB.pdf). (A large portion of our data on youths stems from reports generated within schools. Within Miami-Dade 6,103 students identified as homeless. Of the 6,103, 1,109 are sheltered, 4,476 are doubled-up, 123 are unsheltered, 281 are living in Hotels or Motels, and 412 are awaiting foster care.)

<sup>11</sup> International Covenant on Civil and Political Rights (“ICCPR”) *ratified* Jun. 8, 1992, 999 U.N.T.S. 171.

Torture (CAT)<sup>12</sup>, and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);<sup>13</sup>

- The Universal Declaration of Human Rights (UDHR),<sup>14</sup> the foundational document for the UN human rights system, which the U.S. played a pivotal role in drafting;
- Two treaties the U.S. has signed although not yet ratified: International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>15</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>16</sup>—in signing, however, the U.S. has “an obligation to refrain, in good faith from acts that would defeat the object and the purpose of the treaty.”<sup>17</sup> Moreover, MDC passed a 2015 ordinance to “locally adopt the spirit underlying the principles of” CEDAW;<sup>18</sup>
- The U.S. Constitution.<sup>19</sup>

## II. ANALYSIS

### A. Criminalization of Homelessness

5. Currently, in MDC, there are five ordinances in place that criminalize life-sustaining behaviors that individuals experiencing homelessness are forced to perform on the street or in other public spaces. This includes sleeping on public thruways—making it unlawful for any person to sleep on streets, sidewalks, and other public spaces within the City of Miami;<sup>20</sup> living or sleeping in vehicles within the City of Miami;<sup>21</sup> “aggressive or obstructive” panhandling—which bans panhandling in some of the most densely populated areas of MDC;<sup>22</sup> and public urination or defecation—despite MDC’s failure to provide adequate and available public restrooms.<sup>23</sup> Additionally, beginning in 2018, the City of Miami instituted a series of “clean-up” sweeps of

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<sup>12</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), *ratified* Oct. 21, 1994, 1465 UNTS 85.

<sup>13</sup> International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), *ratified* Oct. 21, 1994, 660 UNTS 195.

<sup>14</sup> Universal Declaration of Human Rights (“UDHR”), G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

<sup>15</sup> International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), *signed* Oct. 05, 1977, 993 U.N.T.S. 3.

<sup>16</sup> Convention on the Elimination of all Forms of Discrimination Against Women (“CEDAW”), *signed* Jul. 17, 1980, 1249 U.N.T.S. 13.

<sup>17</sup> United Nations, Dam Hammarskjöld Library, *What is the difference between signing, ratification and accession of UN treaties?*, accessible at: [ask.un.org/faq/14594](https://ask.un.org/faq/14594).

<sup>18</sup> Ordinance No. 15-87, 9-1-15,

<https://www.miamidade.gov/govaction/legistarfiles/MinMatters/Y2015/151069min.pdf>.

<sup>19</sup> U.S. CONST.

<sup>20</sup> Code 1967, § 38-49; code 1980, § 37-69 (“It shall be unlawful for any person to sleep on any of the streets, sidewalks, public places, or upon the private property of another without the consent of the owner thereof”).

<sup>21</sup> Code 1967, § 38-54.1; Code 1980, § 37-69 (“Other than the area at the Marine Stadium designated for use by self-contained camper trailers, it shall be unlawful for any person within the city to park any vehicle on public rights-of-way, public properties or private parking lots, for the purposes of: (1) Living; (2) Sleeping; (3) Cooking; (4) Bathing; or (5) Housekeeping”).

<sup>22</sup> Ord. No. 12006, § 2, 12-14-00. *See also* Ord. No. 12997, § 2, 5-22-08; Ord. No. 13232, § 2, 11-18-10 (prohibiting panhandling in certain areas of MDC).

<sup>23</sup> Ord. No. 13495, § 2, 2-12-15 (providing exceptions only for children under five years old or persons with “a disability, unrelated to the ingestion of alcohol, illegal substances, or substances not prescribed to the particular person ingesting them, which renders a person unable to control his or her bodily functions of urination and/or defecation”).

homeless encampments.<sup>24</sup> While some of these sweeps are done for legitimate public health reasons, many are done as a pretext for dispersing individuals experiencing homelessness.<sup>25</sup> Regardless of the rationale behind them, these sweeps are often poorly conducted, resulting in the displacement of individuals<sup>26</sup> and the loss of personal effects, including medicines and identity documents.<sup>27</sup> In 2017, the City of Miami Beach hired a special prosecutor to target “nuisance” crimes, such as jaywalking or consuming alcohol in public.<sup>28</sup> Two-thirds of cases brought involved defendants experiencing homelessness.<sup>29</sup>

6. Prior to 2019, individuals experiencing unsheltered homelessness within in the City of Miami, accounting for 65% of MDC’s unsheltered homeless,<sup>30</sup> were guaranteed certain rights and protections under the 1998 *Pottinger* Consent Decree.<sup>31</sup> These included the right to be offered shelter by police before being arrested for engaging in life-sustaining activities, the right to be warned by police before being arrested for certain minor crimes, and certain property protections during city clean-up sweeps.<sup>32</sup> Earlier this year, however, the consent decree was terminated and, although individuals experiencing homelessness still have the same fundamental Constitutional rights that were protected under *Pottinger*, the monitoring and accountability under the consent decree no longer exist.<sup>33</sup>

7. Even though the goal of these regulations is to improve the economic health of certain strategic areas of a city and to ensure public safety,<sup>34</sup> they are ineffective, counterproductive, and

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<sup>24</sup> Joey Flechas & Daniel Cheng, *Many People moved into shelter or treatment as Miami cleans out Overtown homeless area*, The Miami Herald, [www.miamiherald.com/news/local/community/miami-dade/article220231260.html](http://www.miamiherald.com/news/local/community/miami-dade/article220231260.html).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Pottinger v. City of Miami*, 359 F. Supp. 3d 1177, 1192 (S.D. Fla. 2019).

<sup>28</sup> Joey Flechas, *Tired of nuisance crimes going unpunished? Miami Beach is about to crack down*, MIAMI HERALD (Jan. 3, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article192826269.html>.

<sup>29</sup> Kyra Gurney, *Tourists are rarely jailed for breaking Miami Beach laws. Not so for the homeless*, MIAMI HERALD (Jan. 15, 2019), <https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article224019710.html>.

<sup>30</sup> MDC Homeless Trust, *Homeless Trust Census Results and Comparison* (2018), accessible at: <http://www.homelesstrust.org/library/coc/homeless-census-results-and-comparison-2017-2018.XLS>

<sup>31</sup> *Pottinger*, 810 F. Supp. 1551, 1583 (S.D. Fla. 1992); (“The court concludes that the City’s practice of arresting homeless individuals for performing inoffensive conduct in public when they have no place to go is cruel and unusual in violation of the eighth amendment, is overbroad to the extent that it reaches innocent acts in violation of the due process clause of the fourteenth amendment and infringes on the fundamental right to travel in violation of the equal protection clause of the fourteenth amendment. The court further concludes that the City’s seizure of plaintiffs’ personal property violates their fourth amendment rights”).

<sup>32</sup> *Pottinger v. City of Miami*, 810 F. Supp. at 1569-73; Settlement Agreement at 7-13, *Pottinger v. City of Miami*, No. 88-2406-CIV-ATKINS (S.D. Fla. Oct. 1, 1998). Unfortunately, these protections were limited to the City of Miami and not extended to individuals experiencing homelessness in the wider MDC.

<sup>33</sup> *Pottinger*, 359 F. Supp. 3d at 1195.

<sup>34</sup> National Law Center on Homelessness & Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* at 16, accessible at: [nlchp.org/wp-content/uploads/2019/02/No\\_Safe\\_Place.pdf](http://nlchp.org/wp-content/uploads/2019/02/No_Safe_Place.pdf); U.N. General Assembly, *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepulveda Carmona*, U.N. Doc. A/66/265 (2011) (“States justify these measures by classifying the prohibited behaviours as dangerous, conflicting with the demands of public safety or order, disturbing the normal activities for which public spaces are intended, or contrary to the images and preconceptions that authorities want to associate with such places”).

expensive.<sup>35</sup> One study conducted by Creative Housing Solutions on behalf of the Central Florida Commission on Homelessness found that providing “housing [to] just 50% of the current chronic homeless population in Central Florida over a multiyear period, with a 10% recidivism rate, would save the taxpayers a minimum of \$149,220,414,” when compared with the amount spent on pursuing criminalization policies.<sup>36</sup>

8. Moreover, these ordinances and policies violate both the U.S. Constitution, as well as international human rights obligations: they violate the basic human rights to life;<sup>37</sup> freedom from cruel, inhuman and degrading treatment;<sup>38</sup> security of person;<sup>39</sup> freedom of movement;<sup>40</sup>

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<sup>35</sup> See The United States Interagency Council on Homelessness, *Searching out Solutions: Constructive Alternatives to the Criminalization of Homelessness* (2012), [https://www.usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](https://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf) (“criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”).

<sup>36</sup> The Central Florida Commission on Homelessness, *The Cost of Long-Term Homelessness in Central Florida* (2014), <https://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf>.

<sup>37</sup> UDHR, *Article 3* (“Everyone has the right to life”); ICCPR, *Article 6* (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”).

<sup>38</sup> UDHR, *Article 5* (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”); ICCPR, *Article 7* (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”); CAT, *Article 16(1)* (“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment...committed by...a public official or other person acting in an official capacity”); U.S. Const., *Eighth Amendment* (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”).

<sup>39</sup> UDHR, *Article 3* (“Everyone has the right to ... security of person.”), ICCPR, *Article 9(1)* (“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.”); ICERD, *Article 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”).

<sup>40</sup> UDHR, *Article 13* (“Everyone has the right to freedom of movement and residence within the borders of each State”); ICCPR, *Article 12(1)* (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”); CERD, *Article 5 (d)(i)* (“The right to freedom of movement and residence within the border of the State”); CEDAW, *Article 15 (4)* (“States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile”).

freedom of assembly;<sup>41</sup> freedom of speech;<sup>42</sup> freedom from arbitrary arrest or detention;<sup>43</sup> privacy and property;<sup>44</sup> and equality and non-discrimination.<sup>45</sup>

9. In her 2011 report, the Special Rapporteur on Extreme Poverty and Human Rights explained that because individuals experiencing homelessness have no other choice but to perform life-sustaining activities in the open, penalizing them for doing so only perpetuates “discriminatory societal attitudes towards the poorest and most vulnerable.”<sup>46</sup> and “violates the obligation to ensure equality and non-discrimination in the implementation of all laws and policies.”<sup>47</sup> The Special Rapporteur’s 2018 report criticized the U.S. for creating “[e]ver more demanding and intrusive regulations. . . which rapidly turn into misdemeanours, leading to warrants, incarceration, unpayable fines and the stigma of a criminal conviction that in turn virtually prevents subsequent employment and access to most housing.”<sup>48</sup>

10. Treaty bodies have echoed these concerns. Both the Committee on the Elimination of Racial Discrimination and the Human Rights Committee called upon the U.S. to “[a]bolish laws and policies making homelessness a crime”; “intensify efforts to find solutions for the homeless,

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<sup>41</sup> UDHR, *Article 20* (“Everyone has the right to freedom of peaceful assembly and association”); ICCPR, *Article 21* (“The right of peaceful assembly shall be recognized.”); CERD, *Article 5* (d)(ix) (“The right to freedom of peaceful assembly and association”); U.S. Const., *First Amendment* (“Congress shall make no law...abridging...the right of the people peaceably to assemble”).

<sup>42</sup> ICCPR, *Article 19*(2) (“Everyone shall have the right to freedom of expression”); CERD, *Article 5* (d)(viii) (“The right to freedom of opinion and expression”); U.S. Const., *First Amendment* (“Congress shall make no law...abridging the freedom of speech”).

<sup>43</sup> UDHR, *Article 9* (“No one shall be subjected to arbitrary arrest, detention or exile”); ICCPR, *Article 9* (“No one shall be subject to arbitrary arrest or detention”); U.S. Const., *Fifth Amendment* (“No person shall... be deprived of life, liberty, or property, without due process of law”), *Fourteenth Amendment* §1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law”).

<sup>44</sup> UDHR, *Article 12* (“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence”), *17*(2) (“No one shall be arbitrarily deprived of his property.”); ICCPR, *Article 17* (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”); U.S. Const., *Fourth Amendment* (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”).

<sup>45</sup> UDHR, *Article 7* (“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”); ICCPR, *Article 2*(1) (“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind”); ICCPR, *Article 26* (“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”); CERD, *Article 2*(1) (“Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions”); CEDAW, *Article 2*(a) (“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”); U.S. Const., *Fourteenth Amendment* §1 (“[N]or shall any State...deny to any person within its jurisdiction the equal protection of the laws”).

<sup>46</sup> *Special Rapporteur on Extreme Poverty and Human Rights*, ¶ 32, U.N. Doc. A/66/265, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/444/49/pdf/N1144449.pdf?OpenElement>.

<sup>47</sup> *Id.* at ¶ 33 (including activities such as “sleeping, sitting, lying, littering, lodging, camping or storing belongings in public spaces, public drunkenness; public urination; or jaywalking”).

<sup>48</sup> *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, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/125/30/pdf/G1812530.pdf?OpenElement>.

in accordance with human rights standards”; and “[o]ffer incentives to decriminalize homelessness.”<sup>49</sup>

11. The Human Rights Council likewise addressed this issue in the second UPR cycle in 2015, recommending that the U.S. “amend laws that criminalize homelessness and which are not in conformity with international human rights instruments.”<sup>50</sup> The U.S. provided a statement of partial support but did not provide a concrete plan or a timeline for implementing action.<sup>51</sup> While several states have enacted a Homeless Bill of Rights, which ensures that life-sustaining activities are not criminalized, Florida and MDC have failed to enact these measures.

## B. Access to Health Services

12. “Health is a fundamental human right indispensable for the exercise of other human rights,”<sup>52</sup> recognized by the UDHR, ICERD, ICESCR, and CEDAW.<sup>53</sup> While the U.S. has only signed the ICESCR, it has “an obligation to refrain, in good faith from acts that would defeat the object and the purpose of the treaty.”<sup>54</sup> Even under these bare minimum standards, the U.S. is currently failing to meet its obligations by criminalizing homelessness, and thereby creating barriers to health and housing.

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<sup>49</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, CERD/C/USA/CO/7-9, ¶ 12 (2014). See also Human Rights Committee, *Concluding observations on the fourth periodic report of the United States of America*, CCPR/C/USA/CO/4, ¶ 19 (2014) (noting that “[c]riminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc.” violates Articles 2, 7, 9, 17 and 26 of the ICCPR and calling upon the U.S. to “[a]bolish the laws and policies criminalizing homelessness at state and local levels,” “[e]nsure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professional at all levels, to intensify efforts to find solutions for the homeless, in accordance with human rights standards,” and “[o]ffer incentives for decriminalization and the implementation of such solutions, including by providing continued financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize the homeless”).

<sup>50</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United States of America*, ¶ 176, point 310, A/HRC/30/12 (July 20, 2015).

<sup>51</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United States of America: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, Addendum, ¶ 12, point 310, A/HRC/30/12/Add.1 (Sep. 15, 2015).

<sup>52</sup> Committee on Economic, Social and Cultural Rights, *General Comment 14*, ¶ 1 (2000).

<sup>53</sup> UDHR, *Article 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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”); ICERD, *Article 5* (“States Parties undertake to . . . guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law and notable in the enjoyment of the following rights: [ . . . ] (iv) The right to public health, medical care, social security and social services”); ICESCR, *Article 12* (“1. 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”); CEDAW, *Article 12* (“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”).

<sup>54</sup> United Nations, *supra* note 17.

13. As the Committee on Economic, Social and Cultural Rights (CESCR) explained, health care must be available, accessible, acceptable, and of quality.<sup>55</sup> Accessibility is composed of four overlapping dimensions: non-discrimination, physical accessibility, economic accessibility (affordability), and information accessibility.<sup>56</sup> CESCR highlighted that individuals who are homeless may experience greater levels of “discrimination, stigmatization and negative stereotyping,” which may lead to unequal access and denial of care.<sup>57</sup>

14. During the second cycle of the UPR, the Human Rights Council recommended that the U.S. “strengthen efforts in ensuring equal access to health-care and social services,” and “promot[e] access of vulnerable population[s] to public and social and health services,”<sup>58</sup> as well as “strengthen national health-care programmes so that health care is easily accessible, available and affordable for all members of society.”<sup>59</sup> The U.S. expressed that it is “taking steps to improve access to health care for members of racial and ethnic minorities,”<sup>60</sup> but failed to provide a timeline, intermediate steps, or guidelines for reaching this goal.

15. Health issues increase the risk of homelessness. They cause individuals to miss work, which can result in loss of employment. Once unemployed, individuals may quickly exhaust savings to pay medical bills. Without a reliable support system, the loss of a home soon follows.<sup>61</sup>

16. Homelessness further exacerbates existing health conditions and can cause new ones, including through chronic stress.<sup>62</sup> “Children who experience homelessness develop more slowly, have more health issues, and are less likely to achieve in school.”<sup>63</sup> Chronic diseases that require constant specialized care, such as asthma, diabetes, and mental health problems are “difficult to manage under stressful circumstances” and liable to worsen with homelessness.<sup>64</sup> Infections, lacerations, and pneumonia are also “difficult to heal when there is no place to rest

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<sup>55</sup> Committee on Economic, Social, and Cultural Rights (CESCR), *The right to the highest attainable standard of health*, General Comment 14, paras 12(a)-(d) (2000).

<sup>56</sup> *Id.* at ¶ 12(b).

<sup>57</sup> CESCR, *General Comment 20*, ¶ 35 (2000).

<sup>58</sup> Human Rights Council, *supra* note 50, at ¶ 176.315. (The Human Rights Council further called for “equal access to equality maternal health and related services as an integral part of the realization of women’s rights.” *Id.* at ¶ 176.316).

<sup>59</sup> *Id.* at ¶ 176.317.

<sup>60</sup> *Id.* at ¶ 167.

<sup>61</sup> Florida Council on Homelessness, *supra* note 3, at 17.

<sup>62</sup> National Health Care for the Homeless Council, *What is the relationship between health, housing, and homelessness?*, accessible at: <https://www.nhchc.org/faq/relationship-health-housing-homelessness/>; Florida Council on Homelessness, *supra* note 3, at 17 (“Homelessness exacerbates pre-existing health problems, reduces the speed and likelihood of recovery, and exposes people to more health threats. Children who experience homelessness develop more slowly, have more health issues, and are less likely to achieve in school.”); Center for American Progress, *Lack of Housing and Mental Health Disabilities Exacerbate One Another*, accessible at: <https://www.americanprogress.org/issues/poverty/news/2018/11/20/461294/lack-housing-mental-health-disabilities-exacerbate-one-another/>.

<sup>63</sup> Florida Council on Homelessness, *supra* note 3, at 17. *See also*: Miami Homes for All & Shimberg Center for Housing Studies at the University of Florida, *Students Experiencing Homelessness in Florida: Updates and Solutions*, 7, accessible at: [https://drive.google.com/file/d/1kPn8FVtnNlIeznv\\_Br4jWbungnPOVLp-/view](https://drive.google.com/file/d/1kPn8FVtnNlIeznv_Br4jWbungnPOVLp-/view).

<sup>64</sup> National Health Care for the Homeless Council, *supra* note 62.

and recuperate.”<sup>65</sup> Living on the street or in a shelter increases the risk of contracting communicable diseases, such as sexually transmitted diseases, hepatitis, and tuberculosis.<sup>66</sup> Any efforts made to treat illness are made more difficult by the potential theft or loss of medications and the exposure of medications to the elements.<sup>67</sup> Moreover, as discussed above, individuals may lose medications during sweeps of homeless encampments.

17. Additionally, individuals experiencing homelessness lack access to quality health care, an issue exacerbated by the fact that Florida has not adopted Medicaid expansion.<sup>68</sup> Uninsured, they cannot access preventive health services and are forced to seek emergency care when health issues escalate. This is both ineffective and expensive. As the Council on Homelessness reported in 2018, “people who are uninsured and homeless cycle out of crisis and health systems, resulting in high community costs but few, if any improvements in health or preventative care.”<sup>69</sup> This is particularly true when it comes to individuals with mental health or substance abuse issues.<sup>70</sup> Of the unsheltered homeless individuals in MDC: 18% reported a physical disability, 5% reported mental health issues, 5% reported substance abuse issues, and 5% reported experiencing all three. Of the sheltered homeless individuals: 14% reported a physical disability, 14% reported mental health issues, and 7% reported experiencing both.<sup>71</sup>

18. Within the past year, Florida has taken an important step in protecting the health and rights of people who use drugs. Prior to 2016, Florida did not allow for needle exchanges (where used needles can be exchanged for new, sterile ones),<sup>72</sup> despite the rise in HIV infections with Miami-Ft. Lauderdale-Palm Beach leading the nation with “the highest prevalence of newly-diagnosed individuals with HIV infection.”<sup>73</sup> Florida subsequently established the IDEA (Infectious Disease Elimination Act) Exchange in Miami.<sup>74</sup> In 2018, it exchanged 173,532 clean needles for 186,167 used ones, distributed over 1,300 boxes of Narcan to prevent drug overdose, made 682 overdose referrals, and administered 600 HIV tests and 500 Hepatitis C tests.<sup>75</sup> In 2019, the Florida Legislature enabled the program’s expansion, permitting individual county commissions to establish needle exchanges with private funding.<sup>76</sup> However, Florida legislation prohibits needle exchange programs from receiving state and federal funding, restricting and underfunding this important life-saving intervention.<sup>77</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Florida Health Justice Project, *Medicaid Expansion*, <https://www.floridahealthjustice.org/medicaid-expansion.html>.

<sup>69</sup> Florida Council on Homelessness, *supra* note 3, at 21.

<sup>70</sup> *Id.*

<sup>71</sup> MDC Homeless Trust, *Homeless PIT Overview*, Slide 11 (2018), accessible at: [homelesstrust.org/continuum-of-care-subcommittee.asp](http://homelesstrust.org/continuum-of-care-subcommittee.asp).

<sup>72</sup> The Center for Innovative Public Policies, *Needle Exchange Programs: Considerations for Criminal Justice*, accessible at: <https://harmreduction.org/wp-content/uploads/2012/01/NEPcriminaljusticeCIPP.pdf>.

<sup>73</sup> Florida Senate, *Bill Analysis and Fiscal Impact Statement: PCS/CS/SB 366 (858036)*, at 2 (2019) (referencing a 2017 report by Florida’s Department of Health).

<sup>74</sup> University of Miami School of Medicine, *Idea Exchange*, accessible at: <http://medicine.med.miami.edu/ideaexchange/>.

<sup>75</sup> Florida Senate, *Bill Analysis and Fiscal Impact Statement: PCS/CS/SB 366 (858036)*, at 6 (2019).

<sup>76</sup> H.R., *Final Bill Analysis*, CS/HB 171, 7 (Fla. 2019).

<sup>77</sup> Miami-Dade County, Legislative Item 192270, *Sterile Needle and Hypodermic Syringe Exchange Program* (Oct. 3, 2019), accessible at:

19. Additionally, persons experiencing homelessness are often at a higher risk of violence—physical, sexual, and psychological—because of the often-crowded shelter space and the lack of privacy and security that accompanies both street and shelter living.<sup>78</sup> Florida has one of the highest rates of violence against individuals experiencing homelessness.<sup>79</sup> Moreover, homelessness often stems from domestic violence, requiring services that address trauma, ensure safety, and enable the economic stability of survivors. A 2019 report of the Florida Council on Homelessness showed 2,029 individuals experiencing homelessness are survivors of domestic violence.<sup>80</sup>

### C. Access to Housing

20. International human rights instruments—including the UDHR, ICESCR, ICERD, and CEDAW—establish that adequate housing is an essential human right.<sup>81</sup>

21. MDC suffers from significant barriers that limit access to adequate<sup>82</sup> housing. According to Miami Homes for All, “Miami is the third least affordable city in the country.”<sup>83</sup> Miami has

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<http://www.miamidade.gov/govaction/matter.asp?matter=192270&file=true&fileAnalysis=false&yearFolder=Y2019>). On October 3, 2019, the Miami-Dade County Board of County Commissioners is scheduled to review the “Sterile Needle and Hypodermic Syringe Exchange Program.” New language in the ordinance would prevent the operation of any new needle exchange programs through June 30, 2021. After June 30, 2021, new needle exchange programs would need to seek a contract with the Board of County Commissioners and meet all requirements of the Infectious Disease Elimination Act); Fla. Stat. §381.0038(4)(f) (2019) (“State, county, or municipal funds may not be used to operate an exchange program. Exchange programs shall be funded through grants and donations from private resources and funds.”).

<sup>78</sup> National Health Care for the Homeless Council, *supra* note 62.

<sup>79</sup> National Coalition for the Homeless, *Vulnerable to Hate: A Survey of Bias-Motivated Violence against People Experiencing Homelessness in 2016-2017*, 14 (2018), accessible at: [nationalhomeless.org/wp-content/uploads/2019/01/hate-crimes-2016-17-final\\_for-web2.pdf](http://nationalhomeless.org/wp-content/uploads/2019/01/hate-crimes-2016-17-final_for-web2.pdf).

<sup>80</sup> Florida Council on Homelessness, *Annual Report* (2019), Appendix III, Table 3: Homeless Population Characteristics, 2018-2019, accessible at: [myflfamilies.com/service-programs/homelessness/docs/2019CouncilReport.pdf](http://myflfamilies.com/service-programs/homelessness/docs/2019CouncilReport.pdf).

<sup>81</sup> UDHR, 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 . . . housing.”); ICESCR, Art. 11(1) (“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate . . . housing and to the continuous improvement of living conditions”); ICERD, Art. 5(e)(iii) (“Other civil rights, in particular . . . the right to housing”); CEDAW, Art. 14(h) (“[ensures] women the right to enjoy adequate living conditions, particularly in relation to housing . . .”).

<sup>82</sup> See CESCR *General Comment* 4 ¶ 7 (“[The Right to Housing] should be seen as the right to live somewhere in security, peace and dignity.” “Adequate shelter means . . . adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.”); See also CESCR *General Comment* 4 ¶ 8 (“[Adequate housing should] include the following: legal security of tenure . . . availability of services, materials, facilities and infrastructure . . . affordability . . . habitability . . . accessibility . . . location . . . cultural adequacy.”).

<sup>83</sup> Miami Homes for All, *Connect Capital Miami*, at ii (further explaining that “More than half of Miami households are paying more than they can afford on housing.”); FIU Metropolitan Center, *Miami-Dade County Prosperity Initiatives Feasibility Study*, at i; FIU Metropolitan Center, *Miami-Dade County Prosperity Initiatives Feasibility Study*, at 6 (indicating the need for at least 130,000 homes in MDC to meet the current need); see also FREDDIE MAC, RENTAL BURDEN BY METRO 3 (2019), [https://mf.freddiemac.com/docs/rental\\_burden\\_by\\_metro.pdf](https://mf.freddiemac.com/docs/rental_burden_by_metro.pdf) (finding that Miami is one of the most expensive cities to live in based on rent burden).

the second-worst income and poverty level in America, and its residents spend the nation's highest share of their income on rent<sup>84</sup> with 48% of residents spending more than 30% of their income on housing.<sup>85</sup> Furthermore, municipalities are barred from addressing the income gap locally because Florida state law prohibits municipalities from setting their own minimum wages.<sup>86</sup> The income gap disproportionately impacts populations of color, who compose 17% of households below the poverty line and 41% of those below survival level.<sup>87</sup> Moreover, Florida law essentially outlaws rent control.<sup>88</sup>

22. Lack of access to housing in MDC has a particularly detrimental effect on women. 40% of households in MDC are single parent led<sup>89</sup> and, of those, 71% are led by women.<sup>90</sup> 17% of femme-led single parent households earn less than a living income, making it difficult to access adequate housing.<sup>91</sup>

23. In switching from traditional (Euclidean) to form-based zoning, Miami and parts of unincorporated MDC recharacterized zoning for the entire region with one legislative act and eliminated the need for public hearings and community participation for many new developments since the code encourages development and streamlined the process for developments to get administratively approved.<sup>92</sup> This has resulted in substantial loss of affordable housing as the city has instead prioritized rapid development.<sup>93</sup> Under Miami21, Special Area Plans allow parcels that are nine acres or larger in size to forgo normal zoning laws and provide developments free reign to dramatically change the character of neighborhoods and essentially evict existing communities, which are often low-income communities that have experienced historic disenfranchisement and discrimination.<sup>94</sup> Moreover, climate change, leading to rising sea levels, has caused more affluent populations to move inland to previously low income neighborhoods, displacing their inhabitants.<sup>95</sup> Gentrification has contributed to the

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<sup>84</sup> Jerry Iannelli, "Five Stories That Show Wages in Miami Are Far Too Low," *Miami New Times* (Sept. 24, 2017).

<sup>85</sup> Florida, Richard and Pedigo, Steven, *Miami's Housing Affordability Crisis*, at 4 (2019).

[https://carta.fiu.edu/mufi/wp-content/uploads/sites/32/2019/03/Miamis\\_Housing\\_Affordability\\_Crisis\\_FNL.pdf](https://carta.fiu.edu/mufi/wp-content/uploads/sites/32/2019/03/Miamis_Housing_Affordability_Crisis_FNL.pdf).

<sup>86</sup> *City of Miami Beach v. Fla. Retail Fed'n, Inc.*, 233 So. 3d 1236, 1236 (Fla. Dist. Ct. App. 2017); Fla. Stat. §218.077(2) (2015) ("Except as otherwise provided in subsection (3), a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage . . .").

<sup>87</sup> Bustamante, Ali R. *State of Working Florida 2017*; Miami: Florida International University Center for Labor Research and Studies, 2017, <https://risep.fiu.edu/state-of-working-florida/state-or-working-florida-2017.pdf>.

<sup>88</sup> FL ST § 125.0103 (1)(a) ("no county, municipality, or other entity of local government can impose price controls upon a local business activity . . . that is not part of a government agency." This includes home and apartment prices which essentially outlaws any potential local rent control).

<sup>89</sup> United Way Miami, *The Miami-Dade ALICE recap*, available at: <http://unitedwaymiami.org/wp-content/uploads/2019/02/18145-EXT-ALICE-One-pager.pdf>.

<sup>90</sup> Miami's Worker's Council, *Blueprint and Connect Capital Report*, available at: <https://drive.google.com/file/d/1Uq5JjXCCsUwMkYqv76V0yVXCtj1uboX5/edit>.

<sup>91</sup> *Id.*

<sup>92</sup> Interview with Daniela Tagtachian, Clinic Professor, Environmental Justice Clinic, University of Miami School of Law (Jul. 8, 2019).

<sup>93</sup> *Id.*

<sup>94</sup> Daniela A. Tagtachian, Natalie N. Barefoot & Adrienne L. Harreveld, *Building by Right: Social Equity Implications of Transitioning to Form-Based Code*, 28 *J. Affordable Housing & Community Dev. L.* 71, 84-85 (2019).

<sup>95</sup> South Florida Housing Studies Consortium, *The Dynamics of Housing Affordability in*

hyper-segregation of neighborhoods and has pushed poorer inhabitants further away from the city center and economic opportunities.<sup>96</sup> If unable to afford a car, they must also contend with a severe lack of public transportation.<sup>97</sup>

24. MDC provides tenants with few rights. Tenants suffer from both underenforcement of the housing code (where landlords allow buildings to fall into disrepair) and overenforcement (where developers ensure a property is frequently examined and fined for minor infractions, pressuring residents to leave).<sup>98</sup> Renters often have month to month tenancies and can be evicted 15 days after receiving notice. In Miami and Miami Beach, landlords must wait 30 days to evict a tenant, but even this timeframe is insufficient to find new housing. While renters may withhold rent if their building is in violation of the housing code, renters must provide the full rent when challenging an eviction, unless a motion to determine the amount of rent is filed.<sup>99</sup> Renters without legal representation may not know this, and the financial burden may leave those unjustly evicted with no recourse.<sup>100</sup>

25. MDC has a unique approach to youth homelessness. The HOMY Collective: Helping Our Miami-Dade Youth (HOMY) is a collaboration of about 100 organizations and youth leaders working to prevent and end youth homelessness.<sup>101</sup> Miami Homes For All, Inc. is the backbone support to The HOMY Collective, facilitating communication and trust development across all partners.<sup>102</sup> The Youth Voice Action Council (YVAC), a cohort of 10 young people who have experienced homelessness, guide the work of HOMY as members of the Steering Committee and as a formal subcommittee of the Homeless Trust Board with full authority.<sup>103</sup> Four working groups within HOMY focus on education and employment, stable housing, permanent

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MDC, at ii; Interview with Daniela Tagtachian, Clinic Professor, Environmental Justice Clinic, University of Miami School of Law (Jul. 8, 2019).

<sup>96</sup> Interview with Daniela Tagtachian, Clinic Professor, Environmental Justice Clinic, University of Miami School of Law (Jul. 8, 2019); Tony Roshan Samara & Grace Chang, *Gentrifying Downtown Miami*. 15 *Race Poverty & the Environment* 14,15; Jesse M Keenan et al, “Climate Gentrification: from theory to empiricism in Miami-Dade County, Florida”, *Environ Res. Lett.* 13. (2018).

<sup>97</sup> Interview with Stephen Schnably, Professor, University of Miami School of Law (Sept. 25, 2019); Tony Roshan Samara & Grace Chang, *Gentrifying Downtown Miami*, 15 (2008); *but see* Better Bus Project Miami, <https://www.betterbus.miami/concepts> (describing how MDC has been taking some steps to reassess its bus system to make public transportation more comprehensive and reliable in the county).

<sup>98</sup> Interview with Daniela Tagtachian, Clinic Professor, Environmental Justice Clinic, University of Miami School of Law (Jul. 8, 2019); Curtis J. Berger, *Beyond Homelessness: An Entitlement to Housing*, 45 *UMIALR* 315, 322 n.43 (1990).

<sup>99</sup> Florida Statute § 83.60(2) (stating that a “tenant shall pay into the registry of the court the accrued rent as alleged in the complaint ... and the rent that accrues during the pendency of the proceeding.” “Failure of the tenant to pay the rent into the registry of the court ... within 5 days... after the date of service of process constitutes an absolute waiver of the tenant’s defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant.)

<sup>100</sup> Interview with Jeffrey Hearne, Clinic Professor, Tenants Rights Clinic, University of Miami School of Law. (Sept. 26, 2019). Ann. M. Piccard, *Residential Evictions in Florida: When the Rent is Due, Where is the Process?* 36 *STETLR* 149, 150 (2006).

<sup>101</sup> HOMY collective, Our Mission, <https://www.homycollective.org/mission>.

<sup>102</sup> Interview with Pauline Green, Executive Director, Alliance for GLBTQ Youth (Sept. 29, 2019); Interview with Audrey Aradanas, Youth Program Manager, Miami Homes for All (Sept 30, 2019).

<sup>103</sup> *Id.* (also indicating YVAC consultants are compensated for their expertise and receive professional development opportunities and advocacy training).

connections, and well-being.<sup>104</sup> The collective works closely with the MDC Homeless Trust, which provided seed funding through a 1% Food & Beverage Tax dedicated to homelessness.<sup>105</sup> The work is currently funded by The Children’s Trust. The HOMY Collective and the MDC Homeless Trust embraced the national 100-Day Challenge to End Youth Homelessness and created 85 exits to safe and stable housing, addressed psychological issues that can be the root cause of homelessness, and ensured that, on average, youths experiencing homelessness did not stay on the streets longer than two days.<sup>106</sup>

26. HOMY benefits from an understanding of the role intersectionality plays in economic disparity. The Alliance for GLBTQ Youth is a co-chair of The HOMY Collective.<sup>107</sup> In the U.S., 45% of homeless youth identify as LGBT, an astoundingly high number considering that only 7-9% of youth generally claim to be part of the LGBT community.<sup>108</sup> The Alliance focuses on mental health and family support for LGBT youth, working to tackle the root of homelessness by preventing individuals from being pushed out of their family home. The Alliance developed a case management program for LGBTQ youth experiencing homelessness called project SAFE which is now a program of their LGBTQ partner agency, Pridelines. Members of The HOMY Collective and the Miami-Dade County Homeless Trust were recently chosen to participate in two years of technical assistance through the Away Home America Grand Challenge that will improve data and ultimately center LGBTQ+ youth and youth of color in our community.<sup>109</sup>

27. HOMY also provides youth experiencing homelessness with critical educational support. “The Project UP-START Program assists with the identification, enrollment, attendance, and academic support of students who are living in unstable housing.”<sup>110</sup> Project UP-START was one of the key founders and is still one of the co-chairs of The HOMY Collective. The program provides free tutoring, afterschool care, free transportation, and education case managers to youth experiencing homelessness.<sup>111</sup>

### III. RECOMMENDATIONS

28. The following recommendations address human rights obligations by the U.S., Florida, MDC, and MDC’s various municipalities to prevent criminalization of homelessness and provide access to basic health services and adequate housing.

#### A. General

- MDC should enact a Homeless Bill of Rights that prohibits the criminalization of life-sustaining activities and provides for basic health services and adequate housing.

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<sup>104</sup> *Id.*

<sup>105</sup> HOMY collective Comprehensive Plan to Prevent and End Youth Homelessness in Miami-Dade County, page 2. <http://www.homelesstrust.org/library/coc/2017-homy-comprehensive-plan.pdf>.

<sup>106</sup> Miami Homes for All, *Youth Homelessness*, <https://www.miamihomesforall.org/youth-homelessness>.

<sup>107</sup> *Id.*

<sup>108</sup> Matt Foreman, *Gay is Good*, 32 Nova L.R. 557, 560 (2008).

<sup>109</sup> The Grand Challenge to End Youth Homelessness, <https://awayhomeamerica.org/grand-challenge/>

<sup>110</sup> Project UP-START, *Project Up-START Program Description*, <http://projectupstart.dadeschools.net#!/fullWidth/2137>.

<sup>111</sup> Project UP-START, *Project UP-START Program Services*, <http://projectupstart.dadeschools.net#!/fullWidth/2139>.

## **B. Criminalization of Homelessness**

- MDC and its various municipalities should not enforce statutes prohibiting life-sustaining activities by individuals when there is no alternative shelter or housing.
- When MDC and the various municipalities conduct sweeps, they should do so in a manner that respects the dignity, safety, and property of individuals experiencing homelessness.
- MDC and its various municipalities should observe the protections contained within the Pottinger Consent Decree.
- MDC and its various municipalities should monitor compliance of officers and establish consequences for their failure to follow internal procedures governing interactions with individuals experiencing homeless, such as re-training or suspension.

## **C. Access to Health Services**

- Florida should adopt Medicaid expansion to cover low-income uninsured adults.
- The U.S., Florida, and MDC should invest more resources to provide preventive care, including mental health and substance abuse services, for persons experiencing homelessness and support for survivors of domestic violence to address trauma, ensure safety, and enable economic stability. MDC should provide access to free mental health clinics.
- MDC should establish free needle exchange programs throughout the county and amend current legislation to permit programs to receive federal and state funding.

## **D. Access to Housing**

- MDC should invest more resources in homeless shelters as *temporary* residences, aiming at rehousing as the ultimate goal, and should commit resources to guarantee all residents adequate housing.
- MDC's various municipalities should, in consultation with residents from a cross-section of neighborhoods where residents suffer unaffordability and/or homelessness, adopt of polices best-suited to the needs of communities including, but not limited to: social housing, community land trusts, rent control, subsidized housing, and removing land and housing from the speculative market. Moreover, municipalities should track unit production, monitor compliance, and regularly assess affordable housing policies and modify them where appropriate.<sup>112</sup>
- The various municipalities within MDC should simplify the building code to allow for the more expedited creation of affordable housing.
- The various municipalities within MDC should create incentives that encourage the equitable and democratic development of neighborhoods and require public hearings in neighborhoods with new developments. Developers should prepare both

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<sup>112</sup> Miami Homes for All & The City of Miami, *Connect Capital Miami* (2009) (Miami currently has a plan to create and preserve 12,000 affordable homes by 2024. Stakeholders emphasized the importance of transparency in holding the city accountable to this goal's achievement.).

environmental and community impact assessments and mitigation plans for displacing vulnerable populations.

- MDC should invest in improving public transportation accessibility and reliability.
- Florida should remove laws that preempt municipalities' ability to enact rent control and set a local minimum wage.
- MDC should provide legal representation or court navigators to assist those facing eviction.<sup>113</sup>
- The U.S. Department of Housing and Urban Development should continue and expand funding to replicate the HOMY Collective in other states. MDC should replicate the HOMY Collective's multi-dimensional and cross-sectoral approach in addressing homelessness more broadly.

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<sup>113</sup> E.g., Kriston Capps, *New York Guarantees a Lawyer to Every Resident Facing Eviction*, THE CITY LAB, (Aug. 14, 2017) <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>.