



General Assembly

Distr.: General
26 June 2024

English only

Human Rights Council

Fifty-sixth session

18 June–12 July 2024

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Breaking the cycle: ending the criminalization of homelessness and poverty

Report of the Special Rapporteur on extreme poverty and human rights*

Summary

The present study by the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, was prepared in accordance with Human Rights Council resolutions 8/11 and 52/10, in which the Council requested special procedure mandate holders to work in close coordination and cooperation on issues falling within the scope of their mandates. The study is aimed at assisting States to implement the guiding principles on extreme poverty and human rights (see A/HRC/21/39) and Council resolutions 43/14 and 55/11, in which the Council called upon States to decriminalize homelessness and life-sustaining activities of people in poverty.

* Reproduced as received, in the language of submission only.

Breaking the cycle: ending the criminalization of homelessness and poverty

Study by the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Contents

	<i>Page</i>
I. Introduction	3
II. Why the criminalization of homelessness and poverty is not a solution	4
A. Criminalization violates human rights	4
B. Evictions, fines and detention cause further human rights violations	7
C. Criminalization perpetuates historical legacies of discrimination and exclusion	9
D. Criminalization entrenches discrimination and stigmatization	10
E. Criminalization is an unsuitable, inefficient and costly approach to addressing social issues .	12
F. Criminalization is not a rational or proportionate response to enhancing public order and safety	13
III. Alternatives to criminalization: an agenda for change	13
A. Repeal laws that criminalize life-sustaining activities	14
B. Improve judicial review, access to justice and legal aid	14
C. Implement alternatives to detention	14
D. End incarceration for failure to pay a fine	15
E. Reform law enforcement approaches.....	15
F. Promote equal access to public spaces.....	16
G. Housing first, not last.....	17
H. Prevention of Homelessness	17
I. Reform the regulation of informal economic activities	17
J. Enhancing the role of regional and local governments	18
IV. Conclusions and Recommendations.....	18

I. Introduction

1. Persons experiencing homelessness and poverty are extremely vulnerable to human rights violations. Homelessness is, by itself, an affront to human dignity and a serious violation of the right to adequate housing and other human rights. States have an obligation to prevent and eliminate homelessness, including by guaranteeing access to safe, affordable, and adequate housing.¹ Similarly, poverty is a cause and consequence of a broad range of human rights violations, and States have an obligation to end and eradicate poverty. This study examines a double victimization of persons experiencing homelessness and poverty - laws, policies and practices that penalize and criminalize life-sustaining activities in public spaces. It is based on over 130 submissions from all world regions² and consultations held with States, local governments, human rights institutions, civil society organizations and academic experts.

2. Laws which criminalize homelessness and poverty include:

(a) **Vagrancy laws** which criminalize a person for failure to provide “a good account of themselves”, having no settled or fixed abode, or having no means of subsistence. Vagrancy is criminalized either through colonial-era laws that contain vague and arbitrary prohibitions such as being a ‘rogue’, a ‘vagabond’, ‘idle or disorderly’.

(b) Modern laws which prohibit **behaviour-based conduct** and criminalize activities such as camping, sleeping or erecting shelter, eating, washing or bathing, storing personal effects in a public space, causing noise disturbances or obstructing a road, footpath or entrance to a public or private building.

(c) Regulations for **environmental, public health or waste management**, that prohibit littering and the unauthorised disposal or collection of waste or garbage, public washing or bathing, eating, drinking or cooking in a public space, urinating and defecating in public, or washing, drying or spreading clothes or bedding.

(d) Prohibitions against **begging**, which criminalize requests for money or other items of value. This can include blanket bans on all forms of begging, begging in particular zones, or the prohibition of ‘active’ begging.

(e) Prohibiting **informal labour activities in the public domain that sustain livelihoods**, such as hawking, vending, trading, waste collection and sorting, car guarding and washing, or providing informal transport.

(f) Laws against **squatting**, such as the unlawful occupation of uninhabited public and private buildings or land for survival needs due to a lack of access to any affordable alternative.

(g) **Bans or time restrictions on parking vehicles or caravans** in public spaces, prohibiting camping in a vehicle, tent, caravan or any other type of temporary or provisional accommodation.

3. Many of these laws ostensibly aim at maintaining public order and public health, protecting the environment, or reducing visible homelessness. They often appear neutral: they refer to certain behaviours and do not explicitly target persons experiencing homelessness or people who rely on the street for their survival. Yet while the objective of preventing certain activities may be legitimate from a public order or health perspective, it often results in criminalizing people for having no ‘home’ in which they can sleep, eat or perform hygiene-related activities.

4. This study largely focusses on the criminalization of persons using public spaces. However, public spaces have increasingly become semi-public or private, particularly railway stations, public transport, shopping malls, or privately-owned parks and squares. Persons experiencing homelessness may also squat on privately-owned buildings, or collect

¹ A/HRC/43/43, Guideline No. 5.

² All submissions are available at: <https://www.ohchr.org/en/calls-for-input/2023/call-input-decriminalization-homelessness-and-extreme-poverty>. If not indicated otherwise, subsequent footnotes refer to the submission received.

food or reusable materials from waste containers that may be considered private property. Laws protecting private property may legitimately protect against nuisance or trespass, but the response to such violations must be human rights compliant where property rights are violated because of life-sustaining activities by persons experiencing homelessness or poverty. Punishing them for such activities is not a human rights-compliant approach.

5. The prohibition of life-sustaining activities exposes persons experiencing homelessness or poverty to the risk of further rights violations. Initially punishment usually takes the form of a fine, but can also include cascading consequences such as eviction, arrest, deportation, forced institutionalization or imprisonment. When people are unable to pay a fine and subjected to further penalties for failure to pay, people can be imprisoned for minor offences. This raises serious human rights concerns relating to the proportionality of the sanction, cruel and degrading treatment or punishment and equality before the law. Alarming, fines are also imposed for conduct that should not be subject to sanction at all. People in street situations are also at elevated risk of being subjected to arbitrary treatment by public officials or to extortion or physical abuse by private persons.

6. Human rights mechanisms of the United Nations have repeatedly expressed concern about the criminalization of persons experiencing homelessness or poverty.³ While many States have repealed or amended laws criminalizing begging or other life-sustaining activities, administrative or criminal sanctions remain common in local regulations.⁴

7. In this study the Special Rapporteurs explain why the criminalization of poor and homeless persons is an inappropriate response under human rights law (II). They then explore a set of alternatives (III) and close with a range of recommendations (IV).

II. Why the criminalization of homelessness and poverty is not a solution

A. Criminalization violates human rights

8. There is a growing international consensus that criminalizing life-sustaining activities in public spaces is not acceptable. This consensus is reflected in the New Urban Agenda,⁵ the Guiding Principles on Extreme Poverty and Human Rights⁶, the Guidelines on the Implementation of the Right to Adequate Housing,⁷ resolutions of the Human Rights Council,⁸ reports by the United Nations Secretary-General,⁹ recommendations of United

³ A/66/265; A/HRC/21/39; A/HRC/43/43.

⁴ Lukas Muntingh and Kirsten Petersen, 'Punished for Being Poor: Evidence and arguments for the decriminalisation and declassification of petty offences', <https://dullahomarinstitute.org.za/acjr/resource-centre/punished-for-being-poor-evidence-and-arguments-for-the-decriminalisation-and-declassification-of-petty-offences>.

⁵ A/RES/71/256*, para 108.

⁶ A/HRC/21/39, adopted by Council resolution 21/11.

⁷ A/HRC/43/43.

⁸ Resolutions 43/14 and 55/11.

⁹ A/78/236, para 81(f).

Nations human rights mechanisms¹⁰, the United Nations System Common Position on Incarceration,¹¹ and principles issued by the International Commission of Jurists.¹²

9. At the regional level, the African Commission on Human and Peoples' Rights has adopted Principles on the Decriminalization of Petty Offences,¹³ and the African Court on Human and Peoples' Rights has issued an advisory opinion on vagrancy laws.¹⁴ The European Court of Human Rights has found that blanket bans on begging violate the European Convention on Human Rights, in particular, when begging is the only option to ensure survival.¹⁵ Similarly, the Inter-American Commission on Human Rights has enquired into human rights violations experienced by informal traders and waste pickers working in the street.¹⁶

10. Laws criminalizing life-sustaining activities in public spaces may violate a range of human rights:

(a) **The prohibition of cruel, inhuman or degrading treatment or punishment.**

Laws criminalizing life-sustaining activities may result in a violation of Article 7 of the International Covenant on Civil and Political Rights (ICCPR) prohibiting cruel, inhuman or degrading treatment or punishment, in particular when a person is repeatedly evicted or incarcerated; when arrests or move-on orders result in a persistent state of fear or sleep deprivation; when personal belongings or merchandise are confiscated or destroyed; or when evictions from street encampments or squatted buildings are carried out without the provision of any adequate housing alternative.¹⁷ Such laws may also violate other human rights treaties, including regional human rights treaties and the Convention against Torture. The threshold of cruel, inhuman or degrading treatment may also be reached when a State fails to respond to requests by a concerned individual to be provided with accommodation or the basic means for a survival with human dignity.¹⁸

(b) **The right to an adequate standard of living.** Laws criminalizing persons experiencing homelessness or poverty stem from a root cause: failure to guarantee their right to an adequate standard of living, including the right to food and adequate housing (Article

¹⁰ See for example A/HRC/53/29, A/66/265, and the recommendations concerning Albania, CRC/C/ALB/CO/2-4 para. 80; Bangladesh, CRC/C/BGD/CO/4, para. 84; Botswana, CRC/C/BWA/CO/2-3, para 66; Cambodia, CCPR/C/KHM/CO/3 para. 28-29; Denmark, E/C.12/DNK/CO/6, para. 48; Hungary, CCPR/C/HUN/CO/6, para. 33-34; Kyrgyzstan, CRC/C/KGZ/CO/3-4, para. 66; Nigeria, CRC/C/NGA/CO/3-4; para. 84-85; Rwanda CCPR/C/RWA/CO/3, para. 16; CCPR/C/RWA/CO/4; 27-28; CRC/C/RWA/CO5-6, para. 47; Saint Lucia CRC/C/LCA/CO/2-4; para. 63; Sudan CRC/C/SDN/CO/3-4, para. 80-81; United Kingdom, E/C.12/GBR/CO/6, para. 51-52. United States of America CCPR/C/USA/CO/5, para. 40-41; CERD/C/USA/CO/10-12; para. 40; Uruguay E/C.12/URY/CO/5 para. 42-43 and Zimbabwe, CERD/C/ZWE/CO/5-11, para. 43.

¹¹ Available at: https://www.unodc.org/res/justice-and-prison-reform/nelsonmandelalarules-GoF/UN_System_Common_Position_on_Incarceration.pdf.

¹² 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty, <https://icj2.wenginepowered.com/wp-content/uploads/2023/03/Principles-ReportEnglish28Apr024.pdf>.

¹³ African Commission on Human and Peoples' Rights, 'Principles on the Decriminalisation of Petty Offences in Africa', <https://achpr.au.int/index.php/ar/node/846>.

¹⁴ African Court on Human and Peoples' Rights, Advisory Opinion No. 001/2018 of 4 December 2020, <https://www.african-court.org/cpmt/storage/app/uploads/public/5fd0c649b5fd0c649b6658574074462.pdf>.

¹⁵ Lăcătuș v. Switzerland, Appl. No. 14065/15, judgement of 19 January 2021, <https://hudoc.echr.coe.int/eng?i=001-207377>, see as well *Dian v. Denmark*, Application no. 44002/22, decision from 21 May 2024, para. 53, <https://hudoc.echr.coe.int/eng?i=001-234499>.

¹⁶ See, <https://www.oas.org/es/cidh/sesiones/default.asp?S=187>.

¹⁷ CCPR/C/USA/CO/4, para. 19 and the amicus curiae submission to the Supreme Court of the United States of the Special Rapporteurs in *City of Grants Pass v. Johnson*, case 23-175, https://www.supremecourt.gov/DocketPDF/23/23-175/306690/20240403164253559_23-175%20bsac%20UN%20Rapporteurs%20Final.pdf.

¹⁸ See for example European Court of Human Rights, *N.H. and Others v. France*, Appl. no. 28820/13, judgement of 2 July 2020, <https://hudoc.echr.coe.int/eng?i=001-203645>.

11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)). According to the Committee on Economic, Social and Cultural Rights, nobody should be deprived of minimum essential levels of this right, including essential foodstuffs, basic shelter and housing.¹⁹ Subjecting begging, squatting, or the collection of unused food to penalties violates this right, when persons have no alternative to secure their survival by other means. When prosecution for begging or squatting leads to a criminal record, the affected persons often face additional barriers to finding work and housing, thus creating a vicious cycle.

(c) **The right to life.** Laws that criminalize the performance of life-sustaining activities in public spaces can also result in a violation of the right to life, as stipulated under Article 6 of the ICCPR, by interfering with the efforts of persons experiencing homelessness or poverty to maintain and build a decent life.²⁰ The right to life, according to the Human Rights Committee, “should not be interpreted narrowly. It concerns [...] as well [the right] to enjoy a life with dignity”.²¹ In addition, repeated or long homelessness, exacerbated by patterns of incarceration and release, also causes preventable mortality which States are obliged to prevent by ensuring safe living and housing conditions.

(d) **The right to the highest attainable standard of physical and mental health.** Many persons experiencing homelessness or poverty experience very high mortality rates and increased health risks. When such people are subjected to criminalization, targeting such individuals may constitute prohibited discrimination based on their health status, and result in cruel, inhuman or degrading treatment. Rather than punishing such individuals, States should act to prevent the high levels of preventable morbidity and mortality. Where homelessness may be triggered by mental health issues or by psychosocial and intellectual disabilities, the response should not be to impose move-on orders, evictions, deportation, arrest or detention further violating the right to health (Article 12 of the ICESCR): it should be to provide access to adequate housing, social or health care services.

(e) **The right to liberty and security.** Under Article 9 of the ICCPR, any deprivation of liberty is acceptable only if it is based on grounds stipulated in legislation, justifiable, proportionate and strictly necessary. In most instances, the arrest and detention of persons in street situations for life-sustaining activities is disproportionate and unnecessary. States can address public order problems caused by camping, sleeping or working in public spaces through other means: for example, by ensuring that everyone within their jurisdiction has access to adequate housing, pursuing a non-punitive approach to policing, or by regulating informal business activities in public spaces. The enforcement of petty offences against persons experiencing homelessness or working in the street often subjects them to persistent patterns of arbitrary stops and searches, leading to arrest and detention in violation of the right to liberty and security.²² Arbitrary law enforcement is also evident in patterns of arrest, detention and release without being charged, which particularly targets persons experiencing visible forms of homelessness, sex workers, people who use drugs, and others marginalized because of their race, religion, ethnicity, national origin or other status.²³ Persons in situation of homelessness and poverty are also more frequently subjected to arbitrary mass arrests which target groups particularly vulnerable to police profiling such as racially marginalized groups, sex workers, street vendors, children in street-based situations,

¹⁹ Committee on Economic Social and Cultural Rights (CESCR), General Comment No. 2, para. 10.

²⁰ See more generally A/71/310.

²¹ General Comment No. 36, para. 3.

²² High Court of Kenya, Anthony Njenga Mbuti & 5 Others v Attorney General & 3 Others, Constitutional Petition No 45 of 2014, judgment of 27 March 2015, eKLR.

²³ See African Court on Human and Peoples’ Rights (fn. 14), p. 28 and Abbé Pierre Foundation, pp. 2 and 6; American University, Department of Justice, Law and Criminology, p. 4; Dullah Omar Institute, pp. 3-4; Miami Law Human Rights Clinic, pp. 6-8 and 28; Austrian Association of Cities and Towns, p. 3; Amnesty International, pp. 8-9; Campaign to Decriminalize Poverty and Status, p. 8; Consortium for Street Children, pp. 7, 15 and 17; Commission on Human Rights, Philippines, para 31; Human Rights Commission of Mexico City, pp. 7-8; (RE)claim, p. 6; African Policing Civilian Oversight Forum, p. 14.

migrants or refugees, people who beg, and persons with disabilities.²⁴ Finally, persons experiencing homelessness are also at heightened risk of being, arrested and charged for activities that are not illegal in private homes, such as sleeping, cooking or eating.

(f) **The right to liberty of movement and freedom of choice of residence.** When persons in street situation are subjected to move-on orders, displaced, deported, restricted where they are allowed to stay or work, or not permitted to reside at a location of their own choice within their country, this may violate Article 12 of the ICCPR. Such restrictions may exclude persons experiencing homelessness or poverty from areas where they have access to housing, income, work, food, water and sanitation, health services or social networks essential for their survival.

(g) **The right to privacy.** People who rely on public spaces for their survival are vulnerable to increased police interactions and are at a heightened risk of being searched without a warrant on grounds that would not be permitted in a private residence. Such interference may constitute an arbitrary interference with a person's home or privacy (Article 17 of the ICCPR),²⁵ given that for persons in street situation their protected 'home' and private space may be a caravan, vehicle, makeshift shelter, tent, or their sleeping bag.

(h) **Freedom of assembly.** The right to assemble peacefully in public places also covers the right to meet in public places for private, cultural, economic, or other purposes. Many laws and regulations criminalizing persons experiencing homelessness or poverty for meeting or using public spaces interfere with this right.²⁶

(i) **The right to work and to just and favourable conditions of work.** Laws and enforcement measures against persons using the street for income generation often violate their right to work and to fair and safe working conditions (Articles 6 and 7 (b) of the ICESCR). The International Labour Organization (ILO) Convention No. 190 requires States to take appropriate measures to prevent violence and harassment in the world of work, including for informal economy workers, and to identify sectors, occupations and work arrangements in which workers are more exposed to violence and harassment, and take effective measures to protect such persons.²⁷ Article 8 was introduced to the Convention to address the fact that many informal economy workers, particularly those who work in public spaces such as street vendors and waste pickers, face violence and harassment from public authorities in the form of the confiscation of goods, rape or sexual assault, or forceful dispersion.²⁸

B Evictions, fines and detention cause further human rights violations

11. Continuous harassment from law enforcement officials has a harmful impact on people who rely on public places for their survival, and can re-traumatise people already experiencing trauma or mental health conditions.²⁹ A law enforcement approach to addressing the consequences of homelessness and poverty is also counterproductive, with the impacts of enforcement perpetuating cycles of poverty, social exclusion and discrimination, which can impede access to economic and social rights guaranteed under ICESCR.³⁰ The methods adopted for enforcing laws that prohibit life-sustaining activities, include the following:

²⁴ Consortium for Street Children, p. 15; Miami Law Human Rights Clinic, p. 28; Campaign to Decriminalize Poverty and Status, p. 8.

²⁵ International Commission of Jurists, pp. 24-25.

²⁶ Committee on the Rights of the Child (CRC), General Comment No. 21, para. 36-40.

²⁷ ILO, Violence and Harassment Convention 2019 (No. 190), articles 3 and 8.

²⁸ ILO, Violence and harassment in the world of work: A guide on Convention No. 190 and Recommendation No. 206, p. 44.

²⁹ Justice Connect, p. 12.

³⁰ Miami Law Human Rights Clinic, p. 8.

1. Evictions

12. Evictions of encampments, buildings, makeshift shelters or tents are often marked by a lack of judicial process, use of disproportionate force by security officials, or the destruction or confiscation of private belongings. Too frequently, no housing alternative is provided, although human rights law requires the provision of an alternative to evicted persons who are unable to secure housing for themselves.³¹ When a shelter is provided as an alternative, it often fails to meet essential elements of the right to adequate housing, such as security of tenure, availability of services, accessibility, affordability, habitability, location or cultural adequacy.³² In many instances evictions only push those evicted for short periods of time into shelters, detention or healthcare facilities. Afterwards they are released back on the street, resulting in a continued violation of their right to adequate housing, without addressing the underlying problem.

13. It should never be an offence for an individual to remain on the street after refusing an offer for emergency accommodation that lacks safety, privacy or fails to ensure human dignity or other core elements of housing adequacy. This would be tantamount to punishing a person for the State's failure to comply with its duties under international human rights law.

2. Fines

14. Laws regulating public spaces are typically enforced by imposing administrative measures, including fines. Fines have a disproportionate and discriminatory impact on persons experiencing homelessness or poverty as, in most instances, they are set without taking into consideration the means of the offender.³³ When the enforcement of such fines pushes persons further into poverty, several social, economic, and cultural rights, as well as the right to a life with dignity are violated.

15. Penalties for late payment or non-payment of fines, or the cumulative effect of receiving multiple fines, can make it impossible for persons experiencing poverty to pay. This can result in debt and insolvency, the possibility of debt being deducted from social security or wages, denial of essential social or healthcare services, or terms of imprisonment.³⁴ Households may also experience hardship related to their fine or fee which can sometimes lead to homelessness.³⁵ Even where legal systems require fines to be tailored to an individual's personal financial circumstances, in practice fines remain unaffordable for persons experiencing homelessness or poverty.³⁶ Legal aid is usually unavailable for minor offences,³⁷ further increasing barriers to accessing justice for persons experiencing homelessness. This can result in warrants for arrest, or additional charges for failing to appear in court or comply with conditions of bail or bond.

3. Detention and imprisonment

16. In many States, failure to pay a fine can result in a term of imprisonment even if the offence that resulted in the fine is itself not punishable by imprisonment.³⁸ The imprisonment of persons for the mere reason of being unable to pay the fine for a petty offence raises serious concerns regarding the proportionality of the sanction to the initial offence. Enforcement of such fines may violate the right to equality before the law, due process of law, and the prohibition of discrimination in the administration of justice. While offenders with economic means can avoid serious punishment by paying their fine, this option is mostly not available for persons living in extreme poverty or street situations. Article 11 of the ICCPR also guarantees that 'no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation'. It is highly questionable whether imprisoning somebody for simply

³¹ CESCR, General Comment No. 7, para. 16.

³² CESCR, General Comment No. 4, para. 8.

³³ See also Jean Galbraith et al., 'Poverty penalties as human rights problems', *American Journal of International Law*, vol. 117, 2023, pp. 397-440.

³⁴ Quantic Association and the Common Front for Housing Rights, p. 1.

³⁵ Fines & Fees Justice Centre, p. 4.

³⁶ (RE)claim, p. 11 and 14.

³⁷ Child in Need Institute, pp. 4-5.

³⁸ ESADE, University of Ramon Lull, p. 113.

being unable to pay a fee for using a public space as a street vendor, or for the unauthorised use of public transport, is compatible with international human rights law.

17. Bail conditions, or conditions of release that require proof of identity, a fixed residential address or other forms of surety, can also result in prolonged and arbitrary detention for persons experiencing homelessness and poverty. Often sanctions are not proportionate to the offence and have severe consequences for persons experiencing homelessness and poverty.³⁹ Where release is dependent on the payment of fines, the deprivation of liberty may be infinite in duration.

18. In addition, people in street situations can also be an easy and visible target for police sweeps, where people in street situations are rounded-up following pressure from the public, or in the lead-up to major social and sporting events. Many arrested during such police sweeps end up in prison because they cannot afford or access legal assistance. Indeed, in many countries, detention for petty offences is a major contributor to prison overcrowding, a situation that may amount to ill-treatment.⁴⁰

4. Forced institutionalization

19. When laws prohibit sleeping or living in public spaces, persons without any access to housing can be forced into shelters and other institutions to avoid arrest or detention. Forced institutionalization of persons into camping sites, homeless shelters, detention facilities, care, medical or other institutions often violates the liberty of the person and their freedom to choose where to reside, except when it can be justified under international human rights law and is subject to appropriate legal procedures that take into account an individual's situation and the right to a judicial remedy against the deprivation of liberty.⁴¹ Laws and policies that force persons in situation of homelessness into shelters also fail to acknowledge the complex and multifaceted reasons why persons experiencing homelessness may refuse to stay in shelters, including for reasons of safety, accessibility or failure to meet basic standards of housing adequacy.⁴²

C. Criminalization perpetuates historical legacies of discrimination and exclusion

20. The criminalization of homelessness and poverty has a long history, rooted in various forms of structural discrimination and oppression. The laws have historical markers that are linked to laws and policies of industrializing states which sought to regulate and punish the activities of marginalized people for reasons related to the availability of cheap labour, crime prevention, morality, and public health.⁴³ Such laws, such as the Poor Laws of 1834 of the United Kingdom targeted the poor and other marginalized or socially excluded groups, subjecting them to institutionalization, workhouses, detention, imprisonment or enslavement. To justify such inhuman and degrading treatment, those deviating from prevailing social norms were often accused of being the source of disease, deviance, or crime.

21. In States which were subjected to colonial occupation, vagrancy laws can be traced back to legacies of colonialism, slavery and apartheid, with many of these laws remaining in

³⁹ Kazakhstan Parliamentary Development Fund, pp. 1-2; Justice Connect, p. 17; Amnesty International, p. 3; Penal Reform International, pp. 2-3; Ambika Satkunanathan, p. 8; Campaign to Decriminalize Poverty and Status, p. 8; International Commission of Jurists, pp. 5-6; Fees & Fines Justice Centre, pp. 2-4.

⁴⁰ Campaign to Decriminalize Poverty and Status, pp. 10-11.

⁴¹ Human Rights Watch, p. 2; International Commission of Jurists, p. 12; Consortium for Street Children, p. 12.

⁴² South African Western Cape High Court, *Gelderbloem & 10 Others v City of Cape Town*, Case No. 5708/2021 / EC06/2021.

⁴³ Prashan Ranasinhe, 'Reconceptualizing Vagrancy and Reconstructing the Vagrant: A Socio-Legal Analysis of Criminal Law Reform in Canada 1953-1972', *Osgoode Hall Law Journal*, Vol. 48, 2010, p. 59.

force.⁴⁴ Vagrancy is a broadly defined offence which was intended to segregate and control the use of public space in a way that penalized, punished, subjugated, and excluded people on the basis of their race, ethnicity, gender, socio-economic status, or other contextual marker of social exclusion or vulnerability. The English Vagrancy Act of 1824 and the French Penal Code of 1810, among others, became a blueprint for similar laws in colonised States.

22. While the contemporary versions of such laws are usually framed in neutral language, they continue to have the same effect of segregating and controlling the use of public space on the grounds of discrimination and social stigma.⁴⁵

D. Criminalization entrenches discrimination and stigmatization

23. States are required to guarantee human rights to all individuals within their territory without any distinction, including in relation to their social origin, property, birth or other status, which includes their social and economic situation, their housing, health or residency status.⁴⁶ Yet, laws that criminalize persons or the behaviours of persons in public spaces are often discriminatory as they either target, or have a disproportionate impact on, groups protected against discrimination in human rights law.

1. Direct discrimination

24. In many countries vagrancy-type laws criminalize persons experiencing homelessness or living in poverty based on their status. They often allow for arrest, detention or deportation of persons who are considered to be ‘vagrants’, ‘rogue’, ‘vagabond’, ‘idle’, ‘disorderly’, or a ‘nuisance’, which are so broadly defined that they provide arbitrary discretion to law enforcement in determining what conduct will attract sanction. For example, penal codes in at least eighteen African countries inherited colonial laws that define a vagrant as any person who does not have a fixed abode nor means of subsistence, and who does not practice a trade or profession.⁴⁷ Enforcement of these laws results in the harassment, arrest, eviction, and detention of anybody considered to be a vagrant, vagabond or a disorderly person, without proscribing specific criminal conduct. The language used in these laws is dehumanising and entrenches social stigma against persons experiencing homelessness, poverty and other forms of marginalization. Such laws are clearly discriminatory, violating Article 2 of the ICCPR and ICESCR and should therefore be repealed.

2. Indirect discrimination

25. Modern laws tend to criminalize homelessness or poverty by prohibiting certain activities in public spaces. These laws appear neutral, as the prohibition of begging, sleeping or camping in public spaces applies to all persons. However, they have a disproportionate impact on the equal enjoyment of human rights on the basis of prohibited grounds of discrimination, which include age, race, socio-economic, housing or residential status.⁴⁸ When evictions target racial minorities, children or elderly persons and they are becoming homeless, criminalizing sleeping or camping will disproportionately affect those groups.⁴⁹ Such disparate impacts on vulnerable groups should be closely monitored, and laws that have such negative impacts should be repealed or amended.

⁴⁴ Christopher Roberts, ‘Vagrancy and Vagrancy-type laws in colonial history and today’, <https://www.law.cuhk.edu.hk/app/wp-content/uploads/2022/10/Vagrancy-and-Vagrancy-Type-Laws-in-Colonial-History-and-Today.pdf>.

⁴⁵ The effects of spatial segregation are discussed in A/HRC/49/48.

⁴⁶ A/77/157.

⁴⁷ Campaign against Decriminalization of Poverty, p. 3.

⁴⁸ CESCR, General Comment No. 20, para. 10.

⁴⁹ Matthew Desmond et al., ‘Evicting Children’, *Social Forces*, Vol. 92, pp. 303-327, and <https://homelesslaw.org/wp-content/uploads/2020/08/Racism-Homelessness-and-Criminal-Legal-Systems.pdf>.

3. Impact of intersecting forms of discrimination

26. Discrimination, stigma and social exclusion are all drivers of poverty and homelessness, as well as consequences of poverty and homelessness.⁵⁰ Those who face discrimination on the grounds of race, ethnicity, place of origin, age, family status, gender, mental or physical disability, health conditions, sexual orientation and gender identity are at a higher risk of becoming homeless or of falling into poverty. Once homeless or destitute, they face additional layers of structural discrimination, including within justice systems.⁵¹ As marginalized groups are more likely to live in poverty than the general population, they are disproportionately affected by laws criminalizing conduct associated with poverty and homelessness. For example:

(a) **People of African Descent:** In the United States of America, African Americans constitute only 12 per cent of the population, but account for 37 per cent of persons experiencing homelessness.⁵² Among those, black people experiencing homelessness were almost 10 times more likely than white people to receive a camping citation. The risk that African Americans are disproportionately exposed to the criminal justice system for offences prohibiting camping or sleeping in public places is real and must be urgently addressed.

(b) **Women and girls** are disproportionately impacted by incarceration for crimes related to poverty, including the discriminatory application of public order offences such as loitering, vagrancy, public nuisance and public indecency or prohibitions of sex work.⁵³ Experiences of gender-based violence are often interlinked with homelessness or being subjected to detention for performing life-sustaining activities in the street: many incarcerated women are prior victims of domestic violence. Lack of access to alternative housing often prevents women from escaping violence within the home or the street, further driving the cycle of violence, poverty and criminalization.⁵⁴

(c) **Children** in street situations are particularly impacted by offences of begging, breach of curfew, loitering, and vagrancy. Enforcement practices can include the rounding-up or arbitrary removal of children (and their families) from public spaces,⁵⁵ and ‘protective measures’ including institutionalization, that violate the principle of the best interests of the child. Policies often fail to recognise the integral need for these children to have access to public places for their social and economic survival.⁵⁶

(d) **Migrants, including undocumented migrants, refugees, asylum seekers, and internally displaced persons** experience multiple forms of discrimination in securing formal employment and temporary or permanent housing, which heightens the risk of homelessness and poverty.⁵⁷ Enforcement of laws associated with homelessness or poverty can have dire consequences, including deportation or permit restrictions, and the possibility of harsher criminal sanctions for lower-level offences because of immigration or refugee status.⁵⁸

(e) **Persons with mental or physical disabilities** face deeply rooted stigma and serious challenges to accessing adequate housing, employment, financial security and healthcare, and are therefore vulnerable to homelessness and extreme poverty.⁵⁹ Criminalizing life-sustaining activities exacerbates these systemic injustices. Moreover, vagrancy laws disproportionately impact persons with mental disabilities, criminalizing

⁵⁰ E/C.12/2001/10, para. 11.

⁵¹ USA, p. 1 and 4; (RE)claim, p. 4; ESADE, University of Ramon Lull, p. 92; Campaign to Decriminalize Poverty and Status, p. 2.

⁵² A/HRC/11/36/Add.3, para. 64; <https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf>.

⁵³ A/HRC/RES/53/27; African Court on Human and Peoples’ Rights (fn. 14 above), para. 52 and 130.

⁵⁴ OHCHR, ‘Women and the right to adequate housing’, https://www.ohchr.org/sites/default/files/Documents/publications/WomenHousing_HR.PUB.11.2.pdf.

⁵⁵ CRC, General Comment No. 21.

⁵⁶ Convention on the Rights of the Child, Article 12; Consortium for Street Children, p. 8.

⁵⁷ A/HRC/31/54, para. 46.

⁵⁸ Eurodiaconia p 6; Global Forum of Communities Discriminated on Work and Descent, p. 11.

⁵⁹ World Health Organization, World Report on Disability 2011.

behaviours such as being ‘idle’ or ‘disorderly’. In prison, punitive responses for persons with psychosocial disabilities result in extended isolation, segregation, and the further deterioration of mental health.⁶⁰

(f) **Other groups subjected to discrimination, stigmatisation or criminalization** are also impacted by laws that criminalize homelessness or poverty. Among them are older persons, itinerant communities, persons who identify as Roma, Travellers,⁶¹ or Indigenous Peoples,⁶² as many laws relating to public spaces undermine their capacity to live, move, stay or work according to their customs or traditions. Similarly, people who use drugs,⁶³ sex workers,⁶⁴ and LGBTI persons⁶⁵ experience a heightened risk of intimidation, arbitrary arrest, or physical attack and discrimination when they use or work in public spaces.

E. Criminalization is an unsuitable, inefficient and costly approach to addressing social issues

27. Reliance on the criminal justice system to respond to poverty and homelessness is not a sustainable approach to addressing social issues or to enhance public safety. Rather, it diverts scarce public resources away from effective and evidence-based crime and violence prevention measures, increases the likelihood of reoffending (recidivism), and is a threat to public safety.⁶⁶

28. In many States, local government and law enforcement officials come under pressure from citizens to address increased criminality - whether real or perceived - or from residents and business people to “clean the streets”. Already overstretched police forces are particular prone to engaging in sweeping operations against people in poverty, resulting in mass arrests of persons in street situations, in order to demonstrate that they are “tough on crime”. When such police officials are underpaid and accountability mechanisms are weak, there is a heightened risk of corruption, including for the extortion of fines or protection money from persons living or working in the street.

29. In addition, the cost of criminalization often outweighs the economic costs and social resources required to address the root causes of poverty and exclusion, including the provision of affordable housing, social services and social welfare.⁶⁷ Addressing homelessness through law enforcement can cost two to three times more than providing affordable housing and social services, which would address the underlying problems of homelessness and poverty, rather than punishing it.⁶⁸ The US Interagency Council on Homelessness has acknowledged that “criminalization creates a costly revolving door that circulates individuals experiencing homelessness from the street to the criminal justice system and back.”⁶⁹ A study on the cost of homelessness in Cape Town, South Africa highlights that properly housing individuals would significantly offset the financial costs of providing shelters and homelessness services, as well as indirect costs related to policing and the criminal justice system.⁷⁰ Germany dedicates EUR 200 million each year to enforcing the

⁶⁰ A/72/128, para. 14.

⁶¹ A/HRC/16/42/Add.2, paras. 51-56.

⁶² A/74/183, para. 19.

⁶³ A/HRC/47/40, para.8.

⁶⁴ A/HRC/32/44.

⁶⁵ A/HRC/35/36.

⁶⁶ National Law Centre on Homelessness and Poverty, ‘Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities’, pp. 63-74, <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf>; David Rudin, ‘You Can’t Be Here: The Homeless and the Right to Remain in Public Space’, N.Y.U Review of Law & Social Change, Vol. 42, pp. 309-350.

⁶⁷ Miami Law Human Rights Clinic, p. 8; Jonathan Hopkins, et. al. (2020), ‘The Cost of Homelessness in Cape Town’, https://homeless.org.za/wp-content/uploads/2020/11/24_Nov_Cost-of-homelessness-in-Cape-Town_Report-Summary-1.pdf.

⁶⁸ Southern Poverty Law Centre, p. 9.

⁶⁹ Miami Law Human Rights Clinic, p. 8.

⁷⁰ Jonathan Hopkins (fn. 67 above), p. 3.

Criminal Code Violation of Fraudulent Use of Public Transport Services, with the majority of people affected being either unemployed, or without a permanent address.⁷¹

30. Processing fines results in high costs for national and subnational governments, although a substantial proportion of all fines imposed on persons in precarity are never paid (more than 50 per cent in the city of Barcelona).⁷² The enforcement of the prohibition of begging cost the Canton of Geneva CHF 1.22 million in policing costs between January 2008 and June 2011, around CHF 200,000 in the administration of fines, and CHF 1.8 million for related procedures before judicial tribunals. These amounts did not include the imprisonment of offenders at an estimated cost of at least CHF 124.10 per person and day who were unable to pay their fines. In total, 13,634 fines were imposed against 1,516 offenders amounting to over CHF 1.6 million in fines and fees, but only CHF 35,117 in fines were collected.⁷³ The extremely high rate of recidivism also underlines that such discriminatory law enforcement approaches against persons in precarity are neither suitable to move people out of poverty, nor do they achieve their objective (in this case to reduce begging).

F. Criminalization is not a rational or proportionate response to enhancing public order and safety

31. Laws that criminalize homelessness and poverty do not substantively deter the activities of people who have no other choice but to carry out life-sustaining activities in public spaces. Therefore, the laws cannot be justified as a proportionate response to the safety and public health challenges posed by homelessness as required under human rights law.⁷⁴ Criminalization has the opposite effect of entrenching socio-economic exclusion and marginalization, without evidence of the crime prevention value of these laws.⁷⁵ For example, the criminalization of homelessness and poverty has severe consequences where convictions, including for failure to pay fines, result in a criminal record which entrenches discrimination in obtaining housing, employment, and other social services. Prior convictions also expose affected people to harsher consequences in the case of repeat fines or convictions, and may in some countries result in the suspension of civil and political rights, such as the right to vote.⁷⁶

III. Alternatives to criminalization: an agenda for change

32. The search for alternatives to criminalization should start with a review of the laws in force, changing the way they are enforced, reviewing proportionality and impact of penalties, and ensuring that sufficient resources are available to the State to ensure the use of alternatives. Inclusive and meaningful consultations should identify effective alternatives to criminalization that will realize the right to adequate housing and to enjoy an adequate standard of living while meeting the objectives of public order and public health, consistent with human rights. This process should be participatory, involving people with lived experience of homelessness and precarity; law enforcement officials; housing, healthcare or social service providers; business actors, shopkeepers and street traders; and local residents. The consultations should be undertaken with a view to identifying:

- (a) The official goals of the laws or regulations that criminalize homelessness and poverty.

⁷¹ *Freiheitsfonds*, pp. 1-3.

⁷² *Arrels Fundación*, p. 11.

⁷³ Response by the Conseil d'Etat to the Grand Conseil du Canton et République de Genève from 31 August 2011, IUE 120, https://www.mesemrom.org/TUE_1208_A.htm.

⁷⁴ UN Tokyo Rules, rules 1.1 and 2.6; A/HRC/21/39, para 81.

⁷⁵ David Rudin (fn. 66 above).

⁷⁶ Miami Law Human Rights Clinic, p. 8; Observatoire pour les Droits des Citoyens Itinérants, p. 1; (RE)Claim, pp. 3 and 10; Global Network of Sex Work Projects, p. 2; The Connection at St. Martin's, p. 3; Conectas Direitos Humanos São Paulo, p. 26; Danish Refugee Council, p. 5.

(b) The potential outcomes success, risks, and impacts resulting from the enforcement of such laws, including whether the costs outweigh the benefits.

(c) Whether these laws may result in human rights violations for the affected persons.

(d) Whether the problem can be addressed in a different way that does not result in criminalization.

33. What follows are measures that the Special Rapporteurs recommend that States take into consideration when designing and implementing alternatives to criminalization, all of which are underscored by the importance of participatory approaches that include the voices, experiences and needs of persons experiencing homelessness and poverty.

A. Repeal laws that criminalize life-sustaining activities

34. National and subnational governments should undertake comprehensive and participatory reviews of all laws regulating the use of public spaces to determine the extent to which they criminalize life-sustaining activities. Laws that punish life-sustaining activities where there are no meaningful alternatives available should be repealed.

35. States should move beyond *de facto* decriminalization, where laws prohibiting life-sustaining activities in public spaces remain in place but are not enforced. Mere non-enforcement of laws that are not compliant with human rights remains insufficient, as such laws remain a constant threat to persons experiencing homelessness or poverty as long as they remain in force. They reinforce the message in law enforcement and society that persons who experience challenging living conditions are inherently law breakers.

36. States should sensitise urban planners, lawmakers, law enforcement officials, judges, and criminal and administrative justice officials at national, regional and local levels on the human rights impacts of criminalization of homelessness and poverty, in particular on people who are unable to comply with the laws regulating the use of public spaces for reasons of necessity or survival.

B. Improve judicial review, access to justice and legal aid

37. Lawyers and judicial authorities must play an active role in the review of legislation criminalizing homelessness and poverty and in ensuring that the rights of persons in situation of precarity are protected. The judiciary must ensure that national law is interpreted in accordance with international human rights. In many countries, courts have the ability to annul or to set aside the application of legal provisions contained in national law that are incompatible with constitutional law or international human rights standards. Legal reform has often been triggered by court rulings that have ended the application of discriminatory law provisions.⁷⁷ Lawyers and human rights defenders who devote their energy to defending the poor and marginalized in the system of justice play a crucial function in this regard: they deserve better protection and public support. Legal aid must also be made available to persons who cannot afford to engage counsel to defend themselves against charges or sanctions for minor offences.

C. Implement alternatives to detention

38. Where there are legitimate reasons for maintaining laws that do not directly target, but have a disproportionate impact on marginalized groups, alternatives to arrest and detention should be implemented in accordance with the minimum safeguards to protect and promote

⁷⁷ See for example, High Court of Malawi, *Gwanda v State* (Constitutional Cause 5 of 2015) from 10 January 2017, <https://malawilii.org/akn/mw/judgment/mwhc/2017/23/eng@2017-01-10> and Constitutional Court of Uganda, *Francis Tumwesige Ateenyi v Attorney General* (Constitutional Petition No. 36 of 2018) from 2 December 2022, <https://ulii.org/akn/ug/judgment/ugcc/2022/5/eng@2022-12-02>.

human rights as established by the United Nations Minimum Standard Rules for Non-Custodial Measures (Tokyo Rules). Such non-custodial measures must adhere to minimum safeguards to protect and promote human rights. For offences related to the prohibited use of public spaces, appropriate non-custodial measures should be considered such as verbal sanctions, facilitating access to social or healthcare services, community service offering social integration, training and work opportunities, or inclusion in Housing First programmes. Policing law, training and practice should be designed to favour community engagement, promotion and respect for human rights, including for the rights of victims of housing exclusion, and consideration should be given in dealing with offenders in the community, avoiding as far as possible resorting to formal proceedings or trial by a court.⁷⁸ Alternatives to criminalization should be developed in full consultation with all relevant stakeholders at different stages of decision-making as mentioned above.

D. End incarceration for failure to pay a fine

39. While fines may provide an alternative to arrest and detention, they have a disproportionate impact on persons experiencing homelessness and poverty. The administration and adjudication of fines must make a distinction between those too poor to pay their fines and those with means to pay.⁷⁹ In Sweden, for example, default imprisonment is only enforced if the sentenced person shows an unwillingness to pay, not if a person is unable to pay.⁸⁰

40. Imprisonment for the mere inability to pay a fine should be abolished. Other non-custodial measures could be considered, which take into account the particular circumstances of the individual sanctioned. This could include possibilities to offset fines by remunerated work for public authorities and service providers.⁸¹

E. Reform law enforcement approaches

41. Law enforcement authorities can and should play a key role in protecting the rights of persons in street situations, including their protection from violence. They can facilitate access to social or healthcare services,⁸² solve conflicts related to the use of public spaces, and ensure that public spaces can be used by everyone in safety. Law enforcement should not, however, be the default or main response to preventing and addressing homelessness, for which criminal justice responses are rarely effective or appropriate.⁸³

42. Harm reduction frameworks provide promising alternative models of engagement for persons using drugs and warrant further study and analysis, which may also be useful for other groups that are overrepresented in street situations. They are premised on fostering mutual trust and cooperation between police and affected communities, by building partnerships between police and health and social services providers, and by providing operational guidance to police that supports diversion and access to services.⁸⁴ To achieve this, law enforcement should adopt new strategies, in consultation with affected groups and

⁷⁸ Tokyo Rules, Rule 2.5.

⁷⁹ Fines & Fees Justice Centre, pp. 2 - 4; Canadian Drug Policy Coalition and Pivot Legal Centre, p. 10; Oman Human Rights Commission p. 5; ESADE, University of Ramon Lull, p. 68; Eurodiaconia, p. 7; Ambika Sutkunanathan, p. 8.

⁸⁰ Eurodiaconia, p. 6.

⁸¹ UNODC, Handbook on Prison Overcrowding, p. 46, https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf.

⁸² National Police Chief's Council and Crisis, 'From enforcement to ending homelessness: How police forces, local authorities and the voluntary sector can best work together', <https://www.crisis.org.uk/ending-homelessness/resources-for-practitioners/housing-centre-guides/from-enforcement-to-ending-homelessness-guides/>.

⁸³ Canadian Human Rights Commission, pp. 6-7; United Cities and Local Governments, para 17.

⁸⁴ See the reports published by the Global Law Enforcement and Public Health Association at: <https://glepha.com/envisaging-the-future-project/>.

other relevant health and social service providers, to understand and respond to marginalization in a way that is rights-based and trauma-informed.

43. In addition, it is essential that training and protocols for law enforcement officials are established that recognise the right of persons experiencing homelessness to be in public spaces, emphasise non-discrimination, and guide officials on how they can facilitate effective access to social and health services. Given the prevalence of violence against persons experiencing homelessness, including by law enforcement officials, measures to ensure their safety and security in public spaces should form an inherent part of public order.⁸⁵ States should ensure that complaints about discriminatory or abusive law enforcement practices are independently and effectively investigated, and that perpetrators are held accountable.

F. Promote equal access to public spaces

44. Persons experiencing homelessness and poverty should enjoy the same rights to use public spaces for gathering, socializing, meeting their livelihood needs, and for rest and leisure as the general public. National policies on homelessness which move away from punitive measures towards approaches that focus on non-discrimination, equality and safety for all, should provide a framework for public space management by national and local authorities. Policies should emphasise the human rights of persons experiencing homelessness, highlight the human, economic and social cost of criminalizing homelessness, and promote cost-benefit analyses to ensure the reallocation of resources from policing, prosecuting and punishment to housing and social and health services.⁸⁶ When supply of affordable and accessible housing does not meet demand, penalization of life-sustaining activities by persons experiencing homelessness should be prohibited.

45. Promising examples of work include the proposed Victorian (Australia) Protocol for Responding to People Experiencing Homelessness in Public Places, which recognises the right of persons experiencing homelessness to be in public spaces and promotes partnerships between law enforcement and social services to ensure integrated responses.⁸⁷ In Europe, the Homeless Bill of Rights, adopted by several cities, sets out various human rights of persons experiencing homelessness. It acknowledges the right of persons experiencing homelessness to use public spaces, to move freely within them, and to carry out survival activities without penalty (including begging or foraging for discarded food).⁸⁸

46. At local level, less punitive approaches to the management of public spaces are emerging, which favour community-based support to persons experiencing homelessness and poverty. They include community-based alternatives to policing, the diversion of police funding to support the deployment of mental healthcare experts, and recruiting community liaison officers within local government and law enforcement agencies to facilitate appropriate referrals and service delivery options.⁸⁹

47. In promoting more inclusive public space management, States and subnational authorities should implement measures which address the preventable underlying causes of offending. These alternatives should be responsive to local conditions and be implemented within a broader framework of ensuring the right to adequate housing. Measures can range from:

- (a) The provision of free public hygiene facilities.

⁸⁵ Canadian Human Rights Commission, p. 6; United Cities and Local Governments submission, para 17.

⁸⁶ Miami Law Human Rights Clinic, p. 8.

⁸⁷ Justice Connect, pp. 21 - 23.

⁸⁸ The Homeless Bill of Rights,

https://www.feantsaresearch.org/download/the_homeless_bill_of_rights_8107364355310719862.pdf.

⁸⁹ National Alliance to End Homelessness, 'Alternatives to Criminalization',

<https://endhomelessness.org/blog/alternatives-to-criminalization/#:~:text=Advocating%20for%20the%20diversion%20of,systems%20preventing%20the%20need%20for> ; Arréls Fundación, pp. 14 - 15.

(b) Transparent, appropriate and accessible regulatory regimes to ensure access to public space for informal workers.

(c) Divestment from law enforcement approaches and a reinvestment in comprehensive support services and community-based solutions to address the diverse needs of persons living in homelessness.

G. Housing first, not last

48. Human rights law requires States to ensure access to adequate housing for all, instead of criminalizing persons because of their lack of housing. Housing-led approaches to reduce homelessness, such as Housing First programmes that offer scattered, long-term housing to persons experiencing homelessness and social support tailored to their needs, reduce long-term homelessness in conformity with human rights standards. They are also less expensive than expanding or maintaining large shelter and emergency accommodation systems, and result in significant cost savings for public law enforcement and healthcare systems.⁹⁰

H. Prevention of homelessness

49. One root cause of homelessness is the lack of adequate affordable housing which must be tackled to make the criminalization of persons without housing obsolete. The supply of affordable housing must be actively promoted and supported by public policies and laws, including by encouraging assembly of affordable land through mechanisms such as land banks, and by encouraging non-commoditized housing options such as public or cooperative housing. The recommendations made by the Special Rapporteur on the right to adequate housing⁹¹ include integrated and long-term responses to prevent homelessness such as preventive mechanisms to reduce evictions for non-payment of rent or other reasons, improved management of housing markets and the provision of social housing or housing assistance for those in need.

I. Reform the regulation of informal economic activities

50. Public space management should guarantee inclusive access to public spaces for a range of informal economic activities. There are examples of where this has been tried,⁹² with a common thread being dialogue and agreements between informal workers, subnational governments and experts in urban planning, to provide greater protection of the right to work and to just and favourable conditions of work in public spaces. This has resulted in measures such as the designation of dedicated spaces, systems for formal registration, and safeguards against the confiscation of belongings.⁹³ Through consultation with informal workers and their representatives, national and subnational governments should ensure suitable sites for work and trade within urban environments, and inclusively manage the growth and development of these sectors.⁹⁴ States should recognize the right to informal workers to freedom of association and collective bargaining,⁹⁵ improve the safety of informal workers using public spaces, and address violence, abuse and harassment of such workers by public officials or private actors in conformity with ILO Convention No. 190.

⁹⁰ See <https://www.huduser.gov/portal/periodicals/em/spring-summer-23/highlight2.html> and <https://nlihc.org/sites/default/files/Housing-First-Research.pdf>.

⁹¹ A/78/192.

⁹² Danish Refugee Council, p. 6; Human Rights Council of Mexico City, p. 6.

⁹³ Martha Chen et.al, 'Inclusive Public Spaces for Informal Livelihoods: A Discussion Paper for Urban Planners and Policy Makers', https://www.citiesalliance.org/sites/default/files/Public%20Space%20Discussion%20Paper_0.pdf.

⁹⁴ Caroline Skinner et. al., 'Supporting Informal Livelihoods in Public Space: A Toolkit for Local Authorities', <http://www.wiego.org/sites/default/files/publications/files/Public%20Space%20Toolkit.pdf>.

⁹⁵ ILO, Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), para. 16, 31 and 32.

J. Enhancing the role of regional and local governments

51. Local and regional governments play a critical role in addressing the criminalization of homelessness and poverty. Several States have decriminalized vagrancy-related offences and/or begging at the national level, or adopted national homelessness or housing policies that recognise the need to ensure fundamental human rights protections, however at local or regional level many by-laws, ordinances or regulations continue to criminalize life-sustaining activities.⁹⁶

52. Local governments are at the frontline of balancing the interests of various constituents in terms of how, when and by whom public spaces are accessed and utilized, while also seeking to ensure public order, safety and urban development. Local governments need to develop strategies that strike a balance between the fair and inclusive use of public spaces and broader environmental, safety and economic objectives. This can be addressed in part through the adoption of zoning laws, local ordinances and by-laws which determine the type of activities that are permitted in public spaces, although such regulations should not lead to the prohibition of the life-sustaining activities discussed throughout this study.

53. Local governments acknowledge that the provision of affordable housing must be prioritised, and that comprehensive approaches to combating homelessness should encompass prevention, emergency responses, structural solutions, and legal reform. Policies must move away from punitive approaches to the management of public spaces, towards measures that focus on non-discrimination, equality and safety.⁹⁷

IV. Conclusions and recommendations

54. **Human rights law requires States to take all possible measures to eradicate extreme poverty and to prevent and end homelessness. Homelessness reflects the failure of the State to guarantee the human right to adequate housing. Criminalizing homelessness does not address this human rights violation. Instead, it makes it worse. It punishes people for behaviours they cannot avoid, further undermining their ability to survive or access housing.**

55. **Relying on the criminal justice system to address the consequences of poverty and homelessness serves only to penalize individuals for structural inequality, social exclusion and their fundamental denial of rights. Criminalization further entrenches inequality, reinforces social stigma, and undermines the dignity of persons experiencing homelessness or poverty. A punitive or carceral approach that penalizes persons in precarity for begging, sleeping, or working in public spaces also poses a significant economic cost to the State that should be redirected to measures that are effective in preventing and ending homelessness and reducing poverty.**

56. **Such a punitive approach leads to a cycle of circular movement of individuals through poverty, homelessness and the criminal justice system and cannot be seen as justifiable. Penalizing the conduct of people who rely on the use of public spaces for their survival will not achieve the objectives of combating homelessness and poverty when the conduct that is prohibited is something the affected person cannot avoid, such as sleeping somewhere or gaining sufficient income for their own survival through informal work or begging. In addition, criminalization results in discrimination on grounds of socio-economic status or other prohibited grounds, such as race, national origin, or health, in violation of human rights law. Homelessness and poverty can be addressed through transformative approaches that facilitate access to adequate**

⁹⁶ Lithuania, p. 1; Mexico, p. 1; Abbé Pierre Foundation, p. 2; African Policing Civilian Oversight Forum, p. 4; ESADE, University of Ramon Lull, p. 7 and 64; Arrels Fundación, p. 7; SOMOS Mulheres, p. 1; Dullah Omar Institute, pp. 2-3; Austrian Association of Cities and Towns, p. 1; Commission on Human Rights, Philippines, para 29; American University, Department of Justice, Law and Criminology, p. 17; Ombudsman for Children in Sweden, p. 2.

⁹⁷ United Cities and Local Governments.

housing, decent work, healthcare, training and social protection, not by making being homeless or living in poverty a criminal offence.

57. The Special Rapporteurs recommend to States, including local governments, to ensure full protection of the right to an adequate standard of living, including the right to adequate housing, for everyone who is within their jurisdiction or control. This implies eradicating poverty, ensuring access to affordable housing, and preventing and ending homelessness, so that no one is forced to sleep or survive in the street without access to adequate housing.⁹⁸ In addition, they recommend that States, including local governments:

58. **Legal reform:**

(a) Repeal criminal or administrative provisions in national and local government law that criminalize or sanction persons living, surviving or working in public spaces, for having no means of subsistence, for being a ‘rogue’, ‘vagabond’, ‘idle’, or ‘disorderly’, or for practicing life-sustaining activities in public spaces, such as sleeping, eating, cooking, washing, sitting, lying down, or performing hygiene-related activities.

(b) Repeal legislation which prohibits informal economic activities for persons that have no alternatives available, or where non-compliance with public order regulations is caused by homelessness, poverty and other forms of social exclusion.

(c) Repeal laws prohibiting begging in public spaces at the national, regional or local level. When begging is the result of exploitation and linked to the trafficking in persons, criminal responsibility should be attributed to those who force persons into begging, and not on trafficked persons forced to beg.⁹⁹

(d) Abolish fine and debt-related imprisonment, declare amnesties, expunge criminal records, and establish fine and debt relief programmes which differentiate between those unwilling to pay and those unable to pay. Ensure that fines can be reduced or waived in case of an inability to pay and that access to public healthcare, housing, social protection benefits or other public services is not restricted as a result of owing unpaid fines or having a criminal record.

(e) Review national legislation to ensure persons staying in buildings, vehicles, caravans, makeshift shelters, encampments or public spaces are effectively protected against forced evictions, including all procedural protections as set out under international human rights law.

(f) Ensure that the arbitrary confiscation and destruction of the possessions or merchandise of persons in street situation, is prohibited by law.

(g) Ensure that subnational laws comply with international human rights obligations.

59. **Reform of law enforcement:**

(a) Ensure that any alternatives to arrest and incarceration, such as community service, training or work, are responsive to structural barriers experienced by persons experiencing homelessness and poverty, including where the accused person lacks a fixed residential address.

(b) Prohibit discriminatory policing practices by law enforcement, including arbitrary and discriminatory identity checks, stops and searches where there is no reasonable suspicion, and address the prevalence of discrimination contributing to the overrepresentation of persons experiencing homelessness and poverty in the criminal justice system through training, instructions and effective oversight and accountability mechanisms.

⁹⁸ See the recommendations contained in A/78/192, A/73/310/Rev.1 and A/HRC/31/54.

⁹⁹ A/Res/65/228, para. 18(k), ILO Forced Labour Convention, art. 25.

(c) Establish independent police oversight mechanisms to conduct effective, thorough, prompt and impartial investigations into any allegations of harassment, intimidation, extortion, ill-treatment, physical assault, excessive use of force, arbitrary arrest or deportation or killing of persons in street situation by law enforcement officials.

(d) Take all necessary measures to prohibit and address violence and harassment of informal workers in conformity with ILO Convention No. 190.

(e) Prohibit the confinement or institutionalization of persons experiencing homelessness against their will in encampment sites, shelters, emergency accommodation, hostels, prisons, detention or rehabilitation facilities, care or healthcare institutions on the basis of their housing or socio-economic status, and ensure that any restriction or deprivation of the right to liberty and choice of residency complies with human rights standards.

(f) Review the use of move-on orders and area bans to ensure that such interventions comply with human rights.

(g) Ensure that nobody is evicted from their habitual place of living without being offered a suitable alternative housing option, in law and practice, that is adequate, safe and allows for a life in dignity.

60. **Public space management:**

(a) Ensure that public spaces are accessible and safe for all, without discrimination.

(b) Recognise that public spaces are essential for the survival of persons experiencing homelessness and poverty and must be equipped with essential services for their needs, including water and sanitation facilities.

(c) Ensure that public spaces can be used for informal business activities and develop suitable regulations in consultation with representatives of informal workers.

61. **Analysis and data collection:**

(a) Collect disaggregated data on the impact of criminalization on persons experiencing homelessness and poverty, the use of criminal and administrative sanctions for the performance of life-sustaining activities including information on fines and terms of imprisonment on conviction, or for failure to pay fines.

(b) Evaluate the impact of fines, move-on orders, evictions, criminal sanctions, arrest, forced institutionalization, detention, or incarceration caused by laws and regulations criminalizing persons experiencing homelessness, poverty or other vulnerabilities.

(c) Regularly publish the financial costs related to the enforcement, fine administration, prosecution, judicial review, detention or imprisonment for public order offences.

62. **Women, children and other groups at risk of discrimination:**

(a) Develop alternative, gender-responsive approaches to the management of public spaces that promote substantive justice for all disadvantaged groups. Priority should be given to interventions which promote access to community-based support mechanisms and prevent persons experiencing homelessness and poverty from coming into contact with the criminal justice system.

(b) Implement gender-responsive alternatives to failure to pay fines or imprisonment for life-sustaining activities, particularly where pathways to prison include prior experiences of gender-based violence. Ensure gender-responsive, alternative and adequate housing for women and girls who have experienced gender-based violence.

(c) Prohibit arbitrary and mass arrests of children, the removal of children and their families from streets or public spaces, and the separation of children from

their parents owing to their street situation.¹⁰⁰ Ensure that protective measures to ensure alternative care of children in street situations comply with the principle of the best interests of the child.

(d) Apply holistic and comprehensive, long-term national strategies for children in street situations which address and prevent homelessness, in line with the Convention on the Rights of the Child. Abolish offences which disproportionately affect children in street situations, such as begging, breach of curfew, loitering, vagrancy and running away from home.

63. **Access to justice:**

(a) Ensure that no eviction leads to homelessness, that evictions are only allowed for just cause, and that those facing an eviction have access to justice and provided with procedural protections against any arbitrary eviction.

(b) Guarantee access to inclusive legal aid and assistance services for persons at risk of or experiencing homelessness or poverty and ensure that legal aid is offered to persons accused of public order offences.

(c) Establish effective mechanisms of reparation for past human rights violations caused by the enforcement of laws that punished homelessness and poverty.

64. **Awareness raising and sensitization:**

(a) Promote understanding and mutual respect among all population groups, through community education and awareness-raising about the underlying causes of homelessness and poverty, and the value of non-punitive responses in addressing homelessness and poverty.

¹⁰⁰ CRC, General Comment No. 21, para. 14.