**Submission by the UNODC Crime Prevention and Criminal Justice Section in response to the Call for Input on decriminalization of homelessness and extreme poverty**

***4 August 2023***

The United Nations Office on Drugs and Crime (UNODC) is mandated to promote the use and application of the [United Nations standards and norms in crime prevention and criminal justice](https://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html). The UNODC Crime Prevention and Criminal Justice Section is supporting the development of new or revision of existing standards and norms, it develops technical tools to assist Member States in implementing these standards and norms and supports Member States through the provision of technical assistance in crime prevention and criminal justice reform.

Based on this work, the present information is brought to the attention of the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights, in response to the following questions contained in their questionnaire.

**Question 2. Laws or regulations that allow the detention or imprisonment of individuals who are unable to pay the fine imposed for petty offences.**

UNODC has documented several promising practices concerning the reform of laws or regulations that allow the detention or imprisonment of individuals for petty offences. The UNODC [handbook on prison overcrowding](https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf) (p. 46) notes that, in the 1950s and 1960s in Finland public drunkenness was punishable by fines, and as these people were often unable to pay their fines, fines were converted to imprisonment. In 1969 public drunkenness was decriminalized and the use of default imprisonment was also reduced. These reforms reduced the prison population by almost one third. The handbook also raises concern about the automatic imprisonment of fine defaulters or the high numbers of fine defaulters among the prison population in some countries (p. 31).

The [UNODC Toolkit on Gender-Responsive Non-Custodial Measures](https://www.unodc.org/res/justice-and-prison-reform/21-06407_Gender_Toolkit_rev_ebook.pdf) highlights that many women cannot pay fines due to poverty and marginalization, particularly women from ethnic minority backgrounds and women affected by gender-based violence, which is a strong factor contributing to indigence among women in conflict with the law. The Toolkit mentions an example from Australia (see p. 46 for further references), where one in every three women who enter prison in one of the states (Western Australia) do so for unpaid fines. Between 2008 and 2013, the number of women locked up for fine default increased by close to 600 per cent. In August 2014 an Aboriginal woman died in police custody after being locked up for unpaid fines. She was in a violent relationship with her partner at the time of her arrest. Following advocacy by civil society organizations for law reform in Western Australia, the [Fines, Penalties and Infringement Notices Enforcement Amendment Act 2020](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.wa.gov.au%2Flegislation%2Fstatutes.nsf%2Flaw_s52647.html&data=05%7C01%7Csven.pfeiffer%40un.org%7Cfe944ed25df84c42420b08db943e08b2%7C0f9e35db544f4f60bdcc5ea416e6dc70%7C0%7C0%7C638266766373155262%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=3PB1x2HAS1coXtVMY9ta8GHDFkWKsOsS%2Boz5Kycq6%2BY%3D&reserved=0) was passed, restricting imprisonment for non-payment of fines so it can only be ordered by a Magistrate, and only as a sanction of last resort. This law [reportedly](https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fthewest.com.au%2Fnews%2Fwa%2Fms-dhu-how-wa-indigenous-womans-death-in-custody-ended-insanity-of-prison-time-for-fine-defaults-c-9475437&data=05%7C01%7Csven.pfeiffer%40un.org%7Cfe944ed25df84c42420b08db943e08b2%7C0f9e35db544f4f60bdcc5ea416e6dc70%7C0%7C0%7C638266766373155262%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=x9ym54UsLXSRYOD0zyUDfLWfjQsZG0KJ7Stp5bdFsKI%3D&reserved=0) led to a dramatic drop in people imprisoned or banned from driving over unpaid fines.

**Question 3. Information about attempts made or planned to decriminalize street vending, informal business activities, sex work, begging, eating, sleeping or performing personal hygienic activities in public places.**

The [UNODC Toolkit on Gender-Responsive Non-Custodial Measures](https://www.unodc.org/res/justice-and-prison-reform/21-06407_Gender_Toolkit_rev_ebook.pdf) mentions the following examples (see p. 24 for further references):

* The African Commission on Human and Peoples’ Rights adopted the “Principles on the Declassification and Decriminalization of Petty Offences in Africa” on 25 October 2018. The Principles establish standards against which petty offences should be assessed and promote measures that can be taken by State Parties to ensure that such laws do not target persons based on their social origin, social status or fortune by criminalizing life-sustaining activities.
* In 2019, the State of Victoria in Australia announced it would decriminalize public drunkenness after an aboriginal woman died in custody. The Government announced it would replace the offence with a health-based approach that will “promote therapeutic and culturally safe pathways to assist alcohol-affected people in public places”.
* In January 2017, the High Court of Malawi in *Mayeso Gwanda v The State* declared the “rogue and vagabond” offences unconstitutional, and therefore arrests made under this offence are unlawful.

**Question 4. Information concerning initiatives to change the response of law enforcement officials and of the criminal justice system from penalization, punishment or detention, towards facilitating social inclusion of persons living in poverty or experiencing homelessness.**

As the guardian of the Tokyo Rules, the Bangkok Rules and the Nelson Mandela Rules, UNODC works with law and policy makers, law enforcement and other criminal justice officials and institutions to reduce unnecessary imprisonment (including through early access to legal aid, decriminalization/depenalization and non-custodial measures at all stages of criminal proceedings) and facilitate social reintegration of prisoners and other persons in conflict with the law, in particular those experiencing intersectional discrimination, including due to poverty and homelessness.

The [UN Common Position on Incarceration](https://www.unodc.org/res/justice-and-prison-reform/nelsonmandelarules-GoF/UN_System_Common_Position_on_Incarceration.pdf) acknowledges and addresses the links between imprisonment and poverty, homelessness or the inability to pay fines, highlighting also that time spent in prison is likely to aggravate unemployment, homelessness and poverty. It outlines specific measures to be taken or supported in a systematic and integrated manner, in three thematic areas:

(a) Shifting policies towards prevention and alternatives;

(b) Strengthening prison management and improving prison conditions;

(c) Advancing the rehabilitation and social reintegration of offenders.

Concerning poverty and homelessness specifically, the [UNODC  Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders](https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf) includes several practice examples from different countries concerning measures to support prisoners in obtaining vocational skills, employment, housing and other services that are essential for their social reintegration. The  [UNODC Toolkit on Gender-Responsive Non-Custodial Measures](https://www.unodc.org/res/justice-and-prison-reform/21-06407_Gender_Toolkit_rev_ebook.pdf) stresses that “Many women cannot pay fines due to poverty and marginalization, particularly women from ethnic minority backgrounds. Other non-custodial sentences should be explored first or the fine set as low as possible, taking into account the background and circumstances of the woman in contact with the law. Women should not be imprisoned because they cannot pay their fines or fees and prosecutors and judges should not issue arrest warrants for non-payment.” (p. 18).