

POLICY ANALYSIS

A Gender Lens on the UN Special Rapporteur Report on Criminalisation of Homelessness

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Introduction

The 2024 report by the United Nations Special Rapporteur on Extreme Poverty and Human Rights critically examines the impact of criminalising homelessness and poverty. It highlights that criminalising homelessness is an ineffective and rights-violating approach that perpetuates historical discrimination and stigmatisation. Criminalisation exacerbates the vulnerability of homeless individuals by subjecting them to punitive measures such as fines, arrests, and evictions – these measures undermine their dignity and ability to secure stable housing, and increases the risk of further rights violations.

The report delves into the historical roots of such punitive measures. It points out that these laws often stem from outdated and discriminatory practices that continue to have a disproportionate effect on racial minorities, women, children, and people with disabilities. By criminalising life-sustaining activities such as sleeping, eating, and begging in public spaces, these laws fail to address the root causes of homelessness and instead reinforce social exclusion and economic instability.

This article summarises key points of the report and focuses on the gender-specific concerns it raises.

The human rights perspective

Criminalising homelessness often involves enacting laws and policies that punish essential survival activities such as sleeping, camping, begging, squatting, or loitering in public areas. These regulations disproportionately affect those who are forced to live in public spaces due to inadequate housing and poverty. The report highlights that such policies breach several human rights.

For example, article 7 of the International Covenant on Civil and Political Rights (ICCPR) prohibits cruel, inhuman, or degrading treatment or punishment. Violations of this article occur when homeless individuals are repeatedly evicted or incarcerated, live in constant fear, or suffer from sleep deprivation due to arrests or eviction notices. They also lose personal belongings through confiscation or destruction, and face evictions without any alternative housing options. Similarly, article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for the right to an adequate standard of living, including food and housing. Criminalising homelessness undermines this right by trapping individuals in poverty and creating additional barriers such as criminal records.



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Other rights are also violated:

- Article 6 of the ICCPR ensures the right to life, which is compromised by laws that obstruct efforts to live with dignity and lead to preventable deaths among the homeless population.
- Article 9 of the ICCPR secures the right to liberty and security, a right which is often violated by the arbitrary arrest and detention of homeless individuals.
- Article 12 of the ICCPR protects freedom of movement and of choice of residence, which is infringed by eviction orders and similar restrictions targeting the homeless.
- Article 17 of the ICCPR safeguards the right to privacy, which is breached by unwarranted searches and the frequent police interactions that homeless people endure.
- Criminalising homelessness also violates article 21 of the ICCPR (which guarantees the right to peaceful assembly) and articles 6 and 7(b) of the ICESCR (which provide the right to work and favourable conditions), by targeting the street-based income activities of homeless individuals.

The report finds that evicting homeless individuals from public spaces, imposing fines, or detaining them not only violates human rights but also worsens their situation. Such actions lead to the destruction of personal belongings, create unmanageable debt, and criminalise homelessness rather than addressing it as a social or economic issue.

Many countries have inherited vagrancy laws from colonial penal codes, which allow for arbitrary arrest and detention by classifying people under broad terms such as ‘vagrants’ or ‘nuisances’. In at least 18 African countries, a ‘vagrant’ is defined as someone without a fixed home or means of support, resulting in harassment, arrest, eviction, and detention.

These laws reinforce social stigma and marginalisation, violating article 2(1) of the ICCPR read with article 2(2) of the ICESCR, and should be repealed. Additionally, criminalising homelessness perpetuates

historical patterns of discrimination and exclusion, disproportionately affecting marginalised groups such as racial and ethnic minorities, people with disabilities, women, and children – who already face systemic barriers to housing, employment, and social services. Criminalisation makes it even harder for these individuals to escape poverty and social exclusion.

Gender-specific implications

Women and girls in particular who are experiencing homelessness face unique challenges and vulnerabilities. The criminalisation of homelessness aggravates these challenges by exposing them to heightened risks of violence and exploitation.

For instance, discrimination against women in housing is multifaceted, stemming from statutory laws, gender-neutral policies, and entrenched cultural practices that do not acknowledge women’s specific circumstances. National laws often contain provisions that directly or indirectly discriminate against women (OHCHR 2012). Examples are inheritance laws that favour men, or marriage laws that grant husbands control of marital property, thereby limiting women’s access to housing and land.



A critical gender-specific concern is the intersection of homelessness and gender-based violence.

The Committee on the Elimination of Discrimination against Women, in its General Comment No. 21 of 1994, stated that many countries’ laws and practices concerning inheritance and property result in serious discrimination against women, granting them smaller shares or less rights than men. These systemic inequalities leave many women without the means to secure stable housing, ultimately contributing to their homelessness.

The Special Rapporteur report further highlights that violence significantly contributes to women's homelessness. A critical gender-specific concern is the intersection of homelessness and gender-based violence. Many homeless women are survivors of domestic violence, and the lack of safe and adequate housing options forces them either to remain in abusive situations or face the streets.

Furthermore, women and girls are disproportionately affected by laws against public order offences such as loitering, vagrancy, and public indecency. These laws often target those engaged in life-sustaining activities in public spaces, including those who engage in sex work as a means of survival. Criminalising their survival strategies when they become homeless further victimises them, compounding their trauma and limiting their access to justice and support services. This criminalisation puts women at a distinct disadvantage by exacerbating their vulnerabilities and subjecting them to additional risks.

Policy developments

The report argues that criminalising homelessness is not only ineffective but an inefficient and costly approach to addressing social issues. It diverts resources away from more effective solutions such as affordable housing and social support services. In some countries, the cost of policing, prosecuting, and incarcerating homeless individuals often exceeds the cost of providing housing and support services that address the root causes of homelessness.

For example, a study on homelessness in Cape Town shows that providing proper housing for individuals would significantly reduce the financial burden associated with shelters, homelessness services, and indirect costs related to policing and the criminal justice system (Hopkins et al, 2020). Moreover, criminalisation does not deter homelessness but instead creates a 'revolving door' scenario where individuals cycle in and out of the criminal justice system without any long-term resolution to their housing needs.

Human rights law mandates that states take all possible measures to eradicate extreme poverty and prevent and end homelessness. Homelessness reflects the state's failure to guarantee the human right to adequate housing. Criminalising homelessness intensifies this violation by punishing people for behaviour they cannot avoid, further undermining their ability to survive or access housing.

The Special Rapporteur recommends that states ensure full protection of the right to an adequate standard of living, including the right to adequate housing, for everyone within their jurisdiction. This includes eradicating poverty, ensuring access to affordable housing, and preventing and ending homelessness.

Legal reforms should repeal criminal or administrative provisions that sanction individuals for living, surviving, or working in public spaces. Laws prohibiting begging and informal economic activities should also be repealed, especially when non-compliance is due to homelessness or poverty. States should abolish fine and debt-related imprisonment, declare amnesties, expunge criminal records, and establish fine and debt relief programmes that consider individuals' ability to pay.

Importantly, women and children, along with other groups at risk of discrimination, require specific attention in addressing homelessness.

Gender-responsive approaches to public space management should be developed to promote substantive justice for all disadvantaged groups. Interventions should focus on community-based support mechanisms to prevent homeless individuals from encountering the criminal justice system. Alternatives to imprisonment for life-sustaining activities should be implemented, especially for women and girls who have experienced gender-based violence. Adequate and gender-responsive housing options must be provided for these individuals.



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Conclusion

The Special Rapporteur Report highlights the profound flaws in criminalising homelessness, revealing it as a violation of human rights that perpetuates historical discrimination and stigmatisation. This approach fails to address the root causes of homelessness and poverty, instead subjecting already vulnerable individuals to measures such as fines, arrests, and evictions, which further perpetuates the cycle of poverty.

Women and girls are particularly affected due to compounded discrimination from statutory laws, cultural practices, and gender-neutral policies, making them more susceptible to violence and exploitation. Additionally, women experiencing homelessness are frequently survivors of domestic violence, and the lack of safe and adequate housing options forces them to remain in abusive situations or face the streets. The criminalisation of their survival strategies not only compounds their trauma but also restricts their ability to escape the cycle of poverty and violence.

The report, therefore, calls for comprehensive legal reforms to repeal discriminatory laws and ensure access to affordable housing, alongside gender-responsive policies that provide adequate support and protection.

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