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**Submission to the UN Special rapporteurs on the right to adequate housing and on extreme poverty and human rights**

**‘Protectionist’ criminal laws and their impact on homelessness and poverty**

**October 2023**

**Submitting organisations and contacts:**

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| **Global Alliance Against Traffic in Women (GAATW)** | GAATW is an alliance of almost 100 NGOs from Asia, Africa, Europe and the Americas that promote the rights of migrant women and trafficked persons.  Contact: [maya@gaatw.org](mailto:maya@gaatw.org) |
| **International Drug Policy Consortium (IDPC)** | IDPC is a global network of over 190 NGOs that come together to promote person-centred and rights-affirming drug policies.    Contact: contact@idpc.net |
| **International Women's Rights Action Watch Asia Pacific (IWRAW Asia Pacific)** | IWRAW Asia-Pacific is an international feminist organisation committed to the full realisation of women’s human rights through the pursuit of equality.  Contact: [nine@iwraw-ap.org](mailto:nine@iwraw-ap.org); [constanza@iwraw-ap.org](mailto:constanza@iwraw-ap.org); [iwraw-ap@iwraw-ap.org](mailto:iwraw-ap@iwraw-ap.org) |
| **Sexual Rights Initiative (SRI)** | The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Egypt, Argentina that work together to advance human rights related to sexuality at the United Nations.  Contact: [emeline@srigeneva.org](mailto:emeline@srigeneva.org); [carrie@srigeneva.org](mailto:carrie@srigeneva.org) |
| **Women and Harm Reduction International Network (WHRIN)** | WHRIN is a global network working to expand harm reduction approaches for women and gender non-conforming people who use drugs.  Contact: ailish@whrin.site |

**A. Introduction**

1. GAATW, IDPC, IWRAW Asia Pacific, SRI, and WHRIN welcome the opportunity to submit a response to the call for inputs and questionnaire released by the UN Special Rapporteur on adequate housing and the UN Special Rapporteur on extreme poverty and human rights, in preparation of a joint report on efforts made to decriminalise offences frequently associated with homelessness and poverty.
2. Criminal laws that purport to ‘protect’ society, morality, public order or public health - including laws that criminalise sex work or drug use - often harm the communities they are meant to safeguard. They do so by entrenching stigma, discrimination, and policing of people who are marginalised on the basis of their gender identity, sexual orientation, race, ethnicity, or class. In many cases, ‘protectionist’ criminal laws are also a determinant element in placing such persons in a situation of homelessness, and in denying shelter or public housing.
3. This submission provides a conceptual background and evidence for how ‘protectionist’ criminal laws - particularly in the fields of sex work and drug use - contribute to these trends. As such, it constitutes a response to questions 3 and 4 of the Questionnaire released by the Special Rapporteurs. We conclude with a series of recommendations for the forthcoming joint report. In particular, we urge the Special Rapporteurs to go beyond the decriminalisation of life-sustaining activities and to join a growing number of human rights bodies in calling for the decriminalisation of all activities relating to sex work and drug use.

**B. Conceptual background: Origins and impacts of ‘protectionist’ criminal laws**

1. This section examines some of the colonial, ‘protectionist’ and neo-liberal aspects of the criminalization of poverty, homelessness and related issues and their impacts on women and marginalized people. It argues that a human rights-based approach to the criminalization of poverty and homelessness must also address these structures and root causes.

Colonialism

1. As recently pointed out by the Special Rapporteur on the independence of judges and lawyers, “legacies of colonialism [...] continue to affect the judiciary today. Many countries’ judicial systems were deeply shaped by colonialism [and] contemporary manifestations of colonialism [...] can threaten the legitimacy of judicial systems and undermine the right to a fair trial.”[[1]](#endnote-1)
2. Vagrancy laws are but one example of the colonial underpinnings of criminal laws and justice systems, reflecting colonial interests in “maintaining the social order.”[[2]](#endnote-2) As stated by the African Court on Human and Peoples’ Rights, “vagrancy laws commonly use the terms “rogue”, “vagabond”, “idle” and “disorderly” [which] are a reflection of an outdated and largely colonial perception of individuals without any rights and their use dehumanizes and degrades individuals with a perceived lower status.”[[3]](#endnote-3)
3. Colonialism has also played an important role in the criminalization of transgressions of sexual and gender norms.[[4]](#endnote-4) The Special Rapporteur on health has noted that the criminalization of sex work, often purporting to “protect public morality and decency,” can also be traced back to the colonial project’s use of “morality” for repression and control of sexuality and people.[[5]](#endnote-5) As outlined in section C, this has severe consequences for sex workers’ rights, including their rights to housing, non-discrimination and an adequate standard of living.
4. Drug control has also been used to maintain colonial interests and power structures, and to target and incarcerate racialized and other marginalized people around the world, including through the imposition or encouragement by the USA and European states of criminal responses in the Global South, and the disproportionate policing of racialized people in the North.[[6]](#endnote-6) This is important to note given the overlaps between communities of people who are homeless and communities of people who use drugs, as noted in section D.

*Protectionism*

1. Criminal law often purports to “protect” society, morality, public order or public health.[[7]](#endnote-7) However, criminal laws and justice systems also signal which groups, people and behaviours are worthy of protection,[[8]](#endnote-8) and often reflect racial, class and other hierarchies.
2. In this context, it is important to challenge the “protectionism” which frequently underlies criminal and punitive laws and policies. Protectionism refers to “a worldview and attitude that sees certain individuals and groups – notably, women and girls, and other gendered and sexualised people – as “naturally” vulnerable to violence and discrimination and as requiring the protection of the state and the patriarch,”[[9]](#endnote-9) from themselves and/or from real and perceived dangers.[[10]](#endnote-10) Often however, such policies fail to address the root causes of discrimination and violence, and instead individualize, punish and deepen systemic inequality.[[11]](#endnote-11)
3. Protectionist policies and their emphasis on “protecting women” often operate at the expense of women’s rights and autonomy.[[12]](#endnote-12) One example is the harmful conflation of sex work and trafficking. Under the guise of “protection,” anti-trafficking policies increase the surveillance and criminalization of sex workers,[[13]](#endnote-13) and can contribute to homelessness as outlined in section C*.*
4. In the context of gender-based violence, protectionism creates hierarchies between survivors and requires them to comply with arbitrary and discriminatory standards of victimhood, “innocence” or “decency.”[[14]](#endnote-14) This manifests for instance in the frequent exclusion from women’s shelters of women who use drugs, as outlined in section D,based on discriminatory stereotypes and narratives that other survivors must be “protected” from their presence.
5. Anti-immigration policies that compound the impacts of these criminal laws frequently purport to “protect the nation” and its people, pointing again to the racialized hierarchies entrenched by discourses of “protection.”[[15]](#endnote-15)

Neoliberalism

1. Criminalization, policing and protectionism are essential tools in allowing neoliberal economies to penalize individuals for societal and structural harms. Poverty and homelessness are telling examples of situations that constitute socio-economic rights violations requiring transformative rather than punitive state intervention.[[16]](#endnote-16) Instead of addressing the root causes of these violations, neoliberal policies rely on the criminal system to control and contain people whose disenfranchisement and marginalization increase along with austerity and cuts to public services.[[17]](#endnote-17)
2. Inequality, segregation, displacement and homelessness are not ‘facts of life’ but the logical consequences of the neoliberal push for profit, privatization, financialization and commodification of public space, housing, services and land,[[18]](#endnote-18) as Right to the City movements have long articulated.[[19]](#endnote-19) The privatization of public space goes hand in hand with the criminalization, stigmatization and exclusion of people whose presence is deemed “illegal,” “undesirable” or to go against classist, racist and patriarchal interests and conceptions of “protection” and “public order.”[[20]](#endnote-20) In addition, it is important to go beyond the concept of “extreme poverty” and examine poverty itself as a human rights violation, and as the result of wilful impoverishment,[[21]](#endnote-21) including through colonial and neo-colonial exploitation, and the deliberate prioritization of profit under capitalism.[[22]](#endnote-22)
3. In this context, it is important for the Special Rapporteurs to challenge the neoliberal economic model positioning homelessness and poverty as anything other than human rights violations, and to call on states to expand public services and ensure an adequate standard of living, rather than resort to punitive and carceral responses.

**C. The criminalisation of sex work and homelessness**

1. Anti-trafficking laws and initiatives that conflate sex work with exploitation can contribute to homelessness.[[23]](#endnote-23) The conflation of sex work with trafficking and slavery has led to the criminalisation of sex work in much of the United States.[[24]](#endnote-24) These same attitudes have also led to specific restrictions on the ability of migrants to engage in sex work in, for example, New Zealand, where despite the decriminalisation of sex work amongst adults, it remains illegal for migrants on temporary visas to work in the sex industry.[[25]](#endnote-25)
2. Far from tackling exploitation, these attitudes have had a huge impact on the vulnerability of people engaged in sex work to homelessness. In the United States, women engaging in street-based sex work, who are the primary targets of prostitution arrests and incarceration, often report unstable housing or homelessness as a result of repeated arrests and detention.[[26]](#endnote-26) Sex work may also constitute the basis for eviction or exclusion from public housing.[[27]](#endnote-27) The scale of this problem is exemplified by the fact that some women engaged in sex work have described jail as a viable housing option, in juxtaposition to the difficulty of obtaining and maintaining housing as a person engaged in sex work in the United States.[[28]](#endnote-28)
3. The long-term impact of criminalisation has also been demonstrated in New Zealand, where even post-decriminalisation, historic convictions have made it more difficult for sex workers to obtain jobs and a stable income and has therefore made many more vulnerable to homelessness.[[29]](#endnote-29)

**D. The criminalisation of drug possession for personal use and homelessness**

1. WHRIN and partners highlight the clear overlaps between communities of people who are homeless and communities of people who use drugs where, under homelessness laws and regulations, people who use drugs face compounding oppression through mechanisms beyond punitive drug policy.[[30]](#endnote-30)
2. There are clear intersecting[[31]](#endnote-31) causal linkages between violence and homelessness experienced by women who use drugs. Women who use drugs, including women living with HIV, are at elevated risk of experiencing violence .[[32]](#endnote-32) [[33]](#endnote-33) [[34]](#endnote-34) [[35]](#endnote-35) Research also indicates that HIV prevention and treatment as well as drug use management for homeless people is exceptionally difficult unless their housing needs are addressed.[[36]](#endnote-36)[[37]](#endnote-37)[[38]](#endnote-38) This reality (and lack of tailored, responsive, cross-sectoral services) can have devastating and disruptive consequences, leading to homelessness and socio-economic precarity as well as poor health outcomes, unintended pregnancies, incarceration and social isolation, impacting unfavourably on bodily autonomy and power dynamics.[[39]](#endnote-39) Drug use, sex work for goods and services, homelessness, overdose and imprisonment have all been correlated with an elevated risk of violence.[[40]](#endnote-40) In most jurisdictions, access to welfare services, support, or housing is contingent upon abstinence which, in practice, contributes to further exposure to violence, trauma, and housing instability.[[41]](#endnote-41)[[42]](#endnote-42)[[43]](#endnote-43) In a study of women who use drugs in Dar es Salaam, housing instability was found to be independently associated with both physical and sexual violence victimization in the past year.[[44]](#endnote-44) Yet, women who use drugs experiencing violence are consistently denied access to shelters based on their drug use status, either by law or by institutionalised practice. A recent study in Indonesia likewise confirmed that women who use drugs are effectively barred from access to gender based violence supports including emergency shelter.[[45]](#endnote-45)
3. Humanitarian crises have also been shown to elevate the already disproportionate incidence of homelessness among women who use drugs.[[46]](#endnote-46) A 2021 review of harm reduction responses for women who use drugs found that GBV and unstable housing or homelessness were worsened by COVID lockdown conditions, with responses of a limited scale, under-resourced and not able to meet demand for shelters, violence prevention, support services, or food.[[47]](#endnote-47)
4. Women who use drugs experiencing homelessness and/or living in poverty face disproportionate targeting from law enforcement. Police often justify initiating a stop and search, or otherwise unfairly target women experiencing homelessness due to their appearance or presence in an area associated with drug use, even when this is no legitimate justification for doing so.[[48]](#endnote-48) With mandatory prison sentences for even low-level drug trafficking, the incarceration of women has jumped globally by 59% since 2000.[[49]](#endnote-49) In instances where people have been arrested and charged with possession of controlled substances, associated structures together with stigma further compound cycles of poverty and homelessness. People charged with possession of controlled substances face further discrimination in employment and in accessing housing. For women, LGBTQ+ people, sex workers, or other marginalized groups, the stigma is compounded further. In the case of women who use drugs and experience poverty or homelessness, they are viewed to be subverting gender norms and failing to fulfil their societal expectations as women.

**E. Recommendations**

1. In this submission, we have argued that ‘protectionist’ criminal laws that aim to safeguard morals and public health can result in the further criminalisation of marginalised communities, particularly women and people discriminated against on the basis of the gender identity, sexual orientation, race or ethnicity, or class, and that such criminalisation is a barrier to accessing housing and other critical services. The key recommendation emerging from this submission is that the joint reports goes beyond the decriminalisation of life-sustaining activities and include a strong call for the decriminalisation of all activities related to sex work and drug use.
2. In doing so, the report would join a growing body of UN human rights mechanisms that have recommended the decriminalisation of these activities, including:

* In 2023, the UN Working Group on the Elimination of Discrimination Against Women and Girls issued a position paper proposing ‘full decriminalisation of adult voluntary sex work from a human rights perspective’.[[50]](#endnote-50) In its General Recommendation 35,[[51]](#endnote-51) the CEDAW Committee concluded that laws criminalising sex workers are ‘discriminatory against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them’. Such a call has also been endorsed by UNAIDS, UNFP, WHO and UNDP.[[52]](#endnote-52)
* Many UN entities and human rights experts are promoting the decriminalisation of drug use and possession for personal use as a core component of a rights- and health-based approach towards people who use drugs, including OHCHR,[[53]](#endnote-53) UNAIDS,[[54]](#endnote-54) WHO,[[55]](#endnote-55) UNDP,[[56]](#endnote-56) UN Women,[[57]](#endnote-57) the CESCR Committee,[[58]](#endnote-58) the WGAD[[59]](#endnote-59) and the Special Rapporteur on health.[[60]](#endnote-60) The UN system Common Position on drugs, the UN overarching policy document on drug policy, promotes decriminalisation amongst its directions for action.[[61]](#endnote-61)

1. In addition to a strong endorsement of decriminalisation of sex work and drug use and possession for personal use, the following recommendations are provided for the joint report:

Conceptual framework

* Examine the deeply gendered, classed and racialized foundations and impacts of laws criminalizing poverty, homelessness, sex work, drug use and possession for personal use, and related issues from an intersectional perspective, and call on States to eradicate these systems of oppression;
* Challenge the colonial, protectionist and neoliberal origins and objectives of many of these laws and policies, as well as the conditions that create impoverishment, inequality and restrict housing options;
* Position homelessness and poverty as human rights violations that require transformative state intervention (including unconditioned access to social protection systems and welfare programs, including universal basic income) rather than criminal and neo-liberal responses;

On the criminalisation of sex work and related issues

* End anti-trafficking initiatives which conflate sex work with trafficking and slavery, decriminalise sex work, remove restrictions on the rights of migrants to carry out sex work, and expunge any historic convictions for sex work;
* Give irregular migrants and migrants on temporary visas access to social/public housing, permission to work so as to be able to earn a stable income, and access to adequate welfare benefits for those who are unable to work;

On the criminalisation of drug use and possession for personal use and related issues

* Remove restrictions in shelter and housing provision to include accommodation for women who use drugs and women who engage in sex work, including through minimum threshold criteria for access. Ensure that all shelters and housing provision bodies approach drug use as a public health issue, including through access to linakes with harm reduction services, remove punitive measures, and that focus remains on the safety and ensuring housing security for all women as well as gender diverse people;
* Lessons learned from the COVID-19 pandemic and other recent humanitarian emergencies show repeatedly that community involvement, low threshold service access, emergency shelters and other targeted relief measures are required and effective in ameliorating predictable hardship experienced by displaced women who use drugs;
* The provision of psychosocial support for GBV survivors who use drugs, along with economic empowerment/cash transfers, must be integrated with wider GBV responses;
* Advocacy and capacity building is required to ensure that safe housing eligibility, access to financial support programs and social protection mechanisms are not contingent on drug use abstinence and proof of identity;
* Interventions to reduce police harassment and violence and bolster accountability must be instituted to eliminate human rights violations perpetrated by law enforcement and to support GBV reporting.

1. **ENDNOTES**

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3. African Court on Human and Peoples’ Rights Advisory Opinion No 001/2018 On the compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and other human rights instruments applicable in Africa, requested by Pan African Lawyers Union (PALU). <https://www.african-court.org/cpmt/storage/app/uploads/public/5fd/0c6/49b/5fd0c649b6658574074462.pdf> Para. 79, also cited by the Special Rapporteur on the independence of judges and lawyers in op. cit. [↑](#endnote-ref-3)
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    On the need to treat poverty as a human rights violation, please see the [joint submission](https://www.sexualrightsinitiative.org/resources/joint-submission-working-group-discrimination-against-women-and-girls-poverty-and) by SRI, AWID and IWRAW Asia Pacific to the Working Group on discrimination against women and girls, focusing on poverty and inequality, para. 11. On homelessness as a human rights violation, see for instance para. 30 of the Guidelines for the Implementation of the Right to Adequate Housing. Report of 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. [A/HRC/43/43](https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F43%2F43&Language=E&DeviceType=Desktop&LangRequested=False), 2019. [↑](#endnote-ref-16)
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    Circuits of Crime, Sex, and Rights." Theory and Society 41, no. 3 (2012): 233-59.

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18. See for instance Report of 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, Balakrishnan Rajagopal: Spatial segregation and the right to adequate housing. [A/HRC/49/48](https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F49%2F48&Language=E&DeviceType=Desktop&LangRequested=False), 2022, para. 31; Report of 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, [A/HRC/34/51](https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F34%2F51&Language=E&DeviceType=Desktop&LangRequested=False), 2017, para. 19; Report of 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, Raquel Rolnik, [A/HRC/10/7](https://www.refworld.org/pdfid/49a54f4a2.pdf), 2009; [↑](#endnote-ref-18)
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