13 September 2023

**Submission to the Special Rapporteurs in the context of the decriminalisation of homelessness and extreme poverty**

**Penal Reform International (PRI) welcomes the opportunity to provide information to the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights for their upcoming joint report on the decriminalisation of offences frequently associated with homelessness and poverty. This submission is based on PRI’s work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people, including research under our Global Prison Trends programme, our practical human rights programmes in a number of regions, and our work as a member of the global Campaign to Decriminalise Poverty and Status.**

**Laws that criminalise poverty and homelessness**

* Laws or regulations that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places, including their texts and whether they are still in force and enforced.
* Laws or regulations that allow for petty offences the detention or imprisonment of individuals who are unable to pay the respective fine.

Around the world, the poorest and most marginalised members of society continue to be over-represented in prisons and criminal justice systems. Many countries continue to enforce laws that lead to imprisonment for acts associated with poverty and survival with little connection to public safety. This unnecessary overuse of imprisonment continues to drive up national prison populations and overcrowding. For example, in Sri Lanka, where prisons are operating at 190% of official capacity, figures from the Department of Prisons show 74% of all convicted persons in 2020 were imprisoned due to the inability to pay fines.[[1]](#footnote-2)

Such laws disproportionately affect those who experience discrimination and social exclusion because of their status, including people experiencing homelessness, informal traders, sex workers and LGBTQ+ persons. The offences of vagrancy or idleness still exist in at least 42 countries in Africa, criminalising people who do not have a means of subsistence and cannot ‘give a good account’ of themselves, allowing the police to arrest such people without a warrant. In many countries the penalty for vagrancy can be up to 6 months’ imprisonment and in some, such as Cameroon, up to 2 years.[[2]](#footnote-3) Begging is also widely prohibited across the region, with maximum penalties ranging from 1 month to 7 years’ imprisonment.[[3]](#footnote-4)

Research has pointed to discrimination against people in prison without a fixed address in the implementation of COVID-19 release measures. In Belgium and Portugal, for instance, people in prison without a residence in the community were excluded from release measures during the pandemic. On the other hand, where a place to live was not a criteria and releases were implemented without adequate preparation, this resulted in cases of homelessness at release from prison. This was seen with extraordinary pardons in Portugal, where public and civil society organisations collaborated to provide accommodation. In Latvia, those released from prison that do not have a place to live can stay at social rehabilitation centres; however, access to these centres was also restricted during the pandemic.[[4]](#footnote-5)

People involved in sex work continue to be criminalised and imprisoned disproportionately in a number of countries. Recent efforts to decriminalise sex work have been seen, for example, in Australia where the state of Victoria became the third state to decriminalise sex work, with the changes and repeal of the current sex work licensing system expected to come into full effect by December 2023. In the US, a bill to decriminalise sex work in the state of Oregon failed to pass in June 2021, but two similar bills were tabled in New York the same year; the Manhattan district attorney’s office said it will no longer prosecute prostitution and requested that 914 open cases be dismissed, as well as 5,080 cases charging people with loitering for the purpose of prostitution.[[5]](#footnote-6)

Even where sex work is not prohibited, sex workers face high risk of detention and ill-treatment. A recent mapping of legislation on sex work in 11 countries in Latin America and the Caribbean found that, although sex work is not prohibited in any of the countries, those working on the streets experience institutional violence, including arbitrary or illegal arrest and detention in Costa Rica, Honduras, Nicaragua, Panama, and Paraguay.[[6]](#footnote-7) For sex workers detained in Peru, usually illegally, demands for bribes or sexual relations in exchange for release was found to be common.

Disproportionate criminalisation of women and girls living in poverty

Women represent a small but increasing proportion of people in prison worldwide: there are over 740,000 women and girls held in penal institutions throughout the world – making up 6.9% of the global prison population. The number of women and girls in prison worldwide has increased by nearly 60% since 2000, compared to a 22% increase among men in prison and general population growth of around 30% over the same period.[[7]](#footnote-8) Most women in prison globally are charged or convicted for non-violent offences, and their imprisonment is often also related to poverty and the inability to pay fines or to afford bail. In the context of the COVID-19 pandemic, for example, women faced additional barriers to release in countries like Afghanistan, where release was dependent on the payment of bail and fees and women typically do not have control over household finances.[[8]](#footnote-9)

The increase in women’s imprisonment is also an indication of some countries taking harsh approaches to women who commit offences in contexts of poverty, discrimination, violence or coercion. In Sierra Leone, for example, loitering laws are particularly likely to criminalise women who do not comply with traditional gender norms such as being out late, and those who engage in sex work, which is otherwise legal.[[9]](#footnote-10) Research in Australia shows the number of women in prison has risen faster than men over the past decade and that women entering prison often come from disadvantaged backgrounds, with a history of substance use and mental health issues. Of the women surveyed, one in four were unemployed prior to imprisonment, 27% were in short-term or emergency accommodation, and 7% were ‘sleeping rough’ or ‘in a squat’.[[10]](#footnote-11) The UK Government said in early 2021 they expect the number of women in prison to rise by 40% by 2025 and plan to build 500 new prison cells specifically for women – in spite of their 2018 strategy which aimed to reduce the number of women in prison. Figures showed more than half of women convicted in 2019 were for low-level offences such as minor criminal damage and shoplifting, and almost half committed their offence to support someone else’s drug use.[[11]](#footnote-12)

**Promising practices for decriminalising poverty and homelessness**

* 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.
* 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.

Last year marked two decades since the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms recommended the decriminalisation of various offences including vagrancy related offences.[[12]](#footnote-13) Moves have accelerated in recent years to reform these laws, including the adoption of the Principles on the Decriminalisation of Petty Offences in Africa, setting out a new legal standard for all African countries, and the mobilisation of the Regional Campaign to Decriminalise Petty Offences. In 2021, the Lagos State in Nigeria agreed to pilot the decriminalisation of petty offences, and in Uganda in 2022, a task force was established to work towards decriminalisation of petty offences, championed by the Uganda Human Rights Commission and including other government agencies involved in law enforcement and law reform.

Reforms are also being led through court action in Africa and beyond. The Malawi High Court in June 2021 heard a case challenging the constitutionality of police ‘sweeping’ exercises which involve arbitrary arrest practices and result in detention without evidence of any offence having been committed. In August 2021, Nigeria’s Federal High Court, in a case relating to raids conducted in April 2019, held that the arrest of the women without cause and the cruel and inhumane treatment they experienced violated their constitutional rights. The Court also issued an injunction restraining the police and other law enforcement entities from arresting women in such circumstances. The case follows a similar judgment in December 2019.

In Brazil, there have been reports of people being arrested for theft of food, energy, or water, including one woman arrested for stealing discarded food from a restaurant’s rubbish bin, and another woman who was imprisoned for more than 100 days, accused of stealing (public) water.[[13]](#footnote-14) In October 2021, the Superior Court of Justice, in releasing a woman who has lived on the street for at least 10 years who had been imprisoned for stealing food and a soft drink (amounting to US$3.84), acknowledged the woman’s state of need and that she had committed ‘starvation theft’.[[14]](#footnote-15)

**Penal Reform International briefing note**

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Penal Reform International (PRI) is a non-governmental organisation that enjoys ECOSOC Special Consultative Status since 1993. Registered in The Netherlands (registration no 40025979), PRI operates globally with offices in multiple locations and is a member of the Campaign to Decriminalise Poverty and Status.



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2. Campaign to Decriminalise Poverty and Status, *Submission on the Decriminalisation of Homelessness and Extreme Poverty*, 30 November 2021, <https://pettyoffences.org/downloads/submission-onthe-decriminalisation-of-homelessness-and-extreme-poverty>. [↑](#footnote-ref-3)
3. Ibid. [↑](#footnote-ref-4)
4. Penal Reform International, *The impact of the COVID-19 pandemic on non-custodial sanctions and measures: Summary report of a comparative study in Member States of the European Union*, January 2022, p. 24. [↑](#footnote-ref-5)
5. ‘Manhattan to Stop Prosecuting Prostitution, Part of Nationwide Shift’, *The New York Times*, 23 July 2021, [www.nytimes.com/2021/04/21/nyregion/manhattan-to-stop-prosecutingprostitution.html](http://www.nytimes.com/2021/04/21/nyregion/manhattan-to-stop-prosecutingprostitution.html). [↑](#footnote-ref-6)
6. Conducted by Red de Mujeres Trabajadoras Sexuales de Latinoamérica y El Caribe (RedTraSex). See all country reports at [www.redtrasex.org/Mapeo-de-la-legislacionsobre](http://www.redtrasex.org/Mapeo-de-la-legislacionsobre). [↑](#footnote-ref-7)
7. Helen Fair and Roy Walmsley, *World Female Imprisonment List: fifth edition*, Institute for Crime & Justice Policy Research, 2022. [↑](#footnote-ref-8)
8. UN Women, *Gender Alert on COVID-19 in Afghanistan. Issue XIV: The Impact of COVID-19 on Women and Girls in Prisons and Detention Settings*, <https://asiapacific.unwomen.org/en/digital-library/publications/2020/08/gender-alert-on-covid-19-in-afghanistan-issue-xiv>. [↑](#footnote-ref-9)
9. Cyrus R. Vance Center for International Justice and AdvocAid, *Woman Wahala Na Prison – Causes and Consequences of Women’s Imprisonment in Sierra Leone*, August 2020. [↑](#footnote-ref-10)
10. Australian Institute of Health and Welfare, *The health and welfare of women in Australia’s prisons*, Australian Government, 17 November 2020. [↑](#footnote-ref-11)
11. ‘Opinion: Short prison terms for women are ineffective – investment is needed in rehabilitation’, *The Independent,* 11 February 2021, [www.independent.co.uk/voices/prison-rehabilitation-womeninvestment-b1800521.html](http://www.independent.co.uk/voices/prison-rehabilitation-womeninvestment-b1800521.html). [↑](#footnote-ref-12)
12. African Commission on Human and Peoples’ Rights, *Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa*, 34th Ordinary Session, November 2003. [↑](#footnote-ref-13)
13. Conectas Direitos Humanos, *Submission to the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights*, November 2021. [↑](#footnote-ref-14)
14. ‘STJ concede habeas corpus e manda soltar mulher que furtou Miojo, Coca-Cola e suco em pó de supermercado na Zona Sul de SP’, *Globo.com*, 13 October 2021, <https://g1.globo.com/sp/sao-paulo/noticia/2021/10/13/stj-concedehabeas-corpus-e-liberta-mulher-quefurtou-coca-cola-miojo-e-suco-em-po-desupermercado-na-zona-sul-de-sp.ghtml>. [↑](#footnote-ref-15)