STRAAT CONSULAAT

Stigmatisation and criminalisation of homelessness through regulation and policy

Analysis from Radboud Law Clinic for Straat Consulaat
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Preface

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Follow-up research on regulation in some municipalities is currently being conducted by Alyssa Kwas, Famke Meerdink, Tess Menting and Emma Sinderdinck (supervised by Ricky van Oers and Eva Rieter).

Assesment criteria
Assessment criteria based on international obligations to determine whether regulations and enforcement contribute to stigmatisation and criminalisation of people who cannot access mainstream housing.

One of the measures to make Housing First concrete -in addition to ensuring that sufficient housing is available- is to counter stigmatisation and criminalisation of homelessness. The Netherlands National Plan on Homelessness (NAD) mentions as one of the actions to be taken 'Investigate laws and regulations that contribute to stigma of (threatened) homeless people'.

Human rights assessment framework
Straat Consulaat requested the Radboud Law Clinic (RLC) to provide a human rights assessment framework, based on the relevant UN obligations, that would be helpful in the government's investigation of laws and regulations that contribute to stigmatisation of (threatened) homeless people. The research on the international human rights framework was conducted by Master students of the Radboud Law Clinic in 2023-2024 and this note was finalised in November 2024.

Stigmatisation and criminalisation through local and national regulation and enforcement makes access to regular housing even more difficult than it already is. In addition, regulations and enforcement, such as fines for washing, begging, eating and drinking in public, and area bans, if these regulations and enforcement stigmatise and criminalise people in situations of homelessness, potentially violate a range of human rights obligations of the Netherlands, as set out in Part A of this report.

The research question
The research question was: what are assessment criteria, based on international obligations, to determine whether regulations and enforcement contribute to stigmatisation and criminalisation of people who do not have access to regular housing. The RLC 2023-2024 did not examine Dutch regulations and enforcement. Currently (from October 2024), follow-up research on regulations in some municipalities is taking place, by Alyssa Kwas, Famke Meerdink, Tess Menting and Emma Sinderdinck (supervised by Dr Ricky van Oers, LL.M and Dr Eva Rieter, LL.M).

Part A of this report is the summary of the 2023-2024 study report, listing the relevant UN and regional authorities. Part B presents the recommendations and assessment criteria based on those international commitments.

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A. Summary of RLC research report 2023-2024

1. Introduction: the need for an international assessment framework for (local) regulations and policies to test for stigmatisation and criminalisation

The Dutch National Action Plan on Homelessness (NAD) includes the action line 'Countering stigmatising perceptions'. The NAD formulates one of the actions to be taken as: 'Investigate laws and regulations that contribute to stigma of (threatened) homeless people'.1 Indeed, regulations, even if they are not directly or indirectly intended to 'punish' certain groups, can still stigmatise these groups (see further under 2). In doing so, a state can come into conflict with international human rights obligations both by national and municipal regulations, and by enforcement.[2]

In 2023-2024 Straat Consulaat requested the Radboud Law Clinic (RLC) to identify some criteria for assessing these regulations and to do so on the basis of a study on obligations under human rights treaties. This research on the applicable international and European law assessment framework would serve the foundation Straat Consulaat, but could also be useful for government agencies with duties under the NAD, including at least the Netherlands Ministry of Health, Welfare and Sport. Straat Consulaat maintained contact with this Ministry in this regard.

This report constitutes an abridged version of the RLC's findings on several of the international and European human rights obligations relevant to this topic to which the Netherlands is committed, with a focus on the prohibition of discrimination.3 It can be used when assessing existing national and municipal regulations and policies and when drafting new regulations. .

In 2024-2025, a new group of Master's students began exploratory research on regulations in some municipalities.[4] As a recent publication on criminalisation, poverty and socioeconomic inequality concludes, practice remains largely invisible and legal questions remain unanswered, partly because of the lack of actual access to the law.[5] There is a task here for national and local government, both in terms of systematic research and in improving access to justice.[6]

2. Stigmatisation and criminalisation of homelessness

2.1 What is stigmatisation?

Stigma is seen as 'a process of dehumanizing, degrading, discrediting and devaluing people in certain population groups', with the perception that 'the person with the stigma is not fully human'. 'Stigma attaches itself to an attribute, quality or identity that is considered 'inferior or "abnormal"'. Self-stigmatisation, or internalised stigma, may additionally have a secondary negative effect, manifesting itself in low self-esteem and self-exclusion from services or

1 National Action Plan Homelessness First a Home, 30 November 2022, Action Line 2, Action Point 4. '2024: Investigate laws and regulations that contribute to stigma of (threatened) homeless people (VWS, J&V)', https://www.rijksoverheid.nl/documenten/rapporten/2022/11/30/nationaal-actieplan-dakloosheid-eerst-een-thuis, p19.
2 See, for example, UN Committee against Racial Discrimination (CERD), L.R. et al. v Slovakia, CERD/C/66/D/31/2003, 10 March 2005, para 10.4-10.8.
3 The research for the assessment framework to assess legislation, regulations, etc. on stigmatization of homelessness was conducted in 2023-2024 by Master students Dina Morozova, Johanna Fischer, Joseph MacPhee, Riddhi Tyagi and Vaibhav Sharma, under the supervision of Dr Eva Rieter, and presented by them to Straat Consulaat and other interested parties in May 2024. These students completed their Masters in International and European law at Radboud later in 2024.
4 In 2024-2025, the RLC with Master students Alyssa Kwas, Famke Meerdink, Tess Menting and Emma Sinderdinck, under the guidance of Dr Ricky van Oers and Dr Eva Rieter, started a follow-up study on regulation and implementation in some municipalities. They also include some recent UN reports and other publications that could no longer be incorporated in the English 2023-2024 report, but could be incorporated in the present note to enrich the humn rights assessment framework.
5 Van Noorloos, M. (2024), ' Strafbaarstelling, armoede en sociaaleconomische ongelijkheid' (Criminalisation, poverty and socio-economic inequality), 5(3) Boom Strafblad, 137-147, p 140.
6 See further, among others, Barkhuysen, T, and van Emmerik, M., 'Het EVRM en de bescherming van kwetsbare personen in het bestuursrecht' (The ECHR and the protection of vulnerable persons in administrative law) (2024) 29(1) Tilburg Law Review 7. DOI: https://doi.org/10.5334/tilr.364. See also, for example, UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009, paras 36-41.

opportunities,[7] or in, as Terlouw puts it, a general problem of people complaining about discrimination having to name the very identity characteristic that in their eyes should be irrelevant.'.[8]

Stigma is often based on ignorance, fears and misconceptions that can be combated through awareness-raising. National and local authorities have an obligation to ensure that regulations and decision-making do not contain or perpetuate stereotypes and prejudices. This requires involving the groups affected by regulation in the regulatory process (right to meaningful participation).[9] Training on stigma, for decision-makers, is also preferably developed by, or at least in consultation with, those who are (or have been) targets of stigma and have knowledge about the effects of fines and the reasons why people do not accept the help offered..[10]

2.2. What is criminalisation?

The concept of criminalisation is understood more broadly than just punishment under criminal law. Regulations often punish indirectly, even when these regulations do not formally fall under criminal law in the Netherlands. Therefore, when assessing regulations and implementation, it is necessary to take a broader view of the concept of 'criminalising regulations', to include also regulations that do not formally constitute criminal law in the Netherlands.[11] In doing so, it is important to also consider the criminalisation of behaviour resulting from the fact that someone does not have a permanent address.

The most well-known and visible punishment of homeless people takes place on the streets where people who sleep outside, or by necessity spend a lot of time on the streets, are fined for sleeping outside and (other) forms of (perceived) nuisance directly related to their homelessness. This may cover regulations that, for example, prohibit sleeping, eating, drinking, preparing food, sitting, washing and/or urinating in public spaces while adequate alternatives are not available; or, for example, regulations that prohibit begging, offering odd jobs on the street, or peddling items.[12]

These fines are often administrative in nature. However, they are frequently perceived as punishment by both the person imposing the fine, and the person receiving it. The same applies to area bans. Moreover, the consequence of repeated non-payment of fines is fine stacking, after which the public prosecutor can even request the district court judge to authorize the person concerned to be held hostage. In light of human rights obligations, such as the principle of equality and the prohibition of discrimination, this is problematic. The UN Rapporteurs also point to the rule that no one should be detained solely because they are unable to fulfil an obligation arising from a contract (art 11 ICCPR).[13] Simple offences such as shoplifting or destruction of flowers, together with violating a restraining order, may even lead to a measure of 'placement in a facility for habitual offenders for the duration of two years'.[14]

7 See, inter alia, UN Special Rapporteur on the human right to safe drinking water and sanitation, Stigma and the realisation of the human rights to water and sanitation, 2 July 2012, A/HRC/21/42, paras 12 (and reference therein), 14, 18-21, 23-42, 58-77, 82.41.
8 See Terlouw, A., "Klassisme. Discriminatie op grond van sociale status. Toevoeging van de gronden sociale afkomst en/of sociaaleconomische status aan de Nederlandse anti-discriminatiewetgeving?' (Classism. Discrimination based on social status. Adding the grounds of social descent and/or socio-economic status to Dutch anti-discrimination law?) 47(4) Nederlands Tijdschrift voor de Mensenrechten NJCM-Bulletin 403-421 (2022), p 412, referring to Minnow, M., Making all the difference, New York: Cornell University Press 1990.
9 See, for example, Art 12 CRC.
10 See also Special Rapporteur on safe drinking water, paras 64, 68.
11 See also van Noorloos, who points out that 'punitive administrative law' can foster socio-economic inequalities, van Noorloos, M. (2024), 'Strafbaarstelling, armoede en sociaaleconomische ongelijkheid', 5(3) Boom Strafblad, 137-147, p 137.
12 See, for example, Principle 21 of the International Commission of Jurists 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty, March 2023 (25 pp). See also the joint report of the UN Special Rapporteur on extreme poverty and the UN Special Rapporteur on the right to housing (full name: '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'), Breaking the cycle: ending the criminalisation of homelessness and poverty, A/HRC/56/61/Add.3, 26 June 2024, paras 34-36.
13 Idem Breaking the cycle, para 16. Even though a fine is not strictly speaking a contract, art 11 ICCPR seems indeed relevant here because of the object and purpose of the provision.
14 See further Schipaanboord, E. & Vols, M., 'Criminalising homelessness: the case of areas bans in the Netherlands', 2024, who refer to Rechtbank Amsterdam, 26 April 2023, ECLI:NL:RBAMS:2023:3532; and Rechtbank Den Haag, 9 November 2023, ECLI:NL:RBDHA:2023:17139. See more generally Breaking the cycle, paras 5-6.

2.3. Stigmatisation and criminalisation and human rights

Internationally, stigmatisation of (groups of) people, in the sense of stereotyping, and often in the form of criminalisation, is strongly condemned.[15] First, this often stems from, or results in, discrimination. The assessment framework on discrimination is the focus of the RLC report and is summarised here in section 5.

In addition, stigmatisation can undermine feelings of self-esteem and self-confidence and thus, in addition to being a violation of the prohibition of discrimination, violate the right to private life, and often also the right to family life and/or the prohibition of cruel treatment (art 7 ICCPR). UN experts have specifically noted the consequences of regulations and policies for outdoor sleepers and the various human rights involved. One consequence is a persistent state of anxiety and sleep deprivation. There are also consequences such as destruction or confiscation of personal property and evictions (from squats/camps, for example) that take place without the availability of an adequate alternative. Here, the prohibition of cruel, inhuman or degrading treatment may come into play, including when the government fails to respond to requests for shelter or to ensure minimum subsistence (see Article 7 ICCPR).[16]

Punishing people for survival-related activities, when they have no other means of survival, may additionally violate the right to an adequate standard of living. A criminal record as a result is the beginning of a vicious circle, as it is a barrier to accessing housing (see Article 11 ICCPR).[17] Punishing activities aimed at staying alive may amount to a violation of the right to life in dignity (Article 6 ICCPR).[18] UN experts also argue that long-term homelessness causes avoidable mortality.[19] The right to the highest attainable standard of physical and mental health is also at stake. Homelessness increases health risks. Punishing homelessness is the opposite of what states should do under Article 12 ICESCR, especially when mental health problems give rise to homelessness. Criminalising people with increased morbidity and health risks can lead to discrimination based on health status.[20]

In addition, regulations may violate freedom of assembly (Article 21 ICCPR);[21] freedom of movement and choice of residence (under Article 12 ICCPR);[22] and the right to privacy, under Article 17 ICCPR, linked to the concept of home. A caravan, sleeping bag, makeshift shelter or tent constitutes a home for people who are homeless;[23] and prohibiting them from working may violate the right to work, including the right to the opportunity to earn one's own living, and the right to fair and favourable conditions of work (Articles 6 and 7(b) ICESCR).[24]

Furthermore, in most cases, arrests and detention for activities undertaken to meet daily needs is disproportionate and unnecessary. Persons who are homeless are also at increased risk of being arrested and charged for activities that are not illegal if carried out indoors, in homes of private homeowners or tenants. Such arrests may violate the right to liberty and security under Article 9 ICCPR.[25] Finally, it is necessary to always take into account the Convention on the Rights of the Child and the best interests of the child.[26]

15 See also, for example, the call by states in the UN Human Rights Council for all UN member states to lift criminalising regulations: Resolution 43/14 on Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context, 6 July 2020, para 1(j).
16 See recently, for example, Breaking the cycle, para 10(a). See also European Court of Human Rights (ECtHR), N.H. et autres c. France, 28820/13, 2 July 2020 and see Supreme Court of the United Kingdom R (on the application of Limbuela) v Secretary of State for the Home Department [2205] UKHL 66; [2006] 1 AC 396 (HL), para 71.
17 Breaking the cycle, 10(b).
18 See, inter alia, UN Human Rights Committee General Comment 36 on the right to life, CCPR/C/GC/36, 3 September 2019, paras 3 and 26.
19 Breaking the cycle, 10 (c) and 14
20 Breaking the cycle, 10(d).
21 Breaking the cycle, 10(h). See also, inter alia, Children's Rights Committee (CRC) General Comment No 21 (2017) on children in street situations, CRC/C/GC/21, 21 June 2017, paras 36-40.
22 Breaking the cycle, 10(f). See Vols and Schipaanboord 2024 in more detail.
23 Breaking the cycle, 10(g). See also, inter alia, Children's Rights Committee (CRC) General Comment No 21 (2017) on children in street situations, CRC/C/GC/21, 21 June 2017, paras 27, 43, 60.
24 Breaking the cycle, 10(i).
25 Breaking the cycle, 10(e) and 17-19.
26 See further in any case Children's Rights Committee (CRC) General Comment No. 21 (2017) on children in street situations, CRC/C/GC/21, 21 June 2017. See also eg CRC General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/1, 29 May 2013, para. 6; General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, para. 22

2.4. Inclusive approach to homelessness

An inclusive approach to homelessness is needed to make the right to housing effective, and to counter stigma and stereotyping, and thus violations of other human rights (see above). In an inclusive approach, the government takes into account not only the impact of regulations on the group of 'outdoor sleepers' most conspicuous to 'the public', but also the impact on others in situations of homelessness. Those situations are very diverse, from people in debt, migrant workers who have lost their jobs and thus their housing, people without residence permits, to people with addiction problems or psychiatric disorders, and combinations of these situations. They can also include situations of domestic violence, which may result in children ending up in emergency accommodation with a parent, for example.[27] Or young people who run away and stay with friends and acquaintances.[28] In short, there are many people who, although not sleeping on the streets, do not have an official permanent place to live or stay and who stay in different places, or occupy unofficial accommodation.

In an analysis of regulations and enforcement of begging bans, fines, area bans and the like, the negative impacts on people using public spaces who are visibly homeless are more likely to be evident. But these regulations and enforcement can also cause (self)stigmatisation of other homeless people. That (self)stigmatisation can also be an obstacle for them accessing regular housing. In addition, it is common for people without a permanent place to live, to be able to stay somewhere in some periods, and in other periods to have to sleep outside again. As a result, they may alternately have to deal with direct and more indirect consequences of regulations.[29] Both in policies aimed at combating nuisance, and in policies specifically aimed at reducing homelessness, it can be stigmatising when conditions are imposed on everyone in this very diverse group of people, in all kinds of different situations of homelessness. Think of a general condition that you have to be admitted to a shelter before you are potentially entitled to urgent access to regular housing, or the fact that you are not allowed to enter into a tenancy agreement with the landlord yourself, and are obliged to enter into a care contract.

3. Good rules: content and process

The government has an obligation to ensure that regulations and policies are careful in terms of both content and process (especially establishment and evaluation). In any case, this means that when making and implementing rules, the government should prevent and combat disproportionate effects for certain groups.[30] The government also has an obligation to ensure a careful process, in which it consults stakeholders when drafting and adapting rules and organises monitoring and evaluation of rules and their enforcement.

Further on the process

When drafting regulations, including local ones, it is important, based on treaty obligations,[31] that all 'stakeholders' are effectively consulted, in any case including persons who can be expected to be affected by the regulations. UN experts speak of the obligation to conduct a comprehensive legislative review with all stakeholders.[32]

27 See further See Children's Rights Committee (CRC) General Comment No. 21 (2017) on children in street situations, CRC/C/GC/21, 21 June 2017, para 46.
28 See also CRC General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, paras 52- 54, 58-59, 66-67. 29 The Ethos Light definition of homelessness can be helpful for an inclusive approach, see e.g. https://www.feantsa.org/download/fea-002-18-update- ethos-light-00324174417886874191 54.pdf.
30 This also fits into the current proportionality debate in the Netherlands, partly as a result of the 'Toeslagen affaire' (the Dutch benefits affair scandal) and see also Administrative Jurisdiction Division of the Dutch Council of State: ABRvS 2 February 2022, ECLI:N- L:RVS:2022:285 (Harderwijk).
31 See, for example, Art 7 CEDAW; Art 2(1)(e) ICERD; Art 2(2) IVESCR and Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009, para. 36; see also art 4(3) and 33(3) CRPD and Committee on the Rights of Persons with Disabilities, General Comment No. 6, CRPD/C/GC/6, 26 April 2018, para. 33, 70(d) and (e) and 73(j) and see General Comment No. 7, on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention CRPD/C/GC/7, 9 November . See further CRC General Comment No. 21 (2017) on children in street situations, CRC/C/GC/21, 21 June 2017, para 33; on participation in general, see, inter alia, CRC General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, paras 23-25.
32 Breaking the cycle, paras 32-33. See further UN Special Rapporteur on the human right to safe drinking water and sanitation, Stigma and the realisation of the human rights to water and sanitation, 2 July 2012, A/HRC/21/42, para. 68. See also, inter alia, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Racial discrimination and emerging digital technologies: a human rights analysis, A/HRC/44/57, 18 June 2020, para. 56 (on equality impact assessment and the importance of 'co-design and co-implementation').

For example, when drafting municipal regulations (bylaws), not only shopkeepers who might experience 'nuisance' should be consulted, but also people who are homeless and use the relevant public space. Persons in situations of homelessness should be effectively approached to this end in a way that encourages their participation, throughout the regulatory process. Meaningful participation is thus an important assessment criterion for regulations. SamenThuis2030 has developed a guidance for officials and advocates on meaningful participation[33] for homeless youth. This also includes a training.[34]

In addition, it is a general requirement for governments (national and local) to monitor regularly whether certain groups are disproportionately affected by their regulations and other measures.[35]

Further on the content

People without housing are not suddenly going to do something different in response to regulations and measures. The government, including local authorities, should investigate[36] whether measures repeatedly affect certain groups, in this case people in various situations of homelessness, because they no other choice. If that is the case, the measures miss the mark and there may be disproportionate disadvantage.

If no adequate alternatives are available, all activities necessary to live/survive on the streets should allowed. This is true in any case where homelessness is directly due to a lack of affordable suitable housing. All activities that people with homes would do in that home in normal daily life, outdoor sleepers necessarily carry out on the street or in the public space.[37] In this sense, the street and any sleeping places they have created there are their alternative home. In that case, a restraining order or the taking of a tent can be seen as a violation of elements of the right to housing, and perceived as an eviction and home invasion.[38]

4. Assessment of regulations and enforcement based on the prohibition against discrimination

4.1 General criteria

Proposed and existing regulations must comply with the principles of equality and non-discrimination.[39] includes the following:

- Formal equality alone is insufficient. It is also about material equality. This means addressing de facto (actual) (social) inequality, and the stigma associated with it.
- Meaningful participation of people affected by measures is an important right. [40] In the context of stigmatising and criminalising laws and regulations, such meaningful participation can help make visible the disproportionate impact of laws and regulations on people in extremely vulnerable situations, which would allow for a better adaptation of laws

33 See CRC General Comment No. 21 (2017) on children in street situations, CRC/C/GC/21, 21 June 2017, para 33; on participation in general, see, inter alia, CRC General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, paras 23-25. See further EU Lisbon Declaration on the European Platform on Combatting Homelessness, 21 June 2021, p 6. See also European Committee on Social Rights in ERRC v France, Decision on Complaint No 51/2008, 19 October 2009, para 93 (where the Committee stresses the importance of dialogue with persons affected by poverty and exclusion and with representatives of civil society).

34 See SamenThuis 2030, 'Betekenisvol samenwerken met jongeren met ervaringskennis over (dreigende) dakloosheid, Een handleiding voor beleidsmakers' (Meaningful collaboration with young people with experiential knowledge about (impending) homelessness, A guide for policymakers) https://vng.nl/sites/default/files/2023-11/betekenisvolle_participatie_van_jongeren_met_ervaringskennis.pdf. See also https://zoek.officielebekendmakingen.nl/kst-29325-159.html .

35 See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non- Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 25 May 2009, paras 37 and 41.

6 See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 25 May 2009, paras 37 (review of laws) and 41 (monitoring, indicators and benchmarks); and CRPD General Comment No. 6 (2018) on equality and non-discrimination, CRP-D/C/GC/6, 26 April 2018, paras 34, 35 and 71.

40 On the right to participation in general, see, for example, Office of the High Commissioner on Human , Guidelines for States on the effective implementation of the right to participate in public affairs, A/HRC/39/28, 20 July 2018, paras 49-94. To combat material inequality, it is necessary to address existing disadvantages and, at the same time, stigma and stereotyping. It also requires that affected individuals and groups have a say, can participate in decision-making and are seen and recognised. See, for example, UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20, 2 July 2009, para. 8.a and b. See also Committee on the Rights of Persons with Disabilities (CRPD), General comment on equality and non-discrimination, CRPD/C/GC/6, 26 April 2018, paras 10, 28; and European Social Rights Committee (ESRC), European Roma Rights Centre (ERRC) v. France, Collective Complaint 51/2008, 19 October 2009, para 83; also in other regions, see, inter alia, Inter-American Human Rights Court Advisory Opinion OC-29/22, Differentiated approaches with respect to certain groups of persons deprived of liberty, 30 May 2022, para 59. See also paras 60-65.

and regulations or of their implementation.
- The right not to be discriminated against is an independent right under the ICCPR (and Protocol 12 ECHR): a violation is a violation regardless of whether other human rights have been violated in addition.
- The discrimination prohibition may involve different treatment of persons in relevantly similar circumstances. It may also involve precisely the unjustified equal treatment of persons in relevantly different circumstances.[41]

4.2 Direct and indirect discrimination are prohibited

Direct discrimination occurs when a measure has a discriminatory intent or is overtly disadvantageous to a particular group. This may be the case, for example, if the text of a local regulation (bylaw), work instructions, or local specification of regulations, specifically disadvantages homeless people. There may also be direct discrimination if it appears that homeless citizens from other countries (in practice, often from EU countries) are actively fined to secure their deportation.[42]
The terms used in regulations, work instructions and specifications can say a lot. For example, the UN Special Rapporteur points out that these terms can be so vague and broad that they give authorities arbitrary discretion in determining what behaviour will lead to arrest, detention or deportation of people without housing. Think of labels like 'vagrants', 'tramp' or 'vagabond', nouns like 'anti-social behaviour' and 'nuisance', and adjectives like 'lazy' or 'disorderly'.[43]

Indirect discrimination occurs when a measure that at first sight appears neutral, disproportionately affects people belonging to a particular group, without reasonable and objective justification. Stigmatisation and criminalisation of behaviour are usually not directly targeted at a suspect ground such as gender, religion, or socio-economic status (as ground designated by international authorities on the basis of international human rights obligations), but they are instead targeted at behaviour related to such a suspect criterion. This disproportionately affects people belonging to that group. Indirect discrimination can occur when prejudice and stigma are hidden behind a neutral criterion to circumvent the prohibition of direct discrimination. Indirect discrimination can also be unintentional. Also if the disproportionate disadvantage caused by a measure is unintentional, there is still a violation of the prohibition of discrimination. This has been confirmed by UN committees monitoring UN conventions,[44] and by regional human rights courts.[45] In order to recognise indirect discrimination, it is necessary to look at the context, including the circumstances in which the regulation was drafted or invoked, and/or examine research findings on the impact of regulations and enforcement. The question of institutional discrimination also comes into play here.[46] Institutional, structural, or systemic discrimination may involve legal rules, policies,

41 See, for example, the aforementioned ESRC, European Roma Rights Centre (ERRC) v France, collective complaint 51/2008, 19 October 2009, paras 81 and 83.
42 See, for example, UN Special Rapporteur Housing on his visit to the Netherlands, A/HRC/55/53/Add.1, 2 April 2024, para 48. See also para 19.
43 Breaking the cycle, para 2.
44 See, for example, Human Rights Committee General Comment No 18, 1989, para 12; and Human Rights Committee Prince v South Africa, CCPR/C/91/D/1474/2006, 31 October 2007, para 7.5; Sharon McIvor and Jacob Grismer v Canada, CCPR/C/124/D/2020/2010, 1 November 2018, para 7.11; Alymbek Bekmanov and Damirbek Egemberdiev v Kyrgyzstan, CCPR/C/125/D/2312/2013, 29 March 2019, para 7.7; CEDAW, ST v Russian Federation, CEDAW/C/72/D/65/2014, 25 februaryi2019, paras 9.4 and 9.5; CERD, General Recommendation No. 32, CERD/C/GC/32, 24 September 2009, para 9; CERD, Murat Er v Denmark, CERD/C/71/D/40/2007, 8 August 2007, para. 7.3; CERD, Ms. L.R. et al. v Slovakia, CERD/C/66/D/31/2003, 7 March 2005, para. 10.4; CRC General Comment No. 5 (2003) on general measures of implementation of the Convention, para. 12; CRC General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, paras 21 and 26.
45 On indirect discrimination and the ECHR, see, inter alia, Biao v. Denmark [GC], no. 38590/10, 24 May 2016. See further Council of Europe: European Court of Human Rights , Guide on Article 14 of the European Convention on Human Rights and Article 1 of Protocol No. 12 to the Convention - Prohibition of Discrimination, updated 29 February 2024, available at: Guide on Article 14 and on Article 1 of Protocol No. 12 - Prohibition of discrimination (coe.int), para 35. For further updates, see Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination - ECHR-KS - Knowledge Sharing (coe.int). See also European Committee on Social Rights, e.g. Autism-Europe v. France collective complaint 13/2002, 4 November 2003, para 53. The Inter-American Court of Human Rights has also regularly ruled on indirect discrimination, see e.g. Norín Catrimánet et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, judgment of 29 May 2014, para 200-201; Advisory Opinion OC-18/03, 17 September 2003, para. 103; Yatama v. Nicaragua, judgment of 23 June 2005, para. 186, Atala Riffo and daughters v. Chile, judgment of 24 February 2012, para. 82; Nadege Dorzema et al. v. Dominican Republic judgment 24 October 2012, para. ; Advisory Opinion Oc-29/22, , Differentiated Approaches with Respect to Certain Groups of Persons Deprived of Liberty, 30 May 2022, para. 58; see also Inter-American Commission, for example: Towards the Effective Fulfillment of Children's Rights: National Protection Systems, OEA/Ser.L/V/II.166 Doc 206/17, 30 November 2017, para. 300 and also the African Court on Human and Peoples' Rights (ACtHPR), Advisory Opinion Vagrancy Laws, 4 December 2020, paras 67 and 73; ACtHPR Tanganyika Law Society and The Legal and Human Rights Centre and Reverend Christopher Mtikila v. United Republic of Tanzania, 14 June 2013, paras 105.1, 105.2
46 See further Parliamentary Inquiry Committee, 'Doing equal justice. A parliamentary enquiry into the legislature's ability to combat discrimination', June 2022.

practices or dominant cultural attitudes, that create disadvantages for some groups, and privileges for others..[47]

4.3 Adversity test

To effectively combat stereotyping (the term often used in case law instead of stigmatisation), it is important to apply a harm test: discrimination occurs if the stereotyping is harmful to the group in question and the rule or practice is based on such stereotypes. If regulation or enforcement is stereotyping, it cannot be reasonable or objective. Then it is discriminatory.

Questions that can be asked when reviewing existing regulations, or drafting new ones: :

- Do regulations aimed at (perceived) nuisance indeed protect third parties from direct harm (physical, psychological or financial)? (if not: then it is necessary to be extra vigilant for discrimination)
- Does the regulation negatively affect people based on their personal identity or status? (if yes: this is a clear indication of stigma and discrimination)
- Does the existence and enforcement of the rule[48] deny services and rights to individuals, especially to already marginalised groups, or do the stigmatising impact of that rule and of its enforcement impede access to services and the exercise of rights?[49] (if yes: there is a conflict with human rights obligations).

4.4 Grounds for discrimination

It follows from the ICCPR and the ICESCR that discrimination of any kind is prohibited.[50] Besides some examples of specific grounds of discrimination, such as social origin, property and birth, article 26 ICCPR mentions here the ground 'or other status'.[51] Lack of access to regular housing is such an 'other status'.[52]

> *"All are equal before the law and are entitled to equal protection under the law without discrimination. In this regard, the law prohibits discrimination of any and guarantees to everyone equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Article 26 ICCPR, with italics added by the RLC).*

47 See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social, and cultural rights, Identifying and Preventing Systemic Discrimination at the Local Level, E/C.12/GC/20, 2009, para 12 (the Committee speaks of 'systemic discrimination') and paras 8b and 39.
48 Consider also extreme formalism, see e.g. ECHR G.R. v. Netherlands, 10 January 2012, 22251/07, AB 2012/31, annotated by Barkhuysen and Van Emmerik.
49 See further also Gerards, J., ' Slingerbewegingen in de rechtsstaat' (Pendulum swings and the rule of law) (2023) 39 NJB 2818, 3392-3398.
50 See art 26 ICCPR and art 2(2) ICCPR. See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art 2, para. 2), E/C.12/GC/20, 25 May 2009, para 27: "These additional grounds are commonly recognised when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalisation. The Committee's General Comments and Concluding Observations have recognised various other grounds and these are described in more detail below. However, this list is not intended to be exhaustive." In addition, specific treaties such as CEDAW, ICERD and CRPD provide protection against discrimination on specific grounds.
51 Art 14 ECHR also contains the open clause 'other status'. The ECtHR did rule in some cases that certain differences in treatment are not covered under 'other status', see further Guide on Article 14 and on Article 1 of Protocol No. 12 - Prohibition of discrimination. But given the obligations under the UN conventions, and in light of the European Social Charter (art E), the European Charter on Fundamental Rights (art 21(1)) ,and the EU Lisbon Declaration on the European Platform on Combatting Homelessness, 21 June 2021, socio-economic status, poverty, and situations of homelessness may be considered examples of 'other status'. See also art 1(1) American Convention on Human Rights: 'any other social condition'; and art 2 African Charter on Human and Peoples' Rights. The African Court of Human and Peoples' Rights (ACtHPR) has indicated that 'any other status' 'encompasses those cases of discrimination, which could not have been foreseen during the adoption of the Charter' and that discrimination based on economic status is prohibited, see ACtHPR Advisory Opinion on Vagrancy Laws, 1/2018, 4 December 2020, paras 72-73.
52 See, for example, 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, Leilani Farha, Guidelines for the Implementation of the Right to Adequate Housing, A/ HRC/43/43, 26 December 2019, paras 31, 32 and 33(c). See also, inter alia, Committee on Economic, Social and Cultural Rights, General Comment 20 (2009) on non-discrimination in economic, social and cultural rights, para. 35 ("Economic and social situation. Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatisation and negative stereotyping which can lead to the refusal or unequal access to the same quality of education and health care as others as well as the denial of or unequal access to public places."), as well as para 26 (no discrimination based on descent), para 33 ("States parties should also adopt measures to address widespread stigmatisation of persons on the basis of their health status, such as

Discrimination based on social status (both social origin and socioeconomic status), and also referred to as classism,[53] is moreover increasingly clearly named internationally as a separate prohibited ground of discrimination.[54] The states in the UN Human Rights Council have also established a Special Rapporteur on the right to adequate housing, as a component of the right to an adequate standard of living, who has been explicitly mandated to also monitor worldwide the right not to be discriminated against because of housing status.

People who do not have access to regular housing, or are at risk of losing such access, may thereby belong to a group with a protected status.[55] They are in a vulnerable situation, which makes the distinction made more suspect.[56] Multiple grounds of discrimination may also be at play at the same time, which together leads to discrimination, or makes the violation even more serious.[57]

4.5 Discrimination: conditions for justification grounds[58]

- The relevant government which, by regulation or policy, directly or indirectly, appears to act in violation of the prohibition of discrimination can only be justified on two conditions. One is that the distinction made is not suspect. The other is that the government can concretely demonstrate that not only the regulation as such (which, for example, aims to protect against 'nuisance'), but also the distinction made itself, serves a legitimate purpose under human rights treaties. This must then be a purpose exhaustively l isted in the ICCPR: namely for the rights or reputations of others, or for national security, public order, public health and morality.[59] it must also be reasonable, objective, and clearly set out in national regulation and arrived at in accordance with the law (principle of legality).
- This also means that the rule or measure is demonstrably proportional. It is strictly necessary and achieves the legitimate aim with the lowest burden. So if there is a less intrusive alternative, the regulation or measure is not necessary.
- If a measure or rule does not work it is not necessary.
- The measure or rule should not be arbitrary and should not violate other human rights obligations. In addition, it is important to examine not once but regularly whether the distinction made has a disproportionate negative effect.

53 See further Terlouw, A., 'Klassisme. Discriminatie op grond van sociale status. Toevoeging van de gronden sociale afkomst en/of sociaaleconomische status aan de Nederlandse anti-discriminatiewetgeving?' 47(4) Nederlands Tijdschrift voor de Mensenrechten NJCM-Bulletin 47(4) Nederlands Tijdschrift voor de Mensenrechten NJCM-Bulletin 403-421 (2022).
54 See further, among others, Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, Banning discrimination on grounds of socioeconomic disadvan- : an essential tool in the fight against poverty, A/77/157, 13 July 2022; UN Human Rights Committee General Comment 36, CCPR/C/GC/36, 3 September 2019, para. 61. European Social Rights Committee (ESRB), International Federation for Human Rights (FIDH) v. Ireland, collective complaint. 110/2014, 23 October 2017 (some people and groups are hindered in their rights 'on the grounds of their socio-economic or health status, or other personal conditions'); and International Federation for Human Rights (FIDH) v. Ireland, Collective Complaint 110/2014, 23 October 2017, para. 124 (the prohibition of discrimination (Article E), obviously includes discrimination on grounds of poverty). See also Sayek Böke, S., Rapporteur for the Parliamentary Assembly of the Council of Europe, Tackling discrimination based on social origin, Report Doc. 15499, Explanatory Memorandum, 11 April 2022. See further Ganty, S. and Benito Sanchez, J.C., Expanding the List of Protected Grounds within Anti Discrimination Law in the : An Equinet Report, published by Equinet, European Network of Equality Bodies, 2021. See further, for example, Inter-American Commission on Human Rights (IAComHR), Report on Poverty and Human Rights in the Americas. OAS/Ser.L/V/II.164 Doc. 147, 7 September 2017, paras 177-8, 102. See also IAComHR, Compendium on Equality and Non-Discrimination, Inter-American Standards, OEA/Ser.L/V/II.164, II.171 Doc. 31, 19 February 2019, paras 5, 112-3 and 152.
55 See, inter alia, CESCR El Ayoubi et al v. Spain, E/C.12/69/D/54/2018, 19 February 2021, para 13.1; IAComHR Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II. Doc. 68, 20 January 2007, para 83 (economic status as a suspect category). English-language literature already speaks of 'homeism' a form of discrimination based on housing status, which is based on negative stereotyping of homelessness. See Canham, S.L. and others, 'Homeism: Naming the Stigmatisation and Discrimination of Persons Experiencing Homelessness' (2 021) 39 Housing, Theory and Society 507-523 and later also Fragkou R and Tsadiras A, 'Breaking the Vicious Circle between Discrimination and Homelessness' (2023) 12 International Human Rights Law Review 223, among others.
56 The UN Committee on Economic, Social and Cultural Rights (CESCR) has ruled in an individual complaint against Spain that social housing cannot be denied to people who have 'squatted' a place because of homelessness. The state must ensure that systemic discrimination and stigmatisation of those living in poverty is not perpetuated. To counter stigmatisation, conditions of access to social services must be reasonable. Moreover, the behaviour of a person in need of alternative housing should not be held against that person to impede that person's access to social services. CESCR El Ayoubi et al v. Spain, E/C.12/69/D/54/2018, 19 February 2021, para 13.1. In a recent inadmissibility decision, the ECtHR took a paternalistic and stigmatising approach to vulnerability, distinguishing, as Ganty puts it, between the good and bad 'poor', and misapplied the criteria formulated in Lăcătuș t Switzerland, 14065/15, 19 January 2021 (case on a general ban on begging). This was in Dian v Denmark, 44002/22, 21 May 2024 (not received). See further Ganty, S., 'Sliding Fast Down the Slippery Slope of Criminalisation of Poverty in Strugurel Ion Dian v. Denmark', in Strasbourg Observers, 28 October 2024, strasbourgobservers.com/2024/10/29/sliding-fast-down-the-slippery-slope-of-criminalisation-of-poverty-in-strugurel-ion-dian-against-denmark/. See further Art 53 ECHR: 'No provision of this Convention shall be interpreted as imposing restrictions on or infringing the human rights and fundamental freedoms that may be secured under the laws of any High Contracting Party or under any other treaty to which the High Contracting Party is a party.'

5 Conclusion

If national and municipal regulations and enforcement stigmatise and criminalise people who do not have access to regular housing, this may violate several human rights, including the prohibition of discrimination. To assess whether existing and proposed regulations, and enforcement by local authorities, comply with the prohibition of discrimination, it is important to look at the content of the regulations, and likewise to review whether regulations and policies were created with meaningful input from people in situations of homelessness. Content-wise, 'homelessness', or more generally, socioeconomic status, is a ground for discrimination prohibited under UN conventions. People should not be discriminated against directly on this ground, but also not indirectly. To ensure this prohibition, legislators, law enforcement and courts need to be very alert to vague terms and to how these terms are applied in practice. According to the UN rapporteurs the prohibition of discrimination also requires regular scrutiny by the government, at national and local level, of the detrimental effect of regulation and enforcement on people in situations of homelessness. Detected discrimination can only be justified if it meets a set of conditions, including legitimacy, effectiveness and necessity.

57 See, for example, UN Human Rights Committee Sonia Yaker v France, CCPR/C/123/D/2747/2016, 17 July 2018, para 8.17; Seyma Türkan v Turkey, CCPR/ C/123/D/2274/2013/Rev.1, 17 July 2018, para 7.8; UN Committee Against Discrimination Against Women (CEDAW) General Recommendation No. 28 on the Core Obligations of States Parties under Article 2, CEDAW/C/GC/28, 16 December 2010, para 18; CEDAW, S.B. and M.B. v North Macedonia, CEDAW/C/77/D/143/2019, 2 November 2020, para 7.3; CEDAW, R. P. B. v The Philippines, CEDAW/C/57/D/34/2011, 12 March 2014, paras 8.2, 8.3;
2 November 2020, para 7.3; CEDAW, R. P. B. v The Philippines, CEDAW/C/57/D/34/2011, 12 March 2014, paras 8.2, 8.3; UN Committee Against Racism (CERD), The meaning and scope of special measures, General Recommendation No. 32 (75th session, 2009), paras 3 and 7; Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 25 May 2009, paras 17 and 27; CRPD General Comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, 26 April 2018, para 32; European Social Rights Committee (ECSR), International Planned Parenthood Federation - European Network (IPPF EN) v Italy, 10 September 2013, paras 190-194. See further on the interference of inequalities, intersectionality: Terlouw, A., 'Klassisme. Discriminatie op grond van sociale status. Toevoeging van de gronden sociale afkomst en/of sociaaleconomische status aan de Nederlandse anti-discriminatiewetgeving?' 47(4) Nederlands Tijdschrift voor de Mensenrechten NJCM-Bulletin 403-421 (2022), pp. 416-420. 58 See, for example, Human Rights Committee Whelan v Ireland, 17 March 2017, CCPR/C/119/D/2425/2014, 11 July 2017, para. 7.12 (there was a violation of the prohibition of discrimination under art 26 ICCPR because the government had failed to take into account what was medically necessary and socio-economic circumstances in regulations and practices that between two groups, and without addressing meet the requirements of legitimate aim, reasonableness and objectivity). Another requirement is that in all measures by the government (but also by private parties) the interests of children are a primary consideration, see art 3(1) CRC. See also Court of Appeal, 19 March 2024, ECLI:NL:GHDHA:2024:363 (drinking water case). 59 Or under ICESCR: 'solely for the purpose of promoting the general welfare in a democratic society': Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 25 May 2009, para 13: "Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be
realised and the measures or omissions and their effects."

B. Overview of recommendations Radboud Law Clinic 2023- 2024

1. Introduction

One of the measures to make Housing First concrete -in addition to ensuring that sufficient housing is available- is to counter stigmatisation and criminalisation of homelessness. The National Plan on Homelessness (NAD) mentions as one of the actions to be taken 'Investigate laws and regulations that contribute to stigma of (threatened) homeless people'. .

Straat Consulaat requested the Radboud Law Clinic (RLC) to provide a human rights assessment framework, based on the relevant UN obligations, that would be helpful to the government's investigation of laws and regulations that contribute to stigmatisation of (threatened) homeless people. The research on the international human rights framework was conducted by Master students of the Radboud Law Clinic in 2023-2024 and this note was finalised in November 2024.

Stigmatisation and criminalisation through local and national regulation and enforcement makes access to regular housing even more difficult than it already is. In addition, regulations and enforcement, such as fines for washing, begging, eating and drinking in public, and area bans, if these regulations and enforcement stigmatise and criminalise people in situations of homelessness, potentially violate a range of human rights obligations of the Netherlands, as set out in Part A.

The research question concerned assessment criteria based on international obligations, to determine whether regulations and enforcement contribute to stigmatisation and criminalisation of people who do not have access to regular housing. The RLC 2023-2024 did not examine Dutch regulation and enforcement itself.

This part, part B, provides an overview of the recommendations and assessment criteria.

2. 'Investigate laws and regulations that contribute to stigma of homeless people'

The government action to be taken under the NAD requires that:

- The national government set up structural nationwide impact research, based on an inclusive approach to homelessness (Ethos Light) and then adjust regulations, where necessary, or alert municipalities to problematic local regulations and enforcement.
- Municipalities ensure thorough and regularly repeated monitoring and evaluation, possibly in cooperation with other municipalities, using the Ethos Light definition. Municipalities adapt their regulations and enforcement, where necessary, on the basis of the results.

3. ShapeHuman rights assessment framework for regulations and enforcement
3.1 General criteria

- Municipalities and the national government ensure that regulations, implementation and enforcement do not disproportionately disadvantage people in situations of homelessness (see further under 3.2)
- Municipalities and the national government ensure that regulations, implementation and enforcement do not stigmatise people in situations of homelessness.

- Municipalities and the national government ensure that regulations, implementation and enforcement are in line with the Netherlands' human rights obligations including, in addition to the prohibition of discrimination, at least:
  o right to privacy, private life, family life
  o prohibition of cruel treatment; right to life
  o freedom of assembly; freedom of movement and choice of residence; and the right to liberty and security (rights from the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR)).
  o right to a decent standard of living, including housing; right to the best possible physical and mental health (rights from the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Social Charter (ESC)).
  o Access to justice
  o In addition, it is necessary to always consider the best interests of the child (art 3(1) International Convention on the Rights of the Child (CRC)). If the government does not let the best interests of the child prevail, it has an additional duty to justify its decision.
- Municipalities and the national government ensure a careful process for drafting and adapting regulations and policies, meaningfully involving people in different situations of homelessness.

3.2 Assessing regulations and enforcement based on the prohibition of discrimination

3.2.1 Prohibition of direct and of indirect discrimination

Testing against the prohibition of discrimination is important exactly to prevent stigmatisation/ stereotyping through regulations and law enforcement policies, such as imposing fines for actions that people with housing can undertake indoors but people without housing cannot. This prohibition applies not only to direct discrimination, but also to indirect discrimination.

If regulations or instructions speak explicitly about nuisance caused by homeless people, or specifically target a group of homeless people, it is examined whether there is direct discrimination (on prohibited grounds of discrimination see 3.2.3).

It is also important to examine whether regulations or instructions that are neutral on the face of it nevertheless disproportionately affect people in situations of homelessness, without reasonable and objective justification. Because in that case, indirect discrimination occurs. Here, prejudice and stigma may be hidden behind a neutral criterion to circumvent the prohibition of direct discrimination, but the disproportionate effect may also be unintended. There is equally a violation of the ban on discrimination if the disproportionate effect was, or may have been, unintended (on grounds of justification, see 3.2.4). Research here focuses on:

- context (including the circumstances in which the regulation was drafted or invoked)
- decisions on fines and other documentation
- Social science impact research on the adverse effects of regulations and enforcement on specific groups such as people in situations of homelessness.

3.2.2 Adversity test

If the rule or enforcement is *based* on stereotypes, and/or *results* in stereotyping, and this stereotyping is harmful to the group in question, then it cannot be reasonable or objective (on justifications, see 3.2.4). The following questions, among others, are relevant: :

- Do regulations on 'nuisance' and the like indeed protect third parties from direct harm (physical, psychological or financial)? (if no: then it is necessary to pay extra attention to

whether there is discrimination)
- Does the regulation disproportionately disadvantage already stigmatised groups and people, based on their 'personal status'? (if yes: this is a clear indication of stigmatisation and discrimination)
- Does the stigmatising impact of a rule, and/or of its enforcement, prevent marginalised groups from accessing services and does this impact impede the exercise of rights? (If yes: conflict with human rights obligations).

3.2.3 Prohibited discrimination grounds

The ICCPR and the ICESCR prohibit 'any discrimination', 'of any kind' and 'on any ground'. Lack of access to regular housing is a prohibited ground of discrimination that falls under 'or other status' in Art 26 ICCPR, the residual category after listing a number of specific prohibited grounds, including social origin, property and birth. Particularly suspect forms of discrimination as identified by UN authorities include for instance:

- When people are more often and more severely affected by the distinction made because they are in a vulnerable situation.
- Discrimination based on socio-economic status.
- When multiple grounds of discrimination are at play simultaneously.

3.2.4 Conditions for justifications

The following conditions must be met for the valid invocation of a justification:
- The rule and its implementation, in other words the distinction made itself, serve a legitimate purpose under human rights treaties (to protect the rights or reputations of others, for the protection of national security, public order, public health or morals (ICCPR) and only for the purpose of promoting the general welfare in a democratic society (ICESCR).
- The rule or enforcement measure is appropriate to achieve the goal.
- The rule is reasonable and objective.
- The rule is clearly set out in national regulations, established in accordance with the law (principle of legality).
- The rule or measure is strictly necessary to achieve a legitimate aim, and proportionate to the aim pursued and achieves this aim with the lowest burden
    - Less intrusive alternative available? If so, the regulation or measure is not necessary.
- A rule or enforcement measure that does not work is also not necessary (effectiveness).
- The rule or measure must not be arbitrary or violate human rights obligations.
- It is important to examine not once but regularly whether the rule or enforcement measure has a disproportionate effect on people in situations of homelessness.