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**Report on the Regional Meeting**

**Poverty is Not a Crime**

**Consultation on Draft Principles to End the Criminalisation of Petty Offences in Africa**

**1. Introduction**

On the 5th and 6th of December 2016, APCOF and its partners[[1]](#footnote-1) co-facilitated a consultation with the African Commission on Human and Peoples’ Rights (the African Commission) on draft principles to promote the declassification and decriminalisation of petty offences in Africa. The consultation was attended by the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, Hon. Commissioner Med S.K. Kaggwa, Commissioner Jamesina King, Chairperson of the Working Group on Economic, Social and Cultural Rights, stakeholders from across Africa including national human rights institutions, civil society organisations, the judiciary, academia, representatives from ministries of justice and police organisations.

The consultation provided these stakeholders with an opportunity to review the draft Principles, and to provide their expert opinion and commentary, prior to its consideration for adoption by the African Commission. During the consultation, presentations were done on research studies on the enforcement of petty offences law, initiatives taken by different countries in addressing the criminalisation of these offences, impact of petty offences on marginalised groups and a discussion on a current High Court of Malawi challenge to petty offences laws. On the first day of the consultation, participants were taken through the draft text of the Principles, and were given an opportunity to provide their expert opinion and commentary on the text. All the input received during the consultation on the draft text was captured and is reflected in the annexures. Some of the comments included citing international law instruments in the preamble, making a link with the sustainable development goals agenda and including women and elderly persons as vulnerable groups.

**2. Presentations**

**Kristen Petersen** from the University of the Western Cape in South Africa made a presentation on the background and research on the declassification and decriminalisation of petty offences in Africa. She stated that petty offence laws are not enforced fairly and frequently result in arbitrary and unlawful arrests targeting the poor and marginalised groups. She further stated that these laws provide a tool for the police to arrest persons whom they think are engaging in or planning criminal conduct.

**Mr. Boaz Muhumuza** from OSIEA made a presentation on the enforcement of petty offences against persons with psycho-social disabilities. He stated that the draft principles should reflect and cater for the needs of persons with psycho-social disabilities who are vulnerable and are an easy target for arrests and face a number of human rights violations once in custody or detention.

**Melody Kozah** from the African Policing Civilian Oversight Forum (APCOF) made a brief presentation on the development of the Principles. She stated that the Principles were developed on the basis of Article 45(1) (b) of the African Charter and that they offer guidance to States on how to implement the Oguadougu Declaration, which calls for the decriminalisation of petty offences as a strategy to reduce the prison population. She stated that the Principles focus on three African Charter rights, which the laws criminalising petty offences are inconsistent with. These laws violate the following Articles: Articles 2 and 3 which guarantee the rights to non-discrimination and the right to equality before the law and equal protection of the law; Article 5 which provides for the right to dignity and freedom from torture, cruel, inhuman or degrading treatment; and Article 6, which provides for the right to liberty and security of the person and freedom from arbitrary arrest and detention.

**Anjuli Maistry** from the South African Human Rights Commission (SAHRC) made a presentation on the use of petty offences and by-laws to arrest and harass refugees and asylum seekers. She stated that refugees and asylum seekers face difficulties in securing employment in the formal sector and thus rely on informal trade to earn their livelihood. This then makes them susceptible to arrest for petty offences when “operations” to clean up the streets are undertaken. Anjuli highlighted that in 2012, the police services in the Limpopo Province embarked on an operation called “Operation Hardstick” whose aim was to shut down all businesses in Limpopo that were operating without the requisite business permit. However, this operation in fact resulted in the arrest of number of refugees and asylum seekers illustrating the discriminatory aspect of the enforcement of some of the by –laws.

During the second day of the consultation, organisations working on related issues made presentations. **Anneke Meerkotter** from the Southern Africa Litigation Centre (SALC) made a presentation on the legal arguments against criminalising the offence of being a rogue and vagabond and similar offences. In her presentation, she stated that the offence of being a rogue and vagabond violates the rights to dignity; freedom from inhumane and degrading treatment and punishment; freedom and security of person; freedom from discrimination and equal protection of the law; privacy; and freedom of movement. She also stated that the arbitrary and discriminatory enforcement of petty offences laws and the inherent reversal of the presumption of innocence are contrary to international human rights law.

**Victor Mhango** from the Centre for Human Rights Education, Advice and Assistance (CHREAA) spoke about a case that is undergoing in Malawi challenging the constitutionality of the rogue and vagabond laws. The applicant in this case was arrested by police whilst on his way to the market where he works as a street vendor and was charged with the offence of being a rogue and vagabond. The applicant and *amici curiae* are arguing that the offence is outdated and unconstitutional and that this offence contributes to overcrowding in prisons. Judgment is expected to be delivered in January 2017.

**Linette du Toit** from HRAPF made a presentation on the enforcement and impact of rogue and vagabond and idle and disorderly offences on marginalised groups. Her presentation focused on a study that HRAPF undertook from 2011 to 2015 to analyse the trends of the enforcement of ‘Idle and disorderly’ laws and how they affect marginalised groups. Of the 958 arrests recorded at the five police stations surveyed, 957 of these arrests were made under the offence of ‘being a rogue and vagabond’ and only one arrest was carried out under the idle and disorderly laws since the offence of being a rogue and vagabond is more vague than the latter which makes charges under this offence popular. She also highlighted that the provisions criminalising the offences of being idle and disorderly are used by police to remove people from the street when the President is receiving diplomatic visitors and that such arrests are done without following due process and without respecting the rights of the arrested person.

Children have also been arrested for petty offences and Professor **Anne Skelton** highlighted the negative consequences of the unlawful arrest of children for such offences. **Professor** **Ebenezer Durojaye** from the University of the Western Cape had the opportunity to present a draft resolution on the penalisation of poverty in Africa, which calls for a human rights approach to poverty and looks at how poor people are affected by stigmatisation, segregation, criminalisation and over-regulation. The draft resolution also states that inequality; lack of capabilities and social exclusion further aggravates poverty and undermine the rights of people living in poverty in Africa.

**Francois Godbout** from the Pan African Lawyers Union (PALU) made a presentation, which focused on strategies to challenge petty offences at the African Court. He highlighted that either a case could be brought forward by Benin, Burkina Faso, Côte d’Ivoire, Ghana, Mali, Malawi and Tanzania or an advisory opinion on the subject of the legality of petty offences could be requested by a Member State of the African Union, the African Union itself, any of the organs of the Union, or any African organization recognized by the Union.

**Lorraine Ochiel** from ICJ Kenya highlighted that ICJ is implementing a project on the decriminalization and declassification of petty offences in Kenya with a focus on the impact on commercial sex workers, street vendors or hawkers, public service vehicle touts, street families, (LGBT) community, persons who use drugs & human rights defenders. She stated that one of the alternatives used to address petty offences in Kenya is community based policing which focuses on encouraging the police to work closer with communities in addressing petty offences to develop problem-solving strategies which look at community needs, values and problems.

**3. Conclusion**

In conclusion, the participants identified keys areas for advocacy and collaboration including training and sensitization of law enforcement officials, judicial officials as well as the community and using inter agency co-operation as a strategy to address the enforcement of petty offences. Participants were informed that the consultation process is still ongoing, that there would be a West Africa consultation in early 2017 and that the African Commission would also upload the draft text on the website and request written comments

1. Partners are the Pan African Lawyers Union, Southern Africa Litigation Centre, Centre for Human Rights Education, Advice and Assistance (Malawi) and the International Commission of Jurists (Kenya Chapter), and the Civil Society Prison Reform Initiative, at the Dullah Omar Institute, University of the Western Cape (South Africa), with funding support from the Open Society Foundations. [↑](#footnote-ref-1)