

A SIMPLIFIED VERSION OF THE PRINCIPLES ON THE DECRIMINALISATION OF PETTY OFFENCES IN AFRICA

In November 2017, the African Commission on Human and Peoples' Rights ('African Commission') adopted a new legal standard for all African countries: the Principles on the Decriminalisation of Petty Offences in Africa.

The African Commission adopted this new legal standard because it was concerned that certain categories of people, including those who are poor or who otherwise experience social exclusion, are unfairly targeted by petty offences, which threatens their enjoyment of human rights in the criminal justice system. In particular, the African Commission was concerned that the existence and enforcement of petty offences can violate rights that are protected by the African Charter on Human and Peoples' Rights ('African Charter'), including non-discrimination (Article 2), freedom from ill-treatment (Article 5) and freedom from arbitrary arrest and detention (Article 5).

The Principles address these concerns by encouraging all African countries to abolish laws that can be categorised as 'petty offences'. These petty offences are crimes that are not serious. There are many different types of petty offences, including being a rogue and vagabond, being an idle or disorderly person, loitering, begging, being a vagrant, failing to pay a debt, being a common nuisance, disobedience to parents, urinating in public, washing clothes in public, hawking, and vending. The punishment is usually a warning issued by the police or the courts, community service, a fine, or a short time in prison.

The Principles comprise six parts, which cover: the definitions of terms used; the purpose of the Principles; how petty offences violate the rights to non-discrimination, freedom from ill-treatment, and freedom from arbitrary arrest and detention; and the measures African countries should take to ensure that the existence and enforcement of petty offences are consistent with the African Charter.

What follows is a simplified version of the Principles containing details on each of the six parts: Part 1: Definitions; Part 2: Purpose; Part 3: Discrimination; Part 4: Ill-treatment; Part 5: Arbitrary Arrest and Detention; and Part 6: How African countries should apply the Principles.

<p>PART 1 Definitions</p> 	<p>Important words used in the Principles are defined and explained. The following are the most important of these:</p> <ul style="list-style-type: none"> • Decriminalisation, which means changing the law so that an act (e.g. washing clothes in public) is no longer illegal; and • Petty offences, which are crimes that are not serious and are known by different names in different countries – for example, they might be termed 'minor offences', or 'summary offences', or 'regulatory offences'. The punishment is usually a warning issued by the police or the courts, community service, a fine or a short time in prison. There are many different types of petty offences – some examples include being a rogue and vagabond, being an idle or disorderly person, loitering, begging, being a vagrant, failing to pay a debt, being a common nuisance, disobedience to parents, urinating in public, washing clothes in public, hawking and vending.
<p>PART 2 Purpose</p> 	<p>The Principles were developed by the African Commission to help African countries ensure that their laws on petty offences do not unfairly target people who are poor or who otherwise experience social exclusion.</p>
<p>PART 3 Petty offences cause discrimination</p> 	<p>Petty offences discriminate against people on the basis that they are poor, are vulnerable, are part of a key population, or on account of their gender, age or disability.</p> <ul style="list-style-type: none"> • They are used to punish, keep separate, control and negatively affect the dignity of people because of one or more aspects of who they are. • People living in poverty are at high risk of being arrested for a petty offence because they perform life-sustaining activities in public places. • By arresting and detaining people for petty offences, African countries reinforce the idea that people unfairly targeted by these laws are not respected and do not have the same right to dignity as other people.
<p>PART 4 Petty offences cause ill-treatment</p> 	<p>Sanctions imposed for petty offences can affect a person's dignity, and can cause people to experience ill-treatment. When people are arrested and detained for petty offences, they are often sent to a police station or prison that is overcrowded. The African Commission has stated that overcrowding in detention is one form of ill-treatment. Also, when law enforcement organs make mass arrests of people for the purpose of enforcing petty offences (e.g. through sweeping or swooping exercises that result in the arrest of all street children in a particular area), this is a form of ill-treatment.</p>
<p>PART 5 Petty offences cause arbitrary arrest and detention</p> 	<p>Petty offences can affect a person's right to liberty and security and can cause people to be arrested or detained arbitrarily (i.e. be arrested or detained where there is no evidence, or likelihood, that the person arrested has committed a crime).</p> <ul style="list-style-type: none"> • The laws concerned are too broad and it is difficult for a person to know what type of activity will violate the law. Because these laws are broad, the police have significant powers to decide when an activity violates the law. In addition, the police do not always apply the law equally to every person when they have this type of discretionary power. • Enforcing petty offences does not make communities safer or reduce the rate of serious crime. Instead of encouraging the police to focus the use of their limited time on solving serious and violent crime, policing resources are used to enforce petty offences, which are neither serious nor violent crimes. • The punishment meted out to people who are convicted of petty offences is often not proportional to the threat that the activities leading to the convictions poses to public safety and security. Indeed, using the criminal justice system to deal with what are often issues of poverty and social exclusion can have a negative impact on public safety and security.
<p>PART 6 States should decriminalise petty offences</p> 	<p>African countries should take measures to apply these Principles, including:</p> <ul style="list-style-type: none"> • Decriminalising certain petty offences. • Providing alternatives to arrest for petty offences that are not decriminalised. • Addressing the root causes of poverty and other forms of marginalisation rather than criminalising activities that are caused by poverty and marginalisation. • Further applying the Principles by: (a) reviewing all existing petty offences to ensure that they are consistent with the Principles; (b) ensuring that all people have access to a lawyer; (c) making the Principles available to all people; (d) training the police and the courts with regard to these Principles; (e) reporting to the African Commission on whether their petty offences are consistent with the Principles; (f) collecting data and other information on the enforcement of petty offences; and (g) cooperating and sharing best practices on the decriminalisation of petty offences with the African Commission and as part of reporting under the Sustainable Development Goals.

