



NGO Observer Status No. 372

Statement under Agenda Item 3: Human Rights Situation in Africa

**69th Ordinary Session of the African Commission on Human and Peoples' Rights
15 November – 6 December 2021**

Dear Hon. Chairperson, Hon. Commissioners, all protocols observed.

The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to make this statement to the 69th Ordinary Session of the African Commission on Human and Peoples' Rights. This statement focuses on the issue of the decriminalisation of petty offences in Africa, and draws on the work of the [Campaign to Decriminalise Petty Offences in Africa](#), of which APCOF is a member. The Campaign is a coalition of 36 non-governmental organisations (NGOs) and national human rights institutions (NHRIs) advocating for the decriminalisation and declassification of laws that criminalise life sustaining activities in public spaces.

As the Commission's Principles on the Decriminalisation of Petty Offences recognise, petty offences have the effect of punishing, segregating, controlling and undermining the dignity of persons on the basis of their socio-economic status, and raise significant human rights concerns. The Principles focus on the impact of petty offences on the rights to equality and non-discrimination, freedom from ill-treatment and freedom from arbitrary arrest. We welcome the Commission's efforts, mainly through the mandate of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, to address these human rights challenges by promoting decriminalisation of these offences, and reform of policing and criminal justice responses to poverty and marginalisation.

However, while the criminalisation of petty offences has a criminal law focus, there is also a socio-economic impact that cannot be ignored. This aspect is important as individuals require access to socio-economic goods in order to live a life consistent with human dignity and in order to reach their full human potential. As emphasised by the South African Constitutional Court in *Government of the Republic of South Africa v Grootboom*: "There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter". The Court went on to affirm that access to housing requires more than mere "bricks and mortar", as it also requires access to land, services and

financing. This calls for a broader understanding of the intersecting elements of spatial, criminal and socio-economic justice.

This is necessary as under vagrancy-related petty offences, individuals are effectively 'evicted', often violently, from the spaces that they utilise to perform life-sustaining activities. This often has implications for their capacity to enjoy family and community life, emphasising the broader philosophical and normative attributes underlying the conception of home. Violence and harassment by law enforcement also results in vulnerable individuals being deprived of their few material possessions, which include food and clothing. The exclusion of individuals in seeking to maintain a livelihood within the informal sector, further undermines their capacity to access social security and critical services, such as health care services. The effective criminalisation and exclusion of the urban poor from city centres has therefore created a powerful nexus between socio-economic exclusion and spatial justice. The practical implication is that access to social goods remain beyond the reach of many poor and vulnerable urban inhabitants.

We call on the Commission to continue its work to promote the implementation of the Principles on the Decriminalisation of Petty Offences, with a particular focus on encouraging State Parties to implement the Principles to not only support reform to policing and justice sector processes, but to address the root causes of poverty and other marginalisation. In particular, we call on the Commission to remind States of Principle 14.3, which encourages the adoption by States of measures that aim to address the conditions that cause, exacerbate or perpetuate poverty, rather than criminalise poverty, in accordance with the obligation to respect, protect and promote economic and social rights, and the right to development, as guaranteed by the African Charter.

We further call on the Commission to remind States about the "Principles and guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and People's Rights." In particular, States should be encouraged to remember and recognise that all human rights are indivisible, interdependent and interrelated and cannot be enjoyed in isolation from each other.

Submitted by:

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