



APCOF - NGO Observer Status No. 372

Statement in response to the activity report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa

**77th Ordinary Public Session of the African Commission on Human and Peoples' Rights
20 October to 9 November 2023
Arusha, Tanzania**

Item 5: Activity Reports of the Members of the Commission & Special Mechanisms

Honourable Chairperson and Commissioners.

All protocols observed.

The [African Policing Civilian Oversight Forum](#) (APCOF) welcomes the opportunity to make a statement in response to the activity report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa. We make this statement together with the [Global Campaign to Decriminalise Poverty and Status](#) (the Global Campaign), of which we are a founding member.

The work of Campaign partners and others has highlighted that the continued *criminalisation* of homelessness across Africa is a distinct human rights challenge. There are several types of laws which criminalise homeless people based on their status, such as those that criminalise the conduct of life-sustaining activities in public spaces (including

sleeping, cooking, and storing personal belongings). The enforcement of other laws with purposes such as the regulation of public spaces (e.g., loitering) and public health or environmental management (e.g., littering or urinating in public), begging, and laws related to the occupation and eviction of persons from public property, disproportionately affect homeless people.

These laws have a profound impact on the rights of homeless persons at two levels. First, the enforcement of these laws has a direct impact on the rights to dignity and non-discrimination as they amount to criminalisation on the basis of status, and interfere with efforts to maintain and build a decent life. Punishing homeless persons for violating laws when they have no other choice is an irrational response to the issue, and is not a deterrent to future offending. Second, the way these laws are enforced have an impact on homeless persons' rights to security and freedom from arbitrary arrest and detention. The laws are often broadly framed, giving wide discretion to law enforcement officials, leading to discriminatory outcomes for homeless persons. Arrest and detention for offences that criminalise homelessness also contributes to detention overcrowding, and can violate a detainees' right to freedom from ill-treatment.

Decriminalising homelessness will not address its underlying causes, for which integrated social development, urban and safety planning is required. However, decriminalisation will reduce homeless persons' exposure to police contact and legal sanctions, and minimise the risk of further human rights violations within the criminal justice system.

The Commission's own Principles on the Decriminalisation of Petty Offences recognise these rights challenges, and call on African states to review and repeal laws that target persons on the basis of their social status or social origin by criminalising acts or omissions that are life sustaining. In a 2020 Advisory Opinion, the African Court on Human and Peoples' Rights has recognised that vagrancy-related offences are incompatible with the African Charter, and similarly called for review and repeal of these laws. More recently, this issue has been the focus of work by the UN Special Rapporteur on the right to adequate housing, and the Special Rapporteur on extreme poverty, who are developing a study on the criminalisation of homelessness.

APCOF and the Global Campaign urge the Special Rapporteur to engage African states on their obligations under Articles 2, 4, 5 and 18 of the African Charter to:

- Review and repeal laws that target homeless persons for criminalisation on the basis of their status, particularly those laws which criminalise life sustaining activities in public spaces.

- Provide training to law enforcement officials and judicial officers on the Principles on the Decriminalisation of Petty Offences, and ensure effective and accessible complaints and accountability mechanisms for law enforcement agencies.
- Adopt alternative approaches to the policing of public spaces, including through measures aimed at ensuring that law enforcement officials work with state social services and non-government organisations to address the needs of homeless people through support and referral, within a human rights framework.
- Improve the collection and reporting of data on the prevalence and types of homelessness to support integrated and evidence-based interventions to address the pathways to homelessness, in accordance with the implementation measures provided by the African Commission in the Principles on the Decriminalisation of Petty Offences in Africa.

Submitted by:

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