



# African Policing Civilian Oversight Forum

## Statement by the African Policing Civilian Oversight Forum (APCOF) to the EU-AU Consultation with Civil Society

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The [African Policing Civilian Oversight Forum](http://www.apcof.org.za) (APCOF) welcomes this opportunity to make a submission during the EU-AU Consultation with Civil Society as part of the preparatory work for the EU-AU Human Rights Dialogue to be held in Brussels on 5 December 2022. We are a not-for-profit Trust based in Cape Town, South Africa, but work across the African continent on issues of policing governance and accountability. We make this statement on together with the [Global Campaign to Decriminalise Poverty and Status](http://www.globalcampaign.org.za), of which we are a founding member. Our submission relates to the agenda item on diversity, inclusion, and anti-racism.

Across Africa, criminal law is used to punish poverty and to criminalise people on the basis of their status, including activists, the poor, homeless people, migrants, sex workers, and the LGBTIQ+ community. This criminalisation infringes upon Articles 2 (equality and non-discrimination), Article 4 (freedom from arbitrary arrest and detention) and Article 5 (freedom of ill-treatment) of the African Charter on Human and Peoples' Rights. These laws also exacerbate political and socio-economic exclusion and criminal injustice, in that they hold those targeted criminally responsible for their status, rather than investing in measures that protect people who are vulnerable to rights abuses on the basis of their poverty or status.

Laws that criminalise poverty and status are also in conflict with African states' obligation to ensure sustainable and inclusive development for all. In cities, for example, people are routinely removed, often violently, from public spaces they utilise to perform life-sustaining activities like sleeping, eating or trading. Those targeted are often socio-economically disadvantaged. Violence and harassment by law enforcement officials is often accompanied by the unlawful confiscation of their material possessions. This approach also hinders access by targeted groups to socio-economic goods and services such as social security, health care, education, and political participation. The laws are often colonial-era, or new laws that reflect colonial intent. Exacerbating efforts to overcome these challenges is the lack of quality disaggregated data on the impact of these laws in Africa, making it difficult to inform and influence evidence-based policy-making.

At the regional level, there is an emerging normative framework that includes specific measures that African states should take to decriminalise laws that criminalise poverty and status:

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1. In 2017, the AU's human rights organ, the African Commission on Human and Peoples' Rights adopted the Principles on the Decriminalisation of Petty Offences in Africa. The Principles call on African states to, inter alia, review and repeal laws that criminalise people on the basis of their poverty or status, and to address the underlying causes of what is currently criminalised through the African Union's own policy framework for development and poverty alleviation.
2. In 2020, the African Court on Human and Peoples' Rights delivered its Advisory Opinion No. 001/2018 on the incompatibility of vagrancy laws with the African Charter on Human and Peoples' Rights. The Court imposed a positive obligation on African states to reform outdated criminal laws that penalise vagrancy, and to and the associated practice of arbitrary and unlawful arrests.
3. Recently, the Pan-African Parliament adopted the Model Law for Police in Africa. The law includes an emphasis on limiting the use of arrest in the case of minor or petty offences and, where a policing response is appropriate, the implementation of rights-based alternatives to arrest.

While the development of this normative framework at the AU level is encouraging, the challenge is in its implementation at both the regional and national level.

Accordingly, we request that the EU-AU dialogue include consideration of the measures that can be taken by AU organs to promote implementation of the Principles on the Decriminalisation of Petty Offences, the African Court's Advisory Opinion, and the Model Law for Police in Africa. The disproportionate impact of weaponising criminal justice systems against the poor and others who are vulnerable to rights violations on the basis of their status is well documented through the work of the Campaign. A commitment towards ensuring full implementation of the AU's own normative framework on this issue – particularly the urgent review and repeal of laws that do not meet the legal tests set by the Principles and Advisory Opinion - will be a welcome outcome of the Dialogue to strengthen human rights protections in the context of diversity and inclusion on the African continent.

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