



African Policing Civilian Oversight Forum

NGO observer status no. 372

Statement in response to the report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa during the 68th Ordinary Session

ITEM 6: Activity Reports of the Members of the Commission & Special Mechanisms

Honourable Chair, Honourable Commissioners

The African Policing Civilian Oversight Forum (APCOF) is a not-for-profit Trust based in South Africa, working on issues of police accountability and governance across Africa. We welcome the opportunity to make this statement to the Special Rapporteur, Hon. Commissioner Manuela, in response to her activity report. Our statement addresses the need for clearly articulated alternatives to arrest and detention for petty offences in Africa.

As the Special Rapporteur is aware, in December 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 The Court imposed a positive obligation on States to reform outdated criminal laws that penalise vagrancy, and to end the associated practice of arbitrary and unlawful arrests. The Court has affirmed the Commission's normative statements on these issues in the Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention, and the Principles on the Decriminalisation of Petty Offences in Africa. APCOF welcomes the Advisory Opinion, and notes the complementarity of this

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development with efforts of the Commission to date, through the Special Rapporteur, to promote the decriminalisation and declassification of petty offences in line with the Principles and Luanda Guidelines.

APCOF's work as part of the [Regional Campaign to Decriminalise Petty Offences in Africa](#) has highlighted how, in the absence of the urgent law reform needed to decriminalise and declassify petty offences, the poor and other marginalised persons continue to be targeted for arrest and detention for life sustaining activities in public spaces. This situation has been exacerbated by the creation of new petty offences as part of [Covid-19 containment measures](#), such as curfews, and restrictions on trading, gathering and other uses of public spaces, across Africa.

The use of arrest and detention as a tool through which the poor and other marginalised persons are criminalised for the conduct of life sustaining activities in public spaces must be addressed as a matter of urgency. In most jurisdictions, law enforcement officials have discretion as to whether to make an arrest for a petty or minor offence, with alternatives available to them in the form of, for example, fines, cautions, warnings or diversion. However, they are often disincentivised from using alternatives for reasons including lack of knowledge or training, performance indicators that includes arrest quotas, and both community pressure and public policy to address issues of poverty, homelessness and other forms of marginalization as a criminal justice, rather than social justice, issue.

The Principles on the Decriminalisation of Petty Offences call on States to offer alternatives to arrest for declassified offences. The articulation and promotion of context-appropriate alternatives to the criminalisation of poverty within a development, public health and rights-based framework is urgently required as a measure to reduce arbitrary arrest and detention for minor and petty offences.

Accordingly, APCOF **calls on the Commission, through the Special Rapporteur, to conduct a study** on drivers to arbitrary arrest for minor offences in Africa and how the African Charter and its subordinate instruments can guide the development of alternatives to arrest, and support Member States to achieve their obligations under, in particular, Article 6 of the Charter.

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