Regional Conference on the Decriminalisation of Petty Offences in Africa
Bintumani Hotel, Freetown
22 – 23 November 2017

Conference Report

EXECUTIVE SUMMARY

The conference brought together international and Sierra Leonean partners working to decriminalise petty offences in Africa. It began the process of documenting their actions at regional and national levels. The campaign responds to action by the African Commission on Human and Peoples' Rights (ACHPR) to address petty offences. In November 2017, the ACHPR adopted Guidelines on the Decriminalisation of Petty Offences, which it will launch in 2018.

The ACHPR has observed that petty offences have a disproportionate impact on the poor, vulnerable persons, or on the basis of gender, and contribute to prison overpopulation. The Commission's Guidelines propose a three-part test for assessing petty offences: are they clear, precise and accessible; are they necessary and proportionate to a legitimate objective; and are they consistent with human rights. If this test is not met, then the offence should be decriminalised or declassified.

Participants spoke about petty offences and campaigns to decriminalise petty offences in their countries. Several common themes emerged during the discussion. Petty offences give police overly broad powers to arrest people, often the poor, marginalised or otherwise vulnerable in society. Police officers abuse these powers in the belief that arbitrary arrests in certain communities deters crime (a belief prevalent in Sierra Leone, Kenya and Malawi) or in order to extort money from vulnerable people. Participants noted that campaigns to decriminalise petty offences should be accompanied by steps to tackle the underlying causes of these arrests. Otherwise, the police may simply use different offences, or even decriminalised offences (as in Cameroon and Malawi), to continue the same pattern of arrests.

Prosecutors and judges are important targets of campaigning. Making judges confront prison overcrowding, for example through prison visits in Malawi, or through the media in Ghana, can focus their attention on petty offences. New provisions for bail and non-custodial sentencing, for example in Sierra Leone and Nigeria, can help to decrease the burden of petty offences. Revised guidelines for prosecutors, such as in Malawi, may reduce the number of cases that go to court. Participants noted the need for relevant evidence to convince justice sector actors. For example, the high conviction rate for petty offences versus serious offences convinced the Kenyan Chief Justice that petty offences were wasting judicial resources.

Campaigns to decriminalise petty offences also need to transform public understanding of petty offences. The public, especially the elite, may value petty offences as a way of controlling poorer people, as research in Ghana showed. Changing public perceptions requires engaging the media, and careful selection of cases for campaigning and strategic litigation. In Malawi, campaigners decided to work on the case of a petty trader, instead of sex workers who are also targeted by the same offences. Participants identified the need to distinguish petty offences from minor crimes (e.g. petty theft) and to avoid or carefully manage discussions where issues of morality may arise.

The conference concluded with a discussion of campaign activities for 2018. Some participants have already begun a case before the African Court of Human and Peoples' Rights seeking an advisory opinion on the legality of vagrancy laws. Participants were invited to submit amicus briefs with statistics on such laws in their countries and to conduct public campaigning in countries which have judges on the court (Kenya, Uganda and Malawi). After the launch of the guidelines in early 2018, it was proposed that participants would disseminate the guidelines, identify the most commonly used petty offences and the problems they cause. They could then target key audiences, including the public, police and judiciary, with their findings. Participants were encouraged to use the resources available on pettyoffences.org. The campaign will also seek new partnerships with organisations in Francophone countries.

ACRONYMS USED

ACHPR	African Commission on Human and Peoples' Rights (based in South Africa)
ACJR	Africa Criminal Justice Reform (based in South Africa)
ADR	Alternative Dispute Resolution
APCOF	African Policing Civilian Oversight Forum (based in South Africa)
CARL	Centre for Accountability and Rule of Law (based in Sierra Leone)
CHRI	Commonwealth Human Rights Initiative (based in Ghana)
HRAPF	Human Rights Awareness and Promotion Forum (based in Uganda)
HRD	Human Rights Defender
HRI	Human Right Initiative, a project of the Open Society Foundations
KNCHR	Kenya National Commission of Human Rights
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
OSIWA	Open Society Initiative West Africa
PALU	Pan-African Lawyers Union
PRAWA	Prisoners' Rehabilitation and Welfare Action (based in Nigeria)
SALC	Southern Africa Litigation Centre (based in South Africa)

INTRODUCTION

AdvocAid, together with national and regional partners, have been campaigning to decriminalise petty offences in Africa. The campaign responds to efforts by the African Commission on Human and Peoples' Rights (ACHPR) to address prison overpopulation, in part through tackling the use of custodial sentences to deal with petty offences.

The conference brought together stakeholders from West, East, and Southern Africa to discuss and document work towards decriminalisation across the region. AdvocAid and the Centre for Accountability and Rule of Law (CARL) presented findings from their research on petty offences in Sierra Leone to stakeholders from the government, judiciary, legal community, civil society and affected groups from Sierra Leone. Participants from across Africa presented on the work they are doing at national and regional levels to decriminalise petty offences.

The conference built on meetings held in Johannesburg (December 2016) and Dakar (February 2017), which discussed the African Commission on Human and Peoples' Rights' draft Principles on the Decriminalisation of Petty Offences. At the ACHPR Session in November 2017, the Commission adopted the Principles, which are expected to be launched at the next session in early 2018.

Definitions

The ACHPR defines petty offences as "minor offences for which the punishment is prescribed by law to carry a warning, community service, a low value fine or short term of imprisonment, often for failure to pay the fine." The campaign to decriminalise petty offences targets offences such as being a rogue and vagabond, being an idle or disorderly person and being a vagrant (so called 'status offences'), loitering, begging, and failure to pay debts. These offences often have the effect of criminalising poverty. The campaign does not seek the decriminalisation of petty crimes such as low-value theft, which ought to remain criminal.

Decriminalisation refers to the process of removing an act that was criminal, and its associated penalties, from the law. Declassification refers to the process of changing offences so that they are non-arrestable and can only be punished through non-custodial sentences or administrative fines.

WELCOME ADDRESS

Mr. Daniel Eyre, AdvocAid (Sierra Leone) and Mr. Joe Pemagbi, Open Society Initiative West Africa (OSIWA, Sierra Leone).

Mr. Daniel Eyre, Executive Director of AdvocAid, welcomed participants to the conference. AdvocAid provides holistic support to women and girls in conflict with the law. Many of AdvocAid's clients are arrested on suspicion of petty offences, such as loitering and fraudulent conversion. These arrests have serious impacts on people's human rights, on prison overcrowding and absorb the time of police, prosecutors and courts. Mr. Eyre thanked the Open Society Initiative West Africa (OSIWA) for funding the conference and his predecessor, Ms. Simitie Lavaly, who advocated for the conference to be hosted by AdvocAid.

Mr. Joe Pemagbi, Country Director of OSIWA then welcomed the group. He stated that the conference is an opportunity to network across the continent to move the campaign on decriminalizing petty offenses forward, and an opportunity to learn from others. OSIWA supports different justice sector initiatives across the region, including the petty offences campaign. He expressed his hope that this meeting and project would build on partnerships with organizations that provide legal aid across the continent.

Mr. Eyre then introduced Justice Vivian Solomon, who has led a distinguished career in teaching, private practice and presently on the Supreme Court.

KEYNOTE SPEECH

Justice Vivian Solomon, Supreme Court of Sierra Leone

Justice Solomon noted that petty offences have been a thorny issue in Africa and in other parts of the world. She reminded participants that petty offenses disproportionately affect the poor, vulnerable, uneducated, and underprivileged, often burdening the police and correctional services. The government's criminal justice reform process includes the Bail and Sentencing Bill, soon to pass into law.[1] The Bill provides for alternatives to incarceration, including alternative dispute resolution and options for non-custodial sentences. These measures will decrease the burden of petty offenses on prisons and the justice system.

Justice Solomon highlighted the offence of 'fraudulent conversion'. While this is not a petty offence, it is sometimes used to criminalise defaulting on small debts, which is a civil wrong. She cautioned the judiciary to be careful about the application of fraudulent conversion. She commented that the repeal of the provisions which criminalize petty offenses would be the best route to decriminalisation. Petty offences could also be better dealt with through fines, alternative sentences, and community service, instead of detention and imprisonment. She wished the participants a constructive conference.

INTRODUCTION TO THE CAMPAIGN TO DECRIMINALISE PETTY OFFENCES IN AFRICA

Ms. Kristen Petersen, Africa Criminal Justice Reform (ACJR, South Africa)

Ms. Petersen introduced the campaign to decriminalize petty offenses in Africa. The initiative for the campaign arose as a result of pre-trial justice audits that were conducted in Kenya, Malawi, Zambia and Mozambique. The audits' data suggested that many people were incarcerated for extensive periods of time for minor, archaic offences, such as the offence of being a 'rogue and vagabond'. Many of these offences, which exists in several countries, are vague and ambiguous. The organisations found that many of these minor offences did not meet the principle of legality and

[1] The Bail and Sentencing Guidelines were approved in May 2017 by the Rules of the Court Committee and hence are binding on all courts. However, the portions of the Guidelines relating to sentencing are dependent on provisions of the Criminal Procedure Bill being passed into law. At the close of Parliament in December 2017, the Criminal Procedure Bill had not been passed into law. It was also proposed that the Bail and Sentencing Guidelines would be passed as a statutory instrument by Parliament. Again, this had not happened at the close of Parliament in December 2017.

were used in a discriminatory way to target the poor. The Open Society Foundation's Human Rights Initiative initially funded six campaign partners to work on the issue, all uniquely placed within their areas of expertise. The areas of contributions and or expertise towards the initial campaigning. Were highlighted. The partners to the campaign has subsequently expanded.

Many petty offenses are outdated, and give police broad powers, which are open to abuse. Those arrested are generally marginalized people, such as sex workers, children, and poor people. The punishment for these minor infractions are disproportionate to the crimes that they are charged with.

The campaign advocates for the decriminalisation of minor offences that are outdated, unlawful and discriminatory in nature. Further, it calls for the declassification of certain legitimate minor offences into non-arrestable offences with the option of using alternatives to penal prosecutions, thus using restorative/traditional justice methods to deal with these offending behaviours. The campaign calls on governments to review these laws, and on lawyers to challenge laws. Further information and resources are available on www.pettyoffenses.org.

She closed by saying that the petty offenses project has had success in some jurisdictions, such as Malawi and Kenya. She urged participants to take that momentum forward.

ADVOCAID AND CARL RESEARCH INTO PETTY OFFENCES IN SIERRA LEONE

Dr. Gassan Abess, Centre for Accountability and Rule of Law (CARL, Sierra Leone) and Mr. Daniel Eyre (AdvocAid)

Dr. Abess and Mr. Eyre set out the findings of research into petty offences in Sierra Leone. OSIWA is funding a joint project between AdvocAid and CARL on decriminalizing petty offences between February 2017 and August 2018. The project has three objectives: i) to promote reform of legislation relating to petty offences, ii) to reduce custodial sentences for petty offenders and iii) to raise awareness about rights, legislation, and impact of criminalizing petty offences.

The research was conducted through data collection and interviews with key informants. Data on the arrest and prosecution of petty offences was collected between March and May 2017 in Freetown, Bo, Makeni, Kenema, and Kambia. AdvocAid and CARL monitors visited courts and police stations, interviewing a total of 604 people in detention. In depth discussions were held with key stakeholders, including the Justice Sector Coordination Office, Legal Aid Board, Parliamentary Sub-committee on Human Rights, Law Reform Commission, Anti-Corruption Commission, Sierra Leone Police, members of the judiciary, and the Independent Police Complaints Board. The researchers consulted the Drivers' Union, Bike and Kekeh Riders' Association, and sex workers. Finally, the researchers interviewed police officers and magistrates in Bo, Makeni and Kenema. These interviews were designed to gauge stakeholders' attitudes to petty offences.

The research found that people were arrested for the following categories of offence (see table below). The term 'Expression Offences' is used here to cover the criminal offences of threatening or abusive language, insulting conduct and criminal defamation.

Category of offence	Male	Female	Total Number of Respondents
Non-Violent Theft	106	40	146
Petty Traffic Offences	129	3	132
Other Traffic Offences	9	0	9
Violent Offences	112	46	158
Public Order	55	21	76
Expression Offences	29	13	42
Drug Offences	4	1	5
Other	26	10	36
Total	**470**	**134**	**604**

The data reveals significant differences in the pattern of offences by gender. 27% of arrests of men were for petty traffic offences. The corresponding figure for women is 2%. The following table shows the most common individual offences for which men were arrested.

Most Common Offences for Men	Arrested / Sentenced	Percent
Assault / Wounding	51	11%
Larceny / Robbery	50	11%
Domestic Violence / Abuse	47	10%
No Driver's License	41	9%
Fraudulent Conversion	35	7%
No Insurance / Vehicle License	32	7%
Loitering	32	7%
No helmet / vehicle fault	31	7%
Obtaining money under false pretences	17	4%
Total	**336**	**71%**

This table demonstrates that many of the most common offences for men are petty offences, whether minor traffic offences, such as not carrying a driver's license or not wearing a helmet, or loitering, fraudulent conversion and obtaining money under false pretences. Looking at the full data, petty offences count for 45% of all arrests of men.

With the exception of traffic offences, women are most commonly arrested for many of the same offences (see table below). Again, petty offences such as loitering, abusive language, fraudulent conversion and obtaining money under false pretences feature prominently. Looking at the full data, petty offences account for more than 30% of the arrests of women.

Most Common Offences for Women	Arrested / Sentenced	Percent
Assault / Wounding	27	20%
Larceny	18	13%
Loitering	14	10%
Threatening or Abusive Language / Insult	12	9%
Domestic Violence	11	8%
Fraudulent Conversion	10	7%
Obtaining Money Under False Pretences	5	4%
Total	**97**	**72%**

AdvocAid and CARL believe that these offences would not meet the three-part test for petty offences set out by the ACHPR (see next presentation). Loitering is an offence under the Public Order Act (1965)[2] and the Criminal Procedure Act (1965).[3] These provisions are overly broad, discriminatory and impose arbitrary restrictions on freedom of movement. Threatening and abusive language, and public insult and provocation are offences found under the Public Order Act (1965)[4] and do not meet human rights standards for acceptable restrictions on freedom of expression. Fraudulent conversion is provided for in the Larceny Act (1916)[5] and was originally designed to penalize the intent to defraud. In practice, however, straightforward disputes over debt result criminal charges under the guise of fraudulent conversion. Such matters could easily be mediated outside the court system. The misuse of fraudulent conversion results in the criminalization of poverty.

During interviews, respondents shared a variety of views of petty offences. Several respondents expressed support for decriminalizing or declassifying petty offences as that would ease pressure on police cells and prisons, shift the focus to from punishment to tackling root causes of crime, and be more consistent with human rights, in line with Government's criminal justice reforms. Many police officers, however, were uncertain. They expressed a preference for declassification so that they could retain offences they find useful or rejected the project as a whole, arguing that criminalization allows the police to make arrests which prevent or deter crime.

The research generated three key recommendations:

[2] Article 7, Idle and Disorderly Persons "Any person loitering in or about any stable house or building, or under any piazza, or in the open air, and not having any visible means of subsistence, and not giving a good account of himself, shall be deemed an idle and disorderly person, and shall, on conviction thereof, be liable to imprisonment for any period, not exceeding one month."

[3] Article 13, When constable may arrest without warrant "(1) Any constable may without a warrant arrest – (e). [a]ny person whom he finds between the hours of six in the evening and six in the morning lying or loitering in any street, highway, yard, compound or other place, and not giving a satisfactory account of himself."

[4] Article 2, Public insult and provocation and Article 3, Insulting conduct, Public Order Act, 1965.

[5] Section 20 (1)(iv)(b) "Every person who having either solely or jointly with any other person received any property for or on account of any other person; fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof; shall be guilty of a misdemeanour and on conviction thereof liable to penal servitude for any term not exceeding seven years."

1. The government should decriminalise / declassify petty offences through passing the new Criminal Procedure Act into law, replacing and repealing the Public Order Act (1965) and Larceny Act (1916)
2. The government and donors should ensure adequate legal assistance and representation for indigent suspects and accused through support to the Legal Aid Board and other organisations providing legal assistance.
3. The government should reduce the misuse of petty offences (i.e. fraudulent conversion) through finalizing the new Bail and Sentencing Guidelines to reduce custodial sentences and increase access to bail, and conduct refresher training for Police and Magistrates on alternatives to custodial sentences, including ADR and use of non-custodial sentences.

AdvocAid and CARL intend to do further analysis of the data, including to disaggregate the data according to specific groups who may be especially vulnerable to petty offences.

ACHPR PRINCIPLES ON THE DECRIMINALISATION OF PETTY OFFENCES IN AFRICA

Ms. Melody Kozah, African Policing Civilian Oversight Forum (APCOF, South Africa)

Ms. Kozah summarised the background to the ACHPR's Principles on the Decriminalisation of Petty Offences in Africa.[6] The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reform in Africa called on states to decriminalise some offences, "such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents." At the 21st Extraordinary Session (23 February - 4 March 2017) in The Gambia, the Commission tasked the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa to develop the Principles. The Principles were developed through research, in-person consultations and consultations through the ACHPR website. The ACHPR approved the Principles in their November 2017 session and will launch the Principles in 2018.

The Principles establish standards against which petty offences should be assessed, and promote measures that can be taken by states to ensure that such laws do not target persons based on their social origin, social status or fortune by criminalising life sustaining activities. The Principles define petty offences as, "Minor offences for which the punishment is prescribed by law to carry a warning, community service, a low value fine or short term of imprisonment, often for failure to pay the fine". Decriminalisation refers to the process of removing an act that was criminal, and its associated penalties, from the law. Declassification refers to the process of re-classifying offences as administrative or non-arrestable offences, or offences for which pre-trial detention may not be used and a prison sentence not be imposed upon conviction.

Petty offences are inconsistent with several human rights. They violate the principles of equality and non-discrimination because they either target, or have a disproportionate impact on, the poor, vulnerable persons, or on the basis of gender. Their effect is to punish, segregate, control and undermine the dignity of persons on the basis of their status. The enforcement of petty offences

[6] The Draft Principles can be found here: http://www.achpr.org/files/news/2017/03/d283/zero_draft_principles_on_the_declassification_and_decriminalization_of_petty_offences.pdf

contributes to overcrowding in places of detention or imprisonment. Overcrowding threatens the dignity of detainees, and increases the risk of ill treatment. Petty offences enable arbitrary arrest and detention and they give overly wide discretion to law enforcement officers.

The ACHPR's Principles set out a three-part test for petty offences. They should be decriminalised if they do not meet the conditions of the test. Legitimate offences should:

- **Comply with the rule of law:** the laws defining criminal conduct must be clear, precise and accessible, and clearly establish the elements of the crime, as well as the grounds upon which a person can be arrested and detained.
- **Be legitimate, necessary and proportionate**: Criminal laws must be in pursuit of a legitimate objective. Laws, which allow for arrest and imprisonment for petty offences can be a disproportionate measure, which is contrary to the principle of arrest as a measure of last resort.
- **Meet regional and international human rights standards,** including the principles of equality before the law and non-discrimination**.**

The ACHPR's Principles call on states to decriminalise:

- laws which criminalise conduct in broad, vague and ambiguous terms; and
- laws which criminalise the status of a person or their appearance, in particular, laws that criminalise life-sustaining activities in public places.

For other minor criminal offences that are assessed by states as being in compliance with the three-part test, states are encouraged to declassify such offences by establishing alternatives to arrest and detention. These alternatives include diversion of cases involving petty offences away from the criminal justice system and making use of community service, community-based treatment programmes, and alternative dispute resolution mechanisms, such as mediation.

The Principles also call on states to adopt measures that aim to address the conditions that cause, exacerbate or perpetuate poverty, rather than criminalise poverty in line with Article 22 of the ACHPR. Finally, the Principles call on states to promote the principles, to guarantee all people legal advice and assistance, provide information that relates to existence and enforcement of petty offences, ensure data is collected on detention, and collaborate with civil society to promote the principles.

NATIONAL HUMAN RIGHTS INSTITUTION PERSPECTIVE ON THE DECRIMINALISATION OF PETTY OFFENCES

Ms. Anne Okutoyi, Kenya National Commission of Human Rights (Kenya)

Ms. Okutoyi introduced participants to the mandate and work of the Kenya National Commission of Human Rights (KNCHR). The Commission is established by the Constitution and further operationalised by an act of parliament. It is compliant with the Paris Principles for national human rights institutions and is also Kenya's National Preventative Mechanism for preventing torture. The KNCHR conducts both human rights protection and promotion work. The functions of the KNCHR are

as follows: investigate violations and secure redress, research and monitor public institutions, human rights education, and campaigns with other stakeholders.

Kenya's constitution is very progressive on human rights. The state is obliged to ensure access to justice for all, without any impediments. A person must be brought to a court within 24 hours and cannot be arrested for any offence that carries a sentence of less than 6 months. However, the Penal Code and Criminal Code contain broad provisions that criminalise offences that are not criminal in nature i.e. minor traffic offences, idling, loitering, begging, brewing illegal alcohol, prostitution, among other misdemeanours. Arrests for such offences have a large impact on the enjoyment of other rights.

In practice, petty offences have a disproportionate impact on vulnerable groups and lower income persons in the society. The police conduct mass arbitrary arrests, often through so-called 'swoops'. Once arrested, suspects are at risk of assault, sexual and gender-based violence, torture and other violations. Most cannot afford bail and they make up of the majority of pre-trial detainees, who are kept in deplorable state-minimum rehabilitation. They face protracted court cases (often lasting two years) and lack access to legal aid. Only the poor end up in places of detention. 70% of the cases in court are petty offences and petty offences account for 33% of females in custody.

The KNCHR is well-placed to campaign on petty offences. It sits on several key committee,[7] including the task force on decriminalisation of petty offences. The KNCHR also coordinated the National Action Plan for Human Rights and undertakes national campaigns towards the domestication of the Luanda guidelines on pre-trial detainees. It inspects prisons to monitor compliance with international standards. The KNCHR also participated in ICJ Kenya's national conference on decriminalisation and reclassification of petty offences.

The KNCHR deals with petty offences across all areas of its work.

- Investigations: It documents patterns of violations relating to petty offences and makes recommendations. E.g. the mass arrest of suspects from communities assumed to be responsible for recent terror attacks for petty offences as a form of collective punishment.
- Research: Works with civil society actors. Recent activities include an audit of penal reforms, NCAJ criminal justice audit report, the Social Economic Impact of pre-trial detention-IMLU and CSPR, Law and Policy Research on Petty Offences by ICJ Kenya.
- Public education: sensitise criminal justice actors, including through revised police curriculum.
- Alternative Dispute Resolution: Works with courts to mediate disputes, trained other ADR providers.
- Campaigning: Issues advisories on criminal justice reform, engages in dialogue with key actors.
- Public interest litigation: Seeks remedy for violations. So far mostly cases of HRDs and torture.

The challenges facing the petty offences campaign include the lack of political good will. Legal reform requires the participation of parliament and the elections mean that new relationships have

[7] Criminal Justice Reforms Committee, the Legal Aid Board, National Council Administration of Justice, Consultative Committee of Persons Deprived of Liberty, National Taskforce on Alternative Dispute Resolution, and Bail and Bond Committee.

to be built with parliamentarians. Reforms take time, there are many actor in the criminal justice system that need to be brought along and there is a poor implementation of the existing legal framework. Finally, the KNCHR faces financial constraints due to budget cuts from government.

Discussion

The discussion covered the position of the police, engagement with parliament, public interest litigation and political will. Engagement with the police is challenging, as it is hard to avoid pollicising issues. The leadership has been open to engagement, however changing the practice of police officers requires tackling corruption and the belief that mass arbitrary arrests are effective. The KNCHR has a good relationship with parliament and is mandated to review new legislation. This helps reduce the risk that new petty offences are created, however parliament may ignore the advice of the KNCHR. The KNCHR would be interested in taking up public interested litigation on petty offences, but would welcome support in case selection. Ms. Okutoyi noted that the KNCHR's legal framework ensures it has significant independence, however funding cuts hamper its effectiveness.

NATIONAL PROJECTS: OPPORTUNITIES AND CHALLENGES IN EASTERN AND SOUTHERN AFRICA

Justice Kenan Manda, Prisons Inspectorate of Malawi (Malawi), Mr. Adrian Jjuuko, Human Rights Awareness and Promotion Forum (HRAPF, Uganda), Ms. Anneke Meerkotter, Southern Africa Litigation Centre (SALC, South Africa)

Malawi

Ms. Meerkotter introduced Justice Manda as a great partner to civil society in Malawi who has spoken publicly about petty offences. He is a judge of the High Court of Malawi and runs the Prisons Inspectorate. Justice Manda noted that Malawi is a great example of prison overcrowding, prisons are at 300% capacity. In 1997, the Chief Justice commented that some petty offences are likely unconstitutional, however 20 years later, the country remains in the same situation. The problem is one of political will. Frequently, Magistrates do not respond to training and continue to convict people for petty offences. As long as petty offences are on the statute books they will continue to be used by law enforcement. However, progress has been made. National guidelines for prosecutors have recently been approved and should reduce the number of petty offences brought to trial.

Justice Manda noted that traffic offences are often applied in a discriminatory way, based on the social status of the person. In Malawi, fraudulent conversion is not considered a petty offence; it is the application of the offence which is the problem. Many of these offences target the poor and threaten the presumption of innocence. Any campaign strategy needs to get judges to see beyond the narrative given by the state, which requires them to get out of the courtroom. We should change the narrative to focus on privacy and the presumption of innocence.

Ms. Meerkotter provided a history of the campaign in Malawi. The campaign arose five years ago when organisations tried to tackle excessive pre-trial detention and prison overcrowding. Often people were being detained and convicted under 'rogue and vagabond' or 'idle and disorderly person' provisions. These offences are very vague and come from the colonial times, yet they were left behind by the law reform process as they affected only the poor.

As the campaign did more research, they tried to learn why the police apply these offences the way they do. It became clear that arrests were done at random. The campaign sought to challenge both the law and also the discriminatory way the offence was enforced. Often sex workers and street children were arrested. The High Court considered these issues, but it did not affect the practice of police and lower courts. Public campaigning was more successful. The campaign highlighted the case of a man arrested on his way to the market to sell plastic bags. He was arrested for being a rogue and vagabond. The offence is very vague and the police describe it as the best tool in their tool box. Police claim that it is important for crime prevention, despite no evidence that it helps.

The case went to court and asked the court whether the man's rights were violated and did the state have a justification for violating those rights? The court found violations of the rights to dignity, freedom from discrimination, protection of law, freedom of movement, and right to fair trial. It said that the law needs to be more precise, there may be more appropriate alternatives than arrest and the government should focus on root causes and structural reforms. Immediately after the judgement, the police issued standard procedures and guidelines to all police stations saying that they cannot arrest people for that offence any more. Sadly, the police have now just changed the offences they use to arbitrarily arrest people. The practice of police sweeping exercises continues.

Despite this positive judgement, ongoing public dialogue is needed. Parliament recently passed an HIV bill which created 37 new crimes showing the practice of overusing criminal law to address social behaviour. Further reform of existing law is needed, for example, the criminalisation of begging.

Discussion

Justice Manda noted that the police continue to use decriminalised offences to arrest people. It is difficult for people to resist unlawful arrests. In the discussion participants noted the experience of sex workers in Kenya, who organised themselves to resist unlawful practices. The police used to require them to please guilty in unison. Now they plead 'not guilty' together, forcing the police to take the case to court. As police lack evidence, this has deterred them from arresting sex workers.

Mr. Kamara from the Sierra Leone Police noted the importance of bridging the gap between skill set and mind set. The internal and independent police complaints mechanisms in Sierra Leone should help this. However, the police always find a way of arresting people. This is partly to please your superior and party from the desire to maintain law and order. Ms. Meerkotter replied that petty offences can actually hamper law and order if it means police are arresting people who would otherwise be informants for more serious offences. The Sierra Leone Legal Aid Board suggested that additional training is needed for magistrates and judged because they prefer incarceration.

Mr. Nwadioke from PRAWA, noted that Nigerian police can use illegally obtained evidence in court. Ms. Namatovu from the Ugandan Police argued that preventative arrest is a useful tool for maintaining law and order. Ms. Meerkotter replied that there are alternatives to arrest. For example, someone loitering by an ATM can be asked to move on, instead of being arrested. The discussion turned to how to change the view of the police on what strategies are effective for reducing crime.

Ms. Sembie from AdvocAid asked how repeat offenders are handled by the police and Ms. Meerkotter noted that criminalising people who have no means of subsistence prevents them from earning a living, ensuring that they have no alternative but to be repeat offenders. However, in Canada, the courts found this was double jeopardy.

The Sierra Leone Law Reform Commission noted the legal uncertainty created by Sierra Leone's tradition law system and the incorporation of English law.

Uganda

Mr. Jjuuko from HRAPF introduced their work in Uganda. HRAPF Is a legal service provider for marginalised persons in Uganda, specifically sex workers and LGBTI people. The penal code has a number of petty offences. One of the most used is being idle and disorderly or being a rogue and vagabond. In a 2016 study,[8] HRAPF found 958 cases of people arrested for being idle and disorderly. Often these people are arrested in mass, arbitrary 'swoops', which the police use to extort money from people. People spend long periods on remand and often are forced by circumstances to plead guilty rather than endure the long remand periods. Almost all of those arrested were poor, many were vulnerable in other ways: sex workers, LGBTI persons, drug users, homeless persons, street vendors, street children, and beggars.

HRAPF is in the process of a constitutional challenge to these laws. Affected groups have already been consulted and it is expected to be filed before the end of 2017. It will challenge 'being idle and disorderly', 'being a rogue and vagabond', on the basis of being vague, wide and discriminatory. The prospects for the case are good as the constitutional court has previously struck down legislation as vague, the President and Inspector-General of Police have spoken out against the offence of 'being idle and disorderly', many in the judiciary are on side, and HRAPF's research supports the case.

There are challenges. Not all the offences included under 'being idle and disorderly' are vague and discriminatory. The police may continue to conduct 'swoops' under different provisions. It is hard to find the right petitioner, as issues around sex work and LGBTI rights are controversial.

Discussion

During the discussion, participants differed on whether it was better to tackle multiple provisions in one piece of litigation, or target one small, but easy to win part of the argument. Ms. Ehlers noted that, in Malawi, it was also difficult to find the right petitioner so that the case caught the imagination of as many people as possible. She also noted that even if the police use different grounds for 'swoops' in the future, removing 'idle and disorderly' still makes it more difficult for the police to conduct 'swoops' and is valuable. Ms. Meerkotter said that in her litigation, she deliberately chose not to use the case of a sex worker to avoid the difficult issues that would raise. She also noted that seemingly vague laws may have been given meaning through the practice of the courts, so this may be a challenge. Mr. Jjuuko responded to the comments on choice of petitioner, noting that HRAPF works with sex workers and LGBTI people, but has won important cases without

[8] The report can be downloaded here: www.hrapf.org/resources

mentioning sex workers or LGBTI people. He also said that he would re-evaluate how many provisions the litigation was going to challenge.

Justice Manda suggested that judges should refuse to accept guilty pleas when the person has been arrested in these arbitrary 'swoops' or 'sweeps'.

NATIONAL PROJECTS: OPPORTUNITIES AND CHALLENGES IN WESTERN AND CENTRAL AFRICA

Ms. Wilhelmina Mensah, Commonwealth Human Rights Initiative (CHRI, Africa Office based in Ghana) and Mr. Emeka Nwadioke Prisoners' Rehabilitation and Welfare Action (PRAWA, Nigeria)

Ghana

Ms. Mensah introduced the work of CHRI in Ghana. In the justice sector, this includes police reforms, pre-trial detention and prison reforms. Ghana's government is working to reform the criminal justice system, for example through the ongoing Justice For All programme which began in 2011, and the 2014 Ministry of Interior non-custodial sentences policy forum. However, the focus has been on de-congesting prisons and not yet on the entry point to the justice system.

In Ghana, petty offences generally fall in the legal category of 'misdemeanours'. Many petty offences come from colonial-era English law and are inconsistent with the 1992 Constitution's human rights protections. Several are codified in the 1960 Criminal Offences Act (Act 29), including drunken behaviour, disorderly conduct, harbouring thieves, and debt collection. Few such cases are actually prosecuted. Often "fictitious trading" is used to prosecute people, even though the definition is unclear. In many cases, a petty offense is actually a pretext for police extortion.

CHRI has conducted research on the use of petty offences, followed by advocacy with key government institutions. One interesting response was that the police felt that the middle and upper classes supported the use of petty offences to control 'criminals'. A roundtable discussion is planned for January 2018 to continue the discussion.

Current opportunities include the justice reform process, the desire of police to improve their image and the current anticorruption drive in Ghana. The President is a Co-Chair of the Advocacy Group of Eminent Persons for the Sustainable Development Goals and is therefore very keen on the realisation of the SDGs in Ghana. SDG's 16.3 and 16.6 are particularly relevant as a means of promoting decriminalisation as they speak to the issue of access to justice. There is also a conversation beginning on reforming sentencing guidelines for judges. Notably, there is a new Chief Justice keen on reforming the judiciary.

There are also challenges. Citizens are calling for tougher policing and they believe that petty thieves graduate to armed robbery, so they support criminalisation. Actors in the criminal justice system preferred using non-custodial sentences (declassification) to decriminalisation.

Discussion

During the Q&A session, Louise Ehlers (OSF) noted that in the campaign's advocacy must distinguish between petty offences, where there is no criminal intent (e.g. being a vagrant), from petty crimes

(e.g. stealing a small amount of money). Mr. M.D.Kamara (Sierra Leone Police) recognised the value of Ghana's decision to scrap non-bailable offences, ensuring that there was no offences for which bail was ruled out.

Nigeria

Mr. Emeka Nwadioke is an independent attorney currently working as a pro bono lawyer with Prisoners' Rehabilitation and Welfare Action (PRAWA) and its partners in Nigeria under the "Security and Justice Sector Reform Programme." PRAWA seeks prison and justice sector reform.

Mr. Nwadioke noted that criminalization of petty offences in Nigeria also dates back to the colonial era and was a tool to manage the local population.

Human rights in Nigeria are protected by the 1999 Constitution and the African Charter on Human and Peoples' Rights which has been ratified by Nigeria. Like other countries, Nigeria's laws criminalise "idle and disorderly persons" and "rogues and vagabonds" (Criminal Code Act, 2004). Section 250 of the Criminal Code Act gives police officers broad discretion to arrest such people. Other petty offences - such as environmental sanitation, street trading and public nuisance, among others - are subject to fines or imprisonment. Petty offences often enable police extortion, particularly around the holidays.

The 2015 Administration of Criminal Justice Act (ACJA) provides for non-custodial sentences. However, it is yet to be adopted or 'domesticated' by most of the state legislatures. Presently, only the Federal Capital Territory, Abuja and eight of Nigeria's 36 States have adopted the ACJA. There are also several state-level laws criminalising petty offences.[9] In order to make space for urban renewal projects, states target especially street hawkers who are deemed a public nuisance or charged with disorderly conduct. For example, Lagos State Police Command recently charged about 30 people with 'wandering'.

Lagos State has set up Special Offences Courts to specifically deal with simple offences such as environmental sanitation, pollution, street trading, traffic offences, and gaming among others.[10] This has serious implications for the justice system. Suspects are reportedly encouraged by some officials of the courts to plead guilty and jettison legal representation. Similar problems exist in Abuja where the Abuja Environmental Protection Agency and its Task Force routinely conduct mass arrests for petty offences, ranging from street trading to wandering and 'prostitution.' However, in 2017 the ECOWAS Court of Justice awarded compensation to three women arrested for alleged prostitution by the Abuja EPA, declaring that their arrest was arbitrary and their right to dignity was infringed.[11]

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[9] Lagos, for example, has the following laws which criminalise petty offences: "Street trading and illegal market (Prohibition) Law" Cap S12 Laws of Lagos State of Nigeria 2015 (which criminalises informal trading), "Road Traffic Law" Cap R5 Laws of Lagos State of Nigeria 2015 (which criminalises traffic offences, including "riding, driving or propelling a wheelbarrow" in certain areas), and Section 168 of the Criminal Law Cap C17 Laws of Lagos State of Nigeria 2015 (which criminalises "disorderly persons," including prostitutes, beggars, persons engaged in gaming activities, and criminalises "wandering").

[10] "Special Offences Court Law" Cap S8 Laws of Lagos State of Nigeria 2015.

[11] For more information see http://punchng.com/violation-of-rights-ecowas-court-grants-three-nigerian-women-n18m-compensation/

Criminalisation of petty offenses contribute to prison congestion and slows down the criminal justice system with minor cases. Petty offences criminalise informal economic activity, discriminating against the poor and heightening inequality.

Key projects by PRAWA include "Speeding Up Criminal Justice Project" in which PRAWA provides free legal services to indigent awaiting trial detainees; advocacy on the passage of the Administration of Criminal Justice Act, provision of printed copies of the ACJA, workshops on the implementation of the Act, as well as research. PRAWA's research on the bail system in Enugu found that most accused persons cannot afford legal or paralegal services, and there is a lack of flexibility of judicial officers to grant bail for simple offences.

While Nigeria has repealed "wandering" as an offence, the police often resort to State laws which still criminalise "wandering" to charge suspects. The recently published National Justice Policy and implementation of the Administration of Criminal Justice Act may aid decriminalization and declassification of petty offences in Nigeria.

Discussion

During the Q & A, participants discussed the need for children and young persons to be included as a vulnerable group in the decriminalisation campaign and for a cohesive regional campaign plan. Noting the success of repealing the offence of 'wandering', Louise Ehlers (OSF) suggested documenting such success stories (see also progress in Mozambique and Zimbabwe). These stories and successful approaches could be useful in framing these issues with other governments.

POLICING PERSPECTIVES ON THE DECRIMINALISATION OF PETTY OFFENCES

Mr. Polycarp Ngufor Forkum, Cameroon National Police (Cameroon), presentation delivered by Mr. Tem Mbuh, OSIWA (Senegal)

Mr. Mbuh began with an introduction to Cameroon's legal system. The common law system applies in the English-speaking parts of the country, while the civil law system in the French-speaking parts of the country. Criminal procedure rules have been harmonized and draw elements from both systems. As a result, there are many petty offences in the laws of Cameroon.

In general, law enforcement is carried out principally by judicial police officer who may be police (in urban municipalities) or the gendarmes (in rural areas).[12] As a francophone country, a feature of the policing system is that in rural areas there are 'gendarmes' with policing type powers, as well as police. They are assisted by Judicial Police Agents.[13] However, certain administrators are called up to enforce laws in their respective sectors and as such are accorded special judicial officer powers, including the power of arrest.

[12] Law No DF/67/08 of 1967
[13] Section 78 -81, Criminal Procedure Code

The penal code[14] establishes three categories of offence, with corresponding penalties: felonies, misdemeanours and simple offences. Many petty offences are to be found in the category of simple offences and can include such offences as "Failure to maintain, repair or clean ovens, chimneys or factories in which fire is used." Many of these petty offences are inconsistent with human rights law.

One of the offences most commonly used by police is the following: "The perpetrators of any disorder, disturbance or unlawful assembly of any abusive nature or at night which disturbs the peace of local residents". Further, the penal code makes disobeying the orders of municipal authorities and offence, enabling the abuse of power by administrative authorities. Likewise, anyone who attempts to contest an attempted unlawful arrest by the police are simply arrested for obstructing the law.

Many petty offences were decriminalised last year in Cameroon's new penal code but police continue to use them to arrest people. The following petty offences remain part of the penal code:

- Vagrancy, which carries a term of imprisonment of six month to two years.[15]
- Renting Fraud, where a tenant can be sentenced for up to three years' imprisonment for being two months in arrears.[16] This is, in fact, an offence created in 2016, which highlights the need to scrutinise new legislation.

Further, many people remain in detention for on trial for crimes that have been decriminalised in the new penal code.

Currently it is popular amongst the police to arrest people for homosexuality and abortions. To charge someone for homosexuality, they need to be caught in the act. In practice, anyone who is accused of being a homosexual is arrested. The homosexuality laws are not in themselves broad, but they are misapplied and misinterpreted. The lack of independence of the judiciary makes it very difficult to hold police and administrators accountable for the abuse of power. Complaints against officials can only be handled by the Administrative Bench of the Supreme Court in Yaoundé, effectively denying the majority of people access to redress.

Discussion

During the Q&A, participants discussed the challenges of reducing arrests for petty offences when there are few mechanisms to hold police accountable. In discussing options for challenging the use of anti-homosexuality laws, Anneke Meerkotter (SALC), noted that it can be useful to focus on the argument that only the act of homosexual sex is illegal and not homosexuality itself – homosexuals have the same rights as everyone else. This allows us to challenge courts around other issues facing LGBTI people, so NGOs can do advocacy on other issues even if they cannot directly target the sodomy laws.

A constitutional challenge to laws and practices is not possible because individuals do not have standing before the Constitutional Council (a body whose mandate is presently exercised by the Supreme Court). Only the President of the Republic, the Presidents of the two legislative bodies or at

[14] Section 21, CMR Penal Code-Law No 2016/007 of 12 July 2016.
[15] Section 247 of the Penal Code.
[16] Section 322 of the Penal Code.

least 1/3 of their respective membership have standing. This effectively bars access to individuals or human rights organisations. Opportunities for civil society in Cameroon are very limited. Many people have been arrested for making comments on social media. One option may be to work with international lawyers' associations that have clout in the country.

Campaigning by working through the media is difficult, again due to a lack of independence. The African Commission has issued a number of decisions against Cameroon, but these rulings are not implemented. The Higher Judicial Council is supposed to oversee the careers of judicial officers, ensuring discipline and reviewing promotions, however it lacks independence. The police are trained in human rights, but this does not result in changes in practice.

UPDATE ON LITIGATION AT THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Mr. François Godbout, Pan-African Lawyers Union (PALU, Tanzania) and Ms. Anneke Meerkotter, SALC

Mr. Godbout briefed participants on the newly established African Court on Human and Peoples' Rights ('the Court'). The Court can decide contentious cases or issue advisory opinions. Contentious cases are only admissible if local remedies have been exhausted and the country has accepted the Court's jurisdiction. Currently, only eight countries have done so (Benin, Burkina Faso, Côte d'Ivoire, Ghana, Mali, Malawi, Tanzania and Tunisia). An advisory opinion can be issued on any provision of the African Charter on Human and Peoples' Rights ('the Charter') provided that it is not related to an application pending before the ACHPR and it is brought by and African organisation recognised by the African Union.

PALU is seeking an advisory opinion from the Court on whether the vagrancy laws violate articles 2, 3, 5, 6, 7, and 12 of the Charter,[17] articles 4, 5 and 17 of the African Charter on the Rights and Welfare of the Child,[18] and article 24 of the Protocol on the Rights of Women in Africa.[19]

Ms. Meerkotter spoke about the history of vagrancy laws in Africa. Prior to independence, many colonial economies depended on forced labour to extract revenue for colonial powers. When Britain and France outlawed forced labour, their colonial administrators had to find a new way to compel people to work. The administrators used vagrancy laws including idle and disorderly and rogue and vagabond offences, to arrest anyone who refused to work for the colonial government. Given this history, most people would oppose criminalising vagrancy laws. The litigation focuses on the offence which criminalises a person's inability to show 'means of subsistence' because this provision is common to both Anglophone and Francophone jurisdictions.

[17] These articles relate to non-discrimination, equal protection of the law, the prohibition of torture and cruel, inhuman and degrading treatment, arbitrary arrest and detention, presumption of innocence, and freedom of movement.
[18] These articles relate to non-discrimination, best interests of the child, right to life, right to special treatment, prohibition of torture and cruel, inhuman and degrading treatment and presumption of innocence.
[19] This article relates to the protection of poor women and women heads of families.

One factor behind the continuation of vagrancy offences is the mistaken belief that the police need these offences to prevent crime. This argument needs to be challenged. The campaign also needs to challenge the idea that arrest is the most appropriate response to a social concern.

Ms. Meerkotter also spoke about strategic litigation at the African Court. She noted that effective strategic litigation also requires exposing judges to the issues outside of the courtroom, sometimes through the media. Perhaps the petty offences campaign needs to target judges on the Court from their countries (Kenya, Uganda, Malawi).

Discussion

Justice Manda argued that it is necessary to show judges the impacts of their decisions, particularly on prison overcrowding. Litigation must be accompanied by other strategies. Ms. Mensah noted that in Ghana a journalist took judges to the prisons to show them the impact of their decisions. This has had a big impact on judges' behaviour. Ms. Meerkotter agreed that the media is a vital tool to prepare the way for strategic litigation.

Mr. Eyre asked how the campaign in Malawi managed to humanise the people affected by petty offences. Justice Manda noted that they used a case of a police woman who was arrested while abroad because she was accidentally staying in a brothel. She was able to be an effective spokesperson for how arbitrary petty offences are.

Asked why the African Court litigation was for an advisory opinion instead of a contentious case, Mr. Godbout noted that the option for a contentious case remains open. It was thought to be a longer process and might limit the impact of the case to one country, whereas the advisory opinion could cover 22 states which have similar provisions in their legislation. It was also proposed that members of the coalition could file amicus briefs in support of the strategic litigation. Mr. Nwadioke noted that the ECOWAS Court ruling awarding compensation to three women arrested for prostitution might be useful precedent to raise in at the African Court.

Ms. Meerkotter noted that there are insufficient statistics on the application and impacts of petty offences and so, in the case before the African Court, the arguments focus on the inherent vagueness of the vagrancy laws being challenged. If other coalition members filed amicus submissions based on the research they have done, this could be a way of bringing statistical information before the court. Some participants noted the difficulties in compiling statistics.

Ms. Ehlers proposed that elevating cases from campaigns in the countries where judges are from, might be a strategy for getting judges on side. The coalition could also use research that has already been done and could put together guiding notes on how to make a submission. More alliances across the continent would be valuable in supporting this effort.

National Strategic Litigation

Ms. Meerkotter initiated a discussion about national-level strategic litigation. She proposed challenging vague provisions that target the poor and marginalised groups for behaviour which are not criminal in nature and focussing on laws that are used regularly. However, strategic litigation could also target the way offences are used, or could involve establishing a group of lawyers who

regularly challenge unlawful arrests. She also noted that the campaign should make use of existing case law. For example, vagrancy offences were considered by Tanzanian and Kenyan courts in the 1940s and found to be overly broad. Organisations should carefully determine which cases to take on based on the research available on the enforcement of those offences and should be careful in how many provisions to target in one case as this could overburden the legal arguments before the court and lead to a confusing judgment. The purpose should be to focus on those offences that are most often used to target poor and marginalised groups. Offences which are not often used can rather be changed through law reform advocacy and processes.

Litigation also carries risks. Litigation has an emotional and financial impact on the client. It may also result in bad jurisprudence which increases the incidence of police abuse, or the courts may ask the legislature to consider the issue, resulting in worse legislation. Judgments may impact a range of groups in different ways. All impacts should be considered when deciding the litigation strategy. Organisations should identify laws which are most abused and conduct in depth analysis to assess whether a challenge will be successful. They should start a public debate on the issue and ensure a sensitised judiciary. They should identify the most appropriate client and prepare the client properly on the risks of litigation. Finally, they should seek additional partners, who might join as amicus curiae to support case and raise additional arguments on the negative impacts of the laws.

During the discussion, participants spoke of the need to include people with disabilities in the campaign and their access to justice.

AdvocAid spoke about its intention to litigate the application of fraudulent conversion and loitering. The challenge to loitering is part of a broader body of work on the rights of sex workers. Mr. Nwadioke spoke about the need for national champions who would be public advocates on petty offences.

IMPLEMENTATION STRATEGY FOR THE PRINCIPLES ON THE DECRIMINALISATION OF PETTY OFFENCES IN AFRICA

Ms. Melody Kozah, APCOF

This session was intended to allow participants to plan strategies for implementing the Principles. The ACHPR's Principles on Decriminalisation of Petty Offences in Africa request states to promote the principles, to guarantee all people legal advice and assistance, provide information that relates to existence and enforcement of petty offences, ensure data is collected on detention, and collaborate with civil society to promote the principles.

During the discussion, participants highlighted the need to develop action plans and engage stakeholders, including by finding a bridge between civil society and government. In particular, civil society could replicate the work done to promote the Luanda Guidelines. Participants proposed streamlining and tailoring conference to specific audience such as the judiciary and for the parliament. Disseminating the guidelines across the continent should be a priority. And then principles need to be applied at a national level or adapted for national use.

The Sierra Leone Law Reform Commission (LRC) noted that the final text of the Principles needed to be distributed to enable an informed discussion. The LRC also said that more research was needed to identify which laws we are talking about and how they are applied in the various courts, before we could review how they should be amended. Another participant noted that the Principles provide a clear legal standard by which domestic legislation can be evaluated and so the three-part test is a useful tool for designing our own interventions. Mr. Eyre (AdvocAid) proposed that AdvocAid and the LRC might conduct a joint analysis of existing legislation on priority petty offences, applying the three-part test. A conference report will be shared with all participants to enable the discussion to continue.

To implement the Principles, each country should ascertain its specific problems. In Malawi, a key problem was congestion in the prisons. They identified the problem first and then worked on addressing it by explaining to the judges. Taking judges to the prisons was useful as they were able to see the congestion first-hand. In Malawi, many judges don't believe in other alternatives to custodial sentences because of their background – many were prosecutors previously. Now there are also judges who were defenders, and judges with a Master's in human rights law, who have different perspectives. It should be possible to find champions in the justice system to support your cause.

Research is vital to persuading the judiciary. One participant highlighted research in Kenya showed a 90% successful conviction rate for petty offences while only 2% - 3% for murder and robbery. This persuaded the Chief Justice that there was something wrong. If people are concerned about crime prevention, they should be concerned about the fact that people are not being convicted for the more serious crimes and that police resources are being used to arrest people for these petty crimes. Advocacy should be targeted to be persuasive to the audience.

Engaging the media is vital to persuading the public. It is important to identify the specific vulnerable groups in the relevant context / country. Organisations can ask people from those groups come to speak and explain their story. e.g. a person with a disability coming to tell their story. This is a powerful way of convincing the public.

Ms. Kozah said that APCOF's implementation strategy entailed the following: developing a simplified version of the principles which could be used by community based organizations; translating the principles into other languages; working with NANHRI on testing an implementation tool for the Principles that will provide basic training, a monitoring template, and advocacy materials. The tool will be tested through the NHRIs as a pilot phase and NANHRI will then separately work with the NHRIs for the development of national action plans for decriminalisation. They are happy to share these documents and others countries can consider further translations. APCOF suggested that it would be important to consolidate the work done in different countries by different organisations and put it together to feed into best practices that can be adopted.

DISCUSSION OF REGIONAL CAMPAIGN STRATEGY FOR 2018

Ms. Louise Ehlers, Human Rights Initiative (HRI), Open Society Foundations

Ms. Ehlers chaired the final session of the conference. It was an opportunity for all participants to share their plans for 2018 and receive suggestions and feedback from colleagues. She noted that while OSF obviously cannot fund everyone directly, grant funding is not a prerequisite for joining the campaign and that any groups that are interested in the issue are encouraged to participate. Petty offences are prolific across Africa and affect many people. The campaign will only be successful if there is a critical mass of groups and organisations coming together. The campaigns need to target objectives that are realistic and practical. When one looks at the number of people in prisons and police cells for minor offences, the campaigns can really make a difference on overcrowding as well as on physical, psychological and economic health of accused persons and their families.

The campaign is designed as a combination of national and regional level initiatives with work at the country level supporting regional advocacy and vice versa. Currently OSF is supporting five regional or Pan African groups. Support is also being provided to five country-level groups in Malawi, Uganda, Kenya, Sierra Leone and Ghana respectively with the possibility of adding a sixth in 2018, most likely in a civil law jurisdiction. There is also work underway in other countries that are not supported by OSF, for example Human Rights watch is doing good work in Rwanda. Where possible, organisations that are supported directly are encouraged to share learning with neighbouring countries e.g. Sierra Leone and Liberia. At the regional level OSF has supported partners to develop Principles on the Decriminalization of Petty Offences in Africa. This soft law instrument was adopted by the African Commission on Human and Peoples Rights in November 2017. It provides a legal standard against which States can review their petty offence laws with a view to repealing those that are non-compliant. In parallel OSF is supporting the Pan African Lawyers Union to approach the African Court on Human and Peoples Rights for an advisory opinion on the consonance of the petty offence laws with the African Charter. Ms. Ehlers invited participants to make use of the resources available on the petty offences website (www.pettyoffences.org), including the Poverty is Not a Crime logo , the baseline report "Punished for Being Poor" as well as the information pamphlet, infographic, social media video and Twitter handle and to like the campaigns Facebook page – Poverty is not a Crime. Participants were also encouraged to use the website and social media to share stories, research and litigation efforts from their countries.

Participants noted that the campaign is currently very Anglophone focussed and there is a desire to expand to more Francophone countries. This trend reflects the quick uptake by organisations in Anglophone countries, rather than design. A lot of research has been done by campaign partners on the application of petty offence laws in common law jurisdictions and this is being used to underpin litigation efforts in various countries. However, this conference has made it clear that there is a lot more research that needs to be done in countries with civil law systems.

Participants felt that the conference was a good opportunity to share information and ideas and that another conference should be held to come up with time-bound action plans. Ms. Ehlers proposed that given the above, the next regional conference should perhaps be held in West Africa in a francophone/civil law country.

AdvocAid set out its next steps for the Sierra Leone campaign. The organisation has already spoken with market women, commercial sex workers, parliamentarians, motorcar drivers, and is continuing to go out into communities. It wants to further analyse its data to learn more, such as the rate of prosecution. AdvocAid would like to use the adoption of the Principles as a hook for public advocacy and to develop its strategic litigation in the coming year. It also seeks to further engage the judiciary, as has been done in Malawi. Dr. Abess (CARL) noted the work already done to explain the campaign to the public through jingles and dramas on the radio.

In Malawi, there is a need to engage prosecutors, including by training them on the new prosecutorial guidelines. There will be opportunities in the coming year to use the new prosecutorial guidelines to reduce the reliance on petty offences. Police officers and judges will be engaged through training to establish their duties and obligations. It was suggested that the Chief Justice be approached to create a roster for judges to visit prisons. There should be a provision for judges to review sentences of those in detention, especially if excessive custody is a problem.

Some participants proposed that each country organise its own launch of the Principles and localise them for their context.

Ms. Ehlers mentioned said the editor of one of Nigeria's newspaper had been arrested for a petty offence and would like to cover the issue of petty offences in his publication. She will try to finds his name and contact details for Mr. Nwadioke.

Ms Ehlers encouraged participants, in addition to their law reform, litigation and research efforts to look at ways of empowering affected communities such as street traders, sex workers, drug users, LGBTI person etc to advocate in their own right. For example, idle and disorderly laws are routinely used to target person with psychosocial or intellectual disabilities. Often, they are then diverted into the healthcare system, where they may be detained indefinitely without trial or due process of law, despite not having committed a crime.

The Principles will be officially launched at the upcoming 62nd ACHPR Session in Mauritania in April 2018. Many of the organisations that are part of the campaign attend the ACHPR sessions on other business and this could provide an opportunity for a campaign meeting. HRI and OSIWA are in the process of developing a photo exhibition which they hope to showcase at the April Session. This will bring a human face to the rights violations inherent in petty offence laws. If organisations are able, and if they have Observer Status, it would be useful for them to make submissions on petty offences at the next ACHPR Session.