



# African Policing Civilian Oversight Forum

## **73<sup>rd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights**

### **Panel Discussion on Women Prison Conditions**

**Presentation by Louise Edwards, Director of Research and Programmes,  
African Policing Civilian Oversight Forum (APCOF)**

**28 October 2022**

Honourable Chairperson and Commissioners,

All protocols observed

Thank you for the invitation to be part of this important panel. I am Louise Edwards, the Director of Research and Programmes at the African Policing Civilian Oversight Forum (APCOF). I have been asked to reflect on the action items identified by the African Commission's *Sensitisation Webinar on the Vulnerable Situation of Women in Prison* held in November 2021. I want to acknowledge the work of Sabrina Mahtani, a Zambian lawyer and founder of both AdvocAid and Women Beyond Walls, as well as Professor Lillian Artz of the Gender Health and Justice Research Unit at the University of Cape Town, in developing this presentation.

I want to start by welcoming the Commission's focus on this issue. As emphasised by experts at the sensitisation webinar, research on women in prison (and more broadly within the justice system) in Africa remains scarce and discrete. This leaves a stark gap and a critical absence of information about their pathways and experiences. The lack of research and work on this issue is not an indication of a lack of interest from civil society and academia, but speaks to the precarious funding situation for this type

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of work. A 2021 research report into funding for work with incarcerated women and girls by Women Beyond Walls found that while there are established organisations doing vital work, using multiple strategies, in a challenging context, addressing women's incarceration is not a priority for most donors. Amongst the recommendations of that report was the need to make funding more accessible to organisations working in this area. We hope that the efforts of the African Commission, and in particular the Special Rapporteurs, in amplifying the issue will encourage donors to increase and prioritise feminist funding for work with women and girls impacted by the criminal justice system.

As has been noted, the outcome of the African Commission's *Sensitisation Webinar on the Vulnerable Situation of Women in Prison* was a set of action items, which included:

- Prioritising research and data collection.
- Reviewing discriminatory and other laws that impact the rights of women.
- Develop and promote alternatives to detention for women.
- Mainstream gender responsive measures in custodial settings.
- Ensure training for all law enforcement officials on best practice related to justice outcomes for women.
- Establish and maintain effective oversight mechanisms.
- Investment in criminal justice reform.

Each of these areas of action are equally important and mutually reinforcing and require support to not only to and by State Parties, but to organisations with the capacity to deliver research and knowledge production to bolster advocacy and movement-building around these issues. Notably, most of the action points focus on the issue of legal and policy reforms within criminal justice systems. While those are absolutely critical to improving the experiences of women and girls in a detention context, they don't address the feminisation of poverty and the underlying socio-economic causes of female incarceration. By feminisation of poverty, I mean the trend of increasing inequality in living standards between men and women due to the widening gender gap in poverty.

Globally the number of women in prison has increased by approximately 59% between 2000 and 2020, at a much faster rate than that of men. The main driver of women coming into contact with the criminal justice system is poverty. If we want to address the increasing numbers of women in prison – and the fact that the infrastructure and services available are not gender-sensitive or rights-compliant – we need to address the underlying socio-economic causes of female incarceration. These causes include the feminisation of poverty, prior victimisation, discriminatory laws, and punitive drug policies. This is compounded by a lack of access to loans and credit, lack of access to education and opportunities, high levels of gender-based violence, and the economic pressures on single-headed households.

In Sierra Leone, a 2020 study found that 34% of women had either been convicted of or charged with crimes related to poverty or drug use.

In South Africa, empirical research into women's pathways to crime and incarceration by the Gender, Health and Justice Research Unit at the University of Cape Town, shows how poverty, indicated by the absence of food in their homes, relatively low educational and employment levels, and the insecure environments in which they lived and socialised, influenced women's pathways to crime. In South African prisons, about 45% of women were convicted on economically related crimes. Exposure to violence also has an impact on pathways, with 56% of incarcerated women reported domestic violence or rape sometime during their lifetime, which is over double the rate of abuse reported in the general population.

One area of reform that requires urgent attention is how women and girls are disproportionately impacted by laws that criminalise poverty across Africa and the pathway it creates to incarceration. Through its work to promote implementation of the Principles on the Decriminalisation of Petty Offences in Africa, the African Commission (and particularly Commissioner Manuela) is part of a growing movement pushing for the removal of colonial-era discriminatory and inappropriate laws that punish poverty and which have a disproportionate impact on women and girls. This includes laws that seek to control and segregate public spaces, drafted in terms so broad that police have a wide discretionary power to effect arrest. One example is the offence of loitering, found in criminal laws across the continent, the enforcement of which is often used to target women who work as informal traders, sex workers, drug users, and women who perform life sustaining activities in public spaces for reasons of their socio-economic marginalisation. For example, section 7 of the Sierra Leone Public Order Act of 1964 provides that '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'. AdvocAid has filed a case in the ECOWSA Court of Justice in Abuja, Nigeria, against the Government of Sierra Leone, seeking to overturn the country's discriminatory loitering laws. These type of laws have also been subject to successful legal challenges in Malawi (where a colonial era law criminalising 'being a rogue and vagabond' was deemed unconstitutional), and are currently being challenged in Uganda and South Africa. More will follow. As well as being discriminatory on the basis of gender, there is clear evidence that these laws only further marginalise people already experiencing social and economic exclusion on the basis of their status, and are not a proportionate, evidence-based or effective response to issues of community safety.

As I mentioned, these vague, gender-blind laws, provide police with broad discretionary powers. This increases the potential for abuse of power through, for example, asking for bribes or sex. Once women are arrested under these laws, gender stereotypes then inform the nature of the charges brought against women, while influencing the way in which they are treated during the court proceedings and during the sentencing stage. Once incarcerated – and this applies to women convicted under any criminal law, not just those which criminalise poverty - prisons are not designed to meet women's needs, with a lack of gender-sensitive hygiene, nutrition, sexual and reproductive health products, and psychosocial support. Research from South Africa also points to the lack of gender-sensitive rehabilitation programmes for women, who are bringing unaddressed trauma back to their own communities. While there are alternatives to prison, these options don't usually address women's unique needs.

The Commission's action plan gives a broad framework for addressing key issues particularly related to law reform and the need for data collection to inform an evidence-based approach to the reform of criminal justice systems to better protect the rights of women. But beyond legal reform, a multi-layered and holistic approach is also needed that addresses the underlying socio-economic causes women's incarceration. Criminalising poverty has, and will continue to have, a disproportionate impact on women, and challenging this must be a centrepiece of efforts to reduce incarceration rates of women.

We recommend that all stakeholders, in working towards implementation of the Commission's Action Plan:

- Mainstream gender (and women prisoners) into conversations on the decriminalisation of poverty;
- Document the gendered impact of law enforcement and laws that criminalise poverty.
- Work with and train key criminal justice role-players, such as the police, prosecutors, and judiciary in combating this gender bias.
- Utilising the law through a legal empowerment approach by assisting women in knowing the rights; and
- Increase and prioritise feminist funding for work with women and girls impacted by the criminal legal system.

In conclusion, as a matter of practice, maintaining a gender lens is also important as we need to constantly question whether efforts to address broader issues relating to the situation of women in prisons and all other forms of detention exacerbate gender inequality, or whether they are effectively addressing and shifting embedded gender bias and gender inequality.

**Presentation delivered by:**

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