



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**

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

**20 October to 9 November 2022**

**Banjul, The Gambia**

**ITEM 10: Activity Reports of the Members of the Commission & Special Mechanism**

Honourable Chairperson and Commissioners,

The African Policing Civilian Oversight Forum welcomes the opportunity to make this statement in response to the activity report of the Special Rapporteur on Conditions of Prisons, Conditions of Detention and Policing in Africa. We are a not-for-profit Trust based in Cape Town, South Africa, working on issues of police accountability and governance in Africa. We are a member of the Campaign to Decriminalise Poverty and Status, and it is in that context that we make this statement.

APCOF commends the Special Rapporteur's continuing efforts to deepen implementation of the African Commission's Principles on the Decriminalisation of Petty Offences in Africa. This includes the Hon. Commissioner's participation

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at the recent convening of 40 organisations from over 30 countries in Stellenbosch, South Africa, to discuss the decriminalisation of status and activism. The event was held from 27 – 29 September 2022, and organised by APCOF, together with the Open Society Foundations and the Faculty of Law at the University of Stellenbosch.

Delegates heard about the strategies for successful advocacy and law reform that have emerged from the work in Africa. Significantly, this included the work of the African Commission to popularise the Principles on the Decriminalisation of Petty Offences in Africa. Delegates also discussed the ongoing challenges faced by states, civil society organisations and national human rights institutions in addressing the criminalisation of amongst the most vulnerable and marginalised in our societies. Areas of discussion and learning included:

- the discriminatory policing of status;
- the disproportionate impact of criminalisation on women and girls;
- colonial-era laws and newer laws that apply a colonial logic; and
- the criminalisation of protest and activism.

The outcome of the event was a draft *Cape Declaration on Decriminalising Poverty and Status*, which calls on stakeholders at the national, regional and international level to take immediate action to address the crisis of the criminalisation of poverty and status.

We urge the African Commission to continue its work to promote the Principles on the Decriminalisation of Petty Offences in Africa, and to remind States of the need to adopt a developmental, health-based and human rights-based approach to reform of criminal justice systems that are rooted in evidence and best practice.

In particular, we call on the African Commission to:

- Reiterate the urgent need for States to repeal colonial-era laws as well as modern laws that criminalise poverty, including those that criminalise homelessness, debt and life-sustaining activities in public spaces.

- Urge States to immediately review and repeal laws that criminalise status and activism.
- Promote the establishment by States of mechanisms for the identification of, and immediate release of people who are arrested for, suspected of and convicted of these offences, as well as expungement of criminal records in such cases.
- Continue to provide guidance to States on how to critically address the role played by law enforcement officials in enforcing laws that criminalise poverty and status, and in stifling freedom of association and assembly in the policing of civic spaces and gatherings in particular. In this regard, States should be reminded of their obligations under the African Charter, as interpreted by both the Principles on the Decriminalisation of Petty Offences in Africa, and the Commission's Guidelines on the Policing of Assemblies by Law Enforcement Officials in Africa (2017).

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