



Panel session on the Launch of the Principles on the Decriminalisation of Petty Offences in Africa

At the 63rd Ordinary Session of the African Commission on Human and People's Rights

Statement by Maureen Bwisa, Programme Officer of the Network of African National Human Rights Institutions.

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**Honourable Commissioner Soyata Maiga, Chairperson of the African Commission on Human and People's Rights,
Commissioner Maria Teresa Manuela, Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa,
Honourable Representatives of the African Union Member States,
Honourable panellist members,
Distinguished Ladies and Gentlemen,
All protocols respectfully observed.**

Good Afternoon.

On behalf of the Network of African National Human Rights Institutions (NANHRI) Executive Director, Mr. Sebihogo, it is my singular pleasure and honour to be part of this auspicious launch of the Principles on the Decriminalisation of Petty Offences in Africa. I wish to congratulate the African Commission for their coherence work in the development and adoption of numerous progressive soft laws touching on pertinent issues arising from arrest, pre-trial detention and custody, calling on States to reduce the size of prison populations by adopting strategies to decriminalize petty offences and minor offences.

The commendable efforts of the Commission with support from African Policing Civilian Oversight Forum (APCOF) and Open Society Foundations (OSF), has resulted in the Principles on the Decriminalisation of Petty Offences, which seeks to set a regional standard outlining procedural measures that can hasten criminal justice reforms by guiding states to decriminalize petty offences.

Uniquely, this landmark regional soft law, further addresses overly broad and vague laws that potentially targets persons on the basis of their social origin, social status or fortune by criminalizing acts or omissions that are life sustaining. Contrary to several human rights instruments including the African Charter, criminalizing petty offences violates numerous provisions of the Charter: Article 2 freedom from discrimination, Article 3 equality before the law, Article 5 right to dignity and freedom from torture, cruel, inhuman or degrading punishment and treatment and lastly, Article 6 right to liberty and security of the person and freedom from arbitrary arrest and detention and Article 18.

The misconception and enforcement of these laws is misconstrued to control public nuisance. Yet criminalization of petty offences created by statutes, are meted through arbitrary arrests by law enforcement agencies enforced in a discriminatory manner unfairly targeting the poor and most vulnerable in society. This in turn substantively raises the percentage of pre-trial detainees languishing in deplorable detention centres for petty offences with an adverse socio-economic impact on their families.



NANHRI, a regional network drawing its membership from 44 African National Human Rights Institutions (NHRIs) and a Member of Campaign Partners on the Decriminalisation of Petty Offences in Africa (some of whom are present), strives to strengthen and coordinate NHRIs mandate in the promotion and protection of human rights, and we are committed in working closely with our members in advancing criminal justice reforms.

In this regard, NANHRI through its project: Enhancing the role of NHRIs in the Decriminalization of Petty Offences in Africa, recently launched a **Baseline Assessment Report** on 3rd October, 2018. Intriguing findings from the report reveal that the **most common offence in five African countries: Côte d'Ivoire, Ghana, Kenya, Malawi and South Africa**, is that of **Being a Common Nuisance as prescribed in either national and/or subordinate legislation**. Notably, placing reliance on statistics obtained from the International Centre for Prison Studies, prisons in the five abovementioned countries are overcrowded beyond the anticipated official holding capacity, comprising of pre-trial/remand detainees majority of whom are petty offenders, exposed to a mirage of gross human rights violations.

Role of National Human Rights Institutions (NHRIs): NHRIs as independent state bodies with constitutional and/ or statutory mandate continue to play a vital role. Particularly, their broad mandate as enshrined in Article 26 of the African Charter and the United Nations Paris Principles include **human rights promotion** creating a national culture of human rights where tolerance and equality thrive and an enabling environment of human rights is created; **human rights protection** helping to identify and investigate human rights abuses, seek justice and redress for victims of human rights violations where their mandate permits and advise for remedies of address.

In the context of the decriminalisation of petty offences, NHRIs are instrumental in the implementation the Principles through the following strategies:

- 1) **Raise awareness** of the Principles amongst both state and non-state actors in the Criminal Justice Sector;
- 2) **Work closely with the ACHPR Special Rapporteur on Prisons, Conditions of Detention and Prisons in Africa and the Committee for the Prevention of Torture in Africa** in the promotion and implementation of the Principles,
- 3) **Continuous collaboration with state and non- state** through development of **National Action Plans** for the implementation of the Principles at national level;
- 4) **Advise the State and develop Memoranda** for Law Reform Commissions and Parliament to create an enabling environment to undertake review of existing laws, policies and administrative measures with a view to identify areas for reform in line



with international and regional human rights standards in the decriminalization of petty offences;

- 5) **Monitor State compliance** in the implementation of international and regional human rights frameworks for persons deprived of their liberty **and report on the State of Human Rights and State compliance** to the United Nations, ACHPR and respective Parliaments;
- 6) **Encourage the State to decongest prisons** by utilizing imprisonment as a measure of last resort for petty offenders and use alternatives to imprisonment such as: Non-Custodial Sentences, loosening bail requirements and adopting bail sentencing guidelines;
- 7) **Conduct comprehensive and continuous training** for law enforcement agencies and judicial officers on international and regional human rights frameworks relevant to persons deprived of their liberty with a specific focus on decriminalisation of petty offences;
- 8) **Conduct detention monitoring visits in places of detention** to gather data and information on petty offenders within the criminal justice system;
- 9) **Complaints handling and investigating complaints** lodged by persons deprived of their liberty on allegations of gross human rights violations;
- 10) **Undertake research on the state of petty offences**, its impact to society in a bid to inform policy reforms in their respective countries.

Challenges faced by NHRIs: existence of petty offences in national and or subordinate laws are outdated, and ought to be repealed, **lack of adequate allocation of resources to NHRIs.**

In conclusion, **NANHRI's recommendation** to State Parties to the African Charter is to **establish and support NHRIs with strong legal framework, adequate allocation of resources to NHRIs** to effectively exercise their mandate as independent state entities, **move swiftly in implementing the Principles** through reviewing laws, policies and administrative measures, which are contrary to the Principles.

Thank you all for according me your undivided attention.