

ACHPR/Res.366 (EXT.OS/XX1) 2017: Resolution on the Need to Develop Principles on the Declassification and Decriminalization of Petty Offences in Africa

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 21st Extraordinary Session held from 23 February to 4 March 2017 in Banjul, The Gambia;

Recalling its mandate to promote and protect human rights in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling Article 45(1)(b) of the African Charter which mandates the Commission to 'formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation;

Further recalling Resolution ACHPR/Res.64(XXXIV)03 adopting the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa, which calls on State Parties to the African Charter to declassify and decriminalize minor offences, 'such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents' as a strategy for reducing prison overcrowding;

Bearing in mind the Commission's Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, which articulate grounds for arrest based on principles of legality and equality, and encourage the diversion of minor criminal offences away from the criminal justice system;

Concerned about the existence of vague and overly broad laws, in many African states that create petty offences and impede the enjoyment of human rights by all persons, particularly on the basis of their origin status and fortune;

Further concerned that the enforcement of petty offences have the effect of punishing, segregating, controlling and undermining persons on the basis of their status, and further infringe on the autonomy of persons by restricting their performance of socio- economic activities in public places;

Considering that overcrowding is endemic in prisons and police detention facilities across Africa, and the need to develop strategies for preventing imprisonment through the

use of alternatives forms of punishment and the decriminalization of petty offences;

Concerned about the disproportionate impact of laws that create petty offences on the poor and persons who are otherwise marginalized or vulnerable within the criminal justice system;

Mindful that the enforcement of petty offences not only diverts resources away from the prevention and detection of serious crime, but further entrenches the impact of poverty on persons most vulnerable to human rights violations across the criminal justice chain;

Convinced of the urgent need to develop Principles on the Declassification and Decriminalization of Petty Offences in Africa, to ensure greater observance of human rights for all persons;

The Commission decides:

1. to task the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa to develop the Principles on the Declassification and Decriminalization of Petty Offences in Africa; and
2. that the Principles be presented to the Commission for consideration and adoption within a year.

Done in Banjul, Republic of the Gambia, on 4 March 2017.