

In 2012, the Human Rights Council's **Guiding Principles on Extreme Poverty and Human Rights**, recommended that:

- » States must ensure that persons living in poverty are equal before and under the law and are entitled, without discrimination, to the equal protection and benefit of the law.
- » States must repeal or modify laws and regulations that are biased against the rights, interests and livelihoods of persons living in poverty.
- » All forms of legislative or administrative discrimination, direct or indirect, on grounds of economic situation or other grounds associated with poverty must be identified and eliminated.
- » States should assess and address any disproportionate effect of criminal sanctions and incarceration proceedings on persons living in poverty.
- » States should ensure that, to the greatest extent possible, bail processes take into account the economic and societal circumstances of persons living in poverty.
- » States should repeal or reform any laws that criminalise life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities.
- » States should review sanctions procedures that require the payment of disproportionate fines by persons living in poverty, especially those related to begging, use of public space and consider abolishing prison sentences for non-payment of fines for those unable to pay.
- » Penalisation measures should not be designed and implemented without a meaningful dialogue with persons living in poverty.

The Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa, 2003, recommended “decriminalisation of some offences such as being rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents” as a strategy to reduce the prison population.

The nature of petty offences, such as begging, loitering, being idle and disorderly persons or rogues and vagabonds, and the practices around their enforcement, has become an area in need of urgent attention and reform.

Having endorsed the regional human rights framework, it is incumbent on States to reform the laws and practices which facilitate abuse of the poor and marginalised in our societies and to promote a rights-based approach to arrest and detention.

States should repeal outdated offences and revise offences which give police too much discretion to arrest. Declassifying certain petty offences into administrative or non-arrestable offences or offences for which a prison sentence may not be imposed, will ensure a more proportional response to petty offences and will ease the resource burden these offences create for the police and prisons, thus allowing them to focus on more serious offences.



DEMAND DIGNITY, PROMOTE RIGHTS

Support Steps to
Decriminalise and
Declassify Laws that
Marginalise the Poor





Many people in pre-trial detention in Africa are detained for nothing more than being poor, homeless or a 'nuisance'.

Many of these detainees are charged with offences which do not comply with national Constitutions or international law.

Many will experience terrible conditions, fall ill, or suffer abuse in detention while their families will be without their support.

Now is the time for African countries to review and repeal or declassify petty offences which perpetuate the abuse of the most vulnerable in our societies.

“Penalisation policies reflect a serious misunderstanding of the realities of the lives of the poorest and most vulnerable and ignorance of the pervasive discrimination and mutually reinforcing disadvantages that they suffer ... Asymetries of power mean that persons living in poverty are unable to claim rights or protest their violation.”

UN Special Rapporteur on Extreme Poverty and Human Rights, 2011

Petty offences are used on a daily basis throughout Africa to arrest and abuse vulnerable populations, often under the guise of urban transformation, crime prevention, privatisation, beautification and redevelopment.

Petty offences are frequently used to arrest and detain marginalised population groups:

»» Begging and vagrancy offences are often used as a basis to arrest and detain street children, in violation of international law and recognition of them as children in need of care and protection.

»» By-laws are often used against street vendors, who end up being targets for bribery and abuse by police officers.

»» Sex workers are frequently targeted for bribery and abuse by police even though there is no proof of them having committed any offence and despite the fact that the act of selling sex for reward is not a criminal offence in most countries in Africa.

»» Offences relating to vagrancy are also routinely used to detain persons with psycho-social and intellectual disabilities.

There is increasing evidence that the levels of abuse perpetrated against the poor have escalated. For example:

»» A report by the Independent Medical Legal Unit issued in 2014 showed that police shootings account for the bulk of injuries inflicted on hawkers and small-scale business operators in Nairobi, Kenya.

»» Reports issued by the UN and Human Rights Watch in 2014 documented how ill-conceived crime prevention efforts resulted in summary killings of unarmed men and boys in the Democratic Republic of Congo.

»» A report issued by Human Rights Watch in 2014, documented the range of abuses faced by street children in Uganda at the hand of police under the guise of enforcing vagrancy laws.

»» A report issued by Human Rights Watch in 2013 documented systemic police abuse of street vendors in Angola.

»» A report on Malawi issued by the Southern Africa Litigation Centre and Centre for Human Rights Education, Advice and Assistance in 2013, showed that rogue and vagabond offences are often used during police sweeping exercises to arrest and detain persons without proof of any offence having been committed.

Criminal justice audits conducted by OSISA between 2013 and 2015 in Zambia, Malawi and Mozambique show that a significant number of persons in prison are detained for petty offences relating to being a rogue and vagabond, touting and loitering. Such arrests and detention for petty offences are often in violation of national criminal procedure laws and regional and international law.

Article 2 of the **Guidelines on Pre-Trial Detention in Africa** provides that a person shall only be deprived of their liberty based on laws which are clear and precise and consistent with international standards and respect for the rights of the individual. Arrests may not be carried out on the basis of discrimination of any kind.