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## THE NATIONAL CONFERENCE ON DECRIMINALIZATION AND RECLASSIFICATION OF PETTY OFFENCES

### THEME: TOWARDS REFORMING THE CRIMINAL JUSTICE SECTOR THROUGH DECRIMINALIZING PETTY OFFENCES

NAIROBI KENYA, 21<sup>ST</sup> MAY 2019

### CONFERENCE COMMUNIQUE

#### **PREAMBLE:**

We, the participants at the National Conference on Decriminalization and Reclassification of Petty Offences, including; stakeholders in the criminal justice sector, Civil Society Organizations, Community Based Organizations, Academia, state agencies, and other strategic partners, having met and engaged in a conference organized in partnership with the Kenyan Section of the International Commission of Jurists(ICJ Kenya), the Network of African National Human Rights Institutions (NANHRI) and the Kenya National Commission on Human Rights (KNCHR) dubbed, “Reforming the Criminal Justice Sector through Decriminalizing Petty Offence”, promoted and built knowledge on the African Commission on Human and People’s Rights (hereinafter referred to as ACHPR) Principles on the Decriminalisation of Petty Offences in Africa (hereinafter referred to as the Principles) and further taken stock of the current implementation of the principles in Kenya.

Following the discussions and interactions, thereof, we the participants,

**ACKNOWLEDGING** that petty offenders continue to experience different human rights violations at different stages of the justice system;

**NOTING** that petty offences mostly affect indigent persons who constitute vulnerable groups in the society and suffer most when it comes to enforcement of laws on petty offences;

**AFFIRMING** that petty offenders, as human beings, are equal before the law and have the right to equal protection and equal benefit of the law;

**ACCEPTING** that the campaign to decriminalize and reclassify petty offences requires collective action to achieve positive outcomes towards decriminalizing petty offences and to fortify links between various stakeholders;

**RECOGNIZING** that the continuing challenges facing the enforcement of petty offences in Kenya raises questions on how to promote and protect the rights of individuals and key populations;

**COMMITTED** to ensuring the application of regional and international best practices that include human rights based approach in handling petty offenders.

**DO HEREBY ADOPT THE FOLLOWING RESOLUTIONS:**

1. That the Judiciary should adopt mechanisms for handling petty offenders for example summary trials which would expedite the administration of justice to avoid the violation of human rights;
2. That the government should develop mechanisms to address the socioeconomic root causes affecting key populations. The Key populations include but are not limited to street families, hawkers, sex workers, users of drugs, sexual minorities, persons with mental illness and persons with disabilities;

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3. That the law and enforcement of the law should not criminalize economic status of its people. The conference reaffirms the position that “Poverty is not a crime.”
  4. That the Judiciary should use the sentencing guidelines and adopt non-custodial sentences when adjudicating on petty offences in line with provisions of Article 49 (2) of the Constitution of Kenya;
  5. That the Judiciary should issue bail and bond terms that are reasonable and which should not exceed the fines stipulated under the specific petty offence in law. The bail and bond term should take into account the economic status of a petty offender;
  6. That the Office of the Director of Public Prosecutions (ODPP) should embark on sensitization and awareness creation initiatives on plea bargaining and diversion guidelines in collaboration with other criminal justice sector actors;
  7. That the National Police, county inspectorate’s and other law enforcement agencies should adopt human rights based approach in handling petty offenders including refraining from arbitrary arrests and informing petty offenders of their right to bail and bond;
  8. That there is a need to actively engage and involve the Ethics and Anti-Corruption Commission (EACC), Independent Policing Oversight Authority(IPOA) and the Internal Affairs Unit (IAU) of the National Police Service to curb the menace of corrupt law enforcement agencies who take advantage and/or harass petty offenders;

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9. That the implementation of the ACHPR Principles on Decriminalization of Petty Offences in Africa should be adopted through judicial, legislative, policy, practice, and administrative reforms that adhere to constitutional values and regional and international best practices;

AND

10. That there is a need to work together through a multi-sectoral approach to fast-track the implementation of the ACHPR Principles on decriminalization of petty offences in Kenya.

Thank You.