



NGO Observer Status No. [334]

Statement in response to the activity report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa

**79th Ordinary Public Session of the African Commission on Human and Peoples' Rights
14 May to 3 June 2024**

Item 5: Activity Reports of the Members of the Commission & Special Mechanisms

Honourable Chairperson and Commissioners.

All protocols observed.

The Dullah Omar Institute welcomes the opportunity to make a statement in response to the activity report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa. We make this statement together with the [Global Campaign to Decriminalise Poverty and Status](https://decrimpovertystatus.org/) (the Global Campaign), of which we are a founding member.¹

We commend the on-going work of the African Commission, and particularly the Special Rapporteur, on promoting the decriminalisation of petty offences. As the Commission is aware, across Africa, there are a range of laws targeting transgressions commonly referred to as 'petty offences'. These crimes typically do not pose a threat to public safety and usually attract a warning issued by the police or courts, community service, a fine or a short time in prison. The Commission's own work, and that of the Global Campaign's partners, demonstrate that these laws are systematically used to target and punish people on the basis of their poverty, status or for reasons of discrimination. In many cases, people

¹ "Campaign to Decriminalise Poverty & Status," <https://decrimpovertystatus.org/>.

are arrested and charged for offences that either directly relate to survival activities (such as sleeping, or trading in public spaces), or on the basis of who they are and not what they have done. The effect of enforcement is to heighten the risk of human rights violations within the criminal justice chain, and this can lead to far reaching socio-economic consequences for affected people.

The Dullah Omar Institute and the Global Campaign are increasingly concerned about the extent to which the challenges related to the criminalisation of minor or petty offences manifests at the sub-national level in law development and enforcement. In our view, this aspect of the challenge has been overlooked and requires urgent consideration by the African Commission and its stakeholders.

Subnational governments exist below the national level and are typically provinces, states, municipalities, and/or counties, depending on how each country devolves power. Subnational governments can invoke their own legislation (for example, by-laws, municipal laws, and local ordinances) that applies to a particular area. They may also have their own law enforcement agencies to enforce their by-laws or local ordinances. Research by the Dullah Omar Institute, and other Global Campaign partners, has confirmed that many of the laws that punish people for their poverty or marginalisation (such as sleeping, begging, street trading, waste picking) in public spaces are found in by-laws or local ordinances at a subnational government level. The laws and ordinances are often drafted in vague or ambiguous terms and criminalise the socio-economic status of people, even where Constitutions or national laws contain provisions upholding the rights of the poor. The contravention of these by-laws, municipal laws, or local ordinances is often treated as a crime or results in a fine or a combination of both which has serious ramifications for people working in public spaces for reasons of survival.

Moreover, research by the Dullah Omar Institute confirms that in several African countries, local law enforcement agencies often enforce subnational laws in an arbitrary, discriminatory and violent way.² This infringes on fundamental human rights including, but not limited to, freedom from discrimination, the right to dignity, freedom of movement, and the freedom against torture and other ill-treatment.

Concerningly, there is a lack of strong and effective internal and external oversight and monitoring mechanisms to regulate the enforcement practices of subnational law enforcement agencies to protect people against human rights abuses. Even in countries

² J Mangwanda, "Fact Sheet 27: Sub-National Law Enforcement and Oversight in Four African Countries: Kenya, Ghana, Nigeria, and Zambia," File (Dullah Omar Institute, 2023), <https://dullahomarinate.org.za/acjr/acjr-publications/acjr-factsheet-27-sub-national-law-enforcement-jm-final.pdf/view>.

where national oversight mechanisms exist, the focus is typically on the national police and not subnational law enforcement. This may be through an external body (e.g. South Africa - Independent Police Investigating Directorate) or an internal body (e.g. Kenya - Independent Police Oversight Authority). National oversight bodies generally do not have jurisdiction over complaints against subnational or local law enforcement officials as these complaints must be directed to the respective municipal assembly in which these officials operate. Yet, the proximity to and the interaction with the general public by municipal or district law enforcement officials often yields public concerns which require that oversight is taken seriously. This is a significant lacuna in the human rights architecture and creates a culture of impunity and leaves citizens with nowhere to turn for redress.³

This challenge is compounded by the existence in many African states of private or quasi-private security officers and quasi-state security agencies or vigilante groups with delegated powers to prevent crime, maintain public order, police the use of public spaces, and in some cases, effect an arrest. The problem, however, is that the majority of these security agencies are populated by informally trained personnel and enforcement is conducted in a brutal manner and often characterized by a lack of due process. Moreover, these security agents often become the ploy of the political elite and those capable to afford them, thus creating security risks for others in the community.⁴

Accordingly, we recommend that the African Commission and the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa urgently prioritise the role of subnational governments in their work to promote the decriminalisation of petty offences. In particular, we recommend that the African Commission:

1. Examine the situation of petty offences at subnational level in its work to promote and monitor implementation of the African Charter and the Principles on the Decriminalisation of Petty Offences in Africa, including through state reporting and country visits.
2. Reiterate to states that the obligation to establish independent civilian policing oversight mechanisms, as set out in Commission resolution 103a of 2006 should include not only national police institutions, but must also encompass effective and independent oversight of subnational law enforcement mechanisms. These oversight mechanisms serve in conducting independent and impartial investigations, regulating

³ Mangwanda.

⁴ J Mangwanda, "Fact Sheet 27: Sub-National Law Enforcement and Oversight in Four African Countries: Kenya, Ghana, Nigeria, and Zambia" (Dullah Omar Institute, October 2023), <https://dullahomarinate.org.za/acjr/acjr-publications/acjr-factsheet-01-2023.pdf/view>.

and holding accountable national police and subnational law enforcement agencies for unlawful actions against citizens.

3. Consider providing further guidance for African states on the obligation to ensure effective oversight of private and quasi-private policing and security institutions, who have been delegated with authority to manage the use of public spaces, particularly where it includes arrest powers and the deprivation of liberty.

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