

DECRIMINALIZATION OF PETTY OFFENCES IN KENYA

PRESENTED BY: JULIE WAYUA MATHEKA- NYAGA

AG. DEPUTY EXECUTIVE DIRECTOR, ICJ KENYA

MEMBER OF THE NATIONAL COMMITTEE ON CRIMINAL JUSTICE REFORM, KENYA

MEMBER OF THE ALTERNATIVE JUSTICE SYSTEMS COMMITTEE, KENYA

What is Decriminalisation?

- Involves administering new perspectives of dealing with petty offences which includes abolishing some petty offences from our current laws.
- Targets to ease service delivery within the criminal justice system and address aspects such as decongestion in prisons and places of detention that bear a great cost to the state.
- Decrim encourages use of other measures such as issuance of warnings to offenders, compulsory counselling, community service orders for petty offences amongst other redress measures.

What is a Petty offence?

- A minor crime punishable by way of paying a fine or through a short imprisonment sentence. The penalty of fine or imprisonment can apply alone or both.

What is the history of the petty offences?

- Petty offences trace their origin from English laws that were designed to, among other things, force people to work, restrict the movement of potential labourers, curtail criminal activity, punish idleness, and enable law enforcement agents to make arrests without proof of actual commission of offences.

Laws providing for petty offences in Kenya

National level

- **The Penal Code - including sections 175 (1), 182 and 193**

County level

- **Unreformed County government bi-laws which are not in conformity with the provision of the County Governments Act, 2012 e.g. Nairobi County Public nuisance Act, 2021**

What are some of the petty offences in Kenyan laws?

- Loitering
- Littering
- Idling
- Being drunk and disorderly
- Causing a disturbance or nuisance
- Loitering with intent to commit prostitution, among others

Groups targeted by enforcement of laws providing for petty offences

- The youth
- The marginalised groups like street children
- Homeless persons and the poor
- Refugees

Impact of enforcement of the laws in Kenya



- Human rights violations and abuse in the pre-detention and pretrial stages as well as violation during trial and detention for petty offenders.
- County government machinery such as patrol vehicles and personnel (arresting officers) intimidate and harass marginalized and vulnerable groups to extort bribes in the pretext of their being petty offenders.
- High cases of extortion of bribes from vulnerable groups especially streets vendors, regardless of whether they have licenses for trade.
- Gender based violence with cases of rape and sexual exploitation and harassment of women and members of the LGBTI community being targeted the most.

Impact of enforcement of the laws in Kenya:

- Some detention facilities do not recognize the right to privacy or the rights of minors hence cases of children being mixed with adults and women being detained in cells with men.
- Discrimination of minority groups such as those in the LGBTI community is perniciously rampant and violence is used to enforce the by-laws against the express prohibition of torture and excessive use of force by the Constitution.

Human rights violations faced by arrested petty offenders?

- Not being informed of the reason for arrest.
- Torture, cruel and degrading treatment and punishment.
- Lack of medical attention when injured during arrest.
- Confiscation and loss of goods and tools of trade.
- Lack of presentation to courts within 24 hours.
- Lack of legal representation.
- Compelled to make a confession or admission of an offence.

What are the alternative options of handling petty offences?

- Diversion and community service orders.
- Alternative justice processes.
- Government to create favourable business environment to favour also small and medium enterprises.
- Job creation.
- Advocacy for community policing to bolster democratic society.
- Review both national and county laws to provide better mechanisms to address petty offences.

Why decriminalisation of petty offences advocacy?



- Ensure penal laws and enforcement of criminal laws comply with human rights standards.
- Introduction of alternatives to penal prosecutions.
- Bolster the relationship between the police and the communities.
- Decongestion of prisons, save taxpayers money, enhance standards of living in prisons.
- Allow community to exercise their powers of community policing and support law enforcement agencies in maintaining law and order.
- Stop discriminative laws which profile the poor in the society.

Recommendations

- The provisions in law that criminalize petty offences should be repealed including sections of the Penal Code that do not align with the Constitution of Kenya and retrogressive county bi-laws
- There is need for the government to strengthen ongoing reforms of structures and practices in handling petty offences by the justice system actors.
- The National Police Service and County governments should initiate human rights orientation and training for national and county law enforcement agencies respectively, including inclusion of human rights training in the curriculum for law enforcement agents.

CONT:

- Need for sensitization of members of the public on petty offences and initiatives aimed at addressing human rights violations resulting from poor enforcement of laws and practices.
- Citizens must also exercise their responsibly to seek/access information relating to petty offences, laws that protect their rights in this regard and avenues for redress of human rights violations as result.
- Citizens must remain vigilant of malpractices of law enforcements agents in the handling of petty offenders during arrest, detection and trial process and report such cases to the relevant authorities for substantive redress

Current Reforms in Kenya

- The creation of the National Criminal Justice Committee with a mandate to decriminalize and reclassify petty offences in Kenya
- The development of the Guidelines on the Management of Petty Offenders
- The reform of the National Sentencing Guidelines
- The development of a Criminal Justice Bill which repeals some petty offences
- Engagement of the National Parliament towards decriminalizing petty offences and ensure no further laws are enacted that do not create new petty offences.

Current Reforms in Kenya cnt.

- Engagement with the National Government particularly the National Community Service Orders Committee and the Ministry of Interior and National Government to commute sentences.
- Litigation against the continued enforcement of laws that are criminalize petty offences (individual cases and public interest matters).
- Enhanced reporting on the continued enforcement of petty offences to International and regional treaty mechanisms
- Advocacy to fully operationalize the Legal Aid Act 2016 and capacitating lawyers and paralegals to take up matters affecting the poor and vulnerable.

THANK YOU FOR LISTENING