



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

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Chairperson of the African Commission on Human and Peoples' Rights, Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, Commissioners, representatives of State Parties, National Human Rights Institutions, and civil society. All protocols observed.

The Dullah Omar Institute for Constitutional law, Governance and Human Rights 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, and does so on behalf of the Campaign to Decriminalise Petty Offences in Africa. The Campaign is a coalition of NGOs and National Human Rights Institutions working together to advocate for the decriminalisation and reclassification of laws that criminalise and penalise life sustaining activities in public spaces, or which disproportionately impact key populations and other marginalised or vulnerable persons.

From 14 – 16 September 2020, the Regional Campaign co-hosted a conference with the Special Rapporteur to discuss the impact of measures to combat the spread of COVID-19 on poor and marginalised people. On behalf of the Regional Campaign, we make the following statement in response to the Conference deliberations and outcomes:

Noting that an effective response to the Coronavirus pandemic (COVID-19) will require a combination of health, economic and containment strategies;

Acknowledging that the duty of African states to promote access to health will necessitate the adoption of *temporary* measures to combat the spread of COVID-19 that may limit the enjoyment of certain rights, including freedom of movement;

Concerned about the high number of extraordinary measures, introduced through declarations of states of emergency or disaster which increase state power, weaken the scope of parliamentary, judicial, statutory and civil society oversight, and invite authoritarian creep;

Concerned about the militarised response to the enforcement of COVID-19 measures by law enforcement agencies, arbitrary arrest and detention, excessive use of force, the disproportionate impact of containment measures on the poor and vulnerable, and the discriminatory targeting for enforcement of marginalised persons;

Aware that socio-economic conditions impact compliance with COVID-19 measures, with limited prospect of compliance in densely populated informal settlements;

Aware that places of detention, including police cells, prisons, mental health care facilities and migration detention centres, are vectors for the spread of COVID-19, and significantly heighten the risk of infection for all - confined persons, facility staff, their families, and their communities – with potentially catastrophic consequences for wider public health care systems;

Concerned that COVID-19 measures have a significant impact on access to justice;

Calls on the African Commission on Human and Peoples' Rights (the Commission) to continue to remind African states of their obligations under the African Charter on Human and Peoples' Rights to ensure that all COVID-19 containment measures and their enforcement are **necessary, proportional, reasonable, lawful, non-discriminatory, and time-bound**.

The Regional Campaign **further calls on the Special Rapporteur**, in her engagement with State Parties, to encourage the following measures be taken to fulfil obligations under the African Charter with respect to the protection of human rights in the context of COVID-19 measures:

- 1 Ensure that COVID-19 containment measures, including those under declared states of disaster or emergency, are necessary, proportional, reasonable, lawful, non-discriminatory, and time-bound, and that any extension of such declarations or measures are subject to parliamentary oversight, and protect the right to privacy.
- 2 Adopt measures to contain COVID-19 transmission that provide access to facilities for safe and voluntary self-isolation, health care and treatment, and which promote access to regular, evidence-based COVID-19 information (particularly on preventative measures and the health risk of non-compliance).
- 3 Ensure that minor infringements of COVID-19 measures are not criminalised, such as failure to wear face masks, breaching curfew or lockdown violations, and to expunge criminal records already imposed under COVID-19 related emergency laws.
- 4 In accordance with the ACHPR Principles on the Decriminalisation of Petty Offences in Africa, decriminalise and reclassify petty offences and immediately place moratoria on the use of arrest and detention for petty offences, and release low risk offenders, to reduce detention populations.
- 5 Curb human rights violations by police and other law enforcement officers by ensuring that officers are trained and equipped to comply with human rights standards under states of emergency and disaster, understand public health contexts, and are subject to independent mechanisms of oversight and accountability in compliance with Part 8 of the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines).
- 6 Ensure that COVID-19 measures do not limit access to justice and violate the right to a fair trial, including the right to legal counsel for persons in detention, and that reductions in court capacities are managed to protect the right to habeas corpus and to a speedy trial.