DECRIMINALISATION AND RECLASSIFICATION OF PETTY OFFENCES IN KENYA

The Kenya National Commission on Human Rights in collaboration with Civil Society Organisations and State agencies have been advocating for the decriminalisation and reclassification of petty offences in Kenya. Decriminalisation and reclassification involve administering new perspectives of dealing with petty offences which includes abolishing some petty offences from our current laws. The advocacy by KNCHR and CSOs targets to ease service delivery within the criminal justice system such and address aspects such as decongestion in prisons and places of detention that bear a great cost to the State. The Criminal Justice System should be empowered to use other measures such as issuance of warnings to offenders, compulsory counselling, community service orders for petty offences amongst other redress measures.

**What is petty offence?**
A petty offence refers to 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 are some of the petty offences in Kenyan laws?**
Loitering, littering, idling, being drunk and disorderly, causing a disturbance or nuisance and loitering with intent to commit prostitution, among others.

**Petty offences affects who mostly?**
What is the basis for the advocacy for decriminalisation of petty offences?

1. **Decongestion of prisons and use of alternative justice system**: Kenyan prisons are full of petty offenders whose cost of maintenance bears economic burden on the state that would have otherwise been utilised for more impactful development.

2. **Reduce court backlogs and apply Alternative Dispute resolution mechanism**: Kenyan Courts backlogs are full of petty offences cases which take years yet the judiciary has embraced alternative dispute resolution as a mode of correctional services options.

3. **Stop human rights violations**: Often times petty offenders face human rights violations as most of them are poor, marginalised and vulnerable and cannot afford the costs of justice.

4. **Catch the big thief and small too but ensure equal attention to gravity of offence**: More focus should be given to big time offenders; starting with corruption cases that continue to be delayed due to huge case backlogs, however, petty offenders often end up in prison.

5. **Create an enabling space for proper Police investigators**: Kenyan police officers are competent to undertake in depth investigations the challenge is that often times their desks are full of petty offences which deny them adequate time and resources needed to investigate serious crimes.

The youth, the marginalised groups like street children, homeless persons and the poor.

**What are the examples of petty offences that target the status of person rather than the behaviour?**

Hawking and vending, disturbing peace, spitting on footpath, common nuisance, using public toilet without paying, loitering, touting, idling and begging.

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**What is the history of the petty offences?**

The laws on petty offences in Kenya trace their origin to English laws and the colonization period, as these offences were designed to restrict movement of African labourers, force them to work for a few masters in the name of curtailing crime, punish idleness, and empower the whites to make arrests without proof of actual commission of a crime.

In Kenya, petty offences were used by the British colonialists to limit and control the movement of the indigenous Africans in white settlers’ areas.

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6. **Promote Community Policing and protect defenders/informers.** Many times witnesses of crimes and potential informers end up facing trumped up petty offences to defeat the cause of justice and accountable leadership and governance in different sectors.

**What are some of the human rights violations faced by arrested petty offenders?**

Not being informed of the reason for arrest, torture, cruel and degrading treatment and punishment, not being accorded medical attention when injured during arrest, confiscation and loss of goods and tools of trade, not brought to appear before a court of law in 24 hours, not allowed to access the services of an advocate, coerced or compelled to make a confession or admission of an offence.

**Why decriminalisation of petty offences advocacy?**

Decriminalization of petty offences will ensure:

2. Petty offences that satisfy all legal requirements be reclassified into non-arrest offences with the option of using alternatives to penal prosecutions and using restorative/traditional justice methods to deal with these offending behaviours.
3. Improve relationship between the police and public; ensure that there is effective use of the Criminal Justice System’s resources; aid to curb corruption and abuse of power; and it would guarantee that justice is the ultimate outcome of the criminal process.
4. Bolster access to justice system criminal justice actors will have adequate time to focus on key crimes and allow use of alternative justice process and the national coordination actors like Chiefs, leaders to address the petty cases.
5. Assist in decongestion of prisons, save tax payers money, enhance standards of living in prisons and for working conditions of the prison officers.
6. Allow community to exercise their powers of community policing and support law enforcement agencies in maintaining law and order.
7. Stop discriminative laws which profile the poor in the society. Create opportunities for everyone to earn a living and enhance equity and equality for all.

**What are the alternative option of handling petty offences?**

1. Diversion and community service orders should be used when dealing with petty offences
3. Increase Government effort to address the gaps between the rich and the poor- create favourable business environment to favour also Small and medium enterprises.
4. More focus on economic growth and job creation to end youth unemployment, poverty, street life and homelessness.
5. Increase advocacy for community policing as a tool to bolster a democratic society that upholds rule of law and human rights.
6. Design adequate and transparent systems of supporting special groups like the persons with
disability, the elderly, children, women and youth as well as the by child.

7. Review and harmonise the laws both at the national and county level to provide better mechanisms
of addressing petty offences using ADR and disallow formalization of criminal justice processes for
petty offenders, which is costly and unnecessary.