

## EVALUATING THE IMPACT OF DECRIMINALIZATION, RECLASSIFICATION, AND DEPENALISATION OF PETTY OFFENCES ON NIGERIA'S CRIMINAL JUSTICE ADMINISTRATION

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### ABSTRACT

*The overcriminalization of petty offences in Nigeria disproportionately affects individuals from poor or vulnerable backgrounds, exacerbating socio-economic inequalities and overburdening the criminal justice system. This issue of global concern contradicts critical human rights agreements such as the International Covenant on Social, Economic and Cultural Rights, the principles of decriminalization of petty offences adopted by the African Commission in 2017 and the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa. These petty offences, often remnants of colonial laws, undermine the dignity of African people by criminalizing behaviours linked to economic hardship such as street vending, loitering, begging, sex work, nuisance, breach of peace, etc. This study aims to examine the impact of decriminalizing, reclassifying, and depenalizing petty offences in Nigeria's criminal justice system, highlighting how these legal reforms can address socio-economic issues without stigmatizing poverty. Utilizing a doctrinal research methodology that incorporates historical and comparative sources, and supported by case studies, this research exposes the exploitative role of law enforcement agents and how this obstruct and over-burden the current system. Findings also reveal how vague and overly broad terms of petty offences lead to indiscriminate arrests, exploitation, and manipulation of charges. The paper recommends that a more efficient criminal justice system would be realized through penal reform, either by decriminalization, depenalization or reclassification, depending on the nature of the offence. Such reforms are projected to reduce the criminal justice system's burden, decrease the criminalization of poverty and promote more equitable outcomes for vulnerable individuals in Nigeria.*

**Keywords:** Decriminalization; Depenalization; Reclassification; Petty Offences; Criminal Justice.

### INTRODUCTION

The main arguments for the decriminalization, depenalization and reclassification of petty offences focus on four issues: firstly, Nigeria's correctional centers are full of petty offenders whose maintenance is an economic burden on the state that would have otherwise been utilized for more impactful development. Though Nigeria Courts has backlogs of petty offence cases, the judiciary has not fully embraced alternative dispute resolution as a corrective option. Often, petty offenders face human rights violations as most are poor, marginalized, vulnerable and cannot afford the costs of justice which is most critical at the time of initial arrest. Indeed, the recent practice of providing pro-bono lawyers at the time of trial is medicine after death. Secondly,

Nigerian police officers often have desks full of petty offences, which deny them adequate time and resources to investigate serious crimes. Thirdly, the offences are almost always defined over-broadly and vaguely, leaving them open to exploitative interpretation and abuse by law enforcement officials with punishment unequal to the potential harm caused. Fourthly, Imprisonment of up to one year for an offence such as loitering is indicative of a vindictive carceral system inherited from the colonial masters and continued by governments that have not transformed their criminal justice systems to reflect the principles of the AChHPR and the socio-economic realities of Africa.

The enforcement of these laws is frequently done arbitrarily and unpredictably through sweeping operations, but also polluted by corruption and bribery, which result in severe socio-economic consequences for detainees and their households. The problem is enabled by myriads of antiquated laws rooted in colonial laws that permit police the broad discretion to execute arrests. Though Governments engage in jail deliveries when overcrowding worsens, these measures only temporarily address the symptoms of a broader problem around enforcing these offences.

The decriminalization, depenalization, and reclassification of petty offences in the Nigerian criminal justice system have the potential to produce significant positive changes. *Decriminalizing* can alleviate the burden on the criminal justice system by diverting cases away from courts and towards alternative approaches. This approach can reduce prison overcrowding, alleviate resource strains, and allow the system to prioritize more serious crimes. *Depenalization*, which also focuses on alternative sanctions and restorative justice principles, can foster rehabilitation, reintegration, and community engagement. Shifting away from punitive measures can contribute to a more humane and inclusive approach to justice. *Reclassification* of petty offences in line with socio-economic realities acknowledges the underlying factors contributing to their commission. This approach allows for tailored responses that address root causes and provides appropriate interventions and initiatives.

In Nigeria, many such offences include street trading, begging, loitering, prostitution, etc., burdening the system and creating opportunities to exploit vulnerable persons by law enforcement agencies. In this work, we intend to show how compliance with the principles of

decriminalization of petty offences, as provided by the Human Rights Commission, will unclog the overburdened system and yield a more effective criminal justice administration in Nigeria.

## METHOD

**Decriminalization** refers to removing a criminal act and its associated Penalties from the law.

**Depenalization** entails removing or reducing the criminal penalties associated with an offence while keeping it within Criminal Law by shifting away from punitive measures and focusing on alternative forms of regulation. The conduct remains illegal, but its penalties are reduced to non-criminal sanctions, such as fines, community service, or administrative measures.

**Reclassification** refers to changing the severity of an offence to a less serious one. Usually, to adjust the severity of punishment or legal consequences associated with the crime.

Each concept represents a different approach to dealing with offences and has implications for the criminal justice system and society.

**Petty offences** are minor offences or victimless offences. Examples include but are not limited to loitering, begging, vagrancy, and offences created through by-laws targeted at controlling public nuisance on roads and in public places such as urinating in public street hawking and other life-sustaining activities.

## HISTORICAL BACKGROUND OF PETTY OFFENCES IN NIGERIA

Many of the offences that have remained on the statute books in African countries after independence had as their purpose the subjugation and humiliation of Africans by colonial authorities. Ironically, the main colonizing countries (the United Kingdom, France and Portugal) have repealed their laws criminalizing petty offences such as loitering, begging, prostitution and so forth, recognizing the injustice and its problematic enforcement. Petty offences were incorporated into the laws of Nigeria following its colonization. As a result of the imbibition, Nigeria adopted the Common Law legal tradition and its legal system. Therefore, the Law of Nigeria includes the English common law received under section 14 of the Supreme Court Ordinance 1914, equity and the statute of general application. Petty offences such as those

criminalizing acts of morality and public decency (prostitution, begging, drunkenness, loitering, and unruly conduct) found their way into the Criminal Code Act of Nigeria. The introduction of the English court system also eroded the criminal jurisdiction of the traditional courts and its restorative component. Certain offences held to be serious at custom, such as unlawful processions (section 88) and behaving irreverently at the burial of a corpse (section 242), were incorporated into the Criminal and made petty offences.

The advancement in modern societies, the sophistication of human life and human rights development have prompted reforms in the criminal law of some countries. State obligations arising from international and regional human rights standards, constitutional bills of rights and statutes have impacted the criminalization of conduct and the penalties attached. Thus, conduct that amounts to petty or minor offences has been decriminalized. Offences, which previously entailed prison terms and fines, have also been depenalized to alternative sentences such as community service in the Western world. The unfair enforcement of such laws on the disadvantaged citizens of society has also influenced the clarion call towards decriminalization and reclassification of petty offences in Africa. Accordingly, international and regional human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights (ACHPR), the Protocol on the Rights of Women in Africa (PRWA) are making a significant impact in turning the criminal justice system away from unduly targeting such persons for punishment due to their status as a means of reducing the burden in criminal justice administration.

## **REVIEW OF EXISTING LEGAL AND POLICY FRAMEWORKS ON DECRIMINALIZATION, RECLASSIFICATION, AND DEPENALIZATION OF PETTY OFFENCES**

### **International Developments**

At the international level, several instruments support the decriminalisation of extreme poverty and homelessness and recommend changes in policing and incarceration practices:

1. The Guiding Principles on Extreme Poverty and Human Rights adopted by the Human Rights Council resolution in September 2012 underline that States should repeal and amend laws that criminalize life-sustaining activities in public places, such as sleeping, begging, or performing personal hygiene activities.
2. The Guidelines on the Implementation of the Right to Adequate Housing specify that States should provide alternative procedures for dealing with petty offences related to homeless people to help break the cycle of incarceration and homelessness and secure the right to housing.
3. In its 2021 Common Position on Incarceration, the UN seeks to tackle discriminatory carceral practices. It states, "*The focus of criminal justice responses should be shifted from punishing to exploiting longer-term strategies for crime prevention, such as rehabilitation and social reintegration, focusing on the most vulnerable. This shift also requires a movement towards depenalisation and decriminalisation in appropriate cases, in line with international norms and standards.*". It commits the United Nations system to support reform efforts aimed at ensuring proportionate and individualised sentencing policies and alternatives to conviction or punishment in appropriate cases, including for minor drug-related offences.
4. The recently adopted United Nations Sustainable Development Goals (SDGs) provide goals for governments to address extreme poverty. Governments have a responsibility to end poverty by 2030. Governments must implement programs and policies to end poverty in all its ramifications and formulate sound strategy frameworks to support accelerated investment in poverty-eradication actions. Targeting poor and marginalized people to enforce petty and minor offences contradicts the SDGs.

### **Regional Developments**

At the regional level in Africa, several instruments further encourage the reform of penal laws and improvement in arrest practices:

1. The Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa recommends the "*decriminalization of some offences, including loitering, prostitution, being a vagabond, failure to pay debts, etc.*"
2. The African Commission on Human and Peoples' Rights' Principles on the Decriminalisation of Petty Offences observes that petty offences are inconsistent with the right to dignity and Freedom from ill-treatment because their enforcement contributes to overcrowding in places of detention and the adverse socio-economic impact of the enforcement of petty offences, such as imposition of fines on persons without means to pay, prolonged or arbitrary pre-trial detention, harassment by law enforcement officials, further entrenching the marginalisation of people living in poverty
3. Model Police Law in Africa, The Model Police Law for Africa was adopted by the Plenary Session of the Pan-African Parliament on 13 October 2019. It included provisions on the requirement for police to use alternatives to arrest for minor or petty offences and to codify in the law of states the requirements of the Principles on the Decriminalization of Petty Offences in Africa.
4. The Maputo protocol was adopted in 2003 by the African Union to defend equal rights for girls and women. The Maputo Protocol is the first pan-African treaty to recognise abortion as a human right openly. The Protocol recognises and protects women's right to make decisions regarding their reproductive health, including access to safe and legal abortion services in certain circumstances. (Article 14.) it covers a broad spectrum of civil economic and social rights and is considered one of the most progressive human rights instruments globally.
5. African Charter on Human and Peoples' Rights (ACHPR), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (PRWA) and the African Charter on the Rights and Welfare of the Child (ACRWC) are making a significant impact in turning the criminal justice system away from unduly targeting persons for punishment due to their status. Articles 6 and 7 of the AChHPR are relevant against arbitrary arrest and detention by the police and an individual's unlawful arrest, especially

where it involves a minor offence that does not threaten public safety and targets vulnerable and poor people.

Finally, various regional courts have contributed to the African jurisprudence on reforming offences that criminalize poor and marginalised groups:

1. Malawi: The High Court of Malawi, in the case of *Mayeso Gwanda v State*, considered the constitutionality of the offence of being a vagabond and a rogue and argued that these vagrancy laws are now outdated. The Court held that the offence was unconstitutional and violated a range of human rights.
2. South Africa: The Supreme Court of South Africa, in 2019, delivered a ruling on the constitutionality of removal of the property of persons who were homeless. The applicants, who live under a bridge in the city, had their property confiscated during a clean-up exercise by the municipality. The court held that destroying the applicants' property was unconstitutional and unlawful and awarded them compensation.
3. Kenya: In *Feisal v Kandie*, nineteen people were arrested *en masse* and held in a police vehicle for three hours without being told of the reason for their detainment. They were then taken to the police station, where an advocate speaking on their behalf was also detained for creating a disturbance. They were charged with being idle and disorderly. The court commented on the arbitrary nature of their arrests, arising from the Penal Code, which allows any ambiguous behaviour to be deemed criminal.

### **Domestic developments**

On 5 August 2021, the Federal High Court in Abuja handed down judgment in a case relating to the notorious raids that resulted in the arrest and abuse of women. The court criticized the Abuja Environmental Protection Board for exceeding its mandate and powers in initiating the attacks. The court found that there were multiple violations of articles 1, 2, 3 and 18 (3) of the African Charter on Human and Peoples' Rights; articles 2, 3, 4, 5, 8 and 25 of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol); articles 2, 3, 5 (a) and 15(1) of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW); articles

2(1), 3, 7 and 26 of the International Covenant on Civil and Political Rights (ICCPR); articles 10, 12, 13 and 16 of the Convention against Torture (CAT); and articles 1, 2, 5, 7 and 8 of the Universal Declaration of Human Rights (UDHR).

Minor Offences Act CAP 16 LAWS of the Federation of Nigeria 2004 Abolished the offence of wandering, etc. It provides that notwithstanding anything to the contrary in any other enactment or law, a person shall not be accused of or charged with wandering by whatever name called or any other offence related to wandering (by whatever name called).

ACJA 2015 provides for Compensation, Damages and Restitution, Fines, Deportation, Probation, Suspended Sentence, and Community Service. Detention at a Rehabilitation and Correctional Centre and Parole. Especially for minor offences.

### **TOPICAL IMPACT OF PETTY OFFENCES ON THE JUSTICE SYSTEM**

In Nigeria, like in many other countries, the enforcement of petty offences has been debated. There have been concerns about the over-policing and indiscriminate arrests and detentions of individuals for petty offences, particularly in urban areas. The Nigerian government has taken a few tentative steps to address these concerns.

In 2017, the Nigerian Police Force launched the "Bail Is Free" campaign to raise awareness about the rights of individuals detained for petty offences and to discourage the extortion of detainees by law enforcement officers. The campaign aimed to educate police officers and citizens about the Administration of Criminal Justice Act 2015 provisions, prohibiting paying bail fees for minor offences. In 2018, the Nigerian Senate passed the Nigerian Police Trust Fund Act 2019 as amended which seeks to provide funding for the training and welfare of police officers. The aim is to improve professionalism and reduce the likelihood of arbitrary arrests and detentions. The police have for years insisted that police. Authorities then embarked on a nationwide campaign to admonish Nigerians not to pay a dime for bail. Yet many Nigerians who have passed through police cells were never released free of charge. Some case examples in Nigeria will illustrate the current real-life status of petty offences in Nigeria:



1. Kunle Sami, a journalist on Premium Times reported as follows: Nafisat Lukman, a 31-year-old nursing mother who trades in stick meats and herbal drinks in Abuja, was arrested along with dozens of hawkers, primarily women, by the Abuja Environmental Protection Board (AEPB). They allegedly violated section 35(1)(d) of the AEPB Act of 1997, which criminalizes hawking at a road junction or any unauthorized area within the FCT and imposes N5,000 as a fine or imprisonment on anyone found guilty. Taskforce teams routinely hunt down petty traders and hawkers displaying their wares for sale along the road in different parts of Abuja. Many are detained until they can pay the imposed fine and afford a private lawyer. Many victims end up in jail as they could neither afford the fine nor a lawyer at the time of initial arrest.
2. He also reported that Data compiled by various non-governmental organizations focusing on decriminalizing petty offences reveal that a sizeable number of citizens suffer violations through arrests or detention for wandering and loitering. Lawyer Alert says its record shows that from April 2021 to September 2021, 700 wandering and loitering cases, equivalent to 16 per cent of petty offences cases tracked nationwide, were recorded. Ten per cent of these cases involved hawking, while seven per cent involved sex workers during the period.
3. A similar study by Rehabilitation and Welfare and Action (PRAWA), editorial through its Petty Offence Project, stated that 2,431 people charged with petty offences were poor and needed to get pro bono services across five states from February 2020 to April 2021. According to the report, Abuja had the highest of 1,897 persons or 77.13 per cent, while Lagos State followed with 147 persons or 6.05 per cent. Abia State in south-east Nigeria came third with 136 cases, Enugu State also in the South-east had 137 cases, and Kano State in the North-west had 114 cases.
4. Samis report further stated that In February 2017, the police raided a suspected sex workers hub in Mabushi in Abuja. Monica Manasseh, a 42-year-old sex worker, was arrested. The task force that led the operation comprised officials of the Abuja Environmental Protection Board (AEPB), the Nigeria Police Force and even the Nigerian

Army. Yet it is trite that no Nigerian law specifically or expressly criminalizes prostitution. But like in many petty offences cases, actions against prostitution come with rights violations. MS Manasseh recalled that the task force searched her indecently, took away her money, and assaulted and detained her for three days before she was bailed. *"Getting home, I discovered that my whole property was destroyed or carted away during the operation. The N280,000 I kept at home was nowhere to be found, and my plasma television was destroyed, among other valuables,"* she narrated. Lawyers Alert filed a suit at the Federal High Court in Abuja on behalf of Ms Manasseh and 15 other women for redress. On 19 December 2019, the judge ruled in their favour, confirming that officers of the security task force had illegally broken into Ms Manasseh's and other women's apartments in Abuja in violation of their rights. The court awarded N100,000 in compensation against the Nigerian government.

5. Ibrahim, a 30-year-old driver and soap marketer from Warri, travelled to Ekiti State for a family event when he was arrested at a hotel in Ado-Ekiti. The police raided the hotel where he had gone to see a friend on a charge of disturbance of the peace. He was detained from 25 February until March 14, when the police arraigned him and two others before the Magistrate Court of Ado Ekiti. Under section 249 of the Ekiti State Criminal Code, they were charged with "conducting themselves in a manner likely to create a breach of peace" by causing disturbance in a public place. The case suffered several adjournments due to the absence of the arresting officer in court. Ibrahim eventually spent six months in jail, awaiting trial, before he was released on 31 August. The offence itself was only punishable by one month of imprisonment.
6. Nigerian Airforce officers arrested Ganiyu Rafiu, 32, for wearing a T-shirt with a camouflage design in Lagos in October 2020. His explanation that he donned the T-shirt to appear gallant for his role at a private security firm based in Lagos did not salvage the situation. His case is another example of how security agents can exploit vaguely drafted criminal laws to violate citizens and cloak the violations in legitimacy through the judicial process. The military personnel beat Mr Rafiu mercilessly before he was thrown into their

van and driven away. He spent two weeks in detention at the Military Police base, where he was accused of impersonation and assault and denied contact with his family. He was transferred to the now-defunct Special Anti-Robbery Squad (SARS) office at Lagos State Police Command, where he spent another two weeks before he was charged in court. Mr Rafiu was arraigned and granted bail. He was remanded at the Kirikiri Medium Prison in Apapa Lagos for nearly one year owing to his inability to meet his bail conditions. It took a civil society organization's intervention to secure Mr Rafiu's release on 26 August 2021 for want of diligent prosecution. He was finally released on 30 September 2021. Sections 109 and 110 of the Nigerian Criminal Code Act under which he was charged stipulate a punishment of one year on conviction. Mr Rafiu spent nearly the same time in jail without being convicted.

7. Another issue is the criminalization of traffic breaches. A case example is Lagos State traffic laws. According to the Lagos State Transport Sector Reform Law 2018, anyone who disregards traffic signals or drives in a way that is against the law would have to pay a fine, forfeit their car, and serve one year of jail time for a first offence and three years for a second.

These cases speak to the issues around petty offences within Nigeria's criminal justice system. According to the immediate past Minister of Interior, Rauf Aregbesola (2019-September 2023), in a special report on Premium Times, commented that about 70 per cent of inmates in Nigerian prisons are awaiting trial, many of whom are abandoned petty offences, such as Messrs, Rafiu and Ibrahim, that were abandoned by the prosecution for want of evidence.

## **OFFENCES SUITABLE FOR DECRIMINALIZATION, DEPENALIZATION AND RECLASSIFICATION IN NIGERIA**

- a. Public nuisance (Section 234 of the criminal code)

In Nigeria, police use this offence under section 234 of the code as a blanket offence to arrest and detain poor and marginalised persons. For example, The Police in Abuja arraigned a 20-year-old scavenger, Kabiru Ibrahim, to a Zuba Upper Grade 1 Area Court, Abuja, for allegedly

*constituting a public nuisance*. He was arrested by the vigilance group at about 10 p.m. and handed over to the police. He had reportedly been caught in a black spot with a cutlass (not stated), constituting a nuisance and posing a danger to the public and could not give a satisfactory account of his actions. The defendant pleaded not guilty to the offence but the presiding judge granted the defendant N100,000 bail with a surety in like sum, which is the penalty and in default thereof to imprisonment for 3 to 6 months. The criminalisation of such an offence is not strategic as there is no victim; also, the defendant will likely be unable to pay the fine, leading to imprisonment. Such nuisance is better reclassified and treated administratively.

#### b. Prostitution

There is no federal law that bans prostitution in Nigeria. However, the Criminal Code criminalizes procuring and related offences, which concededly has a slight affiliation to prostitution but is not the same. Sections **223, 224 and 225A** of the criminal code outlaw only the procuring and administration of drugs on girls and women and defilement. The Penal Code Act of FCT, 1990 however defines prostitutes as vagabonds and the police use this overbroad term to exploit citizens. It has a penalty of one month of imprisonment, a fine, or both.

Despite these penal code provisions, the constitution is still clear on the Right to Freedom of Association. This means that, as Nigerians, we can meet and associate with whomever we want. Therefore, the Penal Code that penalizes people meeting with prostitutes or vice versa might fail if tested against the constitution because no part of the constitution prohibits prostitution in Nigeria. It was also in line with this position that the Abuja court voided the arrest of commercial sex workers in Abuja in *Mensah's case*. The penal code describes an Idle person as a common prostitute behaving disorderly or indecently in a public place or persistently soliciting persons for prostitution. Ironically, even though Abuja law criminalizes prostitution and solicitation of prostitutes, no men have been arrested for solicitation of prostitution. Too often, police abuse their powers and exploit or rape sex workers with nowhere to turn for help. Decriminalization of prostitution would empower sex workers against exploitation and substantially reduce this abuse of power. The cost of arresting people for victimless crimes, with the additional cost of jail and prosecution, places a significant burden on taxpayers. Ironically, criminalization neither ends nor

reduces prostitution. It rather pushes sex work into the black market, where workers are unprotected from exploitation and abuse. Similarly, the prohibition of alcohol and drugs failed to reduce the demand and made these substances more dangerous. Laws should be adapted to address these realities by replacing criminalization with harm-reduction policies. Combatting violence and abuse in sex work should be prioritized over arresting consenting adults. Jails are ill-equipped to improve the lives of people arrested for choosing to earn a living via prostitution. Unequivocal and ample evidence worldwide shows that decriminalizing sex work will help end human trafficking and improve public health. When prostitution is criminalized, it often pushes the industry underground and into the hands of criminal networks. These networks thrive in the shadows and are more likely to engage in trafficking and exploitation. By decriminalizing prostitution, law enforcement agencies can redirect their resources towards targeting and dismantling these criminal networks

c. Street begging and hawking

There are different state Laws in Nigeria that criminalize street begging. The Street Trading And Illegal Market (Prohibition) Law Cap S12 Laws of Lagos State of Nigeria 2015 is an example of a state law that criminalizes street hawking. It proscribes the use of pedestrian bridges as a market and the indiscriminate pasting of banners. Section 10 provides that offenders shall pay a fine ranging from N90,000 to N180,000 or be liable to imprisonment for a term ranging from 6 months to one year.

The Absence of a Welfare System in Nigeria is a catalyst for the existence of such begging and hawking. Like many developing countries, Nigeria grapples with lacking a comprehensive welfare system. This absence creates a challenging environment where individuals, particularly those in vulnerable situations, often resort to life-sustaining activities to survive. Street begging is illegal in Lagos and carries fines ranging from N15,000 to three months imprisonment. The consequence of failure to pay the penalty is incarceration until payment is made. Due to the poor welfare system and no medical support, the people begging on Nigerian streets are disproportionately made up of mentally ill and disabled citizens. Severally, vulnerable people have been detained over the past five years due to the ban, causing large-scale human rights violations."

*d.* Rogue, vagabond, Idle and disorderly persons

The offence of idle and disorderly persons is an example of the vague, broadly drafted offences that give room for indiscriminate arbitrary arrest. The Criminal Code Act contains provisions against idle and disorderly persons, rogues, and vagabonds. Specifically, Section 249 makes copious provisions for effectively criminalizing wandering and acts capable of causing breach of the peace with a penalty of one month without an option of a fine. Section 250 of the Act also criminalizes begging, rogues and vagabonds. It is liable on conviction for the first instance of imprisonment for three months and every subsequent offence to imprisonment for one year. These offences need to be depenalized or, at best, reclassified with more to avoid exploitation by law enforcement agencies.

*e.* Road Traffic Laws

Different States are exploiting the regime of petty offences to boost their internally generated revenues through huge fines, with the task force and enforcement agencies being given monthly targets. Conflicting inter-agency roles in the administration of traffic laws also contribute to over-criminalization. The Federal Road Safety Corps is the lead agency in traffic management. Yet, some other agencies are also institutionalised and equipped for traffic management at the same federal level. The Police Act also provides for the establishment of a Traffic Warden Service. Most of the Federal Road Safety (Establishment) Act 2007 offences are also contained in the Federal Highway Act, which empowers the police to prosecute for the offences in the Act. There is a high chance of conflicts of interest leading to duplication and overcriminalization. The issue of lack of fair trial and needless criminalisation of traffic breaches in the enforcement of Lagos State traffic laws has been challenged by human rights advocates. Inibehe Effiong, a rights activist and lawyer, in an interview with Premium Times mentioned that any law that gives the government power to seize and/or auction off a citizen's car or other property without a fair trial and due process is illegal, null and void.

Another human rights lawyer, Monday Ubani, opined that any law that punishes a traffic offender to the point that he loses his car is a clear violation of citizens' rights to own property. The traffic

offence law that makes driving one way such that you can lose your car is a law that I am not comfortable with. And I am ready to challenge that law. It is a clear violation of the citizens.

#### f. Abortion

While abortion is not a petty offence within the ambit of this work, legalizing abortion has socioeconomic implications and I shall use this socioeconomic aspect as a rider to address it. It is important to recognize that vulnerable populations often face unique challenges that may be further exacerbated by unintended pregnancies. By legalizing abortion, individuals from these groups can have increased access to safe and affordable services, reduced financial burdens, enhanced educational and employment opportunities, and reduced reliance on illegal and unsafe procedures. These considerations highlight the potential positive impacts of legalizing abortion on the socioeconomic status and overall well-being of vulnerable populations. This will also reduce quackery, emphasize the criminalization of quackery and death-related abortions

Sections 228-230, 297, 309 and 328 of the Criminal Code and sections 232-236 of the Penal Code criminalize abortion in all circumstances except where the abortion is required to save the life of the woman or to preserve her physical or mental health, Contrary to Article 14(2)(c) of the Maputo Protocol. Yet an estimated 1.25 million induced abortions occurred in Nigeria in 2012, equivalent to a rate of 33 abortions per 1,000 women aged 15–49. The study said, "Fifty-six per cent of unintended pregnancies were resolved by abortion. About 212,000 women were treated for complications of unsafe abortion, representing a treatment rate of 5.6 per 1,000 women of reproductive age, and an additional 285,000 experienced severe health consequences. However, they did not receive the treatment they needed. The criminalization of abortion leads to quackery. Example: In *State v. Njoku*, The court proved that the defendant caused the victim to swallow the medicine with intent to procure, which caused her miscarriage. She was found under section 228 of the criminal code.

The Maputo Protocol adopted in 2003 by the African Union is the first pan-African treaty to recognize abortion as a human right. There is sufficient evidence of progress and support from African regional human rights standards toward a favourable legal environment for self-managed abortion. The use of the most onerous, intrusive, and penal state powers to regulate matters of

abortion runs contrary to the regional-level standards. WHO also advises states not only to require full legalization but also to create environments where people can safely self-manage their abortions.

g. Drug Abuse

The National Drug Law and Enforcement Agency (NDLEA) Act 1999 provides punishment for different offences of drug possession, trafficking and use, with life imprisonment as the highest penalty for possessing cocaine, heroin and other hard drugs. The penalties for acquisition, use or possession of illegal drugs for personal use are encapsulated in the laws that criminalize the offences. Thus section 19 of the NDLEA Act prescribes punishment ranging from 15 to 25 years' imprisonment. Many developed countries decriminalize some drug offences or provide rehabilitation programs for those involved in personal drug use. In recent years, policymakers have come under increasing pressure to find proactive and appropriate responses to manage the issue of drug abuse. While many believe there should be effective sanctions, including arrest and sentencing offenders, other schools seek alternatives such as education, treatment, rehabilitation, aftercare and social reintegration for drug-using offenders. However, despite the overwhelming evidence supporting that position, drug addiction continues to be criminalized in Nigeria. Ironically punishment does not ameliorate substance use disorders or related problems. One hundred ninety-three member nations of the United Nations General Assembly Special Session on Drugs voted to approach substance use disorders as public health issues rather than punishing them as criminal offences. This recommendation for reform does not extend to traffickers and dealers.

**Summary Table of Over-criminalization Issues and Proposed Solutions**

Offence	Problems Associated with Criminalization	Solution
Personal and recreational drug use	<ul style="list-style-type: none"> <li>Shifts focus from treatment to punishment</li> </ul>	Decriminalize



Offence	Problems Associated with Criminalization	Solution
<p>NDLEA ACT, The Dangerous Drugs Act;            Indian Hemp Act Cap. 16, Laws of the Federation of Nigeria 2004.</p>	<ul style="list-style-type: none"> <li>• burdens the criminal justice system.</li> <li>• prevents treatment and rehabilitation.</li> <li>• criminalization of addiction is unhelpful</li> <li>• exploitation and profiteering by dealers</li> </ul>	
<p>Prostitution section 249/405 Penal code</p>	<ul style="list-style-type: none"> <li>• hampers the ability of sex workers to protect themselves. Fear of arrest can discourage reporting violence, exploitation, or abusive behaviour,</li> <li>• lack of legal recognition and protection for sex workers.</li> </ul> <p>Increases exploitation and human trafficking.</p> <ul style="list-style-type: none"> <li>• Police, prosecutors, and jails are ill-equipped to improve the lives of people arrested for earning a living via prostitution.</li> </ul> <p>Resources are wasted which could be better allocated towards addressing more serious crimes,</p>	<p>Reclassify</p>

Offence	Problems Associated with Criminalization	Solution
	<ul style="list-style-type: none"> <li>• can hinder efforts to promote public health and prevent the spread of STD</li> </ul>	
Traffic Violations	<ul style="list-style-type: none"> <li>• Overburdens the criminal justice system</li> <li>• Ineffective for deterrence</li> <li>• Fines and penalties associated with criminal charges can create financial burdens, leading to debt or even incarceration for those unable to pay. This can exacerbate socio-economic inequalities and perpetuate cycles of poverty.</li> </ul>	reclassified
Loitering/wandering Section 249 CC/ 199 PC	<ul style="list-style-type: none"> <li>• It jeopardizes individual Freedom and right to engage in harmless activities, such as sitting, resting, or simply being present in public areas.</li> <li>• Historically, it has targeted marginalized communities, including people experiencing homelessness disproportionately.</li> </ul>	Decriminalization

Offence	Problems Associated with Criminalization	Solution
	<ul style="list-style-type: none"> <li>• fails to address the underlying issues that may lead to these behaviours, such as poverty, lack of affordable housing,</li> <li>• can lead to collateral consequences, such as arrests, fines, or even imprisonment, which can exacerbate cycles of poverty,</li> <li>• Law Enforcement Priorities are diverted from more crucial offences</li> </ul>	
<p>Rogues and vagabonds’ section 250 cc</p>	<ul style="list-style-type: none"> <li>• Increased burden on the legal system</li> <li>• can infringe upon individuals' fundamental human rights and subject individuals to arbitrary arrests, detention, and harassment by law enforcement authorities without due process or sufficient justification.</li> <li>• Criminalizing Poverty and Homelessness disproportionately</li> </ul>	<p>depenalization</p>

Offence	Problems Associated with Criminalization	Solution
	<p>affects marginalized groups, street children, the mentally challenged, or disadvantaged backgrounds.</p>	
<p>Nuisance section 234(f) CC</p>	<ul style="list-style-type: none"> <li>• The monetary penalties do not take cognisance of the individual means</li> <li>• Creates opportunity for Law enforcement agents to exploit individuals financially</li> </ul>	<p>Decriminalize</p>
<p>Begging Section 249(b)</p>	<ul style="list-style-type: none"> <li>• limits the ability of poor individuals to communicate their circumstances and seek support from others.</li> <li>• It fails to address the underlying causes of poverty and neglects the need for social support and welfare programs.</li> <li>• Perpetuate cycles of poverty by subjecting individuals to fines, arrest, or incarceration, leading to further financial burdens,</li> <li>• place burden on the legal system and divert resources away from</li> </ul>	<p>Depenalize</p>

Offence	Problems Associated with Criminalization	Solution
	<p>addressing more serious crimes and public safety concerns,</p> <ul style="list-style-type: none"> <li>• may not deter begging since it is often rooted in desperation and lack of alternatives.</li> </ul>	
<p>Hawking</p> <p>STREET BEGGING AND HAWKING (PROHIBITION) LAW, 2016</p>	<ul style="list-style-type: none"> <li>• Criminalization without providing alternative livelihood opportunities can push individuals further into poverty and increase vulnerability</li> <li>• can limit their ability to earn a living and exacerbate poverty and inequality.</li> <li>• It can hinder the growth of the informal sector and impede job creation, as individuals are forced to operate outside the formal legal framework.</li> <li>• Can reduce access to affordable goods and services for remote communities.</li> </ul>	<p>Reclassify</p>

Offence	Problems Associated with Criminalization	Solution
	<ul style="list-style-type: none"> <li>• It can limit consumer choices and increase prices, negatively impacting residents.</li> <li>• Overburdens the Legal System, leading to inefficiencies and delays in the administration of justice.</li> </ul>	
<p>Abortion 228, 229, and 230 CC</p>	<ul style="list-style-type: none"> <li>• infringes upon individuals' reproductive rights and ability to decide about their reproductive health.</li> <li>• Individuals may resort to unsafe methods and procedures. With attendant health complications, injuries, and even deaths.</li> <li>• Disproportionately affects marginalized communities and low-income individuals, leaving them without safe options.</li> <li>• Restricts access to comprehensive reproductive</li> </ul>	<p>Advocates for legalization highlight the need for a clear regulatory framework, access to safe care, and the recognition of reproductive rights and equality. The socioeconomic implication of unwanted pregnancies is linked to the need for LEGALIZATION</p>

Offence	Problems Associated with Criminalization	Solution
	<p>healthcare, including contraceptive services, family planning, and post-abortion care.</p> <ul style="list-style-type: none"> <li>• Affects vulnerable populations, including victims of sexual violence and individuals with compromised health.</li> <li>• does not necessarily reduce the incidence of abortion. Instead, it can lead to increased unsafe and clandestine procedures.</li> </ul>	

## SUCCESSFUL APPROACH TO PETTY OFFENCES IN OTHER JURISDICTIONS

### The Portuguese decriminalization and Depenalization Model on drug offences

2001, Portuguese legislators decriminalized low-level possession and consumption of all illegal drugs and reclassified these activities as administrative violations. In addition, Portugal significantly expanded its treatment and harm reduction services in drug-related cases. After nearly one and a half decades, Portugal has not experienced significant increases in drug use. Instead, it has experienced reduced rates of problematic drug use, arrests and a considerable increase in the number of people receiving treatment. According to the United Nations, "Portugal's policy has reportedly not increased drug tourism; instead, drug-related problems have decreased." Independent research concludes that a combination of the removal of criminal

penalties with the use of alternative therapeutic interventions for dependent drug users can decrease the burden of drug law enforcement on the criminal justice system, simultaneously reducing problematic drug use. This strategy offers a model for other nations that wish to provide less punitive and effective responses to drug use."

### **Decriminalizing Sex Work in New Zealand**

New Zealand decriminalized consensual adult prostitution with the passage of the Prostitution Reform Act (PRA) 2003. Five years after implementing the PRA, a government report concluded that most people involved in the sex industry are better off under the PRA than previously." Sex workers in New Zealand and parts of Australia where sex work has been decriminalized report safe working conditions and frequently cooperate with law enforcement. Since the passage of the PRA, sex workers are no longer subject to criminal exploitation. Violence against sex workers has declined as they can report crimes committed against them without fearing arrest. There have even been cases of police prosecuting clients for attempted theft. Too many people are incarcerated, and resources are spent targeting such victimless crimes. Most of those arrested are adults engaging in consensual, victimless activities. Where sex work is decriminalized, law enforcement can focus resources on prosecuting human trafficking and other exploitative sexual-related crimes.

### **Legalization of Abortion in South Africa**

To reduce abortion-related deaths, South Africa legalized abortion in 1996 through the Choice in Termination of Pregnancy Act, which gives all women the right to access abortion services within the first 12 weeks of pregnancy. The Act brought to light the scale of the problem of unsafe abortion. It repealed the 1975 Abortion and Sterilization Act that restricted access to abortion services by requiring approval for the procedure from a physician or a magistrate. In 1994, a study concluded that teenagers in South Africa had the highest death rate, further underscoring the legislation's importance. A review of national data indicates that abortion mortality dropped by more than 90 per cent between 1994 and 2001 This legislation is in line with the Maputo protocol.

### **Begging in Switzerland and Austria**



In its judgment on *Lăcătuș v. Switzerland*, the ECtHR considers begging a human rights issue for the first time. The judgment declared that the general ban on begging in Geneva violates the right to private and family life prescribed in Article 8 of the European Convention of Human Rights (ECHR). The court based its argument on the particular vulnerability of the applicant, a young Roma woman. After this landmark ruling, many countries adopted a distinction between "silent" and "aggressive" begging. Similarly, in Austria, the Court held that prohibiting "silent" begging is incompatible with the constitution, whereas a criminalization of aggressive and commercial/professional begging was not and should be prohibited. Silent begging typically refers to soliciting or requesting money or goods in a non-verbal or non-confrontational manner, such as passively displaying a sign or sitting or standing in a public space. Silent begging is usually protected under Freedom of speech or expression rights as long as it does not violate other laws or regulations. Aggressive begging refers to more assertive or intrusive behaviour when soliciting money or goods, such as blocking individuals, threatening language or gestures, or other persistent and unwanted solicitation.

#### **Traffic offences - California and Finland**

successful reclassification exists in California's pilot programs, allowing people convicted of driving without a license or suspended license to serve home detention sentences instead of jail. Finland also has a system that focuses on reclassifying and depenalizing traffic offences. Finland has also replaced traditional fines with day fines based on the offender's income. This approach ensures that the punishment is proportionate and fair. Finland also emphasizes education and rehabilitation programs to promote safe driving behaviour.

### **CHALLENGES AND BARRIERS TO EFFECTIVE IMPLEMENTATION**

Implementing decriminalization and depenalization of petty offences in Nigeria may face several challenges. Here are some common challenges that can arise:

1. *Lack of Legal Framework*: One significant challenge is the absence of clear legal frameworks and guidelines for the decriminalization and depenalization of petty offences.

We cannot depend on international principles without appropriate domesticated laws to facilitate legislation or regulations. Developing and enacting comprehensive laws that outline the modus of executing alternative penalties and procedures is crucial for successful implementation.

2. *Resource Constraints*: Nigeria may face resource constraints regarding funding, personnel, and infrastructure. Implementing alternative approaches to petty offences requires adequate resources to establish rehabilitation programs, a welfare-oriented system, educational initiatives, and alternative dispute-resolution mechanisms. Social security, which a welfare state should offer its citizens, is little known in Nigeria because no government has seriously addressed it as a conscious policy for eliminating poverty and lack among the people. The government focuses its resources on state security with a network of state security organizations, such as DSS, spread nationwide and responsible for many people detained without trial for untenable reasons. The citizens' economic security should be of priority, even as the 1999 constitution states that the people's security and welfare shall be the government's primary purpose. (S.14 (2) (b)).
3. *Resistance to Change / Public Perception and Awareness*: The shift from a punitive approach to a more administrative and/or rehabilitative/restorative approach can face opposition from the public. Traditional, moral and religious attitudes are very potent in Nigeria, and perceptions about the role of punishment in deterring offences may need to be addressed through education and awareness campaigns to foster support for decriminalization and depenalization measures. Public perception and awareness of decriminalization and depenalization measures can influence their success. Misconceptions about the purpose and implications of these approaches may undermine public support. Engaging in comprehensive public education campaigns is crucial to dispel misconceptions about the benefits and objectives of such penal reform efforts.
4. *Practical barrier/enforcement*: Even if decriminalisation laws are enacted, effectively implementing and enforcing them can be challenging. This includes training law

enforcement officials and judicial personnel on the new legal framework and ensuring consistent application of the law.

Addressing these challenges requires collaboration among stakeholders, including government agencies, civil society organizations, and legal professionals. It is vital to develop a comprehensive strategy, including legal reforms, public awareness campaigns, and capacity-building initiatives, to overcome these challenges and ensure a more effective criminal justice administration

## CONCLUSION

It is evident that Nigeria and many other African countries still grapple with the issue of petty offences that colonial masters created. These offences, which primarily target people experiencing poverty and peasants, perpetuate a system of oppression and social inequality. Notably, the very colonial powers that enacted these laws have long abolished them in their own jurisdictions, recognizing their unjust nature. Efforts have been made in Nigeria and across Africa to abolish these discriminatory laws. In Nigeria, notable steps have been taken towards reforming the criminal justice system. For instance, the Administration of Criminal Justice Act (ACJA) was enacted in 2015 to promote fair and efficient criminal justice administration, with provisions aimed at reducing the reliance on petty offences and encouraging alternative measures such as community service.

Furthermore, the Lagos State government in Nigeria launched the "Lagos State Justice Sector Reform" initiative, which seeks to address the issue of petty offences and decongest the prisons by implementing alternative dispute resolution mechanisms and diversion programs. In Africa, there have been continental efforts to address these issues. The African Commission on Human and Peoples' Rights, through its Special Rapporteur on Prisons, Conditions of Detention, and Policing in Africa, has called for decriminalizing petty offences and introducing alternative measures to imprisonment. Additionally, the African Union's Agenda 2063 includes the goal of promoting human rights, justice, and the rule of law, which involves reviewing and reforming laws that perpetuate social injustices.

Despite these efforts, it is crucial to continue advocating for the complete abolition of petty offences in Nigeria through decriminalization, reclassification and depenalization. This requires sustained dialogue, legal reforms, and collaborative efforts between governments, civil society organizations, and the international community. By addressing these unjust laws, we can strive for a society that upholds the principles of equality, fairness, and social justice for all its citizens. Instead of arresting and prosecuting persons for minor offences, issuing warnings for minor infractions is more appropriate. In some jurisdictions, certain petty crimes are deemed non-arrestable, thus allowing law enforcement officials to issue warnings for contraventions instead of detention. It is recommended that the issuance of warnings can serve as an alternative to arrest, detention and prosecution for certain minor offences, especially if the offending behaviour is victimless. Warnings can be **informal or formal**. An informal warning can be a mere verbal admonishment from law enforcement officials. In England and Wales, simple cautions are given to persons for minor crimes and first-time offenders as long as there is an acknowledgement of guilt and the individual agrees to be cautioned. Conditional warnings should be accompanied by specific rules, conditions or restrictions, such as attending a course to target offending behaviour (i.e., going for drug abuse treatment) or fixing damaged property. Failure to comply with the conditions may make the suspect charged with the appropriate crime. Offences involving minor infractions of environmental laws and traffic laws with criminal sanctions mainly apply to persons fulfilling life-sustaining activities in public. Such offences include depositing refuse, hawking, begging, and loitering. Individuals need not be detained and prosecuted for crimes considered regulatory or administrative offences. Monetary penalties serve as a better deterrent in promoting compliance but should not be abused as a form of income generation. Governments need to impose appropriate monetary penalties, taking into account the peculiar circumstances of the offender so that the monetary penalties do not exceed the person's financial abilities; where it is evident that the accused has no financial means to pay the fine, law enforcement officials should be provided with the discretion to explore other less intrusive alternatives, such as imposing community service.

Strengthening legal frameworks and legislation is critical to penal reform. Where decriminalization is not possible, the offence should be reclassified and operable within the By-laws supervised by the local government. This approach will facilitate the treatment of those offences as administrative and allow for more flexibility in determining the penalties for committing the offence. Sanctions such as community service (sweeping the streets and working on a state farm), warnings, and bonds to be of good behaviour should be implemented.

Law enforcement agencies should be intensively trained on international protocols such as the International Covenant on Economic, Social and Cultural Rights, the African Charter on the Fair Trial Principles in Africa, the Tokyo Principles, the Ouagadougou Plan of Action and the Principles on the Declassification and Decriminalization of Petty Offences in Africa.

The hitherto piecemeal reform of the petty offences' regime is to be blamed for this congestion malaise. The Federal Government should systematically review all petty offences in Nigeria's statute books to ensure wholesome reform. State legislatures must also toe this line, as many state laws contribute unduly to Nigeria's body of petty offences.

African courts are now willing to strike down vagrancy and similar laws. In a 2014 judgment, the ECOWAS Community Court of Justice awarded heavy damages against the Nigerian government for the unlawful arrest of three women deemed prostitutes. Malawi High Court also recently struck down the "rogue and vagabond" law in the Mayeso Gwanda case, ruling that it is not a crime to wander without a fixed place of abode. This emerging jurisprudence needs to be implemented in Nigerian courts soon. Instead, the government should provide social welfare and programs to deter individuals who wander out of necessity. These processes would encourage people to live with dignity as human beings and prevent individuals who are weak from committing those acts.

Administrative, legislative and other measures to address the conditions that cause, exacerbate or perpetuate poverty should be addressed rather than criminalize poverty. When there are no jobs, people will, of necessity, take up activities to make a living. There needs to be enforcement of third-generation socio-economic rights in the constitution. It is suggested that Nigeria tow the line of South Africa, where courts have been applauded for engaging in socio-economic rights

adjudication and for playing a pivotal role in interpreting socio-economic rights provisions in the constitution and other legislation.

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