

# Request for an Advisory Opinion

## on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and other Human Rights Instruments Applicable in Africa

No. 1/2018, 4 December 2020, African Court on Human and Peoples' Rights

### African Court on Human and Peoples' Rights

#### Jurisdiction

Establish personal and material jurisdiction and admissibility

#### Pan African Lawyers Union (PALU)

"African organisation" – registered in an African country, has branches at sub-regional, regional and continental levels, and carries out activities beyond the country where it is registered.

Recognised by the African Union – has a memorandum of understanding on cooperation with the AU since 2006 and Observer Status before the African Commission.

#### Advisory Opinion

Relates to a legal matter on the African Charter or relevant human rights instruments. Does not seek to resolve a factual dispute between opposing parties.

#### African Commission

Issue not currently dealt with by the African Commission.

**Legal question:** Are vagrancy laws compatible with regional human rights instruments?

**What are vagrancy laws?** Offences which criminalise the status of a person as being without a fixed home, employment or means of subsistence and who cannot give a good account of themselves

Countries with penal code offences which criminalise someone who has no fixed abode and no means of subsistence

Countries with no specific offences in their penal laws which criminalise lack of subsistence, although such offences are often still retained in municipal by-laws



### The Court's Findings

#### Vagrancy laws violate a range of rights

- The right to dignity
- The right to liberty
- The right to a fair trial
- The right to freedom of movement
- The right to protection of the family
- Children's right to non-discrimination
- Children's right to have their best interests considered
- Children's right to a fair trial
- The right to an environment where poor and marginalised women can fully enjoy their rights.

#### The right to non-discrimination

Vagrancy laws target individuals based on their economic status. The expression "any other status" in the prohibited grounds of discrimination encompasses cases of discrimination which could not have been foreseen during the adoption of the Charter.

#### Vagrancy laws are contrary to African human rights instruments

Vagrancy laws violate the African Charter (articles 2, 3, 5, 6, 7, 12, 18), Charter on the Rights and Welfare of the Child (articles 3, 4(1), 17) and Maputo Protocol (article 24).

#### States must reform their laws immediately

State parties must take all necessary measures in the shortest possible time to review vagrancy and related laws to bring them in compliance with the African Charter, Children's Charter and Maputo Protocol.

### Evidence presented by PALU



Mapped vagrancy offences in Africa.



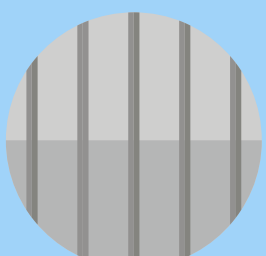
Showed the movement towards decriminalisation.



Historical development of vagrancy laws.



Disproportionate impact of arrests on individuals and their dependants.

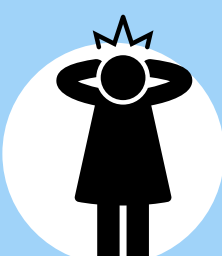


Impact of prison overcrowding.

*"Vagrancy laws effectively punish the poor and underprivileged, including but not limited to the homeless, the disabled, the gender-nonconforming, sex workers, hawkers, street vendors and individuals who otherwise use public spaces to earn a living."*

Advisory Opinion

### Arguments by PALU



Vagrancy laws punish a status individuals involuntarily entered into.



Vagrancy laws have a disproportionate impact on poor and vulnerable persons.



Vagrancy laws do not assist crime prevention.



Vagrancy laws are overbroad and result in arbitrary enforcement contrary to the presumption of innocence.

### Sources relied on by PALU and adopted by the Court

- **Kampala Declaration** on Prison Conditions in Africa, 1996
- **Ouagadougou Declaration** and Plan of Action on Accelerating Prisons and Penal Reform in Africa, 2002
- **Principles on the Decriminalisation of Petty Offences in Africa**, 2017
- **Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa** (Luanda Guidelines), 2014
- **Dorothy Njemanze and Others v Nigeria**, ECOWAS decision, 2017
- **Mayeso Gwanda v State**, Malawi High Court decision, 2017

