



Pan African Lawyers Union

PRESS RELEASE

THE AFRICAN COURT UNANIMOUSLY DECLARES VAGRANCY LAWS CONTRARY TO THE AFRICAN CHARTER, CHILDREN RIGHTS CHARTER & WOMEN'S RIGHTS PROTOCOL, ORDERING MEMBER STATES OF THE AFRICAN UNION TO REPEAL IN SHORTEST POSSIBLE PERIOD.

Today, Friday 4th December 2020, the African Court on Human and Peoples' Rights (AfCHPR) in its 59th Ordinary Session, delivered an Advisory Opinion on a Request submitted by the Pan African Lawyers Union (PALU) declaring vagrancy laws contrary to the African Charter on Human and Peoples' Rights (African Charter), Children's Rights Charter and Women's Rights Protocol (Maputo Protocol). This was the first Advisory Opinion that the Court has rendered since 2017.

The Advisory Opinion came after a continental advocacy campaign aimed decriminalizing and reclassifying petty offences in Africa with the dual objectives of raising awareness of the disproportionate impact on the poor and vulnerable and advocate for the repeal and decriminalization of these laws.

Together with other key regional partners of the Campaign, PALU's role was to interrogate the legality of the provisions criminalizing petty offences in Africa. One key request to the Court was to determine whether State Parties to the African Charter have positive obligations to repeal or amend their vagrancy laws and by-laws to conform with the rights protected by the African Charter, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), and if in the affirmative, to determine what these obligations are.

PALU had filed the Request for the said Advisory Opinion in March 2018, in which it asked the Court:

- i. Whether vagrancy laws and by-laws, including but not limited to, those that contain offences which criminalise the status of a person as being without a fixed home, employment or means of subsistence; and cannot give good account of him or herself violate African Human Rights Treaties.
- ii. Whether vagrancy laws and by-laws, including but not limited to, those containing offences which, once a person has been declared a vagrant or rogue and vagabond, summarily orders such person's deportation to another area violate African Human Rights Treaties.
- iii. Whether vagrancy laws and by-laws, including but not limited to, those which allow for the arrest of someone without a warrant simply because the person has no "means of subsistence and cannot give a satisfactory account" of him or herself violate African Human Rights Treaties.
- iv. Whether State Parties to the African Charter have positive obligations to repeal or amend their vagrancy laws and by-laws to conform with the rights protected by the African Charter, the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and if in the affirmative, determine what these obligations are.

In accordance with the African Charter, Protocol, Rules of Procedure, and Practice Directions of the Court, the AfCHPR invited States Parties, the African Commission of Human and Peoples' Rights (the Commission), and other interested parties to file their written Submissions on these questions. States parties that filed written Submission included Burkina Faso and Kenya. In addition, the following key stakeholders applied and were granted leave to file their Submission as friends of the Court (*Amici Curiae*): Network of African National Human Rights Institutions (NANHRI), University of Miami School of Law, Kenyan Section of the International Commission of Jurists (ICJ-Kenya), University of Pretoria and the Open Society Foundations (OSF).

Speaking with regards to the Opinion issued, PALU CEO Adv. Donald Deya said this to say "This is only the second Request for Advisory Opinion to succeed on the merits, and the first one filed by civil society to go beyond the admissibility stage. It is a major milestone for African citizens and civil society. And we are glad that we and our campaign partners successfully focused it on legal protection for the poor and vulnerable amongst us. PALU will continue to champion similar crusades towards a more just Africa."

This Opinion marks the second crucial instrument for the campaign, the first being the Principles on the Decriminalization of Petty Offences, launched by the African Commission on Human and Peoples' Rights, on 25th October 2018, in Banjul, in the Republic of the Gambia. A simplified

version of these Principles was published in September, 2020 during the Regional Conference for “decriminalization of petty offences in Africa”. These instruments will champion the campaign against petty offences in Africa.

Issued By:

Information and Communications Office
Pan African Lawyers Union (PALU)
No. 3 Jandu Road, Corridor Area,
P.O. Box 6065 Arusha, Tanzania,
Tel: +255 68 507 8794
secretariat@lawyersofafrica.org

About PALU

The Pan African Lawyers Union (PALU) is a continental membership forum for African Lawyers and Lawyers’ Associations. PALU was founded in 2002, by African Bar leaders and eminent lawyers, to reflect the aspirations and concerns of the African people and to promote and defend their shared interests. It brings together the continent’s five regional Lawyers’ associations, over fifty-four national lawyers’ associations and over 1,000 individual lawyers.