



Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África



Criminalisation of poverty: vagrancy and related laws and their impact on children's access to justice



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Background

- The 2003 Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa called upon African countries to decriminalise some minor offences;
- The 2011 Report of the Special Rapporteur on extreme poverty and human rights, Sepúlveda Carmona: *“outright criminalisation, prosecution and incarceration of people living in poverty”*;
- ACJR Criminal justice audits conducted between 2013 and 2015 in Kenya, Malawi, Mozambique and Zambia showed that a significant number of persons were in remand facilities for extensive periods of time for petty offences such as loitering, being idle and disorderly, being a ‘rogue and ‘vagabond,’ nuisance, touting and minor municipal contraventions;

Problem Statement

- Laws, municipal by-laws and notions of social order that have their roots in the colonial era;
- Many of these petty offences, esp. vagrancy offences, were enforced by colonial powers to control African populations and protect their economic interests in the African colonies;
- Laws remain intact in African jurisdictions even after the abolishment of colonial powers;
- Laws are in overly broad, vague or ambiguous language;
- People around the world who live in poverty and who are perceived to have less power are particularly targeted;
- Homeless people, street children, sex workers, street vendors and people with disabilities, ethnic minorities and refugees/asylum seekers targeted;

How are vagrancy laws applied in Africa?

- Officials use discretion to arrest anyone they suspect;
- No legal requirements of having reasonable suspicion and without officials having to assess all the elements of the crime;
- Extortion/bribes is commonly practiced as a way of avoiding arrest;
- People do not know their rights, legal/illegal arrest;
- Children are affected, particularly street children, homeless and trafficked children;
- Preventing crime?
- Criminalisation of the socio – economic challenges of poor and marginalised people

What are the consequences on this application on children's access to justice?

- Arrest
 - arbitrary/illegal arrest
 - excessive force or violence by the police
 - problematic conditions of detention in police custody
 - people don't know their rights
- Pre-trial detention
 - unaffordable bails
 - legal representation
 - duration outside legal periods
 - no separation of prisoners
 - socio-economic impact (direct and indirect)

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- Trial
 - lack legal representation
 - judicial system not properly equipped
- Sentencing
 - fine or imprisonment or both
 - no separation of prisoners
 - problematic conditions of detention in prisons
 - overcrowding
 - education

Some examples

- *Rounding up street in the 2010 Soccer World Cup in **South Africa**.*
- *In **DRC**, Human Rights Watch reports that roundups of street children are likely to occur when crimes happen in areas where such children are known to congregate, the victims of the crime are politically connected.*
- *A 2012 research report documents that there were more than 150 children in conflict with the law in **South Sudan**'s prisons and that few services were available to them.*
- *In **Kenya**, there have been many incidents of street children being arrested and detained for loitering and other vagrancy offences 'Vagrancy' is a criminal offence under Kenyan law. Female street children reported being sexually propositioned or raped by police in order to avoid arrest or to be released from custody.*
- *Street children in **Uganda** also face abuse and arbitrary arrest. Police and officials threaten them at night and beat them with batons, whips or wires to extort bribes or as a punishment for 'Vagrancy'.*
- *In **Malawi** in March 2012 more than 30 children were arrested in Kasungu, Malawi, for 'loitering around town without proper reasons', and in June 2013 Malawian police arrested 47 people aged 14 to 40 years for loitering in Balaka town in an effort 'to curb criminal activities'.*
- *Research in **Egypt** clearly indicates targeted arrest campaigns against children by the police.*

Implications for governments

- These laws enforcement must be assessed against key human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (AChHPR) and international treaties on children rights such as African Charter on the Rights and Welfare of the Child (AChRWC)
 - arbitrary arrest and subsequent detention of children in appalling conditions are tantamount to exploitation, and amount to cruel, inhuman and degrading treatment
 - Prosecuting the child on the basis of his or her 'homelessness' is in violation of the non- discrimination clause in the AChRWC
- Increasing cost of detention
 - Mozambique 1000 Mt. (15\$)per person per day
- Increasing corruption
 - *A 2002 report by Transparency International found that on average each Kenyan had been forced to bribe the police four and a half times a month, paying them on average US\$16 per month, and 95 per cent of interactions with the police resulted in a bribe*
- Weakening relations justice system/community
 - no trust on police
 - Increasing lynching cases

Who is / What is the Campaign about?

- In 2014, OSF HRI and organisations working in the field of criminal justice and human rights identified the need to form a campaign to advocate for the decriminalisation and declassification of petty offences on the Continent - to address the issues discussed in this presentation.
- The Campaign has focused extensively on advocacy, research and (where possible) litigation and established its own Campaign identity, website, social network platforms and campaign material.
- Initially the Campaign had seven partner organisations. To date there are 12 partner organisations



Campaign Partners

- Open Society Foundations (OSF); AdvocAid – Sierra Leone; Human Rights; Awareness and Promotion Forum (HRAPF); Africa Criminal Justice Reform (ACJR); African Policing Civilian Oversight Forum (APCOF); Centre for Human Rights Education Advice and Assistance (CHREAA); Commonwealth Human Rights Initiative – Ghana; International Commission of Jurists (ICJ Kenya); Network of African National Human Rights Institutions (NANHRI); Pan African Lawyers Union (PALU); Prisoners' Rehabilitation And Welfare Action (PRAWA); Southern Africa Litigation Centre (SALC)



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What has the Campaign done and achieved?

- Research has been conducted by Campaign partners in their respective countries on the existence and enforcement of petty offences.
- The Campaign released a research report 'Punished for Being Poor' – the report explores arguments against and evidence for decriminalisation and declassification of petty offences. This is also used as an advocacy tool.
- Campaign members have actively been involved in lobbying the African Commission (ACHPR) and all other strategic regional organisations /platforms to raise awareness and push the agenda of the Campaign. (i.e. conducting presentations, hosting side-events/discussions)



Some regional/domestic developments

- Adoption of the Principles on the Decriminalisation of Petty Offences in Africa - ACHPR/Res. 366 (EXT.OS/XX1) 2017.
- Kenya's Chief Justice gazetted the formation of a national Steering Committee to review the criminal justice system and specifically petty offences.
- Mozambique has abolished such offences in 2015, with the introduction of the new Penal Code
- In Malawi, a court case challenging the constitutionality of the vagrancy offence of 'being a rogue and vagabond' succeeded. The court declared the offence unconstitutional. (Gwanda v. S)

Thank you/Obrigada

