



African Court
on Human and Peoples' Rights

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**PRESS RELEASE
ADVISORY OPINION SUMMARY**

**REQUEST FOR ADVISORY OPINION BY THE PAN AFRICAN LAWYERS UNION (PALU)
ADVISORY OPINION NO. 001/2018
4 DECEMBER 2020**

AN ADVISORY OPINION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Date of Press Release: 4 December 2020

Arusha, 4 December 2020: The African Court on Human and Peoples' Rights (the Court) delivered its Advisory Opinion on the request by the Pan African Lawyers Union (PALU).

In its request for advisory opinion (the Request), PALU submitted that many Member States of the African Union (AU) retain laws which criminalise the status of individuals as being poor, homeless as opposed to specific reprehensible acts – PALU referred to these laws, generally, as “vagrancy laws”. According to PALU, many African countries abuse vagrancy laws to arrest and detain people even when there is no proof of criminal conduct. PALU submitted that vagrancy laws are overly broad and they thereby confer too wide a discretion on law enforcement officers as to how to enforce the law, thereby opening up the possibility of abuse.

PALU presented four questions for the Court's determination. In considering the four questions, the Court established that essentially, it was called upon to pronounce itself on the following: first, whether vagrancy laws are compatible with Articles 2, 3, 5, 6, 7, 12 and 18 of the African Charter on Human and Peoples' Rights (the Charter); second, whether vagrancy laws are compatible with Articles 2, 4(1) and 17 of the African Charter on the Rights and Welfare of the Child (the Children's Rights Charter); third, whether vagrancy laws are compatible with Article 24 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (the Women's Rights Protocol); and lastly, whether States Parties to the Charter have positive obligations to repeal or amend their vagrancy laws to conform with the Charter, the Children's Rights Charter and the Women's Rights Protocol.

Before pronouncing itself on any of the questions presented by PALU, however, the Court considered whether it had jurisdiction to provide the Advisory Opinion as well as whether the

Request was admissible. In terms of jurisdiction, the Court noted that in advisory proceedings, given that there is no contestation on facts as between opposing parties, it needed only consider whether its personal and material jurisdiction were satisfied. Focusing on its personal jurisdiction, the Court held that this was satisfied since PALU was an African organisation within the meaning of Article 4(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) and this was further proved by the Memorandum of Understanding that PALU has with the AU.

As for its material jurisdiction, the Court confirmed that under Article 4(1) of the Protocol it is empowered to provide an advisory opinion on "any legal matter relating to the Charter or any other relevant human rights instrument...". Since the Request was inviting the Court to provide an opinion on the compatibility of vagrancy laws with the Charter, the Children's Rights Charter and the Women's Rights Protocol, the Court found that its material jurisdiction was established. The Court thus confirmed that the Request was on legal matters relating to the enjoyment of human rights guaranteed in the Charter, the Children's Rights Charter and the Women's Rights Protocol.

In terms of the admissibility of the Request, the Court confirmed that since there was no similar matter pending before the African Commission on Human and Peoples' Rights, the Request was admissible.

In its Opinion, the Court first considered the compatibility of vagrancy laws with the Charter. Specifically, the Court's Opinion dwelt on the compatibility of vagrancy laws with Articles 2, 3, 5, 6, 7, 12, and 18 of the Charter. After having considered the submissions made by PALU and the *amici curiae*, the Court drew the following conclusions. First, that vagrancy laws, both in their formulation as well as in their application, by, among other things, criminalising the status of an individual, enabling the discriminatory treatment of the underprivileged and marginalized, and also by depriving individuals of their equality before the law are not compatible with Articles 2 and 3 of the Charter. The Court also found that arrests for vagrancy-related offences, where they occur without a warrant, are not only a disproportionate response to socio-economic challenges but also discriminatory since they target individuals because of their economic status. Second, that the application of vagrancy laws often deprives the underprivileged and marginalized of their dignity by unlawfully interfering with their efforts to maintain or build a decent life or to enjoy a lifestyle of choice. Consequently, the Court found that vagrancy laws are incompatible with the notion of human dignity as protected under Article 5 of the Charter. Third, that arrests and detentions under vagrancy laws are incompatible with the arrestees' right to liberty and the security of their person

as guaranteed under Article 6 of the Charter and this is invariably the case where the arrest is without a warrant. Fourth, that arresting individuals under vagrancy laws and soliciting statements from them about their possible criminal culpability is at variance with the presumption of innocence and is not compatible with Article 7 of the Charter. Fifth, the enforcement of vagrancy laws, generally, is incompatible with the right to freedom of movement as guaranteed under Article 12 of the Charter. The Court also found that forced relocation, which is permitted by vagrancy laws in some African countries, is also incompatible with Article 12 of the Charter. Sixth, the Court held that arrests and detentions based on vagrancy laws are incompatible with Article 18 of the Charter. The Court also held that the forcible relocation of “vagrants” is incompatible with the preservation of the sanctity of the family as a basic unit of society as guaranteed in Article 18 of the Charter.

The Court then considered the compatibility of vagrancy laws with the Children’s Rights Charter. In its Opinion, the Court established as follows: first, that the enforcement of vagrancy-related laws, which results in the arrests, detention and sometimes forcible relocation of children from the areas of residence, is incompatible with children’s right to non-discrimination as protected under Article 3 of the Children’s Rights Charter. Second, that the arrest, detention and forcible relocation of children on account of vagrancy offences infringes the best interests of children. Such conduct, according to the Court, not only compromises children’s fundamental rights but also exposes them to multiple other potential violations of their rights which is incompatible with Article 4(1) of the Children’s Rights Charter. Third, that the arrest, detention and forcible relocation of children due to vagrancy laws is incompatible with their fair trial rights as protected under Article 17 of the Children’s Rights Charter.

The Court then considered the compatibility of vagrancy laws with Article 24 of the Women’s Rights Protocol. After having analysed the submissions by PALU and the *amici curiae*, the Court concluded that vagrancy laws are incompatible with Article 24 of the Women’s Rights Protocol for permitting the arrest without a warrant of women where they are deemed to have no means of subsistence and cannot give a satisfactory account of themselves.

Finally, the Court considered whether State Parties to the Charter have positive obligations to repeal or amend their vagrancy laws and/or by laws to conform with the rights protected by the Charter, the Children’ Rights Charter and Women’s Rights Protocol, and in the affirmative, determine these obligations. The Court held that Article 1 of the Charter, Article 1 of the Children’s Rights Charter and Article 1 of the Women’s Rights Protocol obligates all State Parties to, *inter alia*, either amend or repeal their vagrancy laws and by-laws to bring them in conformity with these

instruments. According to the Court, this would be in line with the obligation to take all necessary measures, including the adoption of legislative or other measures, in order to give full effect to the Charter, the Children's Rights Charter and the Women's Rights Protocol. As to the nature of the obligation, the Court held that this obligation requires all State Parties to amend or repeal all their vagrancy laws, related by-laws and other laws and regulations so as to bring them in conformity with the provisions of the Charter, the Children's Rights Charter and the Women's Rights Protocol.

Justice Blaise Tchikaya appended a separate opinion to the Court's decision.

Further Information

Further information about this Request, including the full text of the Advisory Opinion, may be found on the website at: <https://en.african-court.org/index.php/16-advisory-opinion/1251-request-no-001-2018-pan-african-lawyers-union-palu>. For any other queries, please contact the Registry by email registrar@african-court.org

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. It also has jurisdiction to render advisory opinions on any legal matter relating to the Charter or any other relevant human rights instruments. For further information, please consult our website at www.african-court.org .