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At Tema Station Market and Lorry Park, vendors situated on the pavement protect themselves from the sun's harsh rays with straw-hewn hats as they lay out their wares for sale. The vendors at Tema Station pay daily, monthly, and yearly licensing fees and tolls to the city government to enable them to operate there. Photo credit: Jonathan Torgovnik/Getty Images Reportage

Re-examining Legal Narratives on Vagrancy, Public Spaces and Colonial Constructs: A Commentary on the ACHPR's Advisory Opinion on Vagrancy Laws in Africa

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In January 2017, the Malawian High Court held that section 184(1)(c) of the country's Penal Code, which made it an offence to be a "rogue" or a "vagabond", was unconstitutional and therefore invalid. The matter before the court was brought by Gwanda Mayeso, a street vendor who was arrested on his way to work early one morning in March 2015. Refusing to believe that he was going to sell plastic bags to fishermen, police officers

arrested him on the grounds that he was in the area "for an illegal or disorderly purpose".

The High Court held that the provision violated his rights to dignity; freedom from inhuman and degrading treatment and punishment; freedom from discrimination; and right to equal protection under the law. The judgment was celebrated by local street vendors and other marginalized groups because law enforcement

and judicial officers had long used this provision to justify their arrest, detention, and conviction on unsubstantiated grounds. This judgment was also celebrated regionally because many African countries have inherited colonial laws that target poor citizens and other socially and economically marginalized groups, criminalizing poverty and rendering select activities illegal.

This edition of *Law and Informality Insights* analyzes the implications for informal workers of the recent African Court on Human and Peoples' Rights' (ACHPR) advisory opinion,¹ which was delivered in response to a continental challenge against vagrancy laws on the grounds that they violate several human rights that are enshrined in binding regional instruments. The Pan African Lawyers Union (PALU), which is based in Tanzania, approached the court for this advisory opinion in 2018 as part of its campaign to decriminalize petty offences in Africa.² The court found that the laws violate people's rights to non-discrimination and equality, dignity, liberty, a fair trial, freedom of movement and protection of the family that are enshrined in the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the African Charter on the Rights and Welfare of the Child. It further declared that all signatories to the African Charter (currently 54 out of the 55 African Union member states) have a positive obligation to review and amend their laws to align them with these three instruments.³

At the heart of this challenge to vagrancy laws – part of a range of petty offences, including loitering, begging, nuisance laws and the criminalization of informal economic

activities – is the criminalization of poverty, livelihood activities and the policing of public spaces to privilege elites' interests over those of other citizens. Vagrancy laws are often vague, which give the police a wide discretion to make "arbitrary arrests which are influenced by police assumptions of criminality based on biases relating to poverty, gender, race, ethnicity, place of origin and social status."⁴ In practice, this enables covert economic profiling and perpetuates indirect discrimination as it disproportionately affects marginalized groups,⁵ including hawkers, street vendors, and individuals (such as waste pickers) who use public spaces to earn a living.

Vagrancy laws must be contextualized within how public space is conceptualized and the contestation among different interest groups of what public space should look like, who should use it, and for what purpose. In most cities, ownership and use of private property is beyond the reach of poor residents and of migrant workers, who flock to cities in search of work. They need access to property, both for shelter and to generate livelihoods. Yet, private property is out of their reach and in many countries livelihood activities in public spaces are criminalized. In part this is so because African states have failed to rescind inherited colonial governance regimes. But it is also the case that in pursuance of constructing "world class cities" the state is privileging the interests of elite residents over the majority of the population.

¹ The African Court on Human and Peoples' Rights has the power to give an advisory opinion as per the African Charter on Human and People's Rights. It is not mandatory for states to adhere to the opinion but essentially provides guidance to all member states of the African Union.

² The Campaign is a coalition of organizations that work on challenging petty offences that target the poor and marginalized. Righting a Wrong. 25.05.2021. Accessed at: <https://www.youtube.com/watch?v=1-cDDJGlp4>

³ While all members of the African Union have not ratified the three instruments, the Courts points out that all 55 states of the African Union have ratified the constitutive Act of African Union. The African Charter on Human and People's Rights has been ratified by 54 states, the African Charter on the Rights and Welfare of the Child by 48 states and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women by 42 states.

⁴ *Mayeso Gwanda v The State* (High Court) Constitutional Course No. 5 of 2015 at 14-15.

⁵ *Ibid.*

In this brief, we first outline the decision of the African Court on Human and Peoples' Rights (the court), bringing attention to aspects of the advisory opinion that informal workers can use in their struggle for access to public space for trading and other livelihood activities. In Africa more than 85 per cent of the workforce is informally employed.⁶ Most workers are self-employed, with no notional employer. Occupational groups include street vendors, waste pickers, informal traders, and informal transport workers, all of which require access to public spaces to work. The advisory opinion therefore has implications for the livelihoods of workers using public spaces. Second, we consider the orthodox narratives that inform how public space is conceptualized and regulated, and the competing interests of informal workers on the one hand, and the elite on the other. Finally, we argue that this advisory serves as a useful precedent to challenge notions of criminality associated with legitimate street activities and can help in shifting the narratives dominating regulation of public space.

Challenging Vagrancy Laws: PALU and the APHRC Advisory Opinion

African countries such as Angola, Cape Verde, Kenya, Lesotho, Mozambique, Rwanda, and Zimbabwe have repealed their vagrancy laws.⁷ At least eighteen countries, however, define a vagrant as any person who does not have a fixed abode nor a means of subsistence and who does not practice a trade or profession.⁸ In South Africa, individuals

without a fixed abode are prohibited from sleeping or loitering in public places.⁹ Cape Town's by-laws, for instance, make any person who "begs, stands, sits or lies in a public place"¹⁰ liable to legal action.¹¹

PALU petitioned the court in May 2018. The petition challenged vagrancy laws on the basis that they violate rights to non-discrimination and equality, dignity, liberty, a fair trial, freedom of movement and protection of the family. These rights are enshrined in the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the African Charter on the Rights and Welfare of the Child. PALU requested the court's advisory opinion on the status of three categories of provisions that characterize vagrancy laws:

- 1) The criminalization of "the status of a person as being without a fixed home, employment or means of subsistence; as having no fixed abode nor means of subsistence, and trade or profession; as being a suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of him or herself; and as being idle and who does not have a visible means of subsistence and cannot give good account of him or herself."¹²
- 2) Provisions that summarily order a person's deportation to another area once that person has been declared a vagrant.
- 3) Provisions that allow for the arrest of someone without warrant simply because the person has no "means of subsistence and cannot give a satisfactory account" of him or herself.

⁶ ILO. 2018. "Women and men in the informal economy: A statistical picture." Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf

⁷ *The Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and other Human Rights instruments applicable in Africa*. African Court on Human and Peoples' Rights. Advisory Opinion. No 001/2018. December 2020.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Open By-laws South Africa. 2007. Streets, Public Places and the Prevention of Noise Nuisances By-law. Available at: <https://openbylaws.org.za/za-cpt/act/by-law/2007/streets-public-places-noise-nuisances/eng/>

¹¹ In South Africa, 11 homeless people challenged the validity of these laws. See <https://pettyoffences.org/homeless-challenge-bylaws/>

¹² *Supra* note 7, at 2.

PALU also asked the court for its opinion on whether the state parties to the African Charter had positive obligations to repeal and amend their vagrancy laws to bring them in line with the three African Union instruments. PALU challenged the formulation of the laws: the object and rationale of the laws, the context within which the laws were framed, and the language used. It also challenged the implementation of the laws: how the laws are interpreted and enforced by police officers. Last, PALU highlighted the consequences of these laws: the groups who are targeted and the impact of their being targeted.

The court delivered its opinion in December 2020. Although the opinion focuses on a range of issues, we outline three aspects that are relevant to informal workers. First, the court laid down a broad definition of the laws that constitute vagrancy laws. It noted that vagrancy laws usually refer to a code of conduct or a manner of living. The court thus adopted an inclusive definition of vagrancy laws as laws that criminalize “being idle and disorderly, begging, being without a fixed abode, being a rogue and vagabond, being a reputed thief and being homeless or a wanderer” but stated that vagrancy laws are not limited to its definition.

This broad definition leaves room for similar challenges to laws such as nuisance laws, which usually give police/local authorities the power to restrict any activity that “endangers the life, health, property, morals or comfort of the public or obstructs the public in the exercise or enjoyment of rights common to all.”¹³ For instance, in Nairobi, the general nuisance by-laws allow the police to arrest any individual creating a general nuisance in public spaces.¹⁴ This by-law is used to harass street vendors, even though they have permits to trade.¹⁵

Second, the court outlined the historical origins of vagrancy laws. The historical lens

through which the court analyzes vagrancy laws is a significant aspect of the advisory opinion, as it signals a pathway for a new approach to regulating public space. PALU questioned the object and rationale of vagrancy laws by relying on the Principles on the Decriminalisation of Petty Offences¹⁶ which state that there should be a rational connection between law, its enforcement, and its objectives. In fact, the court finds that there is no evidence that vagrancy is equivalent to criminality. If the police find somebody loitering or idling in the streets, it does not mean that he or she is likely to commit a crime. Neither is there any evidence of the argument that vagrancy laws prevent crimes against public property or in public places.

Third, the court upheld the rights to non-discrimination and equality, dignity, liberty, fair trial, freedom of movement and the protection of family. We discuss the court’s reasoning with respect to two of these rights – the right to dignity and the right to non-discrimination and equality.

Right to dignity

The petition challenged vagrancy laws on the basis that they violate the right to dignity. Drawing on Article 5 of the African Charter, which states that “[e]very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”, the court emphasized that “human dignity is an inherent human right to which all human beings are entitled without distinction”.

The court found that vagrancy laws are a “reflection of an outdated and largely colonial perception of individuals without any rights” and violate a person’s right to dignity because it “dehumanizes and degrades individuals with

¹³ Thomson Reuters. 2021. “Practical Law Glossary.” Accessed July 4. Available at [https://uk.practicallaw.thomsonreuters.com/8-107-6896?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/8-107-6896?transitionType=Default&contextData=(sc.Default))

¹⁴ Sheila Wanjiru Kamunyori. 2007. “A growing space for dialogue: the case of street vending in Nairobi’s Central business district.” PhD dissertation. Massachusetts Institute of Technology.

¹⁵ *Ibid.*

¹⁶ Principles on the Decriminalisation of Petty Offences in Africa. 2017.



Abena Konadu is a trader at Tema Lorry Station Market along the footpath to the station in Accra, Ghana. She trades in underwear for children and adults, and has been in this business for the past 20 years. Photo credit: Benjamin Forson

a perceived lower status.” The court relied on another judgment,¹⁷ where it was held that words like “lunatics” and “idiots” are dehumanizing and infringe on citizens’ right to dignity. Vagrancy laws designate individuals as vagabonds, idle, disorderly or rogues, which set vagrants apart from the rest of the population. Such designations violate a person’s right to lead a life with dignity. The court found that this is compounded by their forceful relocation, which denigrates an individual’s dignity as a human being, particularly if accompanied by force. Such force, argued the court, constitutes physical abuse.

The court further noted that at the heart of the right to dignity is the notion that all human beings have a right to enjoy a decent life. It found that the way in which vagrancy laws are enforced interferes with poor individuals’ and marginalized groups’ efforts

to “maintain and build a decent lifestyle or enjoy a lifestyle they pursue”.¹⁸ This finding is particularly significant for hawkers, street vendors and other informal workers who use public spaces to earn their livelihoods.

The right to non-discrimination and equality before the law

Vagrancy laws are usually enforced by police officers who can stop and arrest a person. PALU argued that the vagrancy laws allow police to harass poor individuals, “clear the streets of undesirables” and arrest them. Citing articles 2 and 3 of the African Charter,¹⁹ PALU argued that vagrancy laws are discriminatory because people are targeted for arrest and relocation based on their economic status rather than on their actions.

Ramanathan, a legal scholar, describes the class of persons that vagrancy laws target as status

¹⁷ *Purohit and Moore v The Gambia*. Communication No. 241/2001, Sixteenth Activity report 2002-2003, Annex VII.

¹⁸ *Supra* note 7, at 22.

¹⁹ Article 2 of the African Charter states that, “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.” Article 3 provides that “(1) Every individual shall be equal before the law; (2) Every individual shall be entitled to equal protection of the law.”

offenders: “they offend by being who they are, and not by doing what they do”.²⁰ It is unlikely that an upper middle-class man loitering in a city in the early hours will be prosecuted for being a rogue or a vagabond. The way that the police treat a person depends on the person’s appearance and their class. Turning to how laws are written, the court found that, “*while an eternal attribute of all good laws is that they must always be clear and precise, vagrancy laws often employ vague, unclear and imprecise language.*”²¹ This assumption of criminality also denies poor people their right to be presumed innocent until proven guilty.²² The court stated that expressions such as “having no visible means of support” and “failing to give a good account of oneself” are not evidence of criminal actions.

The court highlights how vague legal language combined with discretionary power conferred on law enforcement officers disproportionately impacts certain sections of society. Indeed, one of the principles of the African Charter is the prohibition of arbitrary arrest without a warrant. The court clearly stated that arrests without warrants for vagrancy-related offences are “*not only a disproportionate response to socio-economic challenges such as poverty but also discriminatory since they target individuals because of their economic status.*”²³

The court found that singling out vagrants from the rest of the population amounts to economic discrimination, in particular against people using public spaces to earn a livelihood:

“...the Court notes that 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. Notably, however, individuals under such

*difficult circumstances are already challenged in enjoying their other rights including more specifically their socio-economic rights. Vagrancy laws, therefore, serve to exacerbate their situation by further depriving them of their right to be treated equally before the law.”*²⁴

In sum, the advisory opinion found vagrancy laws to be incompatible with the human rights enshrined in the African Charter on Human and Peoples’ Rights, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, and the African Charter on the Rights and Welfare of the Child. The court declared that signatories to the Charter have a positive obligation to review all laws and by-laws which provide for vagrancy-related offences and to repeal or amend these laws to comply with the Charter. Although this does not constitute a binding order on state parties, the advisory opinion “carries significant legal weight and moral authority and has the potential to reshape profoundly criminal justice outcomes for the poor and marginalized people in Africa”.²⁵

The opinion highlights the inequalities embedded in the vagrancy laws, their inherent class character and the bias that creeps in when the laws are enforced. In its submission to the court, Burkina Faso argued that governments should respond to vagrancy offences with social rather than penal interventions. Yet, the court failed to articulate that states should assume responsibility for addressing the structural problems of poverty and homelessness, and to build an enabling environment for people working in public spaces.

²⁰ Usha Ramanathan. 2008. “Ostensible poverty, beggary and the law.” *Economic and Political Weekly*: 33-44.

²¹ *Supra* note 7, at 19.

²² *Supra* note 7.

²³ *Supra* note 7, at 20.

²⁴ *Supra* note 7 at Para 70.

²⁵ Pan African Lawyers’ Union. 2021, “African Court rules Vagrancy Laws Unlawful following Filing by PALU for Advisory Opinion” (4 May 2021). Available at <https://lawyersofafrica.org/african-court-rules-vagrancy-laws-unlawful-following-filing-by-palu-for-advisory-opinion/>.

Public space: A contested ground for informal workers

Vagrancy laws and their enforcement are but one manifestation of the contestation around public space. Analyzing competing claims for the use of public space is critical to realizing spatial justice in a city. Vagrancy laws embody both colonial and elites' conception of the public space as a sanitized space, which denies poor residents of the city equal access to public spaces such as streets and parks, and to other collective spaces. In large parts of the developing world, planning, policing and vagrancy legislation reflect a colonial view of streets, street work and street poverty.²⁶ In a colonial context, vagrancy and other petty offences were part of law and order measures and efforts to sanitize urban spaces, which were largely reserved for white people. In southern and arguably parts of east Africa,²⁷ they must be seen against the backdrop of the broad colonial policy of securing the hegemony of settlers' commercial interests by usurping productive resources and exploiting black people's labour.²⁸ To promote this agenda, colonial governments instituted a myriad of laws to suppress indigenous people's economic activities and to force them to work for the settlers.²⁹ Vagrancy laws helped the colonial authorities to control the labour movement and in Zimbabwe (formerly Rhodesia), for example, they invoked these laws to arrest informal vendors operating

in public areas. The advisory opinion also highlights the colonial nature of vagrancy laws.

The spirit of the laws lives on beyond colonial rule. African countries have adopted vagrancy laws that shift the focus from controlling the movement of labour to keeping "undesirables" off the streets.³⁰ In Senegal, this view underpins law 50 of 1967, which lays the foundations for the regulation of informal economic activities in the public space. The preliminary reports prepared by the Ministry of Interior and the Legislative Commission³¹ that accompany the submission of the bill to parliament clearly describe the rationale that guided the drafting of the law as "the need to regulate the disorderly occupation of public space by itinerant traders, porters, street acrobats (*cireurs*), and car guards (*gardiens de voitures*)". The reports note that such activities are "frequently of such a nature to bring serious threat to [the country's] prestige", and are not only inappropriate for its level of development, but are also "dangerously incompatible" with its economic aspirations as a "hospitable country and touristic attraction." The law provides criminal sanctions, including imprisonment, in case of violations of the provisions regulating economic activities. Commenting on the nature of these sanctions, the Ministry's report notes that while the laws are indeed severe, they are adequate to curb the "plague" of this "beggary in disguise." Even now, the decrees

²⁶ In Africa, vagrancy offences can be traced to the 14th century when the Statute of Labourers enacted by Britain made it criminal to give alms to anyone who is able to work and made provisions to curtail the labour movement. These provisions were adopted by criminal codifications such as the English Vagrancy Act of 1824 and the French Penal Code of 1810. See Anneke Meerkotte. 2020. "Litigating to Protect the Rights of Poor and Marginalized Groups in Urban Spaces." *Miami L Rev* 74(U).

²⁷ The control of labour and the suppression of black people's economic activities was less of a concern in West Africa because settler capitalists were largely focused on trade, as opposed to on production. This meant that they needed limited direct labour, which was largely exploited for the construction of major infrastructure. Labour was therefore relatively free and the colonial authorities allowed indigenous people to engage in a range of economic activities and they exploited indigenous labour and extracted surplus through unequal market exchanges with indigenous cash crop producers.

²⁸ Thandika Mkandawire, 'The informal sector in the labour reserve economies of Southern Africa with special reference to Zimbabwe' (1985) Harare: Zimbabwe Institute of Development Studies 16; G C Z Mhone, Conceptual and Analytical Issues. in G C Z Mhone (ed), *The Informal Sector in Southern Africa: An Analysis of Conceptual, Research and Policy Issues* (SAPES Books 1991) 1-20 at 11-12

²⁹ Prior to colonization, the indigenous population engaged in legitimate primary and secondary economic activities including agriculture, mining, minerals processing and beer-brewing. Herbert Ndoro. 1991. "Zimbabwe: The informal sector in a decontrolling formerly 'Socialist' Economy". in G C Z Mhone (ed), *The Informal Sector in Southern Africa: An Analysis of Conceptual, Research and Policy Issues*. SAPES Books: 22,23; F Siddiqui and R S Maya. 1992. "The Development Potential of Small-scale and Informal Sector Enterprises in Zimbabwe." Harare International Labour Office Employment and Manpower Planning Project: 1,4; Thandika Mkandawire. 1985. "The informal sector in the labour reserve economies of Southern Africa with special reference to Zimbabwe." Harare: Zimbabwe Institute of Development Studies: 16,18.

³⁰ William J Chambliss. 2017. *A sociological analysis of the law of vagrancy*. Routledge.

³¹ Commission de la législation, de la justice, de l'administration générale et du règlement intérieur



Informal head porter Aisha Adam transports goods on her head in Kantamanto Market in Accra, Ghana. Working as a kayeyei (head load porter) is rife with challenges. Aisha describes the physical challenges of carrying heavy loads, the low pay, the risks of violence and theft. At night, many kayeyei, due to their inability to afford accommodation, sleep outside or in the marketplace, making them a target for thieves who would steal their day's wages.

Photo credit: Jonathan Torgovnik/Getty Images Reportage

that regulate street vending in Senegal outlaw itinerant vendors,³² a decision that reflects a discriminatory and punitive stance toward informal workers that work in the public space.

While the struggles by organizations of street vendors have resulted in several countries recognizing street vending as a legitimate activity,³³ criminal laws such as the vagrancy offences are still used against street vendors. Begging and loitering, initially conceived of as a public nuisance in law, is now viewed as a criminal act in many cities around the world. The criminalization of street poverty impacts

how public spaces are regulated and policed. Street vendors, waste pickers and other informal workers who use public spaces are constantly under the gaze of the police who are authorized by regulations to maintain law and order. The hostility and discrimination that informal workers experience from the state is manifested in many ways – police harassment, arrests, confiscation of their goods, eviction and the relocation of vendors.³⁴ The advisory opinion provides an opportunity to interrogate and challenge this punitive stance.

³² Decree No 76-018 of January 6, 1976, regulating the sale on streets and public space, Art.2. Articles 3 and 4 of the decree regulate the so-called “*marchands tabliers*”, vendors who sell goods from a stall (a table or a structure attached to the ground). Unlike *marchands ambulants* (itinerant vendors), *tabliers* are allowed to sell on streets and public space provided they obtain the required authorization(s).

³³ India's Street Vendors (Protection of Livelihoods and Regulation of Street Vending) Act No. 7 of 2014. Street vending in Ghana is regulated by the Local Government Act 462 of 1993 which allows local authorities to pass by-laws to regulate street vendors in municipal areas.

³⁴ A study examining reports globally over a three-year period finds evictions and harassment of street vendors to be pervasive. See Sally Roever and Caroline Skinner. 2016. “Street vendors and cities.” *Environment and Urbanization* 28, no. 2: 359-374. <https://www.wiego.org/sites/default/files/publications/files/Roever-Skinner-streetvendors-cities-2016.pdf>

Several studies³⁵ demonstrate the exclusionary practices inherent in much urban planning. While parking spaces and parked cars are not seen as obstructing the movement of traffic, street vendors, who are eking out a livelihood, are consistently targeted by traffic officials, who evict them from their trading space and confiscate their goods.³⁶

Additionally, the policing of public spaces (either by the police or by urban municipal bodies) takes on a distinctly anti-poor slant without respect for due process, since the police know that poor residents have limited access to justice, lack a voice in the city's decision-making and in the everyday production of the public space. Both policy and orthodox urban planning discourse represent streets as sanitized spaces for the elites to use and enjoy, which also informs how urban policing is exercised. This prioritizing of streets for vehicular movement and as cultural spaces, free from chaos and poverty, points to the need for a paradigm shift in the understanding of public space, and the complex negotiation required to regulate public spaces in a manner that takes into account the values of equity, citizenship and representation for all.

Shifting the Narrative: Reconceptualizing the Regulation of Public Space

The advisory opinion reveals how law normalizes discrimination based on status and legitimizes harassment. Although some vagrancy laws have been amended, repealed or challenged through litigation,³⁷ the spirit of these laws live on as they are or in repurposed versions globally. For instance, although several provisions of Britain's Vagrancy Act have been repealed or amended, it is still a crime to "sleep rough or beg."³⁸ In India, several states criminalize begging,³⁹ by defining begging as "having no visible means of subsistence and wandering about or remaining in a public place in such condition or manner as, makes it likely that the person doing so exists by soliciting or receiving alms." In the late 1980s, a shoe shiner with a disability, who was working in Bombay⁴⁰ was presumed to be a beggar and charged under beggary laws. A committee was set up by the Bombay High Court in 1990, when a petition was brought to the Court challenging the arrest of the shoe shiner and the constitutionality of the law. The Committee looked into the procedure followed by the police when arresting people under beggary laws and found that arrests are "made of people who are found on the street in dirty clothes and wandering. They are not actually found begging..."⁴¹ In Canada, vagrancy laws were reconceptualized over time.⁴² The COVID-19 Policing and Homelessness Initiative has mapped over 250 by-laws, which they call the "neo-vagrancy laws," as it revives the purpose

³⁵ Caroline Skinner, Sarah Orleans Reed and Jenna Harvey. 2018. Supporting Informal Livelihoods in Public Space: A Toolkit for Local Authorities. Prepared by WIEGO for the Cities Alliance Joint Work Programme for Equitable Economic Growth in Cities. Manchester, UK: WIEGO.

³⁶ Ibid 28.

³⁷ Anneke Meerkotter. 2020. "Litigating to Protect the Rights of Poor and Marginalized Groups in Urban Spaces." *Miami L Rev*, 74(U).

³⁸ Vagrancy Act 1824. Available at: <https://www.legislation.gov.uk/ukpga/Geo4/5/83/section/4>. In 2018 responding to a campaign to repeal the law, the government said it has no plans to make changes to the law <https://petition.parliament.uk/archived/petitions/205388>.

³⁹ In 2018, the Delhi High Court in W.P.(C)Nos.10498/2009 & 1630/2015, held that it is unconstitutional to treat begging as an offence. While the Delhi High Court decriminalized begging in Delhi in 2018, a constitutional challenge is ongoing at the national level.

⁴⁰ Bombay was renamed as Mumbai in 1995.

⁴¹ *Supra* note 21

⁴² Prashan Ranasinhe. 2010. "Reconceptualizing vagrancy and reconstructing the vagrant: A socio-legal analysis of criminal law reform in Canada, 1953-1972." *Osgoode Hall LJ* 48: 55.

of vagrancy laws. These laws include laws which prohibit loitering, panhandling, obstructing, salvaging, sheltering, resting and sleeping.⁴³ Through this repurposing of vagrancy laws, the practice of criminalizing poverty is continued.

Although informal workers were not the focus of this challenge to vagrancy laws, the interlinkages among the use of public space, discrimination and bias in policing, confiscations, evictions and arrests are experiences shared by those working on the streets as informal workers. For informal worker organizations, their allies and public interest lawyers, the advisory suggests a similar process might be possible to challenge their ubiquitous harassment, arbitrary arrests, the confiscation of their goods and for nuisance and other punitive laws that regulate public spaces to be reviewed and repealed.

In sum, this advisory opinion serves as a useful precedent to decriminalize all legitimate street activities including loitering, waste picking, street vending and sex work. It is the first step in integrating the urban poor into the city space. The availability of the vagrancy laws as omnibus legislations to target those on the streets must cease to exist so that there is greater accountability in the policing process. Moreover, including marginal groups in the decision-making processes of the city, including in the planning process, is critical to widen democratic representation and ensure spatial justice. And finally, colonial histories and perspectives that continue to inform law and policy-making have a bearing on the lives of informal workers. These entrenched narratives need sustained questioning to shift the legal narratives to reflect contemporary democratic values.



Informal worker Iris Lamiorkor runs a snack stand at Kwame Nkrumah Circle Market. Unlike other vendors who sell during the day, Iris works in the late afternoon and evening, targeting the post-business day rush of commuters who travel through Kwame Nkrumah Circle, Accra's largest transport hub. Iris is a member of the Kwame Nkrumah Market affiliate of the national-level Ghana Trade Union Congress, which supports its members at this market by visiting vendor members, assessing their performance in interacting with and gaining customers, and providing supportive feedback. In addition, when members experience problems, such as the seizure and confiscation of their goods by the Accra Metropolitan Assembly, the TUC steps in as a representative to assist them in getting their items back. Photo credit: Jonathan Torgovnik/Getty Images Reportage

⁴³ Joe Hermer and Elliot Fonarev. 2020. "The Mapping of Vagrancy Type Offences in Municipal By-Laws." Available at <https://www.homelesshub.ca/blog/mapping-vagrancy-type-offences-municipal-laws>

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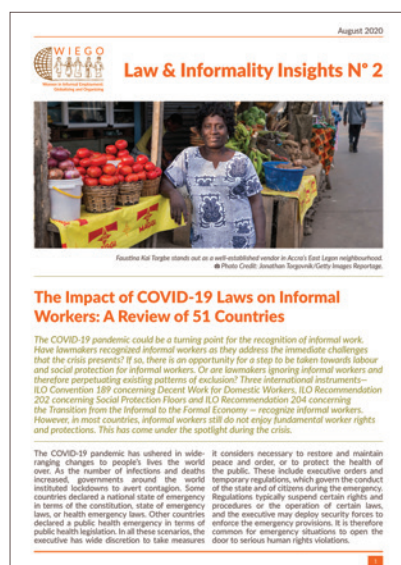


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[Informal Workers Gaining Recognition and Rights as Workers: Recent Publications and Resources.](#)

Law and Informality Insights, No.1

Other language versions: [French](#) | [Spanish](#)



Street vendor in Dakar, Senegal. Photo credit: Dean Saffron

WIEGO's Law Programme strives to see a world in which:

- international instruments, national and local laws and regulations recognize, include and protect the rights and work of informal workers; and
- informal workers know, use and shape the law to realize secure livelihoods and labour rights.

To advance these goals, we seek three mutually reinforcing outcomes at both global and national levels:

Outcome 1: Membership-based organizations of informal workers are better able to use the law (including international legal instruments and administrative justice) in their advocacy strategies.

Outcome 2: Legal and civil society organizations support the recognition, inclusion and protection of informal employment in law and policy at local, international and global levels.

Outcome 3: Legal scholars and labour lawyers advocate for informal workers in their scholarship and in policy contexts.

For more information, visit the Law programme page at <https://www.wiego.org/our-work-impact/core-programmes/law-programme>

