

repeal OUTDATED OFFENCES

OUAGADOUGOU DECLARATION

The Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa of 2003 endorsed recommendations calling for reducing the size of prison populations in Africa.

The Plan of Action recommended “*Decriminalisation of some offences such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents*” as a strategy to reduce the prison population.

Nearly a decade has passed and few countries have made any progress in implementing this strategy endorsed by the African Commission.

Many of the offences identified by the African Commission as ripe for repeal amount to nothing more than the criminalisation of poverty, homelessness, unemployment, or previously having committed an offence.

Tell us about colonial or other unconstitutional offences in your country and the progress made in repealing these laws. Email us on: ppja@communitylawcentre.org.za

ROGUE AND VAGABOND

Rogue and vagabond offences across Africa have their roots in England’s Vagrancy Act of 1824. The offence criminalises various “nuisance” behaviours. For example, the Malawi Penal Code, like many others, provides that the following are rogues and vagabonds:

- every ‘suspected or reputed thief who has no visible means of assistance and cannot give a good account of himself’
- any person found on a road or at a public place ‘at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose’

This gives licence to police to arrest someone who is homeless or poor or is assumed to be a thief who has not caused harm to anyone. The offence may be abused by police. This is against the right not to be detained arbitrarily.

LOITERING

Loitering with intent to participate in a crime is when a person or group is found at a known place of crime, having been seen there for a reasonable time. Similar provisions apply to *loitering for the purposes of prostitution*. Like rogue and vagabond offences, this offence gives police officers a great deal of discretion to arrest a person who has not harmed anyone.

TOUTING

Touting has its origins in English law. Today in England the offence involves the soliciting of custom for *unlicensed* taxis. In African countries the offence in practice appears only to require the soliciting or pestering of potential taxi or other customers e.g. ‘minibus touts’. The licensing status of the vehicle does not appear to be required for the offence. Does touting deserve imprisonment or are there better interventions?

FAILURE TO PAY DEBTS

A judgment debtor is a person against whom a court has issued a money judgment to pay another person. The judgment debtor is ‘in contempt of court’ if he fails to pay up. The usual punishment for contempt of court is imprisonment. Yet detention makes it impossible for the debtor to engage in any work that could allow him to raise money to pay the debt.

PROMOTING PRE-TRIAL JUSTICE IN AFRICA

Promoting Pre-trial Justice in Africa (PPJA) aims to collect and organise information on pre-trial justice in Africa and make this available and accessible to a broad audience of stakeholders in a manner that can inform decision-making and improve practice, thereby promoting pre-trial justice in Africa.

There is a growing body of knowledge and practical experience around pre-trial justice reform projects which, if harnessed, can enhance pre-trial justice in Africa. PPJA aims to be a repository of such knowledge and experience.

The practice of imprisoning debtors goes back to the Roman times. England, from which many East African countries inherited this law, abolished debtor prisons with the Bankruptcy Act of 1869. The United States abolished the practice in 1833. In South Africa, the practice was ruled unconstitutional in 1995.

Article 11 of the *International Covenant on Civil and Political Rights* says: ‘No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.’

PROSTITUTION

Across the world approaches to prostitution (the exchange of sex for money, or sex work) are being reviewed. Sex work in Senegal is legal and regulated. Sex workers must be 21 years old, register with the police, carry a valid card, and test negative for sexually transmitted infections. Exchanging sex for money is legal in Ethiopia and Côte d’Ivoire, but procuring (living off the profits) is illegal. In New Zealand both procuring and prostitution are legalised.

In most of Africa sex work is widespread yet criminalised. Sex workers are often arrested for no more than appearing to be prostitutes or walking alone where prostitution is known to be practised. Police are known to solicit bribes from sex workers to avoid arrest or to rape them when they are arrested. Criminalising sex workers may infringe a number of rights, such as the right to privacy and the right to gender equality.

DISOBEDIENCE TO PARENTS

In some countries it is still possible for children to be arrested, convicted and punished with measures such as public caning for *Asi Al-Walidainor* ‘disobedience to parents’.

Children can be imprisoned even where they have caused no harm. This is against international law relating to the rights of children, which states that imprisonment of children must be a measure of last resort.

Many people in pre-trial detention in Africa are detained for nothing more than being poor or homeless or a ‘nuisance’.

Many of these detainees are charged with offences which do not comply with national Constitutions or international law.

Many will experience terrible conditions, fall ill, or suffer abuse in detention while their families will be without their support.

NOW is the time for African countries to review and repeal outdated offences inherited from colonial times.

EXPLORE
DECRIMINALISATION
NOW!



PPJA is a project of the Civil Society Prison Reform Initiative (CSPRI) of the Community Law Centre of the University of the Western Cape (South Africa) and is supported by the Open Society Foundations Rights Initiative Global Criminal Justice Fund.

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