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REVISITING VAGRANCY AND LOITERING PROVISIONS IN THE LIGHT OF INTERNATIONAL LAW

Abstract:

As part of the colonial heritage of Africa, vagrancy laws criminalising idleness and disorderliness still form part of existing legislation. These laws originated in England's Vagrancy Act of 1824 and remain in the penal codes and by-laws (prohibiting loitering) of former British colonies. Globally, vagrancy laws subsequently became the subject of constitutional scrutiny due to their tendency to typify a specific action or inaction as illegal and to criminalize, as Ocozbek notes, the "personal condition, state of being, and social and economic status" of offenders.

With the adoption of The Principles on the Decriminalisation of Petty Offences by the African Commission on Human and Peoples' Rights by the African Commission on Human and Peoples' Rights in November 2017, the reconsideration of vagrancy and loitering has become immanent to African legislators. Vagrancy laws are still entrenched in African penal codes stemming from the colonial era. These laws provide for the arrest of street vendors, beggars, street kids, homeless people, and sex workers. In South Africa, vagrancy legislation was used during the 19th and 20th century but the body of law has been repealed. However, petty offences are still prohibited by by-laws pertaining to issues such as nuisance, noise, street trading and littering in a city. In particular, petty offences may refer to bathing or washing in public; urinating or defecating in public; using abusive or threatening language in public; drunken behaviour; fighting or acting in a riotous manner in public; and drying or spreading laundry in a public place or on a fence on the boundary of a public road.

In this paper I will investigate the implications of international law (regional and other international instruments as well as soft law) in terms of the obligations created with specific focus on vagrancy and loitering provisions. These provisions are suspect because of their origin in ideologies aimed at controlling labour and space and do not reflect the commitment of member states to promote and protect human and peoples' rights. In particular, I want to focus on the provisions governing the use of public space.

Keywords:

loitering, vagrancy, International law, human rights, public space, colonial legislation

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