

VAGRANCY AND VAGRANCY-TYPE LAWS IN COLONIAL HISTORY AND TODAY

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INTRODUCTION

This report has three sections. The first provides a brief overview of the historical evolution of vagrancy laws. Historically, vagrancy laws were used, explicitly and implicitly, to penalize a wide range of activities and ways of being, including: poverty; begging; homelessness; moving around, including at night; drunkenness; sex work; public gambling; fortune-telling and other forms of predictive or minority religious activity; public indecency; homosexual activity, cross-dressing and others transgressions of hetero-normative conduct; oppositional social and political advocacy; and simply being suspicious. As the extent of this list suggests, in addition to constituting a substantive penalization of certain forms of conduct and ways of being, vagrancy laws served to expand the discretionary power of state authorities and the police, including their power over the poorest and most vulnerable segments of the population in particular. Understanding the history of vagrancy laws is important in order to understand how such legal orders evolved and the purposes to which such laws were put. Recognizing the injustice, inequality and exploitation inherent in that history should serve to delegitimize and support the reform of such laws, as and where they remain on the books today. It should also serve as a reminder of the extensive rights violations that were committed as part of the colonial process, the legacy of which is ongoing and for which adequate reparations have not yet been provided.

The second section of the report details vagrancy and vagrancy-type laws currently on the books in the jurisdictions covered. This section considers six former European empires in turn: the British, French, Portuguese, Spanish, Dutch and Belgian. In the jurisdictions covered, contemporary vagrancy laws, together with a few related ‘vagrancy-type’ laws, are laid out. ‘Vagrancy-type’ laws, for the purposes of this report, is a category that refers to laws which, while they do not explicitly refer to ‘vagrants’ or ‘vagabonds’ as vagrancy laws do, are substantively very close to such laws, targeting either (1) loitering; (2) begging; (3) homelessness; or (4) generally grating the police discretionary power to conduct arrests. While the coverage of this report is extensive, it is not comprehensive, due to both access to information and resource constrains as well as the breadth of the legal and institutional measures that may be considered part of the legacy of vagrancy and vagrancy-type laws. As such, while all the measures detailed below are in need of reform, and while steps to remove these laws from the books would be positive, it is important to underscore that reformers should not only address the laws mentioned but all laws that may be understood as part of the vagrancy law legacy, including vagrancy and vagrancy-type laws not explicitly mentioned as well as other measures that, while they may be more reasonable on their face, are put to similar uses in practice.¹

The third section of the report lays out various different manners in which vagrancy laws violate human rights obligations. In particular, the section considers the manner in which vagrancy laws violate the rights to equality before the law, a fair trial, liberty, security, dignity, to be free from cruel, inhuman or degrading treatment or punishment, freedom of movement, freedom of expression, equality, and to be free from discrimination. As this extensive list indicates, vagrancy and vagrancy-type laws are an archetypal example of an intersectional rights violation, insofar as vagrancy laws violate numerous different sorts of rights obligation in numerous interconnected ways. Vagrancy and vagrancy-type laws also constitute an intersectional form of rights violation insofar as such laws have been and continue to be used in a manner discriminatory not only against the poor but also against racial, ethnic and religious minorities, women, children and LGBTQ communities.

¹ Including for example measures penalizing nuisance, obstruction, gang activity and disorderly conduct, where those measures enable arbitrary, discriminatory penalizations to be employed.

I. A BRIEF HISTORY OF VAGRANCY AND VAGRANCY-TYPE LAWS IN WESTERN EUROPE AND THE EUROPEAN COLONIAL CONTEXT

I.1 *The Early Modern Period*

Vagrancy laws have a long history. In the British context, such laws are normally traced back to the mid-fourteenth century Statutes of Labourers, passed in the wake of the Black Death.² Those laws penalized the out of work and the itinerant poor, and limited workers' ability to bargain over the terms of their employment—key features of the vagrancy law tradition. Many similar laws were passed over subsequent centuries.³ Those laws took on a more distinctly modern form in the eighteenth century, including by targeting individuals categorized under such headings as the “idle and disorderly,” “vagabonds and rogues” and “incorrigible rogues.”⁴

Vagrancy laws were passed in continental European countries as well. In Portugal, such laws can be traced to the 1211 diploma of D. Alfonso II, which allowed for the expulsion of the idle, with further developments in the fourteenth century onwards similar to those in Britain.⁵ Gypsies were among those particularly targeted by such laws.⁶ In France, the Black Death was followed by laws similar to those adopted in England, which were similarly maintained and modified over time.⁷ The

² See 23 Edw. III (1349); 25 Edw. III s. 2 (1351). For more, see Larry Poos, *The Social Context of Statute of Labourers Enforcement*, 1 LAW & HIST. REV. 27 (1983); E. B. Fryde, *Peasant Rebellion and Peasant Discontents*, in AGRARIAN HISTORY OF ENGLAND AND WALES VOL. 3 (1348-1500) 755 (Edward Miller ed., 1991); Kellie Robertson, THE LABORER'S TWO BODIES: LABOR AND THE “WORK” OF THE TEXT IN MEDIEVAL BRITAIN, 1350-1500 (2006); Samuel Cohn, *After the Black Death: labour legislation and attitudes towards labour in late-medieval western Europe*, 60 ECON. HIST. REV. 457 (2007); A. L. Beier, “A New Serfdom”: Labour Laws, Vagrancy Statutes, and Labour Discipline in England, 1350-1800, in CAST OUT: VAGRANCY AND HOMELESSNESS IN GLOBAL AND HISTORICAL PERSPECTIVE 43 (A. L. Beier & Paul Ocobock eds., 2008).

³ See 1 Rich. II c. 6 (1377); 2 Rich. II. c. 8 (1378); 7 Rich. II c. 5 (1383); 12 Rich II c. 3 (1388); 2 Hen. V (1414); 11 Hen. VII c. 2 (1494); 19 Hen. VII c. 12 (1503); 22 Hen. VIII c. 12 (1530); 27 Hen. VIII c. 25 (1535); 1 Edw. VI c. 3 (1547); 14 Eliz. I c. 5 (1572); 18 Eliz. I c. 3 (1576); 39 Eliz. I c. 4 (1597); 7 James I c. 4 (1609); 13 & 14 Car. II c. 12 (1662). For more, see C.S.L. Davies, *Slavery and the Protector Somerset: The Vagrancy Act of 1547*, 19 ECON. HIST. REV. 533 (1966); John Pound, POVERTY AND VAGRANCY IN TUDOR ENGLAND (1971); A. L. Beier, *Vagrants and the Social Order in Elizabethan England*, 64 PAST & PRESENT 3 (1974); Paul Slack, *Vagrants and Vagrancy in England, 1598-1664*, 27 ECON. HIST. REV. 374 (1974); A. L. Beier, MASTERLESS MEN: THE VAGRANCY PROBLEM IN ENGLAND, 1560-1640 (1985); Philip Verran Thomas, *Vagrancy in Elizabethan England and the Response of the Privy Council, with Particular Reference to Five Towns* (Master's Thesis, University of Adelaide, 1994); Linda Woodbridge, VAGRANCY, HOMELESSNESS, AND ENGLISH RENAISSANCE LITERATURE (2001); Craig Dionne & Steve Mentz eds., ROGUES AND EARLY MODERN ENGLISH CULTURE (2004); David Cressy, *Trouble with Gypsies in early modern England*, 59 HIST. J. 1 (2016); David Hitchcock, “Punishment Is All the Charity that the Law Affordeth Them”: Penal Transportation, Vagrancy, and the Charitable Impulse in the British Atlantic, c.1600-1750, 12 NEW GLOBAL STUD. 195 (2018).

⁴ See 13 Anne c. 26 (1714); 13 Geo. II c. 24 (1740); 17 Geo. II c. 5 (1744); 32 Geo. III c. 45 (1792). For more, see Nicolas Rogers, *Vagrancy, Impressment and the Regulation of Labour in Eighteenth-Century Britain*, 15 SLAVERY & ABOLITION 102, 104 (1994); Audrey Eccles, VAGRANCY IN LAW AND PRACTICE UNDER THE OLD POOR LAW (2012); Sarah Nicolazzo, *Henry Fielding's The Female Husband and the Sexuality of Vagrancy*, 55 THE EIGHTEENTH CENTURY 335 (2014); Sarah Nicolazzo, *Vagrant Figures: Law, Labor, and Refusal in the Eighteenth-Century Atlantic World*, PhD Dissertation (University of Pennsylvania, 2014); David Hitchcock, VAGRANCY IN ENGLISH CULTURE AND SOCIETY, 1650-1750 (2016).

⁵ For more, see Laurinda Abreu, *Beggars, Vagrants and Romanies: Repression and Persecution in Portuguese Society (14th-18th Centuries)*, 6 HYGENIA INTERNATIONALIS: INTERDISCIPLINARY J. HIST. PUB. HEALTH 41 (2007).

⁶ See Jose Gabriel Pereira Bastos & Susana Pereira Bastos, *Gypsies (Ciganos) in Portugal Today*, 8 STUDIA EUROPAEA 99 (2000); Laurinda Abreu, *Beggars, Vagrants and Romanies: Repression and Persecution in Portuguese Society (14th-18th Centuries)*, 6 HYGENIA INTERNATIONALIS: INTERDISCIPLINARY J. HIST. PUB. HEALTH 41, 54-62 (2007).

⁷ See Emanuel Chill, *Religion and Mendacity in Seventeenth-Century France*, 7 INT'L REV. SOC. HIST. 400 (1962). For more, see Olwen Hufton, *Begging, vagrancy, vagabondage and the law: An aspect of the problem of poverty in eighteenth-century France*, 2 EUR. STUD. REV. 97 (1972); Olwen Hufton, THE POOR OF EIGHTEENTH-CENTURY FRANCE, 1750-1789 (1974); Natalie Davis,

Portuguese, Spanish, French and Dutch all exported both vagrants and vagrancy law to their colonies, moreover.⁸

1.2 The Nineteenth Century Through the 1960s

In 1824, a new Vagrancy Act was passed in England.⁹ The act, which has been enormously influential around the world, both drew on and developed the vagrancy law tradition. In addition to penalizing ‘idleness,’ itinerancy and begging, the act consolidated the gradual expansion in coverage that had been underway over the last century, by penalizing family deserters, unlicensed peddlars, sex workers, public gambling, public indecency, fortune-tellers, and those simply deemed suspicious as ‘vagrants’ as well.¹⁰ The moral opprobrium attached to being poor and unemployed was thus connected to the moral opprobrium attached to sex work, gambling, public indecency and the like, augmenting the sense of social threat attached to each.

The model set by the 1824 Vagrancy Act spread all over the British Empire, where it was used to accomplish a range of purposes, including to enhance labor control in the wake of the abolition of slavery, enforce respectability, and police urban streets and boundaries.¹¹ The wide-ranging

Poor relief, humanism, and heresy, in SOCIETY AND CULTURE IN EARLY MODERN FRANCE (Natalie Davis ed., 1975); Robert Schwartz, *POLICING THE POOR IN EIGHTEENTH-CENTURY FRANCE* (1988); William Olejniczak, *Working the Body of the Poor: The Atelier de Charité in Late Eighteenth-Century France*, 24 J. SOC. HIST. 89 (1990); Robert Jutte, *POVERTY AND DEVIANCE IN EARLY MODERN EUROPE* (1994); Martin Klein, *SLAVERY AND COLONIAL RULE IN FRENCH WEST AFRICA* (1998).

⁸ For more, see Gabriel Haslip-Viera, *CRIME AND PUNISHMENT IN LATE COLONIAL MEXICO CITY, 1692-1810* (1999); Richard Warren, *Mass Mobilization versus Social Control: Vagrancy and Political Order in Early Republican Mexico, in RECONSTRUCTING CRIMINALITY IN LATIN AMERICA* (Carlos Aguirre & Robert Buffington eds., 2000); Sabine MacCormack, *Social Conscience and Social Practice: Poverty and Vagrancy in Spain and Early Colonial Peru, in HOME AND HOMELESSNESS IN THE MEDIEVAL AND RENAISSANCE WORLD* (Nicholas Howe ed., 2004); Richard Warren, *VAGRANTS AND CITIZENS: POLITICS AND THE MASSES IN MEXICO CITY FROM COLONY TO REPUBLIC* (2nd ed., 2007); Michelle McKinley, *Fractional Freedoms: Slavery, Legal Activism, and Ecclesiastical Courts in Colonial Lima, 1593-1689*, 28 LAW & HIST. REV. 749, 785 (2010); Timothy Coates, *The Long View of Convict Labour in the Portuguese Empire, 1415-1932*, in *GLOBAL CONVICT LABOUR* (Christian Giuseppe De Vito & Alex Lichtenstein eds., 2015); Timothy Coates, *The Portuguese Empire, 1100-1932*, Christian Giuseppe De Vito, *The Spanish Empire, 1500-1898*, Jean-Lucien Sanchez, *The French Empire, 1542-1976* and Matthias van Rossum, *The Dutch East India Company in Asia, 1595-1811*, all in *A GLOBAL HISTORY OF CONVICTS AND PENAL COLONIES* (Clare Anderson ed., 2018); Eva Maria Mehl, *Poverty, punishment, and the Enlightenment in the Spanish empire, in THE ROUTLEDGE COMPANION TO THE HISPANIC ENLIGHTENMENT* (Elizabeth Franklin Lewis et al. eds., 2019).

⁹ For more on the history of the 1824 vagrancy act and related legal developments, see Martin Wiener, *RECONSTRUCTING THE CRIMINAL: CULTURE, LAW, AND POLICY IN ENGLAND, 1830-1914* (1990); Bruce Smith, *The Presumption of Guilt and the English Law of Theft, 1750-1850*, 23 LAW & HIST. REV. 146 (2005); Christopher Frank, *MASTER AND SERVANT LAW: CHARTISTS, TRADE UNIONS, RADICAL LAWYERS AND THE MAGISTRACY IN ENGLAND, 1840-1865* (2010); David Philips, *Crime, law and punishment in the Industrial Revolution, in THE INDUSTRIAL REVOLUTION AND BRITISH SOCIETY 166-9* (Patrick O'Brien & Ronald Quinault eds., 2012); Andrew McLeod, *On the Origins of Consorting Laws*, 37 MELBOURNE U.L. REV. 103 (2013); Paul Lawrence, *The Vagrancy Act (1824) and the Persistence of Pre-Emptive Policing in England Since 1750*, 57 BRIT. J. CRIMINOLOGY 513 (2017); Danielle Boaz, *Fraud, Vagrancy and the ‘Pretended’ Exercise of Supernatural Powers in England, South Africa and Jamaica*, 5 LAW & HIST. 55 (2018).

¹⁰ See 5 Geo. IV c. 83 (1824).

¹¹ For more on vagrancy laws’ expansion around the British Empire in the early nineteenth century and related developments, see William Green, *James Stephen and British West India Policy, 1834-1847*, 13 CARIBBEAN STUD. 33 (1974); David Arnold, *European orphans and vagrants in India in the Nineteenth century*, 7 J. IMPERIAL & COMMONWEALTH HIST. 104 (1979); O. Nigel Bolland, *Systems of Domination after Slavery: The Control of Land and Labour in the British West Indies after 1838*, 23 COMP. STUD. SOCIETY & HIST. 591 (1981); Susan Campbell, *Carnival, Calypso, and Class Struggle in Nineteenth Century Trinidad*, 26 HIST. WORKSHOP 1 (1988); Norman Etherington, *Natal’s Black Rape Scare of the 1870s*, 15 J. SOUTHERN

penalizations incorporated under a single heading by the 1824 act made it easy to add new penalizations where deemed appropriate; public drunkenness became a standard inclusion, along with some regionally-specific penalizations, such as the penalizations of obeah (and later cross-dressing) in certain Caribbean territories.¹² In the United States as in the British Empire, reliance on vagrancy laws was expanded after emancipation.¹³

Vagrancy laws expanded rapidly over the early to mid-nineteenth century, and remained frequently revised and augmented and heavily enforced as the nineteenth century gave way to the twentieth.¹⁴ In the 1930s vagrancy law in Britain came under at least a degree of challenge, thanks in

AFRICAN STUD. 1 (1988); Robert Ross, *Emancipations and the economy of the Cape Colony*, 14 SLAVERY & ABOLITION 131 (1993); Paula Byrne, CRIMINAL LAW AND COLONIAL SUBJECT: NEW SOUTH WALES, 1810-1830 (1993); Joy Damousi, "Depravity and Disorder": *The Sexuality of Convict Women*, 68 LABOUR HIST. 30 (1995); Anthony De V. Philips, *Emancipation Betrayed: Social Control Legislation in the British Caribbean (with Special Reference to Barbados), 1834-1876*, 70 CHICAGO-KENT L. REV. 1349 (1995); Robert Shelton, *A modified crime: The apprenticeship system in St. Kitts*, 16 SLAVERY & ABOLITION 331 (1995); Radhika Singha, A DESPOTISM OF LAW: CRIME AND JUSTICE IN EARLY COLONIAL INDIA (1998); Aravind Ganachari, *White Man's Embarrassment: European Vagrancy in 19th Century Bombay*, 37 ECON. & POL. WKLY. 2477 (2002); Jeremy Martens, *Polygamy, Sexual Danger and the Creation of Vagrancy Legislation in Colonial Natal*, 31 J. IMPERIAL & COMMONWEALTH HIST. 24 (2003); Douglas Hay & Paul Craven eds., MASTERS, SERVANTS, AND MAGISTRATES IN BRITAIN AND THE EMPIRE, 1562-1955 (2004); A. L. Beier & Paul Ocock eds., CAST OUT: VAGRANCY AND HOMELESSNESS IN GLOBAL AND HISTORICAL PERSPECTIVE (2008); Natasha Lightfoot, TROUBLING FREEDOM: ANTIGUA AND THE AFTERMATH OF BRITISH EMANCIPATION (2015).

¹² For more, see Diana Paton, THE CULTURAL POLITICS OF OBEAH: RELIGION, COLONIALISM AND MODERNITY IN THE CARIBBEAN WORLD 122 (2015); Danielle Boaz, *Fraud, Vagrancy and the 'Pretended' Exercise of Supernatural Powers in England, South Africa and Jamaica*, 5 LAW & HIST. 55 (2018); Janeille Zorina Matthews & Tracy Robinson, *Modern Vagrancy in the Anglophone Caribbean*, 1 CARIBBEAN J. CRIMINOLOGY 123 (2019).

¹³ For more, see See also W.E.B. Du Bois, BLACK RECONSTRUCTION IN AMERICA, 1860-1880 (1962 (originally published 1935)); Theodore Brantner Wilson, THE BLACK CODES OF THE SOUTH (1965); William Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 J. SOUTHERN HIST. 31 (1976); Pete Daniel, *The Metamorphosis of Slavery, 1865-1900*, 66 J. AM. HIST. 88 (1979); Eric Foner, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1977 (1988); Ralph Shlomowitz, *Planter combinations and black labour in the American South, 1865-1880*, 9 SLAVERY & ABOLITION 72 (1988); William A. Cohen, AT FREEDOM'S EDGE: BLACK MOBILITY AND THE SOUTHERN WHITE QUEST FOR RACIAL CONTROL, 1861-1915 (1991); Amy Dru Stanley, *Beggars Can't Be Choosers: Compulsion and Contract in Postbellum America*, 78 J. AM. HIST. 1265 (1992).

¹⁴ For more, see James Pitsula, *The Treatment of Tramps in Late Nineteenth-Century Toronto*, 15 HIST. PAPERS/COMMUNICATIONS HISTORIQUES 116 (1980); Frederick Cooper, FROM SLAVES TO SQUATTERS: PLANTATION LABOR AND AGRICULTURE IN ZANZIBAR AND COASTAL KENYA, 1890-1925 (1980); Jim Phillips, *Poverty, Unemployment, and the Administration of Criminal Law: Vagrancy Laws in Halifax, 1864-1890*, in ESSAYS IN THE HISTORY OF CANADIAN LAW: NOVA SCOTIA (Philip Girard & Jim Phillips eds., 1990); William A. Cohen, AT FREEDOM'S EDGE: BLACK MOBILITY AND THE SOUTHERN WHITE QUEST FOR RACIAL CONTROL, 1861-1915 (1991); Amy Dru Stanley, *Beggars Can't Be Choosers: Compulsion and Contract in Postbellum America*, 78 J. AM. HIST. 1265 (1992); Paul Lovejoy & Jan Hogendorn, SLOW DEATH FOR SLAVERY: THE COURSE OF ABOLITION IN NORTHERN NIGERIA (1993); Walton Look Lai, INDENTURED LABOR, CARIBBEAN SUGAR: CHINESE AND INDIAN MIGRANTS TO THE BRITISH WEST INDIES, 1838-1918 (1993); David Montgomery, *Wage Labour, Bondage, and Citizenship in Nineteenth-Century America*, 48 INT'L LABOUR HIST. 6 (1995); David Bright, *Loafers are not going to Subsist upon Public Credulence: Vagrancy and the Law in Calgary, 1900-1914*, 36 LABOUR/LE TRAVAIL 37 (1995); Mike Ener, *Prohibitions on Begging and Loitering in Nineteenth-Century Egypt*, 39 DIE WELT DES ISLAM 319 (1999); Robert Gordon, *Unsettled Settlers: Pacification and Vagrancy in Namibia*, in ETHNOGRAPHY IN UNSTABLE PLACES: EVERYDAY LIVES IN CONTEXTS OF DRAMATIC POLITICAL CHANGE (Carol Greenhouse, Elizabeth Merts & Kay Warren eds., 2002); Alex Steel, *Consorting in New South Wales: Substantive Offence or Police Power?*, 26 UNSW L.J. 567 (2003); Ahmed White, *A Different Kind of Labor Law: Vagrancy Law and the Regulation of Harvest Labor, 1913-1924*, 75 U. COLORADO L. REV. 667 (2004); Douglas Hay & Paul Craven eds., MASTERS, SERVANTS, AND MAGISTRATES IN BRITAIN AND THE EMPIRE, 1562-1955 (2004); A. L. Beier & Paul Ocock eds., CAST OUT: VAGRANCY AND HOMELESSNESS IN GLOBAL AND HISTORICAL PERSPECTIVE (2008); Prashan Ranasinhe, *Reconceptualizing Vagrancy and Reconstructing the Vagrant: A Socio-Legal Analysis of Criminal Law Reform in Canada, 1953-1972*, 48 OSGOODE HALL L.J. 55 (2010); Robert Home, *Township Laws and Urban Governance in Kenya*, 56 J. AFRICAN L. 175 (2012); Julie Kimber, *Poor Laws: A Historiography of Vagrancy in Australia*, 11

significant part to the work of the National Council for Civil Liberties.¹⁵ In *Ledwith v. Roberts* the Court of Appeal found that police arrest of a person who spent 25 minutes in a telephone booth in Liverpool, on the grounds that he was a suspicious person preparing to rob the phone, was ill-founded.¹⁶ This decision was sharply narrowed by *Rawlings v. Smith*, however, in which the High Court found the police had been justified arresting a man on suspicion after he tried several car door handles.¹⁷ Vagrancy laws remained an integral part of legal orders around the British Empire as well, despite the rise of the International Labor Organization and gestures towards labor reform in the colonial context.

The history of vagrancy laws in Britain and the British Empire was paralleled in other European colonial states. In addition to continuing to utilize vagrancy laws in Portugal—including as justification for the exportation of convict labor—such laws were exported to and picked up around the Portuguese world.¹⁸ In Brazil, for instance, vagrancy laws were relied upon for various purposes both prior to and following the abolition of slavery.¹⁹ In Spain, vagrancy laws remained relied upon throughout the nineteenth century, before intensifying under Franco’s dictatorship in the twentieth century.²⁰ In the Spanish colonies, successful nineteenth century independence movements did little to diminish the perceived social utility of vagrancy laws.²¹ In France, measures to address the vagrancy

HIST. COMPASS 537 (2013); Andrew McLeod, *On the Origins of Consorting Laws*, 37 MELBOURNE U.L. REV. 103 (2013); Paul Lawrence, *The Vagrancy Act (1824) and the Persistence of Pre-Emptive Policing in England Since 1750*, 57 BRIT. J. CRIMINOLOGY 513 (2017); Shani Roper, “A Depraved Class”: *Regulating Juvenile Delinquency through Legislation in Colonial Jamaica 1881-1904*, 10 J. HIST. CHILDHOOD & YOUTH 62 (2017); Janeille Zorina Matthews & Tracy Robinson, *Modern Vagrancy in the Anglophone Caribbean*, 1 CARIBBEAN J. CRIMINOLOGY 123 (2019).

¹⁵ For more on the NCCL, see Brian Dyson, *Liberty in Britain 1934–1994: a diamond jubilee history of the National Council for Civil Liberties* (1994); André Keil, *The National Council for Civil Liberties and the British State during the First World War, 1916-1919*, 134 ENGLISH HIST. REV. 620 (2019).

¹⁶ *Ledwith v. Roberts* [1936] 3 All E.R. 570 (C.A.).

¹⁷ *Rawlings v. Smith* [1938] 1 K.B. 675.

¹⁸ For more, see Gerald Bender, *ANGOLA UNDER THE PORTUGUESE: THE MYTH AND THE REALITY* 151 (1978); Deirdre Meintel, *RACE, CULTURE AND PORTUGUESE COLONIALISM IN CAPE VERDE* 128 (1984); Gervase Clarence-Smith, *THE THIRD PORTUGUESE EMPIRE, 1825-1975: A STUDY IN ECONOMIC IMPERIALISM* (1985); Timothy Coates, *The Long View of Convict Labour in the Portuguese Empire, 1415-1932*, in *GLOBAL CONVICT LABOUR* (Christian Giuseppe De Vito & Alex Lichtenstein eds., 2015); Lisa Åkesson, *Narrating São Tomé: Cape Verdean memories of contract labour in the Portuguese empire*, 20 ETHNOGRÁFICA 57, para. 19 (2016); Timothy Coates, *The Portuguese Empire, 1100-1932*, in *A GLOBAL HISTORY OF CONVICTS AND PENAL COLONIES* (Clare Anderson ed., 2018); Timothy Coates, *The Depósito de Degredados in Luanda, Angola: Binding and Building the Portuguese Empire with Convict Labour, 1880s to 1932*, 63 INT’L REV. SOC. HIST. 151 (2018).

¹⁹ For more, see Martha Knisely Huggins, *FROM SLAVERY TO VAGRANCY IN BRAZIL: CRIME AND SOCIAL CONTROL IN THE THIRD WORLD* (1985); Thomas Holloway, *Doing Favors for Street People: Official Responses to Beggars and Vagrants in Nineteenth-Century Rio de Janeiro*, in *CAST OUT: VAGRANCY AND HOMELESSNESS IN GLOBAL AND HISTORICAL PERSPECTIVE* 168 (A. L. Beier & Paul Ocozbek eds., 2008); Leriche de Castro Garzoni, *At the Borders of Non-Work: Poor Female Workers and Definitions of Vagrancy in Early Twentieth-Century Rio de Janeiro*, 60 INT’L REV. SOC. HIST. 193 (2015).

²⁰ For more, see Jean-Louis Guereña, *Prostitution and the Origins of the Governmental Regulatory System in Nineteenth-Century Spain: The Plans of the Trienio Liberal, 1820-1823*, 17 J. HIST. SEXUALITY 216 (2008); Ibai Atutxa, *Toxic Criminalities in Francoist Spain: The Making of a European Dictatorship*, PhD Dissertation (Columbia University, 2018).

²¹ For more, see Richard Slatta, *Rural Criminality and Social Conflict in Nineteenth-Century Buenos Aires Province*, 60 HISPANIC AMERICAN HIST. REV. 450 (1980); Erick Detlef Langer, *ECONOMIC CHANGE AND RURAL RESISTANCE IN SOUTHERN BOLIVIA, 1880-1930* (1989); David McCreery, *Wage Labor, Free Labor, and Vagrancy Laws: The Transition to Capitalism in Guatemala, 1920-1945*, in *COFFEE, SOCIETY, AND POWER IN LATIN AMERICA* (William Roseberry et al. eds., 1995); Tulio Halperín Donghi, *The Buenos Aires Landed Class and the Shape of Argentine Politics 1820-1930* and Frank Safford, *Agrarian Systems and the State: The Case of Colombia*, both in *AGRARIAN STRUCTURE AND POLITICAL POWER: LANDLORD AND PEASANT IN THE MAKING OF LATIN AMERICA* (Evelyn Huber & Frank Safford eds., 1995); Jeffrey Gould, “*Vana Ilusión!*”: *The Highlands Indians and the Myth of Nicaragua Mestiza, 1880-1925* and Richard Turits, *The Foundations of Despotism: Agrarian Reform, Rural Transformation, and Peasant-State Compromise in Trujillo’s Dominican Republic, 1930-1944*, all in *IDENTITY AND STRUGGLE AT THE MARGINS OF THE NATION-STATE: THE LABORING PEOPLES OF CENTRAL AMERICA AND THE HISPANIC CARIBBEAN* (Aviva Chomsky & Aldo Lauria-Santiago eds., 1998); Christopher Schmidt-Nowara, *EMPIRE AND*

problem intensified in the late nineteenth century.²² In the French Empire, vagrancy law remained essential through decolonization.²³ In Holland, vagrants began being sent to labor colonies in 1818.²⁴

I.3 The Post-World War II Period

ANTISLAVERY: SPAIN, CUBA, AND PUERTO RICO, 1833-1874 (1999); Lauren Benton, “*The Laws of This Country*”: *Foreigners and the Legal Construction of Sovereignty in Uruguay, 1830-1875*, 19 *LAW & HIST. REV.* 479, 507 (2001); Ricardo Donato Salvatore, *WANDERING PAYSANOS: STATE ORDER AND SUBALTERN EXPERIENCE IN BUENOS AIRES DURING THE ROSAS ERA* (2003); Arlene Díaz, *FEMALE CITIZENS, PATRIARCHS, AND THE LAW IN VENEZUELA, 1786-1904* 132-49 (2004); Astrid Cubano-Iguina, *Legal Constructions of Gender and Violence Against Women in Puerto Rico Under Spanish Rule, 186-1895*, 22 *LAW & HIST. REV.* 531, 536 (2004); Thomas Percy, *THE HISTORY OF CENTRAL AMERICA* (2006); Luis Álvarez-López, *THE DOMINICAN REPUBLIC AND THE BEGINNING OF A REVOLUTIONARY CYCLE IN THE SPANISH CARIBBEAN, 1861-1898* 61-73 (2009); April Mayes, *Tolerating Sex: Prostitution, Gender, and Governance in the Dominican Republic, 1880s-1924*, in *HEALTH AND MEDICINE IN THE CIRCUM-CARIBBEAN, 1800-1968* (Juanita De Barros et al. eds., 2009); Adriana Sánchez Lovell, *Vagrancy as a Problem: A Theoretical Approach to Costa Rica’s Experience Using History from Below*, 17 *DIÁLOGOS* 161 (2016); Christian Giuseppe De Vito, *The Spanish Empire, 1500-1898*, in *A GLOBAL HISTORY OF CONVICTS AND PENAL COLONIES* (Clare Anderson ed., 2018); Christian Giuseppe De Vito, *Punitive Entanglements: Connected Histories of Penal Transportation, Deportation, and Incarceration in the Spanish Empire (1830s-1898)*, 63 *INT’L REV. SOC. HIST.* 169 (2018). From time to time progressive governments in the Americas challenged vagrancy law. Vagrancy laws were repealed after Mosquera’s victory in the 1860-63 civil war in Colombia, for instance, but the law became more punitive again following a conservative coup in 1878-9. See Forrest Hylton, *EVIL HOUR IN COLOMBIA* 18-21 (2006).

²² See Timothy Smith, *Assistance and Repression: Rural Exodus, Vagabondage and Social Crisis in France, 1880-1914*, 32 *J. SOC. HIST.* 821 (1999). For more, see Stuart Woolf, *THE POOR IN WESTERN EUROPE IN THE EIGHTEENTH AND NINETEENTH CENTURIES* (1986); Paul Lawrence, *The Police and Vagrants in France and England during the Nineteenth Century*, in *POLIZIA, ORDINE PUBBLICO E CRIMINE TRA CITTÀ E CAMPAGNA: UN CONFRONT COMPARATIVO* (Livio Antonielli ed., 2011).

²³ See Alexander Keese, *Slow Abolition within the Colonial Mind: British and French Debates about “Vagrancy”, “African Laziness”, and Forced Labour in West central and South Central Africa, 1945-1965*, 59 *INT’L REV. SOC. HIST.* 277 (2014); Alexander Keese, *Hunting “Wrongdoers” and “Vagrants”: The Long-Term Perspective of Flight, Evasion, and Persecution in Colonial and Postcolonial Congo-Brazzaville, 1920-1980*, 44 *AFRICAN ECON. HIST.* 152 (2016).

²⁴ See Paul Ocobock, *Introduction: Vagrancy and Homelessness in Global and Historical Perspective*, in *CAST OUT: VAGRANCY AND HOMELESSNESS IN GLOBAL AND HISTORICAL PERSPECTIVE* 24 (A. L. Beier & Paul Ocobock eds., 2008). For more on Dutch vagrancy laws in the late eighteenth and nineteenth centuries see Frances Gouda, *POVERTY AND POLITICAL CULTURE: THE RHETORIC OF SOCIAL WELFARE IN THE NETHERLANDS AND FRANCE, 1815-1854* (1995); Marian Weevers et al., *Swept up from the Streets or Nowhere Else to Go? The Journeys of Dutch Female Beggars and Vagrants to the Oegstgeest State Labor Institution in the Late Nineteenth Century*, 46 *J. SOC. HIST.* 416 (2012). On early Dutch vagrancy law, see Anne Winter, “*Vagrancy*” as an Adaptive Strategy: *The Dutch of Brabant, 1767-1776*, 49 *INT’L REV. SOC. HIST.* 249 (2004); Yves Junot, *Heresy, War, Vagrancy and Labour Needs: Dealing with Temporary Migrants in the Textile Towns of Flanders, Artois and Hainaut in the Wake of the Dutch Revolt (1566-1609)*, in *GATED COMMUNITIES? REGULATING MIGRATION IN EARLY MODERN CITIES* (Anne Winter & Bert De Munck eds., 2012).

Vagrancy laws came under challenge in the 1950s, 60s and 70s United States. With the support of numerous law review articles,²⁵ success was won in a string of court cases,²⁶ capped by the *Papachristou* decision, which struck down a vagrancy law due to its vagueness and the manner in which it allowed for arbitrary arrests.²⁷ While the most explicit ‘vagrancy’ laws may have been challenged in the United States, however, vagrancy-type laws—laws which grant the police and other authorities extensive discretion to arrest individuals deemed suspicious, powers used disproportionately against the poor—remain widespread.²⁸

Elsewhere around the world reforms have also taken place on occasion over the course of the late twentieth and early twenty-first centuries. Cape Verde, Angola and Mozambique all repealed their vagrancy laws between 2003 and 2014.²⁹ In Kenya, the vagrancy law was repealed in 1997.³⁰ While these represent important steps forward, like the United States, the states in question maintain numerous other vagrancy-type laws under which discretionary police authority may be exercised. Numerous other states around the world maintain both vagrancy and vagrancy-type laws, moreover. The following section outlines the persistence of such laws within both former European metropolises and former colonies.

²⁵ See Note, *Use of Vagrancy-Type Laws for Arrests and Detention of Suspicious Persons*, 59 YALE L.J. 1351 (1950); Forrest Lacey, *Vagrancy and Other Crimes of Personal Condition*, 66 HARV. L. REV. 1203 (1953); Caleb Foote, *Vagrancy-Type Law and Its Administration*, 104 U. PA. L. REV. 603 (1956); Rollin Perkins, *The Vagrancy Concept*, 9 HASTINGS L.J. 237 (1958); William Douglas, *Vagrancy and Arrest on Suspicion*, 70 YALE L.J. 1 (1960); Arthur Sherry, *Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision*, 48 CALIF. L. REV. 557 (1960); Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67 (1960); Gary Dubin & Richard Robinson, *The Vagrancy Concept Reconsidered: Problems and abuses of Status Criminality*, 37 N.Y.U. L. REV. 102, 136 (1962); Anthony Amsterdam, *Federal Constitutional Restrictions on the Punishment of Crimes of Status, Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers, and the like*, 3 CRIM. L. BULLETIN 205 (1967); Gerald Magaro, *Criminal Penalties for Vagrancy—Cruel and Unusual Punishment under the Eighth Amendment*, 18 W. RES. L. REV. 1309 (1967); Harold Engel, *Constitutional Law—Conviction as a Vagrant of Persons Who Are Unemployed and Who Are Able to Work and Who Have No Visible Means of Support Is an Overreaching of Police Power and a Denial of Due Process*, 14 HOW. L.J. 402 (1968).

²⁶ See *Thompson v. City of Louisville*, 362 U.S. 199 (1960); *Robinson v. California*, 370 U.S. 660 (1962); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Cox v. Louisiana*, 379 U.S. 536 (1965); *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965); *Brown v. Louisiana*, 383 U.S. 131 (1966); *Palmer v. City of Euclid*, 402 U.S. 544 (1971); *Coates v. City of Cincinnati*, 402 U.S. 611 (1971). For more, see Risa Goluboff, *VAGRANT NATION: POLICE POWER, CONSTITUTIONAL CHANGE, AND THE MAKING OF THE 1960S* (2016).

²⁷ *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).

²⁸ For more, see Wayne LaFave, *Fourth Amendment Vagaries (Of Improbable Cause, Imperceptible Plain View, Notorious Privacy, and Balancing Askew)*, 74 J. CRIM. L. & CRIMINOLOGY 1171 (1983); Tracey Maclin, *The Decline of the Right of Locomotion: The Fourth Amendment on the Streets*, 75 CORNELL L. REV. 1258 (1990); T. Leigh Anderson, *Another Casualty of the War ... Vagrancy Laws Target the Fourth Amendment*, 26 AKRON L. REV. 493 (1993); Joel Berg, *The Troubled Constitutionality of Antigang Loitering Laws*, 69 CHI.-KENT. L. REV. 461 (1993); Maria Foscarinis, *Downward Spiral: Homelessness and Its Criminalization*, 14 YALE L. & POLY REV. 1 (1996); Harry Simon, *Municipal Regulation of the Homeless in Public Spaces*, in *HOMELESSNESS IN AMERICA* (Jim Baumohl ed., 1996); Don Mitchell, *The Annihilation of Space by Law: The Roots and Implications of Homeless Laws in the United States*, 29 ANTIPODE 303 (1997); *Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L.J. 2249 (1998); Dan Kahan & Tracey Meares, *The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153 (1998); Kim Strosnider, *Anti-Gang Ordinances after City of Chicago: The Intersection of Race, Vagueness Doctrine, and Equal Protection in the Criminal Law*, 39 AM. CRIM. L. REV. 101 (2002); Katherine Beckett & Steve Herbert, *The Punitive City Revisited: The Transformation of Urban Social Control*, in *AFTER THE WAR ON CRIME: RACE, DEMOCRACY AND A NEW RECONSTRUCTION* (M.L. Frampton et al. eds., 2008); National Center on Homelessness & Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* (2015). On the spread of the United States’ punitive approach to issues such as homelessness to Europe, see Eoin O’Sullivan, *Varieties of Punitiveness in Europe: Homelessness and Urban Marginality*, 6 EUROPEAN J. HOMELESSNESS 69 (2012).

²⁹ See Anneke Meerkötter, *Litigating to Protect the Rights of Poor and Marginalized Groups in Urban Spaces*, 74 U. MIAMI L. REV. CAVEAT 1, 10 (2019).

³⁰ See The Statute Law (Repeals and Miscellaneous Amendments) Act, Act No. 10 of 1997 (Kenya) (Nov. 7, 1997).

II. CONTEMPORARY VAGRANCY AND VAGRANCY-TYPE LAWS

II.1 *England and Former British Colonies*

II.1.1 *England*

As indicated above, the 1824 Vagrancy Act³¹ proved an enormously influential legislative model, inspiring the adoption of laws all over the world. Despite its antiquated title and numerous calls for its scrapping, England 1824 Vagrancy Act remains in effect in England and Wales. Alongside it, numerous other vagrancy-laws are also in effect that employ similar approaches have been promulgated. Section 5 of the 1986 Public Order Act allows for arrest and punishment on the basis of “disorderly behavior” or threatening visible representations.³² The ‘Injunctions to Prevent Nuisance and Annoyance’ and ‘Public Space Protection’ orders enabled by the 2014 Anti-Social Behaviour, Crime and Policing Act,³³ as well as the possibility for individuals to be imprisoned on the basis of council tax debt—a practice which has been deployed in an arbitrary manner, overwhelmingly to target poor women, many of whom are unlawfully imprisoned even according to the rules in force³⁴—also bear close resemblance to the vagrancy law legacy.³⁵

II.1.2 *Africa*

Botswana

Article 5(1)(h) of Botswana’s Constitution, headed “Protection of right to personal liberty,” provides:

No person shall be deprived of his or her personal liberty save as may be authorized by law in any of the following cases, that is to say— ...

³¹ 5 Geo. IV c. 83 (1824).

³² Public Order Act, 1986 c. 64, § 5.

³³ 2014 c. 12. ‘IPNAs’ replaced ‘ASBOs’, i.e. ‘Anti-Social Behavior orders,’ which had been authorized by the 1998 Crime and Disorder Act (1998 c. 37). On several problems with the ASBO/IPNA regime, see Andrew Ashworth et al., *Neighbouring on the Oppressive: the Government’s ‘Anti-Social Behaviour Order’ Proposals*, 16 CRIM. JUST. 7 (1998); Peter Squires & Dawn Stephen, ROUGHER JUSTICE: ANTI-SOCIAL BEHAVIOR AND YOUNG PEOPLE (2005); Elizabeth Burney, MAKING PEOPLE BEHAVE: ANTISOCIAL BEHAVIOUR, POLITICS AND POLICY (2005); Andrew Simester & Andrew von Hirsh eds., INCIVILITIES: REGULATING OFFENSIVE BEHAVIOR (2006); CRC Committee, Concluding observations: United Kingdom of Great Britain and Northern Ireland (2008); Peter Squires ed., ASBO NATION: THE CRIMINALISATION OF NUISANCE (2008); Adam Crawford, *Governing Through Anti-social Behaviour: Regulatory Challenges to Criminal Justice*, 49 BRIT. J. CRIMINOLOGY 810 (2009); Adam Crawford, *Criminalizing sociability through anti-social behaviour legislation: Dispersal powers, young people and the police*, 9 YOUTH JUST.: AN INT’L J. 5 (2009); Barry Goldson, *The sleep of (criminological) reason: Knowledge—policy rupture and New Labour’s youth justice legacy*, 10 CRIMINOLOGY & CRIM. JUST. 155 (2010); Chris Cunneen, Barry Goldson & Sophie Russell, *Human rights and youth justice reform in England and Wales: A systemic analysis*, 17 CRIMINOLOGY & CRIM. JUST. 367 (2017); James Morrison, SCROUNGERS: MORAL PANICS AND MEDIA MYTHS (2019).

³⁴ See Rona Epstein, *Punishing the poor: the scandal of imprisonment for council tax debt*, 75 SOCIALIST LAWYER 33 (2017); Chris Daw, *Unfair, ineffective and unjustifiable: the case for ending imprisonment for Council Tax arrears in England* (2019); Alicia Love, *‘Anachronistic, unfair, and inhumane’: calls to scrap imprisonment for non-payment of council tax*, THE JUSTICE GAP (Sept. 23, 2019).

³⁵ See Joseph Rowntree Foundation, *Destitution in the UK* (2016).

h. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community; ...³⁶

Section 179 of Botswana's Penal Code, headed "Idle and disorderly persons," indicates:

Any person who-

- (a) being a common prostitute, behaves in a disorderly or indecent manner in any public place;
- (b) wanders or places himself in any public place for the purpose of begging or gathering alms, or causes or procures or engages any child to do so;
- (c) plays at any game of chance for money or money's worth in any public place;
- (d) publicly conducts himself in a manner likely to cause a breach of the peace;
- (e) without lawful excuse does any indecent act;
- (f) in any public place solicits for immoral purposes; and
- (g) wanders about and endeavours by the exposure of wounds or deformation to obtain or gather alms,

is guilty of an offence and is liable to a fine not exceeding P10 or to imprisonment for a term not exceeding one month, or to both and on a second conviction to imprisonment for a term not exceeding three months and on any subsequent conviction thereof to a term of imprisonment not exceeding one year.³⁷

Section 182 of Botswana's penal code, headed "rogues and vagabonds," indicates:

A person who-

- (a) goes about as a gatherer or collector of alms, or endeavours to procure charitable contributions of any nature or kind, under any false or fraudulent practice;
- (b) is a suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself; and
- (c) is found in or about any premises or in any road or highway or any place adjacent thereto or in any public place, for any unlawful purpose,

³⁶ Botswana Constitution (1966), Art. 5(1)(h).

³⁷ Botswana Penal Code, § 179.

shall be guilty of an offence and shall be liable on a first conviction thereof to imprisonment for a term not exceeding three months and on a second or subsequent conviction thereof to imprisonment for a term not exceeding one year.³⁸

Eswatini

Article 16(1)(h) of Eswatini's Constitution, headed "Protection of right to personal liberty," provides:

A person shall not be deprived of personal liberty save as may be authorized by law in any of the following cases - ...

h. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of the care or treatment of that person or the protection of the community; ...³⁹

The Gambia

Section 166 of Gambia's Criminal Code, headed "idle and disorderly persons," stipulates:

The following persons—

- (1) every common prostitute behaving in a disorderly or indecent manner in any public place;
- (2) every person playing at any game of chance for money or money's worth in any public place;
- (3) every persons who in any public place conducts himself in a manner likely to cause a breach of the peace;
- (4) every person who publicly without lawful excuse does any indecent act; and
- (5) every persons who in any public place persistently solicits or importunes for immoral purposes;

Shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one month or to a fine not exceeding two pounds or to both.⁴⁰

Section 167 of Gambia's Criminal Code, headed "rogues and vagabonds," indicates:

The following persons—

³⁸ *Id.* § 182.

³⁹ Eswatini Constitution (2005), Art. 16(1)(h).

⁴⁰ Gambia Criminal Code, § 166.

- (1) every person convicted of an offence under the last preceding section after having been previously convicted of an offence against this Code;
- (2) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;
- (3) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;
- (4) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any 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;

Shall be deemed to be a rogue and vagabond, and shall be guilty of a misdemeanor, and shall be liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year.⁴¹

Section 168, headed ‘criminal charms,’ indicates:

- (1) Any person who—
 - (a) makes, lends, sells, keeps or offers for sale or for hire or reward, any fetish or charm which is pretended or reputed to possess power to protect burglars, robbers, thieves, or other malefactors, or to aid or assist in any way in the perpetration of any burglary, house-breaking, robbery or theft, or in the perpetration of any offence whatsoever, or to prevent, hinder or delay the detection of or conviction for any offence whatsoever; or
 - (b) is found having in his possession without lawful and reasonable excuse (the proof of which excuse shall lie on such person) any such fetish or charm as aforesaid,

is guilty of a felony and is liable to imprisonment for three years.

(2) Where any person is convicted of an offence under this section the court may order that any criminal charm used in connection with any such offence shall be forfeited to Her Majesty.⁴²

Ghana

Article 14(1)(d) of Ghana’s Constitution, headed “Protection of personal liberty,” provides:

⁴¹ *Id.* § 167.

⁴² *Id.* § 168.

Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in the following cases and in accordance with procedure permitted by law- ...

d. in the case of a person suffering from an infectious or contagious disease, a person of unsound mind, a person addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community; ...⁴³

Kenya

Kenya's vagrancy law was repealed in 1997. The ongoing exercise of discretionary power over the poor under alternative vagrancy-type provisions of Kenyan law was challenged by the Kenyan High Court in 2015. In *Anthony Njenga Mbuti v. Attorney General*, the High Court declared null and void provisions of Kenya's Criminal Procedure Code which allowed courts to impose bonds on suspicious individuals to keep the peace. The court struck down those provisions on the grounds that they violated the rights to equality before the law, dignity, freedom and security of person, due process on arrest, and a fair trial.⁴⁴ Other components of Kenyan law continue to grant the police the power to make discretionary, arbitrary arrests, however, including Section 29 of Kenya's Criminal Procedure Code, which allows for the warrantless arrest, *inter alia*, of:

... (f) any person whom he finds in a highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;

(g) any person whom he finds in a street or public place during the hours of darkness and whom he suspects upon reasonable grounds of being there for an illegal or disorderly purpose, or who is unable to give a satisfactory account of himself; ...⁴⁵

Limitations on freedom of movement authorized by the 1950 Public Order Act and the 1967 Public Security (Control of Movement) Regulations may also be understood as part of the broader vagrancy law tradition.⁴⁶

Lesotho

Article 6(1)(h) of Lesotho's Constitution, headed "Right to personal liberty," provides:

Every person shall be entitled to personal liberty, that is to say, he shall not arrested or detained save as may be authorized by law in any of the following cases, that is to say— ...

⁴³ Ghana Constitution (1992), Art. 14(1)(d).

⁴⁴ See *Anthony Njenga Mbuti v. Attorney General* [2015] No. 45 of 2014 (High Ct. Kenya).

⁴⁵ Kenya Criminal Procedure Code (1930), § 29.

⁴⁶ See Mercy Muendo, *Kenyans are still oppressed by colonial laws*, THE CONVERSATION (Mar. 16, 2017).

h. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care and treatment or the protection of the community; ...⁴⁷

Malawi

Despite several cases challenging the vagrancy law legacy,⁴⁸ several vagrancy law penalizations remain on the books in Malawi. Section 180 of the Penal Code, headed “Idle and disorderly persons,” stipulates:

The following persons—

- (a) every common prostitute behaving in a disorderly or indecent manner in any public place;
- (b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;
- (c) every person playing at any game of chance not being an authorized lottery or a private lottery for the purposes of section 174, for money or money's worth in any public place;
- (d) every person who without lawful excuse publicly does any indecent act;
- (e) every person who in any public place solicits for immoral purposes;
- (f) every person wandering about and endeavouring by the exposure of wounds or deformation to obtain or gather alms; and
- (g) every male person who wears the hair of his head in such a fashion as, when he is standing upright, the main line of the bottom of the mass of hair (other than hair growing on his face or on the nape of his neck) lies below an imaginary line drawn horizontally around his head at the level of the mouth,

shall be deemed idle and disorderly persons, and shall be liable for the first offence to a fine of K20 and to imprisonment for three months and for a subsequent offence to a fine of K50 and to imprisonment for six months.⁴⁹

Section 184, headed “Rogues and vagabonds,” stipulates:

(1) The following persons—

⁴⁷ Lesotho Constitution (1993), Art. 6(1)(h).

⁴⁸ See Republic v. Luwanja [1995] 1 M.L.R. 217 (High Ct. Malawi); Brown v. Republic [1996] Crim. App. No. 24 (High Ct. Malawi); Republic v. Ganizani [1999] Confirmation Case No. 290 (High Ct. Malawi) (unreported); Mwanza and Others v. Republic [2008] M.W.H.C. 228 (High Ct. Malawi); Mayeso Gwanda v. the State, Constitutional Case 5 of 2015, High Court of Malawi (Jan. 10. 2017). For more on these cases, see Anneke Meerkotter, *Litigating to Protect the Rights of Poor and Marginalized Groups in Urban Spaces*, 74 U. MIAMI L. REV. CAVEAT 1, 26 (2019)

⁴⁹ Malawi Penal Code 1930, § 180.

- (a) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;
- (b) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself; ...
- (d) every person who, without the prior consent in writing in that behalf of the District Commissioner, collects or makes any appeal for subscriptions of money in any public place in such District Commissioner's District for any purpose;
- (e) every person who has collected money by subscription in any place in Malawi, who fails to produce to a District Commissioner or to publish in a newspaper named by a District Commissioner, correct accounts of any money received by such subscription and of the disposal thereof, when called upon so to do by such District Commissioner,

shall be deemed to be a rogue and vagabond, and shall be guilty of a misdemeanour and shall be liable for the first offence to imprisonment for six months, and for every subsequent offence to imprisonment for eighteen months ...⁵⁰

Section 185, headed “Power to order removal of undesirable persons from certain Municipalities, Townships and other areas,” stipulates:

- (1) This section shall extend to such Municipalities, Townships and other areas as the Minister may, by order published in the Gazette, direct, and shall apply to—
 - (a) persons of any age which, according to law or custom, should render them subject to control, where the person whose duty it is to exercise control is resident outside a Municipality, Township or other area to which this section applies; or
 - (b) persons having no settled home within such a township or such an area whose District of origin or last place of ordinary residence is outside the Municipality, Township or other area. ...
- (2) Where a magistrate has reasonable cause to believe that a person belongs to one of the categories specified in subsection (1) and that the presence of such person within any Municipality, Township or other area within his jurisdiction to which this section extends is, by reason of any of the matters mentioned in subsection (3), undesirable in the public interest, he may make an order (in this section referred to as a removal order) requiring such person—
 - (a) to leave the Municipality, Township or other area not later than such date as may be specified in the Order;
 - (b) thereafter to remain outside the Municipality, Township or other area either during a period to be specified in the order or until further order.

⁵⁰ *Id.* § 184.

- (3) A removal order may be made on any of the following grounds—
- (a) that a person has been convicted of an offence under section 184;
 - (b) that he has no regular employment or other reputable means of livelihood and cannot give a good account of himself;
 - (c) that he has been convicted of an offence against the person or in relation to property. ...⁵¹

Section 28(f) of Malawi’s Criminal Procedure and Evidence Code, headed “Arrest by police officer without warrant,” provides:

Any police officer may, without an order from a magistrate and without a warrant, arrest—
...

- (f) any person whom he finds lying or loitering in any highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony; ...⁵²

Section 29, headed “Arrest of vagabonds, habitual robbers, etc.,” provides:

Any police officer may without an order from a magistrate and without a warrant, arrest or cause to be arrested— ...

- (b) any person within the limits of such station who cannot give a satisfactory account of himself; ...⁵³

Other components of Malawi’s law may be seen as part of the broader vagrancy law tradition as well, or at least as similarly granting the police extensive discretionary authority in a similar vein. Section 181 of Malawi’s Penal Code, headed “Conduct likely to cause a breach of the peace,” stipulates:

Every person who in any public place conducts himself in a manner likely to cause a breach of the peace shall be liable to a fine of K50 and to imprisonment for three months.⁵⁴

Namibia

In Namibia, a vagrancy law from 1920,⁵⁵ which remains on the books, stipulates:

1. Any person found wandering abroad and having no visible lawful means, or insufficient lawful means of support, who, being thereunto required by any magistrate, police officer, police constable, superintendent of native locations, or owner or occupier of land, or who

⁵¹ *Id.* § 185.

⁵² Malawi Criminal Procedure and Evidence Code 1968, § 28(f).

⁵³ *Id.* § 29.

⁵⁴ Malawi Penal Code 1930, § 181.

⁵⁵ Namibia Vagrancy Proclamation 25 of 1920 (July 1, 1920).

- having been duly summoned for such purpose, or brought before a magistrate in pursuance of this Proclamation shall not give a good and satisfactory account of himself, shall be deemed and taken to be an idle and disorderly person, and on conviction thereof shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement or any of them, for any period not exceeding twelve months: Provided that no person shall be liable to be sentenced to undergo spare diet or solitary confinement except during the first three months of any sentence of imprisonment imposed upon him.
2. Every person who shall wilfully or knowingly harbour, or suffer or permit to reside on land or premises owned or occupied by him, any idle and disorderly person as aforesaid, shall, on conviction before a Magistrate's Court be liable, in case of conviction to a penalty of not exceeding five pounds for every such offence, and in default of payment of such penalty, to be imprisoned, with or without hard labour, for any period not exceeding two months, unless such fine be sooner paid.
 3. (1) Every person found without the permission of the owner (the proof of which permission shall lie on such person) wandering over any farm, in or loitering near any dwelling-house, shop, store, stable, outhouse, garden, vineyard, kraal, or other enclosed place, shall be deemed and taken to be an idle and disorderly person and on conviction thereof shall be liable to a fine not exceeding one hundred pounds or, in default of payment, to imprisonment with or without hard labour, and with or without spare diet, and with or without solitary confinement, or any of them, for a period not exceeding twelve months: Provided that no person shall be liable to be sentenced to undergo spare diet or solitary confinement except during the first three months of any sentence of imprisonment imposed upon him. No servant or apprentice of any owner of any land, and no squatter upon the land of any owner shall for the purposes of this sub-section be deemed to be qualified merely by the possession or occupation of any hut, house or building on such land to give permission for and on behalf of such owner.

(2) Every person shall be deemed to be an idle and disorderly person within the meaning of and for all the purposes of this Proclamation, and shall upon conviction be liable to the penalties provided by sub-section 1 of this section, who shall be found without the permission of the owner of any farm (the proof of which permission shall be on such person)(a)loitering upon any road crossing such farm, or(b)in or loitering at or near any hut, house or other building upon any farm, whether such hut, house or other building shall or shall not be in the possession or occupation of any servant or apprentice of the owner of such farm, or in the possession or occupation of any squatter...
 13. Every person found wandering or being in any street or road ordinarily used by the public, or in any place of public resort, or in view thereof respectively, without sufficient clothing for the purpose of decency, shall be deemed and taken to be a disorderly person, and to be guilty of an offence against the true intent and meaning of this Proclamation, and may be arrested without warrant and conveyed before the nearest magistrate to be dealt with according to law, and upon conviction, as in the first section this Proclamation is provided, shall be liable to the penalties imposed by that section.⁵⁶

⁵⁶ *Id.*

Other provisions of the law facilitate enforcement.

Nigeria

Article 35(1)(e) of Nigeria's Constitution, headed "Protection from unjustified restraint," provides:

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law- ...

e. in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; ...⁵⁷

Section 249 of the Criminal Code penalize stipulates:

The following persons-

(a) every common prostitute-

- (i) behaving in a disorderly or indecent manner in any public place;
- (ii) loitering and persistently importuning or soliciting persons for the purpose of prostitution;

(b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;

(c) every person playing at any game of chance for money or money's worth in any public place; and

(d) every person who, in any public place, conducts himself in a manner likely to cause a breach of the peace,

shall be deemed idle and disorderly persons and may be arrested without warrant, and are guilty of a simple offence and liable to imprisonment for one month.⁵⁸

Section 250 stipulates:

The following persons-

(1) every person convicted of an offence under section 249 of this Code after having been previously convicted as an idle and disorderly person;

⁵⁷ Nigeria Constitution (1999), Art. 35(1)(e).

⁵⁸ Nigeria Penal Code, § 249.

(2) every person wandering abroad and endeavouring by the exposure of wounds or deformation to obtain or gather alms;

(3) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

(4) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;

(5) every person who exercises control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting, or controlling, her prostitution with any man, whether a particular man or not;

(6) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any 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,

shall be deemed to be a rogue and vagabond and is guilty of a misdemeanor and is liable on summary conviction for the first offence to imprisonment for three months and for every subsequent offence to imprisonment for one year. An offender may be arrested without warrant.⁵⁹

Penalizations also exist at the regional level. Section 168 of the 2011 Lagos State Criminal Law stipulates:

(1) The following persons-

(a) every prostitute-

(i) behaving in a disorderly or indecent manner in any public place;

(ii) loitering and persistently importuning or soliciting persons for the purpose of prostitution;

(b) every person who places himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children to do so;

(c) every person playing at any game of chance for money or money's worth in any public place;

(d) every person who, in any public place, conducts himself in a manner likely to cause a breach of the peace;

⁵⁹ *Id.* § 250.

(e) every persons endeavoring by the exposure of wounds or deformation to obtain or gather alms;

(f) every person going about as a gatherer or collector of alms, or endeavoring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

(g) every person who exercises control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, or controlling, prostitution with any person;

(h) every person found wandering in or on or near any premises or in any road or highway or any place adjacent to it or in any 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, shall be deemed to be a disorderly person ...⁶⁰

Seychelles

Section 173A of the Penal Code of the Seychelles stipulates:

The following persons-

- (a) every common prostitute behaving in a disorderly or indecent manner in any public place;
- (b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;
- (c) every person playing at any game of chance for money or money's worth in any public place, or on private property without the consent of the occupier;
- (d) every person who in any public place conducts himself in a manner likely to cause a breach of the peace;
- (e) every person who in any public place uses any indecent or obscene language;
- (f) every person found in a public place wandering or placing himself so as to cause an obstruction,

shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one year or to a fine not exceeding Rs.1,000 or to both.⁶¹

Section 174 stipulates:

The following persons-

⁶⁰ Lagos State Criminal Law, § 168.

⁶¹ Seychelles Penal Code, § 173A.

- (a) every person convicted of an offence under section 173 after having been previously convicted as an idle and disorderly person;
- (b) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;
- (c) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;
- (d) every person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any 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,

shall be deemed to be a rogue and vagabond, and shall be guilty of a misdemeanour, and shall be liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year.⁶²

Other provisions of Seychelles’ criminal law may be understood as vagrancy-type laws as well, as, unless they are tightly delimited by precedent, they may be also be used in an arbitrary and discriminatory manner. Section 165A, headed “Antisocial behaviour,” provides for the making of antisocial behavior orders.⁶³ Section 166, headed “Common nuisance,” indicates:

Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a common nuisance and is liable to imprisonment for one year.

It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.⁶⁴

Sierra Leone

Article 17(1)(i) of Sierra Leone’s Constitution, headed “Protection from arbitrary arrest or detention,” provides:

No person shall be deprived of his personal liberty except as may be authorized by law in any of the following cases, that is to say- ...

⁶² *Id.* § 174.

⁶³ *Id.* § 165A.

⁶⁴ *Id.* § 166.

d. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; ...⁶⁵

Article 18(3)(g), under the heading of “Protection of freedom of movement,” limits that protection by providing:

3. Nothing contained in or done under authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision— ...

g. for restricting vagrancy. ...⁶⁶

Article 7 of Sierra Leone’s 1965 Public Order Act, headed “Idle and disorderly persons,” stipulates:

Any person loitering in or about any stable house or building, or under any piazza, or in the open air, and not having any visible means of subsistence, and not giving a good account of himself, shall be deemed an idle and disorderly person, and shall, on conviction thereof, be liable to imprisonment for any period, not exceeding one month.⁶⁷

Article 8, headed “Rogues and vagabonds,” stipulates:

Any person found in or upon any dwelling-house, store, warehouse, kitchen, stable or out-house, or in any enclosed yard or garden, for any unlawful purpose, and every suspected person or reputed thief frequenting any quay, wharf, or landing place, or any street, highway or avenue leading thereto, or any place of public resort or any avenue leading thereto, or any street or highway or place adjacent, with intent to commit felony, and every person having in his possession any pick-lock key, key, crow, jack or other implement with intent feloniously to break into any dwelling house, warehouse, store, kitchen, stable or out-house, or having upon his person any instrument with intent to commit any felonious act, and every person who, having been convicted of the same offence, shall be deemed a rogue and a vagabond, and shall, on conviction thereof be imprisoned for any period any exceeding three months and every such pick-lock key, key, crow, jack or other implement, and every such instrument as aforesaid, shall on the conviction of the offender, be forfeited and destroyed.⁶⁸

South Africa

In South Africa, the vagrancy law legacy is primarily carried on on the municipal level. Numerous urban areas in South Africa have laws that penalize causing a nuisance, camping or residing

⁶⁵ Sierra Leone Constitution (1991/1996), Art. 17(1)(i).

⁶⁶ *Id.* Art. 18(3)(g).

⁶⁷ Sierra Leone Public Order Act 1965 (Dec. 31, 1965), Art. 7.

⁶⁸ *Id.* Art. 8.

in a public space, laying down in public, loitering and begging, which are applied primarily against the poor.⁶⁹

Tanzania

Section 176 of Tanzania's Penal Code, headed "Idle and disorderly persons," stipulates:

The following persons-

- (a) every common prostitute behaving in a disorderly or indecent manner in any public place or loitering or soliciting in any public place for the purpose of prostitution;
- (b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;
- (c) every person playing at any game of chance for money or money's worth in any public place;
- (d) every person wandering abroad and endeavouring by the exposure of wounds or deformation to obtain or gather alms;
- (e) every person who publicly conducts himself in a manner likely to cause a breach of the peace;
- (f) every person who without lawful excuse publicly does any indecent act; and
- (g) every person who in any public place solicits for immoral purposes,

shall, be deemed idle and disorderly persons, and shall be liable to a fine not exceeding five hundred shillings or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.⁷⁰

Section 177, headed "Rogues and vagabonds," stipulates:

The following persons-

- (1) every person convicted of an offence under section 176 after having been previously convicted as an idle and disorderly person;
- (2) every person going about as gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

⁶⁹ See Magnus Killander, *Criminalising homelessness and survival strategies through municipal by-laws: colonial legacy and constitutionality*, 25 SOUTH AFRICAN J. HUM. RTS. 70 (2019).

⁷⁰ Tanzania Penal Code 1981, § 176.

- (3) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;
- (4) every person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any 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;
- (5) every person who, without the prior consent in writing in that behalf of the Area Commissioner, or, in the case of any municipality or township, the police officer in charge of the police in such municipality or township, collects, or makes any appeal for, subscriptions of money in any public place in such district, municipality or township, for any purpose.

shall be deemed to be a rogue and vagabond, and shall be guilty of a misdemeanour, and shall be liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year.⁷¹

Section 14 of Tanzania’s Criminal Procedure Act, headed “Arrest by police officer without warrant,” stipulates:

A police officer may without a warrant arrest- ...

(d) any person whom he finds lying or loitering in any highway, yard or garden or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit an offence or who has in his possession without lawful excuse any offensive weapon or housebreaking implement; ...

(h) any person whom he suspects of being a loiterer. ...⁷²

Section 28(b), headed “Arrest of vagabonds, habitual robbers, etc.,” stipulates:

Any officer in charge of a police station may in like manner arrest or cause to be arrested- ...

(b) any person within the limits of the station who has no ostensible means of subsistence or who cannot give satisfactory account of himself; ...⁷³

Older laws granting similar powers also remain on the books. Both the 1923 Destitute Persons Ordinance and the 1944 Township (Removal of Undesirable Persons) Ordinance allow district commissioners to detain and remove destitute and homeless persons.⁷⁴

Other components of Tanzania’s law may be seen as part of the broader vagrancy law tradition as well, or at least as similarly granting the police extensive discretionary authority in a similar vein. Section 170 of Tanzania’s Penal Code, headed “Common nuisance,” stipulates:

⁷¹ *Id.* § 177.

⁷² Tanzania Criminal Procedure Act 1985, § 14(d, h).

⁷³ *Id.* § 28(b).

⁷⁴ Tanzania Destitute Persons Ordinance 1923; Tanzania Township (Removal of Undesirable Persons) Ordinance 1944.

Any person who does an act not authorized by law or omits to discharge a legal duty and thereby causes any common injury or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a “common nuisance”, and is liable to imprisonment for one year.

It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.⁷⁵

Uganda

Section 167 of Uganda’s Penal Code, headed “Idle and disorderly persons,” stipulates:

Any person who—

- (a) being a prostitute, behaves in a disorderly or indecent manner in any public place;
- (b) wanders or places himself or herself in any public place to beg or gather alms, or causes or procures or encourages any child to do so;
- (c) plays at any game of chance for money or money’s worth in any public place;
- (d) publicly conducts himself or herself in a manner likely to cause a breach of the peace;
- (e) without lawful excuse, publicly does any indecent act;
- (f) in any public place solicits or loiters for immoral purposes;
- (g) wanders about and endeavours by the exposure of wounds or deformation to obtain or gather alms,

shall be deemed an idle and disorderly person, and is liable on conviction to imprisonment for three months or to a fine not exceeding three thousand shillings or to both such fine and imprisonment, but in the case of an offence contrary to paragraph (a), (e) or (f) that person is liable to imprisonment for seven years.⁷⁶

Section 168 of Uganda’s Penal Code, headed “Rogues and vagabonds,” stipulates:

(1) Every—

- (a) person convicted of an offence under section 167 after having been previously convicted as an idle and disorderly person;

⁷⁵ Tanzania Penal Code 1981, § 170.

⁷⁶ Uganda Penal Code 1950, § 167.

- (b) person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;
- (c) suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself or herself; and
- (d) person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any 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,

shall be deemed to be a rogue and vagabond, and commits a misdemeanour and is liable for the first offence to imprisonment for six months, and for every subsequent offence to imprisonment for one year.

- (2) Subsection (1)(b) shall not apply to collections made in any recognised building or place of religious worship.⁷⁷

Section 10(e) of Uganda’s Criminal Procedure Code, headed “Arrest without warrant,” stipulates:

Any police officer may, without an order from a magistrate and without a warrant, arrest —
...

- (e) any person whom he or she finds in any highway, yard or other place during the night and whom he or she suspects upon reasonable grounds of having committed or being about to commit a felony; ...⁷⁸

Section 11 of Uganda’s Criminal Procedure Code, headed “Arrest of vagabonds, habitual robbers, etc.,” stipulates:

Any officer in charge of a police station may in like manner arrest or cause to be arrested—
...

- (b) any person within the limits of that station who has no ostensible means of subsistence or who cannot give a satisfactory account of himself or herself; ...⁷⁹

Other components of Uganda’s law may be seen as part of the broader vagrancy law tradition as well, or at least as similarly granting the police extensive discretionary authority in a similar vein. Section 160 of Uganda’s Penal Code, headed “Common nuisance,” stipulates:

- (1) Any person who does an act not authorized by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a common nuisance and is liable to imprisonment for one year.

⁷⁷ *Id.* § 168.

⁷⁸ Uganda Criminal Procedure Code 1950, § 10(e).

⁷⁹ *Id.* § 11.

- (2) It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.⁸⁰

Zambia

Article 13(1)(h) of Zambia's Constitution, headed "Protection of Right to Personal Liberty," provides:

1. No person shall be deprived of his personal liberty except as may be authorized by law in any of the following cases: ...

h. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; ...⁸¹

Section 178 of Zambia's Penal Code, headed "Idle and disorderedly persons," stipulates:

The following persons:

- (a) every common prostitute behaving in a disorderly or indecent manner in any public place;
- (b) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;
- (c) every person playing at any game of chance, not being an authorised lottery, for money or money's worth in any public place;
- (d) every person wandering abroad and endeavouring by the exposure of wounds or deformity to obtain or gather alms;
- (e) every person who, without lawful excuse, publicly does any indecent act;
- (f) every person who publicly conducts himself in a manner likely to cause a breach of the peace; and
- (g) every person who in any public place solicits for immoral purposes;

are deemed idle and disorderly persons, and are liable to imprisonment for one month or to a fine not exceeding sixty penalty units or to both.⁸²

Section 181, headed "Rogues and vagabonds," stipulates:

⁸⁰ Uganda Penal Code 1950, § 160.

⁸¹ Zambia Constitution (1991), Art. 13(1)(h).

⁸² Zambia Penal Code 1931, § 178.

The following persons:

- (a) every person convicted of an offence under section one hundred and seventy-eight after having been previously convicted as an idle and disorderly person;
- (b) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;
- (c) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself; and
- (d) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any 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;

shall be deemed to be a rogue and vagabond, and are guilty of a misdemeanour and are liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year.⁸³

Section 26(f) of Zambia's Criminal Procedure Code, headed "Arrest by police officer without warrant," stipulates:

Any police officer may, without an order from a magistrate and without a warrant, arrest- ...

- (f) any person whom he finds in any highway, yard or other place during the night, and whom he suspects, upon reasonable grounds of having committed or being about to commit a felony; ...⁸⁴

Section 27, headed "Arrest of vagabonds, habitual robbers, etc.," stipulates:

Any officer in charge of a police station may, in like manner, arrest or cause to be arrested- ...

- (b) any person, within the limits of such station, who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; ...⁸⁵

Other components of Zambia's law may be seen as part of the broader vagrancy law tradition as well, or at least as similarly granting the police extensive discretionary authority in a similar vein. Section 172 of Zambia's Penal Code, headed "Common nuisance," stipulates:

- (1) Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes

⁸³ *Id.* § 181.

⁸⁴ Zambia Criminal Procedure Code 1933, § 26(f).

⁸⁵ *Id.* § 27.

- inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a “common nuisance” and is liable to imprisonment for one year.
- (2) It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.⁸⁶

Zimbabwe

In Zimbabwe, the Vagrancy Act stipulates, in part:

2. Interpretation ...

“vagrant” means any person who—

- (a) has no—
- (i) settled or fixed place of abode; or
 - (ii) means of support; and who wanders from place to place; or
- (b) maintains himself by begging or in some other dishonest or disreputable manner.

3. Power to arrest vagrants

(1) A police officer may arrest without warrant any person whom he reasonably suspects to be a vagrant and shall take such person before a magistrate within forty-eight hours of his arrest.
...⁸⁷

II.1.3 Asia

Bangladesh

Vagrancy-type laws are provided for by several municipal-level ordinances in Bangladesh. *Inter alia*, the Dhaka Metropolitan Police Ordinance includes the following clauses:

77. Penalty for obstructing or annoying passengers in streets

Whoever wilfully puts, presses, hustles or obstructs any passenger in any street or public place, or by violent movement, menacing gestures, screaming, shouting, wilfully frightening any animal or otherwise disturbs the public peace and order shall be punishable with fine which may extend to two hundred taka.

⁸⁶ Zambia Penal Code 1931, § 172.

⁸⁷ Zimbabwe Vagrancy Act, Act 40 of 1960, §§ 2-3.

78. Penalty for misbehaviour with intent to provoke a breach of peace

Whoever uses in any street or public place any threatening, abusive or insulting words with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned shall be punishable with fine which may extend to two hundred taka. ...

80. Penalty for committing nuisance in or near street, etc.

Whoever in or near to any street or public place commits a nuisance by easing himself, or suffers any child in his care or custody under seven years of age to commit such nuisance or spits or throws any litter, refuse or rubbish so as to cause annoyance to any passer-by shall be punishable with fine which may extend to two hundred taka.

81. Penalty for begging and exposing offensive ailments

Whoever in any street or public place begs or applies for alms, or exposes or exhibits any sores, wounds, bodily ailment or deformity with the object of exciting charity or obtaining alms shall be punishable with imprisonment for a term which may extend to one month. ...

86. Penalty for being found under suspicious circumstances between sunset and sunrise

Whoever is found between sunset and sunrise –

- (a) armed without any satisfactory excuse with any dangerous instruments; or
- (b) having without any satisfactory excuse his face covered or otherwise disguised; or
- (c) in any dwelling house or other building, or on board any vessel or boat or in any vehicle without being able satisfactorily to account for his presence there; or
- (d) lying or loitering in any street, yard or other place without being able to give a satisfactory account of himself; or
- (e) having in his possession without satisfactory excuse any implement of house-breaking;

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand taka, or with both. ...

92. Penalty for gambling in street

Whoever assembles with others in a street or public place for the purpose of gambling or wagering or joins any such assembly shall be punishable with fine which may extend to one hundred taka.⁸⁸

⁸⁸ See Dhaka Metropolitan Police Ordinance (1976), §§ 77-8, 80-1, 86, 92.

The Chittagong and Khulna Metropolitan Police Ordinances includes similar measures.⁸⁹

Brunei

Inter alia, Brunei's Minor Offences Act stipulates:

11. Definition of nuisances and penalty

Any person who —

- (a) without authority in the case of public property, or without the consent of the owner or occupier in the case of private property, affixes or causes to be affixed any advertisement, bill or notice, or any paper against or upon any building, wall or fence, or writes upon, defaces or marks any such building, wall or fence with chalk or paint or in any other way;
- (b) bathes or washes himself or any other person, animal or thing on any public road, or in, upon or by the side of any public tank, reservoir, watercourse or stream the use of which for bathing has been forbidden by the Commissioner of Police;
- (c) obstructs or incommodes a person bathing at any place set apart as a bathing place by wilful intrusion, or by washing any animal at or near such place, or in any other way;
- (d) wilfully or indecently exposes his person, or commits a nuisance by easing himself in or by the side of, or near to, any public road or public place;
- (e) being the owner or person in charge of any animal does not, if such animal dies, dispose of its carcass in such a way as not to be a common nuisance;
- (f) places on or near any public road any dead animal;
- (g) spits on the floor of any school house, theatre, public building or other place of public entertainment or assembly, or in any licensed public vehicle, or in any tram or railway car, or on any wharf or jetty, or on any five-foot way or side-walk of a public street; or
- (h) keeps pigs in any Malay village,

is guilty of an offence and liable on conviction to a fine of \$250. ...

22. Apprehension of suspected persons

⁸⁹ See Chittagong Metropolitan Police Ordinance (1978), §§ 79-80, 82-3, 88, 94; Khulna Metropolitan Police Ordinance (1978), §§ 80-1, 83-4, 89, 95.

Any person —

- (a) found between sunset and sunrise armed with any dangerous or offensive instrument with intent to commit any criminal offence;
- (b) being a reputed thief, found between sunset and sunrise on board any vessel or boat, or lying or loitering in any bazaar, street, road, yard or other place who does not give a satisfactory account of himself;
- (c) found between sunset and sunrise having his face covered or otherwise found disguised with intent to commit any criminal offence;
- (d) found between sunset and sunrise in any dwelling house or other building or wandering about without being able to give a satisfactory account of himself;
- (e) having in his possession without lawful excuse, the proof of which excuse shall be on such person, any implement of housebreaking,

may be taken into custody by any police officer without a warrant, and is guilty of an offence and liable on conviction to a fine of \$2,000 and imprisonment for 12 months, and any such instruments or implements found in the possession of such person shall be forfeited. ...

26. Fortune-telling and other forms of vagrancy

(1) Any person who —

- (a) pretends or professes to tell fortunes, or uses any subtle craft, means or device by palmistry, divination, sortilege, or otherwise to deceive and impose on any one;
- (b) lodges in any shed or out-house without the permission of the owner thereof, or in any deserted or unoccupied building, or in the open air, or under a tent, or in or under any cart or wagon or other similar shelter, not having any visible means of subsistence and not giving a good account of himself;
- (c) begs for alms or endeavours by the exposure of wounds, sores, diseases of deformities to obtain alms;
- (d) endeavours under any false or fraudulent pretence to procure charitable contributions of any kind; or
- (e) not being physically able to earn or being unwilling to work for his own livelihood and having no visible means of subsistence,

is guilty of an offence and liable on conviction to a fine of \$500 or imprisonment for 2 months, and may be repatriated, and on a second or subsequent conviction to a fine of \$500 and imprisonment for 4 months.

(2) The court may order to be forfeited any book or other article used as an implement of fortune-telling.⁹⁰

India

The Maharashtra Prevention of Begging Act provides, *inter alia*:

4. Power to require person found begging to appear before Court

(1) Any police officer or other person authorised in this behalf in accordance with rules made by the State Government, may arrest without a warrant any person who is found begging ...

5. Summary inquiry in respect of persons found begging and their detention.

(1) Where a person who is brought before the court under the last preceding section is not proved to have previously been detained in a Certified Institution under the provisions of this Act, the Court shall make, a summary inquiry, in the prescribed manner, as regards the allegation that he was found begging. ...

(4) If on making the inquiry referred to in sub-section (1), the court is satisfied that the person was found begging, it shall order a finding that the person is beggar.

(5) If a person is found to be a beggar under the last preceding sub-section, the Court shall declare him to be a beggar and may—

(a) if the Court is satisfied from the circumstances of the case that the person is not likely to beg again, admonish and release the beggar on his or any other person whom Court considers suitable, executing a bond, with or without surety as the Court may require, requiring the beggar to abstain from begging and to be of good behaviour; or

(b) if the Court is of opinion that the person is not likely to give up begging, by order direct such person to report himself forthwith to the Commissioner of Police or the District Magistrate having jurisdiction in the area and shall forward a copy of such order to the Commissioner of Police or, as the case may be, the District Magistrate; or

(c) order the beggar to be detained in a Certified Institution for the period of not less than one year, but not more than three years.⁹¹

Similar laws exist in other regions of India as well.⁹²

⁹⁰ Brunei Minor Offences Act (2013), §§ 11, 22, 26.

⁹¹ Maharashtra Prevention of Begging Act (1960), §§ 4-5.

⁹² See, e.g., Jammu and Kashmir Prevention of Beggary Act (1960); Assam Prevention of Begging Act (1964); Haryana Prevention of Beggary Act (1971); Goa, Daman and Diu Prevention of Begging Act (1972); Madhya Pradesh Redressal of Begging Act (1973); the Uttar Pradesh Prohibition of Beggary (1975); the Karnataka Prohibition of Beggary Act (1975); Telangana Prevention of Begging Act (1977); Andhra Pradesh Prevention of Begging Act (1977); Sikkim Prohibition of Beggary Act (2004).

Malaysia

Malaysia's Destitute Persons Act stipulates, *inter alia*:

2. Interpretation ...

“destitute person” means—

(a) any person found begging in a public place in such a way as to cause or to be likely to cause annoyance to persons frequenting the place or otherwise to create a nuisance; or

(b) any idle person found in a public place, whether or not he is begging, who has no visible means of subsistence or place of residence or is unable to give a satisfactory account of himself ...

3. Power to require a destitute person to reside in a welfare home

(1) Any officer duly authorized in writing by a local authority and acting under the direction of the Director General or any social welfare officer may take into his charge any destitute person and produce such person before a Magistrate within twenty-four hours: Provided that if the destitute person refuses to be taken or offers any resistance to the officers mentioned in this subsection, such officer may call upon any police officer for assistance in the exercise of his powers, and it shall be the duty of every police officer to comply with such request.

(2) If the Magistrate has reasonable cause to believe that any person so brought before him is a destitute person, he may order such person to be admitted temporarily to a welfare home pending a report by a social welfare officer. ...⁹³

Pakistan

Vagrancy is penalized by several regional-level ordinances in Pakistan. *Inter alia*, the Punjab Vagrancy Ordinance includes the following clauses:

2. Definitions ...

(g) “vagrant” means a person who—

(i) solicits or receives alms in a public place;

(ii) exposes or exhibits any sore, wound, injury, deformity or disease in a public place for the purpose of soliciting or receiving alms;

⁹³ Malaysia Destitute Persons Act (1977), §§ 2-3.

(iii) allows himself to be used as an exhibit for the purpose of soliciting or receiving alms;

(iv) enters on any private premises without the invitation of the occupier for the purpose of soliciting or receiving alms; ...

7. Powers of police officer to arrest and search vagrants and seize things liable to confiscation

(1) Any police officer may without an order from a magistrate and without a warrant, arrest and search any person who appears to him to be a vagrant ...

9. Sentence for vagrancy

If the magistrate finds that a person is a vagrant, such person shall be punished with imprisonment of either description for a period not exceeding three years ...⁹⁴

The Balochistan Vagrancy Ordinance,⁹⁵ the Sindh Vagrancy (Amendment) Ordinance⁹⁶ and the Khyber Pakhtunkhwa Vagrancy Restraint Act⁹⁷ contain similar provisions.

Singapore

Singapore's Miscellaneous Offences (Public Order and Nuisance) Act provides, *inter alia*:

26. Disorderly or indecent behaviour by prostitutes

Every common prostitute wandering in any public road or place of public resort and behaving in a disorderly or indecent manner shall be deemed to be an idle and disorderly person within the meaning of this Part and shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding one month.

27. Rogues and vagabonds

(1) Every person—

(a) committing any of the offences mentioned in section 26, after having been previously convicted as an idle and disorderly person;

(b) pretending or professing to tell fortunes in any manner which causes or is likely to cause a public nuisance, or using any subtle craft, means or device, by palmistry or otherwise, to deceive and impose upon any person;

⁹⁴ Punjab Vagrancy Ordinance (1974), §§ 2, 7, 9.

⁹⁵ Balochistan Vagrancy Ordinance (1975).

⁹⁶ Sindh Vagrancy (Amendment) Ordinance (1983).

⁹⁷ Khyber Pakhtunkhwa Vagrancy Restraint Act (2020).

(c) wilfully exposing to view, in any street, road, highway or public place, any obscene print, picture or other indecent exhibition;

(d) wilfully, openly, lewdly and obscenely exposing his person in any street, road or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female;

(e) going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

(f) having in his possession without lawful excuse any instrument or material with intent to commit any offence;

(g) being found in or upon any dwelling-house, or premises for the custody of property, or in any enclosed yard, garden or area, for any unlawful purpose; or

(h) arrested as an idle and disorderly person who violently resists arrest and being subsequently convicted of the offence for which he was arrested,

shall be deemed to be a rogue and vagabond within the meaning of this Part and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

(2) Every suspected person or reputed thief, frequenting or loitering in or about any river, canal or navigable stream, dock or basin, or any quay, wharf or warehouse near or adjoining thereto, or any street, highway or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway or place adjacent thereto, or in any highway or any place adjacent to a street or highway, with intent to commit a seizable and non-bailable offence, shall be deemed to be a rogue and vagabond within the meaning of this Part and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months or to both.

(3) In proving the intent referred to in subsection (2), it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if, from the circumstances of the case, and from his known character as proved to the court, it appears that his intent was to commit a seizable and non-bailable offence.⁹⁸

Singapore's Destitute Persons Act stipulates, *inter alia*:

3. Power to require destitute person to reside in welfare home

(1) Any public officer acting under the direction of the Director-General or any police officer may take in his charge any destitute person and deliver him to the custody of the Director-General. ...

⁹⁸ Singapore Miscellaneous Offences (Public Order and Nuisance) Act (1990), §§ 26-7.

(4) If after holding such inquiry the Director-General is satisfied that that person is a destitute person within the meaning of this Act, he may by warrant under his hand require that person to reside in a welfare home.

4. Penalty for Begging

(1) Any person being a habitual beggar found begging in a public place in such a way as to cause or be likely to cause annoyance to persons frequenting the place or otherwise to create a nuisance shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 2 years.

(2) In this section, “habitual beggar” means a person who on at least 2 previous occasions was found begging in a public place in such a way as to cause or be likely to cause annoyance to persons frequenting the place or otherwise to create a nuisance and was in consequence thereof required on those 2 occasions to reside in a welfare home. ...⁹⁹

Sri Lanka

Inter alia, Sri Lanka’s Vagrants Ordinance stipulates:

2. Punishment of persons behaving riotously or disorderly in the public streets

Every person behaving in a riotous or disorderly manner in any public street or highway shall be liable to a fine not exceeding five rupees:

Provided nevertheless that every person convicted four times of such conduct shall, for every subsequent offence, be punishable in the manner declared in the following section respecting idle and disorderly persons.

3. Persons who are deemed idle and disorderly persons

(1)

(a) Every person being able to maintain himself by work or other means, but who shall wilfully refuse or neglect so to do, and shall wander abroad or place himself in any public place, street, highway, court, or passage to beg or gather alms, or cause, or procure, or encourage any of his family so to do, excepting priests and pilgrims in performance of their religious vows, not being mendicants of the description mentioned in the paragraph (d) of the next succeeding section

(b) every common prostitute wandering in the public street or highway, or in any place of public resort, and behaving in a riotous or indecent manner;

(c) every person wandering abroad or lodging in any verandah, outhouse, shed, or unoccupied building, or in any cart, vehicle, or other receptacle, without leave of the

⁹⁹ Singapore Destitute Persons Act (1989), §§ 3-4.

owner thereof, and not having any visible means of subsistence, and not giving a good account of himself;

(d) every person, without leave of the owner, defacing the side of any house or building or wall by fixing any placard or notice, or by any indecent or insulting writing or drawing thereon;

(e) every person who in or upon any wharf, jetty, street, road, walk, passage, verandah, or other place situated within any proclaimed area and used by or accessible to the public, persistently and without lawful excuse follows, accosts, or addresses by words or signs any person against his will and to his annoyance

shall be deemed an idle and disorderly person within the true intent and meaning of this Ordinance, and shall be liable upon the first conviction to be imprisoned, with or without hard labour, for any term not exceeding fourteen days, or to a fine not exceeding ten rupees.

(2) A police officer may arrest without a warrant every person deemed to be an idle and disorderly person

(3) In this section, "proclaimed area" means any area declared by the Minister by Order published in the Gazette, to be a proclaimed area for the purposes of this section.

4. Who are deemed to be rogues and vagabonds

(a) Every person convicted a second time of being idle and disorderly;

(b) every idle and disorderly person resisting any constable or police officer apprehending him;

(c) every person wilfully exposing himself in an indecent manner, or exhibiting any obscene print, picture, or other indecent exhibition, in any street, road, highway, or public place or elsewhere, to the annoyance and disgust of others;

(d) every person wandering abroad, or placing himself in any public place, street, highway, court, or passage, and endeavouring by the exposure of any wounds, deformities, leprosy, or loathsome diseases to obtain or gather alms;

(e) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions for himself or others, of any nature or kind, under any false or fraudulent pretences, shall be deemed a rogue and vagabond within the true intent and meaning of this Ordinance, and

shall be liable to be imprisoned with or without hard labour for any period not exceeding one month, or to a fine not exceeding twenty rupees.

5. Who are deemed to be incorrigible rogues

(a) Every person convicted a third time or more often of being idle and disorderly; or

(b) every person convicted a second time or more often of being a rogue and vagabond;
and

(c) every person escaping out of any place of legal confinement before the expiration of the term for which he shall have been committed under this Ordinance,

shall be deemed to be an incorrigible rogue within the true intent and meaning of this Ordinance, and shall be liable to imprisonment with hard labour for any period not exceeding four months, and to corporal punishment not exceeding twenty-four lashes ...

7. Soliciting and acts of indecency in public places.

(1) The following persons, that is to say—

(a) any person in or about any public place soliciting any person for the purpose of the commission of any act of illicit sexual intercourse or indecency, whether with the person soliciting or with any other person, whether specified or not;

(b) any person found committing any act of gross indecency, or found behaving with gross indecency, in or about any public place;

(c) any person found –

(i) in any public enclosure contrary to any local by-laws or regulations prescribing the use of such enclosures ; or

(ii) in any enclosure belonging to the State , without the permission of the person in charge thereof; or

(iii) within any private enclosure attached to any dwelling house, except upon the invitation of any inmate of the premises,

under such circumstances that it is reasonable to infer that he is there present for immoral purposes, unless he is able to explain his presence to the satisfaction of the court by which he is tried,

shall be guilty of an offence, and shall be liable on summary conviction to imprisonment of either description for a period not exceeding six months, or to a fine not exceeding one hundred rupees, or to both.

(2) In any case in which any person who has been convicted of an offence under paragraph (a) of the last preceding subsection shall subsequently be convicted of another such offence, he shall, if a male, in addition to any other punishment to which he may be sentenced by the court, be liable, at the discretion of the court to be whipped.¹⁰⁰

¹⁰⁰ Sri Lanka Vagrant Ordinance (1841), §§ 2-7.

In addition to these clauses, Sri Lanka's Vagrants Ordinance contains many other provisions in need of reform, including clauses enhancing enforcement powers and a clause allowing for the detention of "youthful bad characters."

Other components of Sri Lanka's law may be seen as part of the broader vagrancy law tradition as well, or at least as similarly granting the police extensive discretionary authority in a similar vein. Article 450 of Sri Lanka's penal code penalizes "Whoever is found in or upon any building or enclosure for any unlawful purpose, and whoever is found in or upon any building or enclosure and fails to give a satisfactory account of himself ..." ¹⁰¹ Article 451 of Sri Lanka's penal code penalizes "Whoever, being a reputed thief, loiters or lurks about any public place [or several other enumerated areas] with intent to commit theft or any other unlawful act ..." ¹⁰²

II.1.4 The Americas

The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines all maintain provisions in their constitutions legitimizing the penalization of vagrancy. ¹⁰³

Antigua and Barbuda

Article 16(1)(h) of Antigua and Barbuda's Constitution, headed "Protection of right to personal liberty," provides:

No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say- ...

i. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; ... ¹⁰⁴

Antigua and Barbuda's Criminal Procedure Act provides:

Any constable or peace officer may, without a warrant, take into custody any person whom he finds loitering or lying in any highway, yard, or other place during the night, and whom he has good cause to suspect of having committed, or being about to commit, any felony, and may detain such person until he can be brought before a Magistrate to be dealt with according to law ... ¹⁰⁵

Antigua and Barbuda's Small Charges Act stipulates, *inter alia*:

¹⁰¹ Sri Lanka Penal Code (1883), § 450.

¹⁰² *Id.* § 451.

¹⁰³ Other formerly British colonial States which maintain such provisions in their constitutions are Cyprus and Malta in the Caribbean and Fiji, Kiribati, Papua New Guinea and the Solomon Islands in the Pacific.

¹⁰⁴ Antigua and Barbuda Constitution (1981), Art. 5(1)(i).

¹⁰⁵ Antigua and Barbuda Criminal Procedure Act (1873), § 6.

14. Begging

(1) Any person wandering abroad or placing himself in any public place to beg or gather alms, shall be deemed an idle and disorderly person within the meaning of this Act, and shall be liable to a fine not exceeding five hundred dollars, or to imprisonment for a term not exceeding one month.

(2) Any person-

(a) wandering abroad and endeavouring by the exposure of wounds or deformities; or

(b) going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind under any false or fraudulent pretence;

shall be deemed to be a rogue and a vagabond within the meaning of this Act, and shall be liable to imprisonment for a term not exceeding three months.

30. Incurrible rogues

Any person, committing any offence against this Act, by reason whereof he shall be deemed to be a rogue and a vagabond within the meaning of this Act, such person having been, at some former time adjudged so to be and duly convicted thereof, shall be deemed an incurrible rogue within the meaning of this Act, and shall be liable to imprisonment for a term not exceeding six months.

52. Vagrancy

(1) Any person being able wholly or in part to maintain himself by work or by other means and wilfully refusing or neglecting so to do, shall be deemed an idle and disorderly person within the meaning of this Act, and shall be liable to imprisonment for a term not exceeding one month.

(2) Any person-

(a) wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air or under a tent, or in any vehicle, or in any vessel, boat, lighter or drogher, and not having any visible means of subsistence, and not giving a good account of himself; or

(b) being found in or upon any dwelling house, office, warehouse, coach house, stable or outhouse, or in any enclosed yard, garden or area, or in any vessel, boat, lighter or drogher, for any unlawful purpose;

shall be deemed to be a rogue and a vagabond within the meaning of this Act, and shall be liable to imprisonment for a term not exceeding three months.¹⁰⁶

¹⁰⁶ Antigua and Barbuda Small Charges Act (1891), §§ 14, 30, 52.

Bahamas

The Bahamas' Vagrancy Act stipulates, *inter alia*:

3. Vagrants

Any person who commits any of the offences specified in the First Schedule to this Act and who is convicted by the magistrate of any such offence shall be deemed a vagrant and shall be liable to a fine of twenty dollars or to imprisonment for two months.

4. Rogues and vagabonds

Any person who commits any of the offences specified in the Second Schedule to this Act and who is convicted by the magistrate of any such offence shall be deemed a rogue and vagabond and be liable to a fine of fifty dollars or to imprisonment for four months.

5. Incurrible rogue

Any person who commits any of the offences specified in the Third Schedule to this Act and who is convicted of any such offence by the magistrate shall be deemed an incurrible rogue and be liable to imprisonment for one year.

6. Arrest

(1) It shall be lawful for a peace officer to arrest without warrant any person who shall be found offending against this Act.

(2) Any person so arrested shall forthwith be brought before the magistrate for trial. ...

FIRST SCHEDULE (Section 3)

VAGRANTS

1. Being a person who, being able to work or by other lawful means to maintain himself or his family whom he or she may be legally bound to maintain, such person or family being without other means of support, refusing or neglecting so to do.

2. Being a common prostitute, loitering or soliciting in a street or public place for the purpose of prostitution.

3. Being a person wandering abroad or placing himself in any public place to beg or gather alms or cause or procure or encourage any child or young person, within the meaning of the Children and Young Persons Act, so to do.

4. Being a person who pretends or professes to tell fortunes.

5. Being a person who plays or bets (otherwise than in accordance with the provisions of any law for the time being in force permitting gaming) in any public place at any game or pretended game of chance or with any instrument of gaming.

SECOND SCHEDULE (Section 4)

ROGUES AND VAGABONDS

1. Being a person committing any of the offences mentioned in section 3 of this Act after having been deemed a vagrant.

2. Being a person lying, sleeping, or loitering in, upon or under any verandah, gallery, barn, out-house, passageway, cartway, or building wholly or in part unoccupied, and not being able to give a satisfactory account of himself.

3. Being a person found in or under any cart, carriage, vessel, aircraft or on or under any wharf, jetty, bridge, footway or any public place not being able to give a satisfactory account of himself or who refuses to leave or move therefrom when requested so to do by any peace officer or by any person in charge of such wharf, jetty, bridge or footway or public place or such car, carriage, vessel or aircraft.

4. Being a person found in, upon or under any dwelling house, warehouse, coach house, stable, garage or out-house or in any enclosed yard or garden and not being able to give a satisfactory account of himself or who is found there for the purpose of committing some offence, either in that place or at some other place.

5. Being a suspected person or reputed thief frequenting or loitering in or about any place, public or private, with intent to commit an offence: Provided that in proving the intent to commit an offence as referred to in paragraphs 4 and 5 of this Schedule it shall not be necessary to prove that the person suspected was guilty of any particular act or acts tending to show his purpose or intent and he may be convicted if from the circumstances of the case and from his known character as proved to the court it appears to the court that his intent was to commit an offence.

6. Being a person exposing to view in any public place any obscene print, picture or other indecent exhibition.

7. Being a person wilfully, openly, lewdly or obscenely exposing his person in any street, road or public highway or in view thereof or in any place of public resort or with intent to insult any female.

8. Being a person wandering abroad and endeavouring by the exposure of wounds or deformities to obtain or gather alms.

9. Being a person procuring or endeavouring to procure a charitable contribution of any nature or kind under false or fraudulent pretence.

THIRD SCHEDULE (Section 5)

INCORRIGIBLE ROGUES

1. Being a person committing any of the offences mentioned in section 4 of this Act after having been deemed a rogue and vagabond.
2. Being a person having in his control or possession any picklock, key, jackbit, and other implements with intent to commit an indictable offence.
3. Being a person armed with any gun, pistol, hanger, cutlass, bludgeon or other offensive weapon or any instrument with intent to commit any felonious act.
4. Being a person apprehended as a vagrant or rogue and vagabond and violently resisting any peace officer so apprehending him and being subsequently convicted of the offence for which he shall have been so apprehended.¹⁰⁷

The Bahamas' Penal Code provides, *inter alia*:

104. Arrest without warrant by peace officer

(1) Any peace officer and all persons whom he shall call to his assistance may arrest and take persons into custody without a warrant in the following cases — ...

(b) any intoxicated or idle or disorderly person whom he finds in any way disturbing the peace, whether in a public or private place, and causing public annoyance, or guilty of any other offence against the law which may be an outrage of public decency or morality;

(c) any person whom he finds during the night lying or loitering in any highway, yard or other place and whom he shall have good cause to suspect of having committed, or being about to commit, any offence against this Code; ...

209. Idle and Disorderly Persons

(1) Whoever —

(a) being able by labour or other lawful means to maintain himself or herself, or his wife or child, or her child, where the wife or child is without other means of support, refuses or neglects so to do, or wanders abroad, or places himself in any public place, to beg or gather alms, or causes, procures or encourages any child so to do;

(b) sleeps or loiters in, upon or under any verandah, gallery, outhouse, passage, gateway or building wholly or in part unoccupied, or is found in or under any cart, carriage or vessel, or on or under any wharf, quay, jetty, bridge, footway or other public place, and refuses to leave or remove therefrom when required or called upon so to do by any peace officer or by any person in charge of the wharf, quay, jetty, bridge, footway or

¹⁰⁷ Bahamas Vagrancy Act (1939), §§ 3-6, First-Third Schedules.

other public place, or is found within any enclosed land, without leave of the owner, occupier, or person in charge thereof, and does not give a good account of himself;

(c) pretends or professes to tell fortunes; or

(d) plays or bets in any public place at any game or pretended game of chance, or with any instrument of gaming, shall be dealt with by a peace officer as an idle and disorderly person and shall, on conviction, be liable to imprisonment for one month.

(2) Where any person having no visible means of support is convicted of trespassing on premises for the purpose of committing theft, he shall be liable to imprisonment for six months. ...

212. Nuisances and Obstructions in the Streets, and the Like

Every person who does any of the following acts shall, in every case, be liable to a penalty of one hundred and fifty dollars, that is to say, every person who —

(1) in any public place, wilfully or wantonly shouts or vociferates, or blows any horn or shell, or beats any drum or other instrument, to the annoyance or disturbance of any householder, or sounds or plays upon any musical instrument, or sings, quarrels or makes any other loud or unseemly noise near any house after being required to depart;

(2) throws or discharges any stone or other missile, to the annoyance, damage or danger of any person, or, in any public place in any town, makes any bonfire or sets fire to or throws when lighted any firework;

(3) being the owner or occupier of premises in any town or settlement knowingly permits any disturbance of the public peace by loud shouting or otherwise in or upon such premises;

(4) in any street or place of public resort, flies any kite or plays at cricket or any game to the annoyance or danger of passengers or residents;

(5) in any part of any town or settlement or any place immediately adjacent thereto, makes or causes to be made any fire in the yard or other part of any house or premises, except the kitchen, whereby the town, or any house or building, in or near it may be endangered;

(6) in any part of any town or settlement or any place immediately adjacent thereto, lights, or causes to be lighted, any fire, or carries any lighted torch, candle or other lighted thing, or any fire, through the same, unless secured in a lantern or some other safe thing in which it may be conveyed;

(7) wantonly extinguishes the light of or destroys or interferes or meddles with, any public or street lamp;

(8) assembles with other persons in any public place, or in any open space near a public place, for any idle, vicious or disorderly purpose, or otherwise than in the regular performance or in pursuance of some, lawful calling or object, to the annoyance or obstruction of any passenger or person frequenting such public place or any person living near it, and does not move away when required by any peace officer;

(9) loiters, carouses or the like in or about any shop, in any public place, and does not quietly move away when desired so to do by any peace officer or by the owner of the shop or his agent;

(10) behaves irreverently near any church, chapel or other building appropriated for religious worship during divine service, or behaves irreverently or indecently in or near any public burial ground during the burial of a body;

(11) having the custody of any child above the age of five years, permits it to go naked;

(12) wilfully and indecently exposes his person in any public place or within view thereof, or in any place with intent to insult any female;

(13) loiters or wanders about and importunes any passenger for the purposes of prostitution;

(14) without the consent of the owner or occupier thereof, affixes any posting-bill or other paper against or upon any building, wall, fence, pillar, post or pale, or writes upon, soils, defaces or marks any building, wall, fence, pillar, post or pale, with chalk or paint; or in any other way or with any other material;

(15) being in charge of, and by means of, any cart, dray, waggon or other vehicle, or by other means wilfully, or negligently breaks, damages or destroys any curb-stone, lamp-post, wall or other public property;

(16) peddles, hawks, sells or exposes for sale any goods or other articles whatsoever on a highway:

Provided that —

(i) the provisions of this paragraph shall not apply to persons who shall first obtain a permit from the Commissioner of Police to sell vegetables, fish, fruit, victuals, ice, coal, seeds, roots, or goods or articles the product of a person's own manufacture or work, or to persons selling in any public market, or at public auctions, or to commercial travellers;

(ii) every such permit shall be in such form and subject to such conditions as the Commissioner of Police may prescribe and may be cancelled by him in his discretion upon the breach of any such conditions;

(17)

(a) begs for alms, or annoys any person by importuning, soliciting, or asking for custom for any purpose whatsoever on any highway or public place or upon any private premises, or causes, or procures, or encourages any child or young person so to do; or

(b) being a parent or guardian allows any child or young person for whom he is responsible to commit any of the offences hereinbefore in this subsection mentioned;

(18) holds or takes part in any procession in any public street or place without the previous written permission of the Commissioner of Police;

(19) washes any vehicle or motor vehicle in Rawson Square or in any part of Bay Street which is within the limits of the City of Nassau as defined by the Interpretation Act.¹⁰⁸

Barbados

Barbados' Minor Offences Act stipulates, *inter alia*:

2. Disorderly behaviour

(1) Any person who

(a) applies for relief to the Chief Welfare Officer or to any person or body acting on his behalf and at the time of the application is the owner of any money or property of which, on enquiry by the Chief Welfare Officer or the person or body acting on his behalf, he does not make correct and complete disclosure;

(b) being able, either by labour or by other lawful means, to maintain himself or herself or his wife or his or her child or children wilfully refuses or neglects to do so and thereby becomes burdensome or renders his wife or his or her child or children burdensome upon national assistance or other public funds set apart for the relief of the poor;

(c) wanders in the public streets or highways or in any place of public resort and behaves in a riotous or indecent manner;

(d) in any street, highway or public place accosts a passenger and offers to take him to the house or residence of a prostitute;

(e) loiters in any street or highway and importunes passengers for the purpose of prostitution;

¹⁰⁸ Bahamas Penal Code (1924), §§ 104, 209, 212.

(f) in any street, highway or public place, including a beach, without lawful authority or excuse (the proof whereof shall lie on the person accused), accosts, molests, threatens or harasses any person or follows him about;

(g) loitering in any highway, yard or other place, is unable to give a satisfactory account of himself or whom there is cause to suspect of being about to commit an offence; or

(h) for the purpose of obtaining relief from national assistance, for himself or for any other person, wilfully gives a false name or makes or uses a false statement to the Chief Welfare Officer or any person or body acting on his behalf,

commits an offence and is liable on conviction before a magistrate to a penalty of \$2 500 or to imprisonment for 2 years or to both.

(2) For the purposes of this section “harass” means to

(a) use words, gestures and actions that annoy, alarm or abuse a person;

(b) insult, taunt or challenge a person in a manner likely to offend;

(c) use obscene and profane language to intimidate a person; or

(d) disturb or irritate especially by continued and repeated acts.

3. Offensive behaviour

Any person who

(a) commits an offence under section 2, having previously been convicted of an offence under that section;

(b) wilfully exposes or causes to be exposed to view in any street, road, highway or public place or in the window or other part of any shop or other building situate in any street, road, highway or public place or in any building or any place, whether opened or covered, which the public are permitted to enter any obscene print, picture or other indecent exhibition; or

(c) wilfully, openly, lewdly and obscenely exposes his person in any street, public road or highway or in the view thereof or in any place of public resort;

(d) endeavours to procure charitable contributions under any false or fraudulent pretence;

(e) has in his custody or possession any pick-lock, key, crowbar, jack, bit or other implement with intent to break into any dwelling-house, warehouse, store, shop or outbuilding;

(f) is armed with any gun, pistol, cutlass, bludgeon or other offensive weapon or has upon him any instrument with intent to commit an arrestable offence;

(g) is found in or upon any dwelling-house, warehouse, stable or outhouse or in any enclosed yard, garden or area and is there for purpose of committing an arrestable offence, either in that place or at some other place; or

(h) being a suspected person or reputed thief, frequents or loiters in or about any highway or any place, public or private, with intent to commit an arrestable offence,

commits an offence and is liable on conviction before a magistrate to a fine of \$3 500 or to imprisonment for 2 years or both. ...¹⁰⁹

Belize

Belize's Summary Jurisdiction (Offences) Act stipulates, *inter alia*:

3. Division 1

(1) A person who, ...

(vii) commits any of the offences mentioned in paragraphs (xxix), (xxx) and (xxxii) of section 4 (1) of this section, having been previously deemed an idle and disorderly person;

(viii) pretends or professes to tell fortunes, or uses any subtle craft or device by palmistry, obeah or any such like superstitious means to deceive and impose upon any person whomsoever;

(ix) maliciously fabricates or knowingly spreads abroad or publishes, whether by writing or by word of mouth or otherwise, any false news or false report tending to create or foster public alarm or to produce public detriment; or

(x) wanders abroad and lodges in any outhouse or in any deserted or unoccupied building, or in the open air, or in any vehicle or boat, not having visible means of subsistence and not giving a good account of himself;

(xi) willfully exposes to view in any street or any public place, or in the window of any house or shop in any street or public place, any obscene print, picture or other indecent exhibition;

(xii) willfully, openly, lewdly or obscenely exposes his person in any street, river or harbour, or in any place in view thereof, or in any place of public resort;

¹⁰⁹ Barbados Minor Offences Act (1998), §§ 2-3.

(xiii) wanders abroad and endeavours by the exposure of wounds or deformities to obtain or gather alms;

(xiv) goes about as a gatherer or collector of alms, or endeavours to procure charitable contributions of any nature or kind under any false or fraudulent pretence; or

(xv) runs away and leaves his wife or his or her child or children chargeable, or whereby she or they or any of them becomes chargeable, on any public fund;

(xvi) has in his custody or possession any pick-lock, key, crow, jack, jemmy, bit or other implement with intent feloniously to break into any dwellinghouse, warehouse, store, shop, office, church, chapel, cellar, boiling-house, curing-house, distilling-house, out-house, stable or building, or is armed with any gun, pistol, hanger, cutlass, machete, sheathknife, razor, club, bludgeon or other offensive weapon with intent to commit any felonious act;

(xvii) is found in or upon any dwelling-house, warehouse, stable or out-house, or in any enclosed or unenclosed yard, garden, court or other place for any unlawful purpose, or being found in any of those places, does not give a satisfactory account of himself;

(xviii) being a suspected person or reputed thief frequents any harbour, river, canal or navigable stream, dock or basin, or any quay, wharf or warehouse near or adjoining thereto, or any place of public resort, or any avenue leading thereto or any street, or any place adjacent to any street with intent to commit a felony;

(xix) being apprehended for an offence on conviction of which he may be deemed an idle and disorderly person, violently resists any police officer so apprehending him, and is subsequently convicted of the offence for which he has been so apprehended;

4. Petty offences

(1) A person who, ...

(xxix) being able wholly or in part to maintain himself or his family by work or other means, willfully refuses or neglects so to do;

(xxx) being a common prostitute wanders in any street or place of public resort and behaves in a riotous and indecent manner;

(xxxix) wanders abroad or places himself in any public place, street, court or passage to beg or gather alms, or causes or procures, or encourages any child or children so to do; ...

7. Idle and disorderly person

A person committing any of the offences mentioned in paragraphs (xxix), (xxx) and (xxxi) of section 4 (1) of this Act, shall be deemed an idle and disorderly person.

8. Rogue and vagabond

A person committing any of the offences mentioned in paragraphs (vii) to (xix) of section 3 (1) of this Act, shall be deemed a rogue and vagabond.

9. Incurrible rogue

A person who,

(a) breaks or escapes out of any place of legal confinement or out of lawful custody before the expiration of the term for which he was committed or ordered to be confined in consequence of a conviction under paragraphs (vii) to (xix) of section 3 (1), or paragraphs (xxix), (xxx), and (xxxi) of section 4 (1) of this Act;

(b) commits any offence against any of the paragraphs (vii) to (xix) of section 3 (1) of this Act (which subjects him to be dealt with as a rogue and vagabond), he having been previously convicted of any such offence; or

(c) upon being apprehended for an offence in respect of which he is liable to be deemed a rogue and vagabond, violently resists any police constable or other peace officer so apprehending him, and being subsequently convicted of the offence for which he was so apprehended,

shall be deemed an incurrible rogue.¹¹⁰

Dominica

Dominica's Small Charges Act includes various vagrancy and vagrancy-type clauses, including, *inter alia*:

10. Annoyance in public place

(1) Any person who in any public place persists, after being warned not to do so by any other person, or by a police officer or local or special constable, in accompanying or following such other person about for the purpose of –

(a) soliciting alms or employment; or

(b) satisfying idle curiosity; or

(c) annoying,

¹¹⁰ Belize Summary Jurisdiction (Offences) Act (1952), §§ 3-4, 7-9.

is liable to a fine of seventy-five dollars or to imprisonment for fourteen days.

(2) Any person who in any public place or on or around any premises, persists in loitering therein, or in behaving in an idle or disorderly manner after being warned not to do so, or to move on, by any police officer or by any local or special constable is liable to a fine of seventy-five dollars. ...

13. Begging

(1) Any person wandering abroad or placing himself in any public place to beg or to gather alms, or causing or procuring any child or children to do so, shall be deemed an idle and disorderly person within the meaning of this Act, and is liable to a fine of two hundred and fifty dollars or to imprisonment for one month.

(2) Any person –

(a) wandering abroad and endeavouring by the exposure of wounds or deformities to collect alms; or

(b) going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind under any false or fraudulent pretence,

shall be deemed to be a rogue and a vagabond within the meaning of this Act, and is liable to imprisonment for three months. ...

24. Family desertion

(1) Any person who is wholly or in part able to maintain his or her children, and if a male, his wife, by work or by other lawful means, and who wilfully refuses or neglects to do so, shall be deemed to be an idle and disorderly person within the meaning of this Act, and is liable to imprisonment for one month.

(2) Any person who deserts his wife or children is liable to imprisonment for three months.

(3) Any person running away and leaving his wife or his or her child or children, shall be deemed to be a rogue and a vagabond within the meaning of this Act, and is liable to imprisonment for three months. ...

29. Incurrible rogues

Any person committing any offence against this Act, by reason whereof he is deemed to be a rogue and a vagabond within the meaning of this Act having been at some former time adjudged to be so and duly convicted thereof, shall be deemed an incurrible rogue within the meaning of this Act and is liable to imprisonment for six months.

30. Indecency

(1) Any person behaving in a public place in an indecent manner is liable to imprisonment for one month.

(2) Any person who writes or draws any indecent word or figure or representation in any public place is liable to a fine of one hundred dollars.

(3) Any person who wilfully –

(a) exposes in any public place any obscene print, picture, photograph or other indecent exhibition;

(b) exposes or causes to be exposed to public view in the window or other part of any shop or other building situated in a public place, any obscene print, picture, photograph or other indecent exhibition;

(c) exposes his person in any public place or in view thereof;

(d) appears in public attired in such a manner as to outrage public morality,

Shall be deemed a rogue and a vagabond within the meaning of this Act and is liable to imprisonment for three months; and in determining what shall be an outrage of public morality, regard shall be had to the appearance of any person in a public place attired in garments made partially or entirely of grass material, banana leaves, pelts or skins of animals.

(4) Any person who is concerned in the publishing or circulating or who suffers to be published or circulated in any newspaper or otherwise any indecent matter is liable to a fine of three thousand dollars. ...

38. Pretending to tell fortunes, etc.

Any person –

(a) pretending or professing to tell fortunes; or

(b) using any craft, means or device by palmistry or otherwise,

to deceive and impose on any person shall be deemed to be a rogue and a vagabond within the meaning of this Act, and is liable to imprisonment for three months.

39. Prostitutes

(1) Any prostitute or night-walker loitering or being in any public place for the purpose of prostitution or solicitation to the annoyance of the public is liable to a fine of one hundred dollars.

(2) Any common prostitute wandering in the public streets or public highways or in any place of public resort and behaving in a riotous or indecent manner shall be deemed an idle and

disorderly person within the meaning of this Act and is liable to imprisonment for one month.
...

42. Riotous conduct

Any person who –

- (a) in any public place is guilty of any riotous behaviour; or
- (b) in any police station house is guilty of any violent behaviour,

is liable to a fine of two hundred and fifty dollars or to imprisonment for one month.

43. Rogues and vagabonds

Any person committing any offence on conviction for which he is deemed an idle and disorderly person within the meaning of this Act, after having been convicted as an idle and disorderly person shall be deemed to be a rogue and vagabond within the meaning of this Act and is liable to imprisonment for three months. ...

49. Vagrancy

(1) Any person being able wholly or in part to maintain himself by work or by other means and wilfully refusing or neglecting to do so, shall be deemed an idle and disorderly person within the meaning of this Act and is liable to imprisonment for one month.

(2) Any person –

- (a) wandering abroad and lodging in any bam or outhouse, or in any deserted or unoccupied building, or in the open air or under a tent, or in any cart or wagon, or in any vessel, boat, lighter or drogher, and not having any visible means of subsistence, and not giving a good account of himself; or
- (b) being found in or upon any dwelling-house, office, warehouse, coach-house, stable or outhouse, or in any enclosed yard, garden or area, or in any vessel, boat, lighter or drogher, for any unlawful purpose,

shall be deemed to be a rogue and a vagabond within the meaning of this Act, and is liable to imprisonment for three months. ...¹¹¹

Guyana

Guyana's Summary Jurisdiction (Offences) Act stipulates, *inter alia*:

143. Vagrancy

¹¹¹ Dominica Small Charges Act (1891), §§ 10, 13, 24, 29-30, 38-9, 42-3, 49.

Everyone who does any of the following acts shall be declared a vagrant or idle and disorderly person ...

(a) being able, by labour or other lawful means, to maintain himself or herself, or his wife or child, or her child, where the wife or child is without other means of support, wilfully refuses or neglects to do so; or

(b) wanders abroad, or places himself in any public way or public place, or intrudes in any private premises after being lawfully ordered to depart, and uses any solicitation, means, or device to induce the bestowal or alms upon him, or causes, procures, or encourages any other person to do so; or

(c) sleeps, lodges, or loiters in or under any porch, verandah, gallery, outhouse, passage, gateway, dwelling-house, warehouse, store, shop, stable, or other building, or in or under any building wholly or in part unoccupied, or is found in or under any cart, carriage, or vessel, or in any logie or plantation building, or on or under any wharf, stelling, quay, jetty, bridge or any other place, or in any canefield or provision ground, or on or in any dam or trench immediately adjoining thereto, without leave of the owner, occupier, or person for the time being in charge thereof, and has no visible means of subsistence or does not give a satisfactory account of himself.

144. Roguery and vagabondage

(1) Everyone who does or suffers any of the following acts or things shall be declared a rogue and vagabond ...

(a) is convicted a second or any subsequent time of being a vagrant or idle and disorderly person; or

(b) while being apprehended as a vagrant or idle and disorderly person, assaults or violently resists the police or rural constable or other person who is apprehending him, and is subsequently convicted of the offence for which he was being apprehended; or

(c) procured or endeavours to procure alms or charitable contributions for himself or any other person, under any false or fraudulent pretence; or

(d) is found in or under any porch, verandah, gallery, outhouse, passage, gateway, dwelling-house, warehouse, store, shop, stable, or other building, or in any yard, garden, or other enclosed place or land for any unlawful purpose, or, being found in any of those places, does not give a satisfactory account of himself; or

(e) plays or bets by way of wagering or gaming in any street, road, highway or other open or public place, or in any open place to which the public have or are permitted to have access to or with any table, dice, cards or other instrument or means of such wagering or gaming at any game or pretended game of chance; or

(f) has in his custody or possession any picklock, key, crowbar, jack, bit, or other implement, with intent unlawfully to break into any building, or is armed with or had upon him any gun, pistol, sword, knife, razor, bludgeon, or other deadly or dangerous weapon or instrument, with intent to commit any unlawful act; and the weapon or instrument shall, on the conviction of the offender, be forfeited; or

(g) is convicted a second or any subsequent time of an offence against section 136(a) or section 141; or

(h) is convicted a second or any subsequent time of an offence against section 159; or

(i) being a suspected person or reputed thief, loiters or lurks about or frequent any river, canal, or navigable stream, or any market, warehouse, wharf, dock, or stelling, or loiters or lurks in or about or frequents any vessel, punt, boat, or other craft, with intent to commit any robbery, theft, or unlawful act, or is found in any of those places or in any vessel, boat, punt, or other craft aforesaid, and does not give a satisfactory account of himself; or

(j) is convicted a second or any subsequent time of an offence against section 161; or

(k) unlawfully sells, attempts to sell, or unlawfully acts as an agent for the sale of any lottery ticket. ...

145. Obeah and Witchcraft

(1) For the purposes of this section, 'obeah' signifies every pretended assumption of supernatural power or knowledge whatever, for fraudulent or illicit purposes or for gain, or for the injury of any person.

(2) Everyone who –

(a) by the practice or pretended practice of obeah, or by any occult means or assumption of supernatural power or knowledge, or by any pretended love philtre or medicine, –

(i) intimidates, or attempts to intimidate or influence, anyone; or

(ii) obtains or endeavours to obtain any chattel, money, or valuable security, from another; or

(iii) pretends to discover any lost or stolen goods, or the person who stole them, or to inflict any disease, loss, damage, or personal injury, to or upon another, or to restore another to health, or to cause or divert affection; and

(b) procures, counsels, induces, or persuades, or endeavours to persuade, another to commit any of those offences, whether with or without payment,

shall on conviction before any magistrate, be deemed a rogue and vagabond ...

(5) Anyone who uses any subtle craft, means, or device, by palmistry, cards, or otherwise, to deceive and impose upon another, any anyone who for personal gain pretends or professes to tell fortunes, shall be liable to a fine of not less than seven thousand five hundred dollars nor more than fifteen thousand dollars and to imprisonment for ten months.¹¹²

Jamaica

Jamaica's Towns and Communities Act stipulates, *inter alia*:

3. What not to be done in thoroughfares or highways

Every person who—

(a) shall, in any thoroughfare in any town, or on any highway, feed or fodder any horse or other animal, or show any caravan containing any animal, or any other show or public entertainment, or shoe, bleed, or farry any horse or animal (except in cases of accident), or exercise, train, or break any horse or animal, or clean, make, or repair any part of any cart or carriage, except in cases of accident where repair on the spot is necessary;

(b) shall, in any thoroughfare in any town, turn loose any horse or cattle, or suffer to be at large any unmuzzled ferocious dog, or shall, in any place, wilfully set on or urge any dog or other animal to attack, worry, or put in fear any person, horse, or other animal;

(c) shall, by negligence or ill-usage in driving cattle or any other animal, cause any mischief to be done by such cattle or other animal to any person or property; or who shall, in the driving, care, or management of such cattle or other animal, wantonly or unnecessarily impede or obstruct the free passage of any person along any thoroughfare or highway; and also every person, not being hired or employed to drive such cattle or other animal, who shall wantonly and unlawfully pelt, drive, or hunt, or injure or hurt any such cattle or other animal;

(d) having the care of any cart or carriage, shall ride on any part thereof, or on the shaft thereof, or on any horse or other animal drawing the same, without having and holding the reins, or who shall be at such a distance from such cart or carriage as not to have the complete control over every horse or other animal drawing the same;

(e) shall, in any thoroughfare in any town, ride or drive furiously, or on any thoroughfare or highway ride or drive so as to endanger the life or limb of any person, or to the common danger of the passengers therein;

¹¹² Guyana Summary Jurisdiction (Offences) Act (1893), §§ 143-45.

(f) shall, in any thoroughfare cause any carriage, with or without horses or other animals, to stand longer than may be necessary for loading or unloading, or for taking up or setting down passengers, excepting carriages standing for hire in any place allowed by competent authority; or who, by means of any carriage, or any horse or other animal, shall wilfully interrupt any public crossing or wilfully cause any obstruction in any thoroughfare or highway;

(g) shall lead or ride any horse or other animal, or draw or drive any carriage upon any footway, or faster any horse or other animal so that it may stand across, or upon, or impede any footway; and every person who shall, along any thoroughfare or highway, in, or on any carriage, carry or convey any timber, lumber, iron, or thing made of any material whatsoever in such manner as that the same or any part thereof shall extend across the carriage two feet beyond the wheels;

(h) shall roll or carry any cask, tub, hoop, or wheel or any ladder, plank, pole, or placard upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway, or for the performance of any immediate or indispensable work, or for the repair of any building otherwise than under the regulations hereinafter mentioned;

(i) after being made acquainted with the regulations or directions made by competent authority for regulating the route of horses, carriages and persons during the time of divine service, or at any other time, through any of the towns of this Island, shall wilfully disregard or not conform himself thereunto;

(j) shall, without the consent of the owner or occupier affix any bill or other paper against or upon any building, wall, fence, or pale, or write upon, soil, deface, or mark any such building, wall, fence, or pale in any other way whatsoever;

(k) shall, in any thoroughfare or public place, indecently expose his or her person;

(l) shall sell or distribute, or offer for sale or distribution, or shall mark on any fence, wall or any building, any obscene figure, drawing, painting, or representation, or sing any profane, indecent or obscene song or balad, or write or draw any indecent or obscene word, figure, or representation, or use any profane, indecent or obscene language;

(m) shall use any threatening, or abusive and calumnious language to any other person publicly, as shall tend to provoke a breach of the peace; or shall use such language, accompanied by such behaviour to any person publicly. as shall tend to a breach of the peace;

(n) shall, in the streets, lanes, or squares of any town or in any thoroughfare or highway, wantonly discharge any firearms, or make any bonfire or throw or set fire to any firework; or who, to the danger and annoyance of any passenger or inhabitant, shall throw or discharge any stone or other missile, or who shall fly any kite, or play any game;

(o) shall wilfully and wantonly disturb any inhabitant by pulling or ringing any door-bell, or knocking at any door, without lawful excuse, or who shall wilfully and unlawfully extinguish the light of any lamp, or shall unlawfully enter into any dwelling-house, building, or premises to the annoyance of any person therein;

(p) in any thoroughfare in any town, or in any highway, shall tyre any wheel, or burn, dress, or cleanse any hoop, or cleanse, fire, wash, or scald any cask or tub, or shall wilfully make any fire on or in any prohibited place;

(q) shall bum any wood, shavings, rubbish, or sweepings in any street, lane or road;

(r) shall loiter in any public place and solicit any person for the purpose of prostitution,

shall be guilty of an offence and shall be liable to a penalty not exceeding one thousand dollars.

4. Constable may apprehend parties offending on view, etc.

It shall be lawful for any constable to take into custody, without warrant, any person who shall commit any of the offences hereinbefore mentioned within view of any such constable; and in like manner. when the offender is unknown, without warrant to take into custody any such offender who shall be charged by any other credible person with recently committing any of the said offences, though not committed within view of such constable, but within view of the person making such charge. ...

20. Idle and disorderly persons assembled in public places

It shall be lawful for any constable to take into custody any idle and disorderly persons who may, at any time, be found assembled in any thoroughfare, street, lane, or public place, or in front, or about, or in the neighborhood of any house, wharf, tavern, or other premises, or in any street or other public place in any city or town in this Island, who, upon being desired by such constable to retire or disperse, and leave the place in which they shall have so assembled, shall refuse or neglect immediately to do so, and carry such persons, or any of them, before any Justice, who shall hold them, or any of them, to bail, to appear and answer any charge touching such offence that may be brought against them; and in default of security, he shall remand such persons in custody until they can be brought before the Justices in Petty Sessions for trial.¹¹³

Jamaica's Offences Against the Person Act

80. Apprehension without warrant

Any constable may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, that is to say the interval between 7 o'clock in the evening and 6 o'clock in the morning of the next succeeding day, and whom he shall have good cause to suspect of having committed, or being about to commit

¹¹³ Jamaica Towns and Communities Act (1843), §§ 3-4, 20.

any felony in this Act mentioned, and shall take such person, as soon as reasonably may be, before a Justice, to be dealt with according to law.¹¹⁴

Trinidad and Tobago

Trinidad and Tobago's Summary Offences Act provides, *inter alia*:

45. Idle and disorderly persons

A person committing any of the offences mentioned below in this section may be deemed an idle and disorderly person, and shall be liable to a fine of two hundred dollars, or to imprisonment for one month—

- (a) any person who, being able by labour or other lawful means to maintain himself or his wife or child, where such wife or child is without other means of support, refuses or neglects to do so;
- (b) any person wandering abroad or placing himself in any street to beg or gather alms, or causing or procuring or encouraging any child to do so;
- (c) any person found sleeping or loitering in or under any building, including any open outhouse, verandah, gallery, passage, or gateway, or in any vehicle or vessel, without leave of the owner, occupier or person in charge thereof, or on or under any wharf, quay, jetty, bridge, footway, or in any street or other public place, and not giving a good account of himself;
- (d) any person who, without leave of the owner or occupier, affixes any placard or notice upon any building, wall, pillar, post, or fence, or otherwise defaces the same;
- (e) any person pretending or professing to tell fortunes.

46. Rogues and vagabonds

A person convicted a second time of being an idle and disorderly person, and a person apprehended as an idle and disorderly person violently resisting any constable apprehending him and who is subsequently convicted of the offence for which he was apprehended, and a person who commits any of the offences mentioned below in this section, may be deemed a rogue and vagabond, and shall be liable to imprisonment for two months—

- (a) any person procuring or endeavouring to procure alms or charitable contributions for himself or others under any false or fraudulent pretence;
- (b) any person having in his custody or possession any implement which there is reasonable cause to believe is intended for the purpose of unlawfully breaking into any

¹¹⁴ Jamaica Offences Against the Person Act (1864), § 80.

building; and every such implement shall, on the conviction of the offender, be forfeited;

(c) any person armed with, or having upon him, any weapon or instrument which there is reasonable cause to believe is intended for the purpose of committing any indictable offence; and every such weapon and instrument shall, on the conviction of the offender, be forfeited;

(d) any person found in any verandah, gallery, passage, gateway, dwelling house, warehouse, store, stable, outhouse, or other building, or in any yard, garden, or other enclosed land, for any unlawful purpose;

(e) any person found in or about any market, wharf, or jetty, or in or about any vessel, for any unlawful purpose;

(f) any person who exposes in any public place or in view thereof any defamatory or insulting writing or object;

(g) any person who offers for sale or distribution or who exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation;

(h) any person wilfully and obscenely exposing his person;

(i) any person playing or betting in any open and public place at any game or pretended game of chance or with any instrument of gaming;

(j) any woman loitering about and soliciting passers-by for the purpose of prostitution.

47. Incurable rogues

Any person committing an offence against this Act which subjects him to be dealt with as a rogue and vagabond, such person having been previously convicted as such, and any person apprehended as a rogue and vagabond and violently resisting any constable apprehending him and who is subsequently convicted of the offence for which he was apprehended, and any person who breaks or escapes out of any place of lawful confinement before the expiration of the term for which he was committed under this Act, shall be deemed to be an incurable rogue, and shall be liable to imprisonment for six months.¹¹⁵

Trinidad and Tobago's Police Service Act stipulates, *inter alia*:

46. Power to arrest without a warrant

(1) A police officer may arrest without a warrant— ...

(e) a person whom he finds lying or loitering in any public or private place or building and who does not give a satisfactory account of himself;

¹¹⁵ Trinidad and Tobago Summary Offences Act (1921), §§ 45-7.

(f) a person whom he finds in any public or private place or building and whom he suspects upon reasonable grounds of having committed or being about to commit an offence; ...¹¹⁶

II.2 France and Former French Colonies

II.2.1 France

The offences of vagrancy and begging, previously penalized by Articles 269 to 281 of the 1810 French Penal Code,¹¹⁷ were abolished as a matter of federal law in 1994. Various measures of the law still penalize homelessness, however. Some vagrancy-type offences are penalized as well. Obstruction of roads is an offence under Article R644(2) of the Penal Code.¹¹⁸ In addition to federal measures, local authorities have passed laws penalizing improper and prolonged occupation of public space, begging and foraging.¹¹⁹

II.2.2 Africa

The penalization of vagrancy contained in the 1810 French Penal Code remains influential across former French African colonies.

Cameroon

Section 247(1) of Cameroon's Penal Code 1967, headed "Vagrancy," states that:

Whoever is found in a public place being of no fixed abode and with no means of support shall be guilty of vagrancy and shall be punished with imprisonment for from six months to two years.¹²⁰

In addition to vagrancy, begging is also penalized under the Cameroon Penal Code. Section 245 of the Penal Code, headed "Begging," indicates that:

Whoever, having means of subsistence, or being able to earn such by working, begs in any place for alms shall be punished with imprisonment for from three months to three years and with fine of from CAF 50,000 to CAF 500,000.¹²¹

Section 246, headed "Aggravated Begging," states:

¹¹⁶ Trinidad and Tobago Police Service Act (2006), § 46.

¹¹⁷ French Code Pénal (1810), §§ 269-281.

¹¹⁸ French Code Pénal (1994), § R644-2.

¹¹⁹ See Noria Derdek, *How Can It Be That "Anti-Poor" Orders Still Exist?*, Fondation Abbé Pierre; Housing Rights Watch, *Criminalisation of homelessness in France, Pro Bono Report* (Dec. 11, 2012), available at: https://www.housingrightswatch.org/sites/default/files/2012-12-11_RPT_FRANCE_anti_soc_laws_en.pdf

¹²⁰ Cameroon Penal Code (1967), § 247.

¹²¹ *Id.* § 245.

Whoever, whether or not able-bodied and having or not means of subsistence, begs for alms in any of the following manners:

- (a) with abuse, threats, or assault;
- (b) after entering any dwelling or enclosure thereto appurtenant without the occupant's permission;
- (c) feigns wounds or a disability in order to attract the generosity or play over the intelligence of a third party;
- (d) in company, save husband and wife, or father and mother with their young children, or a blind man and his guide;

shall be punished with imprisonment for from six months to six years and with fine from CAF 1,000 to CAF 1,000,000.¹²²

Cote d'Ivoire

Vagrancy is penalized in various ways in Cote d'Ivoire, including by amendments added to the Penal Code in 1995. Section 5 of Cote d'Ivoire's Penal Code is headed "Vagabondage and Begging." Article 189 therein states:

Est puni d'une peine de trois à six mois d'emprisonnement et peut être frappé, pendant cinq ans, d'interdiction de séjour, ou d'interdiction du territoire de la République, ou d'interdiction de paraître en certains lieux, celui qui n'a ni domicile certain, ni moyens de subsistance avouables et qui n'exerce habituellement ni métier, ni profession.¹²³

Article 190 states:

Toute personne qui, capable d'exercer un travail rémunéré, se livre habituellement à la mendicité, est punie d'un emprisonnement de trois à six mois et peut être frappée pendant cinq ans, d'interdiction de séjour, ou d'interdiction du territoire de la République, ou d'interdiction de paraître en certains lieux.¹²⁴

Article 191 states that:

Sont punis d'un emprisonnement de six mois à deux ans, tous mendiants:

¹²² *Id.* § 246.

¹²³ Cote d'Ivoire Penal Code (1981), § 189 ("Persons who has neither a definite home nor a decent means of subsistence and who usually does not engage in any trade or profession shall be punished by imprisonment for a term of three to six months and may be punished for five years with prohibition of residence, or prohibition of the territory of the Republic, or prohibition to appear in certain places.").

¹²⁴ *Id.* § 190 ("Anyone who, able to perform paid work, habitually engages in begging, is punished by imprisonment of three to six months and may be subject to five years, ban on stay, or banned from the territory of the Republic, or prohibition to appear in certain places.").

- 1) qui ont usé de menaces ou sont entrés, contre le gré de l'occupant, soit dans une habitation, soit dans un enclos en dépendant;
- 2) qui feignent des plaies ou infirmités;
- 3) qui mendient en réunion, à moins que ce ne soient le mari et la femme, le père ou la mère et leurs jeunes enfants, l'aveugle et son conducteur. La peine peut être portée au double contre ceux qui provoquent à la réalisation du délit.¹²⁵

Article 192 states:

Est puni d'une peine de deux à cinq ans d'emprisonnement, tout mendiant ou vagabond qui est trouvé porteur d'une arme, ou muni de lime, crochet ou autre instrument propre soit à commettre des vols ou d'autres délits, soit à lui procurer les moyens de pénétrer dans les maisons¹²⁶.

Article 193 states:

Tout mendiant ou vagabond qui exerce des violences envers les personnes est puni d'un emprisonnement de deux à cinq ans. Si les violences sont accompagnées d'une des circonstances mentionnées à l'article 192. les peines sont poilées au double.¹²⁷

Article 194 states:

Les peines établies par le présent code contre les individus porteurs de faux certificats, faux passeports ou fausses feuilles de routes, sont toujours dans leur espèce, portées au double, quand elles sont appliquées à des vagabonds ou mendicants.¹²⁸

Madagascar

Articles 269-273 of the Madagascar Penal Code penalize 'vagabondage.' Article 269 makes vagrancy a crime.¹²⁹ Article 270 provides a definition:

Vagrants or unconcerned people are those who have no definite home or means of subsistence and who usually do not practice a trade or profession.

¹²⁵ *Id.* § 191 ("All beggars: - (1) who have used threats or have entered, against the will of the occupant, either in a dwelling, or in a dependent enclosure; (2) who pretend wounds or infirmities; (3) who beg in a meeting, unless it is the husband and wife, the father or mother and their young children, the blind man and his driver. Are punished by imprisonment of six months to two years. The penalty can be doubled against those who provoke the commission of the offense.").

¹²⁶ *Id.* § 192 ("Any beggar or vagrant who is found carrying a weapon, or provided with a file, hook or other instrument suitable for committing thefts or other crimes, or to provide him with the means to enter houses.").

¹²⁷ *Id.* § 193 (Any beggar or vagrant who exercises violence against people is punished with imprisonment of two to five years. If the violence is accompanied by one of the circumstances mentioned in article 192, the penalties are doubled.").

¹²⁸ *Id.* § 194 ("The penalties established by this Code against individuals carrying false certificates, false passports or false roadmaps are always in their species, doubled, when they are applied to vagrants or beggars.").

¹²⁹ Madagascar Penal Code (1972), §269.

Persons who are unaccompanied are considered to be persons who, whether or not they have a certain place of domicile, usually derive their livelihood only from practicing or facilitating the practice of illicit gambling on the highway.¹³⁰

Article 271 states that:

Vagrants or unconvicted persons who have been legally declared as such will be punished by three to six months' imprisonment for this act alone.¹³¹

Section 272 indicates that:

Individuals who have been declared vagrants by judgment may, if they are foreigners, be removed by the Government to leave the territory of the Republic.¹³²

Section 273 further states that:

The vagabonds born in Madagascar may, after a judgment even become final, be claimed by the municipal council of the commune where they were born, or endorsed by a solvent citizen. If the Government accepts the complaint or approves the surety, the persons so demanded or bonded shall, by his orders, be sent back or brought into the commune which has claimed them, or in that which will be assigned to them for residence, at the request of the guarantor.¹³³

Mali

Vagrancy is penalized under Paragraph II of the Mali Penal Code, headed "Vagabondage." Article 145 defines vagabondage:

Le travail est un devoir pour tout Malien. En conséquence, le vagabondage est un délit.

Les vagabonds ou gens sans aveu sont ceux qui n'ont ni domicile certain, ni moyens de subsistance et qui n'exercent habituellement ni métier ni profession.¹³⁴

The sentencing for vagabondage is stated by Article 146:

Les vagabonds ou gens sans aveu qui auront été légalement déclarés tels, seront, pour ce seul fait, punis de quinze jours à six mois d'emprisonnement. Ils pourront en outre, en cas de récidive, être interdits de séjour pendant deux ans au moins et cinq ans au plus.¹³⁵

¹³⁰ *Id.* § 270.

¹³¹ *Id.* § 271.

¹³² *Id.* § 272.

¹³³ *Id.* § 273.

¹³⁴ Mali Penal Code (1961), §145 ("Work is mandatory for all residents in the territory, hence vagrancy is a crime. Vagabonds are those who have no fixed abode, no livelihoods and that usually exercise no trade or profession.").

¹³⁵ *Id.* § 146 ("The vagrants or people without confession who will have been legally declared as such, will, for this fact alone, be punished from fifteen days to six months imprisonment. They may also, in the event of a repeat offense, be banned from residence for at least two years and at most five years.").

Further, Article 147 states that:

Les individus non originaires de la République du Mali déclarés vagabonds peuvent être conduits par les ordres du Gouvernement hors de la République.

Les vagabonds nés au Mali pourront, même après un jugement passé en force de chose jugée, être réclamés par délibération du conseil de la commune ou du village où ils sont nés, ou cautionnés par un citoyen solvable.

Si le tribunal accueille la réclamation ou agréé la caution, les individus ainsi réclamés ou cautionnés seront par ses ordres renvoyés ou conduits dans la commune ou le village qui les aura réclamés ou dans telle autre localité qui leur sera assignée comme résidence à la demande de la caution.¹³⁶

In addition, Article 150 states:

Tout vagabond ou mendiant qui aura été saisi travesti d'une manière quelconque et muni d'instruments propres, soit à commettre des vols ou d'autres délits, soit à lui procurer les moyens de pénétrer dans les maisons, sera puni de six mois à cinq ans d'emprisonnement.

Tout vagabond ou mendiant qui aura exercé ou tenté d'exercer quelque acte de violence que ce soit envers les personnes sera puni d'un emprisonnement de deux ans à cinq ans.

Les vagabonds et les mendiants qui auront été condamnés aux peines portées au présent article seront interdits de séjour pour cinq ans au moins et dix ans au plus.¹³⁷

Mauritania

Section IV of Mauritania's Penal Code is headed "Criminal association, vagrancy and begging." Article 250 therein states:

Le vagabondage est un délit.¹³⁸

Article 251 defines vagabonds as:

¹³⁶ *Id.* § 147 ("Individuals not originating from the Republic of Mali declared vagrants may be taken by government orders outside the Republic. Vagrants born in Mali may, even after a judgment passed in the force of *res judicata*, be claimed by deliberation of the council of the municipality or the village where they were born, or guaranteed by a solvent citizen. If the court accepts the claim or approves the surety, the individuals thus claimed or bonded will be by its orders returned or taken to the municipality or village which will have claimed them or to such other locality which will be assigned to them as residence at the request of the bail.").

¹³⁷ *Id.* § 150 ("Any vagrant or beggar who has been seized disguised in any way and provided with proper instruments, either to commit theft or other crimes, or to provide him with the means to enter houses, will be punished by six months to five years' imprisonment. Any vagrant or beggar who has exercised or attempted to exercise any act of violence whatsoever against people will be punished by imprisonment of two to five years. Vagrants and beggars who have been condemned to the penalties provided for in this article will be banned from residence for at least five years and at most ten years.").

¹³⁸ Mauritania Penal Code (1983), §250 ("Vagrancy is an offence.").

Les vagabonds sont ceux qui n'ont ni domicile certain ni moyen de subsistance, et qui n'exercent habituellement ni métier ni profession.

Sont considérés comme des vagabonds, les mineurs de dix-huit ans qui ont, sans cause légitime, quitté, soit le domicile de leurs parents ou tuteurs, soit les lieux où ils étaient placés par ceux à l'autorité desquels ils étaient soumis ou confiés, ou qui ont été trouvés soit errant, soit tirant leurs ressources de la débauche ou de métiers prohibés.¹³⁹

Article 252 states that:

Les vagabonds qui auront été légalement déclarés tels seront pour ce seul fait punis de trois à six mois d'emprisonnement. Ils seront, après avoir subi leur peine, interdits de séjour pendant cinq ans au moins et dix ans au plus.

Néanmoins, les vagabonds âgés de moins de seize ans ne pourront être condamnés à la peine d'un emprisonnement mais, sur la preuve des faits de vagabondage, ils seront interdits de séjour jusqu'à l'âge de vingt ans accompli.¹⁴⁰

Article 253 indicates orders that can be made against foreign vagrants:

Les individus déclarés vagabonds par jugement pourront, s'ils sont étrangers, être conduits par les ordres du gouvernement hors du territoire de la République.¹⁴¹

Article 254 states:

Les vagabonds nés en Mauritanie pourront, après un jugement même passé en force de chose jugée, être cautionnés par un citoyen solvable. Si le gouvernement agréé la caution, les individus ainsi cautionnés seront, par ses ordres, renvoyés ou conduits dans la ville qui leur sera assignée pour résidence, sur la demande de la caution.¹⁴²

Article 258 provides further penalties for 'beggars' or 'vagabonds' found in certain conditions or with particular objects:

¹³⁹ *Id.* § 251 ("Those who have neither a certain domicile nor a means of subsistence, and who habitually exercise neither trade nor profession. The following persons are considered vagrants: minors of eighteen years of age who have, without lawful cause, left the domicile of their parents or guardians or the places where they were placed by those to whose authority they were subject or entrusted, or who have been found to be wandering, or drawing their resources from debauchery or prohibited trades.").

¹⁴⁰ *Id.* § 252 ("Vagrants who have been legally declared as such will be punished by three to six months' imprisonment. After being sentenced, they shall be forbidden to stay for at least five years and ten years at the most. Nevertheless, vagrants under the age of sixteen years cannot be sentenced to imprisonment but, on proof of vagrancy, they will be forbidden to stay until the age of twenty years.").

¹⁴¹ *Id.* § 253 ("Individuals declared vagrants by judgment may, if they are foreigners, be removed by the orders of the Government outside the territory of the Republic.").

¹⁴² *Id.* § 254 ("Vagabonds born in Mauritania may, after even a judgment with the force of res judicata, be guaranteed by a solvent citizen. If the government approves the surety, the individuals who have been guaranteed shall, by the government's orders, be sent back or conducted to the city which shall be assigned to them for residence, at the demand of the surety.").

Tout mendiant ou vagabond qui aura été saisi travesti d'une manière quelconque, ou porteur d'armes, bien qu'il n'en ait usé ni menacé, ou muni de limes, crochets ou autres instruments propres, soit à commettre des vols ou d'autres délits, soit à lui procurer les moyens de pénétrer dans les maisons, sera puni de deux à cinq ans d'emprisonnement.¹⁴³

Article 259 states that:

Tout mendiant ou vagabond qui sera trouvé porteur d'un ou de plusieurs effets d'une valeur supérieure à 1.000 UM, et qui ne justifiera point d'où ils lui proviennent, sera puni de la peine portée en l'article 257.¹⁴⁴

Morocco

The Moroccan Penal Code¹⁴⁵ penalizes vagrancy in various manners. Article 329 provides:

Est coupable de vagabondage et puni de l'emprisonnement d'un à six mois quiconque, n'ayant ni domicile certain, ni moyens de subsistance, n'exerce habituellement ni métier, ni profession bien qu'étant apte au travail et qui ne justifie pas avoir sollicité du travail ou qui a refusé le travail rémunéré qui lui était offert.¹⁴⁶

Article 330 provides:

Le père, la mère, le tuteur testamentaire, le tuteur datif, le kafil ou l'employeur et généralement toute personne ayant autorité sur un enfant ou qui en assure la protection qui livre, même gratuitement l'enfant, le pupille, l'enfant abandonné soumis à la kafala ou l'apprenti âgé de moins de dix-huit ans à un vagabond ou à un ou plusieurs individus faisant métier de la mendicité, ou à plusieurs vagabonds est puni de l'emprisonnement de six mois à deux ans. La même peine est applicable à quiconque livre ou fait livrer l'enfant, le pupille, l'enfant soumis à la kafala ou l'apprenti, âgés de moins de dix-huit ans, à un ou plusieurs mendiants ou à un ou plusieurs vagabonds, ou a déterminé ce mineur à quitter le domicile de ses parents, tuteur testamentaire, tuteur datif, kafil, patron ou celui de la personne qui assure sa protection, pour suivre un ou plusieurs mendiants ou un ou plusieurs vagabonds.¹⁴⁷

¹⁴³ *Id.* § 258 (“Any beggar or vagrant who has been seized disguised in any way, or carrying arms, although he has not used or threatened them, or provided with files, hooks or other proper instruments, either to commit thefts or other crimes, or to provide him with the means to enter homes, will be punished by two to five years’ imprisonment.”).

¹⁴⁴ *Id.* § 259 (“Any beggar or vagrant who will be found carrying one or more effects of a value greater than 1,000 MO, and who will not justify where they come from, will be punished by the penalty provided in article 257.”).

¹⁴⁵ Morocco Code Pénal (1962).

¹⁴⁶ *Id.* § 329 (“Whoever, having neither a certain domicile, nor means of subsistence, does not habitually exercise either a trade or a profession, although being able to work and who does not justify not have applied for work or who has refused the paid work offered to him, is guilty of vagrancy and punishable by imprisonment from one to six months.”).

¹⁴⁷ *Id.* § 330 (“The father, the mother, the testamentary guardian, the dative guardian, the kafil or the employer and generally any person having authority over a child or who ensures its protection who delivers, even free of charge, the child, the pupil, the child abandoned subject to kafala or an apprentice under the age of eighteen to a vagabond or to one or more individuals engaged in begging, or to several vagabonds is punishable by imprisonment for six months to two years. The same penalty is applicable to anyone who delivers or causes to be delivered the child, the pupil, the child subject to kafala or the apprentice, aged under eighteen, to one or more beggars or to one or more vagrants, or has determined this minor

Niger

Vagabondage is penalized under Section I, Chapter VI of the Niger Penal Code, headed “Vagabondage.” Article 177 defines vagrants as:

Les vagabonds sont ceux qui n’ont ni domicile certain, ni moyen de subsistance et qui n’exercent habituellement ni métier, ni profession.¹⁴⁸

Article 178 states that:

Les vagabonds seront punis d’un emprisonnement de trois à six mois. L’interdiction de séjour sera en outre prononcée.¹⁴⁹

Senegal

Vagrancy offences are penalized under Paragraph II of Section V of Senegal’s Penal Code, titled “Vagabondage.” Article 241 states that:

Le vagabondage est un délit.¹⁵⁰

Article 242 defines vagabonds:

Les vagabonds ou gens sans aveu sont ceux qui n’ont ni domicile certain, ni moyens de subsistance, et qui n’exercent habituellement ni métier, ni profession.¹⁵¹

Article 243 states that:

Les vagabonds ou gens sans aveu qui auront été légalement déclarés tels seront, pour ce seul fait, punis d’un mois à trois mois d’emprisonnement.¹⁵²

Article 244 states orders that can be made against foreign vagrants:

to leave the domicile of his parents, testamentary guardian, dative guardian, kafil, boss or that of the person who ensures his protection, to follow one or more beggars or one or more vagrants.”).

¹⁴⁸ Niger Penal Code (1961), §177 (“Those who have no definite home, no means of subsistence and who ordinarily exercise neither trade nor profession.”).

¹⁴⁹ *Id.* § 178 (“Vagrants will be punished with imprisonment of three to six months. A prohibition on sojourning will also be pronounced.”).

¹⁵⁰ Senegal Penal Code (1965), §241 (“Vagrancy is an offence.”).

¹⁵¹ *Id.* § 242 (“Vagabonds or people without confession are those who have neither a certain domicile, nor means of subsistence, and who do not usually exercise either trade or profession.”).

¹⁵² *Id.* § 243 (“Vagrants or people without acknowledgment who have been legally declared as, shall be punished by one month to three months’ imprisonment for this act alone.”).

Les individus declares vagabonds par jugement pourront, s'ils sont étrangers, être conduits, par les orders du Gouvernement, hors du territoire de la République. S'ils sont réclamés par leur Gouvernement, cette mesure pourra intervenir même avant l'expiration de leur peine.¹⁵³

Article 246 provides enhanced penalties for individuals found in particular conditions or with particular objects:

Tout mendiant ou vagabond qui aura été saisi travesti d'une manière quelconque, Ou porteur d'armes, bien qu'il n'en ait usé ni menacé, Ou muni de limes, crochets ou autres instruments propres soit à commettre des vols ou d'autres délits, soit à lui procurer les moyens de pénétrer dans les maisons, sera puni de deux à cinq ans d'emprisonnement.¹⁵⁴

The Republic of Congo

Vagrancy is penalized under Paragraph 2, Section V of the Republic of Congo's Penal Code, headed "Vagabondage." Article 269 states that:

Le vagabondage est un délit.¹⁵⁵

Article 270 defines vagabonds:

Les vagabonds ou gens sans aveu, sont ceux qui n'ont ni domicile certain, ni moyens de subsistance et qui n'exercent habituellement ni métier, ni profession.¹⁵⁶

Article 271 states:

Les vagabonds ou gens sans aveu qui auront été légalement déclarés tels, seront, pour ce seul fait, punis de quinze jours à six mois d'emprisonnement. Ils pourront en outre, en cas de récidive, être interdits de séjour pendant deux ans au moins et cinq ans au plus.¹⁵⁷

Article 272 stipulates orders that can be made relative to foreign vagrants:

Les déclarés vagabonds par jugement, pourront, s'ils sont étrangers être conduits, par les ordres du Gouvernement hors du territoire du Royaume (de la République).¹⁵⁸

¹⁵³ *Id.* § 244 ("Individuals declared vagrants by judgment may, if they are foreigners, be taken, by the orders of the Government, out of the territory of the Republic. If they are requested by their Government, this measure may be taken even before the expiry of their sentence.").

¹⁵⁴ *Id.* § 246 ("Any beggar or vagabond who has been seized in disguise in any way, or bearer of arms, although he has not used or threatened them, or provided with files, hooks or other instruments capable of either committing theft or other offenses, or providing him with the means to enter houses, shall be punished by two to five years' imprisonment.").

¹⁵⁵ The Republic of Congo Penal Code (2001), §269 ("Vagrancy is an offence.").

¹⁵⁶ *Id.* § 270 ("Vagrants or unaccompanied persons are those who have neither a certain domicile nor means of subsistence, and who habitually exercise neither trade nor profession.").

¹⁵⁷ *Id.* § 271 ("Vagrants or persons without acknowledgment who have been legally declared as such, shall be, for this sole fact punished by six months' imprisonment, shall be returned, after having undergone their police supervision for at least five and ten years at the most.").

¹⁵⁸ *Id.* § 272 ("Individuals who have been declared vagrants by judgment, may, if they are foreigners, be taken by the Government's orders out of the territory of the Republic.").

Article 273 states:

Les Vagabonds nés en France pourront, après un jugement passé en force de chose jugée, être réclamés par délibération du conseil municipal de la commune où ils sont nés ou cautionnés par un citoyen solvable.

Si le gouvernement agréé la caution, les individus ainsi cautionnés seront, par ses ordres, renvoyés ou conduits dans la commune qui les aura réclamés, out dans cette qui leur sera assignée pour résidence, sur la demande de la caution.¹⁵⁹

Article 277 states:

Tout mendiant ou vagabond qui aura été saisi travesti d'une manière quelconque, ou d'armes, bien qu'il n'en ait ni usé ni menacé,

Ou muni de limes, crochets ou autres instruments propres, soit à commettre des vols ou d'autres délits, soit à lui procurer les moyens de pénétrer dans les maisons, sera puni de deux à cinq ans d'emprisonnement.¹⁶⁰

Article 278 states:

Tout mendiant ou vagabond, qui sera trouvé porteur d'un ou de plusieurs effets d'une valeur supérieure à 100 francs et qui ne justifiera point d'où ils lui proviennent, sera puni de la peine portée en l'article 276.¹⁶¹

II.3 Portugal and Former Portuguese Colonies

II.3.1 Portugal

Vagrancy related offences were repealed in Portugal in 1982, when a new Penal Code was promulgated.¹⁶² The Portuguese Criminal Code still penalizes the 'use of minors and mentally incapacitated persons' for vagrancy, however. Article 296, titled "Use of minor for vagrancy," states:

Whoever uses a minor or a mentally incapable person for vagrancy shall be punished with a sentence of imprisonment of not more than three years.¹⁶³

¹⁵⁹ *Id.* § 273 ("Vagrants born in France may, after a judgment which has become final, be claimed by deliberation of the municipal council of the commune where they are born or guaranteed by a solvent citizen. If the Government agrees to the bond, the persons so requested or bonded shall, by his orders, be sent back or taken to the municipality which has claimed them, or to that which will be assigned to them for residence, upon the request of the guarantor.").

¹⁶⁰ *Id.* § 277 ("Any beggar or vagrant who has been seized in transvestite in some way, or bearer of weapons, although he has neither used nor threatens, or provided with files, hooks or other instruments proper, either to commit theft or other crimes, or to provide him with the means to enter houses, will be punished with two to five years imprisonment.").

¹⁶¹ *Id.* § 278 ("Any beggar or vagrant, who will be found carrying one or more effects of a value greater than 100 francs and which will not justify where they come from, will be punished by the penalty given in the Article 276.").

¹⁶² See J.F. Dias, *As tendências recentes da política criminal e o novo código penal Português de 1982*, in REVISTA DE DIREITO PENAL E CRIMINOLOGIA 11 (H.C. Frago ed., 1982).

¹⁶³ Portugal Criminal Code (1983), Art. 296.

II.3.2 Asia

Goa

Article 4 of the Goa, Daman and Diu Prevention of Begging Act allows the police to “arrest without a warrant any person who is found begging.”¹⁶⁴ Under Article 5, such persons may be detained in a Certified Institution for from one to three years.¹⁶⁵

Malacca

The Destitute Persons Act of Malacca¹⁶⁶ defines destitute persons as

- (a) any person found begging in a public place in such a way as to cause or to be likely to cause annoyance to persons frequenting the place or otherwise to create a nuisance; or
- (b) any idle person found in a public place, whether or not he is begging, who has no visible means of subsistence or place of residence or is unable to give a satisfactory account of himself.¹⁶⁷

Article 3 allows the authorities to “take into [their] charge any destitute person,” and require that person “to be admitted temporarily to a welfare home pending a report by a social welfare officer.”¹⁶⁸ A magistrate may then “order that person to reside in a welfare home for a period which shall not exceed three years.”¹⁶⁹

II.3.3 The Americas

Brazil

In Brazil, Article 59 of Decree-Law No. 3.688 of 1941 penalizes ‘idleness’:

Entregar-se alguém habitualmente à ociosidade, sendo válido para o trabalho, sem ter renda que lhe assegure meios bastantes de subsistência, ou prover à própria subsistência mediante ocupação ilícita:

Pena – prisão simples, de quinze dias a três meses.¹⁷⁰

¹⁶⁴ The Goa, Daman and Diu Prevention of Begging Act (1972), Art. 4.

¹⁶⁵ *Id.* Art. 5.

¹⁶⁶ Destitute Persons Act (1977).

¹⁶⁷ *Id.* Art. 2.

¹⁶⁸ *Id.* Art. 3.

¹⁶⁹ *Id.*

¹⁷⁰ Decree-Law No. 3,688 (Oct. 3, 1941), Art. 59 (“If someone habitually indulges in idleness, while being able to work, without having an income that guarantees sufficient means of subsistence, or providing for his own subsistence through illegal occupation: Penalty – simple imprisonment, from fifteen days to three months.”)

II.4 Spain and Former Spanish Colonies

II.4.1 Spain

Vagrancy was previously penalized in Spain, including by the Spanish Penal Order of 4 August 1933, which in time was amended to penalize homosexuality as well. These laws were repealed in 1995. Begging is still penalized in various ways on the municipal level however. Article 34(2) of the *Ordenanza de medidas para fomentar y garantizar la Convivencia ciudadana en el espacio público*¹⁷¹ in Barcelona, for instance, stipulates:

(2) Especialmente, esta sección tiende a proteger a las personas que están en Barcelona frente a conductas que adoptan formas de mendicidad insistente, intrusiva o agresiva, así como organizada, sea ésta directa o encubierta bajo prestación de pequeños servicios no solicitados, o cualquier otra fórmula equivalente, así como frente a cualquier otra forma de mendicidad que, directa o indirectamente, utilice a menores como reclamo o éstos acompañen a la persona que ejerce esa actividad.¹⁷²

Article 35 stipulates:

- (1) Se prohíben aquellas conductas que, bajo la apariencia de mendicidad o bajo formas organizadas, representen actitudes coactivas o de acoso, u obstaculicen e impidan de manera intencionada el libre tránsito de los ciudadanos y ciudadanas por los espacios públicos.
- (2) Queda igualmente prohibido el ofrecimiento de cualquier bien o servicio a personas que se encuentren en el interior de vehículos privados o públicos. Se considerarán incluidos en este supuesto, entre otros comportamientos, la limpieza de los parabrisas de los automóviles detenidos en los semáforos o en la vía pública así como el ofrecimiento de cualquier objeto.
- (3) Sin perjuicio de lo previsto en el artículo 232 del Código Penal, queda totalmente prohibida la mendicidad ejercida por menores o aquella que se realice, directa o indirectamente, con menores o personas con discapacidades.¹⁷³

¹⁷¹ “Ordinance of measures to promote and guarantee citizen coexistence in the public space.”

¹⁷² *Id.* Art. 34(2) (“Especially, this section tends to protect people who are in Barcelona against behaviors that take forms of insistent, intrusive or aggressive begging, as well as organized, be it direct or concealed under the provision of small unsolicited services, or any other equivalent formula, as well as against any other form of begging that, directly or indirectly, uses minors as a claim or they accompany the person who exercises that activity.”).

¹⁷³ *Id.* Art. 35 (“(1) Those conducts that, under the guise of begging or in organized forms, represent coercive or harassing attitudes, or intentionally hinder and impede the free movement of citizens through public spaces are prohibited. (2) The offering of any good or service to people who are inside private or public vehicles is also prohibited. Included in this assumption, among other behaviors, will be the cleaning of the windshields of cars stopped at traffic lights or on public roads, as well as the offering of any object. (3) Notwithstanding the provisions of article 232 of the Penal Code, begging by minors or begging that is carried out, directly or indirectly, with minors or people with disabilities is totally prohibited.”).

In Madrid, the Ordenanza Municipal de Policía Urbana y Gobierno de la Villa¹⁷⁴ provides:

Se prohíbe el ejercicio de la mendicidad bajo cualquier forma y en todo lugar. Los propietarios y encargados de establecimientos lo impedirán dentro de sus locales.

Los que se encontraren pidiendo limosna en la vía pública serán amonestados por primera vez y conducidos, si reincidieren, a los Albergues de Mendigos, donde se procederá a su clasificación y a la incoación del expediente que corresponda.¹⁷⁵

II.4.2 Africa

Equatorial Guinea

Article 584(10) of Equatorial Guinea's Código penalizes:

Los padres tutores o guardadores cuyos hijos o pupilos menores de dieciséis años fueren detenidos por hallarse menodigando, vagando o pernoctando en parajes públicos si no probaren ser ajenos a tales hechos, así como las personas que se hagan acompañar de menores de dieciséis años sean o no de su familia, con objeto de implorer la caridad pública.¹⁷⁶

The penalty is "... la pena de arresto menor o con la multa de 250 a 2,000 pestas o con la de reclusion privada ..."¹⁷⁷

II.4.3 Asia

Philippines

Article 202 of the 1930 Penal Code of the Philippines criminalized vagrancy, vagrancy was decriminalized in 2011.¹⁷⁸ Begging remains a criminal offence in the Philippines, however.¹⁷⁹

II.4.4 The Americas

Dominican Republic

¹⁷⁴ Municipal Ordinance of Urban Police and Government of the City.

¹⁷⁵ *Id.* Art. 60 ("The exercise of begging in any form and in any place is prohibited. The owners and managers of establishments will prevent it within their premises. Those who are found begging on public roads will be reprimanded for the first time and taken, if they reoffend, to the Beggars' Shelters, where they will be classified, and the corresponding file will be opened.")

¹⁷⁶ Equatorial Guinea Penal Code, Art. 584(10) ("Parents, guardians or guardians whose children or wards under the age of sixteen are arrested for begging, loitering or spending the night in public places if they do not prove to be oblivious to such acts, as well as the persons who are accompanied by minors under the age of sixteen who are not of their family, in order to implore public charity.")

¹⁷⁷ *Id.* Art. 584 ("The penalty of minor arrest or a fine of 250 to 2,000 pestas or private reprimand").

¹⁷⁸ See An Act Decriminalizing Vagrancy, Republic Act No. 10158 (July 2011).

¹⁷⁹ See Presidential Decree No. 1563 (1978).

The Penal Code of the Dominican Republic includes a section on “Vagos Y Mendigos” (Vagrants and Beggars). Article 277 thereunder indicates:

Se impondrá la pena de prisión correccional de seis días a seis meses, a los mendigos o vagos a quienes se aprehendieren disfrazados, o que lleven armas, aún cuando no hubieren hecho uso de ellas, ni proferido amenazas contra persona alguna. Se castigará con la pena de tres meses a un año, a los que vayan provistos de limas, ganzúas u otros instrumentos que puedan servir para cometer robos u otros delitos, o que puedan facilitarles los medios de introducirse en las casas.¹⁸⁰

Begging is also criminalized in the Dominican Republic. Article 274 of the Penal Code states:

La mendicidad ejercida en los lugares donde existen establecimientos públicos, organizados con el fin de impedirla, será castigada con prisión de tres a seis meses, y conducción del culpable, después que extinga su pena, al establecimiento u hospicio del lugar.¹⁸¹

Mexico

Article 38 of the Mexican Constitution provides:

Los derechos o prerrogativas de los ciudadanos se suspenden: ...

IV. Por vagancia o ebriedad consuetudinaria, declarada en los términos que prevengan las leyes ...¹⁸²

Venezuela

Article 504 of Venezuela’s Penal Code stipulates:

El que, siendo apto para el trabajo, fuere hallado mendigando será penado con arresto hasta por seis días; y en el caso de reincidencia en la misma infracción, el arresto podrá imponerse hasta por quince días.

Al que no siendo apto para el trabajo, mendigue sin sujetarse a las ordenanzas locales del caso, se le aplicarán las mismas penas.

¹⁸⁰ Dominican Republic Penal Code, Art. 277 (“The correctional prison sentence of six days to six months will be imposed on beggars or vagrants who are apprehended in disguise, or who carry weapons, even when they have not used them or made threats against any person. Those who are provided with files, picks or other instruments that can be used to commit robberies or other crimes, or that can provide them with the means of entering houses, will be punished with a sentence of three months to one year.”).

¹⁸¹ Dominican Republic Penal Code, Art. 274 (“Begging exercised in places where there are public establishments, organized in order to prevent it, will be punished with imprisonment from three to six months, and conduction of the guilty party, after his sentence is served, to the establishment or hospice of the place.”).

¹⁸² Mexico Constitution (1917), Art. 38 (“Citizens’ rights and prerogatives can be suspended in the following cases: ... IV. Due to vagrancy or customary inebriation, declared according to the provisions of law ...”).

La contravención no deja de serlo por mendigar el culpable so pretexto o apariencia de hacer a otro un servicio o de vender algunos objetos.¹⁸³

II.5 The Netherlands and Former Dutch Colonies

II.5.1 The Netherlands

1994 amendments to the Dutch Penal Code removed previous provisions prohibiting vagrancy. Measures typically of vagrancy laws still persist at the municipal level, however. The Amsterdam General Local Ordinance, for instance, allows the Mayor to target particular areas in which the public consumption of alcohol and use of soft drugs is prohibited, and bans imposing a nuisance, public gambling, sleeping in the streets, and begging.¹⁸⁴

II.5.2 Asia

Indonesia

Article 504 of the Indonesian Penal Code states:

Any person who begs alms in public, shall, being guilty of begging, be punished by a maximum light imprisonment of six weeks.

Begging committed by 3 or more persons above the age of sixteen years, shall be punished by a maximum light imprisonment of 3 months.¹⁸⁵

Article 505 states:

Any person who roams about without means of subsistence shall, being guilty of vagrancy, be punished by a maximum light imprisonment of three months.

Vagrancy committed by three or more persons above the age of sixteen years, shall be punished by a maximum light imprisonment of 6 months.¹⁸⁶

Vagrancy-type penalties are also included in municipal regulations. Article 35(4) of Local Regulation of Denpasar City No. 15 of 1993 jo. No. 3 of 2000 on Public Cleanliness and Order states that:

¹⁸³ Venezuela Penal Code, Art. 504 (“Whoever, being fit for work, is found begging shall be punished with arrest for up to six days; and in the case of recidivism in the same infraction, the arrest may be imposed for up to fifteen days. Whoever, being unfit for work, begs without subjecting himself to the local ordinances of the case, the same penalties will apply. The contravention does not cease where the culprit begs under the pretext or appearance of doing another a service or selling some objects.”).

¹⁸⁴ See Housing Rights Watch, Criminalisation of homelessness in The Netherlands, available at: https://www.housingrightswatch.org/sites/default/files/2012-12-11_RPT_NETHERLANDS_anti_soc_laws_en_final.pdf.

¹⁸⁵ Indonesia Penal Code (1999), Art. 504.

¹⁸⁶ *Id.* Art. 505.

No business, begging, begging activities, singing or other similar businesses are allowed on the streets of Denpasar City.¹⁸⁷

Article 37(1) of the same indicates:

Any person who violates the provisions referred to in the articles of Chapter II to Chapter X shall be liable to a maximum of 3 months imprisonment or a maximum fine of 5 million rupiah.¹⁸⁸

II.6 Belgium and Former Belgian Colonies

II.6.1 Belgium

‘Vagabondage’ was historically penalized in Belgium by the 1891 *Loi pour la répression du vagabondage et de la mendicité*.¹⁸⁹ Vagabondage and begging were decriminalized at the national level in 1993. Individual communities can still take steps to target begging however. In Ghent, for example, begging is punished as a municipal offence by 2011 police regulations.¹⁹⁰

II.6.2 Africa

Burundi

Vagrancy was penalized under Burundi’s 1981 Penal Code.¹⁹¹ Those penalizations were subsequently removed from the law, though a degree of uncertainty persists on this issue.

Democratic Republic of Congo

Vagrancy is still penalized by an 1896 law in the Democratic Republic of Congo.¹⁹² That law provides

Rwanda

Vagrancy was penalized under Rwanda’s 1977 Penal Code.¹⁹³ Those penalizations appear to have been subsequently removed from the law, though a degree of uncertainty persists on this issue.

¹⁸⁷ See Gdr Made Swardhana, *Vagrants and Beggars Countermeasures at Denpasar City in Criminology Perspective*, 9 UDAYANA MAGISTER L.J. 15, 33 (2020).

¹⁸⁸ See *id.*

¹⁸⁹ (Nov. 27, 1891).

¹⁹⁰ See Myria, *2016 Annual Report trafficking and smuggling of human beings: Beggars in the hands of traffickers* 23 (Jan. 17, 2017).

¹⁹¹ Burundi Code Pénal (1981).

¹⁹² Democratic Republic of Congo, Decree on Vagrancy (May 23, 1896).

¹⁹³ Rwanda Code Pénal (1977).

III. HUMAN RIGHTS OBLIGATIONS VIOLATED BY VAGRANCY AND VAGRANCY-TYPE LAWS

As the above sections detail, vagrancy laws have a long history, and remain an extensive part of numerous legal orders around the world. This persistence is deeply troubling, in that vagrancy laws violate numerous human rights obligations. United Nations programmes, committees and special rapporteurs have on several occasions observed the rights violations committed by vagrancy laws in a general sense. UN Habitat has observed that “[l]aws that criminalize homelessness, vagrancy or sleeping rough, along with street cleaning operations to remove homeless people from the streets” can violate homeless persons’ rights.¹⁹⁴ The Committee on Racial Discrimination has observed its concern with the “criminalization of homelessness through laws that prohibit activities such as loitering, camping, begging and lying down in public spaces” in the United States.¹⁹⁵ The Special Rapporteur on extreme poverty and human rights has included vagrancy laws in the category of “laws, regulations and practices that punish, segregate, control and undermine the autonomy of persons living in poverty.”¹⁹⁶

Beyond these general statements, several of the particular manners in which vagrancy laws violate human rights obligations are detailed below.

III.1 Rights Violations

III.1.A The Rights to Equality Before the Law and to a Fair Trial

Vagrancy laws almost always fail the test of legality, which may be understood as closely connected to the rights to equality before the law and to a fair trial. In particular, vagrancy laws are typically loosely defined, producing three subsequent failures: a failure to provide sufficient notice to the public on the basis of which they can adjust their conduct or understand the grounds on which they might be charged; inherently discriminatory and discretionary application, in that the charges in question could potentially be applied against a wide number of individuals; and a failure to provide a clear enough standard for a defendant to defend themselves against the charges.

A similar point was made by the Caribbean Court of Justice in its decision in *McEwan and others v. Attorney General*.¹⁹⁷ There, the court found a provision of Guyana’s law penalizing cross-dressing, which was initially enacted as part of a broader set of measures the colony took against vagrancy in 1893, in violation of numerous rights obligations. The provision of law in question, Section 153(1)(xlvii) of Guyana’s Summary Jurisdiction (Offences) Act, penalized a man dressing in female attire, or a woman dressing in male attire, in a public place, for an improper purpose. Among other things, the court indicated that ‘valid laws’ had to: “provide fair notice to citizens of the prohibited conduct;” “not be vaguely worded;” “define the criminal offense with sufficient clarity that ordinary people can understand what conduct is prohibited;” “should not be stated in ways that allow law

¹⁹⁴ UN Habitat, *The Right to Adequate Housing* (2009).

¹⁹⁵ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America* (2014), para. 12.

¹⁹⁶ Report of the Special Rapporteur on extreme poverty and human rights, UN Doc. A/66/265 (Aug. 4, 2011), paras. 29-43.

¹⁹⁷ *McEwan and others v. Attorney General* [2018] CCJ 30 (AJ).

enforcement officials to use subjective moral or value judgments as the basis for [their] enforcement;” and “should not encourage arbitrary and discriminatory enforcement.”¹⁹⁸ The court found the law in question failed the relevant tests, observing that “[n]o details or examples of conduct that would fall under the umbrella of ‘improper purpose’ are discernible ... The cross-dressing person has no clue, and received no guidance, as to whether contemplated conduct is forbidden by the statute.”¹⁹⁹

Similarly, the African Court on Human and Peoples Rights, in its advisory opinion on vagrancy laws, linked the vagueness of those laws to a violation of the right to a fair trial. In particular, the Court observed, in the course of considering the way such laws may violate the right to a fair trial, that:

because vagrancy laws often punish an individual’s perceived status, such as being “idle”, “disorderly” or “a reputed thief”, which status does not have an objective definition, law enforcement officers can arbitrarily arrest individuals without the sufficient level of prima facie proof that they committed a crime.²⁰⁰

In addition, the African Court observed the vagueness of the charges, and their frequent reference to the need for the defendant to provide an account of their behavior, could be linked to other due process-related issues. As the Court put it,

Once they are taken into custody, such arrested persons would have to explain themselves to the law enforcement officer(s) to demonstrate that, for example, they were not idle or disorderly, are not a reputed thief or that they practice a trade or profession. A failure to provide an explanation acceptable in the eyes of law enforcement officers could result in them being deemed unable to give an account of themselves and thereby, supposedly, providing justification for their further detention.

Forcing a suspect to explain himself/herself may be tantamount to coercing a suspect to make self-incriminating statements. Law enforcement officers may exert undue pressure on suspected criminals by pretextually arresting them under vagrancy laws and then soliciting incriminatory evidence even in relation to crimes not connected to vagrancy.²⁰¹

There are two related issues here. First, the Court’s observations bring out the manner in which such laws may be used as a pretext, pointing to the impermissible looseness in the definition of the ‘criminal act’ in such laws, as well as to the discretionary, discriminatory application thereby enabled. Second, the African Court’s reflections highlight the manner in which vagrancy laws further violate defendants’ due process rights insofar as they contain clauses referring to defendants’ explanations for their behavior, as such clauses inherently compromise defendants’ right to remain silent.

III.1.B The Rights to Liberty and Security of the Person

¹⁹⁸ *Id.*, para. 80.

¹⁹⁹ *Id.*, para. 81.

²⁰⁰ See Request for Advisory Opinion by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Others Human Rights Instruments Applicable in Africa, Advisory Opinion No. 1 of 2018, African Court on Human and Peoples’ Rights (Dec. 4, 2020), para. 92.

²⁰¹ *Id.*, paras. 92-3.

In addition to the rights to equality before the law and to a fair trial, vagrancy laws violate the right to liberty, in that as they authorize the detention of individuals who have committed no harm to others.

The African Commission on Human and Peoples' Rights' Principles on the Decriminalization of Petty Offences call for the decriminalization of:

offences such as being a rogue and vagabond, being an idle or disorderly person, loitering, begging, being a vagrant, failure to pay debts, being a common nuisance and disobedience to parents; offences created through by-laws aimed at controlling public nuisances on public roads and in public places such as urinating in public and washing clothes in public; and laws criminalising informal commercial activities, such as hawking and vending.²⁰²

The guidelines observe that the penalization of such offences is inconsistent with “the right to liberty and security of the person and freedom from arbitrary arrest and detention.”²⁰³

In its advisory opinion, the African Court on Human and Peoples' Rights found that vagrancy laws violate the right to liberty as well. In this context, the Court observed that:

in practice, the enforcement of [vagrancy] laws often results in pretextual arrests, arrests without warrants and illegal pre-trial detention. This exposes vagrancy laws to constant potential abuse ...

the manner in which vagrancy offences are framed, in most African countries, presents a danger due to their overly broad and ambiguous nature. One of the major challenges is that vagrancy laws do not, ex ante, sufficiently and clearly lay down the reasons and conditions on which one can be arrested and detained to enable the public to know what is within the scope of prohibition. In practice, therefore, many arrests for vagrancy offences are arbitrary.²⁰⁴

This rationale is closely related to the rationale on the basis of which such laws are understood as violating the right to equality before the law and a fair trial, as laid out above. Recognizing that the vagueness of vagrancy laws also leads to substantial violations of the right to liberty is important, however, in that it helps to clarify the extent of the harm such laws lead to.

III.1.C The Rights to Dignity and to Be Free from Cruel, Inhuman or Degrading Treatment or Punishment

Vagrancy laws also violate the rights to dignity and to private life, due to the normative stigma they contain and advance.

²⁰² African Commission on Human and Peoples' Rights, Principles on the Decriminalization of Petty Offences in Africa (2018), Part 1: Definitions.

²⁰³ *Id.*, Part V.

²⁰⁴ See Request for Advisory Opinion by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Others Human Rights Instruments Applicable in Africa, Advisory Opinion No. 1 of 2018, African Court on Human and Peoples' Rights (Dec. 4, 2020), paras. 85-6.

A similar point was recognized by the Court of Justice of the Economic Community of West African States in *Dorothy Njemanze et al.*, relative to the assertion by the police that particular women were “prostitutes,” the term used in the vagrancy law-derived section of Nigeria’s Penal Code in question. There, the Court found that

The use of the word prostitute or “Ashawo” on the Plaintiffs is humiliating, derogatory and degrading to their persons. The Defendant having failed to provide any reasonable justification for its allegation and use of such degrading words on the Plaintiffs is therefore in violation of Plaintiffs [right to dignity].²⁰⁵

The decision in *Dorothy Njemanze* on this matter is somewhat limited, however, by the facts that it concerns an allegation of “prostitution” specifically, and insofar as the Court leaves open whether or not there would have been a dignity violation had the defendants in question in fact been sex workers—a position which risks reinforcing the normative stigma often leveled against sex workers.

More significant is the European Court’s decision in *Lacatus v. Switzerland*.²⁰⁶ There, the European Court of Human Rights found that Switzerland had violated Lacatus’ right to dignity by fining and, in the absence of her ability to pay, imprisoning her due to the fact that she had engaged in begging. In particular, the Court observed

se trouvant dans une situation de vulnérabilité manifeste, la requérante avait le droit, inhérent à la dignité humaine, de pouvoir exprimer sa détresse et à essayer de remédier à ses besoins par la mendicité ...

la Cour estime que la mesure par laquelle la requérante, qui est une personne extrêmement vulnérable, a été punie pour ses actes dans une situation où elle n’avait très vraisemblablement pas d’autres moyens de subsistance et, dès lors, pas d’autres choix que la mendicité pour survivre, a atteint sa dignité humaine ...

[finding herself in a situation of manifest vulnerability, the applicant had the right, inherent in human dignity, to be able to express her distress and to try to remedy her needs by begging ...

the Court considers that the extent to which the applicant, who is an extremely vulnerable person, was punished for her acts in a situation where she very likely had no other means of subsistence and, therefore, no other choice than begging to survive, affected her human dignity ...]²⁰⁷

The violation here, on the European Court’s reasoning, consisted in the state’s penalization of begging in particular, insofar as that penalization limited the targeted individual’s ability to attempt to obtain the basic necessities of a dignified life.

The African Court has reached the broadest finding in this area, recognizing and coming to more thorough conclusions in both regards. In regards to the nature of the language utilized by

²⁰⁵ See *Dorothy Njemanze & others v. Federal Republic of Nigeria*, Case No. ECW/CCJ/APP/17/14, ECOWAS Court of Justice (Oct. 12, 2017), 37-8.

²⁰⁶ *Lacatus v. Switzerland*, App. No. 14065/15, ECtHR (Jan. 19, 2021).

²⁰⁷ *Id.*, paras. 107, 115.

vagrancy laws, the Court referred first to the African Commission on Human and Peoples' Rights decision in *Purohit and Moore v. The Gambia*, in which the Commission found that the branding of individuals "lunatics" and "idiots" by law "dehumanize[d] and den[ie]d" the individuals in question "any form of dignity."²⁰⁸ The Court built on this by observing

vagrancy laws commonly use the terms "rogue", "vagabond", "idle" and "disorderly" to label persons deemed to be vagrants. These terms, the Court holds, are a reflection of an outdated and largely colonial perception of individuals without any rights and their use dehumanizes and degrades individuals with a perceived lower status.²⁰⁹

Second, the African Court found 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 they pursue."²¹⁰ Third, the Court found that removing those deemed to be 'vagrants' or the like from particular areas could be deemed a violation of their dignity as well.²¹¹ Fourth, the Court found the warrantless arrest of 'vagrants' to constitute a violation of the right to dignity as well.²¹²

The right to dignity and the right to be free from cruel, inhuman or degrading treatment or punishment are both contained in the same article (Article 5) within the African Charter on Human and Peoples' Rights, for understandable reasons. The latter two forms of dignity violation noted by the African Court may also be understood as violations of the right to be free from cruel, inhuman or degrading treatment or punishment, moreover, insofar as the Court observed the manner in which vagrancy penalizations might be understood as inherently degrading. The African Commission on Human and Peoples' Rights' Principles on the Decriminalization of Petty Offences suggest the same.²¹³

III.1.D The Right to Freedom of Movement

Vagrancy laws that proscribe limits on freedom of movement, on the basis of poverty or 'suspicious' character, whether in the form of bans on entry into certain areas, pass requirements, removal from certain areas or forced relocation, violate the right to freedom of movement. The African Court on Human and Peoples' Rights found as such. In its advisory opinion, the African Court held that the limitations on freedom of movement contained in vagrancy laws are impermissible,

²⁰⁸ *Purohit and Moore v. The Gambia*, App. No. 241/01, African Commission on Human and Peoples' Rights (May 2003), para 59.

²⁰⁹ Request for Advisory Opinion by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Others Human Rights Instruments Applicable in Africa, Advisory Opinion No. 1 of 2018, African Court on Human and Peoples' Rights (Dec. 4, 2020), para. 79.

²¹⁰ *Id.*, para. 80.

²¹¹ *Id.*, para. 81 ("labelling an individual as a 'vagrant', 'vagabond', 'rogue' or in any other derogatory manner and summarily ordering them to be forcefully relocated to another area denigrates the dignity of a human being").

²¹² *Id.*, para. 82 ("arrests without a warrant for vagrancy offences are arbitrary since, often times, no rational connection exists between such arrests and the objectives of law enforcement. Practically, such warrantless arrests normally target the underprivileged only").

²¹³ African Commission on Human and Peoples' Rights, Principles on the Decriminalization of Petty Offences in Africa (2018), Part 4.

in that the measures in question “are not necessary for any of the purposes for which they are often cited.”²¹⁴

III.1.E The Right to Freedom of Expression

Vagrancy laws, in particular those which penalize certain forms of conduct, may also be understood as infringing defendants right to freedom of expression. The Caribbean Court of Justice found as much relative to Guyana’s laws penalizing cross-dressing. As the Court put it:

It is essential to human progress that contrary ideas and opinions peacefully contend. Tolerance, an appreciation of difference, must be cultivated, not only for the sake of those who convey a meaning, but also for the sake of those to whom it is conveyed. A person’s choice of attire is inextricably bound up with the expression of his or her gender identity, autonomy and individual liberty. How individuals choose to dress and present themselves is integral to their right to freedom of expression. This choice, in our view, is an expressive statement protected under the right to freedom of expression ...

No one should have to live under the constant threat that, at any moment, for an unconventional form of expression that poses no risk to society, s/he may suffer such treatment. But that is the threat that exists in [the measure in question]. It is a threat particularly aimed at persons of the LGBTI community. The section is easily utilised as a convenient tool to justify the harassment of such persons. Such harassment encourages the humiliation, hate crimes, and other forms of violence persons of the LGBTI community experience ...²¹⁵

While the European Court did find a violation of the right to freedom of expression in *Lacatus*, concurrences made a strong case that right was at the very least infringed.²¹⁶

III.1.F The Rights to Equality and to be Free from Discrimination

Vagrancy laws, both on their face and as applied, also violate the rights to equality and to be free from discrimination. Most overarchingly, they do so insofar as they discriminate on the basis of wealth. Over and above that discrimination, however, vagrancy laws often discriminate against racial, ethnic and religious minorities and vulnerable groups, against women, and against children.

²¹⁴ See Request for Advisory Opinion by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Others Human Rights Instruments Applicable in Africa, Advisory Opinion No. 1 of 2018, African Court on Human and Peoples’ Rights (Dec. 4, 2020), para. 100.

²¹⁵ *McEwan and others v. Attorney General* [2018] CCJ 30 (AJ), paras. 76, 79.

²¹⁶ See *Lacatus v. Switzerland*, App. No. 14065/15, ECtHR (Jan. 19, 2021), Concurring Opinion of Judge Keller, Partly Concurring and Partly Dissenting Opinion of Judge Lemmens, and Partly Concurring and Partly Dissenting Opinion of Judge Ravarani.

The generally discriminatory nature of such laws is emphasized by the African Commission on Human and Peoples' Rights' Principles on the Decriminalization of Petty Offences.²¹⁷ In addition, the African Court on Human and Peoples' Rights has found that

any arrest without a warrant requires reasonable suspicion or grounds that an offence has been committed or is about to be committed. Notably, where vagrancy-related offences are concerned, most arrests are made on the basis of an individual's underprivileged status and the inability to give an account of oneself. In this context, therefore, arrests are substantially connected to the status of the individual who is being arrested and would not be undertaken but for the status of the individual.²¹⁸

The Court also observed the manner in which the vagueness of vagrancy laws enables this form of discrimination:

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. Common terminology used in framing vagrancy offences include expressions such as "loitering", "having no visible means of support" and "failing to give a good account of oneself". Such language does not provide sufficient indication to the citizens on what the law prohibits while at the same time conferring broad discretion on law enforcement agencies in terms of how to enforce vagrancy laws. This, automatically, makes vagrancy laws prone to abuse, often to the detriment of the marginalized sections of society.²¹⁹

The Court also observed 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.²²⁰

In short, in other words, and to clearly restate the subtly different bases for these observations. vagrancy offences violate the right to equality and to be free from discrimination in that they specifically target those of underprivileged status; in that they grant extensive discretion, utilized to attack the marginalized in practice; and in that they exacerbate the difficult situation the worst off already find themselves in.

²¹⁷ African Commission on Human and Peoples' Rights, Principles on the Decriminalization of Petty Offences in Africa (2018), Part 3.

²¹⁸ *Id.*, para. 74.

²¹⁹ *Id.*, para. 71.

²²⁰ *See* Request for Advisory Opinion by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Others Human Rights Instruments Applicable in Africa, Advisory Opinion No. 1 of 2018, African Court on Human and Peoples' Rights (Dec. 4, 2020), para. 70.

III.1.F.1 Discrimination Against Racial, Ethnic and Religious Minorities and Vulnerable Groups

As the above statements indicate, insofar as their inherent vagueness allows for discretionary application, vagrancy laws are inevitably disproportionately utilized in practice against vulnerable groups, insofar as such groups are particularly likely to be targeted under laws that are discretionarily applied. The discriminatory application of vagrancy laws against such groups was emphasized by the Caribbean Court of Justice, which held:

Although it is true that cross dressing is practiced by persons of several types of sexual orientation, both on its face and in its application, section 153(1)(xlvii) has a disproportionately adverse impact on transgendered persons, particularly those who identify with the female gender. It infringes on their personal autonomy which includes both the negative right to not be subjected to unjustifiable interference by others and the positive right to make decisions about one's life. The formulation and operation of section 153(1)(xlvii) also reinforce stereotyping. The section conduces to the stigmatisation of those who do not conform to traditional gendered clothing. But most of all, the fact that it criminalizes aspects of their way of life, thus enabling the State to unleash its full might against them, cannot, in all the circumstances, be reasonably justified. It is therefore, in our view, that section 153(1)(xlvii) violates Articles 149(1) and 149D of the Constitution.²²¹

The European Court of Human Rights did not consider the issue of discrimination in its judgment in *Lacatus v. Switzerland*. The submission by the European Roma Rights Center in the case made a strong case the legal regime in question was in fact discriminatory, however, due to the fact that anti-begging laws in Europe were closely connected to “antigypsyism.” As the Center highlighted,

Laws criminalising begging draw on racist stereotypes about the criminality of the Roma and perpetuate antigypsyism. These stereotypes are particularly invidious because they draw upon deep-rooted and longstanding ideas that encode the idea of Roma in the very word “begging” ...

Council of Europe Commissioner for Human Rights Nils Muižnieks has summarised recent political discourse as falsely depicting Roma as migrating into Western Europe in unprecedented numbers, failing to seek jobs, and taking advantage of social safety nets. He notes that the terms “Roma” and “beggars” have become “essentially interchangeable” in the media in many countries. He describes recent bans on begging as efforts “to criminalise the presence of Roma in public spaces”.

The Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe (“PACE”) has found that “[t]he general public have a tendency to link Roma migrants to begging”. The Committee has recognised “problems with the implementation of anti- begging legislation and the way it has allegedly been applied to Roma” in countries including Switzerland, Luxembourg, and Austria.

PACE itself has recognised a connection between “the widespread tendency to make a generalised link between Roma and criminality” and “the criminalisation of begging in certain Council of Europe member States” ...

²²¹ McEwan and others v. Attorney General [2018] CCJ 30 (AJ), para. 72.

Amnesty International has likewise recognised laws on begging as “particularly targeting Roma” ...²²²

III.1.F.2 Discrimination Against Women and Children

Vagrancy law provisions that specifically target women, or that allow for campaigns to be conducted against women, constitute discrimination against women specifically. In *Dorothy Njemanze*, the Court of Justice of the Economic Community of West African States found the state had engaged in discrimination against women due to the fact that the operation considered seemed to be “systematic[ally] ... directed against only the female gender.”²²³

The same logic applies, *mutatis mutandis*, relative to discrimination against children—where the provisions of the law in question specifically target children, or allow for the targeting of children in practice, there is discrimination against children. As the African Court observed, moreover,

arbitrary arrests, generally, have a disproportionate effect on impoverished and marginalized children. By way of illustration, where street children are required to give a satisfactory account of themselves to avoid arrests, such children may be left to provide statements to the police alone. In such a situation it may, practically, be very difficult for the children to establish that they should not be arrested ...

The Court further observes that children who are routinely in conflict with vagrancy laws often belong to vulnerable and disadvantaged groups in society, including but not limited to children living on the street. In the case of children living on the streets, any forcible removal may entail losing their community and means of livelihood. The treatment that children in conflict with vagrancy laws are subjected to is, therefore, less favourable than that which other children in society experience. The primary reason for the differentiated treatment is the position of marginalisation and vulnerability occupied by these children. Children in conflict with vagrancy laws, therefore, are discriminated against because of their status.²²⁴

In short, the problematic nature of vagrancy law generally is magnified in the case of children, and in particular the most marginalized children, who are among the most likely to be targeted, and will suffer

²²² See European Roma Rights Center, Third-Party Intervention, *Lacatus v. Switzerland*, App. No. 14065/15, ECtHR (Jan. 19, 2021), available at: http://www.errc.org/uploads/upload_en/file/third-party-intervention-lacatus-v-switzerland-22-august-2016.pdf, paras. 13-7, *citing* Nils Muižnieks, Human Rights Comment: Time to Debunk Myths and Prejudices about Roma Migrants in Europe, Council of Europe Commissioner for Human Rights Blog (16 July 2015); Council of Europe Commissioner on Human Rights, Human Rights of Roma and Travellers in Europe (2012), 51; Committee on Migration, Refugees and Displaced Persons, *The Situation of Roma in Europe: Movement and Migration*, Report to the Council of Europe Parliamentary Assembly (2012), 7; Committee on Migration, Refugees and Displaced Persons, Resolution 1740 (2010); Cambridge Policy Consultants, Executive Summary: External Evaluation of Amnesty International’s Work on Tackling Discrimination Against Romas (2014).

²²³ See *Dorothy Njemanze & others v. Federal Republic of Nigeria*, Case No. ECW/CCJ/APP/17/14, ECOWAS Court of Justice (Oct. 12, 2017), 38.

²²⁴ See Request for Advisory Opinion by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Others Human Rights Instruments Applicable in Africa, Advisory Opinion No. 1 of 2018, African Court on Human and Peoples’ Rights (Dec. 4, 2020), paras. 117-8.

the most severe effects from that targeting. Further details may be found in the extensive work done by the Consortium for Street Children, which highlights the manner in which vagrancy laws may be, and have been, used to target marginalized children.²²⁵

III.2 Lack of Legitimate Purpose and Rational Connection

The above list of rights violations is so extensive and so serious that it is unlikely any justification could be offered of such a weight as to find, following a proportionality balancing, that vagrancy penalizations are warranted. Here in conclusion it is important to observe, however, that the historical record suggests that, far from being supported by various legitimate rationales, vagrancy laws have in fact been motivated by numerous illegitimate purposes. In particular, such laws have served to control workers, to limit their bargaining power and their ability to move around and seek alternative employment; to penalize ‘idleness’; to ‘sanitize’ the streets, by removing the unsightly nuisance of beggars and the homeless from public view; and to police the boundaries of ‘respectable’ society. To the extent authorities have claimed legitimate purposes for such laws, moreover—in particular, the prevention of crime—such claims have never been backed up by evidence, but rather have merely constituted assertions aimed at justifying the detention of individuals without charge of substantive wrongdoing, beyond a claim of impoverishment or suspiciousness as such.²²⁶

²²⁵ See Consortium for Street Children, Defending the rights of all street children, available at: <https://www.streetchildren.org/our-work/>.

²²⁶ As the Pan-African Lawyers Union argued before the African Court on Human and Peoples’ Rights, moreover, Most Penal Codes allow police to arrest a person without a warrant based on a suspicion on reasonable grounds that an offence has been committed. The requirement of reasonable cause is an important safeguard from improper police invasions of constitutionally protected rights. These criminal procedure provisions ought to be sufficient without the need for vagrancy laws to be used as catch-all provisions to prevent crime.

See Request for Advisory Opinion by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and Others Human Rights Instruments Applicable in Africa, Advisory Opinion No. 1 of 2018, African Court on Human and Peoples’ Rights (Dec. 4, 2020), para. 43.

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