



PRESS STATEMENT

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CONSTITUTIONAL COURT DECLARES PARTS OF THE ROGUE AND VAGABOND OFFENCE UNCONSTITUTIONAL

Today, five justices of the Constitutional Court of Uganda (Frederick Egonda-Ntende, Elizabeth Musoke, Christopher Madrama Izama, Monica K Mugenyi, and Christopher Gashirabake JJCC) in a unanimous decision, declared as unconstitutional and therefore null and void sections 168(1)(c) and 168(1)(d) of the Penal Code Act Cap 120. These provisions are parts of the offence of being a 'rogue and vagabond' which are routinely used by law enforcement to arrest and persecute the poor and marginalised including sex workers, LGBT persons and street vendors as HRAPF found in its 2016 study on the [Implications of enforcement of laws on Idle and Disorderly in Uganda](#).

This decision was made in the case of *Francis Tumwesige Ateenyi v Attorney General*, Constitutional Petition No. 36 of 2018, which can be found at <https://codpouganda.org/wp-content/uploads/2022/12/Francis-Tumwesige-Ateenyi-V-AG-Constitutional-Petition-No-36-of-2018.pdf>. The petition was filed in 2018 with the support of Human Rights Awareness and Promotion Forum (HRAPF), and closely followed by the Coalition to Decriminalise and Declassify Petty Offences in Uganda (CODPO), and the continent-wide Campaign to decriminalise poverty and status. The petitioner was represented by the Legal team at Human Rights Awareness and Promotion Forum (HRAPF) and Rwakafuzi & Co Advocates.

Section 168(1)(c) of the Penal Code Act, criminalises every '*suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself or herself*' while section 168(1)(d), criminalises 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.*'

Hon. Justice Frederick Egonda-Ntende wrote the lead judgment. He found that the provisions '*fail to provide a precise definition for the offences they create*' thereby violating article 28(12) on the principle of legality. He also alluded to the harm principle in criminal law, when he rhetorically asked, '*[w]hat is a disorderly purpose? And why should having such a purpose be criminalised without an element of harm or prejudice to any person.*'

He also found the provisions to be contrary to the presumption of innocence in Article 28(3)(a), as they reverse the burden of proof, imposing it on the accused person instead. He stated that,

'It must be noted that presumption of innocence is a constituent element of the right to a fair trial... There is an absolute bar imposed by the Constitution against whittling away or diminishing the content of the right to a fair trial.'

Finally, His Lordship found that arresting a person on the basis of vague offences is a violation of the right to liberty under article 23(1)(c) and 4(1)(b) as well as the right to freedom of movement under article 29(2)(a) of the Constitution.

However, the Court did not find enough evidence to find that the provisions violated article 21(1) and (2) on the right to equality and freedom from discrimination as no affidavits were sworn by victims of the alleged discrimination.

Nullifying these provisions is in line with the call by the African Commission on Human and Peoples' Rights which in its Principles on decriminalisation of petty offences in Africa (2018) called upon states to decriminalise petty offences including those on rogue and vagabond as they contravened the African Charter on Human and Peoples' Rights. This was confirmed by the African Court on Human and Peoples' Rights which in 2022 issued an advisory opinion finding the criminalisation of petty offences which include rogue and vagabond to be in contravention of the African Charter on Human and Peoples' Rights.

Justice Egonda – Ntende also pointed out the colonial origins of these provisions, noting that the Penal Code 'predates the Constitution by 45 years.' These offences have indeed formed part of Ugandan law since 1930 when the Penal Code was imported into Uganda by the British colonial government and have since then been used to harass and further marginalise already marginalised communities.

'I am very happy that this provision is now off the law books, as it has been used to systematically arrest and harass the poor without any basis, except for being undesirable in some public spaces.' said the Petitioner, Francis Tumwesige Ateenyi

The CODPO is specifically dedicated to pushing for a legal regime that does not penalise people on the basis of status such as being poor and is determined to continue with the efforts to challenge all these laws which create offences that are vague, oppressive, discriminatory, have no victim and yet deprive Ugandans of their rights.

'This decision is a great steppingstone towards eliminating laws that discriminate against people based on their status. Uganda has joined the league of countries, such as Angola, Kenya, Malawi, and Rwanda that have shed this yoke from the colonial era and freed their people from its oppression.' said Flavia Zalwango, the Coordinator of CODPO and Director of Research and Advocacy at HRAPF.

We call upon the Uganda Police Force to take notice of the change, and remind police officers that these provisions are no longer in force. Parliament should also do the right thing and formally remove these provisions from the law books, and also decriminalise other similar petty offences.

According to Dr. Adrian Jjuuko, HRAPF's Executive Director, and lead counsel for the petitioner,

'This decision, following so closely on the heels of a presidential pardon for petty offenders in 2020 and presidential pronouncements denouncing the arrest of persons on charges of being 'idle and disorderly' since 2015, indicate to us that the government of Uganda is progressively taking steps to protect the citizens from systemic marginalisation. The executive and now the judiciary have spoken, and it is therefore time for Parliament to do its duty and remove all remaining offences such as being idle and disorderly and being a common nuisance, from the law books as they still have the same impact as the rogue and vagabond provisions that have been declared unconstitutional.'

For more information contact

Human Rights Awareness and Promotion Forum (HRAPF) Plot 1 Nsubuga Road, Off Ntinda-Kiwatule Road, Ntinda,
P.O. Box 25603, Kampala – Uganda Tel: +256-414-530 683 or +256-312-530 683
Email: info@hrapf.org | Website: www.hrapf.org