

**TRANSFORMING DECRIM.
OPINION INTO TANGIBLE
BENEFITS FOR AFRICA'S POOR.**

OVERVIEW

- **Poverty & Access to justice in Africa**
- **What are petty offences? Why focus on them?**
- **Landscape for petty offences in Africa.**
- **What has been done to change the status quo?**
- **What more can be done?**
- **Questions?**

POVERTY & ACCESS TO JUSTICE IN AFRICA.

- **Before COVID, 445m people in Africa (34% & 9x global average) lived on less than \$1.90 a day (source: ISS).**
- **30m more joined the statistic in 2020 (Source: African Economic Outlook 2021, AfDB).**
- **Poor people can ill-afford services of a lawyer and therefore contend with grimmer criminal justice outcomes.**
- **State-funded legal aid is often inadequate.**

WHAT ARE PETTY OFFENCES & WHY FOCUS ON THEM?

- **Generic for idle & disorderly; begging; rogue & vagabond; no fixed abode; homeless; wanderer; reputed thief (ACTHPR 12/20).**
- **Colonial (e.g. UK Vagrancy Act, 1824)**
- **Focus on Socioeconomic status; discriminatory.**
- **Overly broad + wide discretion to law enforcement.**

WHAT ARE PETTY OFFENCES & WHY FOCUS ON THEM?

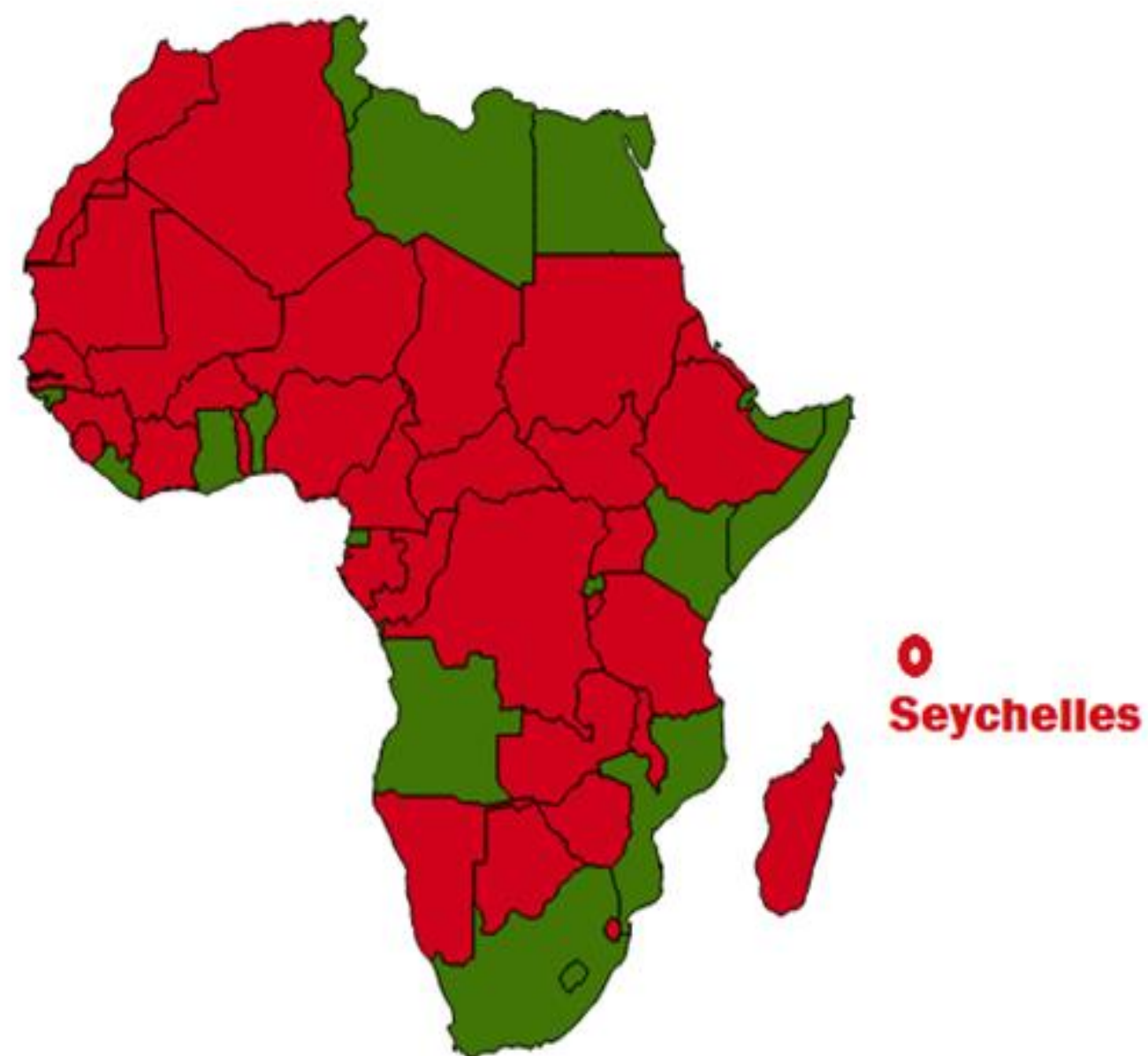
- **Violates principles of presumption of innocence & equality before the law.**
- **Without access to lawyers, the poor often end up in detention.**
- **Consequences: income loss, congestion, spread of diseases, detainee violence etc.**

LANDSCAPE FOR PETTY OFFENCES IN AFRICA

- 38 of 54 countries.
- Angola, Cape Verde, Kenya, Lesotho, Mozambique, Rwanda & Zimbabwe have repealed some of their vagrancy laws.

Source: Campaign to Decriminalize Poverty and Status (2021)

Countries which criminalise a person's lack of subsistence ('vagrancy laws')



Countries with offences which criminalise someone who has no fixed abode and no means of subsistence

Countries with no specific offences in their penal laws which criminalise lack of subsistence, although offences might still be retained in municipal by-laws

WHAT HAS BEEN DONE TO CHANGE THE STATUS QUO?

- **Decrim. campaign** - 50 global partners.
- **Objective:** decriminalize poverty & status.
- **Tools:** advocacy, law reform, research, litigation, outreach & communications.
- **Gains:** Decrim. Principles; Africa's Model Law for Police; African Court opinion; proposals for reforms in states.

AFRICAN COURT INTERVENTION

FACTS

- PALU initiated action on behalf of campaign 11 May 2018.
- Following COVID, JI joined as amicus.
- Laws thought to have dire consequences for rights in Africa

ISSUES

- Compatibility of vagrancy laws (petty offences) with arts 2, 3, 5, 6, 7, 12 & 18 HR Charter.
- Compatibility with African Children's Charter.
- Compatibility with Maputo Protocol.
- State obligation to repeal laws?.

AMICUS

- States - Burkina Faso
- NGOs - ICJ-Kenya, CHR Pretoria, DOI Western Cape, Justice Initiative & Lawyers Alert/HRC Univ. of Miami.
- NHRI - NANHRI

DECISION

- Vagrancy laws criminalize socioeconomic status; are discriminatory and deny equal treatment before the law.
- They violate all referenced articles.
- States to amend/repeal laws & make them compatible with charter.

IMPLEMENTATION SO FAR.

AWARENESS RAISING

- Decrim. Campaign Regional Conference (Cape Town) – Sept. 2022
- RULAAC (Abuja) – June 2022
- CHRI (Accra) – March 2022.
- Righting a Wrong Virtual Convening (OSF/partners) - 2021

FOLLOW-UP LITIGATION

- Human Rights Awareness & Promotion Forum (Uganda) 2018; PALU intervention (2020).
- ADVOCAID/IHRDA (Salone) 2022 – Public Order Act, 1964 (loitering) (ECOWAS Court).

RESEARCH

- Poverty is not a crime – APCOF Research Paper, 2021.
- Litigating to protect the rights of poor & marginalized groups in urban spaces – Meerkotter (SALC).

LEGISLATIVE ADVOCACY

- Lawyers Alert (Nigeria) – Drafted bills looking to convince Benue, Bauchi, Kano and Niger legislators.
- Note advocacy around *Principles on the Decriminalization of Petty Offences*, 2017

WHAT MORE CAN BE DONE?

COUNTRY BASELINES/SUCCESS INDICATORS

- Necessary to make “measuring success” easier..
- Comparative analysis possible,
- Tool for monitoring progress.

STATE LEVEL/CONTINENTAL REVIEWS

- Critical for periodic reviews and comparative analysis.
- Compare past to present and future.

STATE REPORTING UNDER AFRICAN CHARTER (ART. 62)

- Since laws incompatible with Charter, states to report on progress made re repealing.
- Note implementation facilitates Principles on Decriminalization of Petty Offences.

ADVOCACY FOR LAW/POLICY REFORMS

- Targeting specified laws but also policies perpetuating this.
- Focus on eliminating underlying practices.
- Retooling law enforcement to be more proactive and scientific.

THANK U
FOR
LISTENING