

COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMUNIDADE,
CEDEAO



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THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

In the Matter of

ADVOCAID LTD
(APPLICANT)

v

REPUBLIC OF SIERRA LEONE
(RESPONDENT)

Application No. ECW/CCJ/APP/18/22; Judgment No. ECW/CCJ/JUD/33/24

JUDGMENT

ABUJA

7 NOVEMBER 2024

THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA

Application No. ECW/CCJ/APP/18/22; Judgment No. ECW/CCJ/JUD/33/24

BETWEEN

ADVOCAID LTD

-APPLICANT

AND

REPUBLIC OF SIERRA LEONE

-RESPONDENT

COMPOSITION OF THE COURT:

Hon. Justice Ricardo C.M. GONÇALVES

- Presiding Judge

Hon. Justice Dupe ATOKI

- Member

Hon. Justice Edward Amoako ASANTE

- Judge Rapporteur

ASSISTED BY:

Dr. Yaouza OURO-SAMA

- Chief Registrar

REPRESENTATION OF PARTIES:

Eleanor Thompson

Dr. Chipso Rushwaya

- Counsel for APPLICANT



Soniade Barlatt

Olive B.A Horton

-Counsel for RESPONDENT

Counsel for Amici Curiae

Abdulmalik Bello

-Consortium for Street Children

Kolawole Oluwadare

-Amnesty International

Peace Okeshola

-South African Litigation Centre

CHD
[Signature] [Signature]

I. JUDGMENT

1. This is a judgment of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. Applicant, Advocaid Ltd, is a civil society organisation based in Freetown, Sierra Leone, whose mission is the promotion and protection of human rights, particularly women's rights.
3. Respondent, the Republic of Sierra Leone, is an ECOWAS member state and a party to the African Charter on Human and People's Rights 1981 (African Charter) on which Applicant relies in this case.

III. INTRODUCTION

Subject Matter of the Proceedings

4. Applicant asserts that the maintenance and continued enforcement of Respondent's laws on loitering which, among others, authorise the police to arrest any person who is idle in a public place and cannot give a good account of himself is discriminatory and violates the freedom of movement of various vulnerable groups in Sierra Leone. Applicant requests, *inter alia*, an order of the Court directing the Respondent to repeal its loitering laws.

IV. PROCEDURE BEFORE THE COURT

5. Applicant initiated this proceeding by an application dated 31 March 2022 and filed at the Registry of the Court on 12 April 2022. The Application was served electronically on the Respondent on 27 April 2022.
6. On 26 October 2022, the Consortium for Street Children, an NGO, filed an application to intervene in the case as amicus curiae together with its prepared amicus submission. Both documents were electronically served on the parties the same day.
7. On 20 March 2023, Applicant filed an application for default judgment which was served on the Respondent the same day.
8. On 22 March 2023, Amnesty International, filed an application seeking leave of the Court to intervene in the case as amicus curiae together with its prepared written submission. The two processes were electronically served on the parties the same day.
9. On 10 October 2023, the Southern Africa Litigation Centre filed an application to intervene as amicus curiae together with its prepared amicus brief. Both processes were served electronically on the parties on 11 October 2023.
10. On 12 October 2023, Respondent filed a motion for extension of time within which to file a defence together with its prepared Statement of Defence. Both processes were served on 13 October 2023.
11. At the session of the Court on 2 May 2024 at which both parties and the amicus applicants were present, the Court heard and granted the applications of the

Consortium for Street Children, Amnesty International and the Southern Africa Litigation Centre to intervene as amici curiae. The Court then heard arguments of the Applicant and the Respondent on the merits of the case, after which it permitted each amicus curiae to present the main points of their written briefs. Following the close of the oral proceedings, the Court adjourned for deliberation and judgment.

V. APPLICANT'S CASE

a. Summary of Facts

12. According to Applicant, Sierra Leone's Public Order Act 1965 provides in Section 7 that: "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".
13. Similarly, Section 31 of the Summary Conviction Offences Ordinance of 1906 provides that: "Any person loitering in or about any stable or out-house or deserted or unoccupied 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".
14. According to Applicant, Section 13(1) of the Criminal Procedure Act empowers a police officer to arrest without warrant any person the officer may find "between the hours of six in the evening and six in the morning lying or loitering in any street,

highway, yard, compound or other place, and not giving a satisfactory account of himself’.

15. Applicant says that these loitering laws vest unfettered discretion in law enforcement agents to arrest any person without a warrant if the person does not appear to have a means of subsistence and cannot give a good account of themselves.
16. Based on the sworn statements of about ten individuals (annexed to the Application), who claim to have been victims of arrest and harassment by law enforcement agents under the loitering laws, the Applicant asserts that poor people going about their normal lives and moving at night are being arrested—not because they harm anyone, but simply because they are out at night.
17. According to the Applicant, while poor people are arrested for being out at night, individuals with greater economic means or status are left untouched and do not face arrests. Persons driving in private cars at the same time of night are hardly ever arrested for loitering. Those who are arrested are subjected to systemic police corruption, including sexual and physical violence, and demands for bribes ranging from Thirty Thousand Leones (Le30,000, approximately USD 3) to Five Hundred Thousand Leones (Le500,000, approximately USD 50) to secure their release from police stations without being charged.
18. The Applicant further states that in many cases, when women are arrested, police officers demand sexual intercourse in exchange for their release. In other instances, some police officers forcibly have sex with these women against their will and without protection, putting them at risk of contracting sexually transmitted diseases.


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Women who do not comply with these demands are arraigned before the court, while those who satisfy the demands are released without charge.

19. For these reasons, the Applicant contends that the loitering laws are enforced in a discriminatory manner, frequently resulting in arbitrary and unlawful arrests targeting the poor and marginalized groups in society, while people from the middle and upper classes, affluent-looking individuals, or foreign tourists are rarely, if ever, arrested for loitering.

20. That the laws allow the police wide discretion to arrest persons suspected of loitering, regardless of whether they pose a threat to public order and security, and place the burden on any person deemed undesirable by the police to explain their presence.

b. Pleas in Law

21. Regarding pleas in law, Applicant states that by keeping and enforcing its loitering laws, the Respondent has

- (i) violated the right to non-discrimination under Article 2 of the African Charter.
- (ii) violated the right to equality before the law under Article 3(1) of the African Charter.
- (iii) violated the freedom of movement contrary to Article 21(1) of the African Charter
- (iv) violated its obligation under Article 1 of the African Charter by failing to repeal its loitering laws.

c. Reliefs sought

22. Applicant requests the Court for the following reliefs:

- (a) A declaration that the Republic of Sierra Leone is legally responsible for the violation of the right to equality and non-discrimination pursuant to article 2 of the African Charter.
- (b) A declaration that the Republic of Sierra Leone is legally responsible for the violation of the right to equality before the law pursuant to article 3 of the African Charter.
- (c) A declaration that the Republic of Sierra Leone is legally responsible for the violation of the right to freedom of movement pursuant to article 12 (1) of the African Charter.
- (d) A declaration that the Republic of Sierra Leone has violated its general obligations pursuant to article 1 of the African Charter.
- (e) An order for the Republic of Sierra Leone to repeal its loitering laws.
- (f) An order for the Republic of Sierra Leone to carry out training and sensitization of its law enforcement agents on how to prevent human rights violations while ensuring security of lives and property.
- (g) Any such further order(s) as the Court deems fit to make in the circumstances.

VI. RESPONDENT'S CASE

a. Summary of Facts

23. The Respondent does not dispute the existence of the loitering laws cited by the Applicant. However, it denies that the enforcement of these laws has resulted in violations of the prohibition against discrimination, the right to equality, the freedom

of movement, or the obligation to take legislative and other measures to implement the fundamental human rights guaranteed by the African Charter

24. The Respondent states that under Chapter 3 of the 1991 Constitution of Sierra Leone, the rights of all persons are recognized and protected without distinction as to race, tribe, sex, place of origin, colour, or political opinions.

25. The Respondent also asserts that it has established structures to investigate and discipline police officers who act outside of their authority. The Police Discipline Regulations 2001 provide for the investigation and discipline of police officers who engage in unlawful conduct, such as those alleged by the Applicant.

26. Therefore, any allegations of police misconduct or violations of the rights of ordinary people should have been submitted to these national procedures before bringing an action in this Court.

b. Pleas in Law

27. As to pleas in law, Respondent submits that:

- (i) Respondent has not violated the right to non-discrimination under Article 2 of the African Charter.
- (ii) Respondent has not violated the right to equality before the law under Article 3(1) of the African Charter.
- (iii) Respondent has not violated the freedom of movement contrary to Article 12(1) of the African Charter

- (iv) Respondent has not violated its obligation under Article 1 of the African Charter as alleged by the Applicant.

c. Reliefs Sought

28. Respondent prays the Court for the following reliefs:

- (i) That the Court declare that Applicant failed to exhaust local remedies.
- (ii) That the Court dismiss the Application on grounds that the Applicant has failed to prove its claims and that the Application is inconsistent and lacks merit.
- (iii) Any other order(s) the Court deems fit to grant in favour of the Respondent.

VII. INTERVENTIONS OF AMICI CURIAE

29. By way of amicus curiae intervention, three non-governmental organizations—namely, the Consortium for Street Children (CSC), Amnesty International, and the Southern Africa Litigation Centre (SALC)—were granted leave by the Court to submit briefs to assist in clarifying the legal issues involved in this case.

30. In its brief, the Consortium for Street Children (CSC), focused on the rights to non-discrimination, equality before the law, and freedom of movement and how loitering laws disproportionately impact Children in Street Situations (CiSS). CSC highlighted the vagueness of the Respondent's loitering laws and the negative impact they pose on the CiSS and their social origin.

31. Amnesty International discussed the extent to which the Respondent's loitering laws comply with international human rights standards, particularly whether they are necessary and proportionate, adhere to the principle of legal clarity, and are consistent with the rights to dignity, equality, and non-discrimination. It concluded that the Respondent's criminalization of loitering and other petty offences is inconsistent with international and regional human rights standards, as well as with the decisions of several human rights bodies that have recommended decriminalizing such offences.

32. The Southern Africa Litigation Centre (SALC) submitted that arrest and detention under vagrancy-related offenses is a disproportionate response to unemployment, poverty, and homelessness, which may result in significant harm to the individual and their family and worsen conditions in prison. Additionally, SALC noted that assertions about the usefulness of these laws in preventing crime should be evaluated in light of their actual impact on human rights and the principles of legality.

VIII. JURISDICTION OF THE COURT

33. Article 9(4) of the Protocol of the Court grants it 'jurisdiction to determine cases of violation of human rights that occur in any Member State.' To activate this jurisdiction, it is sufficient if an Application to the Court alleges that violations of human rights have taken place in the territory of the Respondent state and that the Respondent is responsible for those violations, but without prejudice to the determination of the claims on the merits after hearing both parties. (See *Registered*

Trustees of Gan Allah Fulani Development Association v Federal Republic of Nigeria ECW/CCJ/JUD/06/23, para 38).

34. In this case, the Applicant alleges that the Respondent's maintenance and continued enforcement of its loitering laws violate the fundamental human rights of various vulnerable groups in Sierra Leone, particularly the rights to equality, non-discrimination, and freedom of movement under the African Charter. The Applicant also contends that the Respondent's failure to repeal the loitering laws violates its obligation under Article 1 of the African Charter to take legislative measures to give effect to the rights guaranteed under the Charter. Since these human rights violations are allegedly occurring within the Respondent's territory and implicate its international human rights obligations, the Court holds that it has jurisdiction consistent with Article 9(4) of the Protocol of the Court.

IX. ADMISSIBILITY OF THE CASE

35. Under Article 10(d) of the Court's Protocol, three main admissibility criteria are required to be satisfied for human rights cases, and these are: (a) the applicant's victim status or standing, (b) the non-anonymity of the application; and (c) the non-pendency of the matter before another international court or tribunal. See *Aziagbede Kokou & Others v Republic of Togo* [2013] CCJELR 167 (para 18).

36. Regarding victim status or standing, the Court has generally held that an applicant must show that they have a legal right or other protectable interest that has been, *prima facie*, adversely affected or injured by the conduct of the state. However, the Court has recognized exceptions to this rule, including situations where an individual

or NGO, not personally affected by the violation, may institute a public interest action to litigate alleged human rights violations that affect the public at large or an indeterminate section of the public. (See *Registered Trustees of Gan Allah Fulani Development Association v Federal Republic of Nigeria* ECW/CCJ/JUD/06/23, para 51.)

37. Relying on *Patrick Eholor v Federal Republic of Nigeria* (ECW/CC/JUD/51/23), paras 51-52 and *Incorporated Trustees of Media Rights Agenda v Federal Republic of Nigeria* (ECW/CCJ/JUD/07/24), paras 88-96, this Court held in *Isaac Mensah v Republic of Ghana* (ECW/CCJ/JUD/30/24, para 76) that “a public interest action (*actio popularis*) is generally characterised by the following:

- a) The applicant (an individual or NGO) presents a claim for the protection or enforcement of a collective or public right, or in some cases, an individual right the alleged breach of which has injured a large and indeterminate section of the public.
- b) The applicant may, but need not, be personally affected by the alleged violation.
- c) The remedies or reliefs sought, including any pecuniary relief, is intended for the benefit of the public generally, not the applicant or a small identifiable group or section of the public.
- d) The applicant does not need authorisation as it would be impossible or impractical to obtain the consent of the whole public, or a large, indeterminate section of the public.”

38. In this case, the Court notes that the Applicant is an NGO dedicated to the promotion and protection of human rights, particularly women’s rights, and has brought the action in a public interest capacity. The alleged human rights violations resulting

from the enforcement of the Respondent's loitering laws appear to affect an indeterminate section of the Sierra Leonean population, thus dispensing with the need for the Applicant to obtain authorization. Regarding the reliefs sought, the Court observes that they are not aimed at benefiting the Applicant personally, but rather at seeking the repeal of the contested laws and advocating for the training and sensitization of the Respondent's law enforcement agents on preventing human rights violations. They are, therefore, intended for the benefit of the public at large. In these circumstances, the Court is persuaded that the action qualifies as a public interest action and meets the standing requirements of Article 10(d) of the Court's Protocol and its jurisprudence.

39. Secondly, the case has not been presented anonymously, nor is there evidence that the claims are pending before another international court or tribunal, contrary to the admissibility requirements of Article 10(d) of the Protocol of the Court.

40. Regarding the issue of local remedies which was raised by the Respondent, the Court recalls that it has consistently affirmed that the exhaustion of local remedies is not one of the admissibility requirements under Article 10(d) of the Court's Protocol. (See *Musa Saidykhan v. Republic of The Gambia* [2010] CCJELR 139, para 39 and *Registered Trustees of Gan Allah Fulani Development Association v Federal Republic of Nigeria* ECW/CCJ/JUD/06/23, para 53). For these reasons, the Court is satisfied that the Application meets all the relevant admissibility requirements of Article 10(d) of the Court's Protocol and its jurisprudence.

X. MERITS

41. Considering the Applicant's pleadings as well as the reliefs sought, the Court is invited to make three substantive legal determinations concerning the alleged

violations of the African Charter resulting from the enforcement of the Respondent's loitering laws: (a) alleged violations of the rights to non-discrimination and equality before the law contrary to Articles 2 and 3(1) of the African Charter; (b) alleged violation of the freedom of movement contrary to Article 21(1) of the African Charter; and (c) alleged violation of Respondent's obligation under Article 1 of the African Charter for failing to repeal its loitering laws. The Court will examine these issues in turn.

a) Alleged Violations of the Rights to Non-Discrimination and Equality before the Law contrary to Articles 2 and 3(1) of the African Charter

i. Submissions of the Applicant

42. Applicant submits that Article 2 of the African Charter requires the Respondent to take necessary measures to prohibit all forms of discrimination whether on grounds of race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, fortune, birth or any status. Similarly, Article 3(1) of the African Charter provides that "[e]very individual shall be equal before the law". According to Applicant, the African Commission stated in *Zimbabwe Lawyers for Human Rights and IHRDA v Zimbabwe* (ACHPR, Comm NO 293/04, para 96) that "the right to equality before the law means that individuals legally within the jurisdiction of a state should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens."

43. Applicant contends that the enforcement of loitering laws in Sierra Leone is inconsistent with the twin principles of non-discrimination and equality before the law as it unfairly targets the poor and vulnerable members of society due to their

economic and social status. According to Applicant, arrests made under the loitering laws are not based on reasonable suspicion of committing a crime, but on being at a specific location at a particular time of the day. Therefore, such arrests are merely based on police assumptions of criminality which they associate with the financial and social status of the persons arrested. In contrast, people who appear to belong in the upper social and economic classes of society are not targeted for arrests under the loitering laws. Applicant therefore submits that the enforcement of the Respondent's loitering laws violates the principles of non-discrimination and equality before the law contrary to Articles 2 and 3(1) of the African Charter.

ii. Submissions of the Respondent

44. On this issue, Respondent denies that it has violated the rights to non-discrimination and equality before the law. Respondent states that its laws particularly, Sections 15 and 27 of its Constitution guarantee the rights of persons to equal rights and freedoms without any distinction on grounds of race, tribe, sex, place of origin, political opinions, colour or creed.
45. Further, Respondent states that it has put in place measures to address conduct of errant police officers. According to Respondent, the Police Discipline Regulations 2001, makes provisions for the discipline and sanction of police officers who engage in the types of unlawful conduct described by the Applicant in its Application.
46. Finally, the Respondent states that its loitering laws aim to maintain public order and protect society from criminal activities such as drug trafficking, human trafficking, and child molestation, among others. That the laws are equally enforced against all persons without any form of discrimination. For these reasons, Respondent contends

that it has not violated the principles of non-discrimination or equality before the law through the enforcement of its loitering laws.

iii. Analysis of the Court

47. On this issue, the Court begins by recalling Articles 2 and 3(1) of the African Charter which respectively provide as follows:

2. Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

3(1). Every individual shall be equal before the law.

48. Article 2 of the African Charter establishes the general principle of non-discrimination, and this is supplemented by Article 3 of the Charter which guarantees equality and non-discriminatory application of the law to all persons. The two provisions constitute the foundation of the Charter's prohibition of discrimination and unfair application of laws. (See *Al-Hassan Fadia v Togolese Republic* ECW/CCJ/JUD/17/24, para 62).

49. Accordingly, in *Kwoyelo v. Uganda* (Comm No. 431/12, para 158), the African Commission noted that 'Article 2 [of the Charter] lays down a principle that is essential to the spirit of the Charter and is therefore necessary in eradicating discrimination in all its guises, while Article 3 guarantees fair and just treatment of individuals within the legal system of a given country.'

50. In the view of this Court, the two provisions of the Charter, in their combined effect, prohibit discriminatory treatment on any of the prohibited grounds of discrimination

(e.g., race, ethnicity, gender, religion) or the subjection of an individual to an unjustifiably selective or differential application of the law not accorded to similarly situated persons.

51. Turning to the facts, Applicant stated that the Respondent's loitering laws unfairly target the poor and most vulnerable members of the society and subject them to criminal sanctions for potential, rather than actual, harmful acts. People who appear to belong in the higher social and economic classes do not face similar arrests and harassment under the law.

52. As this Court has consistently held in previous cases, it is a "general principle of law recognised by both domestic and international courts [that] a party who makes a claim or allegation has the burden to persuasively establish it with relevant evidence and/or arguments of law". *Al-Hassan Fadia v Togolese Republic* (ECW/CCJ/JUD/17/24, para 58.) See also *Gregory J. Todd v Federal Republic of Nigeria* (ECW/CCJ/JUD/41/23, para 72). The practice of international courts and tribunals show that acceptable evidence may include documents, witness or expert testimony, photographs, videos, affidavits or sworn statements, and even news reports.

53. In this case, the Applicant obtained sworn statements from some of the victims, which were annexed to the Application. These statements testify to arbitrary arrests and detentions, as well as systemic corrupt practices involving sexual and physical violence by police officers acting under the authority of the loitering laws. The statements also establish that various amounts are demanded from victims by police officers to secure their release without charge.

54. Seven (7) out of the eleven (11) sworn statements were made by women some of whom have suffered sexual violence from police officers acting under the authority of loitering laws. From the facts deposed to, the Court observes that most, if not all, of the victims are poor and vulnerable members of society. The Court notes that the Respondent has not controverted the depositions in the sworn statements. Accordingly, the Court is inclined to believe that, even if the loitering laws are applied uniformly as the Respondent claims, they nevertheless disproportionately impact the poor and vulnerable members of the Sierra Leonean population, as the Applicant asserts.

55. By their nature, “vagrancy laws”—an umbrella term that includes laws on loitering, like the ones challenged in this case—target individuals who appear to have no “visible means of subsistence”, cannot give a “good account of themselves”, or are deemed “idle” or “disorderly.” Rather than criminalizing specific harmful acts, these laws target the status of individuals who invariably happen to be poor or underprivileged.

56. Accordingly, in *Pan-African Lawyers Union (PALU) (Advisory Opinion)* [2020] 4 AfCLR 874 (“PALU Advisory Opinion”) in which the African Court considered “The Compatibility of Vagrancy Laws with the African Charter on Human and Peoples’ Rights and other Human Rights Instruments Applicable in Africa”, the Court observed that:

70. [V]agrancy 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.

57. This Court considers that the application of loitering laws inevitably attaches criminal suspicion to certain classes of individuals based on their low economic or social status, rather than any specific unlawful acts they have committed. This stigma is not typically applied to individuals of high economic and social status. Accordingly, in the *PALU Advisory Opinion*, the African Court noted that “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.” (*PALU Advisory Opinion*, para 74).

58. Given that “status” is one of the prohibited grounds of discrimination under Article 2 of the African Charter, this Court takes the view, which is also shared by the African Court, that the application of loitering laws unavoidably subjects poor and vulnerable members of society to discrimination and unequal application of the law, in violation of Articles 2 and 3 of the African Charter. (See *PALU Advisory Opinion*, paras 73 and 74).

59. The Court, therefore, agrees with the Applicant that the maintenance and continued enforcement of the Respondent’s loitering laws violate Articles 2 and 3(1) of the African Charter.

b) Alleged Violation of the Freedom of Movement contrary to Article 21(1) of the African Charter

i. Submissions of the Applicant

60. Applicant submits that Article 12(1) of the African Charter guarantees the right of everyone to “movement and residence within the borders of a State provided that he abides by the law”. The freedom of movement and right to choose one’s residence is similarly guaranteed under Article 12(1) of the ICCPR.

61. Applicant contends that the Respondent’s loitering laws violate the freedom of movement because they do not meet the requirement that laws must be drafted with precision and clarity to provide individuals with sufficient indication of what the law prohibits. Instead, the laws contain vague terms such as “not giving a good account of himself”, “not giving a satisfactory account of himself”, and “causing annoyance to any person”, which grant unfettered discretion to police officers and make enforcement prone to abuse.

62. The Applicant also asserts that by making loitering punishable by imprisonment, the Respondent’s loitering laws impose a disproportionate limitation on the freedom of movement. For these reasons, the Applicant urges the Court to find that the Respondent’s loitering laws, and their enforcement violate the freedom of movement under Article 12 of the African Charter.

ii. Submissions of the Respondent

63. On this issue, Respondent emphasizes that under Article 12(1) of the African Charter, everyone has the right to freedom of movement and residence within the

borders of a state “**provided he abides by the law**”. Also, under Article 18 of the African Charter, the Respondent as a state party has the responsibility to take care of the moral wellbeing of the state and has the duty to “assist the family as the custodian of morals and traditional values recognised by the community”.

64. Respondent contends that in the light of these, its laws on loitering are consistent with the African Charter as they impose reasonable restrictions on the freedom of movement and are necessary for upholding the moral values of the Sierra Leonean society.

65. The Respondent further contends that the Applicant has presented a grossly misleading picture by overlooking the fact that it is normal practice in almost all countries for the police to set up checkpoints, particularly at night, as part of measures to ensure security for everyone. It is also common practice for the police, as part of their patrols and other security measures, to require individuals to show their identification or explain their presence in a particular place. These measures, according to Respondent, are often necessary to prevent reckless or drunk driving, drug trafficking and other unlawful activities, particularly at night.



66. For these reasons, Respondent submits that it has not violated the freedom of movement by maintaining and enforcing its loitering laws.

iii. Analysis of the Court

67. Article 12(1) of the African Charter provides that “[e]very individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.” The African Commission has stated that “[t]he right to move freely within a state encompasses

the prerogative to move around within a state without arbitrary confinement of movement. It imposes a duty on the state not to interfere with the free movement of individuals.” (*General Comment No 5 on the African Charter on Human and Peoples’ Rights: The Right to Freedom of Movement and Residence (Article 12(1), para 9*).

68. Admittedly, the freedom of movement is not absolute, as Article 12(1) of the African Charter includes an in-built limitation requiring that one “abides by the law” in the enjoyment of this right. However, the African Commission has noted that this requirement to abide by the law cannot be interpreted in a way that conflicts with international human rights law (ACHPR, *General Comment No. 5*, para. 13). Additionally, the Commission has indicated that any limitations on the freedom of movement must serve a legitimate aim and must be proportionate and absolutely necessary to achieve the purpose of the limitation (ACHPR, *General Comment No. 5*, para. 13).

69. Similarly, this Court observed in *Gregory Todd v Federal Republic of Nigeria* (ECW/CCJ/JUD/41/23, para 64) that “the freedom of movement may be subject to reasonable restrictions if such restrictions are (a) previously laid down by law; (b) serve a legitimate purpose necessary in a democratic society; and (c) are proportionate and the least restrictive means of achieving the purpose of the restriction. (See *Konate v Burkina Faso* (merits) [2006-2016] 1 AfCLR 314, para 125)”.


70. The Court must, therefore, consider whether the Respondent's impugned loitering laws comply with these human rights standards to be regarded as valid limitations on the freedom of movement.

71. In this case, the Court notes that the impugned loitering laws constitute limitations provided by law, as they are statutory provisions enacted by the Respondent. However, the Court must also determine whether these loitering laws meet international human rights standards. To be compatible with such standards, an important requirement is that a criminal statute must be clear and precise, providing individuals with sufficient notice about the conduct that is prohibited. (See *Incorporated Trustees of Laws and Rights Awareness Initiative v Federal Republic of Nigeria* ECW/CCJ/JUD/16/20, paras 126-127).

72. The Court observes, however, that like many typical vagrancy laws, the Respondent's loitering laws contain several vague and imprecise terms, such as having no "visible means of subsistence," being unable to give a "good account of himself," and being "idle" or "disorderly".

73. In the *PALU Advisory Opinion*, the African Court observed that "[s]uch 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." (*PALU Advisory Opinion*, para 71) Accordingly, the African Court stated that "[t]his, automatically, makes vagrancy laws prone to abuse, often to the detriment of the marginalized sections of society." (*Ibid*)

74. This Court concludes that the Respondent's loitering laws, as a limitation on the freedom of movement, meet the requirement of being provided for by law. However, due to their vagueness and imprecision, they lend themselves to arbitrary application and therefore fall short of international human rights standards.

75. The Court now addresses the question of whether the loitering laws serve a legitimate purpose and are proportionate and necessary.

76. The justification offered by the Respondent for maintaining and continuing to enforce the loitering laws is to prevent crime and maintain law and order. However, the Court notes that, as previously stated, the loitering laws criminalize certain states of being rather than specific unlawful acts committed by an individual. Because being "vagrant" (i.e., having no visible means of subsistence, inability to give account of oneself or being idle) is not coterminous with criminality or criminal behaviour, the Respondent's contention that the loitering laws serve a legitimate purpose of crime prevention or law and order is seriously undermined. (See *PALU Advisory Opinion*, para 100).

77. Regarding proportionality and necessity, the Court notes that laws targeting loitering during specific hours disproportionately affects marginalized or vulnerable groups, such as homeless individuals, who may have legitimate reasons for being out during the regulated hours, such as seeking shelter or social support. These individuals should not be subjected to automatic arrest solely based on their presence in public spaces.

78. It is also evident from the sworn statements submitted by the Applicant that other individuals who are engaged in normal activities, such as going to or returning from work or simply enjoying nightlife, are also disproportionately targeted under these

loitering laws. The laws impose arbitrary restrictions on individuals' movement, as they do not distinguish between those engaging in lawful activities and those potentially engaging in criminal behaviour.

79. Accordingly, the Court considers that arresting individuals for merely being present in public spaces during certain hours is disproportionate and unnecessary in a democratic society, as less restrictive measures could be implemented. Measures such as offering vocational training for the unemployed, providing shelter for the homeless, offering addiction rehabilitation programs, and implementing other social intervention programs are more compliant with human rights and address the issues that the loitering laws aim to solve. Additionally, the Respondent has the option to enact laws targeting specific unlawful conduct in public spaces rather than merely criminalizing the status of individuals who are often poor and vulnerable.

80. For these reasons, the Court concludes that the Respondent's loitering laws violate the freedom of movement under Article 12(1) of the African Charter, as they are vague and imprecise and do not meet the requirements of legitimate purpose, proportionality, and necessity in a democratic society.

c) Alleged Violation of Respondent's Obligation under Article 1 of the African Charter for failing to Repeal its Loitering Laws

i. Submissions of the Applicant

81. On this issue, Applicant submits that Article 1 of the African Charter does not only require the Respondent to recognise the rights guaranteed in the Charter, but to also take legislative and other measures to give effect to them. This obligation, according to the Applicant, requires the Respondent to amend or repeal its loitering laws to

bring them into conformity with the African Charter. Applicant says that the continued existence of the Respondent's loitering laws is contrary to the spirit of Article 1 of the African Charter as it does not ensure the realisation of the rights enshrined in the Charter including non-discrimination, equality before the law and freedom of movement.

ii. Submissions of the Respondent

82. Respondent denies that it has violated Article 1 of the African Charter. According to Respondent, it recognises the rights and freedoms enshrined in the African Charter as these rights are reinforced by its Constitution. Additionally, it has adopted other legislative and administrative measures for the promotion of human rights in Sierra Leone.

iii. Analysis of the Court

83. Article 1 of the African Charter enjoins state parties to the African Charter to "recognize the rights, duties and freedoms enshrined in [the] Charter" and to "adopt legislative or other measures to give effect to them". This reflects the obligation of states under general international law to fulfil their treaty obligations in good faith. (See *Vienna Convention on the Law of Treaties 1969*, art 26).

84. The obligation in Article 1 of the Charter means that a state party must adopt legislative measures to give effect to the rights contained in the Charter where it does not already have such legislation on its statute books. Conversely, where there are extant laws, customs or practices that hinder the enjoyment or realisation of the rights guaranteed in the Charter, the obligation in Article 1 requires the state to modify, amend or entirely repeal such laws, customs or practices.

85. In this case, the Court has found that the maintenance and continued application of the Respondent's loitering laws violate Articles 2, 3(1) and 12(1) of the Charter which respectively guarantee the rights to non-discrimination, equality, and freedom of movement of the citizens and residents of Sierra Leone.

86. It follows that the Respondent has violated Article 1 of the Charter by failing to take legislative measures to modify or repeal its loitering laws in order to guarantee the full realisation and enjoyment of these rights.

XI. REPARATIONS

87. Reparations may take the form of restitution, compensation, satisfaction, or a combination of these. In this case, the Applicant has not requested any orders for restitution or compensation.

88. The reliefs sought are mainly in the nature of satisfaction and guarantees of non-repetition, with the Applicant requesting the Court to make various declarations and order the Respondent to repeal its loitering laws. Given the Court's findings and conclusions that the maintenance and continued enforcement of the Respondent's loitering laws violate Articles 2, 3(1), and 12(1), and by extension Article 1 of the African Charter, the Court considers it appropriate to grant an order directing the Respondent to take necessary legislative measures to bring its loitering laws in conformity with the African Charter.

89. The Court grants other reliefs sought by Applicant only to the extent indicated in the operative clause of this judgment.

XII. COSTS

90. Pursuant to Article 66(4) of the Rules of the Court, the Court decides that each party shall bear their own costs.

XIII. OPERATIVE CLAUSE

91. For the foregoing reasons, the Court sitting in public and after hearing the parties:

On jurisdiction

- i. Declares that the Court has jurisdiction over the Application.

On Admissibility

- ii. Finds that the Application is admissible.

On the Merits

- iii. Declares that the maintenance and continued enforcement by the Respondent of its loitering laws violate the rights to non-discrimination and equality before the law contrary to Articles 2 and 3(1) of the African Charter
- iv. Declares that that the maintenance and continued enforcement by the Respondent of its loitering laws violate the freedom of movement under Article 12(1) of the African Charter.
- v. Declares that the Respondent has violated Article 1 of the African Charter by its failure to take appropriate legislative measures to amend, modify or repeal its loitering laws to bring them into conformity with its human rights obligations.

On reparations

- vi. Orders that the Respondent shall take appropriate legislative measures to amend, modify, or repeal the loitering laws that are the subject of this case, to

bring them into conformity with its obligations under Articles 1, 2, 3(1), and 12(1) of the African Charter.

- vii. Decides that all other reliefs sought by the parties which have not been specifically granted herein, either in whole or in part are hereby dismissed.

On Costs

- viii. Decides that each party shall bear their own costs.

Done at Abuja this 7th day of November 2024 in English and translated into French and Portuguese.

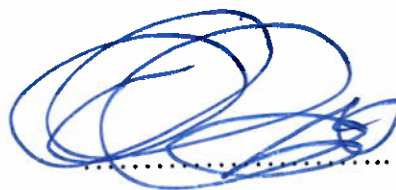
Hon. Justice Ricardo C.M. **GONÇALVES**
Presiding Judge



Hon. Justice Dupe **ATOKI**
Member of Panel



Hon. Justice Edward Amoako **ASANTE**
Judge Rapporteur



ASSISTED BY:
Dr. Yaouza **OURO-SAMA** (Chief Registrar)

