



PARLIAMENT OF MALAWI



**STATEMENT BY THE CHAIRPERSON FOR LEGAL AFFAIRS
COMMITTEE ON PRESENTING A REPORT ON ITS FINDINGS
ON THE REVIEW OF THE PENAL CODE**

PRESENTED BY

**HON. PETER DIMBA MP
(COMMITTEE CHAIRPERSON)**

1. Thank you, **Madam Speaker**, for according me an opportunity to present a Report of the Legal Affairs Committee on its findings on the Review of the vagrancy laws in the Penal Code.
2. **Madam Speaker**, you may recall that the High Court sitting as a constitutional court in the case of **Mayeso Gwanda v The State**, Constitutional Case Number 5 of 2015, on 10th January 2017, declared unconstitutional the offence of rogue and vagabond under section 184(1)(c) of the Penal Code.
3. Subsequently, the Court called upon the Government to make a detailed assessment of vagrancy laws in Malawi generally and, where appropriate, initiate legislative changes to ensure that such laws' are consistent with the Constitution. The Court further, ordered the Government to consider a full review of the vagrancy laws including the entire section 180 of the Penal Code to be in line with Constitutional dictates to avoid future constitutional challenges.
4. **Madam Speaker**, again on 22 July 22, the High Court in Zomba in the case of **The State v The Officer In-Charge | Ex Parte: Banda & Others** (Judicial Review 28 of 2018) [2022] MWHC 139 (22 July 2022) ordered Parliament and the Ministry of Justice, to effectively review the entire section 184 of the Penal and to report to the Court on the progress of legislative reform within 24 months from the date of the judgment by 22nd July, 2024.

5. Further to this, **the House** may wish to note, **Madam Speaker**, that there has been also an international call to review and repeal the vagrancy offences in the African region. The African Court on Human and Peoples' Rights on 4 December 2020, issued an Advisory Opinion on Vagrancy Offences (Case No. 1/2018). The Court's opinion speaks specifically to Malawi's Penal Code provisions relating to idle and disorderly persons and rogues and vagabonds.

6. **Madam Speaker**, in response to this directive, the Legal Affairs Committee pursuant to its mandate, in collaboration with the Ministry of Justice, the Law Commission and the Law Society undertook a fact-finding mission to engage with key stakeholders and gather inputs before proceeding with the necessary amendments to the law on vagrancy.

7. At this juncture, allow me, Madam, **Speaker** and **Members of this August House**, to highlight some of the observations on critical issues that your Committee on Legal Affairs made during engagements with various stakeholders: -
 - i. the Committee underscored the importance of amending Section 184 of the Penal Code and related provisions to the law on vagrancy because it will help improve the administration of justice and protection of human rights (section 19), the right to equality and not to be discriminated against on any grounds (section 20) and right to be presumed innocent (section 42) (2)(f)(iii).

- ii. The Committee further, noted that the current laws often lead to unfair arrests and convictions, particularly for vulnerable individuals. A good example was the Supreme Court of Appeal in *Kamwangala v Republic*, the Committee emphasized that arrests should be based on concrete evidence rather than mere suspicions. The Law Society agreed that the proposed amendments will support the right to a fair trial and prevent abuse of power by law enforcement.
- iii. The Law Society agreed with the observation of the Supreme Court, that law enforcement authorities should not arrest any person with a view to investigate. Many people that have been arrested under section 184 of the Penal Code end up pleading guilty because they want to earn their freedom by paying a fine after conviction and avoid prolonged stay in custody or avoid the inconvenience that is brought by prolonged trial.
- iv. Madam Speaker, the Law Society submitted that the amendment will promote the right to fair trial under section 42(2)(f) of the Constitution and avoid abuse by police officers of their general power to arrest without a warrant under section 28 of the Criminal Procedure and Evidence Code.
- v. The Law Society also highlighted that the plight of individuals arrested for vagrancy-related offences, often

lack legal representation. Further to that the State normally does not provide them with services of legal practitioner as required by sections 42(1)(c) and 42(2)(f)(v) of the Constitution. The Society is of the opinion that if the amendments pass the constitutionality test in section 5 of the Constitution and addresses the issues that the courts have observed regarding these provisions, the amendments will lead to improvement in the access to justice.

- vi. **Madam Speaker**, the Committee invited the Law Commission following the critical role that the Commission plays in the systematic review and reform of the laws to ensure that are effective, fair and reflective of current societal values. Section 132 of the Constitution gives the Commission the mandate to review the law. The Committee wanted to understand whether the Law Commission had conducted a legal analysis on the existing laws and to solicit input into the review process.
- vii. During the discussions, the Law Commission indicated that the specific amendment of Section 184 may not warrant a dedicated review by the Commission, citing cost-effectiveness concerns. The Law Commission however, highlighted the need for a comprehensive review of the vagrancy laws, emphasizing that a piecemeal approach would be ineffective. The Commission suggested that the issue lies more with law

enforcement practices rather than the law itself, advising the Committee to focus on enforcement issues.

- viii. The Ministry of Justice reported to undertake an effort to draft an amendment Bill to come to Parliament in the upcoming meeting. The Committee however, expressed concerns that it had taken a long time for the two branches of government to be aware of the court judgement that was made in 2022.

8. Madam Speaker, having heard views from the stakeholders through round table discussions which is essential for developing a comprehensive, effective, and enforceable amendment to the vagrancy laws, the Committee makes the following recommendations :-

- i. That implementation of the vagrancy laws infringes upon basic human rights and disproportionately target the vulnerable in the society. In view of that, there is need to have a comprehensive review of the vagrancy laws from Section 180- 184 of the Penal Code as directed by the court. This is very crucial to ensure compliance with human rights standards and protection of the rights of vulnerable individuals.
- ii. That government through the Ministry of Justice should facilitate the amendment Bill on selected sections of the Penal

Code as a matter of urgency in view of the time lines that were given by the court.

- iii. That the Judiciary should improve its systems of transmitting judgements to the Executive and Parliament by way of a desk officer to ensure that all judgements and court directives are adhered to within the stipulated timelines.

9. **Madam Speaker**, in conclusion, let me mention that the Legal Affairs Committee diligently, consulted various stakeholders to address the court's directive. The Committee is confident that the findings and recommendations that came from this report will result in a well informed and effective legislative amendment, in accordance with the court's order. The Committee urges the House to fast-track the amendment Bill to comply with the court's directive and to also uphold the rights and dignity of all individuals.

10. With these few remarks, I wish to thank You, **Right Honourable Speaker, Madam**, for granting me the floor and all Honourable Members for your kind attention.

11. **Madam Speaker**, I beg to move that the report should be adopted, I beg to move, Madam.