

ACT 183 THE DESTITUTE PERSONS ACT 1977

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DBKL officers taking persons into custody during Ops Gelandangan. Oct. 25, 2013

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Anti-vagrancy raids and arrests do not end homelessness and poverty.

We cannot fight homelessness by stepping on the rights of homeless persons.

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The Destitute Persons Act: Why is it an issue?

Today, government strategies for dealing with homelessness largely depend on application of the 1977 Destitute Persons Act (DPA). The DPA is the product of a 100 year legacy of vagrancy ordinances first brought by the British in 1872.

The intent of the law is written as: “to provide for the care and rehabilitation of destitute persons and for the control of vagrancy”. In reality, **this law is used to justify—and perpetuate—colonial era practices of harassment, mass round-up, lengthy remand, and compulsory detention of homeless persons through government programs such as *Operasi Gelandangan*.**

Implementation of the DPA involves processes that violate the constitutional and human rights of persons on the streets, such as their right to personal liberty, freedom of movement, equal protection, and property. These violations complicate homeless persons’ ability to establish personal security and well-being. In other words, it makes life harder for people already enduring hardship.

Operasi Gelandangan and other DPA-related operations and facilities cost taxpayers millions of Ringgit each year, yet they provide no practical solution to the problems of poverty and homelessness faced by persons on the streets.

Government programs should be designed in accordance with the equal rights, freedoms, dignity, and needs of all citizens. We cannot fight homelessness by stepping on the rights of homeless persons.

Act 183

DESTITUTE PERSONS ACT 1977

An Act to provide for the care and rehabilitation of destitute persons and for the control of vagrancy.

“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;

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

3. (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:

Penalty

11. Any person who—

- (a) refuses to be taken, or offers any resistance to being taken, into the charge of an officer duly authorized in writing by a local authority and acting under the direction of the Director General or a social welfare officer under this Act;
- (b) escapes from an officer duly authorized in writing by a local authority and acting under the direction of the Director General or a social welfare officer while committed to their charge under this Act;
- (c) without permission of the Superintendent leaves a welfare home in which he is required to reside under section 3

THE DPA: 140 YEARS OF HISTORY

1872—First anti-vagrancy ordinance enacted in the Straits Settlements. Offenders sentenced to prison or fined.

1872-1939—British anti-vagrancy ordinances are introduced and amended throughout the Straits Settlements and Federated and Unfederated Malay States.

1947—Capture and detainment of “beggars” and “vagrants” was reinstated by the governor of the Malayan Union.

1954—The Department of Welfare conducted its first study into homelessness. The report **criticized the “despotic” nature of anti-vagrancy laws** that “deprive beggars and vagrants of their liberty... [and] their civil rights.”*

The Straits Times, 31 May 1965.

PENANG TO ACT ON BEGGAR NUISANCE

Police action will be started on Tuesday to round up vagrants and destitutes under the Vagrancy Act, 1965, which came into force on March 1.

1965
The Vagrants Act 1965 takes effect, providing justification for anti-vagrancy round ups by Police across Malaysia.

1977—The Vagrants Act is replaced by The Destitute Persons Act. The DPA differs from its predecessor in that, **instead of police, officers authorized by social welfare and local authorities are granted the power to round up “beggars” and “vagrants”.**

2008 -Today (June 2014) — In 2008, the Ministry submitted but later withdrew **Bill DR18/2008** to amend the DPA. It **included clauses for expanding officers’ powers and protecting government from lawsuits**, among others.

In 2011, Sabah became the final state to adopt the DPA, which now formally covers all Malaysia.

New facilities were established in Selangor, Sabah, & Sarawak, indicating plans to expand the system.

The MWFC is preparing to amend the DPA, possibly to further penalize begging and/or homelessness.

1870s-1930s

Persons charged with vagrancy came from all ethnicities.

British elites had a special interest in using the law to remove : 1) the “disgrace” of poor whites (typically unemployed sailors) and 2) surplus (or injured) workers from tin and rubber industries during economic slumps.

Anti-vagrancy ordinances are designed to remove poor persons from public view, not to solve poverty.

1962—Federal agencies interested in removing “beggars” and “vagrants” from the cities began drafting a consolidated vagrancy law designed to “encompass all the States of Malaya”.

Aware that such a law would **violate constitutional protections, especially Article 9 (2)**, they enlisted the help of Parliamentary Counsel to produce The Vagrants Bill 1964, a quasi-legal foundation for rounding up and detaining poor and homeless persons.

1975—Ministry of Welfare Services report states that **anti-vagrancy measures are of “little positive help”** as they punish persons for disadvantage, and direct public resources towards deterrence rather than essential aid.**

The Straits Times, 23 June 1970.

After the round-up, the beggars are back again

Resilient

Since the Vagrants’ Act came into force in Malaysia nearly 2,500 beggars have been rounded up. The beggars are resilient, though.

Round ups have never solved the problem of homelessness. But failure of this strategy is regularly blamed on homeless persons.

*Central Welfare Council. (1958). *Social Survey on Beggars and Vagrants*. University of Malaya. Available at Arkib Negara: Ref 2006/0016174

**Ministry of Welfare Services. (1975). *Survey on Beggars and Vagrants in Peninsular Malaysia*: p. 109. Available at the Arkib Negara: Ref 1990/0006345 No. 12.

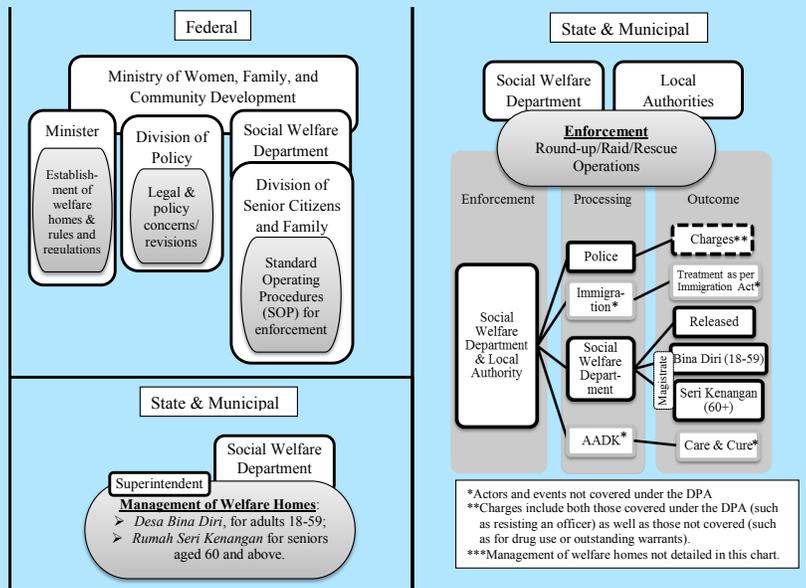
Eastern Daily Mail and Straits Morning Advertiser.

THE VAGRANCY BILL.

munity. But most of all we desire Government to deal with the white beachcomber, who is a disgrace to Europeans generally, lowering the standard of the *orang putih* in the eyes of those millions with whom we are brought in contact.

20 January 1906.

Implementation of The Destitute Persons Act 1977



Key legal components of The Destitute Persons Act

Section 2	Defines destitute persons, welfare homes, and administrative actors
Section 3(1)	Assigns officers under social welfare and local authorities with the power to take suspected destitute persons into custody
Section 3(2)	Assigns magistrate judges with the authority to forcibly admit persons to welfare homes
Section 11	Stipulates criminal penalties for acts such as resisting detainment, or escaping a facility

The SOP delineates three kinds of operations, essential for implementation:

- **Integrated (Bersepadu)**—Regularly scheduled large-scale operations involving multiple agencies such as local authorities, AADK, JPN, Immigration, and Alam Flora; Typically target homeless and street populations (as opposed to persons begging);
- **Periodic (Berkala)**—Small-scale operations conducted at the discretion of JKM, primarily targeting persons begging in public spaces; and
- **Ad hoc (Aduan)**—Operations conducted in response to public complaints.

In Kuala Lumpur, integrated operations are typically coordinated under DBKL, whereas periodic and ad-hoc operations are under the direction of the Federal Territory Social Welfare Department.

Operations are regularly conducted throughout Malaysia such as in Kuala Lumpur, Shah Alam, Georgetown, Ipoh, Johor Bahru, Kota Kinabalu, and Kuala Terengganu.

Official data shows that, **in 2011, authorities conducted 1,190 operations nationwide, detaining 1,408 people.** Overall, there were 7,833 detainees between 2007-2011.

Capture in operations does not avail persons to any special forms of assistance, other than the possibility of involuntary admission to a “welfare home”.

In Kuala Lumpur, anywhere from 30 to 100+ persons are caught in each integrated operation.

Persons caught are subjected to questioning, drug tests, and background checks at the discretion of authorities (*see right*).

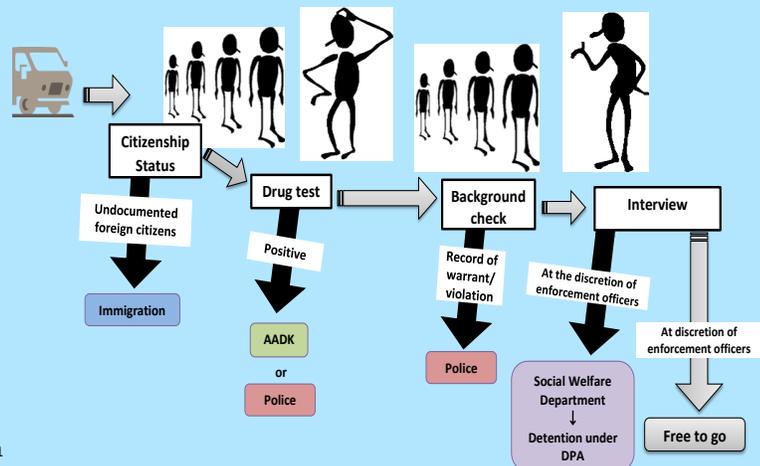
Roughly 80% are released hours later, with no transportation back to the city, as participating agencies have no grounds for further holding them**. This is systematic harassment.

In 2011, the Ministry of Women held 939 persons in **Desa Bina Diri facilities*** in Pahang & Johor, **25% over capacity.**

A 2013 survey** found that **half (48%) of randomly selected homeless persons had experienced being rounded up in operations**, three-quarters (72%) of whom reported being rounded up multiple (2-10) times.

* Facilities run by the Ministry of Women, Family, and Community Development for “destitute persons” aged 18-59.

Post-custody process, integrated operations



JKM may detain persons at length by obtaining from a magistrate judge (in chambers): a) a **one-month detention** order, sometimes followed by b) an order for **involuntary admission to a government welfare home for up to three years.**

No one in these homes, even persons who enter voluntarily, may leave of their own volition; permission of the Superintendent appointed by the Minister is required.

**Rusenko, Rayna M. (2013, unpublished thesis). Metamorphosis of the City, Street Homelessness, and the Destitute Persons Act. University of Malaya.

Impacts

In Malaysia, it is **not** a crime to be homeless. But the DPA allows local authorities and social welfare departments to round up and detain homeless persons against their will.

Such a system violates the rights and freedoms guaranteed to all Malaysian citizens under the Federal Constitution, as well as those guaranteed to all people under the Universal Declaration of Human Rights.

Implementation of the DPA entails violations of the following rights.

Personal Liberty [Article 5(1), Constitution; Article 3, UDHR] The right to personal liberty guarantees all people freedom from arbitrary arrest and detention, as well as the right to exercise choice in their lives within the confines of the law. Round ups and forced confinement at welfare homes deprives persons experiencing homelessness of such personal liberty. The legal system allows officers to indiscriminately pick up and detain anyone at will, in the name of unilaterally imposing government “care and rehabilitation” without citizens’ consent.

Freedom of Movement [Article 9(2), Const; Article 13, UDHR] Homeless persons, owing to their social and economic circumstances, have little opportunity to enter private property. Thus, they must spend most of their time in public areas. By targeting them directly, DPA operations (and the loss of liberty they represent) serve to intimidate, exclude and remove persons experiencing homelessness from public space. This obstructs their freedom to move freely in Malaysia.

Right to Property [Article 13, Constitution; Article 17, UDHR] During integrated operations, officers may refuse to let people take their belongings and Alam Flora (contracted to clean during operations) often throws such personal property away. Persons confined to welfare homes also have property confiscated or lost without consent. The loss of personal property can be devastating, especially since it often includes essentials like identification papers, health records, medication, important contact information, and so on.

Right to Equal Protection [Article 8, Const; Article 13, UDHR] Public space, by definition, should be open to all, yet the DPA allows government officers to forcibly remove poor and homeless persons with impunity. Such treatment discriminates against them, and unfairly segregates them from the rest of the public. Moreover, government appeals for communities to report “destitute” persons further encourage the public to discriminate against and exclude poor and homeless persons, too.

In addition, round ups and detention of homeless persons negatively impacts their health, incomes, assets, access to social support networks and overall personal security in multiple ways.

Assets—Persons targeted by operations must endure authorities disposing of their property. Also, in order to avoid operations, persons with income (from work, family support) feel compelled to spend what little money they have on patronizing restaurants in order to avoid being on the streets.

Earnings—Persons with jobs are prevented from sleeping when caught in—or fearful of—operations. This may hurt work performance and, ultimately, result in wage or job loss.

Health—Many people suffer sleep deprivation and psychological stress due to the threat of operations or post-custody events. Also, all persons released post-custody are forced to walk back (1+ hours), regardless of age, (dis)ability, and physical or mental health condition. In addition, evidence suggests that conditions at DPA facilities are not necessarily conducive to detainees’ good mental & physical health*.

Social support—Social connection is vital for quality of life. Naturally this truth applies to persons who are homeless too. People on the streets generally have reduced access to social support from (former) co-workers, old friends, or family, but do gain much from peers. However, detainment forcibly separates people from their regular peer networks. This deprives them of essential emotional and social support.

While people who are homeless may not have much in the way of material, financial, social, and health-based assets, what they do have is nonetheless precious and necessary for maintaining personal well-being.

Due Process [Article 5(1), Constitution; Articles 9 & 10, UDHR] Interviews reveal that persons caught in operations are regularly denied procedural due process, such as their right to be informed of the basis for action against them, their right to legal counsel and representation, and an opportunity to be heard in court. Moreover, despite the fact that no legal appeals to a magistrate’s order have been filed over the history of the DPA (or the Vagrants Act), there are countless cases of escapes from welfare homes; this raises the question of whether individuals confined to homes have adequate access to an appeals system to challenge their detainment and lawfully regain liberty.

Substantive due process is also an issue as the law is vague and overbroad, containing minimal specificity as to when authorities should and should not exercise power. In fact, this is why mass round-ups are technically possible under the DPA, even though the practice is not explicitly provided for anywhere in the Act. Authorities have virtually limitless discretionary power to take any person on the street—homeless or not, or begging or not—into custody.

* Rusenko, Rayna M. (2013, unpublished thesis). Metamorphosis of the City, Street Homelessness, and the Destitute Persons Act. University of Malaya.

Recommendations

What's wrong with the Destitute Persons Act?

140 years of implementation has shown that the DPA and similar anti-vagrancy measures are not a solution to problems of homelessness and poverty.

The DPA leads to more harm than good.

- ⇒ By undermining the constitutional and human rights of law-abiding individuals.
- ⇒ By intensifying structural inequality and prejudice against homeless persons by denying them equal protection.
- ⇒ By exacerbating the material, financial, and social insecurity of people targeted by operations.

We are wasting valuable public resources on a misguided and outdated approach.

The public's true interest lies in developing policies that enhance individual and collective human security by addressing poverty and homelessness at their root.

The Straits Times, August 20, 1956

The Beggars

A year ago the Federation Government introduced more stringent laws against beggars. The police were given powers to arrest vagrants and beggars and the courts were empowered to impose a maximum fine of \$250 or six months jail or both...

[However,]

Councillors and officials have, in recent weeks, drawn attention to the fact that the number of beggars has increased.

Malaya cannot legislate begging out of existence because its root causes are economic and social. Some do

We recommend that the Ministry of Women, Family, and Community Development:

1) Repeal the Destitute Persons Act

- ⇒ Bring an immediate end to all operations.
 - ⇒ Terminate use of Desa Bina Diri and Rumah Seri Kenangan facilities *for the purposes of the DPA*.
 - ⇒ Review the cases of all persons detained in DPA facilities to humanely resolve the complexities of transition in line with the wishes & needs of each.
 - Release all persons who request release.
 - Persons who request residential care should be given a choice of facilities suited to their specific needs, such as those with specialized medical, psychiatric, or disability assistance services.
- All residential care facilities in Malaysia ought to be regularly evaluated, monitored and upgraded to ensure adherence to formally established requirements in law, and satisfactorily safeguard residents' rights, dignity and well-being.*

2) Refrain from taking steps to further criminalize begging and/or homelessness; instead, promote greater public understanding—particularly through more accurate representations in the media—of the relationship between homelessness and social, economic and policy issues, e.g. employment and income insecurity, housing insecurity, poor health, ageing, addiction, (dis)ability and disparities in development.

3) Help to ensure that the rights, freedoms, and needs of all persons regardless of housing status are protected, by promoting scrutiny, amendment, and/or repeal of:

- ⇒ Laws and regulations at federal, state, and local levels that penalize vagrancy, begging, and/or homelessness and/or disproportionately penalize homeless persons;
- ⇒ Laws, policies, and practices in government agencies that contribute to discriminatory treatment of homeless persons, such as denying essential aid or services due to a lack of an address.

4) Establish an inter-agency council on homelessness, accountable to the Ministry and inclusive of relevant partner agencies. The council ought to:

- ⇒ **Oversee and/or promote investigation into critical factors linked to homelessness**, and
- ⇒ **Clearly outline what relevant government ministries and agencies can do** to better:
 - a) monitor, understand & improve conditions for persons experiencing homelessness as well as,
 - b) prevent homelessness.

“Malaya cannot legislate begging out of existence because its root causes are economic and social.”

[XIII. OF 1872.] SUMMARY CRIMINAL JURISDICTION.

VAGRANTS.

II. Every person wandering abroad and lodging in any shed, or outhouse, 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 waggon, or other similar shelter not having any visible means of subsistence, and not giving a good account of himself.

VI. Shall, in each of the above cases, be liable on conviction to imprisonment of either description for any period not exceeding two months, or to a fine not exceeding twenty-five dollars, and on a second or subsequent conviction to imprisonment of either description for any period not exceeding four months, or to a penalty not exceeding fifty dollars, or to both, and, on conviction, any such implements or arms may be forfeited.

The First Anti-Vagrancy Ordinance, 1872



On the transport van
September 25, 2013



Persons undergoing the post-custody process
DBKL Enforcement, April 5, 2014

The Destitute Persons Act 1977 Fact Sheet

For more information, please contact
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TITLE	LOCATION	YEAR
Summary Criminal Jurisdiction, Paragraph 32. Vagrants	Straits Settlements	1872
Vagrancy Ordinance	F.M.S.	1893
Small Offenses Enactment, Section 29. Vagrants	F.M.S.	1898
Decrepit Vagrants Enactment, E. 9 of 1902	F.M.S.	1902
Vagrancy Ordinance (for the Establishment of Houses of Detention for Vagrants), No 94	Straits Settlements	1906
Vagrancy Enactment, No. 1 of 1921	F.M.S.	1921
Vagrants and Decrepit Persons Enactment	F.M.S.	1928
Vagrancy Enactment, No. 125	Kedah	
Vagrancy and Decrepit Persons Enactment, Cap. 191	F.M.S.	1934
Vagrancy Enactment, No. 63	Johore	1936
Vagrants and Decrepit Persons Enactment, No. 6 of 1344	Trengganu	1939
Vagrancy Ordinance, No. 37	Straits Settlements	1939
Federation of Malaya Agreement, G.N. 6, Second Schedule	Federation of Malaya	1948
Vagrancy (Amendment) Ordinance, No. 32	Straits Settlements	1950
Minor Offenses Ordinance, F3, Section 34(2); Second Schedule	Federation of Malaya	1955
Vagrancy Enactment	Selangor	1960
Vagrants Act, No. 19	Malaysia	1965
Destitute Persons Act	Malaysia	1977

Some laws and ordinances providing for the round up, arrest, & compulsory
detainment of persons experiencing homelessness; 1872 to present.