



**STATEMENT ON THE PLIGHT OF PRE-TRIAL DETAINEES IN MALAWI,
ISSUED ON THE COMMEMORATION OF THE AFRICA PRE-TRIAL
DETENTION DAY, 25TH APRIL 2023**

The Malawi Human Rights Commission (the Commission) and the Legal Aid Bureau (LAB) join the human rights community in Malawi and the rest of the African region in commemorating this year's **Africa Pre-Trial Detention Day** which falls on 25th April. Under the Ouagadougou Declaration which was adopted by the African Commission on Human and People's Rights (ACHPR) in 2003, the ACHPR launched new standards known as the **Luanda Guidelines** for improving the way that the criminal justice systems across Africa treat suspects before they go to trial.

The Luanda Guidelines were adopted out of concern about the impact of prison overcrowding and the consequences of arbitrary arrest and prolonged pretrial detention in Africa. In particular, they seek to ensure fewer arbitrary arrests and more rational and proportionate use of pre-trial detention. As part of the effort to raise the profile of this issue, April 25 was declared **Africa Pre-Trial Detention Day**. On this day, human rights professionals and advocates are urged to pay special attention to the plight of people that are detained while waiting for trial and who face many challenges.

What the Commission has done about the plight of detainees

Under the Human Rights Commission Act, the Commission has powers to undertake monitoring visits to places of detention, with or without notice. Using this mandate, the Commission has been conducting periodic monitoring visits to places of detention, including police and prison. In March and April 2023, the Commission conducted monitoring visits to Zomba, Maula and Mzuzu Prisons to appreciate the conditions under which prisoners are being kept. These monitoring visits have revealed that Malawi's prisons remain underfunded, are overcrowded and lack basic amenities to meet minimum standards for human habitation. From August 2022, Malawi's prisons have experienced acute food shortages that amounted to a humanitarian crisis. The most affected prisons were Zomba, Chichiri and Maula where inmates stayed for days without any food.

The Legal Aid Bureau has a mandate under the Constitution of Malawi to provide legal services to all persons that cannot afford to retain private lawyers. The majority of prisoners on remand rely on legal services from the Legal Aid Bureau

Infrastructural Capacity of Malawi's Prisons

Most prisons in Malawi remain overcrowded. They were built a long time ago and are unable to cater to the ever-increasing prison population. For example, Maula Prison was constructed with an original holding capacity of about 800 inmates. Over time, new cells have been added and it is now estimated to have a holding capacity of about 2,500 inmates. Despite the increase in the holding capacity, the prison remains overcrowded. On the day of the monitoring visit by the Commission, the prison was holding a total number of 3,663 inmates. Of these, about 1,100 were on remand, representing about 30 percent of the total prison population. More than half of prisoners on remand are facing homicide charges.

It was also worth noting, that about 98 inmates from Ethiopia had been convicted as illegal immigrants, they served their sentences and were just being kept

because the government had not made arrangements to have them repatriated back to Ethiopia. Of these, 23 were young persons and 75 were adults.

The issue of foreign nationals was also noted in Mzuzu where there are about 302 foreign nationals that were convicted of being illegal immigrants, have served their sentences and were awaiting to be repatriated. It must be noted that such persons are legally under the Department of Immigration but because the Department of Immigration does not have holding facilities of their own, such people are kept in prisons, thereby increasing the prison population.

Period of stay on remand

Homicide suspects are the ones that overstay on remand. At Maula Prison, there is one homicide suspect who was arrested on 5th December 2011 and has been on remand for twelve years. At Mzuzu Prison the current longest stay on remand is seven years. In most cases, there is no indication as to when the suspects would have their day in court. Inmates have raised a concern that the police are swift in effecting arrests and taking suspects to court, but once suspects have been remanded to prison, they forget about them. To buttress the point, most inmates indicated that for most of them, the last time they were in court was when they were taken to be formally charged and take plea. Despite the opportunity for legal representation by the Legal Aid Bureau, such services are not available to most of the suspects because Legal Aid Bureau itself is underfunded and understaffed.

Reasons for delays in concluding cases in court

The Commission and the Legal Aid Bureau have found the following to be among the reasons why cases take time to be heard and concluded in the courts:

1. Poverty: The majority of inmates who stay for long on remand are those who are poor and cannot afford legal representation. Some are not even aware of the opportunity for representation by the Legal Aid Bureau;

2. Sometimes Police arrest suspects without concrete evidence. They conduct investigations after arrests have already been affected. Once a suspect has been placed on remand, the police are not keen to have the case taken to court. Prisoners feel that such arrests and remands are being used by police officials as a final punishment;
3. Delayed release of court judgments: It has been noted that some cases can take up to more than two years to have judgment released after conclusion of the case hearing;
4. Missing files: most cases delay because of missing files. This problem is so common that suspects feel that some police officers are deliberately misplacing files in order to delay the cases in court due to vested interests.
5. Changes in magistrates, judges and prosecutors handling the cases. There are problems associated with transfers of files between magistrates, judges, and prosecutors. The main issue is failure to ensure proper handovers of files and track progress.

Treatment of pretrial detainees

The basic assumption is that pretrial detainees are presumed innocent until proven guilty by a competent court. As such, the way they are treated by the police, the courts and the prison must be different from the way convicted prisoners are treated. To the contrary, the detainees that were interviewed by the Commission complained of various forms of ill-treatment that they suffer at the hands of the police. Some of the abuses at the hands of the police included the following: -

1. Being physically assaulted by police during the arrest;
2. Being tortured in order to confess the alleged crimes;
3. Being arrested without clear justification;
4. Unlawful confiscation of personal property by police during arrest, and
5. Non-compliance by police to take sick prisoners to the hospital even when there is a court order to do so.

Treatment of detainees by prison officers

Prisoners have cited good treatment at the hands of prison officials. The only issues that inmates raised against prison officials are those associated with infrastructure and the operational environment. For instance, prison clinics are underfunded and do not have enough medical supplies. In order for inmates to seek medical help from government hospitals, there is a need for police involvement and this has proven ineffective. As such, sick prisoners take long before they can be referred to a hospital.

Other operational challenges include the following

1. Overcrowded sleeping quarters. The cells are so congested that inmates sleep while squatting in a manner that has been locally named as **"Shamba"**.
2. Inconsistent water supply
3. Failure by prison officials to supply sanitary facilities such as toilet paper
4. Failure by prison officials to provide bathing and washing soap
5. Discrimination in food provision by convicted prisoners who consider themselves to be in charge of the prisons
6. Not being allowed food from relatives and visitors
7. Prisoners on remand do not take part in recreational activities.

Food Rations

Most prisons in Malawi serve meals at least once a day in line with the Prison Regulations. Each prisoner is entitled to 830 grams of maize meal per day. However, due to maize shortages that have been experienced since last year, the daily ration is not being complied with. For instance, it was noted that Maula Prison which required about 48 bags of maize and 12 bags of beans per day was issuing only 42 bags of maize and 8 bags of beans respectively.

Inmates have bemoaned the poor quality of maize meal. They described it as not fit for human consumption. They also indicated that there is no special diet

provided to inmates with medical needs. For instance, those suffering from ulcers are given porridge rather than nsima and beans. Sometimes when the prison receives visitors who bring food supplies, those with medical problems are at least considered.

Conclusion and Recommendations

From the foregoing, it can be noted that pre-trial detainees in Malawi continue to face many challenges at the hands of the police as well as in prison. The major issues noted are that of overstaying on remand and uncertainty regarding the status of their cases in court. The Commission and Legal Aid Bureau, therefore, make the following recommendations:

- a. The Ministry of Homeland Security must immediately address the problem of overcrowding, by, among others, increasing the living space
- b. The Ministry of Justice, Malawi Police Service and the Judiciary must contribute to reducing the prison population through alternative sentencing and considering releasing some inmates on bail, especially those that that have overstayed on remand
- c. Pre-trial detention periods should be strictly adhered to as provided in the Criminal Procedure and Evidence Code.
- d. Cases which surpass the pre-trial detention period without adhering to due processes should be discharged.
- e. Government should engage with international organizations and countries where foreign detainees are coming from to assist with their repatriation.
- f. The Department of Immigration must consider having their own holding facilities for foreign nationals that are not facing any criminal charges in Malawi or have served their prison sentences.
- g. The Malawi Law Society should provide pro bono legal services to complement the work of the Legal Aid Bureau which is currently understaffed and underfunded.

- h. The judiciary must set trial dates for all cases that have overstayed in the courts so that inmates can have an opportunity to defend themselves.
- i. The Ministry of Homeland Security must resolve the food crisis by taking steps for ensuring that the prisons are food sufficient.



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