

# Police prosecutors, magistrates in the 'dock'

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**P**olice prosecutors' illegal extension of remand warrants is contributing to overcrowding of prisons and remand prisoners overstaying in the facilities, but the Malawi Police Service has defended its officers' actions.

As of last November, there were over 3 000 remand prisoners and 14 500 inmates against the capacity of 5 500 for the 31 prison stations across the country.

Centre for Human Rights Education, Advice and Assistance (Chreea) executive director Victor Mhango, in an interview last week, said there is a general observation of deliberate disregard of the law by police prosecutors who use shortcuts to extend remand warrants.

According to Mhango, this conduct is very common, and it happens almost every day.

He said they [police prosecutors] collect the warrants and present them to the magistrates to sign, "which is illegal and violates the accused's human rights".

Said Mhango: "We believe some judicial officers deliberately violate the law to benefit an interested party. This is very unfortunate because they take advantage of the suspects' ignorance as most of them are not represented by lawyers.

"Such officers need to be punished. The law must not be applied selectively. It's high time people started respecting the rights of offenders, and not torturing them."

The activist, whose organisation primarily works with prisons and prisoners, said the original intention of taking suspects to court is for magistrates to have an opportunity to, among others, check on the health of the accused and the progress of the case, but this has now been subverted in



PHOTOGRAPH: NATION

Survival of the fittest: Prisoners queue for a meal at one of the correctional facilities



PHOTOGRAPH: NATION

Mhango: The law must not be applied selectively

practice.

Section 250 of the Criminal Procedure and Evidence Code (Cpec) stipulates that if the accused is being kept in detention, breaks in the trial can only be for periods of 15 days.

During its inspection of prisons and police cells between August 2020 and February 2021, the Malawi Inspectorate of Prisons also found that remand warrants were being extended without the suspects appearing before the courts.

Further, the inspectorate observed that some warrants were not being signed by responsible officers.

In her paper titled, "The Role of the Judiciary in Safeguarding and Ensuring Access to Criminal Justice During Pretrial Stage: The Case of Malawi", published by Southern Africa Litigation Centre, Supreme Court of Appeal judge Dorothy NyaKaunda Kamanga observed that keeping accused persons in a vulnerable position and for long periods of incarceration exceeding the legally permissible period without trial are contrary to the interests of justice and breach of human rights.

She welcomed proactive approaches by stakeholders in criminal justice system to curtail prolonged pretrial detention and efforts to control the remand prisoner population as such moves contribute towards the protection and promotion of pretrial rights of poor and marginalised detainees.

National police spokesperson Peter Kalaya argued that the allegations against the police were based on an uninformed position on how the justice system works.

But without citing reasons, he said it was wrong to over-generalise issues that touch on human rights and demanded specific examples of suspects languishing.

When contacted to explain why judicial officers were disregarding the regulations on warrant extension, Magistrates and Judges Association of Malawi (Majam) secretary general Peter Kandulu referred *Weekend Nation* to the High Court and Supreme Court of Appeal registrar Kondwani Banda.

However, Kandulu said his association had never discussed the matter as it was beyond its jurisdiction and competence.

Majam is a professional body whose membership derives from all judicial officers and its mandate is to oversee the professional and general conduct of magistrates and judges in the country.

Banda promised to provide responses to our inquiry yesterday afternoon but he had not done so by press time.

Malawi Prison Service spokesperson Chimwemwe Shaba did not respond to our questionnaire after he promised to do so. ■