



PRESS STATEMENT

CONCERN ABOUT THE USE OF PETTY OFFENCES AS A TOOL FOR SEXUAL VIOLENCE

The Centre for Human Rights Education Advice and Assistance CHREAA and the Southern Africa Litigation Centre (SALC) are deeply concerned with reports of sexual violence allegedly perpetrated by police officers. The recent report is the case of Sergeant James Luciano at the Marka Police Unit in Nsanje. CHREAA and SALC commend the Malawi Police Service for arresting the officer who allegedly raped a 17-year-old girl in police custody. The arrest builds public trust in the Malawi Police Service's commitment to upholding and protecting human rights.

It is more concerning that, increasingly, victims of such abuse are women and girls who have been arrested for petty offences like idle and disorderly and in circumstances that do not constitute any offence. In January 2022, Andrew Chagaga a police officer was sentenced to 30 years for raping a 17-year-old girl who had been arrested for an offence of idle and disorderly when she was going to overnight prayers. In September 2022, another police officer from Blantyre Police Station, Emmanuel Phalavi was arrested for allegedly defiling some street-connected children in custody who were arrested for begging and for being idle and disorderly. The alleged victim in Nsanje was also arrested for the offence of idle and disorderly.

In 2017, the Court, in **Mayeso Gwanda v The State** (Constitutional Case No. 444 of 2015) recommended that all vagrancy laws should be reviewed to ensure that they are in tandem with the Constitution and are not used as a tool for abuse mainly by the police. In July 2022; in the case of **The State V Henry Banda** (Judicial Review Case No. 28 of 2018), the Court directed Government to review all vagrancy laws within 24 months to ensure that such laws are consistent with the Constitution.

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. The Court noted that using terms such as 'rogue', 'vagabond', 'idle' and 'disorderly' to label persons reflected an outdated and largely colonial perception of individuals without any rights, and "their use dehumanises and degrades individuals with a perceived lower

status. The African Court's Advisory Opinion guides States on the review of outdated criminal laws. The Court notes that States must ensure that offences do not directly or indirectly target individuals in a discriminatory manner. In this respect, the African Commission explained that the right to non-discrimination in the African Charter "encompasses those cases of discrimination, which could not have been foreseen during the adoption of the Charter". The Court condemned any offences which have a disproportionate effect on women and children and which "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," holding that there is simply no reasonably justifiable basis for such offences and arrest practices.

Vagrancy laws are an easy tool for police officers to abuse vulnerable citizens as shown in the above cases. We, therefore, appeal to the Government as well as the legislators to take action to review such laws as one way of ensuring that the citizens are protected from such abuse.

CHREAA and SALC, therefore, believe that Government will comply with the Court Orders and take steps to review all vagrancy laws within the timeframe set by the Court.

Made and Delivered this 5 April 2023