



## PRESS STATEMENT

### **STOP TORTURE AND CRUEL AND INHUMAN TREATMENT OF REFUGEES AND ASYLUM SEEKERS!!**

The Centre for Human Rights Education, Advice and Assistance (CHREAA) and the Southern Africa Litigation Centre (SALC) are deeply concerned with the detention of refugees at Maula Prison as part of the process of relocating refugees to Dzaleka Camp. It is saddening that Government has taken this action and detained women and children in prison in conditions that amount to cruel, inhuman, and degrading treatment. The detention of the refugees in prison has been undertaken without any measures to secure and protect the rights of the refugees, which is contrary to human rights principles. Section 19 of the Constitution of the Republic of Malawi puts an obligation on the Government of Malawi to respect the human dignity of every person and not to subject any person to cruel, inhuman, and degrading treatment. Article 10 of the International Covenant on Civil and Political Rights states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 10 further obliges States to treat a person inhumanely and take positive measures to ensure a minimum standard for humane conditions of detention, regardless of economic or budgetary difficulties of the State. These standards must consider the special status of migrants and their needs. In addition, custody should take place in public premises intended for the detention of migrants, otherwise, the individual in custody should be separated from persons imprisoned under criminal law. The UN Special Rapporteur on the human rights of migrants, Jorge Bustamante, in his 2010 report clarified that “Migration-related detention centers should not bear similarities to prison-like conditions. It is therefore unlawful to detain refugees and asylum seekers in prisons.

The UN Standard Minimum Rules for the Treatment of Prisoners, covering specific needs of detainees, such as clothing, bedding, food, personal hygiene, medical services, exercise and sport, book, and religious worship, are also relevant to the detention of migrants. Therefore, it is inhumane to imprison refugees and asylum seekers without providing all their necessities.

CHREAA and SALC further remind the Government of Malawi that the detention of children in prison and police custody is prohibited under section 140 of the Child Care Protection and Justice Act. This was affirmed by the High Court of Malawi in the cases of **R v Children in Detention at Bvumbwe and Kachere Prisons**, Review Case No. 21 of 2017 and the case **Francis Kapu and Others v The State**, Misc Criminal Review Case No. 5 of 2021. It is therefore unlawful and contempt of court for the Malawi Government to detain any child in any prison or police facility. Detention for children is a last resort and can only be done by the order of the Court and such detention can only be in a safety home or a reformatory center.

CHREAA and SALC also remind the Government of Malawi that it has an international law obligation to provide non-custodial measures and that detention of migrants should be a last resort. The Working Group on Arbitrary Detention stated that immigration detention should

gradually be abolished and alternative and non-custodial measures, such as reporting requirements, should always be considered before resorting to detention. The Human Rights Committee has also recognized the existence of an obligation for States to provide non-custodial measures when the latter is no longer justified considering the passage of time, intervening circumstances such as the hardship of prolonged detention, or in consideration of the conditions of the person detained.

CHREAA and SALC are also deeply concerned with reports of refusal of access by human rights monitoring bodies at Maula Prison in relation to the detained refugees and asylum seekers. The Government of Malawi is obligated to ensure a monitoring system in detention facilities for migrants. Furthermore, it is important that access is also granted to the media to ensure transparency and accountability.

CHREAA and SALC, therefore, call upon the Government of Malawi to immediately release all refugees and asylum seekers from prisons as this violates international human rights law and the Constitution of the Republic of Malawi. Government should put measures and consider non-custodial measures in dealing with migrants.