

Mandates of the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
AL MWI 3/2020

27 May 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged sexual assault and rape of approximately 17 women and girls by police officers during a routine operation in Lilongwe.**

According to the information received:

On 8 October 2019, in the Msundwe area of Lilongwe, a road block was set up by a group of protesters in order to disrupt a public meeting that was due to be attended by the President of Malawi. Two teams of police officers were deployed to control the situation. In the course of the operation, the police were overpowered by the protesters and one officer was stoned to death. As a result of the ensuing violence, approximately one hundred additional police officers were deployed, in three teams, to disperse the crowds in Msundwe, M'bwatalika and Mpingu. The officers were from Lilongwe Police Station, Central Region Police and A Division.

In addition to the three main teams, reports indicate that other teams of police officers were moving between the three locations, and in the course of their operations, it is alleged that some of them ventured into nearby villages where they threw teargas into houses, forcibly entered homes and properties, beating their residents. Consequently the majority of residents fled the villages.

Between 12:00 and 14:00 hours, some of the women who were left behind in the villages, in particular in Mpingu and M'bwatalika, were reportedly subjected to violent assault, rape and/or indecent assault by the police officers. Reports suggest that thirteen women and four girls were identified as having been sexually assaulted or raped. Eight of the sexual assaults and rapes took place in Mpingu whilst the rest were perpetrated in M'bwatalika. A number of the women were raped in front of their children.

The majority of those who were sexually assaulted or raped chose not to seek medical assistance after the incidents, either due to the trauma they had suffered; the long distance to the public health centre and lack of money to pay for

transport, or to pay for medical assistance at a nearby private clinic; the reported difficulty in obtaining a referral letter from police to attend hospital and the lack of availability of police service in the area at that time.

The social and cultural stigma attached to rape or indecent assault has meant that since the alleged assaults, many of the women have been divorced by their husbands or have been ostracised within the community. The unintended publicity related to their ordeal, particularly on social media platforms, including a video clip that had been allegedly recorded without their consent, and which was widely circulated through WhatsApp, has also provoked much distress.

On 19 October 2019, the Inspector General of Police launched an independent inquiry into the circumstances surrounding the allegations of police brutality, including acts of sexual violence against women and girls in Msundwe, M'bwatalika and Mpingu areas in Lilongwe.

On 7 January 2020, the Deputy Director of Criminal Investigation Department at Malawi Police Service, announced that a team of six senior police officers were investigating the allegations of rape, defilement (rape of a minor) and indecent assault of women and girls in the Msundwe area on 8 October 2019. In the announcement he stated that the investigation had commenced on 31 December 2019 and would conclude within 14 days.

On 19 January 2020, the spokesperson for the Malawi Police Service, indicated that some of the seventeen victims of the Lilongwe assault were not cooperating with the police team carrying out the investigations and as a result the investigations had been delayed. Reports suggest that some of the victims may have been threatened during interrogation.

To date neither investigation has been made public, and none of the police officers who were deployed to Msundwe, M'bwatalika and Mpingu on 8 October 2019 have been subjected to any disciplinary measures.

Without prejudging the accuracy of these allegations, we express our deep concern at the reported acts of police brutality, including sexual assault and rape perpetrated against women and girls in Llingowe, as well as the seemingly limited investigation into the alleged violations, and lack of access to justice for the victims.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide the details, and where available the results, of the two reported police investigations, along with any judicial or other inquiries which may have been carried out in relation to the reported sexual assaults and rapes. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with the Malawi's domestic and international human rights obligations.
3. Please provide information on the type of action taken, if any, to investigate and establish responsibilities at commanding and lower levels among police officers involved in the alleged assaults.
4. Please specify how many complaints have been recorded by the police and what is being done to ensure that survivors can file complaints in a safe and dignified way, with no risk of retaliation from security agents who are allegedly involved.
5. Please specify whether internal procedures are in place to ensure professional and ethical conduct by police, particularly in relation to complaints of sexual abuse committed by members of the Malawi Police Service, including compulsory trainings on human rights and prevention of sexual violence and abuse, during routine operations.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Meskerem Geset Techane
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to bring to your Excellency's attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Similarly, Article 2 provides that violence against women shall include: (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution and (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

We further recall Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

The Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government in 1987), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

Article 4 (g) of the United Nations Declaration on the Elimination of Violence against Women which notes the responsibility of States to work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation.