

Mandates of the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: UA MWI 5/2022
(Please use this reference in your reply)

23 November 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 49/13, 51/21 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **food and water shortages in Malawian prisons and their harmful impact on the human rights of prisoners to adequate food, health and water.**

According to the information received:

Since October 2022, prisons in Malawi have reportedly faced food shortages. According to the media statements issued by the Malawi Prison Service, the food shortages were due to disagreements on food prices between food suppliers and the Government. According to the information received, however, the food crisis is rather connected to the alleged failure of the Malawi Prison Service to distribute sufficient budget allocations to prison facilities, which have run out of funds to pay for food suppliers. Accordingly, the prisons received an approved food budget that felt short more than two times of their estimated needs. Furthermore, while their approved budget shrank, the prison population has continued to grow.

As a result, nearly all 32 prisons in Malawi have suffered food shortages, because the underlying challenge originated from the budget of the Malawian Prison Service. Thus, Zomba Central Prison went without food for three to five days, in addition to a water shortage which was caused by unpaid bills. Domasi Prison also faced food shortages, as the prison's stored food was depleted. It became impossible to serve a full meal per day, and prisoners were left without food up to four days.

On 20 October 2022, the Malawi Human Rights Commission corroborated the food shortages.¹ It reported that Zomba Central Prison ran out of food on 15 October 2022, Maula Prison ran out of food on 18 October 2022, and Chichiri Prison had depleted supplies.

¹ Malawi Human Rights Commission, Press Statement, "Hunger Crisis in Malawi's Prisons: A Call for Urgent Action", 20 October 2022, <https://twitter.com/HumanRightsMW/status/1583132045743513600/photo/1>.

On 21 October 2022, the Ministry of Homeland Security reportedly ordered a private company to distribute 25,000 bags of maize to Malawian prisons, in a one-time emergency provision.

Food and water shortages exacerbate negative effects of severe overcrowding in Malawian prisons, including on the prisoners' right to health. The overall maximum capacity of Malawian prison is 7,322, while the official figures put the prison population at 16,700 prisoners. Due to food shortages, people with medical conditions requiring medication are unable to take their medications on a regular basis, increasing the risk that diseases become drug-resistant and run rampant in overcrowded conditions.

On 28 October 2022, prisoners at Zomba Central Prison reportedly received food and the water supply was reconnected. However, there are still concerns about food and water shortages at other facilities and the sustained access to adequate food and water.

On 14 November 2022, the Malawi Human Rights Commission issued an updated report, expressing concerns about "the continued delays by authorities to act on the hunger crisis in prisons". It referred to the main causes of the crisis being low funding to the prisons and the increase in maize prices. The Commission stressed that: "The continued failure by government and prison authorities to act on this is a violation of Section 42 of the Constitution of Malawi which requires that persons that are placed under detention must be kept in conditions that are consistent with human dignity and this includes adequate nutrition. This is also a violation to right to adequate food".²

In accordance with the Prisons Act 1955, Malawian prisons serve prisoners only one meal per day, which usually consists of *nsima* (maize) and beans or peas. In 2013, during a mission to Malawi, the Special Rapporteur on the right to food criticized the practice, and he stated in his report that budgetary constraints faced by the Malawi Prison Service could not justify violations of the right to adequate food and to be free from hunger.³ In 2018, the Malawi Inspectorate of Prisons found that almost all prisons had failed to even comply with statutory regulations of serving non-diverse diets of *nsima* with beans or peas, which is notably lacking in vegetables or meat.⁴

While we do not wish to prejudge the accuracy of the information made available to us, we would like to express our serious concern about the alleged food shortage in Malawian prisons and its harmful impact on the human rights of the detainees to adequate food and water. We are also concerned about the continued practice of one meal per day in Malawian prisons, which has been considered in the past by the UN human rights mechanisms as insufficient and nutritionally inadequate. As food and water are essential to sustain human life, we are extremely concerned

² <https://www.malawivoice.com/2022/11/14/mhrc-position-on-the-current-social-political-and-economic-situation-in-malawi-full-statement/>

³ A/HRC/25/57/Add.1, 24 January 2014

⁴ Malawi Inspectorate of Prisons, The Report of the Inspection of Prisons and Police Service Cells Conducted by the Malawi Inspectorate of Prisons in March 2018 (September 2019)

about the severe negative impact of this situation on the right to life of prisoners, which is enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Malawi in 1993.

In light of all the above, we would like to refer to Article 25 of the Universal Declaration of Human Rights that recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Excellency’s Government in 1993, recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.” In interpreting this provision, the Committee on Economic Social and Cultural Rights (CESCR) stressed in its General Comment No. 12 that a violation of the right to food occurs when the state fails to provide the “minimum essential level required to be free from hunger”. In addition, we would like to bring to the attention of your Excellency’s Government articles 12 and 2.2 of the ICESCR, which enshrine the right of everyone, including prisoners and detainees, to the enjoyment of the highest attainable standard of physical and mental health. The CESCR interprets the right to health as “an inclusive with extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food [and] nutrition” among others (CESCR, General Comment No. 14, para. 11).

The right to water and sanitation is included in the right to an adequate standard of living in the ICESCR. In General Comment No. 15, the CESCR stated that States must give special attention to ensure that prisoners and detainees are provided with sufficient and safe water for their daily individual requirements.

We wish to refer to the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which apply to all detainees, regardless of the charges against them, in particular Rules 18, 22, 42 and 43, concerning the provision of safe drinking water, food of adequate nutritional value for health and strength, and sanitation to detainees. Rule 22 states that every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served and that drinking water shall be available to every prisoner whenever he or she needs it.

In General Comment No. 36, the Human Rights Committee emphasized that States have a “heightened duty of care” to protect the lives of people in prisons, especially since people in prisons cannot rely on other financial or logistical means to safeguard their own right to life.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

We would like to refer to the outstanding request made on 8 April 2022 by the Special Rapporteur on the right to food to visit Malawi in December 2022 with a view to examining in situ questions relating to his mandate and identify good practices as

well as areas that need improvement.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide any additional information you may have on the scale and extent of food and water shortages facing Malawian prisons, as well as their effects on the prisoners' right to health, the causes and the solutions identified to address them.
3. Please provide details on the budget allocation to prison facilities, and how they meet the requirements of the right to food and to water of prisoners, as well as any independent auditing carried out of the Malawi Prison Service's finances and food supplies.
4. Please provide details on the measures taken to ensure access of prisoners to adequate and nutritious food and to water while in detention, in particular for those with medical conditions and requiring medication.
5. Please provide information on possible actions taken in follow up to the recommendations from the Special Rapporteur on the right to food, following his visit to Malawi in July 2013.

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 responsible of the alleged violations.

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

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

Michael Fakhri
Special Rapporteur on the right to food

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation