

**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.: AL MWI 1/2023  
(Please use this reference in your reply)

7 March 2023

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 51/19.

In this connection, we would like to bring to the attention of your Excellency's Government additional 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.**

Concerns regarding the lack of access to food and water in Malawian prisons were the subject of a previous communication sent by Special Procedures dated 15 November 2022 (case MWI 5/2022), for which your Excellency's Government acknowledged the receipt on 23 November 2022 and for which a substantive reply is still outstanding.

According to the additional information received:

It is reported that the food crisis in Malawian prisons has been caused by many factors, including a growing prison population and increasing food prices. The food crisis reached a climax in October 2022, when prisoners went without maize and relish (a mixture of beans, peas and other cereals) for several days.

Although the Malawi Prison Service (MPS) generally procures food from local suppliers and had negotiated a fixed price, local suppliers reportedly refused to supply food at the old prices. Maize prices in Malawi are at a record high due to increasing energy prices, nationwide inflation, currency weakness, tighter domestic supplies and decreasing trade volume due to the war in Ukraine.

On 8 December 2022, the Parliament of Malawi revised the budget for the MPS, allocating additional MWK 780 million (757,000 USD) for food and MWK 100 million (97,000 USD) for the establishment of farms in prisons.<sup>1</sup> The additional funds provided to the MPS were necessary to purchase 25,000 bags

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<sup>1</sup> Southern Africa Litigation Centre, "Bravo Parliament For Increasing The Prison Food Budget", 15 December 2022. Available at <https://www.southernafricalitigationcentre.org/2022/12/15/bravo-parliament-for-increasing-the-prison-food-budget/>.

(50kg per bag) of maize from the government-owned Agricultural Development and Marketing Corporation (ADMARC). To date, the MPS has not allegedly procured additional maize to ensure food supply through May 2023. There are also concerns shared broadly by local stakeholders that funds for other necessary supplies, such as water and medical supplies, would be redirected to address the food crisis. There are also reports of pests in food rations and of rotten food.

Furthermore, the cholera outbreak in Malawi has left prisons vulnerable to limited clean sources of water, exposing prisoners particularly at risk of widespread infection. As individuals in prisons have no alternative source of water and given the reported lack of transparency, serious questions are raised whether the prison system's budget for water has been negatively impacted due to the food emergency.

It is reported that one customary alternative source of food for prisoners has been through family visits.<sup>2</sup> However, this long-standing practice has been prone to alleged obstruction and abuse by prison officials. According to the information received, prison officials at Chichiri Prison, one of the largest prisons in Malawi, have recently banned family visits and outside food without sufficient justification.

Finally, there is a growing frustration at the lack of comprehensive approach to address the chronic food insecurity in Malawian prisons. It is alleged that repeated recommendations for adopting a new Prisons Bill that would aim to address the overcrowded prison system, provide adequate and nutritional food, and secure clean and drinking water in prisons have not been given sufficient consideration. This is especially concerning given the State's responsibility to ensure adequate food and water for individuals deprived of liberty, who have no other alternative access to those essential rights.

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 allegations of continued food crisis in Malawian prisons and its harmful impact on the human rights of the prisoners to adequate food and water. As food and water are essential to sustain human life, we are extremely concerned about the severe negative impact of this situation on the right to life of prisoners. We would like to remind your Excellency's Government of the State's "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.

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

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<sup>2</sup> The Constitutional Court of Malawi noted that "[p]risoners are allowed to get food from their relatives". *Masangano v Attorney General & Ors.* (15 of 2007) [2009] MWSC 31 (08 November 2009). Available at <https://malawilii.org/mw/judgment/supreme-court-appeal/2009/31>.

We would be grateful if you could share this communication with the Chief Commissioner for Prisons, the Ministry of Homeland Security and the Ministry of Finance as the issues and concerns raised herewith fall within their competence.

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, including information on whether the Malawi Prison Service has sufficient funds to provide the minimum food rations required by the Prisons Act through the current fiscal year, including any solutions identified to procure food in light of the projected depletion of current supplies by March 2023.
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 details on the measures taken to prevent that prisoners experience medical conditions due to insufficient food and nutrients provided to them.
6. 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, as well as the proposals to adopt a new legislation on prisons and prison conditions in Malawi to improve prisoners' right to adequate food and nutrition.

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.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, the facts alleged, if proved correct, appear to be in contravention with 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.

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).

General Comment No. 15 of the CESCR holds that States must give special attention to ensure that prisoners and detainees are provided with sufficient and safe water for their daily individual requirements.

The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) 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.

General Comment No. 36 of the Human Rights Committee emphasizes 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.