

**UNPACKING
ELECTORAL ISSUES**



Demystifying ballot box (part 3)

Today, we focus on how the ballot box is handled at the opening of polling station, including setting up for polling and sealing the containers.

On a polling day, the ballot box is to the Electoral Commission what a pangolin is to agencies fighting wildlife crime. It is handled with extra care and maximum security by polling staff as well as candidates and party representatives.

The only thing that is supposed to go into the ballot box is a ballot paper.

For any ballot to be considered for counting, it must be found in the ballot box. Any ballot paper found outside the ballot box is marked "cancelled", stored separately and is not considered when counting votes.

No matter how genuine it looks, the polling staff or whoever, cannot pick the ballot paper and drop it in the ballot box.

When opening a polling centre on the voting day, the presiding officer is supposed to show the candidates' representatives, voters, observers and any person present at the polling station that the ballot box is empty.

This is done by lifting it up and showing the inside in all the directions of the people present.

Party and candidate representatives are free to verify that the ballot box contains nothing and is usable. If the ballot box is broken on the seal holes, it must be replaced with a perfect one.

As a preventive measure, during pre-inspection of polling materials a day before voting, one area that the presiding officer has to tick is that they have inspected the ballot box and found it to be in perfect order to be used for the elections next day.

The sealing process has its own rituals. The ballot box is sealed on all four corners minus the slit on top of the lid which is used for voting.

The presiding officer records the seal numbers in the Record of Polling Process Book and a party or candidate representative must sign against that record. The representatives are also free to record the serial numbers in their own books or take pictures.

This process is repeated for all the three elections, if it is a general election.

The ballot boxes are placed in full view at all times and arranged in such a way that the flow is from local government, parliamentary and presidential elections. The boxes are placed far apart and labelled accordingly so as not to cause confusion to voters when depositing their ballot papers into the ballot boxes.

Once closed, the ballot box is not supposed to be opened until polling has finished. If a voter dropped car keys or any valuable into the ballot box, that person has to wait until polling closes and counting starts for them to get their valuable possession back. A ballot box cannot be opened whilst polling is running just to retrieve any valuable accidentally dropped in accidentally. ■

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COURT OUTLAWS SWEEPING ARRESTS

As lawmakers sleep on the job, ordinary Malawians backed by campaigners are taking to court to change colonial laws that restrict the rights and movement of the country's poor majority. Campaigners at the SOUTHERN AFRICA LITIGATION CENTRE (Salc) write.

Last week, the High Court declared the police's indiscriminate sweeping exercises unlawful and in violation of various constitutional rights and international human rights standards.

Mass arrest practices, carried out under the guise of crime prevention, referred to are prevalent throughout Africa and are a legacy of colonial-era policing practices that blatantly disregarded human rights.

In her verdict passed on November 8, Judge Ziona Ntoba considered the constitutionality of the petty offence under which the applicants were charged as well as the arrest practices resulting from such vague and overbroad offences.

The case was supported by the Centre for Human Rights Education Advice and Assistance (Chreaa) and Salc.

The applicants, ordinary Malawians arrested in a swooping exercise outside a night club in Kasungu, were represented by lawyer Chikondi Chijozi, criminal justice cluster lead for Salc.

The court held that arbitrary mass arrests violate the rights to liberty, dignity, freedom from cruel, inhuman and degrading treatment, economic activity, fair trial and freedom of movement.

In its judgement, the court ordered Malawi Police Services to develop proper guidelines for arrests.

The court also set aside the applicants' convictions and ordered compensation for the rights violations they suffered.

Finally, the judge ordered the Ministry of Home Affairs and the Inspector General of Police to review its training curriculum for police officers and to develop standard operating procedures binding on all police officers on the parameters of police arrest practices.

In her verdict, Justice Ntoba observed: "in practice, arrests



The vendor who changed a colonial discriminatory law in 2017: Gwanda



Chijozi: Sweeping arrests target whomever the police deem undesirable



Mhango: Many might be caught in the next

PHOTOGRAPHS: NATION

still retain their colonial character since arrests are easily used as a tool in circumstances where it is not a clear indication of an offence having been committed.

"In contrast, in a constitutional democracy based on the rule of law, an arrest is prima facie interference with the right to liberty and accordingly, the powers of arrest are supposed to be reduced."

The case follows her landmark ruling in the case commenced by Mayeso Gwanda, the vendor who petitioned the court to outlaw rogue and vagabond laws that limited poor Malawians' freedom of

movement at night.

In Gwanda's case, the court in 2017 declared section 184(1)(c) of the Penal Code unconstitutional and ordered Parliament to review vague criminal offences which result in arbitrary arrests.

In the current case, the High Court declared section 184(1)(b) of the Penal Code unconstitutional and ordered Parliament, within 24 months from the judgment day, to effectively review the entire section 184 of the Penal Code and to report to the Court on the progress of legislative reform by 22 July 2024.

Decriminalising poverty

Salc executive director Anneke Meerkotter said this judgement is important because it can be utilised by organisations throughout Africa, who are part of the Campaign to Decriminalise Poverty and Status to lobby for a change in policing practices.

She explained: "Arrests are a powerful tool at the disposal of police which by their nature affect a person's right to respect for human dignity; the right not to be subjected to cruel, inhuman, or degrading treatment; the right to freedom of movement; and the right to liberty and security of person.

"For this reason, arrests should comply with legal requirements, be utilised sparingly, and be supervised to ensure compliance with constitutional requirements."

Chijozi, who has ramped up a culture of public interest litigation to confront the country's repressive laws, is optimistic that the judgement will help create a better Malawi for all.

She said police: "Police sweeping exercises often target whomever the police deem undesirable, including sex workers, informal traders, children who live and work on the streets, persons who beg, and persons with disabilities.

"The result is that people find themselves imprisoned or detained in potentially life-threatening conditions, especially in cases where they cannot afford bail or a fine, even when there is no proof of an actual offence having been committed."

Chreaa executive director Victor Mhango is concerned that sweeping exercises continue unabated and are frequently applauded in local media, "although many innocent people might be caught in the net".

"This corrodes trust in law enforcement, making it harder for police to enforce the law in the future," he said.

"The judgment highlights the apparent disjuncture between the rules of professional policing and the practices on the street level, exacerbated by weak mechanisms for accountability and widespread impunity of abusive policing practices."

Background

The applicants who moved the courts to change the colonial repressive law neglected by members of Parliament were arrested in Kasungu around 11pm on March 27 2018.

At the time of their swooping arrests, they were working as a DJ at a local bar, having a drink at a club and selling fish kebabs at a bar.

Typical of sweeping arrests in Malawi, they were not informed of the reasons for their arrest despite specifically demanding this information from the police.

After spending a night in police cells, they were taken to court, charged and convicted of the offence of being rogues and vagabonds contrary to section 184(1)(b) of the Penal Code

upon their guilty plea.

Opposed to the use of colonial laws that impinge the rights of the poor, they applied for judicial review before the High Court. They submitted that the police's indiscriminate arrest practices are unconstitutional, urging the court to order the State to develop directives or standing orders to guide the police and ensure sufficient supervision during arrests so that rights violations do not occur.

The judgment made reference to No Justice for the Poor, research by Salc and Chreaa which investigated the origins of the nuisance-related laws and the atrocities the police commit when arresting people for these offences in Blantyre.

From the interviews conducted with police and magistrates, it was apparent that the police practice of mass arrests disproportionately targeted poor and marginalised groups.

The court also referred to the Advisory Opinion issued by the African Commission on Human and Peoples' Rights issued on December 4 2020, which encouraged States to reform vagrancy-related offences.

The 'petty offences' include being a rogue and vagabond and idle and disorderly person since terminology such as 'loitering', 'having no visible means of support' and 'failing to give a good account of oneself'.

The offences not provide sufficient indication to the citizens on what the law prohibits while at the same time conferring broad discretion on law enforcement agencies to decide how to enforce vagrancy laws.

The African Court noted that enforcement of vagrancy laws often results in arrests without warrants and illegal pre-trial detention. Such arrests are not only a disproportionate response to the socio-economic challenges, but also discriminatory since they target individuals because of their economic status.

The African Court ordered all State Parties to the Charter, including Malawi, to "take all necessary measures, in the shortest possible time.

The African Commission on Human and Peoples' Rights' Principles on the Decriminalisation of Petty Offences sets out the legal requirements against which any criminal offences should be measured.—SOUTHERN AFRICAN LITIGATION CENTRE

ON THE RECORD



"Atupele Muluzi is not a thief. We know the thieves are in government. We will not allow to go in there until real thieves who messed up Affordable Inputs Programme by spending K750 billion on dubious fertiliser suppliers are called here."—Political activist Bon Kalindo, *The Nation* November 11 2022.

"The total number of permanent classrooms constructed in the 2021/22 financial year through various interventions has reached 851. This has created an additional learning space for a minimum of 51 060 learners."—Secretary for Education Chikondano Mussa, *The Nation*, November 8 2022.



"We have seen the police requesting the names of organisers [of demonstrations], it is because they want them to take responsibility. We know such groups collect financial resources to facilitate these activities. Let them use part of the donations to pay bail bonds for their members."—Lawyer Justin Dzonzi, *nation* on Sunday, November 13 2022.

"When a decision is made to procure goods using the restricted tender method, we decided to contract suppliers who were in our database in addition to Xavier Limited, a supplier with required experience."—Inspector General of Police Meryline Yolamu, *Weekend Nation*, November 12 2022.



PHOTOGRAPHS: NATION