

CRIMINALISATION OF POVERTY AN STATUS IN MALAWI

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Malawi is one of the countries that has nuisance related offences that the police use to effect arbitrary arrests against marginalised communities. Arbitrary arrests through sweeping exercises have gone down due to a court judgement (The State v The Officer in-charge Exparte Henry Banda and 2 Others, Judicial Review Case No. 28 of 2018). However, informal traders are currently ones at most risk to abuse through enforcement of certain laws

Section 103 of the Local Government Act grants municipalities (Councils) power to regulate informal trade by establishing by-laws.

“The Council may make by-laws for the good rule and government of the whole or any part of the local government area or, as the case maybe for the prevention and suppression of nuisances therein and for any other purpose.”

Issues for Concern

- In Malawi the law has provided for designated places/markets for plying trade and has put in charges/fees for registration as well as running of the businesses. Plying trade in undesignated market places amounts to illegal vending

Issues for concern

- Licences/Registration Charges/fees are high for small scale businesses
- Inadequate market spaces
- Tool for victimising of small scale businesses/ civilians
 - Impounding/Confiscating merchandise/goods (lawful but unreasonable)
 - Arbitrary arrests/ unlawful detention
 - Prosecution

.....Prosecution

- **Section 105 Local Government Act**

“By-laws may provide that persons contravening the by-laws shall be liable on conviction to a fine not exceeding the sum of K2,000, and in the case of a continuing offence a further fine not exceeding K200 for each day during which the offence continues after conviction thereof or to a term of imprisonment not exceeding six months or to both such fine and imprisonment”.

- **Section 199. Penal Code**

“Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits and shall be liable to be punished as for a common nuisance.”

Interventions

- Organising the informal traders (Advocacy) e.g Media engagement
- Engagement Strategy meetings with the City Council/ Ministry of Local Government (market planning)
- Litigation (Injunction, strategic litigation)

Broadness of the law provides wider discretion hence it is prone to abuse against the less privilege. Enforcement is also problematic as unreasonable force is mostly used by police and/or City Rangers.

Thank you!
