

## **PRESS RELEASE: MALAWI HIGH COURT SETS ASIDE CONVICTIONS OBTAINED AFTER POLICE SWEEPING EXERCISE**

**22 December 2017, Lilongwe** – Today the Malawi High Court ruled that the arrest of 24 people, primarily women, during a police sweeping exercise, was unlawful. The applicants challenged their arrest and conviction for being idle and disorderly persons. The court quashed their convictions and ordered that the fines they paid be returned. The applicants were represented by Gift Katundu and supported by the Centre for Human Rights Education, Advice and Assistance and the Southern Africa Litigation Centre.

In January 2017, the Malawi High Court ruled that the offence of being a rogue and vagabond was unconstitutional. Prior to that the police had often used that offence to arrest people in sweeping exercises. Since then the police have arbitrarily used the offence of being an idle and disorderly person to arrest people during sweeping exercises, even if the elements of the offence have not been met.

“The police with their overzealousness still arrest people arbitrarily, especially sex workers, when they are found moving around the streets or those coming from beer drinking places if they do not give a proper account of themselves and charge them with the offence of being an idle and disorderly person. Usually the person’s actions do not add up to that offence at all” said Gift Katundu, the applicants’ lawyer.

Justice Kachale held that “the rule of law presupposes that in the exercise of its judicial mandate the court will be vigilant to ensure that nobody is unduly deprived of his liberty or otherwise subject to legal sanctions without due process. In ensuring that a proper charge is proffered and adequate information is supplied at the plea stage to warrant an informed decision by the accused person, the court acts as a guardian of the rule of law. In this instance, unfortunately, the trial magistrate did not exercise his mandate with the regular vigilance, which is to be lamented.”

“The judgment is important for its condemnation of the ongoing practice by magistrates to accept guilty pleas when it ought to have been clear to them that due process was not followed in mass arrests and that the accused were unaware of the charges they were pleading to” says Victor Mhango, Executive Director of CHREAA.

### **For more information contact:**

Victor Mhango, CHREAA, +265 999 952256

Chikondi Chijozi, CHREAA, +265 888 647847

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