

Monetary Sanctions and Poverty in Malawi's Criminal Justice System

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I. Introduction

Monetary sanctions in criminal justice systems have profound implications for individuals living in poverty, often creating cycles of debt and criminalization that extend far beyond the original offense. This paper examines the impact of monetary penalties within Malawi's criminal justice system, focusing on their relationship to poverty and systemic inequalities. Through a mixed-methods approach incorporating case studies, legislation and policy analysis, and comparative assessment, we argue that Malawi's current system of fines, fees, and other monetary penalties effectively criminalize poverty, functioning as a modern form of debtors' prison and debt peonage.

In using the term "debtors' prison," we refer to incarcerating individuals primarily for their inability to pay legal financial obligations rather than for their original offense. "Peonage," historically a system where laborers were bound to service through debt, finds its modern parallel in how monetary sanctions trap offenders in financial obligation and criminal justice supervision cycles. In Malawi, where over 50 percent of the population lives below the poverty line and GDP per capita is just USD 672.90, these practices have particularly severe consequences, undermining fundamental principles of justice and perpetuating socioeconomic disparities.

This paper addresses three central questions: How do monetary sanctions in Malawi's criminal justice system disproportionately impact impoverished people? In what ways do these practices mirror historical systems of debtors' prisons and peonage? What reforms could create a more equitable approach that balances accountability with economic reality?

Our analysis proceeds through six key parts. Following this introduction, we provide a global perspective on monetary sanctions, highlighting how similar practices operate across diverse jurisdictions. We then examine Malawi's specific socioeconomic and legal context, establishing the foundation for understanding how monetary penalties function within the country. Part IV analyzes the impact of economic sanctions on low-income individuals in Malawi, focusing on four critical factors: inability to pay, prolonged incarceration, discriminatory practices, and property seizure. Part V presents policy implications and recommendations for reform, followed by a conclusion that synthesizes our

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findings and emphasizes the need for holistic approaches to criminal justice that do not punish people for their poverty.

Having established the fundamental issues surrounding monetary sanctions in Malawi's criminal justice system, it is important to situate these challenges within the broader global context. The following part examines how economic sanctions operate across different jurisdictions, providing a comparative framework for understanding Malawi's specific circumstances.

II. Monetary Sanctions in Criminal Justice: A Global Perspective

Monetary sanctions in criminal justice refer to monetary penalties imposed on offenders, including fines, restitution orders, and court fees. Globally, these sanctions have gained prominence as alternatives to incarceration and as a means of funding justice systems.¹ Across diverse jurisdictions, research shows that economic sanctions, such as fines, fees, and other monetary penalties, often disproportionately burden the poor.² Unless financial penalties are calibrated to an offender's ability to pay, they become "poverty penalties" with snowballing consequences for low-income individuals.³ Those unable to pay face additional sanctions purely due to their poverty, including added fees, interest, or even incarceration, trapping them in cycles of debt and punishment.⁴ Scholars have documented this pattern in countries at all income levels. For example, in the United States, court-imposed fines and fees have been linked to higher recidivism rates and prolonged legal entanglement among poor defendants. A multi-state study found that monetary sanctions can prolong court supervision and hinder reintegration, as individuals struggle under the weight of legal debt.⁵

This phenomenon is particularly pronounced across African countries, where colonial legal systems often instituted monetary sanctions as mechanisms of social control. In Kenya, for instance, the law allows courts to impose a prison term whenever a fine is not paid, even if the original offense was punishable only by a fine—a practice that especially hurts those who could never afford the fine in the first place.⁶ Colonial powers often established legal frameworks that criminalized poverty and unemployment, particularly through

¹ Pat O'Malley, *Theorizing Fines*, 11 *Punishment & Soc'y* 67, 67-70 (2009).

² Devah Pager et al., *Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment*, 87 *Am. Socio. Rev.* 529, 540-47 (2022).

³ Jean Galbraith & Reem Brooks, *The Over-Penalization of Poverty Through Fines and Fees*, *Penal Reform International*, Oct. 16, 2023 (<https://perma.cc/X4ED-MGBX>).

⁴ Alexis Harris et al., *Courtesy Stigma and Monetary Sanctions: Toward a Socio-Cultural Theory of Punishment*, 76 *Am. Socio. Rev.* 234, 237-42 (2011).

⁵ Karin D. Martin et al., *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 *Ann. Rev. Criminology* 471, 480-85 (2018).

⁶ Nanjala Nyabola, *Travelling While Black: Essays Inspired by a Life on the Move* 78-82 (2021).

vagrancy laws and monetary penalties.⁷ When European powers withdrew from the continent, they left behind justice systems designed to maintain social control and extract resources from indigenous populations.⁸ Post-colonial states frequently maintained these structures, sometimes even strengthening them as revenue-generating mechanisms for new governments facing financial constraints.⁹ This legacy explains the remarkable similarity in monetary sanction provisions across Anglophone African legal systems, including Malawi, where the structural foundations of economic penalties in criminal law reflect British colonial jurisprudence.

O'Malley's work identifies this global trend toward financial penalties as a significant development in contemporary criminal justice.¹⁰ However, critics argue that discretionary financial penalties create significant legal debt for defendants that can persist for decades, affecting employment, housing stability, and credit ratings.¹¹ In the United States, monetary sanctions trigger numerous harmful consequences including: driver's license suspensions, voting restrictions, damaged credit ratings, extended involvement with the criminal justice system, and incarceration for non-payment (effectively creating "debtors' prisons").¹² So while monetary sanctions serve multiple functions in the criminal justice system (retribution, deterrence, restoration, and revenue generation), they also often create unjust burdens that perpetuate cycles of poverty and criminal justice involvement, particularly for disadvantaged communities.¹³

Recent scholars have critically examined the theoretical foundations of monetary sanctions as well as their practical implications. Empirical research found that monetary sanctions significantly impact socioeconomic inequality and reproduce existing social hierarchies.¹⁴ The concept of "offender-funded justice" has received particular scrutiny, with research examining budget documents from counties and municipalities in Florida and New York demonstrating that fine and fee revenue partially funds various justice system departments, creating potential incentives to oppose reforms that reduce collections.¹⁵ This financial dependence on monetary sanctions raises questions about institutional priorities and possible conflicts between revenue generation and justice.

⁷ Jacqueline W. Mwangi, Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments Applicable in Africa, No. 001/2018, 117 *Am. J. Int'l L.* 121, 123-25 (2023).

⁸ Achille Mbembe, *Necropolitics* 66-92 (2019).

⁹ Jean Comaroff & John L. Comaroff, *Law and Disorder in the Postcolony* 114-38 (2019).

¹⁰ O'Malley, *supra* note 1.

¹¹ Harris et al., *supra* note 4, at 245-49.

¹² Martin et al., *supra* note 5, at 486-90.

¹³ *Id.*

¹⁴ Pager et al., *supra* note 2, at 548 & 552.

¹⁵ Chris Mai & Maria Katarina E. Rafael, User Funded? Using Budgets to Examine the Scope and Revenue Impact of Fines and Fees in the Criminal Justice System, 63 *Socio. Persp.* 1002, 1010-18 (2020).

In low- and middle-income countries, similar or worse effects are observed. Comparative research highlights that even ostensibly progressive systems can produce these outcomes; in Germany, nearly 8,000 people were jailed in one year for the petty offense of fare evasion simply because they could not pay their fines.¹⁶ The petty crime itself inadvertently punishes the inability to pay a fare, an omission that is most likely linked to a lack of means. The petty crime itself inadvertently punishes the inability to pay a fare, an omission that is most likely linked to a lack of means. These examples underscore a consistent theme in the literature: economic sanctions tend to criminalize poverty if not carefully designed. Social scientists and legal experts note that this phenomenon is not isolated but global in scope, raising fundamental questions about fairness and justice in criminal punishment.¹⁷

While these global patterns provide essential context, understanding Malawi's specific socioeconomic and legal landscape is crucial in analyzing how monetary sanctions operate within the country.

III. Malawi's Socioeconomic and Legal Context

Similar challenges can be observed in contexts like Malawi, a landlocked southeastern African country facing significant economic challenges. With a population of over 20 million, headline inflation of 33.7 percent,¹⁸ and GDP per capita of USD 672.90,¹⁹ Malawi has one of the highest poverty rates in the world, exceeding 70 percent.²⁰ The UNDP's Human Development Index classifies Malawi as a "low human development" country. It has an HDI rank of 172 out of 193.²¹ These economic realities profoundly shape the experiences of individuals in the criminal justice system.

Our analysis of court records reveals that economic sanctions in Malawi primarily take three forms:

1. Fines: Imposed for many offenses, from minor infractions to more serious crimes. According to the Criminal Procedure and Evidence Code, the authority to impose fines is tiered based on the magistrate's grade:
 - § 14. (1) A Resident Magistrate's court may pass any sentence, other than a sentence of death or a sentence of imprisonment for a term exceeding twenty-one years, authorized by the Penal Code or any other written law.
 - (2) A court of a magistrate of the first grade magistrate may pass any sentence, other than a sentence of death or a sentence of imprisonment for a term not exceeding fourteen years, authorized by the Penal Code or any other written law.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Home—National Statistical Office (2024) (<https://perma.cc/38ZF-D8LF>).

¹⁹ World Bank, World Bank Open Data (2024) (<https://perma.cc/39TF-JSSC>).

²⁰ World Bank, Overview (<https://perma.cc/Y4X4-9PPH>).

²¹ United Nations, Human Development Report 2023-24, Mar. 13, 2024 (<https://perma.cc/JHP5-N7Y4>).

(3) A court of a magistrate of the second grade may pass a sentence of imprisonment for a term not exceeding ten years or a fine not exceeding K200,000 or both.

(4) A court of a magistrate of—

(a) the third grade may pass a sentence of imprisonment for a term not exceeding three years or a fine not exceeding K150,000 or both; and

(b) the fourth grade may pass a sentence of imprisonment for a term not exceeding twelve months or a fine not exceeding K100,000 or both.²²

2. Court fees: Charged for various court processes, including filing and administrative costs. In Malawi's economic context, these fees can represent a significant barrier to justice access, particularly for the majority of citizens living below the poverty line.
3. Restitution: Ordered to compensate victims of crimes. In Malawi's resource-constrained environment, with its limited social safety net, restitution can be particularly important for victims but simultaneously challenging for perpetrators to fulfil.

These monetary sanctions operate within Malawi's legal system, which is based on English common law modified by customary law. The only courts in Malawi with the authority to interpret constitutional rights are the Supreme Court of Appeal and the High Court, which serve as the country's courts of record. The Supreme Court is the highest court of appeals and is presided over by the Chief Justice. Below it, the High Court has unrestricted original jurisdiction in civil and criminal cases. It hears appeals from lower courts, including magistrates' courts and the Industrial Relations Court, and consists of three members when hearing constitutional law disputes.²³ Conventional local courts are also established under the Constitution, although these local courts have yet to be operationalized.²⁴

The Magistrate's Court manages the bulk of cases, and while the High Court requires legal representation where the provision of legal aid is available, legal aid services are overwhelmed. While most people recognize the independence of the judiciary, particularly when it comes to higher courts, judicial autonomy may be compromised by the lack of transparency in the judge appointment process and the judiciary's inadequate funding.²⁵ To compound this, there is a shortage of legal professionals, which forces some defendants to represent themselves due to a "low lawyer-to-population ratio."²⁶ In this context of limited legal representation and widespread economic hardship, monetary sanctions can become particularly burdensome.

Recent international human rights developments have highlighted the problematic nature of laws that criminalize poverty-related behaviors. In 2020, the African Court on

²² Criminal Procedure and Evidence Code § 14(1)-(4) (Malawi) (<https://malawilii.org/akn/mw/act/1967/36/eng@2014-12-31>).

²³ *Id.* § 9A.

²⁴ See Mwiza Jo Nkhata, *The High Court of Malawi as a Constitutional Court: Constitutional Adjudication the Malawian Way*, 24 *Law Democracy & Dev.* 442 (2020); Malawi Judiciary, *Subordinate Courts* (<https://perma.cc/R695-L8FC>).

²⁵ Freedom House, *Malawi: Freedom in the World 2024 Country Report* (<https://perma.cc/74RK-ANXE>).

²⁶ *Id.*

Human and Peoples' Rights issued an advisory opinion stating that vagrancy laws are incompatible with human rights standards, as they often criminalize poverty and homelessness.²⁷ This ruling raises important questions about the appropriateness of monetary penalties for certain types of offenses in contexts of extreme poverty. Given Malawi's economic challenges, the imposition of fines and other monetary sanctions presents particular difficulties for both the justice system and those subject to its penalties, potentially deepening cycles of poverty and exclusion for the country's most vulnerable populations.

IV. Economic Sanctions, Poverty, and Criminalization in Malawi: Impact

We now turn to examining how economic sanctions affect impoverished people within the country's criminal justice system. Before examining the specific mechanisms through which economic sanctions harm the poor, it is essential to understand a fundamental characteristic of these systems: monetary sanctions operate iteratively, with each penalty triggering a cascade of consequences. Poverty is a key determinant of who comes into conflict with the law and how they are treated. A recent audit of Malawi's prisons found that indigent defendants are far more likely to be detained, many simply because they cannot afford bail or legal fees, and that poverty was a primary factor keeping people behind bars awaiting trial.²⁸ Over two-thirds of pre-trial detainees in the audited prisons were legally eligible for release, suggesting that their continued detention owed more to inability to pay or navigate the system than to public safety concerns.²⁹ Once convicted, low-income offenders often face fines and court costs that they cannot pay, leading to further punitive measures.

Malawi lacks comprehensive national statistics on monetary sanctions and imprisonment for non-payment. Subordinate courts, which handle most cases, maintain no systematic records. Prison authorities do not disaggregate data by reason for detention. This empirical vacuum itself constitutes evidence of systemic neglect; what remains unmeasured remains unaddressed. Our analysis, therefore, relies on case law, prison audits, and international comparative research to establish patterns that, although documented elsewhere, are likely to exist in Malawi given the identical legal frameworks and socioeconomic conditions.

Before examining specific mechanisms through which economic sanctions harm the poor, it is essential to understand that these harms do not operate in isolation. International research reveals that monetary sanctions function iteratively, each penalty triggering additional consequences in what scholars call "poverty penalties."³⁰ The initial fine, itself disproportionately burdensome for low-income defendants, becomes merely the first step

²⁷ Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments Applicable in Africa, No. 001/2018, Advisory Opinion (Afr. Ct. Hum. Peoples' Rts. Dec. 4, 2020), paras. 64-75, 149-54 (<https://perma.cc/2DES-58DA>).

²⁸ Clifford Msiska & Adam Stapleton, Findings from Auditing Prisons in Malawi: A Data Driven Approach to SDG16.3.2, Penal Reform International, Mar. 21, 2024, at 3-5 (<https://perma.cc/QQ4J-XNZ3>).

²⁹ *Id.*

³⁰ Galbraith & Brooks, *supra* note 3.

in a cascade of escalating sanctions. Inability to pay triggers additional fees, which in turn trigger penalties, which lead to enforcement actions, resulting in further costs. The U.S. Department of Justice investigation in Ferguson, Missouri, documented this dynamic in stark terms: a woman missed payments on a \$151 parking ticket, which led to arrest warrants and additional fees. She spent six days in jail, paid \$550 over seven years, and still owed \$541.³¹ What began as a minor infraction became a multi-year ordeal of mounting debt and incarceration.

Malawi's legal framework creates identical potential for such snowballing consequences. Section 330 of the Criminal Procedure and Evidence Code authorizes property seizure when fines go unpaid. Section 333 permits imprisonment when insufficient property can be found, while adding "all expenses of the seizure and sale, commitment and conveyance to prison" to the defendant's debt burden. Section 331 allows courts to imprison defendants "forthwith" for non-payment. Each provision compounds the others, transforming an initial fine into an ever-expanding web of financial obligations and criminal sanctions. The system's cascading structure means that the poorest Malawians face not merely one punishment but many, each triggered by the inability to satisfy the previous one. Yet unlike in jurisdictions that have documented these patterns through systematic data collection, Malawi lacks comprehensive statistics on how many individuals experience these compounding penalties. The mechanisms exist within the law; only their systematic documentation remains absent.

The impact of economic sanctions on those living in poverty manifests through several specific mechanisms and practices within Malawi's criminal justice system. By examining these factors individually, we can better understand how monetary penalties create and deepen cycles of disadvantage.

A. Factors Affecting Low-Income Offenders: Inability to Pay

One requirement for imposing a fine under criminal law is that the court assess a defendant's ability to pay before imposing a fine. In *R. v. Namputo* (2007), Malawi's High Court critically examined sentencing practices, particularly regarding fines and defendants' financial circumstances.³² The *Namputo* case concerned an appeal against sentence by Isaac Namputo, who had been convicted in a lower court after pleading guilty to the charge of unlawful possession of a trophy contrary to section 91(1) of the National Parks and Wildlife Act. The lower court had imposed the maximum statutory fine of MWK 100,000, with a default sentence of 12 months' imprisonment with hard labor if he failed to pay. At the time of the appeal, Namputo was already in custody, having been unable to pay the fine. His appeal to the High Court was on the grounds that the fine was "manifestly excessive." The State, represented by Counsel Jere, concurred that the fine was indeed excessive.

³¹ U.S. Dep't Just. Civ. Rts. Div., Investigation of the Ferguson Police Department, Mar. 4, 2015 (<https://perma.cc/SN37-76G9>).

³² *R. v. Namputo*, Criminal Appeal No. 33 of 2007, [2007] MWHC 78 (June 20, 2007) (<https://perma.cc/X486-EM53>).

The High Court's review revealed several significant issues. First, the maximum fine was imposed without explanation despite Namputo being a first-time offender who had pleaded guilty. Second, and crucially, the court had failed to assess Namputo's ability to pay the fine before imposing it. Justice Nyirenda emphasized that this omission made the fine arbitrary, stressing that economic sanctions must be tailored to the offender's circumstances, including their capacity to pay. The original sentence was set aside, and Justice Nyirenda personally examined the appellant to determine an appropriate fine based on his means. This case is pivotal in Malawian jurisprudence. It highlights the problematic tendency to apply maximum penalties arbitrarily and the failure to consider mitigating factors. It underscores the critical importance of assessing a defendant's financial capacity before imposing fines, advocating for a more nuanced approach to economic sanctions that considers individual circumstances and ability to pay.

The failure to determine defendants' ability to pay can lead to the imposition of unrealistic financial burdens, particularly on those already struggling with poverty. When fines are set without consideration of an individual's economic circumstances, they cease to be a fair form of punishment and instead become a mechanism for further marginalizing people experiencing poverty. Beyond the initial imposition of fines, the consequences of non-payment lead to another significant problem: prolonged incarceration. This practice effectively transforms financial penalties into deprivations of liberty for those unable to pay.

It is also worth noting that the *Namputo* case came to light only because it reached the High Court through the appeals process, where the arbitrary fine was recognized and corrected. However, this case likely represents just the tip of the iceberg. Malawi's subordinate courts, which handle the vast majority of criminal cases, are not courts of record, meaning their proceedings and decisions often go undocumented and scrutinized. Moreover, many defendants—particularly those from impoverished backgrounds with limited education and legal knowledge—are unaware of their right to appeal or lack the resources to pursue appellate remedies. Justice Nyirenda's intervention in *Namputo* thus highlights a systemic issue: for every case where arbitrary financial penalties are corrected through judicial review, countless others likely remain unchallenged, with defendants serving default imprisonment terms simply because they lack the means to pay arbitrarily imposed fines or to navigate the appeals process. This perpetuates a shadow system of poverty-based incarceration that disproportionately affects Malawi's most vulnerable citizens. The persistence and invisibility of this shadow system deserve closer examination.

This shadow system persists precisely because it remains largely invisible. Subordinate courts, where most criminal cases are heard, are not courts of record. Their proceedings go undocumented, their patterns unscrutinized. Without systematic records, the arbitrary imposition of fines, the failure to assess ability to pay, and the routine conversion of poverty into imprisonment all occur beyond the reach of appellate correction. The absence of documentation is not merely an administrative inconvenience; it represents a fundamental due process violation. Meaningful appellate review becomes impossible when no record exists to review.

Recent High Court decisions have sought to address these systemic failures by articulating the legal requirements more clearly. Courts have made it clear that “a means test must always be conducted” before any fine is imposed, requiring magistrates to undertake “a candid examination of earnings” to determine what defendants can realistically pay.³³ Fines imposed without such assessment are “arbitrary” and violate basic “judicial functions.”³⁴ Yet these pronouncements, however forceful, change little in practice. The subordinate courts where such violations occur operate largely outside the High Court’s effective oversight. Legal mandates mean little when systematic non-compliance faces no consequences, when the very structure of the system, undocumented proceedings in overburdened courts serving impoverished populations, ensures that abuses will continue undetected and uncorrected.

B. Prolonged Incarceration

The Malawian experience aligns with broader findings on how monetary penalties can perpetuate poverty. Local NGO reports and international studies concur that many Malawians end up in prolonged legal trouble due to inability, rather than their refusal, to pay economic sanctions.³⁵ Pre-trial detainees accused of minor, non-violent offenses may spend months in overcrowded jails simply because they cannot afford bail bonds set by the courts.³⁶ This unnecessary incarceration of the poor has contributed to severe prison overcrowding and has drawn criticism for undermining the presumption of innocence and the requirements of due process.³⁷ Even after conviction, those given an option to pay a fine or serve a jail term often lack the resources for payment, effectively converting their sentences into jail time by default. In practice, wealthier defendants in Malawi can pay fines and regain freedom, whereas poorer defendants face imprisonment.³⁸

Section 15 of the Criminal Procedure and Evidence Code (the Code) mandates every subordinate court to submit the record of proceedings to the High Court for confirmation where a fine of over MWK 1,000 (equivalent to USD 0.58) is imposed. However, most subordinate courts are in remote areas away from the High Courts. There is one High Court in every administrative region that is required to serve the city where it sits and the surrounding areas. It is, therefore, difficult for subordinate courts to transmit the case files to the High Court. Even when the case files are transmitted, it is often after a significant delay while the convicted person languishes in prison or indeed has already served their time.

³³ Confirmation Case 775 of 2024, *Republic v. Isaac Mbawu*, at 3-4 (High Ct. Malawi).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Charlotte Mackenzie, *Malawi’s Criminal Justice System Is in Need of Urgent Reform*, *The Guardian*, Feb. 5, 2014, paras. 6-9 (<https://perma.cc/6LV8-2JBA>).

³⁷ *Id.*

³⁸ Galbraith & Brooks, *supra* note 3, at 4-6.

Perhaps one of the most pernicious aspects of the current system is the use of imprisonment as a default punishment for non-payment of fines. Section 331 of the Code includes a troubling mechanism for enforcing monetary sanctions. It outlines how courts can handle situations when individuals cannot pay their fines. If someone is convicted and fined, the court can imprison them for non-payment. In limited circumstances, the court may temporarily suspend this imprisonment if the person provides a bond, potentially with sureties, and agrees to return to court within 30 days. However, if the individual fails to pay by the specified deadline, the court can immediately enforce the imprisonment sentence without further consideration. This creates a harsh reality for many Malawians, especially considering the country's widespread poverty. The brief 30-day window offers little time to gather necessary funds, while the requirement for financial guarantors further disadvantages those without affluent connections. The discretionary nature of the provision—indicated by the word “may” rather than “shall”—creates space for inconsistent application across different courts and cases. Perhaps most concerning is the provision for imprisonment “forthwith,” allowing courts to incarcerate people immediately upon non-payment, regardless of their genuine inability to pay or the circumstances of their original offense.

In practice, this legal framework effectively transforms economic hardship into a criminal matter, creating a system where poverty becomes punishable by imprisonment. For many Malawians, this represents a legal challenge, and a profound injustice embedded within the formal justice system. This practice effectively criminalizes poverty, creating a modern form of debtors' prison where individuals are incarcerated not for their original offense but for their inability to pay. Such systems trap low-income individuals in a cycle of poverty and criminalization, making it increasingly difficult for them to break free from financial hardship. Hence, we argue that Malawi's system *de facto* punishes poverty and reinforces existing social inequalities. There have been calls for Malawi to adopt reforms such as means-adjusted fines, community service instead of penalties, and to improve access to legal aid to prevent economic sanctions from becoming a pipeline into poverty and prison.³⁹

The law does provide some flexibility regarding imprisonment for non-payment of fines. Sections 334 and 335 of the Code outline mechanisms for those already imprisoned for non-payment to secure their release through subsequent payment. Section 334 establishes a straightforward provision: if a person detained for non-payment manages to pay the full fine plus any authorized expenses, they must be immediately discharged from custody (provided they are not being held for another matter). Section 335 offers a more nuanced approach using partial payments. If someone imprisoned for non-payment makes a partial payment, their prison term must be proportionally reduced. The reduction in days should correspond as closely as possible to the percentage of the fine that has been paid. For instance, if half the fine is paid, the prison term should be reduced by roughly half. The process requires the prison officer to bring the prisoner before a court upon application.

³⁹ Southern Africa Litigation Centre, News Release: Malawi High Court Declares Rogue and Vagabond Offence Unconstitutional, Jan. 11, 2017 (<https://perma.cc/A2EP-ENDW>).

The court then calculates and certifies the appropriate reduction in the sentence. Interestingly, subsection (3) includes a provision for refunds if the partial payment exceeds the proportional calculation—a rare safeguard favoring the convicted person.

While these provisions create a pathway to freedom for those already imprisoned, they fundamentally maintain the problematic system of incarceration for economic inability. They place the burden on the imprisoned person to somehow acquire funds while in custody—a particularly challenging task given limited prison earnings and communication with the outside world. This creates a paradoxical situation where people are imprisoned for lack of funds yet must somehow generate funds to secure their release. For many impoverished Malawians, these provisions offer theoretical rather than practical relief from what essentially amounts to the criminalization of poverty.

These legal mechanisms for release through payment represent another burden placed on individuals already disadvantaged by the system. For these provisions to work, the convicted person must possess the financial resources as well as knowledge about sections 334 and 335 of the Code. As previously highlighted, most prisoners in Malawi lack access to legal counsel who might inform them of these options. The procedural requirements, such as making a formal application through a prison officer to appear before a court, create hurdles that many prisoners, particularly those with limited education, cannot easily navigate. The system requires legal knowledge from people unlikely to have it: economically disadvantaged individuals who often lack formal education and access to legal resources. The courts, which initially failed to assess the ability to pay, then place the responsibility on the imprisoned person to manage a legal process from behind bars. This arrangement misallocates responsibility, expecting those marginalized by the justice system to possess the tools to advocate for themselves within that same system.

For most imprisoned Malawians, these legal remedies remain inaccessible due to this imbalance of knowledge, resources and power. Evidence of discriminatory practices targeting specific groups further complicates the application of monetary sanctions. These patterns reveal how economic penalties can reinforce existing social marginalization.

C. Discriminatory Practices

Foreign nationals and other marginalized groups such as sex workers face additional barriers in the criminal justice system, particularly concerning economic sanctions and bail. This unequal treatment before the law violates fundamental principles of justice and reinforces existing social and economic disparities. Criminal justice sanctions in Malawi also reflect a colonial legacy that has historically criminalized poverty. Colonial-era vagrancy laws made it an offense to be found in public without evident means of subsistence, effectively targeting the poor and unemployed. Variants of these laws—such as the offense of “being a rogue and vagabond” (Penal Code § 184(1)(c))—persisted in Malawi’s statute books well

into the 21st century.⁴⁰ They were routinely enforced against marginalized groups, for example, through police “sweeps” of street vendors, homeless individuals, or sex workers under the pretext of maintaining public order.⁴¹

Punishment for a vagrancy offense typically involved a small fine or a short jail term—an ostensibly minor sanction, but with significant implications for those living in extreme poverty. A striking illustration emerged in the 2008 case of *Stella Mwanza and 12 Others v. Republic*.⁴² In that case, thirteen women (some as young as 16) were arrested during a police roundup and convicted on their guilty pleas of “being rogues and vagabonds.” They were each fined MK 2,000 (a few U.S. dollars), with a default sentence of two months’ imprisonment with hard labor if they failed to pay. Authorities described all the women as having “no means of subsistence,” and thus effectively destitute. On review, the High Court found these convictions “fundamentally flawed” and threw them out. Justice Nyirenda sharply criticized the lower court’s reasoning, underscoring that the law should not criminalize poverty or homelessness in a free society.⁴³ He noted the glaring contradiction of imposing fines on persons who, by the state’s evidence, had no resources. The judge stressed that it is the state’s responsibility to provide for vulnerable citizens by ensuring access to shelter and support, rather than to punish them for their destitution. In a powerful rebuke, the High Court ordered that all fines be refunded, and the women immediately released, warning against the oppressive misuse of vagrancy laws to target the poor.

This case, echoed by others in Malawi, highlights how economic sanctions and petty offenses often formalize the “crime” of being poor, cycling disadvantaged individuals through the justice system for want of money rather than compliance. Notably, in 2017, Malawi’s High Court went further by declaring the rogue and vagabond law unconstitutional for violating the right to dignity and equal protection, a decision celebrated as a step toward dismantling the criminalization of poverty.⁴⁴ Similar colonial vagrancy provisions have been challenged across Africa—in countries like Nigeria, Zambia, and Uganda—underlining a regional trend to reform colonial-era laws that disproportionately affect the poor.⁴⁵

⁴⁰ Id.

⁴¹ See, e.g., Southern Africa Litigation Centre, *supra* note 39 (street vendors); Republic v. Balala, [1997] 2 MLR 67, 69-70 (HC) (juveniles); Gwanda v. S., [2017] MWHC 23, para. 4.7 (homeless individuals and sex workers targeted through vagrancy enforcement).

⁴² *Stella Mwanza and 12 Others v. Republic*, Confirmation Criminal Case No. 1049 of 2007 (High Ct. Malawi) (unreported), cited in Gwanda v. S., Constitutional Cause No. 5 of 2015, [2017] MWHC 23 (<https://perma.cc/6PTW-V5KR>).

⁴³ Id.

⁴⁴ Gwanda, Constitutional Cause No. 5 of 2015 (declaring Penal Code § 184(1)(c), which criminalizes being a “rogue and vagabond,” unconstitutional as violating the rights to dignity and equal protection).

⁴⁵ See Mwangi, *supra* note 7, at 123-25 (discussing challenges to vagrancy laws across Nigeria, Zambia, Uganda, and other African countries); Open Society Justice Initiative, Decriminalizing Petty Offences Campaign (<https://perma.cc/L9PB-L48Z>).

D. Constitutional Violations in Malawi's Monetary Sanction Regime

Beyond violating international human rights standards, Malawi's monetary sanction practices raise serious constitutional questions under the country's own supreme law. The Constitution of Malawi, adopted in 1994 following the transition to multiparty democracy, enshrines fundamental rights that monetary sanctions systematically undermine. Section 20 of the Constitution guarantees equality before the law and equal protection, stating unequivocally that all persons are equal before the law and have the right to equal protection of the law. Yet the two-tiered system created by monetary sanctions, where wealthy defendants pay fines and walk free while poor defendants face imprisonment for identical offenses, creates precisely the economic discrimination that equality provisions prohibit.

Malawian courts have increasingly recognized that discriminatory provisions targeting persons based on their social or economic status violate constitutional guarantees. In *Republic v. Henry Banda & 79 Others*, the High Court emphasized that provisions which "violate the right to equality as enshrined in section 20 of the Constitution" by convicting persons "due to their reputation as well as category of person they belong to in society" cannot be considered "reasonable, necessary and acceptable in an open and democratic society."⁴⁶ This principle applies with equal force to monetary sanctions that punish individuals not for their criminal conduct but for their poverty. When courts imprison someone for inability to pay a fine rather than unwillingness to pay, they effectively discriminate based on economic status—treating the poor as criminals while allowing the wealthy to purchase their freedom.

Section 19 of the Constitution protects human dignity, declaring that "The dignity of all persons shall be inviolable." This provision reflects Ubuntu philosophy embedded in Malawian constitutional values—the recognition of shared humanity and interconnectedness. Imprisoning individuals not for their offenses but for their poverty fundamentally violates this dignity guarantee. The practice treats poverty as a moral failing rather than a socioeconomic condition, stripping away the inherent dignity that the Constitution protects regardless of economic status. As Justice Nyirenda recognized in *Stella Mwanza*, the state bears responsibility for providing support to vulnerable citizens rather than punishing them for destitution. To do otherwise transforms poverty from a social challenge requiring collective response into an individual crime warranting punishment.

Section 42 of the Constitution guarantees access to justice and the right to a fair trial. This includes not merely formal access to courts but meaningful access; the ability to effectively vindicate one's rights regardless of economic circumstances. When defendants cannot afford legal representation to challenge arbitrary fines, when they lack knowledge of appellate rights, when the appeals process itself requires resources they do not possess, the promise of access to justice becomes hollow. The constitutional guarantee rings empty for those trapped in subordinate courts where proceedings go unrecorded, where judicial errors

⁴⁶ *Republic v. Henry Banda & 79 Others*, Constitutional Cause No. 1 of 2018, [2022] MWHC 139 (discussing constitutional discrimination and equality provisions).

remain uncorrected, and where poverty determines outcomes more than legal merit. The very structure of the system—undocumented proceedings in courts not of record—, coupled with the inability to afford appellate advocacy, creates what amounts to a separate and unequal justice system for the poor.

Moreover, section 44 of the Constitution permits limitations on rights only where such limitations are “reasonable, recognized by international human rights standards, necessary in an open and democratic society, and shall not negate the essential content of the right.” Monetary sanctions that result in imprisonment for inability to pay fail every prong of this test. They are not reasonable: imprisoning someone for poverty when the original sanction was a fine demonstrates neither proportionality nor rationality. They are not recognized by international human rights standards, as demonstrated by the African Court’s advisory opinion on vagrancy laws and the UN Special Rapporteur’s condemnation of criminalizing poverty. They are not necessary in an open and democratic society. Alternatives exist, including community service, income-adjusted fines, and genuine ability-to-pay assessments. And they negate the essential content of the rights to equality, dignity, and liberty by transforming economic status into grounds for imprisonment.

The Constitution’s commitment to social justice provides additional grounds for critique. The preamble pledges to create a society “founded on the rule of law and good governance” and recognizes “the richness of our diversity.” Monetary sanctions that systematically disadvantage the poor are inconsistent with these foundational commitments. They undermine the rule of law by creating arbitrary outcomes based on wealth rather than adhering to established legal principles. They compromise good governance by transforming courts into revenue-collection mechanisms. And they deepen inequality rather than fostering the inclusive society the Constitution envisions.

Malawi’s courts have shown a willingness to strike down provisions that criminalize poverty. The *Gwanda* decision, declaring the “rogue and vagabond” law unconstitutional, demonstrates judicial recognition that the Constitution forbids punishing poverty itself. Yet monetary sanctions achieve the same unconstitutional result through different means, not by explicitly criminalizing poverty, but by creating legal mechanisms that systematically convert poverty into imprisonment. The constitutional violations are no less severe for being indirect than for being explicit.

This constitutional analysis reveals that reforming monetary sanctions is not merely a policy preference but a constitutional imperative. Malawi’s supreme law demands a justice system that treats all persons with equal dignity, provides meaningful access to justice, and does not punish individuals for their economic circumstances. The current regime of monetary sanctions fails these constitutional requirements. Reform is therefore necessary not just to align with international best practices but to fulfill Malawi’s own constitutional commitments to its citizens.

E. Seizure of Property

When offenders cannot pay their financial penalties, the legal system employs increasingly punitive measures, including seizing property. This approach creates additional hardships for those already struggling economically. In Malawi, when fines or other monetary penalties are imposed, the Code establishes a concerning progression of enforcement that disproportionately impacts those living in poverty. Section 330 outlines the initial response to non-payment: authorities may seize and sell movable and immovable property belonging to the offender. This provision applies mechanisms of civil debt collection to criminal penalties, treating unpaid fines as “money payable under a judgment” and invoking the Sheriffs Act to govern the seizure and sale process. However, section 333 reveals what happens when this process fails due to insufficient assets—a reality for many in a country where over 70% of the population lives below the poverty line. Suppose an officer reports that no property or insufficient property was found to cover the amount owed. In that case, the court may issue a warrant to imprison the person for a specified time.

Therefore, those with property can satisfy their obligations without incarceration, while those without assets, predominantly the poor, face imprisonment not for their original offense but for their economic status. The provision that imprisonment continues until “the money and all expenses of the seizure and sale, commitment and conveyance to prison”⁴⁷ are paid creates a particularly vicious cycle, as these additional expenses further burden already impoverished offenders. The law effectively transforms economic sanctions into liberty deprivations for the poorest Malawians. Despite the seemingly neutral language of these provisions, they function in practice as a mechanism for criminalizing poverty itself, creating a modern version of debtors’ prison in a country already struggling with significant economic challenges. Human rights observers note that this practice locks poor Malawians into a vicious cycle: inability to pay leads to incarceration, which in turn furthers their poverty and social marginalization, increasing the likelihood of future infractions.

Having examined the numerous problems associated with Malawi’s current approach to monetary sanctions, we now address potential solutions. The following part explores policy implications and reform possibilities that could be implemented to create a more equitable system.

V. Policy Implications

International standards call for procedural safeguards when imposing economic sanctions. The International Covenant on Civil and Political Rights (ICCPR), to which Malawi is a party, implicitly forbids jailing someone solely for inability to fulfil a financial obligation (Article 11), a protection originally aimed at civil debts but relevant by analogy to criminal fines. The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo

⁴⁷ Criminal Procedure and Evidence Code ch. 8:01, § 333 (Malawi).

Rules) urge that fines be proportionate and consider the offender's capacity to pay.⁴⁸ That imprisonment for non-payment should be a last resort to be used only in cases of willful disregard of a court order. In practice, however, these safeguards are weakly enforced in many jurisdictions. As noted in a recent review, "poverty penalties" often lead to imprisonment and other harsh consequences that undermine global commitments like the Sustainable Development Goals (e.g., SDG 1 on poverty reduction and SDG 16 on access to justice).⁴⁹ Rather than advancing justice, such penalties entrench inequality, which is counterproductive for societies striving for inclusive justice and the rule of law.⁵⁰

The convergence of evidence from Malawi and other countries has prompted scrutiny under international human rights standards. Human rights bodies contend that penalizing people for their poverty is inherently discriminatory and incompatible with fundamental rights. The United Nations Special Rapporteur on Extreme Poverty and Human Rights, for example, has noted that laws criminalizing vagrancy and minor nuisance offenses tend to "impose fines on the poor," which are often unenforceable and only exacerbate economic hardship and social exclusion.⁵¹ Such measures, the Rapporteur warned, effectively punish people for being poor, undermining rights to an adequate standard of living and, in some cases, amounting to cruel, inhuman, or degrading treatment.⁵² Likewise, the African Commission on Human and Peoples' Rights has emphasized that human dignity (protected by Article 5 of the African Charter) and equality (Article 3) are violated when the enforcement of trivial offenses targets individuals for their impoverishment. The African Charter explicitly prohibits discrimination based on "social origin [or] fortune," which has been interpreted as a ban on treating people differently solely due to wealth or poverty.⁵³

Recent studies examining restorative justice approaches suggest possibilities for addressing harm whilst avoiding the punitive and disproportionate effects of economic

⁴⁸ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), G.A. Res. 45/110, annex, Rules 8.2, 9.2, U.N. Doc. A/RES/45/110 (Dec. 14, 1990) (Rule 8.2 states: "The offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence shall be taken into account in the proper individualization of sentences."; Rule 9.2 provides: "When deciding on the type of sentence, the competent authority should take into consideration not only the protection of society and the principles of proportionality with the gravity of the offence but also the circumstances and needs of the offender as well as the needs of victims.").

⁴⁹ Galbraith & Brooks, *supra* note 3.

⁵⁰ *Id.*

⁵¹ See Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), Report of the Special Rapporteur on Extreme Poverty and Human Rights on His Mission to the United States of America, paras. 40-44, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018) (describing how fines and fees "effectively punish people for their poverty" and can amount to "cruel, inhuman or degrading treatment").

⁵² *Id.* paras. 43-44; see also Olivier De Schutter (Special Rapporteur on Extreme Poverty and Human Rights), Breaking the Cycle: Ending the Criminalization of Homelessness and Poverty, paras. 25-31, U.N. Doc. A/HRC/56/61/Add.3 (June 17, 2024).

⁵³ African Charter on Human and Peoples' Rights art. 2, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986 (providing that rights shall be enjoyed "without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status").

sanctions on low-income populations.⁵⁴ These approaches focus on repairing relationships and addressing underlying issues rather than imposing financial burdens that many cannot bear. Similarly, research on social work criminal sanctions provides alternatives to traditional punitive approaches, particularly relevant to Malawian contexts.⁵⁵

Multi-systemic approaches, considering risk and protective factors across individual, family, school, community, and socio-political domains, offer promising frameworks for understanding and addressing the complex interactions between childhood adversity, poverty, and criminal justice involvement.⁵⁶ Such holistic interventions target root causes rather than symptoms—a critical consideration in a country where economic vulnerability and justice system involvement are tightly intertwined.

Based on our analysis of Malawi's current system and emerging research, we propose four essential reforms:

1. Implementation of ability-to-pay assessments before imposing economic sanctions to ensure penalties are proportionate to financial capacity.
2. Development of alternative sanctions for low-income offenders, such as community service, which would benefit society without imposing unmanageable financial burdens.
3. Caps on total economic sanctions as a percentage of an offender's income, preventing the accumulation of crushing debt.
4. Elimination of additional fees and interest for late payments which currently trap the poorest offenders in cycles of increasing debt.

While these four reforms represent immediate priorities, international experience offers additional insights into alternative approaches. The “day fine” system, employed across much of Europe, provides one model for equalizing the impact of monetary sanctions. Under this system, courts determine the duration of the fine based on offense severity, then calculate the daily amount according to the defendant's income. In theory, this ensures that a fine carries equal weight for both rich and poor defendants.

However, implementation proves considerably more complex than theory suggests. Poland's experience following the Cold War offers a cautionary tale: judges found the system unworkable given the country's large informal economy, where income calculations became “extremely difficult.”⁵⁷ Even Germany, with its sophisticated administrative infrastructure, struggles with the system. Limited financial information and judicial discretion result in daily rates set beyond what many defendants can afford. The consequences are

⁵⁴ Made Narendra Mahotama et al., *Criminal Sanctions Against Environmental Pollution and Damage Offenders in the Perspective of Restorative Justice*, 10 *Path of Science* 2025, 2027-32 (2024).

⁵⁵ Nur Sari Baktiana et al., *Formulation of Social Work Criminal Sanctions for Perpetrators of Minor Corruption Crimes Based on Justice*, 5 *J. Indonesian Soc. Sci.* 370, 375-78 (2024).

⁵⁶ Anne Leyland, *Multi-Systemic Risk and Protective Factors for Contact with Criminal Justice Services for Vulnerable Children*, 8 *Int'l J. Population Data Sci.* 2211, 2215-18 (2023).

⁵⁷ Krzysztof Krajewski, *Sentencing in Poland: Failed Attempts to Reduce Punitiveness*, 45 *Crime & Just.* 175, 212-14 (2016).

stark: in 2018 alone, 7,600 people entered German prisons for failing to pay fines for the petty offense of fare evasion.⁵⁸

These international experiences hold particular relevance for Malawi. With widespread informal employment, limited administrative capacity, and a judiciary already stretched thin, implementing a comprehensive day fine system would face formidable obstacles. Yet the underlying principles remain sound. Rather than adopting these principles wholesale, Malawi could adapt them to local realities. Magistrates could use simplified income proxies, for instance multiples of the minimum wage, rather than detailed financial investigations. Courts could establish presumptions that anyone earning below specified thresholds cannot afford standard fines. “Bench cards” providing magistrates with clear guidance on calculating proportionate fines could be developed and distributed.⁵⁹ Such incremental measures could capture the benefits of income-based fining without demanding infrastructure the system cannot yet provide.

These reforms would align Malawi’s justice system with the 2020 advisory opinion from the African Court on Human and Peoples’ Rights, which declared that laws criminalizing poverty-related behaviors are incompatible with human rights standards.⁶⁰ By adopting approaches that recognize economic realities while still addressing harms, Malawi can create a more just system that does not punish people simply for being poor. While these policy recommendations offer promising directions for reform, significant knowledge gaps remain. Further research is necessary to fully understand the dynamics of monetary sanctions in Malawi and develop evidence-based reform approaches.

Significant research gaps remain despite growing recognition of the problems associated with monetary sanctions in criminal justice systems. There is limited empirical research on the prevalence and impacts of these practices in developing countries like Malawi. The challenges of conducting legal research in Malawi, including the lack of a comprehensive, up-to-date, and easily accessible online legal database, contribute to these gaps.

Future research should explore the long-term economic impacts of monetary sanctions on offenders and their communities, evaluate the effectiveness of alternative approaches, and conduct comparative analyses of practices across different jurisdictions. Qualitative case studies of low-income offenders navigating economic sanctions and interviews with key stakeholders could provide valuable insights into the lived experiences of those affected by these systems.

⁵⁸ Mitali Nagrecha, *The Limits of Fairer Fines: Lessons from Germany*, Harvard Law School, Criminal Justice Policy Program (2020) (<https://perma.cc/6ZCG-CGVE>); see also Morten Boe, *Interrelations of “Debt” and “Guilt” in Criminal Law: Reconsidering a Nietzschean Narrative in the Context of Late Capitalism*, 2 *Mod. Crim. L. Rev.* 14 (2025).

⁵⁹ *Fines & Fees Just. Ctr.*, *First Steps Toward More Equitable Fines and Fees Practices: Policy Guidance on Ability-to-Pay Assessments, Payment Plans, and Community Service 2* (Nov. 17, 2020) (<https://perma.cc/Z4MQ-LC6H>).

⁶⁰ Request for Advisory Opinion by the Pan African Lawyers Union (PALU), paras. 153-54.

Based on our analysis of monetary sanctions in Malawi's criminal justice system and potential reform pathways, we can now draw broader conclusions about the relationship between economic penalties and poverty. The final part synthesizes our findings and emphasizes the importance of developing a more just approach to criminal sanctions.

VI. Conclusion

The examination of monetary sanctions in Malawi's criminal justice system reveals a troubling reality: the current framework effectively criminalizes poverty, creating cycles of disadvantage that further entrench economic and social inequality. In a country where a majority of the population lives below the poverty line, with high inflation and limited economic opportunities, the practice of imprisoning individuals for their inability to pay fines is particularly problematic.

Returning to the central questions posed at the outset of this paper, we can now offer evidence-based responses. First, monetary sanctions in Malawi disproportionately impact those living in poverty through multiple mechanisms: courts frequently fail to assess defendants' ability to pay before imposing fines; imprisonment becomes the default punishment for non-payment; property seizure targets the limited assets of poor households; and colonial-era vagrancy laws have historically criminalized the visible manifestations of poverty. These impacts are not merely incidental but structural features of the current system.

Second, these practices indeed mirror historical systems of debtors' prisons and peonage in troubling ways. When individuals are imprisoned not for their original offense but for inability to pay economic sanctions—as explicitly permitted under sections 331 and 333 of Malawi's Criminal Procedure and Evidence Code—this recreates the essential feature of debtors' prisons. Similarly, the cycle of increasing debt through additional fees, interest, and costs of imprisonment creates a form of modern peonage, where offenders become bound to the criminal justice system through financial obligations they cannot realistically discharge, much like historical laborers bound to service through manufactured debt.

Third, our analysis suggests several promising reforms that could create a more equitable approach, balancing accountability with economic reality: implementing comprehensive ability-to-pay assessments; developing alternative non-monetary sanctions for low-income offenders; capping total sanctions as a percentage of income; and eliminating additional fees and interest that compound initial penalties. These reforms would maintain accountability while recognizing the economic circumstances of Malawi's population. Malawi's Criminal Procedure and Evidence Code, with its provisions for imprisonment upon non-payment, property seizure, and the limited mechanisms for relief, creates a two-tiered justice system. Those with financial means can discharge their obligations, while the economically disadvantaged face incarceration not for their original offenses

but for their poverty. This system contradicts international human rights standards, including those articulated by the African Charter on Human and Peoples' Rights and the United Nations Special Rapporteur on Extreme Poverty and Human Rights.

The cases examined in this paper illuminate how these legal provisions operate in practice, often with devastating consequences for individuals and communities already struggling with significant hardship. They demonstrate that monetary sanctions, as currently implemented, frequently fail to achieve their stated aims of deterrence, rehabilitation, or restoration, instead deepening cycles of poverty and criminalization.

However, promising alternatives exist. Restorative justice approaches, social work criminal sanctions, and multi-systemic interventions offer pathways to reform that could better serve both justice and human dignity. The four key recommendations proposed—ability-to-pay assessments, alternative sanctions, income-based caps on penalties, and elimination of additional fees—would significantly mitigate the harshest effects of the current system while maintaining accountability for wrongdoing.

As Malawi continues to develop its legal framework and criminal justice practices, reform of monetary sanctions represents an opportunity to align the system more closely with the nation's constitutional values and international human rights commitments. By recognizing the economic realities of its citizens and implementing more equitable approaches to criminal sanctions, Malawi can move towards a justice system that upholds human dignity, promotes rehabilitation, and advances social cohesion rather than perpetuating cycles of poverty and imprisonment.

The path forward requires not only legal reform but also a broader societal commitment to addressing the structural factors that contribute to poverty and crime. By tackling these challenges holistically, Malawi has the potential to develop a criminal justice system that truly serves justice—one that holds individuals accountable for their actions without punishing them for their poverty.