



Republic of Malawi
Joint Stakeholder Report for the United Nations Universal Periodic Review

Submitted by the Centre for Human Rights Education, Advice, and Assistance; Irish Rule of Law International; Parliamentarians for Global Action; Reprieve; The Advocates for Human Rights; and the World Coalition Against the Death Penalty

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The **Centre for Human Rights Education, Advice, and Assistance (CHREAA)** is a non-governmental organisation which was established in the year 2000 and works country-wide in Malawi. CHREAA works towards the promotion of the human rights of vulnerable groups through advocacy, litigation, research, and human rights education. It was officially registered in 2006 under the Trustees Incorporation Act. Since then, CHREAA has been engaged in several projects promoting the rights of vulnerable groups in Malawi such as prisoners, sex workers, women, and children to ensure that their rights are respected, protected and promoted.

Irish Rule of Law International (IRLI) is a non-profit rule of law initiative established by the Law Society of Ireland, the Bar Council of Ireland, the Law Society of Northern Ireland and the Bar of Northern Ireland. IRLI operates access to justice programmes in various countries including Malawi, Tanzania, South Africa, Zambia, Myanmar, and Vietnam. Malawi is the only country in which IRLI operates a year-round programme, with in situ personnel. IRLI works towards building capacity within the criminal justice system working alongside the Judiciary, Office of the DPP, the Malawian Police Service and the Legal Aid Bureau.

Parliamentarians for Global Action (PGA) is the largest non-governmental, cross-party, international network of individual legislators with more than 1,000 members in 148 parliaments worldwide. PGA mobilizes parliamentarians as champions committed to promoting the rule of law, democracy, human security, inclusion, and gender equality. By using a peer-to-peer methodology and country-specific strategies, PGA educates, sensitizes, and builds the technical capacity of parliamentarians to take concrete initiatives and legislative actions to achieve results on PGA's campaign objectives. PGA supports individual parliamentarians in their national contexts and parliaments and then leverages that capacity with international networking to support democracy, human rights, and peace. The organization's vision is to contribute to creating a rules-based international order for a more equitable, safe, and democratic world. PGA is in general consultative status with the Economic and Social Council of the United Nations and fosters cooperation with The Hague-based International Organizations, including the International Criminal Court. The Secretariat of PGA is based in New York and The Hague.

Reprieve is an international legal action charity that was founded in 1999 (UK charity registration no. 1114900). Reprieve provides support to some of the world's most vulnerable people, including people sentenced to death and those victimised by states' abusive counter-terrorism policies. Based in London, but with offices and partners throughout the world,

Reprieve is currently working on behalf of hundreds of individuals who are facing, or who were previously sentenced to, the death penalty in 16 countries, including Malawi. Reprieve has been working in Malawi since 2014 with the aim of supporting those originally sentenced to death with resentencing applications and appeals, and to ultimately achieve the abolition of the death penalty. Reprieve's vision is a world free of execution, torture and detention without due process.

The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthening the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

I. INTRODUCTION

1. In its third-cycle Universal Periodic Review in 2020, Malawi noted, without explanation, several recommendations to abolish the death penalty, maintain its moratorium on executions, and consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights.¹ Nevertheless, Malawi has made significant progress against many of those recommendations, and is now in a much more advanced position toward abolition of the death penalty.
2. At the 58th session of the Human Rights Council, held in March 2025, Malawi affirmed its commitment to the absolute prohibition of torture. It added that it was “presently implementing recommendations” from the UN Committee against Torture’s recent review and that Malawi would continue to work with both the Committee and Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment to address gaps in the anti-torture legislative framework.² Malawi did not specify which recommendations from the Committee’s December 2022 report it was seeking to implement. However, these recommendations included abolition of the death penalty, the strengthening of legal safeguards and due process guarantees for all offences, as well as ensuring that the conditions of detention for condemned people are in accordance with international standards.³

II. DEATH PENALTY ABOLITION IN MALAWI

A movement towards death penalty abolition in Malawi

1. Over the past 30 years, Malawi has been at the forefront of progress toward abolition of the death penalty. A de facto moratorium on the implementation of the death penalty has been in place in Malawi since 1992.⁴ The mandatory death penalty was held to be unconstitutional and was abolished in 2007, following the Malawi Constitutional Court’s decision in *Kafantayeni and Others v. Attorney General*.⁵ Following this decision, 169 persons on death row were re-sentenced. Of the 169 that were re-sentenced, none were sentenced to death and, as of writing, 165 people have been released having completed their sentences.⁶ Between 2016 and 2019, no new death sentences were handed down by the courts of Malawi.
2. Despite this, the discretionary death penalty remains in force for the crimes of murder, genocide, rape, piracy, robbery with violence, and housebreaking and burglary,⁷ although in practice, the death sentence is only sought in cases of murder. It is also a mandatory sentence for treason convictions.⁸ The years 2019 and 2020 saw an increase in the number of individuals sentenced to death in Malawi: 12 people were sentenced to death for crimes involving attacks on people with albinism.⁹ These convictions involved confessions obtained through torture.¹⁰
3. In 2021, the Malawi Supreme Court of Appeal, in its judgement *Khoviwa v. The Republic*, ruled that the death penalty *per se* was unconstitutional, as it breached the right to life enshrined in Part IV of the country’s Constitution. While this landmark judgement suggested that the Court had abolished the death penalty, it was quickly reversed by a “perfected” judgment, stating that in the present case, a judgement on the constitutionality of the death penalty was not relevant.¹¹

4. On 5 June 2022, the Government of Malawi announced that the President had commuted the death sentences of all those remaining on death row to life imprisonment.¹² This was the first time a President had exercised his or her power of mercy to commute death sentences since 2005.¹³ However, none of these people have had the opportunity to challenge either their conviction or their sentence in court: many were unable to access effective legal assistance at trial and all have so far been denied their right to appeal.
5. There have been no new death sentences since 2021, meaning that death row is empty for the first time in decades.
6. Malawian officials have publicly expressed, on several occasions, the government's commitment to achieving this goal.¹⁴ The Minister of Justice has spoken publicly in the media and in public events about the government's commitment to abolition, affirming that the "[g]overnment's stance on the matter has not changed. Each and every day, we want to abolish the death penalty. It is barbaric."¹⁵
7. Public opinion has likewise signalled desire for abolition. In 2018, 94% of traditional leaders from home villages of people who had been sentenced to death expressed their opposition to the death penalty. In 2022, during a series of regional public inquiries carried out by the Parliamentary Legal Affairs Committee, 84% of attendees from a cross section of stakeholders expressed significant support for abolition of the death penalty.¹⁶ This was followed in January 2023 by a National Consultative Conference led by the Minister of Justice, at which stakeholders concluded that Malawi was ready for abolition.¹⁷
8. Significantly, following the 2022 commutations of sentences of all those who had been sentenced to death, and then after each public reiteration of the government's commitment to abolition, there was no public outcry against this progress.
9. These steps are commendable and reflect public support for abolition. Malawi is encouraged to capitalise and build upon this momentum by supporting the adoption of a parliamentary bill to abolish the death penalty, in keeping with its commitment to the rule of law and the promotion of human rights, as well as its recently reaffirmed commitment to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UNCAT").¹⁸ Such commitment is embodied in Malawi's Constitution, which recognises the right to life (Article 16), prohibits limitations on rights that conflict with international human rights standards (Article 44), and states that international law is part of the laws of Malawi (Article 211).

The use of the death penalty contravenes Malawi's legal obligations

10. **The right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment:** The death penalty is, by its nature, inconsistent with Malawi's duty to protect the fundamental right to life, and there is no evidence globally that it has a deterrent effect on serious crimes. In addition to the right to life, the death penalty breaches the right to live free from torture or cruel, inhuman or degrading treatment or punishment. Both rights are protected under the Malawi Constitution and the Universal Declaration of Human Rights, as well as under Articles 6 and 7 of the International Covenant on Civil and Political Rights, to which Malawi acceded on 2 December 1993.
11. Malawi's method of execution is hanging.¹⁹ Both the African Commission and African Court on Human and Peoples' Rights have found that this method needlessly exacerbates a

condemned person's suffering and constitutes cruel, inhuman and degrading punishment.²⁰ The UN Committee against Torture has voiced similar concerns, noting that death by hanging is considered to be torture and urging States to take this into consideration as a matter of priority.²¹

12. For the 12 persons sentenced to death in Malawi in 2019/2020, their convictions were secured wholly or in part upon evidence obtained through torture, which is prohibited under international human rights law, in particular, the UNCAT.²² Any violation of the prohibition of torture and other ill-treatment that results in the death penalty constitutes a violation of the right to life and renders the sentence arbitrary in nature, in violation of Malawi's national and international legal obligations as set out at paragraph 10 above.
13. **The right to fair trial and due process:** As a country that retains the death penalty, Malawi is bound to uphold the principle that capital punishment can only be imposed in cases involving the most serious crimes, where there has been "stringent adherence" to fair trial and due process rights. In 2022, there were 24 people on Malawi's death row – 23 men and one woman. These death sentences were handed down in deeply flawed trials in which the accused were denied their rights to a fair trial and to due process, resulting in unsafe convictions. A combination of factors contributed to the deprivation of basic due process rights in these cases, including a lack of resources, time, and training on the part of defence counsel, and a lack of clear standards/guidelines for all justice sector actors involved. These factors prevented the accused from meeting with legal counsel until their trials had already begun, limited counsel's ability to investigate and raise key issues, and prevented the accused from introducing essential arguments and evidence.²³
14. **The right to equal protection before the law:** The death penalty is discriminatory towards, and disproportionately harms, those that are economically disadvantaged, exacerbating the due process violations that accompany the use of the death penalty. This is due in part to insufficient funding for Legal Aid and an inability of accused persons to access quality legal representation.²⁴ Public lawyers in Malawi are afflicted by a lack of resources to provide a robust and adequate defence, resulting in inequality of arms between the State and the defence. All 24 people who were, until the commutation of their sentences in 2022, under sentence of death were declared indigent, had no access to funds to assist in their defence, and were represented by Legal Aid. In all of the 24 cases referenced above, the defendants' lack of funds resulted in a denial of right to appeal for many years because they could not hire an appellate lawyer and Legal Aid was unable to guarantee appellate services, even in the extreme case of a death sentence, despite the legal requirement to provide appellate representation for indigent clients.²⁵
15. Finally, the pardon process in Malawi is not transparent. No clear instructions are provided to those in prison or their lawyers describing how to apply for a pardon and there are no published guidelines explaining the criteria used to make decisions. It is unknown when the last time a person who had been sentenced to death was pardoned, if ever. The opaque approach to pardons and commutations in Malawi highlights the importance of implementing legislative abolition of the death penalty.

III. PRISON CONDITIONS

Hunger and water crises

16. In its 2020 UPR, Malawi supported several recommendations to improve detention conditions.²⁶ Malawi has a long-established history of recognising the extremely harsh conditions of its prisons,²⁷ but has not made sufficient progress to improve the situation.
17. Prisons are still suffering from a hunger crisis, which was first reported in October 2022.²⁸ Incarcerated people receive only one meal of basic food per day, which does not contain recommended nutrition for survival.²⁹ In some cases, people report regularly going days without food.³⁰ In other cases, where young children are detained alongside their mothers, no extra provisions are made and mothers must share their already meagre provisions with their dependents.³¹
18. The State's failure to ensure adequate nutrition in the prison system leaves incarcerated people dependent on their families and communities to meet their nutritional needs. Yet many in prison, as well as their family members, live in extreme poverty and are thus unable to procure food through means other than state provision, nor can they afford to travel to the prison to deliver the food.³²
19. The hunger crisis also contributes to the detrimental health effects of Malawian prisons. Infrequent meals affect the treatment outcomes of those who are already ill and lead to greater susceptibility to communicable diseases.³³ Food scarcity causes psychological distress, and those with conditions requiring medication struggle to take their medications regularly, which, in turn, heightens their susceptibility to disease in prison.³⁴
20. In the past few years, prisons in Malawi have also experienced frequent water shortages. In October 2022, Zomba Central Prison went without water for five days due to an unpaid bill.³⁵ On 18 November 2023, people imprisoned at Zomba Central Prison reported that they again had no access to running water for over two weeks.³⁶
21. A lack of running water undermines the ability to observe hygiene practices and exposes incarcerated people to a higher risk of infection. Increased cases of cholera and Covid-19 have been reported in prisons during water shortages.³⁷ It has also been reported that this water crisis impedes the ability to undergo treatment for tuberculosis and HIV.³⁸
22. A group of UN Special Rapporteurs submitted Communications to Malawi on 23 November 2022 and 7 March 2023 detailing these crises and the ensuing violations of the right to food, the right to the enjoyment of the highest attainable standard of physical and mental health, and the right to safe drinking water and sanitation. A response to these Communications is yet to be provided.
23. Malawi's failure to respect, protect, and fulfil the right to food, which is necessary for the right to life and human dignity, violates Section 42 of the Constitution of Malawi, which requires that persons placed under detention are kept in conditions that are consistent with human dignity, as well as international human rights law. This failure to provide minimum levels of essential food and water further violates the International Covenant on Economic, Social and Cultural Rights, the 2010 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and the African Charter on the Rights and Welfare of the Child.³⁹

Overcrowding

24. Overcrowding remains a critical and unresolved issue in Malawian prisons, severely impacting the living conditions and rights of those in prison. As early as 2007, the

Constitutional Court lamented this, noting that people were being “arranged like sardines” in prison cells and, as such, were subjected to inhuman and degrading treatment.⁴⁰ There has been little, if any, improvement since the Constitutional Court’s ruling.

25. In the most recent inspection of prison facilities between 2020 and August 2021, the Prison Inspectorate found that the nationwide prison holding capacity was overcrowded by 278% beyond the designed capacity.⁴¹ In February 2024, the Malawi Prisons Service deputy commissioner reported that Zomba Central Prison holds over 2000 people against a capacity of 800.⁴² Although there are moves to increase infrastructure capacity, the progress on that front, if any, remains elusive.⁴³
26. Overcrowding has severe implications for health management, particularly for people with HIV, some of whom have reported being unable to take anti-retroviral drugs due to a lack of private spaces to keep their drugs.⁴⁴ During the Covid-19 pandemic, there were multiple calls to reduce overcrowding, including calls to release elderly and medically vulnerable people. While the Government of Malawi pardoned 499 people in August 2020, this failed to meaningfully reduce overcrowding.
27. In a 2007 decision, *Gable Masangano v. Attorney General*, the Constitutional Court held that prison overcrowding and poor ventilation in prison facilities violated the right to be free from torture and cruel, inhuman or degrading treatment, breaching the Malawi Constitution and international law norms.⁴⁵ The Court ordered the Government of Malawi to reduce the prison population by half within 18 months and periodically eliminate overcrowding thereafter. The Malawi Prison Service has yet to fulfil the Court’s mandate, nearly 20 years later.
28. The Malawi Prisons Act, originally enacted in 1956 under the colonial regime, remained unchanged following the adoption of the 1994 Constitution, which enshrined a Bill of Rights guaranteeing specific protections for detained persons. In response to calls for alignment with the Constitution and international human rights standards, a first iteration of a new Prisons Bill was published in the early 2000s, only for it to be shelved due to “socioeconomic realities.” A renewed demand for a bill giving effect to the Constitution resulted in a Special Law Commission being convened in 2013 to conduct a comprehensive review. The Commission published a comprehensive report in 2018 with a draft bill, but there was no movement to bring this into law until recently. Finally on 3 April 2025, after many years of campaigning by CSOs, the Prisons Bill was passed in Parliament. The resulting bill demonstrates some progress in that it creates a parole system and open prisons, allows for release on temporary license, and notes that every incarcerated person has the right, at the expense of the state, to access healthcare.
29. However, there are also many areas of concern with the Bill. The parole system envisaged is not well articulated and could give rise to corruption. The right to nutrition is not mentioned at all, which is extremely concerning given years of reports of starvation in the prisons. Furthermore, for many years the government was calling this a “Correctional Services Bill,” but this would have required a constitutional amendment to change the “prisons system” to the “correctional services” system. This did not happen, so the Bill remains a “Prisons” Bill, and does not provide for correctional services. Notably, the persistent overcrowding of Malawian prisons, as set out above, underscores the critical need for legislative reform that adheres to international standards and reflects a shift

towards correctional, rather than punitive, services. A coalition of CSOs, including Reprieve, CHREAA, IRLI, and the Malawi Human Rights Commission, presented detailed critiques of the draft Bill to the parliamentary committees of Social Affairs, Legal Affairs and Defence in early April 2025. Yet unfortunately, the Bill was passed without any amendments. However, the Parliamentary Defence Committee did issue a report noting that the Constitution should be amended so that prisons transform into correctional services and also noting that regulations should ensure that enhanced powers are given to the Prison Inspectorate, a clear budget is set for the Parole Board, assessment tools are developed with regard to alternative sentences, external representation for incarcerated people is included on the Labour Board, and an explicit provision is made for adequate nourishment in prisons.

Right to healthcare

30. The Malawian prison system faces significant challenges in upholding the right to healthcare, with systemic issues affecting various vulnerable groups within the prison population. A lack of medical assistance “can be characterised as severe pain and suffering inflicted intentionally by an individual” in violation of Articles 1 and 2 UNCAT.
31. There is a failure to provide differentiated treatment to incarcerated people based on age, health conditions, and disabilities, which can result in disproportionately torturous sentences.⁴⁶ For instance, older persons are subject to hard labour and corporal punishment on the same basis as the rest of the prison population and do not receive specialised care and support services, even if they assumedly experience increased pain or discomfort.⁴⁷ This is exacerbated by the lack of regular medical care, with any medical care subject to prison official approval, and hospital visits being reserved for the most critical conditions. This increases the risk of chronic health issues and, in turn, increases the threat of punishment, as symptoms of certain conditions may be mistaken as uncooperative behaviour by prison officials.⁴⁸ The Malawi prison system should provide increased access to sufficient medical services and differentiated food dependent on nutritional requirements (as some foods are less digestible for older persons) to minimise the worsening of, or development of, related health conditions.
32. Prisons in Malawi face a severe shortage of clinics, hindering their ability to respond to medical emergencies.⁴⁹ As of 2024, only 14 out of the 30 prisons have on-site clinics, with the remainder using improvised rooms to offer health services.⁵⁰ During the 75th session of the Committee against Torture, representatives from Malawi confirmed that there was only one licensed doctor for its entire prison system.⁵¹
33. Although improvements in the supply of essential drugs in prison clinics have been made since the crisis three years ago, shortages remain significant,⁵² with multiple reports of weeks without essential medications and adverse side effects from substituted drugs because of shortages.⁵³ Moreover, incarcerated people report that essential medication is sometimes confiscated by prison staff. In some cases, those suffering from HIV report that prison staff have confiscated their anti-retroviral medication. Similarly, people who wear glasses have, in some cases, had their glasses confiscated during routine checks.
34. A shortage of soap in prisons further exacerbates the risk of communicable diseases spreading. Incarcerated people report that they sometimes go months without soap.⁵⁴

35. Women in prison face specific healthcare challenges. In 2021, BMC Women's Health reported that women at Maula Prison could not access cervical cancer screening services due to service unavailability, pain during the screening process, the presence of male practitioners, poor staff treatment and favouritism.⁵⁵ Prisons also partially rely on donations for sanitary products, resulting in irregular and inadequate supply, with products often being reusable, the efficacy of which is further compromised by a lack of soap.⁵⁶
36. Malawian prisons also fail to provide adequate medical care to children of detained mothers. This neglect severely affects children's mental health development and violates their constitutional rights under Section 23 of the Malawi Constitution. Such rights include that children are entitled to protection from treatment, work, or punishment that is likely to be harmful to their health or development, in addition to their welfare being a primary consideration in decisions affecting them.⁵⁷
37. There is no official health surveillance data on rates and profiles of mental illness in Malawian prisons, despite evidence that the prison environment exacerbates mental illness. As of 2024, the prison system relies solely on the state-operated psychiatric hospital (Zomba Mental Hospital) and the private psychiatrist hospital (St John of God Center), with only two Maula and Mzuzu prisons providing ad hoc mental health screening and treatment.⁵⁸
38. Ensuring adequate access to healthcare also requires the provision of transport by the Malawi Prison Service for medical emergencies. As of August 2021, about 15 prisons did not have vehicles for emergency transfers to tertiary healthcare facilities.⁵⁹
39. Following their release from prison, formerly incarcerated people are not accorded any psychosocial support to aid their reintegration into society. Despite the success of the Malawi Resentencing Project, which released many people from death row, the State fails to offer any psychosocial support to aid their recovery from the “death row phenomenon” and associated mental illnesses resulting from prolonged incarceration under a death sentence.⁶⁰

Right to education

40. In Malawian prisons, people are often denied the right to education. In 2021, the Prison Inspectorate found that “[t]he educational system in all the prisons leaves a lot to be desired and amounts to a serious breach of the right to education.”⁶¹ Specifically, Section 163 of the Malawi Constitution mandates the prison authorities to provide rehabilitation programmes, including education, to incarcerated people.⁶² The absence of educational and vocational training in prisons denies people critical skills for community reintegration post-release, impacting, in particular, younger offenders. Access to education is limited to a handful of people being allowed to study at Mzuzu University.⁶³
41. Education for young children who are in prison with detained caregivers is nearly non-existent.⁶⁴ Children accompanying their mothers in prison are not given special access to medical care, education or other services beyond what the prison offers to adults.⁶⁵

Death row conditions

42. The deplorable conditions within prisons in Malawi have been documented for many years, including a lack of hygiene and proper nutrition, as well as overcrowding.⁶⁶ Zomba Central Prison, where people on death row are incarcerated, was condemned in 1997 as unfit for

human habitation. It remains open today and continues to hold over double its capacity, including everyone who has been sentenced to death (now including those who have since had their sentences commuted). Such conditions are particularly acute for people on death row, who additionally live with perpetual fear and uncertainty of looming execution.

43. The psychological toll of prolonged detention under sentence of the death is inherently tortuous and constitutes cruel and degrading punishment, contrary to international human rights law (Article 7 of the International Covenant on Civil and Political Rights). In the past, people on death row were not informed of their anticipated execution date, which constitutes torture according to the United Nations Human Rights Committee.⁶⁷ In the case of one man who had been living on death row for 10 years, the High Court of Malawi said, “One should not stay a long time under the weight of a death sentence before it is carried out since one is always haunted by it. One becomes a living corpse. This is a ghastly experience.”⁶⁸
44. The healthcare rights of those on death row are grossly violated throughout their incarceration, particularly regarding mental health, and this continues even after their sentences have been commuted.⁶⁹ The gallows looms over the death row cells, such that people living on death row are in constant site of the gallows and can never forget their sentence. “Death row phenomenon” describes the psychological distress associated with prolonged death row incarceration, exacerbated by uncertainty around execution dates.⁷⁰ Most death row clients show clear signs of mental health problems linked to post-conviction trauma. While Malawian courts have acknowledged the “death row phenomenon,” the Malawi Prison Service excludes those sentenced to death from the psychosocial services it offers the rest of the general prison population.⁷¹
45. While there is no one currently on death row, as long as the death penalty remains a sentencing option, the deplorable conditions faced by persons on death row pose a risk to others who may be sentenced to death in the future. Further, even following their removal from death row, many people with commuted sentences remain subject to the same poor prison conditions and carry with them permanently the impact of living for years or decades on death row.⁷²

Next steps

46. In line with its recent statement confirming its commitment to the absolute prohibition of torture, Malawi is encouraged to ratify the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which establishes an international inspection system for places of detention. The preventive mandate of OPCAT's inspection system could help Malawi to improve the conditions of detention and the treatment of incarcerated people, and thereby assist Malawi in honouring its commitment to combat torture and other cruel, inhuman or degrading treatment or punishment.

IV. TORTURE

Admissibility of confessions extracted by torture in a court of law violates international law

47. In its 2020 UPR, Malawi summarily noted Ireland’s recommendation to amend section 176 of the Criminal Procedure and Evidence Code to ensure that confessions extracted using torture cannot be admitted in evidence.⁷³
48. A letter submitted jointly by UN Special Rapporteurs reports that 100% of death penalty cases since May 2019 have involved confessions obtained through torture.⁷⁴ Malawi imposes death sentences in cases involving torture-induced confessions in contravention of, *inter alia*, (i) the international prohibition on the imposition of the death penalty after a torture-tainted process or a grave constitutional violation; and (ii) Article 15 UNCAT.⁷⁵ Article 15 UNCAT establishes an exclusionary rule that prohibits the use of evidence extracted by torture and this forms customary international law. Malawi has failed to meet its international obligations under Article 15 UNCAT – on the contrary, it retains a legally permissible framework for the use of evidence extracted by torture.⁷⁶
49. Section 176 of the Malawi Criminal Procedure and Evidence Code permits the admission of confession evidence “notwithstanding any objection to such admission upon any one or more of the following grounds...that such confession...was not freely and voluntarily made and without his having been unduly influenced thereto.”⁷⁷ While a test of the reliability of this evidence is meant to be carried out by law, in practice, no such test occurs and torture-induced evidence is regularly admitted in court.⁷⁸
50. Tests for admissibility in Malawi courts do not include investigations into the use of coercive tactics or torture. In *Republic v. Yustino Kamanga* (Confirmation Case No. 952 of 2020) [2021] MWHC 124 (11 October 2021), the accused alleged that he was forced into admitting to the offence and was forced to thumbprint a caution statement written by police officers. However, because the allegation of torture only came during cross examination, the court was satisfied that the confession was made voluntarily. The Criminal Procedure and Evidence Code in Malawi and these tests for admissibility must be amended to prohibit the use of evidence extracted by torture and prohibit any death penalty sentences where investigations have shown that torture was used to elicit the confession.
51. In Reprieve's experience of working with defendants in capital cases, many allege that they have been tortured while in police custody and that the resulting confessions have been relied upon in court. There have been documented instances of persons experiencing torture while under police custody. For example:
- 52.1 In December 2015, two Reprieve clients were arrested in Mchinji for the murder of a person with albinism. Both alleged that while in custody, they were beaten by the police. They alleged that the police threatened to kill them both unless they confessed to the murder. Notwithstanding the allegations of torture, the High Court sitting in Mchinji sentenced both men to death in 2019.⁷⁹
- 52.2 In April 2016, two other Reprieve clients were arrested in Kasungu and Nkhotakota for the murder of a child with albinism. Both alleged that they were beaten and burned with hot irons while in police custody. Both men were sentenced to death in September 2020 by the High Court in Kasungu.
- 52.3 In 2019, the Malawi Human Rights Commission (MHRC) investigated the torture and murder of Buleya Lule by police officers in Dedza and Lilongwe. Mr. Buleya Lule was a Malawian national, aged 44, who died in police custody on 20 February 2019,

having been arrested two days before. The MHRC concluded that “it is an undeniable fact that the Victim was tortured in police custody” and that this torture caused his death. The post-mortem examination conducted at the request of the MHRC concluded that the cause of death was electrocution.⁸⁰ His co-accused, Mr. Kumbilani Patson and Mr. Sainani Kalekeni, allege that they were also severely beaten into confessing. Despite these credible allegations of torture, their forced confessions were admitted at trial alongside evidence obtained through the torture of Lule. Both were convicted and sentenced to death on 5 March 2020.⁸¹

Failure to investigate allegations of torture violates international law

52. Malawi has acceded to UNCAT, which requires state parties to have adequate legislation to allow victims the ability to pursue redress and access effective remedies in cases of torture. Malawi does not have such legislation, and the processes of accountability are internal to the police force. Currently, the investigative branch is the Professional Standards Unit, a branch of the police force. The proposed independent body, the “Police Complaints Commission,” has not yet been adequately operationalised,⁸² effectively resulting in an absence of an independent third party that investigates allegations of torture. The Government of Malawi must fulfil its obligations to investigate allegations of torture by establishing and sufficiently funding the independent body and enabling the process to be transparent.⁸³
53. Reports from the African Commission Special Rapporteur on Prisons and Conditions of Detention in Africa have documented that physical and violent torture is carried out on incarcerated people in Malawi on a regular basis. Case studies and interviews have shown that police officers and guards are frequently violent toward people in their custody, beating them with sticks and other objects, and causing physical, mental and psychological problems.⁸⁴
54. Malawi does not sufficiently investigate allegations of torture, in contravention of its duties under the UNCAT (Articles 12, 13 and 14). In addition, there are insufficient legal safeguards to protect individuals from abuse inflicted mentally by police officers and guards—for example, the definition of torture within Malawian law does not prohibit such abuse.⁸⁵

I. RECOMMENDATIONS

This stakeholder report suggests the following recommendations for the Government of Malawi:

- i. Fulfil the government's commitment to abolish the death penalty and replace it with penalties that are fair, proportionate, and consistent with international human rights standards;
- ii. In the meantime, do not seek or impose the death penalty in any cases, but particularly those that do not involve the most serious crimes, or those where there are challenges with resource, time, training, and access to clients such that the state cannot guarantee it can meet the requirements of due process;
- iii. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- iv. Facilitate appeals for all those convicted and sentenced to death, including by providing adequate funding and training to the Legal Aid Bureau to represent indigent clients who are being tried for death-eligible offences;
- v. Ensure that all accused have access to due processes and fair trials, including by ensuring that all persons charged with criminal offenses have timely access to qualified counsel and legal aid;
- vi. Step up efforts to implement the Committee against Torture's 2022 recommendations concerning the death penalty, detention conditions, and strengthening due process guarantees;
- vii. Ratify the Optional Protocol to the UN Convention Against Torture and establish a National Preventive Mechanism;
- viii. Revise Section 176 of the Criminal Procedure and Evidence Code to prohibit torture tainted evidence, and create an exclusionary rule that brings the courts in line with Malawi's domestic and international obligations;
- ix. Form an independent third-party authority to investigate allegations of torture;
- x. Request technical assistance to design and implement regulations that apply the new Prisons Bill in a manner that will address ongoing issues such as severe prison overcrowding, and ensure access to adequate nutrition, water, and medical treatment;
- xi. Provide health care and differentiated services, including access to education, taking consideration of the health conditions, age, gender, and disabilities of incarcerated individuals;
- xii. Revise the regulations and sensitise relevant stakeholders to make the process for seeking pardons and commutations transparent and accessible.

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malawi*, UN Doc. A/HRC/46/7 (23 Dec. 2020), ¶¶ 124.2-.5, .10-.11, .26-.35, .37.

² 14th Meeting of the 58th regular session of the Human Rights Council, available at: <https://webtv.un.org/en/asset/k1x/k1xj0d4opy>.

³ UN Committee Against Torture, Concluding observations on the initial report of Malawi, 9 December 2022, para. 28.

⁴ Database — Cornell Center on the Death Penalty Worldwide.

⁵ Constitutional Court Case No. 12 of 2005.

⁶ Information on file with Reprieve.

⁷ Malawi Penal Code, Article 378: <https://malawilii.org/akn/mw/act/1929/22/eng@2014-12-31>. See also Articles 210, 217A, 133, 63 and 301 of the Malawi Penal Code.

⁸ Malawi Penal Code, Article 38(1).

⁹ Letter from the Independent Expert on the enjoyment of human rights by persons with albinism; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, AL MWI 2/201, (26 April 2021), p. 3.

¹⁰ Data collected through ongoing representation of Malawian prisoners on appeal, on file with Reprieve.

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¹² Nyasa Times, "Malawi Reaffirms Commitment to Abolish Death Penalty, Says Justice Minister", 17 January 2025: <https://www.nyasatimes.com/malawi-reaffirms-commitment-to-abolish-death-penalty-says-justice-minister/>; World Coalition Against the Death Penalty; "Joint Open Letter to the Minister of Justice of Malawi on the abolition of the death penalty", 26 July 2024: <https://worldcoalition.org/2024/07/26/joint-open-letter-to-the-minister-of-justice-of-malawi-on-the-abolition-of-the-death-penalty/>.

¹³ Information on file with Reprieve, see, e.g., Pardons petitions, submitted 10 December 2021, Chipiliro Lulanga.

¹⁴ Nyasa Times, "Malawi Reaffirms Commitment to Abolish Death Penalty, Says Justice Minister", 17 January 2025: <https://www.nyasatimes.com/malawi-reaffirms-commitment-to-abolish-death-penalty-says-justice-minister/>

¹⁵ <https://times.mw/death-penalty-is-inhuman-titus-mvalo/#>

¹⁶ Report of the Legal Affairs Committee on its Inquiry into the Abolition of the Death Penalty (3 August 2022), p. 23 (p. 35 of the PDF); The Cornell Center on the Death Penalty Worldwide, *Malawian Traditional Leaders' Perspectives on Capital Punishment: A Targeted Survey of Traditional Leaders Affected by the Malawi Capital Resentencing Project* (2017), p 3.

¹⁷ Report by the Ministry of Justice on its National Consultative Conference, January 2023, on file with Reprieve.

¹⁸ Malawi acceded to the UNCAT on 11 June 1996.

¹⁹ Malawi Penal Code, Article 26, available at: <https://malawilii.org/akn/mw/act/1929/22/eng@2014-12-31>.

²⁰ Joint Submission to the Working Group on the Universal Periodic Review on the 3rd review of Malawi during the 36th session of the Human Rights Council, May 2020, para 16; *The Matter of Ally Rajabu and Others v. United Republic of Tanzania*, Application No. 007/2015, Judgment dated 28 November 2019, para. 125.

²¹ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Concluding observations on the initial report of Botswana (23 August 2022), p. 6; Summary record of the 1923rd meeting of the 74th Session of the Committee Against Torture held on 20 July 2023, Experts of the Committee against Torture Commend Botswana on the Ratification of Core Human Rights Treaties, Ask Questions about the Death Penalty and the Ombudsman's Office, 25 July 2022, para. 24, available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=U6NF4SdIPTWcD%2B9q2n4K23xlqixziJexuL%2FsUMqxcvI5p1wUoMNNVhiVJB7p1ueBPhiRKIdpi8pBTToxJjReOQ%3D%3D>.

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- ²³ Data collected through ongoing representation of Malawian prisoners on appeal, on file with Reprieve.
- ²⁴ Report of the Legal Affairs Committee on its Inquiry into the Abolition of the Death Penalty (3 August 2022), p. 22 (p. 34 of the PDF).
- ²⁵ Data collected through ongoing representation of Malawian prisoners on appeal, on file with Reprieve.
- ²⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malawi*, UN Doc. A/HRC/46/7 (23 Dec. 2020), ¶ 122.63, .84-.88.
- ²⁷ See *Masangano v. Attorney General & Others* (Constitutional Case No. 15 of 2007).
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- ³⁰ Information based on prison visits, on file with Reprieve and CHREAA. See also Zororai Nkomo, "Prison malnutrition persists", *The Nation*, 7 June 2024, available at: <https://www.southernafricalitigationcentre.org/prisons-malnutrition-persists/>.
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