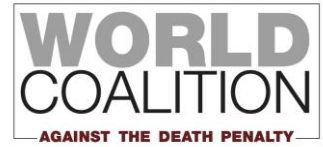




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**Joint Civil Society Submission to the UN Committee on Economic, Social and Cultural Rights
Suggested List of Issues Related to Malawi**

**For the 72nd Pre-Sessional Working Group (6-10 March 2023)
Submitted 9 January 2023**

Submitted by:

- A. Centre for Human Rights Education, Advice and Assistance (CHREAA)
- B. Irish Rule of Law International (IRLI)
- C. Reprieve
- D. The World Coalition Against the Death Penalty

Introduction

The Malawi Centre for Human Rights Education, Advice and Assistance (CHREAA), Irish Rule of Law International (IRLI), Reprieve and the World Coalition Against the Death Penalty submit this written information to the UN Committee on Economic, Social and Cultural Rights to inform the adoption of the pre-sessional working group's list of issues related to the State Party of Malawi.

CHREAA was established as a not-for-profit non-governmental organisation dedicated to the promotion and protection of human rights. The establishment of the organisation followed Malawi's history of oppression and human rights abuse. In the past years, CHREAA's work has focused mainly on key populations. In the past, the organisation documented serious violations of Malawi's international obligations, including the breach of international standards on the prohibition on torture and other forms of ill-treatment.

Irish Rule of Law International (IRLI) is a non-governmental programme and an initiative of the Law Society of Ireland, the Bar of Ireland, the Law Society of Northern Ireland and the Bar of Northern Ireland, dedicated to promoting the rule of law. It operates access to justice programmes in various countries including: Malawi, Tanzania, South Africa, Zambia, Myanmar and Vietnam, though 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 by seconding its lawyers to the Judiciary, Office of the DPP, the Malawian Police Service and the Legal Aid Bureau.

Reprieve (ECOSOC Special Consultative Status 2018) is an international legal action charity that was founded in 1999. Reprieve provides support to some of the world's most vulnerable people, including people sentenced to death and those victimized by states' abusive counter-terrorism policies. Based in London, but with offices and partners throughout the world, Reprieve is currently working on behalf of 70 people facing the death penalty in 16 countries, including Malawi. Reprieve's vision is a world free of execution, torture and detention without due process.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. 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.



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Executive Summary

This report provides suggested questions that the Committee on Economic, Social and Cultural Rights (CESCR) should raise to the government of Malawi in its List of Issues, particularly with respect to the death penalty, prisons, and criminal processes.

Severe overcrowding in detention is a persistent issue in Malawi, and people are denied the rights to adequate food, nutrition, water, housing and healthcare. Despite calls by the international community to ensure adequate nutrition, prisons have systematically failed to provide adequate food and water to people in prisons. Currently, people in prisons are suffering from a widespread hunger crisis and cholera outbreaks. Malawian prisons have also failed to protect the right to healthcare and adequate housing where it maintains overcrowded populations in dilapidated facilities. People in prisons often fail to receive necessary health treatments and mental health resources.

Poverty has a profound effect on people caught in the criminal system. People from economically marginalized communities are disproportionately affected by the death penalty because of the lack of access to legal aid and resources. Families are unable to visit loved ones in detention due to the cost of traveling to prisons. Furthermore, families often struggle financially when their main breadwinners are arrested and are unable to work, due to the lack of awareness of the right to bail.

Substantive issues

I. Right to Food

i. Hunger Crisis in Malawian Prisons

1. People in Malawian prisons are currently suffering from a hunger crisis, which was first reported in October 2022. Malawi has failed to ensure the minimum essential level required to respect, protect and fulfil the right to food where people in prisons have been forced to go days without food. Efforts to secure emergency supplies have been unsustainable and unreliable.
2. On 16 October 2022, The Times Group Malawi reported that people in prisons were going up to two or three days without food.¹ Over the next few weeks, multiple news outlets and the Malawi Human Rights Commission (MHRC) reported that many people in prisons had gone without food for at least five days.² Reprieve and CHREAA were able to confirm these reports and visited clients in prison who had gone without food for several days.³ A Reprieve fellow also learned from prison officers that at least one prison could not serve full meals because it was rationing its depleted food stores.⁴
3. The Times Group Malawi reported that the shortage was due to a disagreement on prices between food suppliers and the government.⁵ While the Malawi Prison Service (MPS) had requested a budget of approximately K2.8 billion

¹ Jameson Chauluka, "Food crisis in prisons", *The Times Group Malawi*, 16 October 2022. Available at: <https://times.mw/food-crisis-in-prisons/>.

² "Times 360 Malawi", Facebook, 20 October 2022. Available at <https://www.facebook.com/times.mw/>; Malawi Human Rights Commission, Press Statement, "Hunger Crisis in Malawi's Prisons: A Call for Urgent Action", 20 October 2022. Available at <https://twitter.com/HumanRightsMW/status/1583132045743513600/photo/1>.

³ Information on file with Reprieve and CHREAA.

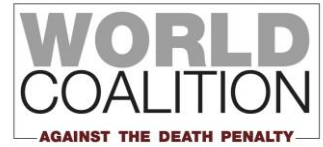
⁴ Information on file with Reprieve.

⁵ Chauluka, "Food crisis in prisons".



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for the current fiscal year, it was allocated only K1.3 billion, which led to insufficient funds for prisons to pay food suppliers.⁶

4. On 21 October 2022, Times 360 Malawi posted on Facebook that the Ministry of Homeland Security had ordered a private corporation, Admarc, to distribute 25,000 bags of maize to Malawian prisons.⁷ However, this was a one-time emergency provision, rather than a sustainable solution. Three days after the report, on 24 October 2022, people at Zomba Central Prison had not received any food from the MPS.⁸ Only certain groups of people were able to receive food through religious organisations.⁹ That same day, a Reprieve fellow was unable to meet with a client who was suffering from diarrhea, which was likely caused by the lack of food and water at the prison.¹⁰
5. In October 2022, the MHRC conducted a fact-finding mission and found that “[t]he continued failure by government and prison authorities to act on this is a violation of Section 42 of the Constitution of Malawi which requires that persons that are placed under detention must be kept in conditions that are consistent with human dignity and this includes adequate nutrition”.¹¹ On 14 November 2022, the MHRC further reported that, despite sharing its findings with prison authorities and the government, little efforts have been made to address the situation in the long term.¹²
6. On 15 November 2022, it was reported that the food shortage was affecting all 32 prisons in Malawi.¹³ The Daily Times also reported that the remaining MPS budget of K99 million was meant to last until March 2023, but that it had no more funds to provide firewood, salt or vegetables.¹⁴
7. On 8 December 2022, the Parliament of Malawi ordered that the prisons budget be increased by about K989 million. However, prisons are still struggling to provide adequate nutrition to people in prisons. On 21 December 2022, Chichiri Prison reported that it was failing to fulfil the right to food for people in prison because it had no funds to maintain electric cooking pots to cook food and that no other cooking methods were available.¹⁵
8. People in prison are dependent on the government to provide food, water, adequate housing and other life necessities. Many people in prison, as well as their family members, live in extreme poverty. Thus, many people are unable to procure food through means other than state provision. Family members are often unable to afford to travel to deliver food, and there are no means to procure food from the surrounding community.
9. Food and water shortages also exacerbate negative effects of severe overcrowding in Malawian prisons, where 13,801 people are held in a system with an overall capacity of 5,352.¹⁶ Due to food shortages, people with medical conditions requiring medication are unable to take their medications on a regular basis, increasing the risk that diseases become drug-resistant and run rampant in overcrowded conditions.¹⁷ Furthermore, food deprivation and insecure food supply can cause severe psychological distress.

⁶ Lloyd Chitsulo, “Prisons face K1.5bn budget deficit”, *The Nation*, 27 October 2022. Available at <https://mwnation.com/prisons-face-k1-5bn-budget-deficit/>.

⁷ “Times 360 Malawi”, Facebook, 21 October 2022. Available at <https://www.facebook.com/times.mw/>.

⁸ Information on file with Reprieve.

⁹ Information on file with Reprieve.

¹⁰ Information on file with Reprieve.

¹¹ Malawi Human Rights Commission, *Position of Malawi Human Rights Commission on the Current Social, Political and Economic Situation in Malawi* (14 November 2022), p. 7.

¹² Ibid.

¹³ Wezzie Gausi, “Prisoners’ Nightmare”, *Daily Times*, 15 November 2022.

¹⁴ Ibid.

¹⁵ Information on file with authors.

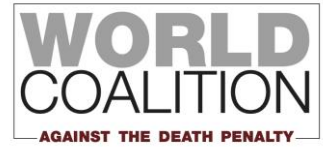
¹⁶ *Initial report submitted by Malawi under article 19 of the Convention pursuant to the simplified reporting procedure, due in 1997*, CAT/C/MWI/1, 6 March 2020, tbl. 4.

¹⁷ See Chauluka, “Food crisis in prisons”.



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ii. Persistent Hunger in Malawian Prisons

10. Inadequate nutrition has been a persistent problem in Malawian prisons. Malawian prisons currently operate from minimum standards set out by an outdated Prisons Act from 1955 and have not adopted new, humane standards despite calls from the UN Special Rapporteur on the right to food,¹⁸ the Human Rights Council,¹⁹ and the Human Rights Committee.²⁰ In 2013, the UN Special Rapporteur on the right to food stated that Malawi was in violation of the UN Standard Minimum Rules for the Treatment of Prisoners for serving only one meal per day, consisting of *nsima* (maize) and beans or peas. In his report, the Special Rapporteur stated that budgetary constraints “cannot justify violations of the right to adequate food and to be free from hunger”.²¹
11. In 2009, the Constitutional Court found that the minimum standard of serving people in prisons one meal per day was grossly inadequate.²² The court ordered the MPS to serve at least two hot meals per day and to diversify meals.²³ Notwithstanding the court’s order, prisons have continued to serve only one meal per day of *nsima* and beans or peas, even when the system is not in crisis. In 2021, the Malawi Prison Inspectorate found that almost all prisons had failed to comply with statutory regulations where they were serving non-diverse diets of *nsima* with beans or peas, which is notably lacking in vegetables or meat.²⁴
12. At Zomba Central Prison, the food provided to people in prison rarely deviates from *nsima*, beans and peas. Vegetables are provided only 2 or 3 weeks per year when the prison is able to harvest vegetables grown on its own plot. Reprieve clients reported that the food is often contaminated with pests or rotten. Contaminated food, worsened by the lack of regular access to water and cooking methods, has led to digestive problems and illness.²⁵
13. Malawi is in clear violation of the International Covenant on Economic, Social and Cultural Right (ICESCR) by failing to ensure for everyone the minimum essential levels of food and water that are necessary for the right to life and human dignity.²⁶ Malawi is also in violation of international standards regarding the treatment of people in prisons.²⁷ People in Malawian prisons already suffer under conditions amounting to torture and cruel, inhuman or degrading treatment or punishment, which have been greatly aggravated by the current food and water crisis.
14. Access to adequate food and water are essential to maintain life, and people in prisons are entirely dependent on the state to provide the minimum essential level to ensure human dignity and basic survival. Malawi’s failure to provide adequate food and water to people in prisons is an egregious violation of international law and fundamental human rights and a grave risk to life.

iii. Suggested Questions on the Right to Food

- What mechanisms are in place to ensure that people in prisons receive adequate food and nutrition and that prisons are able to purchase food from suppliers?

¹⁸ United Nations Human Rights, “End of mission statement by the Special Rapporteur on the right to food, Malawi 12 to 22 July 2013”, 22 July 2013. Available at <https://www.ohchr.org/en/statements/2013/07/end-missionstatement-special-rapporteur-right-food-malawi-12-22-july-2013>.

¹⁹ Report of the Human Rights Council on its thirtieth session, A/HRC/30/2, 30 September 2019, paras. 420, 432.

²⁰ Concluding observations on the initial periodic report of Malawi, CCPR/C/MWI/CO/1/Add.1 (19 August 2014), para. 16.

²¹ United Nations Human Rights, “End of mission statement by the Special Rapporteur on the right to food”.

²² Gable Masangano v Attorney General and Others, Constitutional Case No. 15 of 2007, [2009] MWSC 31 (08 November 2009).

²³ Ibid.

²⁴ Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons and Police Cells Conducted by the Malawi Inspectorate of Prisons in February, May, August 2020 and February 2021* (2021), p. 26.

²⁵ Information on file with Reprieve.

²⁶ E/C.12/1999/5, para. 14; E/C.12/2002/11, para. 37.

²⁷ Article 20(1) of the UN Standard Minimum Rules for the Treatment of Prisoners stipulates that “every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served”. The Nelson Mandela Rules also require States to provide “food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served”.



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- What measures is the State Party taking to improve the nutritional value and diversity of food provided to people in prison?
- What efforts is the State Party making to develop long-term, sustainable solutions to fulfilling the right to adequate food, including allowing people in prisons to supplement their nutrition through farming?²⁸
- What is the status of efforts to consult with the Malawi Prison Inspectorate, civil society organisations and other stakeholders in developing long-term solutions to the systematic lack of adequate nutrition in prisons?

II. Right to Water

i. Persistent Water Shortages

15. In the past few years, prisons in Malawi have experienced frequent water shortages. During the recent food crisis, on 20 October 2022, Times 360 Malawi posted on Facebook that Zomba Central Prison had gone without water for five days due to an unpaid bill.²⁹ Reprieve and CHREAA were able to confirm these reports. On 24 October 2022, people imprisoned at Zomba Central Prison reported that they had not had running water for at least three days.³⁰ That same day, a Reprieve fellow was unable to meet with a client who was suffering from diarrhea, which was likely caused by the lack of food and water at the prison.
16. Zomba Central Prison faces frequent water disruptions due to unpaid water bills, likely caused by underfunding and an inability to access funds.³¹ In September 2022, Reprieve clients went at least nine days without access to running water. Additionally, in December 2022, Reprieve clients at Zomba Central Prison shared that there was no water for at least five days.³² Chichiri Prison also went without running water in September 2022 due to unpaid water bills.³³
17. During water shortages, the inability to observe hygiene practices leads to an increase of cholera and Covid-19 cases.³⁴ During the Covid-19 pandemic, Maula Prison went at least a week without water, exposing people in prison to a higher risk of Covid-19.³⁵
18. Currently, people in Malawian prisons are suffering from a cholera outbreak, which has already claimed two lives at Chichiri Prison. According to reports from Chichiri, the outbreak started when a prepaid water metre developed a fault. No alternative provision of water was provided, hence people in prison resorted to accessing water from a small swamp inside the prison, which is not treated. Backup water tanks stopped functioning a long time back and nothing has been done to remedy this. The prison officers have been requesting for boreholes inside the prison to provide backup water when the regular water supply is interrupted, but these have not been provided.³⁶

²⁸ See, e.g., UNODC, "UNODC SUPPORT TO MALAWIAN PRISON FARMS PAYS OFF". Available at <https://www.unodc.org/southernafrika/en/un-supports-prison-farm.html>.

²⁹ "Times 360 Malawi", Facebook, 20 October 2022. Available at <https://www.facebook.com/times.mw/>.

³⁰ Information on file with Reprieve.

³¹ "Prisoners Run Out of Food Essentials", *The Nation*, 6 March 2022. Available at <https://mwnation.com/prisoners-run-out-of-food-essentials/>.

³² Information on file with Reprieve.

³³ Nickson Kacheswiche, "Water Woes Hit Chichiri Prison", *Malawi Institute of Journalism*, 20 September 2022. Available at <https://news.mijmw.com/water-woes-hit-chichiri-prison/>.

³⁴ Information on file with Reprieve.

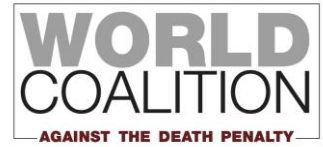
³⁵ Malawi Voice, "Oops! Water Crisis at Maula Prison, 200 Inmates Hit By Covid-19", 27 July 2021. Available at <https://www.malawivoice.com/2021/07/27/oops-water-crisis-at-maula-prison-200-inmates-hit-by-covid-19/>.

³⁶ Information on file with CHREAA.



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19. Reprieve clients also reported that water is rationed, even during times when the system is not in crisis, and that there is not always enough water to wash clothes.³⁷ They also reported that toilets are not directly connected to running water, which often causes blockages that are sometimes not cleared up for at least a week.³⁸

ii. Suggested Questions on the Right to Water

- What mechanisms are in place to ensure that people in prisons receive adequate water and that prisons are able to purchase water from suppliers?
- What measures is the State Party taking to ensure that people in prisons have sufficient access to water for drinking, cooking and sanitation?
- How does the State Party plan to ensure that backup supplies of safe and clean water are provided when regular water supply is interrupted and to effectively prevent disease and illness due to water contamination?

III. Right to Housing

i. Prison Overcrowding and Infrastructure

20. Overcrowding has been a recurring problem in Malawian prisons for a long time. As early as 2007, the Constitutional Court bemoaned the inadequate housing challenges facing Malawian prisons by noting that, to the extent that people were being packed as sardines in prison cells, they were being subjected to inhuman and degrading treatment.³⁹ There seems to have been little improvement since the Constitutional Court's ruling.
21. In the most recent inspection of prison facilities between 2020 and August of 2021, the Prison Inspectorate summed up its findings by noting that the nationwide prison holding capacity was overcrowded by 278% beyond the designed capacity.⁴⁰ For instance, the inspection revealed that Thyolo Prison station, whose prison holding capacity is 60, currently houses 252 people translating to a congestion rate of 317 percent. The inspection further revealed that the largest prisons in Malawi—Zomba Central and Lilongwe—were overcrowded by 112 and 66 percent, respectively.⁴¹
22. Beyond the well-documented overcrowding challenges facing Malawian prisons, the right to adequate housing of people in prisons is violated by the deplorable state in which the majority of the prison structures are maintained. The Prison Inspectorate noted that having inspected all the prisons in Malawi, most of them were in a dilapidated state.⁴² In particular, the Inspectorate singled out Zomba Central, Nkhotakota, Chitipa and Nkhatabay. For instance, the Inspection revealed that a cell block at Zomba Central Prison lacked handrails to protect people in an upper story from falling down.⁴³ People at Zomba Central Prison reported that cells designed for one person are used to house seven people.⁴⁴
23. Prisons in Malawi also lack adequate ventilation. At Zomba Central Prison, people reported that there were no fans or big windows. Combined with the number of broken toilets and disconnected sewage pipes, people are forced to live in unsanitary and inhuman conditions.⁴⁵

ii. Death Row Conditions

24. Generally, people sentenced to death are housed at Zomba Central Prison. Exceptionally, people sentenced to death are relocated to other prisons. Resultantly, the condemned section (death row) at Zomba Central Prison is

³⁷ Information on file with Reprieve.

³⁸ Information on file with Reprieve.

³⁹ *Gable Masangano v Attorney General and Others*, Constitutional Case No. 15 of 2007, [2009] MWSC 31 (08 November 2009).

⁴⁰ Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons*, p. 6.

⁴¹ *Ibid.*, p. 19.

⁴² *Ibid.*, p. 13.

⁴³ *Ibid.*

⁴⁴ Information on file with Reprieve.

⁴⁵ Information on file with Reprieve.



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usually overcrowded. During public consultations on the death penalty by the Parliamentary Legal Affairs Committee, an official noted that, due to the current de facto moratorium on the death penalty in Malawi, the condemned section at Zomba Central Prison has continued to be congested.⁴⁶

25. The condemned section at Zomba Central Prison consists of cells roughly 8 x 6 feet (1.8 x 2.4 meters). Each cell contains one window that is no more than one square foot in size, which is located at the top of the door and provides the only ventilation to the cell. The door is thick wood reinforced with metal bars. Each cell is lit by one light bulb that remains on all night. There are no fixtures in the cells and there was nothing attached to the walls of the empty cell. A bucket in the corner is used as a latrine at night. Across from the cellblock are the gallows. Across from the gallows, there are three showers and three toilets, which are shared by everyone living in the condemned section.
26. Even after presidential pardons were granted to 22 people on death row in July 2022, a Reprieve fellow who regularly visits Zomba Central Prison noted that nothing has changed for the former people on death row as they remain housed in the condemned death row section. Thus, there remains a real risk that conditions on death row will continue to worsen if death sentences remain a legal form of punishment.

iii. Suggested Questions on the Right to Housing

- What measures is the State Party taking to rehabilitate prison structures to adhere to adequate living standards?
- How does the State Party plan to reduce overcrowding in prisons in order to provide an adequate standard of living?
- For people who have received commutations and are now no longer sentenced to death, what steps has the State Party taken to transfer people out of condemned sections at various facilities?
- What steps has the State Party taken to abolish the death penalty so that people are not subject to the deplorable conditions on death row?

IV. Right to Healthcare

i. Inadequate Access to Healthcare in Prisons

27. The right to healthcare for people in Malawian prisons is routinely violated in several ways. To begin with, there is an acute shortage of clinics within the prisons, which hampers the prison's ability to respond to medical emergencies. The Malawi Prison Inspectorate noted during its 2018 report that about 25 prisons did not have in-house clinics. In the recent report in 2021, it reported that clinics had been constructed at Mwanza, Chikhwawa, Kasungu and Nkhotakota.⁴⁷
28. The second impediment to the realisation of the right to healthcare for people in prison is the inadequacy of drugs in prison clinics. While there has been a marked improvement in the supply of essential drugs in prison clinics from the desperate situation of three years ago, the inspection by the Prison Inspectorate revealed that drug shortages remain a serious problem in prison clinics.⁴⁸
29. The right to healthcare is also compromised by the MPS's modest transport means for medical emergencies. As of August 2021, about 15 prisons did not have vehicles to help in medical emergencies which require referral to tertiary healthcare facilities.⁴⁹

⁴⁶ Reprieve, "Submissions by Stakeholders at the Parliamentary Legal Affairs Committee Public Consultations on the Death Penalty, Mzuzu Consultations", May 2022.

⁴⁷ Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons*, p. 20.

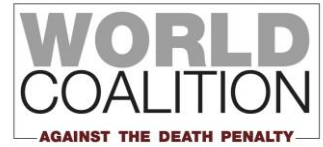
⁴⁸ Ibid., p. 21.

⁴⁹ Ibid.



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30. During the 75th session of the Committee against Torture, representatives from Malawi confirmed that there was only one licensed doctor in the entire prison system.⁵⁰ The severe shortage of medical personnel can cause serious risks to the healthcare of people in prisons, who are unable to receive timely and reliable medical treatment for illnesses that may be caused or exacerbated by deplorable prison conditions.

ii. Death Penalty's Effect on Mental Health

31. The right to healthcare of people on death row is wantonly violated throughout their stay on death row and continues even after getting reprieve via an appeal, resentencing or pardon. In particular, the mental health aspect of the right to health care of people on death row is completely ignored. While the conditions in Malawian prisons afflict all people in prison indiscriminately, they are even more pronounced for people living on death row. Not only do people on death row live in poor sanitary conditions, they also live under the perpetual fear and uncertainty of a looming execution.

32. "Death row phenomenon" is a term that has been adopted to describe the anxiety, dread, fear and psychological anguish that may accompany long-term incarceration on death row. It is difficult to overstate the psychological damage caused by existing for years under a constant fear of death, without knowing precisely when death will come. In a state of a de facto moratorium, people on death row are not told of when their execution is due. This failure to inform a death row inmate when his or her execution is anticipated has been held to amount to torture by the Human Rights Committee.⁵¹ People on death row have spent years near the gallows—a physical reminder of the uncertainty of looming death. While their sentences have been commuted, they still live and sleep next to the gallows. Importantly, they have not received any mental health treatment to alleviate trauma from "death row phenomenon" or to cope with their new life sentences and are even more limited in taking part in education and cultural programs.

33. The majority of our clients on death row manifest clear signs of mental health problems. For the most part, these mental health challenges are traceable to post-conviction trauma. Malawian courts have also acknowledged the prevalence of "death row phenomenon" among people in prison in Malawi due to the prevailing de facto moratorium on executions.⁵² Despite this judicial acknowledgement, the MPS excludes people on death row from the psychosocial services which it offers to the rest of the general population in prison.⁵³

34. Even after being released from death row, people who were formerly sentenced to death are not accorded any psychosocial support to restore them to normalcy following agonising years on death row. Indeed, in Malawi, following the successful resentencing project where a number of people on death row were outright released, the State did not take any measures to offer them psychosocial support to aid their recovery from the harsh effects of "death row phenomenon" on their mental health.

35. People whose death sentences were recently commuted to life imprisonment are still housed in the condemned section at Zomba Central Prison. They do not have access to educational programming or occupational training. No attempt has been made to provide them with psychosocial support to help them with recovering from the mental health damage that have inevitably resulted from being kept on death row for such a long time.

iii. Suggested Questions on the Right to Healthcare

- What steps has the State Party taken to construct more prison clinics and to rehabilitate infirmaries and to employ qualified medical personnel?

⁵⁰ See United Nations, "1944th Meeting, 75th Session, Committee Against Torture (CAT)", UN Web TV, 3 November 2022. Available at <https://media.un.org/en/asset/k1c/k1c0prvjkg>.

⁵¹ Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc CCPR/C/GC/36.

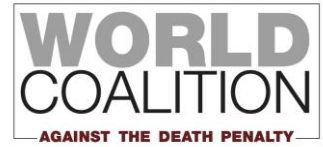
⁵² *Makasu v Teputepu* (Criminal Case 7 of 2017) [2017] MWHC 62 (01 March 2017).

⁵³ Reprieve, "Submissions by Stakeholders at the Parliamentary Legal Affairs Committee Public Consultations on the Death Penalty, Blantyre Consultations", May 2022.



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- How does the State Party plan to ensure that prison clinics are adequately funded so that people in prisons can receive adequate and reliable healthcare?
- What measures is the State Party taking to develop a mental health system and policy to address the trauma and mental health issues among people in prison?
- How does the State Party plan to provide mental health education and support to people who suffer from post-conviction trauma and “death row phenomenon”?

V. Right to Education

i. Lack of Education in Prisons

36. 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.”⁵⁴ While a select few may be allowed to study at Mzuzu University, education is not widely available and very few have access to opportunities.⁵⁵
37. Educational programs provide opportunities for rehabilitation and reform. Without education programs and occupational training, people in prisons are deprived of key tools that would enable them to successfully re-integrate into their communities post-release.
38. People in the condemned section at Zomba Central Prison, a maximum-security prison, are deliberately segregated from the rest of the prison population. Due to this forced isolation, they are unable to take part in any and all activities that might occur at the prison, including educational classes and cultural activities.

ii. Suggested Questions on the Right to Education

- What measures is the State Party taking to improve access to higher education, occupational training and industrial programs to people in prisons?

VI. Right to Cultural Life

i. Limited Participation in Prisons

39. In prison, many people are unable to freely participate or take part in cultural life. In our experience, people in certain prisons are able to take part in cultural events or holidays. However, their participation and involvement is limited and controlled by prison guards.
40. We commend Maula Prison for allowing incarcerated people to attend events held at the facility, including events on the World Day Against the Death Penalty and Human Rights Day. However, we remain concerned that there is no guarantee that people in prison are given sufficient opportunities to participate and take part in cultural activities, such as celebrating holidays, contributing to cultural life and socializing with other people.
41. In 2021, the Prison Inspectorate noted that there were five open prisons that are designed to facilitate social adjustment to the community and reintegration. In its report, the Inspectorate recommended that the MPS construct more open prisons to provide for the same opportunities of reintegration and socialization.⁵⁶

ii. Suggested Questions on the Right to Cultural Life

- How is the State party ensuring that people in prisons have the right to participate and take part in cultural life?
- What mechanisms are in place to allow people in prisons to develop and take part in cultural activities?

⁵⁴ Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons*, p. 6

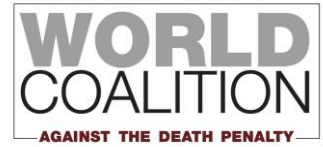
⁵⁵ *Ibid.*, p. 50.

⁵⁶ *Ibid.*, p. 18.



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VII. Right to Family Life

i. Lack of Familial Contact

42. The right to enjoy and maintain family relationships is not protected for people in prisons. Family visits to those held in prisons in Malawi are not only an important right of those detained but can be frequently a source of food in a time when prisons are experiencing a food crisis. It is of paramount importance that those detained are kept close to the vicinity of family. However, in practice, due to the disorganised and over-congested prison situation, many are held far from their family and moved without notice to their families. This is particularly detrimental to the vast majority of detainees who come from poverty stricken backgrounds – the cost and availability of travel for family members is often not feasible and this has a direct impact of the nutrition and sustenance of the detainees by virtue of less visits which deliver vital food parcels.
43. This problem was also exacerbated during the Covid-19 pandemic, when many detained people—especially female detainees—were transferred to far away facilities. Although the pandemic is more contained, there has been no initiative by the prison system to relocate them back to prisons that are closer to their families.⁵⁷
44. The lack of familial contact has been particularly pronounced for people sentenced to death, due to the fact that there is only one maximum-security facility in the country. When we have visited families of people in prison, some families were surprised to hear that their loved one was still alive. Many expressed their wish to be able to see their family member in prison and stated that they were prevented from doing so due the cost of traveling and interruption in work. Since many of our clients come from a background of poverty, their family members often do not have phones to call their family member in prison.
45. Female detainees with children may be detained far away from home and can miss out on visits which impact their access to basic essential items like food, soap and sanitary pads. Furthermore, their children's emotional development is impacted since they are deprived of the chance to interact and bond with family members.
46. IRLI staff can attest that often visitors that do visit are not protected from the weather and are exposed to harsh sun and rains and are forced to meet through fences in unhygienic surroundings, often with very little privacy from other detainees and security personnel.

ii. Effect of Conviction on Family Members

47. In many cases, children have been deprived of maintaining a relationship with their parent who is in prison. Due to the difficulties detailed above, children often lack contact with their imprisoned parent. As a result, some children may be entrusted to the care of distant family members, especially when the other parent remarries, which can make it more difficult for the parent who is in prison to maintain a relationship with them.
48. In some instances, families can be discriminated against due to a family member's conviction. In one case, community members retaliated against a family whose family member was convicted and sentenced to the death penalty. In an act of mob violence, people set fire to two family members' houses.⁵⁸ This is just one example of many forms of discrimination families face due to a family member's conviction or sentence.

iii. Children in Prisons with a Parent

49. The best interests of the child are paramount, and the current situation in Malawian prisons with regards to food and nutrition are severely impacting the growth and development of the many children that accompany their parents to prison. IRLI can confirm a number of babies and children are accompanying their parents in several different prisons throughout Malawi.⁵⁹ At least 10 children are accompanying their mothers at Chichiri Prison.⁶⁰ Reprieve is aware of two children at Domasi Prison.

⁵⁷ Information on file with CHREAA.

⁵⁸ Information on file with Reprieve.

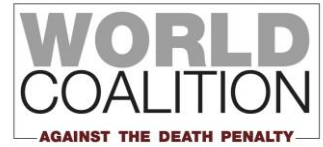
⁵⁹ See "Mw prisons housing under-5 children", *The Times Group*, 8 December 2021. Available at <https://times.mw/mw-prisons-housing-under-5-children/>.

⁶⁰ Information on file with authors.



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50. Malawian prisons are failing to provide adequate food and nutrition for detainees. This means that children in prison are not receiving an adequate level of food.⁶¹ At Domasi Prison, there are no special food provisions for the two children accompanying their mother. During the hunger crisis, they are forced to rely on food brought in by charitable individuals in the surrounding community.⁶² This is a clear violation of the ICESCR, by failing to ensure for everyone the minimum essential levels of food and water that are necessary for the right to life and human dignity and international standards, as well as 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. Often, the female detainee with dependent children must share their food portion with the child rather than receive adequate portions. This is a violation of basic rights for the child and mother who do not receive special assistance or protection in this aspect by virtue of having a dependent child in the prison system.

a. Medical Attention

51. Malawian prisons are also failing to provide adequate medical care. A child should not be subject to a lack of medical care and attention by virtue of their care provider being detained. A lack of proper medication combined with the unhygienic and disease prevalent conditions in the prisons lead to a highly unsafe environment for young children. On a recent prison visit carried out by IRLI, a member of the detainee population reported that female patients were not being assisted in medical situations. It was reported that some were waiting three weeks or more without being taken to hospital when required.⁶³

b. Development of Babies in Prison

52. The development of young children and babies in Malawian prisons is seriously hampered by the conditions that they face. There are no adequate areas in Malawian prisons where babies and young children may safely play or exercise and access to learning and developmental toys are non-existent.⁶⁴ The mental health development of young children and babies is impacted severely by the traumatic surroundings and experiences that they witness in prisons. Special measures of protection are not adequately taken by the MPS to ensure a safe and nurturing environment for the children of detainees, which is a violation of constitutional rights under Section 23 of the Malawi Constitution.⁶⁵

⁶¹ In the 10th General Report, the Committee for the Prevention of Torture (CPT) made general recommendations on ante- and post-natal care. Every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), document CPT/Inf (2000) 13, para. 26. Available at <https://rm.coe.int/1680696a74>.

⁶² Information on file with Reprieve.

⁶³ United Nations Human Rights, "In Dialogue with Malawi, Experts of the Committee against Torture Commend Efforts to Combat Human Trafficking, Ask about Access to Lawyers and the Definition of Torture", 4 November 2022. Available at <https://www.ohchr.org/en/press-releases/2022/11/dialogue-malawi-experts-committee-against-torture-commend-efforts-combat>.

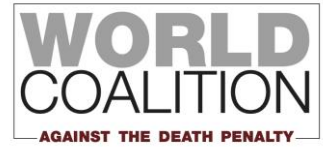
⁶⁴ In the 10th General Report, the Committee for the Prevention of Torture (CPT) made general recommendations on the ante- and post-natal care. the movement and cognitive skills of babies held in prison develop normally. In particular, they should have adequate play and exercise facilities within the prison. CPT, document CPT/Inf (2000) 13, para. 29.

⁶⁵ The Constitution of Malawi states that "All children, regardless of the circumstances of their birth, are entitled to equal treatment before the law, and the best interests and welfare of children shall be a primary consideration in all decisions affecting them", and that "Children are entitled to be protected from economic exploitation or any treatment, work or punishment that is, or is likely to . . . be harmful to their health or to their physical, mental or spiritual or social development". Constitution of Malawi, sections 23(1), (5)(c).



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c. Access to Education

53. The level of education for young children in prison with detained caregivers is little to non-existent given the conditions in Malawian prisons.⁶⁶ In our experience, 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 in prison.⁶⁷ The most recent Prison Inspectorate report has not detailed any information about children or babies detained with caregivers and data is scant.

iv. Suggested Questions on the Right to Family Life

- How is the State Party ensuring that people are detained in prisons close to their families and that families are kept informed of detainees' prison transfers and whereabouts?
- How is the State Party ensuring that family visits occur in sheltered spaces that offer privacy?
- What support mechanisms are available to families who experience financial hardship due to the detention of a family member?
- How is the State Party ensuring that families and innocent third parties are not retaliated or discriminated against when family members are convicted and sentenced to the death penalty?
- How does the State Party ensure that children in prison are not exposed to environments that are harmful to their health or to their physical, mental or spiritual or social development?
- How does the State Party ensure that women with children in prison receive special assistance, as well as adequate food and nutrition for both them and their children?

VIII. Right to Work

i. Lack of Pay for Work in Prisons

54. There is a lack of comprehensive data on people in prisons working. In some cases, people work on prison farms. In 2021, it was reported that two people in prison were assisting the medical staff at Lilongwe Prison.⁶⁸
55. In most known cases, people are not paid for their work or labour. Despite a constitutional right to fair wages,⁶⁹ there is no regulation or policy that guarantees fair wages for people in prison. Furthermore, there is no mechanism for people to be paid where no one in the Malawi Prison Service is tasked with ensuring that people are guaranteed and receive fair wages.
56. At Zomba Central Prison, people in prison may work in a cultural dance troupe, which is hired for performances in the community. Members of the troupe reported that while they used to get paid for these outside performances, they no longer receive payment and, instead, are given food.⁷⁰

ii. Suggested Questions on the Right to Work

- How many people in prison work or provide labour, and what is the nature of the work or labour provided?
- How does the State Party ensure that people who work in prison are subject to fair and safe labour practices and conditions?
- What mechanisms are in place to ensure that people in prison who work or provide labour are paid fair wages?

⁶⁶ See "Mw prisons housing under-5 children", *The Times Group*, 8 December 2021. Available at <https://times.mw/mw-prisons-housing-under-5-children/>; Memory Kutengule-Mana, "Babies behind bars: 12 children serve time with mothers in Malawi prisons", *Nyasa Times*, 17 January 2018. Available at <https://www.nyasatimes.com/babies-behind-bars-12-children-serve-time-mothers-malawi-prisons/>.

⁶⁷ Information on file with Reprieve.

⁶⁸ Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons*, p. 43.

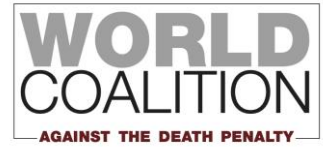
⁶⁹ Constitution of Malawi, section 31(3).

⁷⁰ Information on file with Reprieve.



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IX. Poverty and Death Penalty

i. Renewed Use of the Death Penalty

57. The Malawi Resentencing Project, 2014 - 2017, ensured that 169 people sentenced to the mandatory death penalty were resentenced with new consideration of mitigation. None of those who received new sentences through this project were sentenced to death, reducing the death row population from nearly 200 down to just thirteen. From 2016 – 2019, no new death sentences were handed down. Despite this progress, there was a renewal of the use of death sentences in the past few years.
58. In 2019 and 2020, 12 people were sentenced to death in Malawi for crimes involving attacks on people with albinism. These convictions were the first death sentences imposed following a three-year hiatus by the Malawian courts. Crimes against people with albinism have been a serious issue in Malawi for many years. Perpetrators of attacks on people with albinism should be brought to justice, but there is a well-founded concern amongst rights groups and the albinism community that the use of the death penalty is an ill-founded response, which does not protect or support the community and obstructs true justice for the victims. The government has thus far failed to address the root causes of these crimes, including the economic, social and cultural rights concerns that persons of albinism have raised.
59. In 2018, the Government of Malawi created a National Action Plan on Persons with Albinism⁷¹ to improve accountability for attacks perpetrated against persons with albinism. The National Action Plan sought to address primary concerns raised by persons with albinism, including civic education, support to victims, safety and security, healthcare, and access to education.⁷² However, various stakeholders have stated that not much has been achieved to strengthen the economic, social and cultural rights of persons with albinism. Instead, there is a real risk that those arrested in crimes involving persons with albinism are being assigned blame or deliberately silenced to shield the true perpetrators or scapegoats,⁷³ obstructing true justice for the victims.
60. Until recently, there were 25 people on Malawi's death row – 24 men and one woman.⁷⁴ All 25 cases resulting in a death sentence are the product of deeply flawed trials in which the accused were denied their right to a fair trial resulting in unsafe convictions. A combination of factors contributed to the deprivation of basic due process rights in these cases, including lack of resources, lack of capacity, lack of training and lack of clear standards/guidelines, all of which prevented defendants from meeting with legal counsel until their trials had already begun. All of these contribute to the discrimination that people from backgrounds of poverty are subjected to during capital criminal proceedings.

ii. Access to Counsel and Pre-Trial Detention

61. Although the Constitution provides the right to all detained persons to legal representation,⁷⁵ many people accused of crimes lack access to counsel at investigation and early pre-trial stages. People who are economically marginalized are often denied fair trial and procedural rights due to their lack of access to legal resources.
62. The vast population of prison detainees come from poverty stricken backgrounds. The root cause of a large amount of crimes in Malawi is poverty. Furthermore, there are large remand populations, and a small percentage of the population have access to a lawyer to advocate for bail on their behalf.
63. The issue of selective justice in Malawi is rife. Many rich and powerful people do not spend time in prison, while, on the other hand, many poor Malawians are given custodial sentences for petty offences such as theft, thereby

⁷¹ Malawi, Government of Malawi, *National Action Plan on Persons with Albinism in Malawi: 2018-2022*, June 2018.

⁷² Ibid.

⁷³ Africa Albinism Network, "Action on Albinism Malawi Database". Available at <https://actiononalbinism.org/page/c6cd5zzky9gtvx7vigtw0o1or>.

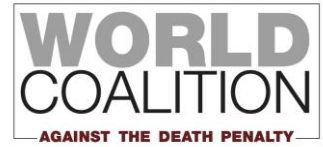
⁷⁴ In July 2022, 22 people received presidential commutations of their death sentences to life imprisonment. In December 2022, 3 people received presidential commutations of their death sentences to life imprisonment.

⁷⁵ Constitution of Malawi, section 42(1)(c).



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pulling them from their families and plunging the families further into poverty. Arrests by police for petty offences need to be minimised, while community service orders and other forms of non-custodial sentences have to be utilised more by the judiciary to help address these issues.⁷⁶

64. The lack of legal aid lawyers and the rates of poverty of accused persons means that 90% of people who are caught in the criminal justice system are unrepresented.⁷⁷ As a result, many pre-trial detainees are uninformed of their right to bail and remain detained in excess of custody time limits. About 75% of pre-trial detainees were unaware of their right to bail, due to the lack of access to legal assistance and the failure of police officers and court magistrates to inform them of this right.⁷⁸ Although the Constitution places temporal limits on pre-trial custody, no formal procedure exists to track this once a person is arrested.⁷⁹ The responsibility to monitor custody time periods is not assigned to any public official or office. As a result, many people without charges or convictions are held beyond the custody time limits because they are not informed of their rights.
65. In our experience, after an arrested person has attended their first court appearance, they spend years in custody without any attempts by the State to prosecute them. Some detainees have been on remand, awaiting trial, for the past five years. In a study by Reprieve of people sentenced to death prior to 2007, the average time spent in remand was 4.5 years, which is 18-times the statutory maximum period of 90 days.⁸⁰
66. The Government of Malawi reported that the Malawi Police Service maintains and updates detention registers of all people in detention or in police custody.⁸¹ Most police stations and prisons have names of people in custody recorded in a hard-copy file. However, there is no centralized register that captures all people in detention or in custody at any given time in the country. The lack of coordination between different police stations, prisons, and jurisdictions have also led to errors in the administration of justice. Misspellings and recording errors have also resulted in delayed lawful release, as well as accidental releases of the wrong person.

iii. Loss of Income

67. People from poverty stricken backgrounds are profoundly affected when they are held pre-trial and post-conviction due to the lack of income and employment. Families are often affected as innocent third parties who may fall deeper into poverty due to the loss of a breadwinner. Imprisonment disproportionately affects impoverished individuals and families and the detainment of primarily male breadwinners detrimentally impacts the economic situation of the family as a whole who may support several members and extended family members. The family then can incur additional costs such as that of hiring a lawyer, transport to prison, purchasing food and essential items for the detainee, as well as supporting the family without the detainee. Even short periods of detention can cause harm to families.⁸² In turn, this can lead to further crime, children dropping out from school to earn money and a continuation of the poverty and crime cycle for those members of society. In Reprieve's experience, many families of people on death row have stated that one of the biggest challenges after their family member's arrest was the sudden loss of much needed income.

⁷⁶ See Southern Africa Litigation Centre & CHREAA, *No Justice for the Poor: A Preliminary Study of the Law and Practice Relating to Arrests for Nuisance-Related Offences in Blantyre, Malawi* (June 2013), pp. 121–23. Available at <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/No-Justice-for-the-Poor-A-Preliminary-Study-of-the-Law-and-Practice-Relating-to-Arrests-for-Nuisance-Related-Offences-in-Blantyre-Malawi.pdf>.

⁷⁷ Charlotte Mackenzie, "Malawi Bail Project: accessing justice", *Counsel Magazine*, 1 October 2021. Available at <https://www.counselmagazine.co.uk/articles/malawi-bail-project-accessing-justice>.

⁷⁸ Ibid.

⁷⁹ Open Society Foundations & Open Society Initiative for Southern Africa, *Pre-Trial Detention Custody Time Limits: Ensuring Compliance in Malawi* (2013), p. 2.

⁸⁰ Reprieve, "Kafantayeni case chart" (on file with authors).

⁸¹ Initial report submitted by Malawi under article 19 of the Convention pursuant to the simplified reporting procedure, due in 1997, CAT/C/MWI/1, 6 March 2020, para. 10.

⁸² Southern Africa Litigation Centre & CHREAA, *No Justice for the Poor*, pp. 112.



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iv. Death Row Conditions

68. Although Malawi has maintained a facto moratorium on the death sentence for 30 years, the risk remains for people to be sentenced to the death penalty in Malawi. The deplorable conditions on death row not only affect the people who remain there despite recent commutations, but also pose a risk to others who may be subject to the same conditions as long as the death penalty is retained as a potential criminal sentence. As detailed above, maintaining a condemned section for people who are sentenced to death has caused violations to the rights to food, water, housing, healthcare, education, cultural life and family life. To prevent further human rights violations, Malawi should abolish the death penalty.

v. Suggested Questions on Poverty and the Death Penalty

- How does the State Party plan to address the economic, social and cultural rights concerns of persons with albinism and other crime victims so that it does not resort to responses which violate the rights of the accused in these cases, including the use of the death penalty and torture?
- What steps has the State Party taken to build support abolition of the death penalty among lawmakers and the general public?
- How does the State Party ensure that people who are facing the death penalty receive quality legal representation and that they are given an opportunity to consult and collaborate with defense counsel during early pre-trial stages?
- What measures has the State Party taken to ensure that people are not kept beyond legal custody time limits?
- How does the State Party ensure that people receive legal aid and access to counsel upon arrest and during investigations?
- How is the State Party responding to poverty crimes and addressing the issue of selective justice, as well as discrimination against people from poverty stricken backgrounds in the criminal system?
- How effectively is the State Party promoting the use of alternative approaches to arrest and detention for penal code offenses that discriminate against the experience of poverty?