

*Submission to the Working Group on the Universal Periodic Review on the 3rd review of the Malawi
during the 36th session of the Human Rights Council*

Malawi

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REPORTING ORGANISATIONS

Centre for Human Rights and Rehabilitation. The Centre for Human Rights and Rehabilitation (CHRR) is one of the leading human rights non-governmental organizations in Malawi. It was founded in February 1995 as a non-profit, apolitical, voluntary organization by former student exiles who returned home to the promises of a new democracy in 1994. CHRR's mission is to contribute towards the protection, promotion and consolidation of good governance by empowering rural and urban communities in Malawi to be aware of and exercise their rights through research, advocacy and networking in order to realize human development. CHRR seeks to contribute towards the realization of this vision through programmes carried out under five core activities, namely: Public Awareness and Community Empowerment, Civic and Human Rights Education, Training and Research; Advocacy, Capacity Building, and Networking.

Community of Sant'Egidio. The Community of Sant'Egidio was founded in 1968 and has since become a network of more than 70 countries tied together by values of peace and providing assistance to the poor. The Community has consistently advocated against the death penalty, and in 2002, launched the first International Day Cities for Life - Cities against the Death Penalty on 30 November. Approximately 80 cities were involved for the first edition in 2002. Now more than 2150 cities have rallied around the initiative - including 80 capitals in five continents, taking part in the event by raising public awareness, promoting educational initiatives and organising events held in symbolic monuments and squares.

PASI. The Paralegal Advisory Service Institute (PASI) oversees paralegals who are given access to prisons, courts and police stations to assist persons in detention by advising them on criminal procedure. The Paralegal Advisory Service (PAS) was established in May 2000 by Penal Reform International (PRI) in partnership with four Malawian NGOs. In August 2007 PAS became independent of PRI as the Paralegal Advisory Services Institute (PASI). PASI was set up to make justice accessible to all people in Malawi through improving efficiency and effectiveness in the justice system and making it responsive to the needs of all users, particularly the poor and vulnerable in pre-trial detention. PASI achieves its impact through activities including Legal literacy; legal advice and assistance, co-ordination of the criminal justice system; mediation; and policy development and problem solving.

Prison Fellowship Malawi. A local faith based trans-denominational organization, established in Malawi in 2001 and registered in 2004 under the Trustees Incorporation Act. Prison Fellowship Malawi is an affiliate of Prison Fellowship International (PFI), a world-wide movement of national ministries working together to improve the lives of prisoners, their families, victims of crime and individuals who are at risk of sliding into crime founded by Charles Colson and has its headquarters in Washington D.C., USA. Prison Fellowship Malawi seeks to promote restoration, empowerment, quality livelihoods and social re-integration of all prisoners, ex-prisoners, families of prisoners, and victims of crime. The organisation programs are

premised on Restorative Justice principles of accountability, reconciliation, restoration and reparation.

Reprieve. 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 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 Saudi Arabia. Reprieve's vision is a world free of execution, torture and detention without due process.

INTRODUCTION

Malawi currently has 19 people on death row, four of whom have been sentenced to death since May 2019, the longest serving of whom has been on death row for almost 15 years. Malawi has not executed anyone since 1992.

In 2007, in the case of Francis Kafantayeni and others v Attorney General, the mandatory death penalty was found to be unconstitutional.¹ Following that decision, the Penal Code was amended to reflect the change in law. In 2010, in McLemonce Yasini v. The Republic, the Malawi Supreme Court of Appeal made clear that those prisoners were entitled to sentence re-hearings in the High Courts where they could present mitigating evidence in support of a reduction in sentence.² At that time, around 190 prisoners were eligible for a sentence re-hearing.

The process of conducting these sentence re-hearings was delayed for a number of years. During this time a number of prisoners eligible for a sentence re-hearing died of ill health or age.

Sentence re-hearings began in February 2015. At the time of submission, 156 former death row prisoners have been re-sentenced to terms of years or, in just a single case, life in prison. Despite the fact that the death penalty is still an available sentence in Malawi, no one was re-sentenced to death. To date, 142 prisoners have completed their determinate sentences and have been released and returned home to their communities.

Among those who benefited from the re-sentencing project were: Alice Nungu, a victim of domestic abuse who had been sentenced to death despite acting in defence of her self and her elderly mother against an attack from her intoxicated husband. She spent 12 years on death row.³ And Fusani Payenda, who was sentenced to death for murder, despite not being present at the time of the crime.⁴

In 2017, a survey was conducted with the community leaders in the places where former death row prisoners had returned, which found that over 94% of community leaders rejected the death penalty. Community leaders surveyed said: “the purpose of prison is reform”, and, “there is no reform in death.”⁵

Unfortunately, Malawi continues to implement the death penalty. In 2019, after over three years without a sentence of death, Malawi’s courts handed down four death sentences in two separate cases. The judge in one of those cases explicitly stated that she had implemented the sentence on the three defendants in order to deter others from committing similar crimes – in this case, crimes that resulted in the death of a person with albinism. There is no evidence that the death penalty has a deterrent effect, and thus the sentence had no penological basis.

We are concerned that the four death sentences from 2019 represent a growing trend in Malawi to sentence people to death in a vain effort to deter crime instead of treating the root causes of appalling violence against people with albinism and committing public resources to education and prevention to protect vulnerable members of Malawi’s society.

This submission was compiled by reviewing the 19 cases for which prisoners are serving sentences on death row in Malawi. It was created in consultation with Malawian lawyers, paralegals, and human rights experts, and contains information gathered from publicly available court records and from interviews with prisoners and their counsel. It concludes that Malawi has acted in breach of its international human rights obligations by:

- ❖ Sentencing people to death without providing an opportunity to present mitigating evidence;
- ❖ Failing in its duty to protect the lives of vulnerable citizens;⁶
- ❖ Sentencing children to death;
- ❖ Systematically using torture and ill-treatment to extract confessions, and then using these confessions in court in contravention of Malawi's treaty obligations;
- ❖ Housing prisoners on death row in appalling conditions without access to rehabilitation, mental health treatment, and other basic services required under the Mandela rules;
- ❖ Denying convicted persons the right to appeal, in part by denying them access to counsel;
- ❖ Denying convicted persons the right to seek pardon or commutation of their sentence.

The use of the death penalty as a means to respond to the public outcry against the attacks on people with albinism is as cruel as it is misguided. Moreover, the continued lack of funding for Legal Aid means that public lawyers in Malawi continue to be afflicted by lack of capacity to take on even the most pressing cases adequately or effectively.

Malawi must commit as follows: to continuing to its moratorium on all executions; to providing adequate representation for those tried for death-eligible offences; to guaranteeing that no detainee or prisoner will be tortured in police custody; and that no confession extracted by torture will be allowed in the courts; and to pursuing abolition of the death penalty in order to prevent future miscarriages of justice.

THE RIGHT TO LIFE

1. Article 6 of the ICCPR guarantees that every human being has the inherent right to life, and that no one shall be arbitrarily deprived of his life.
2. Malawi has made great strides in upholding this key tenant, in particular by eliminating the mandatory death penalty. General Comment 36 (2018) on article 6 of the International Covenant on Civil and Political Rights (ICCPR), dictates that discretion is critical in all cases involving the application of the death penalty, without which such sentences are arbitrary. In particular, the sentencing court must consider mitigating evidence including the personal circumstances of the offender and the particular circumstances of the offence.
3. In 2007, Malawi overturned the mandatory death sentence, allowing for the death sentence to be reserved for the most serious crimes. It facilitated, through the award-winning resentencing project, new sentences for 156 individuals who had been sentenced under the mandatory law, allowing access to justice by providing sentences that were appropriate for their offence through the presentation of mitigation. Furthermore, emerging from this project Malawian courts established a comprehensive and advanced body of jurisprudence relating to capital sentencing.
4. As noted above, Malawi's traditional leaders have also made a significant contribution to Malawi's move to limiting the application of the death penalty. In 2017, traditional leaders presiding over districts where prisoners were released participated in a survey about the impact of having these former prisoners back in their communities. By attesting to the positive effect of the release of the former prisoners on the entire community, and by their warm welcome and reintegration of released persons, the traditional leaders have promoted the right to life in Malawi.
5. Malawi is also to be congratulated for continuing to uphold its moratorium on executions. It has now been 27 years since someone was executed in Malawi, a period that shows Malawi's commitment to limiting the application of the death penalty.

Protecting people with albinism

6. Unfortunately, of concern are the recent death sentences and calls to reinstitute executions. In the past five years, there have been a significant number of attacks on people with albinism, resulting in gruesome and highly publicised deaths. This disturbing trend has been a site for much public debate. However, rather than addressing the issue at hand – the need for protection of people with albinism and the need for education of the public who commit these crimes based on misguided beliefs – the government has abdicated responsibility for prevention in favour of hiding behind the guise of appearing tough on crime. Though it is clear that the issue of crimes committed against people with albinism requires attention and action, calls to impose death sentences on those who commit crimes against people with

albinism fundamentally ignore the fact that there is no evidence that the death sentence is a deterrent. The imposition of the death penalty will not protect the right to life of individuals with albinism who are being persecuted in Malawi, or any other potential victims. The government has failed by declining to address the calls for the death sentence with more appropriate mechanisms for protecting people with albinism.

Making pardons and commutations available

7. Furthermore, the provisions of the Article 6 right to life demand that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.
8. There are currently 19 people on death row in Malawi, none of whom have had an opportunity to apply for pardon. The pardon process is not transparent and it is unknown when the last time a death-sentenced prisoner was pardoned. Moreover, while granting commutations used to be a regular feature of the work of the Malawian Executive, this practice ceased in 2005 and has not resumed. Effectively, prisoners on death row have no access to pardon or to commutation of their sentence and are thus stuck indefinitely on death row.

Protecting children from the death penalty

9. We know that children have been sentenced to death in Malawi. For example, Gray Zimba was a 17-year-old schoolboy when he was arrested in connection with a death in his village. Gray was tried as an adult and held on remand in an adult facility. He was sentenced to death without consideration of his status as a juvenile. As he says, “my childhood came to a sudden end...and just like that, my life was over.” Fortunately, Gray was re-sentenced, and when the judge realized that he has been a child when he was sentenced, he was immediately released. However, no change in sentence can ever make up for the two decades that he spent wrong sentenced to death.

TORTURE AND THE DEATH PENALTY

10. Article 7 of the ICCPR demands that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.
11. The death penalty, as practiced in Malawi, is inherently torturous. As has been stated in Malawi’s courts, prolonged confinement under sentence of death amounts to cruel and degrading punishment.⁷ In the case of one man who had been living on death row for ten years, the court said, “One should not stay a long time under the weight of death sentence before it is carried out since one is always haunted by it. One becomes a living corpse. This is a ghastly experience.”⁸ Nevertheless, 19 people currently live on death row, in some cases, they have been confined there for over 14 years.

Prison conditions

12. This torture of living with a sentence of death is exacerbated by the conditions under which prisoners condemned to die are housed in Malawi.
13. The chronic overcrowding in Malawi's prisons violates basic human dignity and falls below international minimum standards.⁹ The extent of these dire conditions cannot be overestimated. Indeed, Zomba Central Prison was condemned as unfit for human habitation by the Prisons Inspectorate in 1997, but remains in use without modification or improvement, currently housing approximately 2,200 inmates, at least 100% more than it is intended to hold. It is also the only prison in Malawi with a death row, and thus all 19 prisoners on death row are incarcerated there, in constant sight of the gallows.
14. The courts have declared that the conditions are "appalling" and "quite below the recognised international standard" and that, indeed, "such imprisonment is a punishment on its own".¹⁰ The universal acknowledgement of the appalling conditions in Malawi is laudable, but from this acknowledgment, the government has a duty to improve conditions, which it has not done. Prisoners who are housed on Malawi's death row are being daily subjected to torture and this practice must end.

Hanging

15. International law requires that, where a death sentence has been imposed, it must be carried out in such a way as to cause the least possible physical and mental suffering".¹¹
16. Malawi's method of execution is hanging. This method is in and of itself a cruel, inhuman and degrading punishment. The African Commission found that, far from minimising a prisoner's "physical and mental suffering", the use of hanging as an execution method can only intensify a prisoner's suffering. Indeed, the Commission, after outlining the gruesome nature of the hanging process as practiced, concluded that, "hanging causes excessive suffering and is not strictly necessary". Therefore, it constitutes a "cruel, inhuman and degrading punishment".

WRONGFUL ADMISSION OF TORTURE CONFESSIONS

17. Under international law, the death penalty cannot be applied in cases in which confessions were elicited via torture, nor can torture confessions be admitted as evidence.¹²
18. Recent developments suggest that Malawi has failed to fulfill these obligations or to guarantee the rights of detained individuals.

19. Malawi retains the death penalty in cases involving torture confessions. In an ongoing 2019 case in which the defendants are facing the death penalty, an independent report concluded that the defendants gave confessions after being subjected to torture. Further, a co-defendant died as a result of being tortured, as confirmed by independent autopsy.
20. Malawi's retention of the death penalty in this and other similar cases is in contravention of the international prohibition on the imposition of the death penalty after a torture-tainted process or a grave constitutional violation.
21. As articulated in General comment 36 (supra) on the right to life:

“[C]riminal convictions resulting in the death penalty, which are based on information procured by torture or cruel, inhuman or degrading treatment of interrogated persons, would violate articles 7 and 14, paragraph 3(g) of the Covenant, as well as article 6.”
22. Article 14, paragraph 3(g) enshrines the accused's right “[n]ot to be compelled to testify against himself or to confess guilt.”
23. In spite of the international prohibition on the imposition of the death penalty after a torture-tainted process or a grave constitutional violation, Malawi retains the death penalty in cases where there is evidence of torture.
24. The continued imposition of the death penalty in torture-tainted cases encourages the continued use of torture. Such an outcome violates Article 7 of the Covenant and Article 14, paragraph 3(g).
25. Malawi has likewise failed to meet its obligations under Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 15 establishes the inadmissibility of evidence elicited through torture by articulating an exclusionary rule. CAT's exclusionary rule is part of customary international law and applies to all States, including those who are not party to the Convention against Torture. Article 15 calls on each State Party to:

“[E]nsure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceeding, except against persons accused of torture as evidence that the statement was made.”
26. It is of paramount importance that States fulfil their obligations to exclude evidence obtained by torture because doing so counteracts a common function of torture, namely, to elicit a 'confession'. It also protects the accused party's rights, relating to fairness and due process, and preserves the integrity of the judicial process.¹³

27. However, Malawi's current test for the admissibility of statements in judicial proceedings does not include an investigation into whether or not the confession was obtained through the use of torture. Section 176 of the Malawi Penal Code sets a low threshold for the admissibility of confessions obtained through torture. Under the Code, confessions, if otherwise relevant and admissible, can be admitted as evidence notwithstanding any objections that the statement was not made freely and voluntarily:

“Any proof of threats, ill-treatment, intimidation, inducement and the like, go not to admissibility but to weight and if any allegation of any of these factors is established, it is difficult to conceive of any reasonable court accepting a confession as true in the absence of pointers of such cogency . . . amount to corroboration as the term is understood in law.”¹⁴

28. Practices similar to those allowed by the Malawi Penal Code have previously been held to violate article 15.¹⁵ Some of the reported methods of torture and ill-treatment used by officers in these cases include, but are not limited to:

- ❖ Beatings while blindfolded or restrained, with blows to sensitive areas the body;
- ❖ Beatings with electric wires, metal rods, and steel-capped boots;
- ❖ Sleep deprivation;
- ❖ Threats of further beatings if the defendant does not confess;
- ❖ Threats of violence against loved ones and relatives;
- ❖ The use of derogatory language.¹⁶

INVESTIGATIONS OF TORTURE

29. Malawi has not fulfilled its obligation to investigate instances of alleged torture, in breach of its international commitments and recommendations.

30. Articles 12, 13, and 14 of CAT establish an individual's right to prompt and impartial investigation; right to complaint to, and to have his case promptly and impartially examined by, competent authorities; redress; and fair and adequate compensation, including the means for as full rehabilitation as possible. States parties shall also take steps:

“[T]o ensure that the complainant and witnesses are protected against ill-treatment or intimidation as a consequence of his complaint or any evidence given.”¹⁷

31. The UN Committee against Torture has further made clear that State parties need to have legislation in place to implement their obligations to afford victims an effective remedy and the right to obtain adequate relief in instances of torture. States need to ensure that victims are able to pursue redress through transparent and accessible procedures that enable, and encourage, full victim participation.¹⁸
32. Malawi thus has a duty to investigate allegations of torture, especially in cases “in which a serious risk of deprivation of life was caused by the use of potentially lethal force.”¹⁹ Investigations into these violations must be “independent, impartial, prompt, thorough, effective, credible and transparent.”²⁰
33. Moreover, any loss of life occurring in custody raises a presumption of arbitrary deprivation of life, which can only be rebutted by a proper investigation and the fulfillment of the State’s obligations under Article 6.²¹
34. Despite its international obligations, Malawi does not have a law articulating a torture investigation process. Rather, the Professional Standards Unit (PSU), a branch of the police force which can be neither “independent” nor “impartial”, hears complaints of torture. The Malawian government previously committed to establishing an independent Police Complaints Commission, but this Commission has yet to be established. Thus, prisoners’ only avenue for having their complaints heard is to gather information on their case and submit this information to the PSU, a branch of the very body they are filing the complaint against.
35. Malawi has not only failed to fulfill its international obligations, it has encouraged their opposite, namely, repeated incidences of torture confessions. Ill-treatment and corruption at police stations are commonplace. A report from the UN Special Rapporteur on Prisons and Conditions of Detention in Africa documented reports of prisoners being beaten with bottles, sticks or burglar bars during interrogation and forced to sign confessions.²² One prisoner lost an eye after being beaten with boots.²³ At a Lilongwe police station, the UN delegation found that 17 out of the 43 men detained complained about forced confessions and beatings during interrogation.²⁴
36. Protecting against, preventing and combatting torture is a key part of ending torture, strengthening institutions, and ensuring human rights. Malawi has failed in this regard.

VIOLATION OF FAIR TRIAL RIGHTS

37. The UN Safeguards require that “Capital punishment may only be carried out

pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights.” Accordingly, any deprivation of life must be “reasonable, necessary, and proportional to the aims sought, and must be established under the law with effective institutional safeguards to protect against potential arbitrary abuses”.²⁵ When a death sentence comes about through a violation of due process, is automatically a violation of Article 6.²⁶

38. The death sentences reported in this submission were handed down in trials that failed to accord with international minimum standards for fairness and due process, which Malawi under an obligation to uphold. As a country that retains the death penalty, Malawi is bound to uphold the principle that capital punishment can only be handed out where there has been “stringent adherence” to fair trial and due process rights.
39. In all 19 cases of people who are now on death row in Malawi, there has been a consistent failure to uphold the basic due process and fair trial rights of the defendants, resulting in unsafe convictions.
40. A combination of factors contribute to the deprivation of basic due process rights, including political pressure, lack of resources, lack of capacity, lack of training, lack of clear standards/guidelines, all of which prevent defendants from meeting with legal counsel until their trials had already begun, officials did not afford lawyers the necessary time or access to evidence submitted by the prosecution in order to prepare adequate defences, and defendants were not permitted to participate fully in their own defences. All of these represent violations of the fair trial rights enshrined in ICCPR Article 14, rendering any resulting death sentences unlawful.
41. Malawi’s capital trial process violates Article 14 in the following ways:
 - a. Excessive pre-trial detention, contributing to undue delay;
 - b. Denial of access to legal counsel;
 - c. Denial of right to understand the nature of charges against defendant in cases where defendant suffers from severe mental illness;
 - d. Denial of the right to prepare an adequate defence;
 - e. Denial of the right to present mitigating evidence at sentencing;
 - f. Denial of the presumption of innocence;
 - g. Denial of adequate notice by the Prosecution that they would seek the death sentence; and

- h. Denial of the right to appeal, contributing to denial of right to present newly discovered facts showing conclusively that there has been a miscarriage of justice, as well as contributing to undue delay.²⁷

DISCRIMINATION AGAINST THE POOR

42. Article 26 of the ICCPR provides for equal protection of the law without discrimination on any factor, including property/ status. Furthermore, any deprivation of life – including a death sentence – that results from discrimination is automatically arbitrary.²⁸ When data indicate that a certain class of individuals, such as those of a specific economic group, are disproportionately sentenced to death, concerns are raised under Article 6 as well as Article 2 of the ICCPR prohibiting discrimination.²⁹
43. The 19 people on Malawi's death row were all declared indigent and were thus represented by Legal Aid. None of these 19 had access to funds to assist in their defense. In 12 cases, their lack of funds has resulted in a denial of right to appeal, because the prisoners cannot hire an appellate lawyer and Legal Aid is too overstretched to guarantee appellate services (despite the legal requirement to provide appellate representation for indigent clients).
44. Furthermore, Legal Aid are unable to provide a robust defense on behalf of poor clients, resulting in dramatic inequality of arms between the state and defense. A robust defense requires time and money to facilitate thorough research, investigation, client meetings and introduction of experts. Consistently denied proper resources from the state, Legal Aid cannot undertake these tasks, and their poor clients cannot provide funds either.
45. Because they are poor, these defendants and prisoners have been denied equal protection of the law.

CONCLUSION AND RECOMMENDATIONS

The imposition of the death penalty in Malawi is a breach of the right to life because the criminal justice system does not comply with international human rights obligations, and is a breach of the obligation to protect the right to life in relation to people with albinism because it is not a deterrent and is a distraction and a waste of resources which should be directed towards effective interventions. It further violates the right to a fair trial, including through the violation of the key prohibitions against torture provided across international instruments.

Therefore, we call for the Malawian government to do the following:

1. Continue to maintain a moratorium on executions as it has done for the past 27 years;
2. Institute a de jure moratorium on executions with a view to abolition of the death penalty;
3. Abolish the death penalty at law, in order to prevent further injustices caused in part by a consistently overstretched legal system;
4. Sign on to the Optional Protocol to the Convention Against Torture, and investigate all allegations of torture and unconditionally release or pardon any defendants or prisoners who were tortured;
5. Make confessions derived through torture inadmissible at law;
6. 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;
7. Reinstitute regular commutations of death sentences and make transparent the pardon and commutation processes;
8. Stop the political use of the death penalty against those who have been convicted of crimes against people with albinism under the guise of deterrence, as the death penalty has not been shown to have a deterrent effect, and instead focus all efforts on protecting people with albinism from harm by addressing the root causes of these attacks and strengthening nationwide campaigns to raise awareness, conduct robust investigations and trials in all cases, increase protection for victims, and finance and implement all necessary measures,” to redouble efforts to protect these vulnerable citizens.

¹ Kafantayeni and other v Attorney General, Constitutional Case No. 12 of 2005.

² Mclernonce Yasini v The Republic, MSCA Criminal Appeal No. 25 of 2005 (unreported).

³ <https://www.deathpenaltyworldwide.org/alice-project.cfm>.

⁴ Republic v Funsani Payenda, Sentence Rehearing Cause No. 18 of 2015 (unreported).

⁵ Malawian Traditional Leaders' Perspectives on Capital Punishment, <https://reprieve.org.uk/wp-content/uploads/2018/04/Malawian-Traditional-Leaders-Perspectives-on-Capital-Punishment.pdf>.

⁶ From General Comment 36 para 26: States have a duty to put in place “measures to fight the stigmatization associated with disabilities... detailed plans to promote education to non-violence”.

⁷ Republic v Yale Maonga, Sentence Rehearing Cause No. 29 of 2015 (unreported).

⁸ Republic v Edson Khwalala, Sentence Rehearing Cause No. 70 of 2015 (unreported).

⁹ In Gable Masangano v Republic (Constitutional Case No. 15 of 2007),

¹⁰ Republic v Chiliko Senti, Sentence Rehearing Cause No. 25 of 2015 (unreported).

¹¹ Interights & Ditshwanelo v The Republic of Botswana at paragraph 84.

¹² Declaration on the Protection of All Persons from Being Subjected to torture and Other Cruel Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX)), art. 12 (Dec. 9, 1975).

¹³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, A/HRC/25/60, 4 (10 April 2014).

¹⁴ *Chiphaka v Republic* (1971-72), 6 A L R (Mal) 215.

¹⁵ See, e.g., *X v Burundi* (Communication No. 553/2013) (finding an obligation of State parties to ascertain whether or not statements admitted into evidence in any proceedings for which it has jurisdiction have been made as the result of torture and, if so, to not admit them); and *Niyonzima v Burundi* (Communication No. 514/2012) (holding that “the State party was under an obligation to verify the substance of the author’s claims that his confessions had been obtained under torture, and that by not carrying out such verification and by using those confessions in the judicial proceedings against the complainant, in which he was eventually acquitted, the State party violated its obligations under article 15 of the Convention”).

¹⁶ Data collected in interviews throughout Kafantayeni project, on file with Reprieve.

¹⁷ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 14, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at:

<https://www.refworld.org/docid/3ae6b3a94.html>.

¹⁸ UN Committee Against Torture (CAT), *General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment: implementation of article 14 by States parties*, 13 Dec. 2012, <https://www.refworld.org/docid/5437cc274.html>.

¹⁹ 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, CCPR/C/GC/36, para 27 (Oct. 30 2018).

²⁰ *Ibid.* at para 28.

²¹ *Ibid.* at para 29.

²² Dr. Vera Mlangazuwa Chirwa, Special Rapporteur on Prisons and Conditions of Detention in Africa, Prisons in Malawi: Report on a Visit 17 to 28 June 2001, at 39, http://www.achpr.org/files/sessions/30th/mission-reports/malawi/achpr30_misrep_specmec_priso_malawi_2001_eng.pdf.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ 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, CCPR/C/GC/36, para 10-12 (Oct. 30 2018).

²⁶ *Ibid.* at paras 11-12.

²⁷ Data collected in interviews throughout Kafantayeni project, and through ongoing representation of Malawian prisoners at appeal, on file with Reprieve.

²⁸ *Ibid.* at para 61.

²⁹ *Ibid.* at para 44.