**Submission to the call for inputs on violence against older persons – 2023 HRC report**

28 February 2023

1. **Introduction**
   1. Reprieve submits this input on violence, abuse and neglect against older persons to the Independent Expert on the enjoyment of all human rights by older persons. The content of this submission is based on information obtained by Reprieve in the course of their work in Kenya, Malawi and Tanzania related to older persons in and released from prison.
2. **Manifestations of violence, abuse and neglect**
   1. **Excessive sentences**
      1. In Kenya and Malawi, criminal penalties such as life imprisonment and the death sentence are excessive and torturous in light of the average life expectancies in those countries.
      2. During a resentencing proceeding, the High Court of Malawi released a 64-year-old man because he was well over the life expectancy of 55 years (2014 figures). The judge noted that a custodial sentence was inappropriate because, having lived past the life expectancy for almost ten years, the man had already served a sentence of life imprisonment.[[1]](#footnote-2)
      3. In Kenya, the average life expectancy is 60 years for males and 65 years for females.[[2]](#footnote-3) Researchers found that 65 people on death row out of the 671 people (9.69%) surveyed for the study[[3]](#footnote-4) (including some who have had their sentences commuted to life) have reached or surpassed the average Kenyan life expectancy.
      4. In Malawi, the average life expectancy is 60 years for males.[[4]](#footnote-5) Six people over the life expectancy remain in prison who have been sentenced to the death penalty.
      5. We do not have comparable figures for people on death row in Tanzania, due to the lack of transparency.[[5]](#footnote-6)
   2. **Covid-19 prison releases**
      1. During the Covid-19 pandemic, Reprieve and other civil society organisations appealed to the government of Malawi to release older people from prisons. At the time, prisons were operating at over 260% capacity[[6]](#footnote-7) and struggling to contain the spread of the virus. Despite these calls, Malawi did not release anyone on the basis of age.
   3. **Healthcare**
      1. There are no legal safeguards for older persons in prisons in Malawi.[[7]](#footnote-8) Despite worsening mobility and medical issues, older persons are not provided regular assistance or care. At Zomba Central Prison, older persons are housed together in a block of congested cells. At night, they use blankets to cover the concrete floor and sleep on their sides so that everyone can lie down. Sometimes, people have to stand and sleep in shifts due to overcrowding. One of our clients, due to joint pain and decreased mobility, must wait for someone in the morning to help him off the floor.
      2. Medical care must be requested and approved by a prison official. In our experience, hospital visits are rare and only for critical conditions. Medical care is ad hoc and arbitrary—there are no official procedures or manuals to guide prison officials.
      3. In Tanzania, where many of our older clients suffer from HIV, people in prisons have received out-of-date medications or do not have access to medications that are accessible to the general population.
      4. In Malawi and Tanzania, visual and hearing impairments go undiagnosed and untreated, due to a lack of regular healthcare. Undiagnosed conditions put people at risk of abuse, since the symptoms of these conditions can be mistaken for unruly and uncooperative behaviour.
   4. **Nutrition**
      1. The lack of adequate food nutrition and water has been a persistent problem plaguing Malawian prisons for years. Despite a ruling stating that food should be provided more than once per day and include more diversity,[[8]](#footnote-9) prisons continue to serve only one meal per day of nsima and beans or peas.
      2. The same diet of cereals and beans have been difficult for older persons in prison to digest, resulting in stomach ulcers that have gone untreated for years. In addition, people in Malawian and Tanzanian prisons suffer from frequent food shortages. When food is insufficient, people with medical conditions are unable to take medications, which leads to an increased risk of drug-resistant viruses in prisons.[[9]](#footnote-10)
3. **Intersectionality**
   1. **Older women**
      1. In Tanzania, older women in prisons are afforded minimal accommodations.[[10]](#footnote-11) One of our clients who is over the age of 60 has lived in overcrowded cells and does not receive adequate healthcare, despite suffering from HIV and Persistent Depressive Disorder. Moreover, she experiences frequent food shortages, which prevents her from regularly taking medication to manage her HIV. Despite compelling grounds for her release, her application for pardon or commutation has been rejected four times.
   2. **Mental health**
      1. In Malawi, the majority of our older clients who were sentenced to death manifest clear signs of mental health conditions. For the most part, these mental health challenges are traceable to post-conviction trauma and some people suffer from “death row phenomenon”—psychological torture associated with the anticipation of one’s execution. People are not provided mental health support in prison or after being released.
      2. The vast majority of people in prisons come from poverty-stricken backgrounds. The cost and availability of travel precludes family visits, especially for people in higher-security prisons. Some of our older clients have expressed severe anxiety that they will never be able to see their families and children again.
4. **Data**
   1. **Lack of transparency**
      1. In Tanzania, counsel who have enquired about the people on death row and their ages have been denied information. In Kenya, the only data available on the ages of people on death row are those collected by researchers.[[11]](#footnote-12) In Malawi, there is no centralized register that captures all people in custody at any given time in the country.
      2. The lack of information on older persons in prisons in these countries makes it challenging for civil society organisations to ensure that older persons enjoy all human rights.
5. **Access to justice**
   1. **Kenya**
      1. In Kenya, despite the right of reasonable accommodation provided to older persons in prisons,[[12]](#footnote-13) there is no separate complaint procedure for older persons in prison. The complaints procedure is at risk of abuse and neglect, since the officer in charge of the prison must investigate their own prison.
      2. From 2020 to 2021, Reprieve conducted extensive data collection across most Kenyan prisons of those on death row who: (i) have been resentenced to a sentence other than death; (ii) had their death sentence commuted to life; or (iii) are still on death row and pending re-sentencing. While there was one prison officer at Shimo La Tewa who specifically flagged older persons eligible for resentencing for Reprieve’s priority attention, there does not appear to be a formal process by which older prisoners on death row are specifically flagged for expedited resentencing.
6. **Access to information**
   1. **Kenya**
      1. There is no formal policy to ensure that older prisoners are made aware of and have access to essential services when they are released from prison. Assistance is provided at the discretion of prison officers and access to legal services depends solely on the individual’s ability to pay for those services. Older persons who are released following incarceration must rely on their community or family to take care of and support them, who are not always willing to do so—e.g., due to land disputes, burden of care, etc. This can lead to instances of abuse and mistreatment.
      2. Incarcerated older persons do not get any formal help from the government in terms of access to essential services. Any assistance would typically come from charity organisations.
   2. **Malawi**
      1. Information about access to essential services is not readily available to older persons who are released from prison. People are not provided any re-entry support, apart from minimal accommodations for travel to their home villages. Additionally, people who need continuity of care for HIV and TB treatment are not provided resources to continue their treatment.[[13]](#footnote-14)
7. **Recommendations**
   1. Older persons in prisons should be considered for early release from prison and their cases flagged as a matter of urgency due to their vulnerability in prisons and risk of physical and mental abuse.
   2. States should provide data on the number of older prisons in prison on a yearly basis.
   3. States should disclose how many people are people are pardoned each year on account of their age.
   4. Special accommodations and alternative facilities should be provided for older persons in prisons. The responsibility to detect and determine the need for special accommodations should be placed on government officials, who should be required to respond to complaints made by older persons in prisons within a reasonable time.
   5. Older persons in prisons should be provided regular medical examinations and treatment. Prison systems should enact official policies that limit arbitrary decisions by prison officials.
   6. Upon release from prison, older persons should be provided with resources and information during their re-entry into society. Older persons should be provided with essential services and social support to prevent violence, abuse and neglect by the government and people in the community.

1. *Republic v Baison Kaula*, High Court of Malawi, Homicide Case No. 5 of 2015 (20 February 2015) (unreported). [↑](#footnote-ref-2)
2. Data from the World Bank (2020). [↑](#footnote-ref-3)
3. Carolyn Hoyle & Lucrezia Rizelli, The Death Penalty Project, “Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row”, 2022, p.23. Available at <https://deathpenaltyproject.org/wp-content/uploads/2022/12/Living-with-a-Death-Sentence-in-Kenya-Prisoners-Experiences-of-Crime-Punishment-and-Death-Row.pdf>. [↑](#footnote-ref-4)
4. Data from the World Bank (2020). [↑](#footnote-ref-5)
5. The Legal and Human Rights Centre documented that over 480 persons were on death row in 2019, but the exact figure and ages are unconfirmed as Tanzanian authorities do not publish information on the prison population. *See* Legal Human Rights Centre, “Tanzania Human Rights Report 2019”, p. 20. Available at <https://humanrights.or.tz/en/post/resources-center/tanzania-human-rights-report-2019>. [↑](#footnote-ref-6)
6. Prison Inspectorate of Malawi, “The Report of the Inspection of Prions and Police Cells Conducted by the Malawi Inspectorate of Prisons in March 2018”, September 2019. [↑](#footnote-ref-7)
7. Older persons in prison are equally subject to hard labour and corporal punishment as other people in prison. Women of all ages cannot be subject to corporal punishment and cannot be employed outside a prison without a medical officer’s recommendation. Prisons Act, secs. 75, 97 (Malawi). [↑](#footnote-ref-8)
8. *Gable Masangano v Attorney General and Others*, Constitutional Case No. 15 of 2007, [2009] MWSC 31 (08 November 2009). [↑](#footnote-ref-9)
9. Jameson Chauluka, “Food crisis in prisons”, The Times Group Malawi, 16 October 2022. Available at: <https://times.mw/food-crisis-in-prisons/>. [↑](#footnote-ref-10)
10. The Prisons Act does not give older persons the right to reasonable accommodation but provides that no person over 45 years shall be subject to corporal punishment. Prisons Act, sec. 39(5) (Tanzania). [↑](#footnote-ref-11)
11. *See* Carolyn Hoyle & Lucrezia Rizelli, The Death Penalty Project, “Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row”, 2022, p.23. [↑](#footnote-ref-12)
12. Persons Deprived of Liberty Act (2014), sec. 12(3)(f) (Kenya). [↑](#footnote-ref-13)
13. 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”, February 2021, p. 7 [Annex A]. [↑](#footnote-ref-14)