**Submission by Reprieve to the UN Office of the High Commissioner for Human Rights on the situation of the violations and abuses of human rights rooted in harmful practices related to accusations of witchcraft and ritual attacks, as well as stigmatisation**

*September 2022*

Introduction

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 is a legal action charity that supports individuals facing the death penalty 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. Reprieve's vision is a world free of execution, torture and detention without due process. Reprieve has worked in Malawi since 2014 and has supported hundreds of people facing the death penalty in Malawi for a range of homicide crimes.

Background

Between 2019-2020 twelve people were sentenced to death in Malawi for their alleged involvement in the killing of a person with albinism. Since 2019 Reprieve has been assisting the legal representatives of these individuals. As a result, Reprieve has gained significant insight into the effectiveness of measures put in place to bring to justice suspected perpetrators of attacks against persons with albinism, and the extent to which these measures comply with the fundamental rights of both the victims and the accused.

This submission addresses the inappropriateness of the death penalty in this context and how the use of torture and the death penalty against suspected perpetrators undermines efforts to combat harmful practices committed against persons with albinism.

Grave human rights abuses in the context of investigations into attacks against persons with albinism

In 2019, the Malawi Human Rights Commission (MHRC) investigated the torture and murder of Buleya Lule by police officers in Dedza and Lilongwe.[[1]](#footnote-2) Mr. Buleya Lule died in police custody on 20 February 2019, having been arrested in the early hours of 18 February 2019 on the basis of his alleged involvement in the death of a person with albinism. The MHRC concluded that “*it is an undeniable fact that the Victim was tortured in police custody*” and that this torture caused his death.[[2]](#footnote-3) The post-mortem examination conducted at the request of the MHRC concluded that the cause of death was electrocution.

His co-accused, Mr. Kumbilani Patson and Mr. Sainani Kalekeni, allege that they were also severely beaten into confessing. The MHRC recommended that the Inspector General of Police and the Office of the Director of Public Prosecutions should commence criminal proceedings against all police officers and other such persons suspected to have been involved in the torture. However, this case has proceeded at an exceptionally slow rate. In July 2020, 13 police officers, including the Commissioner of Police for the Central Region, were arrested and charged. All 13 police officers were granted bail at the end of July 2020. After more than two years, on 14 September 2022, the High Court ruled that ten of the police officers had a case to answer. The prosecution has not progressed beyond this to date.

By contrast, the prosecution of Mr Patson and Mr Sainani proceeded very swiftly, and both were sentenced to death on 5 March 2022. Despite the credible allegations of torture made by Mr Patson and Mr Sainani, their forced confessions were admitted at trial alongside evidence obtained through the torture of Mr Lule. No investigation into their torture allegations has taken place, and both men remain in prison.

Reprieve is aware of eight other individuals who have been sentenced to death in similar cases, despite credible allegations of torture by the police. These allegations include the use of hot metal irons, and being whipped using a “sjambok” (a heavy leather whip). Reprieve has observed injuries on the people involved that are consistent with these allegations.

Reprieve is also aware of alleged cases of extrajudicial killings. In addition to the killing of Mr Lule in 2019, in October 2020 it was also reported that a man imprisoned in Ntcheu Prison awaiting sentence following his conviction for the murder of a person with albinism, had been killed outside the prison building.[[3]](#footnote-4) Leading figures in the albinism community have expressed their concern that he was deliberately killed by the authorities.[[4]](#footnote-5) No cause of death was made public and it appears that no further action has been taken by the authorities to date.

The use of torture, extrajudicial killings and the death penalty will not eliminate harmful practices

In April 2021, the Independent Expert on the enjoyment of human rights by persons with albinism, the Special Rapporteur on the rights of persons with disabilities, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment expressed their concern over the use of the death penalty and torture in these cases, emphasising that these rights violations obstruct true justice for the victims of these violations.[[5]](#footnote-6)

It has been widely demonstrated that the use of torture and death penalty does not act as a deterrent to crimes[[6]](#footnote-7) and the risk of sentencing an innocent person to death remains unacceptably high in many countries across the world, including Malawi. For instance, following the abolition of the mandatory death penalty in Malawi a large case review exercise took place whereby over 150 people sentenced to death were eligible for a rehearing. It emerged through this process that nearly 20% of the cases eligible for rehearing involved an individual sentenced to death who were later found to have strong claims of actual innocence.[[7]](#footnote-8)

In the context of prosecutions of harmful practices, Reprieve has been found that 100% of the death penalty cases involving the killing of a person with albinism since May 2019 have involved torture, risking innocent people being sentenced to death for crimes they did not commit.

Further, these death sentences have been handed down almost exclusively to scapegoats or low-level perpetrators,[[8]](#footnote-9) with insufficient efforts made to sensitise and educate communities about the real harms faced by people with albinism, or debunk the myths that surround this vulnerable group.

Position of interest groups representing persons with albinism

Notably, the torture, killings and death sentences meted to those accused of crimes against persons with albinism by no means reflect the wishes of the albinism community, who wishes to see perpetrators go through the proper judicial channels to ensure that justice and the appropriate remedies are obtained for victims.

The Malawi government has failed to consult with the albinism community as to what true justice means to them. The policy to seek the death penalty in these cases was adopted against the wishes of leading members of the albinism community. Ian Simbota, President of the Association of Persons with Albinism (APAM) has publicly stated that the community is not advocating for the death penalty. APAM “*believes that peoples’ lives should be preserved*” when tackling attacks against persons with albinism.[[9]](#footnote-10) The approach of the Ministry of Justice is also contrary to the Government’s own National Action Plan which promises to “*involve and consult persons with albinism in the development of policies, plans and programmes*.”[[10]](#footnote-11)

If Governments are serious about preventing these attacks, and delivering true justice for victims, they should instead focus on the measures contained within their Regional Action Plans on Albinism, which do not entertain the application of the death penalty, but rather set out that violence against communities with albinism must be fought at its roots through public education and anti-discrimination programmes. Prevention and protection are the first two measures mentioned in the Regional Action Plan[[11]](#footnote-12) and the Malawi Government should focus its efforts and resources on meaningful protection measures, increased community education to combat harmful practices and take steps to increase the social mobility of persons with albinism to reduce their vulnerability to exploitation and attacks.

Recommendations

Torture, the death penalty and extrajudicial killings obstruct true justice for victims and their families by creating the impression of a tough response to crimes against persons with albinism, when in reality the response has been to extend the cycle of violence and abuse, while doing nothing to tackle the root causes of the harms perpetrated against persons with albinism.

If Governments are serious about preventing these attacks, and delivering true justice for victims, they should listen to the wishes of the albinism community and focus on the measures contained within their Regional and National Action Plans on Albinism, which do not entertain torture and the application of the death penalty. In line with these Action Plans, Reprieve recommends that:

1. In recognition of the fact that the death penalty, torture, and extrajudicial killings are not an effective deterrent against attacks on persons with albinism, Governments must instead implement meaningful protection measures and address the root causes of these crimes.
2. States must ensure that all allegations of torture and extrajudicial killing are independently investigated and prosecuted, irrespective of the circumstances of the offence alleged to be committed by the victim.
3. Domestic laws must ensure that torture-tainted confessions cannot be admitted in evidence, and that individuals cannot be sentenced to death on the basis of torture-tainted evidence.
4. States should ratify and implement the Second Optional Protocol to the International Covenant on Civil and Political Rights.
1. Malawi Human Rights Commission, A REPORT OF AN INVESTIGATION INTO THE DEATH OF MR. BULEYA LULE IN POLICE CUSTODY, HRC/05/03/234, May 2019, available at: https://malawilii.org/system/files/MHRC%20Buleya%20Report.pdf [↑](#footnote-ref-2)
2. ibid. page 6 [↑](#footnote-ref-3)
3. Malawi Voice, “Albino Murder Suspect Found Dead Outside Ntcheu Prison” 27 October 2020, available at: <http://www.malawivoice.com/2020/10/27/albino-murder-suspect-found-dead-outside-ntcheu-prison/> [↑](#footnote-ref-4)
4. <https://twitter.com/bonmassah/status/1320415781402923010/photo/1> [↑](#footnote-ref-5)
5. https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26353 [↑](#footnote-ref-6)
6. See for instance, National Research Council, Deterrence and the Death Penalty, 2012, at 2; full copy available at: https://www.nap.edu/catalog/13363/deterrence-and-the-death-penalty; See also Anna Kreigler and Mark Shaw, ’Analysis: Why South Africa’s murder rates today are not higher than ever’ [↑](#footnote-ref-7)
7. 30 out of the 168 resentencing cases revealed evidence of actual innocence. Further information on file at Reprieve [↑](#footnote-ref-8)
8. Action on Albinism Malawi Database, available at: <https://actiononalbinism.org/page/c6cd5zzky9qtvx7viqtw0o1or> [↑](#footnote-ref-9)
9. Malawi News, Will Chakwera endorse that those sentenced to death should be executed? 26 September 2020 [translated from Chichewa] [↑](#footnote-ref-10)
10. National Action Plan on Persons with Albinism in Malawi 2018 – 2022, at pg. 47 [↑](#footnote-ref-11)
11. Regional Action Plan on Albinism in Africa (2017-2021) at 2, available at: http://www.ohchr.org/EN/Issues/Albinism/Pages/AlbinismInAfrica.aspx [↑](#footnote-ref-12)