**Submission to the Office of the High Commissioner for Human Rights ahead of the Report of the Secretary-General to the Human Rights Council on the question of the death penalty**

March 2024

**Reprieve** is a charitable organisation registered in the United Kingdom (No. 1114900), with special consultative status with the United Nations Economic and Social Council (ECOSOC). Reprieve provides free legal and investigative support to those who have been subjected to state-sponsored human rights abuses. In particular, we protect the rights of those facing the death penalty and of victims of arbitrary detention, torture, and extrajudicial execution.

We are writing in response to your request dated 20 February 2024 for relevant information concerning the question of the death penalty arising since 1 July 2022, paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence, on pregnant women and on persons with mental or intellectual disabilities. We understand that this request is in relation to the UN Secretary General’s report to the Human Rights Council at its fifty-seventh session. This submission reports on developments in Tanzania, Malawi and Kenya.

Submission: 1162 words

**Submission**

1. **Introduction**

This submission provides a summary of developments around the death penalty in Tanzania, Malawi, and Kenya since 1 July 2022. The submission focuses on the listed states’ progress towards abolition, as well as areas of noncompliance with human rights standards.

1. **Developments in Tanzania**

Tanzania has observed a *de facto* moratorium on executions since 1995; however, Tanzanian courts continue to sentence people to death for the crimes of murder, treason, and certain terrorism related offences.[[1]](#footnote-1) According to government statistics, as of 2023, there are an estimated 691 people currently on death row.[[2]](#footnote-2)

Tanzania applies the mandatory death penalty, even though this was ruled a breach of international law by the African Court on Human and People’s Rights (African Court) in the landmark *Ally Rajabu* decision.[[3]](#footnote-3) In 2019, the Government of Tanzania withdrew the right of individuals and non-governmental organisations to file complaints against Tanzania at the African Court.[[4]](#footnote-4) The Court has nevertheless issued judgements in response to petitions that were filed before Tanzania’s withdrawal.[[5]](#footnote-5) Since 2022, the Court has issued 12 judgements reiterating that Tanzania’s use of the mandatory death penalty is incompatible with Article 4 of the African Charter and has ordered resentencing for all individuals sentenced to death.[[6]](#footnote-6) To date, Tanzania has not implemented any of these judgements and continues to impose the mandatory death penalty.[[7]](#footnote-7)

In January 2023, President Suluhu established a Criminal Justice Commission to review the practices and policies of, among other institutions, the Tanzanian National Prosecution Services and the Tanzanian Prison Services. Led by retired Chief Justice Mohamed Othman Chande, the Commission issued a call for written evidence from civil society organisations to provide recommendations on laws that should be reviewed and amended.[[8]](#footnote-8) Reprieve UK, alongside Tanzanian partners, submitted evidence to the Commission.

The Commission concluded its review in July 2023, and presented a summary of recommendations to the President for consideration.[[9]](#footnote-9) One such recommendation was the abolition of the mandatory death penalty in line with the *Rajabu* ruling. The Commission further recommended that all death sentences not executed within three years should be automatically commuted to life imprisonment.[[10]](#footnote-10) At the same time, the Commission called for Tanzania to cap life imprisonment to a term of years.

Whilst these recommendations are a positive development in Tanzania’s discourse on the death penalty, the authorities have yet to take any serious action to implement the recommendations of this report.

As regards those still on death row, there is high prevalence of people with intellectual disability and serious mental illness. The nature of the mandatory death penalty means that courts cannot consider how these factors affect individuals’ moral culpability, heightened vulnerability to coercion and false confessions, and tolerance of harsh conditions of confinement that are not adapted to their needs. One of Reprieve’s clients, for example, has tried multiple times to present evidence of her pronounced intellectual disability to the court to no avail, even though her disability renders her unable to understand that she is on death row.

1. **Developments in Malawi**

Malawi is also a de facto abolitionist country. Malawian courts did not hand down any new death sentences in 2022 or 2023, and the Director of Public Prosecutions sought death sparingly during this period. In 2021, all those on death row at the time—supported by Reprieve UK and the Legal Aid Bureau of Malawi—petitioned the President of Malawi for clemency, which he granted in 2022.[[11]](#footnote-11) As a result, no one is currently under sentence of death in Malawi, though those formerly under capital sentences remain housed in the condemned section, where they are separated from the rest of the prison and see the gallows every day.[[12]](#footnote-12)

The government of Malawi has undertaken legislative steps towards abolition. After extensive public consultations and engagements with key stakeholders, a Private Members Bill abolishing the death penalty was drafted and tabled for parliament’s February 2024 sitting.[[13]](#footnote-13) Due to other government business taking up the sitting, parliament did not ultimately vote on the Bill. It is our understanding that a similar Bill abolishing the death penalty may be tabled in the next parliamentary sitting.

The preparation of the Bill generated new stakeholders engaged in abolition. For example, the Women’s Caucus and Catholic Caucus of Malawi’s parliament held events around the Bill, during which members expressed support of abolition.[[14]](#footnote-14)

Despite these developments, those incarcerated in the condemned section of Zomba Central Prison continue to suffer daily abuses. A longstanding food crisis in Malawi means that those formerly sentenced to death frequently receive no food at all during the day.[[15]](#footnote-15) The only women on death row has no access to gender-sensitive services or healthcare. Medical supplies for the death row population—including many elderly people—remain woefully inadequate.[[16]](#footnote-16) And the numerous people with intellectual disability and serious mental illness on death row receive no support or accommodations. One of Reprieve’s clients with intellectual disability was sentenced to death after pleading guilty in proceedings that he did not understand, that were not explained to him, and that were premised on factual errors that he was not able to contemporaneously correct. He has received no support for his disability during the 12 years of his incarceration.

1. **Developments in Kenya**

Kenya is also de facto abolitionist, having observed a moratorium on executions since 1987.[[17]](#footnote-17) Following the abolition of the mandatory death penalty in 2017, courts in Kenya have conducted resentencing hearings to consider mitigating factors.[[18]](#footnote-18) In September 2023, the judiciary officially published the Sentencing Policy Guidelines to direct the resentencing process.

In November 2022, and following a recommendation by the Power of Mercy Advisory Committee, President William Ruto commutated all death sentences to life imprisonment.[[19]](#footnote-19)

In July 2023, minority leader Honourable Opiyo Wandayi proposed legislative change to abolish the death penalty. The proposals called for an amendment on three bills related to capital punishment: the Penal Code, the Prisons Act and the Legal Aid Act.[[20]](#footnote-20) These amendments have not yet been tabled before the National Assembly.

While these political developments play out, those on death row continue to suffer. Reprieve has identified several people sentenced to death who have intellectual disability and serious mental illness, the latter of which is frequently linked to gender-based violence in women’s cases. One client was sentenced to death in proceedings that failed to account for her acute depression and suicidal ideation at the time of the offense, itself a result of years of intimate partner violence. While incarcerated, she has not received any trauma-informed care or services.

1. **Recommendations**

Reprieve respectfully submits that:

* The Government of Tanzania should adopt the Criminal Justice Commission’s recommendations on the mandatory death penalty.
* The Government of Malawi should table and pass the abolition Bill.
* The Government of Kenya should continue to conduct resentencing hearings and should table pending legislative amendments on the death penalty.
* The governments of Tanzania, Malawi, and Kenya must refrain from imposing new death sentences, commute current death sentences, and take all necessary measures to protect the human rights of all those on death row.
1. Cornell Centre on the Death Penalty Worldwide, Death Penalty Database: United Republic of Tanzania <https://deathpenaltyworldwide.org/database/#/results/country?id=77>. [↑](#footnote-ref-1)
2. Africa Legal: Capital punishment could soon be history in Tanzania [↑](#footnote-ref-2)
3. UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), CCPR/C/GC/35, para. 37 available at: <https://www.refworld.org/docid/5e5e75e04.html> [↑](#footnote-ref-3)
4. Amnesty International, Tanzania: Withdrawal of individual rights to African Court will deepen repression <https://www.amnesty.org/en/latest/press-release/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/> [↑](#footnote-ref-4)
5. Amnesty International, Tanzania: Withdrawal of individual rights to African Court will deepen repression https://www.amnesty.org/en/latest/press-release/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/ [↑](#footnote-ref-5)
6. African Court Decisions: <https://www.african-court.org/cpmt/decisions> [↑](#footnote-ref-6)
7. Ibid [↑](#footnote-ref-7)
8. The Chanzo, Commission to Investigate Tanzania’s Criminal Justice System Inaugurated. <https://thechanzo.com/2023/01/31/commission-to-investigate-tanzanias-criminal-justice-system-inaugurated/> [↑](#footnote-ref-8)
9. Tanzania Digest, Tanzania’s Criminal Justice System: Analysis of President Samia’s Commission Key Findings and Recommendations. https://www.digest.tz/tanzanias-criminal-justice-system/ [↑](#footnote-ref-9)
10. Ibid [↑](#footnote-ref-10)
11. Reprieve, *2022 Annual Report*, <https://reprieve.org/uk/2023/07/07/our-2022-annual-report-and-financial-statements/> [↑](#footnote-ref-11)
12. Reprieve, *Input to the Special Rapporteur on Torture Ahead of the* [*Report on Current Issues and Good Practices in Prison Management*](https://www.ohchr.org/en/calls-for-input/2023/current-issues-and-good-practices-prison-management-thematic-report-special)(27 November 2023) [↑](#footnote-ref-12)
13. International Commission Against the Death Penalty, *ICDP Mission in Zambia and Malawi* <https://icomdp.org/icdp-mission-zambia-and-malawi/> [↑](#footnote-ref-13)
14. Times360 Malawi, <https://m.facebook.com/story.php/?story_fbid=1759681791120780&id=100069098034320> [↑](#footnote-ref-14)
15. Reprieve, *Input to the Special Rapporteur*, *supra*. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. Ibid [↑](#footnote-ref-17)
18. Ibid [↑](#footnote-ref-18)
19. Kenya National Commission on Human Rights, Commutation of Death Sentences to life imprisonment: a welcome move! <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1168/Press-Release-Commutation-of-Death-Sentences-to-Life-Imprisonment-A-Welcome-Move> [↑](#footnote-ref-19)
20. Kenyan Parliament, Justice and Legal Affairs Committee engage Honourable Wandyi on his proposed amendments to various laws to abolish the death penalty. <http://www.parliament.go.ke/node/20213> [↑](#footnote-ref-20)