**OHCHR Call: Input to inform High Commissioner’s report on the centrality of care and support from a human rights perspective to the Human Rights Council, pursuant to resolution 54/6.**

April 2024

**Reprieve** is a charitable organization registered in the United Kingdom (No. 1114900), and in 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. Our clients belong to some of the most vulnerable populations in the world, as it is in their cases that human rights are most swiftly jettisoned, and the rule of law is cast aside. We protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.

In Africa, Reprieve collaborates with local advocates and partners to provide legal representation to people facing death sentences in Malawi, Kenya, and Tanzania.

Submission: 3143 words

1. **Introduction**

This submission provides information about the centrality of care and support for people who are deprived of their liberty, especially those who are imprisoned on death row. We focus on human rights violations against incarcerated women, people with disabilities, and older persons, documenting the lack of care and support to these populations in three countries of our work—Malawi, Kenya, and Tanzania.

In so doing, we draw extensively on our experiences working directly with incarcerated clients and local partners. Much of the information contained herein is the product of conversations with incarcerated people, their families, and affected communities. To the extent possible, we reference publicly available documents, and we note when information is drawn solely from our experience in the field.

1. **Centrality of care and support for incarcerated women**

Incarcerated women, including those on death row, have gender-sensitive care and support needs. Recognizing the centrality of care and support to incarcerated women, the United Nations Bangkok Rules set out the minimum international standard for women’s incarceration and build on non-discrimination provisions in multiple UN Treaties and human rights instruments,[[1]](#endnote-1) which apply with equal force to incarcerated women. Despite these legal provisions, women frequently suffer from poor or nonexistent mental and physical healthcare, neglect, and isolation while in prison.

1. *Healthcare*

The Bangkok Rules acknowledge the importance of gender-sensitive mental and physical healthcare for incarcerated women. The Rules require a comprehensive health screening for women upon admission to prison, assessing “[m]ental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm” and “[s]exual abuse and other forms of violence that may have been suffered prior to admission.”[[2]](#endnote-2) During their incarceration, prisons must provide women with a “healthy environment,”[[3]](#endnote-3) which includes access to gender-sensitive physical healthcare and mental healthcare that accounts for psychological challenges as a result of gendered violence. Such healthcare is important because most incarcerated women on death rows worldwide have experienced multiple and repeated forms of gender-based violence, the mental health consequences of which are severe.[[4]](#endnote-4)

All the women with whom we work in Malawi, Tanzania, and Kenya experience debilitating mental health challenges, frequently because of gender-based violence, that affect their pathways to and experiences of incarceration. For example, one of our Tanzanian clients lives with severe trauma and depressive disorders after enduring years of intimate partner abuse. She was charged with murder after killing her children and trying to commit suicide in the depth of a depressive episode, yet she received no care or mental health support during her incarceration.[[5]](#endnote-5) She is far from alone. Not one of our women clients is receiving gender-sensitive mental health care to support her with mental health challenges.

Incarcerated women also suffer from inadequate physical healthcare. In our countries of work, women who are menstruating do not have sufficient access to hygiene products and women who are experiencing menopause are not granted access to facilities that provide relief from their symptoms. One of our clients in Malawi reports to us that she lives with at least ten other women in one cell, which makes the heat unbearable for older women experiencing menopausal symptoms.[[6]](#endnote-6) Similarly, in Tanzania, one of our clients describes how she lives in a cell with four other women. The only furnishings in the cell are blankets and a mattress on the floor. There are no personal items in the cell, no ventilation, no space for exercising, and no space for privacy. A bucket in the corner of the cell serves in lieu of a toilet.[[7]](#endnote-7) These conditions are particularly challenging for menstruating, perimenopausal, and menopausal women.

Further, incarcerated women who are pregnant or nursing do not receive adequate healthcare. In Tanzania, we have worked closely with a client who was incarcerated while pregnant. Over the course of her pregnancy, she was able to see the prison doctor if she felt ill. However, she had no access to obstetric care and did not receive regular checkups from a qualified specialist to provide gender-sensitive treatment. The client carried her pregnancy to term while living in unsanitary and overcrowded prison conditions and ultimately gave birth in the washroom of the prison. She was found there, having given birth, by a prison guard. This client received no postpartum care, and her baby was not provided any neonatal care.[[8]](#endnote-8)

This client also did not receive adequate nutrition throughout the duration of her pregnancy and breastfeeding, in violation of international law provisions requiring prisons to provide dietary accommodations to pregnant and nursing women.[[9]](#endnote-9) Our client received the same food as the other prisoners: porridge in the morning and ugali and beans in the evening. She ate only twice a day, and for the duration of her pregnancy, she was deprived of necessary nutrients and vitamins from other food sources. The only time she received any supplement during her pregnancy was after she suffered a fall, when the prison doctor gave her a multivitamin.[[10]](#endnote-10)

1. *Women incarcerated with children*

While international human rights standards make clear that prisons must provide specific care and support to women who are incarcerated with their children, the reality is very different. Women remain primary caretakers in many societies and, as such, are often incarcerated with young children or give birth while in prison. These children must receive appropriate care and be in an environment that mirrors “as close as possible” life outside of prison.[[11]](#endnote-11) Women and their children, however, frequently live in unsanitary conditions.

To illustrate, a recent food crisis in Malawian prisons has left many incarcerated people starving.[[12]](#endnote-12) Women with children feel the effects of this crisis particularly acutely. Often, women incarcerated with their children must share their food portion with the child rather than receive adequate portions for two people. At Domasi Prison, for example, one of our local partners documented a case in which prison authorities provided no special food provisions for two children who were accompanying their incarcerated mother. During the hunger crisis, the children and their mother were forced to rely on food brought in by charitable individuals in the surrounding community.[[13]](#endnote-13)

1. *Family contact*

Even when women’s children are not in the prison with them, incarcerated women are entitled to have the “maximum possible opportunity to spend time with their children.”[[14]](#endnote-14) The Bangkok Rules emphasize a preference for non-custodial measures where a defendant is pregnant or a child’s sole or primary caregiver, and must avoid separating women from their dependent children.[[15]](#endnote-15) In reality, women are frequently deprived of access to their children and family members, and receive no care or support in this regard. The lack of familial contact is devastating for many of our clients.

Reprieve is currently assisting on the case of a woman incarcerated in Malawi who has had no in person contact with her children or other family members since her incarceration in 2015. The only communication she has had is through messages relayed via counsel. Her loss of contact with her children – about whom she cares deeply and worries constantly – has been destructive to her mental health.[[16]](#endnote-16)

Similarly, in Tanzania, Reprieve assists on the case of an incarcerated woman whose children were taken from her upon her entry into the prison system. The client recalls simply that someone from social services came to her cell and took her children – all aged below 10 years old – away from her, without giving her the opportunity to say goodbye or relaying where the children were going. This client still does not know where her children are, much less have any contact with them.[[17]](#endnote-17)

1. **Centrality of care and support for people with disabilities**

The centrality of care and support for persons with disabilities in detention facilities is important for upholding international human right standards, dignity, and humane treatment. The UN convention on the Rights of Persons with Disabilities states that ‘if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation’.[[18]](#endnote-18) In Africa, this principle is reinforced in both the African Charter and the Protocol on the Rights of Persons with Disabilities in Africa.[[19]](#endnote-19) Despite this, courts and prison authorities consistently fail to uphold the rights of persons with disabilities. During the Malawi Resentencing Project—which facilitated resentencing hearings for people who had been sentenced to death under the mandatory death penalty regime—we represented several clients with intellectual disabilities who were sentenced to death without consideration of evidence about their disabilities. This was because of a lack of understanding of intellectual disability on the part of all stakeholders, as well as lack of professionals who could undertake the assessments necessary to establish a person’s intellectual disability and present it to the courts. For example, we represented an elderly grandmother who was sentenced to death for killing someone during a harsh drought season. This client’s intellectual disability was caused by Foetal Alcohol Syndrome and was only discovered through an assessment by an American psychiatrist, funded by Reprieve. Prior to this, the client had spent decades in prison without any support for her disability.

Increasingly African states are recognizing the need for specialist support for persons with disabilities in the justice system. In Tanzania, a Criminal Justice Commission found that many aspects of Tanzania’s justice infrastructure fail persons with disabilities. The Commission recommended that more social welfare personnel should be deployed by the state to support persons with disabilities in the justice system. To date, the Tanzanian authorities have not implemented these recommendations. One of our clients with an intellectual disability remains on death row in Tanzania. Our client’s cognitive impairments are such that she does not understand that she is on death row. To date, she has received no psychosocial or adaptive functioning support, nor has a court ever recognized how her disability affects her involvement in the charged offense or her moral culpability.

1. **Centrality of care and support for older persons**

Prisoners often experience age-related health problems at a rate equivalent to people a decade older in the non-incarcerated community.[[20]](#endnote-20) This means that someone who is 50 years old in prison shows the signs of age-related infirmity and cognitive decline of a 60-year-old in the community.[[21]](#endnote-21)

Whilst older people are considered a potentially vulnerable population within the public, there is currently no international convention that focuses exclusively on the rights of older persons as a group.[[22]](#endnote-22) At the same time, there is no treaty that has special considerations specifically for older persons in places of detention. As a result, older persons have become an overlooked minority within the international law and criminal legal systems.

Whilst there is silence on the rights of the elderly as a group, their right to health and dignity is preserved in various international human rights conventions as well as treaty bodies.

1. *The Right to Health*

The right to health is recognized in article 25 (1) of the Universal Declaration of Human Rights, which notes ‘everyone has the right to a standard of living adequate for the health of himself and his family, including food, clothing, housing and medical care and necessary social services’.[[23]](#endnote-23)

Additionally, the right to health is covered by the International Covenant on Economic, Social and Cultural Rights, one of the most important documents of protection for the right to health. Article 12 of the ICESCR notes that states must ‘... recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.[[24]](#endnote-24)

International law demands that the right to health is holistic and inclusive. It must go beyond the right of access to health care. There are key determinants that must be in place to guarantee that an individual has this right. This includes access to safe and adequate sanitation, safe food, adequate nutrition, and housing as well as healthy working and environmental conditions.[[25]](#endnote-25)

For older people living in prison, issues of sanitation, food, and adequate nutrition are critical to their survival.

In Malawi, male individuals charged with and convicted of capital offences are detained in Zomba Central Prison, a detention facility that dates to 1935, when Malawi was under British colonial rule.[[26]](#endnote-26) In Kenya and Tanzania, people sentenced to death are also held in detention facilities dating back to colonial rule.[[27]](#endnote-27) Prison conditions in Kenya, Tanzania and Malawi are considered ‘harsh and life threatening due to gross overcrowding, physical abuse, and inadequate sanitary conditions.[[28]](#endnote-28)[[29]](#endnote-29)[[30]](#endnote-30) Zomba Central Prison has the capacity to hold 800 people, but it currently holds more than two thousand people.[[31]](#endnote-31) The facility is dilapidated and overcrowded, thus posing a risk to both the health of inmates (particularly the elderly), and prison staff.

Overcrowding increases the transmission of communicable diseases such as HIV, hepatitis and tuberculosis, infections that prison authorities often struggle to contain effectively. In 2022, Malawian prison authorities reported that 9 people died in prison.[[32]](#endnote-32) Causes of death included tuberculosis, anemia, pneumonia, sepsis, and hepatitis.[[33]](#endnote-33)

There are no legal safeguards nor special provisions for older incarcerated people. In Zomba Central Prison, older people live in a separate section of the prison called the ‘Madala’ section for their own protection. However, this does not provide adequate relief from the challenges of prison life. Older people sleep on the floor in congested cells that contain up to 17 people, sleeping on their side so that everyone can lie down.[[34]](#endnote-34) We previously represented an elderly man with severe mobility constraints. Despite the client’s inability to sit or stand without support from another inmate, he was never given a cane nor wheelchair to support him.

Currently, we represent 5 elderly men who are now serving life sentences after their death sentences were commuted to life imprisonment, in August 2022. The average life expectancy of men in Malawi is 59 years old.[[35]](#endnote-35) Our 5 clients are between 61 and 73 years old. They have all spent over 15 years in prison, and all suffer from chronic physical health problems including heart disease and hypertension, as well as hearing and visual impairments. The men do not receive adequate medical support in the form of regular hospital visits nor medication for their conditions. As a result, they are at risk of dying in prison. Over the past two years, we have been seeking presidential pardons on their behalf so that they can spend their remaining years with their families.

1. *The Right to dignity*

The right to dignity is well established in international law, norms, and frameworks. Article 10 of the ICCPR stipulates that ‘all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’.[[36]](#endnote-36)

Furthermore, international law requires that prisoners must be treated in line with the minimum standards set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which include being treated with dignity, the right to adequate healthcare, regular access to food, and to clean accommodation that meets health standards.[[37]](#endnote-37) In our experience, Malawi, Tanzania and Kenya have failed to meet the minimum standards. This is particularly the case for older people. In Tanzania, we represent a 66-year-old woman who lives with HIV and suffers from a depressive disorder. Despite being terminally ill and at risk of dying in prison, the Tanzanian prison authorities have not made any special provisions to safeguard her dignity and well-being. The client does not receive an adequate diet nor regular visits from a medical professional to ensure her ARV medication remains suitable. This client is coming towards the end of her life and has sought a presidential pardon on four occasions so that she can spend her remaining years in her community. Her application has been consistently rejected without a clear explanation.

One of the biggest challenges facing older people in detention is the lack of dignity as they approach death. The Protocol to the African Charter on People and Human’s Rights on the Rights of Older Persons in Africa clearly stipulates that older people should be given humane treatment, protection, and respect.[[38]](#endnote-38) However, states do not comply with this provision. Three years ago, we represented an elderly client, NM, in Malawi. NM lived with HIV and had spent a decade on death row. He was required to take dietary supplements with his ARV medication; however, the prison authorities did not provide these, and NM was too poor to purchase them. In early 2021, NM’s health deteriorated significantly, and he became bed ridden, and began to lose his ability to eat and drink. We sought clemency from the Malawian President on behalf of NM so that he could die at home, but never received a response. In August 2021, NM was belatedly admitted to hospital, where he was diagnosed with cancer, and informed that he only had a few weeks to live. After two months, NM died alone without his family in a poorly funded government hospital. The only person at his side was a Reprieve Fellow, who had to contact NM’s family and work with the hospital to ensure that NM was buried with a semblance of dignity that the government deprived him of whilst he was alive.

1. **Recommendations**

Reprieve recommends that prison authorities in Malawi, Tanzania, and Kenya urgently adopt measures to centre care, support, and human rights compliance in their prison systems. Reprieve recommends that:

* States ensure that women have access to gender-sensitive mental and physical healthcare, including the provision of psychosocial support and therapies, appropriate obstetric and gynecological care, and adequate supplies for menstruation.
* States make every effort to facilitate familial contact, including imprisoning women close to their communities.
* The Republic of Malawi finalise and pass the Prisons Bill in the upcoming parliamentary session, codifying higher standards of care for incarcerated people, and ensuring, in particular, incarcerated people with disabilities and the elderly are held in decent conditions and provided with the specialised care and support they require.

1. *See, e.g.*, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 2; the UN International Covenant on Civil and Political Rights (ICCPR), Article 2; the African Union Protocol on the Rights of Women in Africa (Maputo Protocol). [↑](#endnote-ref-1)
2. United Nations Office on Drugs and Crime, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, U.N. Doc A/RES/65/229 (21 December 2010) [hereinafter “Bangkok Rules”], Rule 6. [↑](#endnote-ref-2)
3. Bangkok Rules, Rule 48. [↑](#endnote-ref-3)
4. Sandra Babcock & Nathalie Greenfield, *Gender, Violence, and the Death Penalty*, 53 Cal West. Int. L. J. 327 (2023). [↑](#endnote-ref-4)
5. Urgent Appeal on behalf of Ms. Veronica Gabriel (Tanzania) to the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Ms. Tlaleng Mofokeng (13 July 2022) [hereinafter “Veronica Gabriel appeal to SR Health”]. [↑](#endnote-ref-5)
6. Information on file with Reprieve. [↑](#endnote-ref-6)
7. Ibid. [↑](#endnote-ref-7)
8. Veronica Gabriel appeal to SR Health. [↑](#endnote-ref-8)
9. Bangkok Rules, Rule 48. [↑](#endnote-ref-9)
10. Veronica Gabriel appeal to SR Health. [↑](#endnote-ref-10)
11. Bangkok Rules, Rule 51. [↑](#endnote-ref-11)
12. *Prisoners Run Out of Food Essentials*, The Nation, (6 March 2022) available at https://mwnation.com/prisoners-run-out-of-food-essentials/. [↑](#endnote-ref-12)
13. Information on file with Reprieve. [↑](#endnote-ref-13)
14. Bangkok Rules, Rule 50. [↑](#endnote-ref-14)
15. Bangkok Rules, Rules 2, 57, 58, 64. [↑](#endnote-ref-15)
16. Information on file with Reprieve. [↑](#endnote-ref-16)
17. Veronica Gabriel appeal to SR Health. [↑](#endnote-ref-17)
18. United Nations Convention on the Rights of Persons with Disabilities, (2006) Article 14: Liberty and Security of Person. <https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf> [↑](#endnote-ref-18)
19. Protocol to the African Charter on Human and People’s Rights on the Rights of Persons with Disabilities in Africa <https://au.int/sites/default/files/treaties/36440-treaty-protocol_to_the_achpr_on_the_rights_of_persons_with_disabilities_in_africa_e.pdf> [↑](#endnote-ref-19)
20. Birkbeck University of London: Towards a health informed approach to penal reform? Evidence from ten countries. P12 [↑](#endnote-ref-20)
21. Ibid [↑](#endnote-ref-21)
22. Amnesty International, Older People’s Rights <https://www.amnesty.org/en/what-we-do/older-people/> [↑](#endnote-ref-22)
23. Universal Declaration of Human Rights, Article 25 (1) <https://www.ohchr.org/en/special-procedures/sr-health/international-standards-right-physical-and-mental-health> [↑](#endnote-ref-23)
24. International Covenant on Economic, Social and Cultural Rights (1966) Article 12 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> [↑](#endnote-ref-24)
25. [↑](#endnote-ref-25)
26. African Commission on Humans and People’s Rights, Prisons in Malawi <https://atlas-of-torture.org/api/files/1557397940605l2xst1ddmk.pdf> p9 [↑](#endnote-ref-26)
27. Museum of British Colonialism: Anti- blackness and colonial detention <https://museumofbritishcolonialism.org/anti-blackness-and-colonial-detention/> [↑](#endnote-ref-27)
28. US Department of State: 2022 Country Reports on Human Rights Practices: Tanzania <https://www.state.gov/wp-content/uploads/2023/03/415610_TANZANIA-2022-HUMAN-RIGHTS-REPORT.pdf> p9 [↑](#endnote-ref-28)
29. US Department of State: 2022 Country Reports on Human Rights Practices: Kenya <https://www.state.gov/wp-content/uploads/2023/02/415610_KENYA-2022-HUMAN-RIGHTS-REPORT.pdf> p 7 [↑](#endnote-ref-29)
30. US Department of State: 2022 Country Reports on Human Rights Practices: Malawi <https://www.state.gov/wp-content/uploads/2023/02/415610_MALAWI-2022-HUMAN-RIGHTS-REPORT.pdf> p 3 [↑](#endnote-ref-30)
31. Data held by Reprieve [↑](#endnote-ref-31)
32. US Department of State: 2022 Country Reports on Human Rights Practices: Malawi <https://www.state.gov/wp-content/uploads/2023/02/415610_MALAWI-2022-HUMAN-RIGHTS-REPORT.pdf> p 3 [↑](#endnote-ref-32)
33. Ibid [↑](#endnote-ref-33)
34. Data from Reprieve [↑](#endnote-ref-34)
35. The World Bank: Life expectancy at birth, male (years), Malawi <https://data.worldbank.org/indicator/SP.DYN.LE00.MA.IN?locations=MW> [↑](#endnote-ref-35)
36. International Covenant on Civil and Political Rights, Article 10 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [↑](#endnote-ref-36)
37. UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) : resolution / adopted by the General Assembly* (A/RES/70/175). [↑](#endnote-ref-37)
38. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa. [↑](#endnote-ref-38)