**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)

**Joint Stakeholder submission**

27 November 2023

1. **Introduction**
	1. Irish Rule of Law, Legal and Human Rights Centre (LHRC), Kenya Human Rights Commission (KHRC) and Reprieve submit this input to the report of the Special Rapporteur on Torture.
	2. This input concerns current issues and good practices in prisons in Malawi, Tanzania, and Kenya. It draws on the experiences of people serving death in prison sentences in those countries, whether death by execution or death by lengthy incarceration. We focus on the lack of healthcare, food, water, and access to family members for incarcerated people in the above countries, with particular attention given to the psychological and physical health implications for elderly people, persons with disabilities, and women.
	3. The content of this submission is drawn from our years of client-facing advocacy and partnerships with relevant stakeholders in the named countries. We work directly with incarcerated people, their families, prison officials, nonprofit organisations, and state partners affecting the lives of incarcerated people. The content below is based on information obtained in the course of this work.
2. **About the stakeholders**
	1. 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.
	2. Legal and Human Rights Centre (LHRC) is Tanzania’s human rights advocacy organization. LHRC was established in 1995 as a non-governmental, voluntary, non-partisan and not-for-profit sharing organization, with the purpose of working to empower and conscientize the people of Tanzania on legal and human rights. LHRC envisions “a Just and Equitable Society” and is on a Mission to empower the public and promote, reinforce and safeguard human rights and good governance in Tanzania.
	3. The Kenya Human Rights Commission (KHRC) is a premier and flagship non-governmental organization (NGO) in Africa with a mandate of enhancing human rights-centred governance at all levels; a vision of a society of free people and a mission to root human dignity, freedoms; and social justice in Kenya and beyond.
	4. Reprieve is a charitable organization registered in the United Kingdom (No. 1114900) in special consultative status with the United Nations Economic and Social Council (“ECOSOC”) that 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. We protect the rights of those facing the death penalty and deliver justice to victims of arbitrary detention, torture, and extrajudicial execution.
3. **Legal and regulatory framework**
	1. **Malawi**
		1. While the prohibition of torture is included in the Constitution of Malawi,[[1]](#footnote-1) torture and other forms of cruel, inhuman or degrading treatment or punishment are not criminalised in the Penal Code, and nor does the Penal Code regulate torture in prisons.
		2. The Penal Code criminalises only acts that affect the bodily integrity of another person and does not criminalise psychological or mental torture, which are too often components of incarceration, particularly incarceration on death row (see section 4, below).
		3. Furthermore, the penal offences, having been designed to criminalise conduct between private individuals, are less likely to capture the essential elements of torture in state prison systems.
		4. A further point of concern with relying on the generic penal code is that utilising the current penal offences may lead to the conflation of torture on one hand and cruel, inhuman or degrading treatment or punishment on the other. Currently, it is unclear which offences under the Penal Code criminalise torture as opposed to other cruel, inhuman or degrading treatment or punishment.
		5. Similarly, torture and other cruel, inhuman or degrading treatment or punishment in prisons is not criminalised. The Prisons Act prohibits prison officers from punishing a prisoner without a lawful order from the Commissioner of Prisons and further prohibits officers from using violence or a weapon without just cause.[[2]](#footnote-2) Violations of the aforementioned rules constitute an offence against discipline that may be investigated and tried by the Commissioner of Prisons or a magistrate.[[3]](#footnote-3) Victims do not have a statutory right to lodge a complaint or to be consulted during the disciplinary process.
		6. Section 169 of the Constitution of Malawi establishes the Inspectorate of Prisons, which is charged with monitoring conditions of detention.[[4]](#footnote-4) There is no constitutional or statutory requirement to inspect prisons at regular intervals. The Inspectorate of Prisons reported that prison inspections occurred in 2021, 2020, 2018, 2014, and 2009.[[5]](#footnote-5)
		7. Thus, nothing in the Malawian Penal Code or Prisons Act current regulates torture in its many forms or cruel, inhuman or degrading treatment in Malawian prisons, and there are no mechanisms that regularly monitor torturous or cruel, inhuman or degrading prison conditions.
	2. **Tanzania**
		1. The United Republic of Tanzania has yet to ratify the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). LHRC notes that torture is widespread in Tanzania, particularly among detained people, and that ratifying the CAT is particularly important for safeguarding the rights of people in prisons.[[6]](#footnote-6)
		2. The African Charter on Human and People’s Rights which Tanzania has ratified and domesticated provides Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.[[7]](#footnote-7)
		3. The African Charter on the Rights and Welfare of the Child, to which Tanzania is a party, requires state to take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect, or maltreatment including sexual abuse.[[8]](#footnote-8) Further, the domestic Law of the Child Act provides for the “protection from torture and degrading treatment” for children.[[9]](#footnote-9)
		4. Tanzania is also a party to the Maputo Protocol, under which the state is bound to ensure the protection of women’s physical and mental health, including the health of incarcerated women.[[10]](#footnote-10)
	3. **Kenya**
		1. The Constitution of Kenya explicitly prohibits torture and other cruel, inhuman, or degrading treatment or punishment. Additionally, Kenya is a party to international conventions, such as the CAT, which further obligates the country to prevent and prohibit torture. The Prevention of Torture Act 2017 (“the Act”) seeks to give effect to Articles 25 (a) and 29 (d) of the Constitution as well as the CAT.
		2. The Act provides for a broad definition of torture in tandem with that provided for in Article 1 of the CAT. The Act creates the offences of torture, on the one hand, and cruel, inhuman, or degrading treatment, on the other. The punishment prescribed for the offence of torture under section 5 of the Act is imprisonment for a term not exceeding twenty-five years. If the victim dies because of the torture, the penalty prescribed is life imprisonment. The penalty prescribed for the offence of cruel, inhuman, or degrading treatment or punishment is imprisonment for a term not exceeding fifteen years and/or a fine not exceeding one million shillings (USD 10,000).
		3. Section 6 of the Act provides that no justification can be invoked for torture, cruel, inhuman, or degrading treatment or punishment. The Act further makes evidence or confession obtained by means of torture, cruel, inhuman, or degrading treatment inadmissible in any proceedings.
4. **Current issues**
	1. **A lack of data means many incarcerated peoples’ suffering is invisible.**
		1. As a preliminary point, we note that lack of data is a critical impediment to understanding current issues in Malawian, Tanzanian, and Kenyan prisons. Without reliable, up-to-date, and accurate information on the prison population, it is impossible to fully assess current issues.
		2. In Malawi, there is no centralized register that captures all people in custody at any given time in the country. We rely on our own staff who can go into the courts and prisons to gather information about who is incarcerated and on what charges or convictions they are held.
		3. Similarly, in Tanzania, access to information is scarce. Lawyers who have enquired about the people on death row and their ages have been denied information.[[11]](#footnote-11) The office of the Commissioner of Prisons offers no publicly available data about, *inter alia*, who is in prison; the charges they face or crimes of conviction; the sentences that individuals are held under; the basic biographical information about incarcerated people; or the prisons that individuals are confined in. This lack of information is a core impediment to assessing the challenges facing incarcerated people.
		4. We see a similar lack of information about the incarcerated population in Kenya. Kenya does not publish demographic information on people in prisons;[[12]](#footnote-12) the only data available is that collected by independent researchers.[[13]](#footnote-13) The lack of public record-keeping and procedures mean that it is challenging to identify incarcerated people to assess their needs, particularly people with intellectual, physical, or psychosocial disabilities who need additional support and accommodations.
		5. We note that the Special Rapporteur’s call included a request for information relating to specific groups, such as racial and ethnic groups, LGBTQ+ individuals, and women. We have sought to present information on these groups below where possible. Again, though, lack of data presents a challenge – it is not always possible to identify issues relating to these specific groups without reliable access to basic information about the incarcerated population. For example, there is no publicly available information about the number of women incarcerated in Malawi, Tanzania, and Kenya, much less any data on the sexual orientations of incarcerated people in these countries.
	2. **Prison overcrowding creates unsanitary and dangerous conditions.**
		1. Prison overcrowding remains a critical issue in all three countries relevant to this input. It is important to note that all the specific issues we discuss below – such as access to healthcare, basic nutrition, and water – are compounded by severe overcrowding.
		2. Overcrowding in Malawian prisons provides an example that is applicable to prison systems across the three countries we focus on in this report.[[14]](#footnote-14)
		3. The prisons of Malawi remain severely overcrowded with an overall population of about 15,700 prisoners in the system against a prison capacity of 7,300.[[15]](#footnote-15)
		4. Incarcerated people tell us about having to sleep in a kneeling position or side by side on the ground, due to the lack of space. Detainees suffer from long-term knee problems and other ailments that are related to being placed in a confined space for prolonged periods.
		5. In 2007, the Constitutional Court of Malawi found that prison overcrowding and poor ventilation in prison facilities violated the right to be free from torture and cruel, inhuman or degrading treatment.[[16]](#footnote-16) The Court declared that overcrowding and poor ventilation breached the Malawi Constitution and international law norms. The Court also held that overcrowding could be inhumane or amount to torture, particularly when it led to unsanitary conditions increasing the risk of the spread of diseases as happens in most prisons. The Court ordered the government to reduce the prison population by half, within 18 months, and thereafter eliminate overcrowding periodically.[[17]](#footnote-17)
		6. Between 2018 and 2019, the Malawi Prison Inspectorate visited all of the prisons of Malawi, which at that stage were at 260% capacity, and also found the situation to be tantamount to torture and cruel, inhuman and degrading treatment. Today, based on the above estimated current figure of 15,700 prisoners against a prison capacity of 7,300, the overcrowding figure is approximately 215%.
		7. During the Covid-19 pandemic, civil society organisations appealed to the government of Malawi to release people from prisons to reduce overcrowding and address humanitarian concerns for elderly and medically vulnerable prisoners. At the time, prisons were operating at over 260% capacity[[18]](#footnote-18) and struggling to contain the spread of the virus. Prison authorities introduced some precautionary measures, such as handwashing and separating medically vulnerable people.[[19]](#footnote-19) However, these measures were introduced slowly and irregularly. The Government pardoned 499 people in August 2020, but cases of infections were surging at the time[[20]](#footnote-20) and people with significant health issues and the elderly were not necessarily released.
		8. Prisons in Malawi remain severely overcrowded. Diseases such as malaria, tuberculosis, COVID-19, and HIV remain rife and threaten the life of inmates.
		9. The excessive sentences that the respective criminal codes of Malawi, Tanzania, and Kenya provide for exacerbate problems of overcrowding by incarcerating people for the duration of their lives. Moreover, criminal penalties such as life imprisonment and the death sentence are excessive and torturous considering the average life expectancies in those countries.
			1. In Malawi, the average life expectancy is 59.5 years for males.[[21]](#footnote-21) Six people over the life expectancy remain in prison who have been sentenced to the death penalty.
			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.[[22]](#footnote-22)
			3. In Kenya, the average life expectancy is 60 years for males and 65 years for females.[[23]](#footnote-23) Researchers found that 65 people on death row out of the 671 people (9.69%) surveyed for the study[[24]](#footnote-24) (including some who have had their sentences commuted to life) have reached or surpassed the average Kenyan life expectancy.
			4. We do not have comparable figures for people on death row in Tanzania, due to the lack of transparency.
	3. **The lack of healthcare creates life-threatening situations for incarcerated people.**
		1. A related issue of concern, and one that becomes increasingly desperate, is the lack of access to healthcare in prisons across Malawi, Tanzania, and Kenya. The effects of inadequate healthcare are particularly felt by elderly people, medically vulnerable people, and women.

***Malawi***

* + 1. Healthcare provision in Malawian prisons is, on the whole, inadequate and creates cruel, inhuman and degrading conditions for incarcerated people who suffer with physical and psychological healthcare challenges that go unaddressed.
		2. Firstly, it is difficult for prisoners to access the care they need. There is an acute shortage of clinics within the prisons, which hampers prisons’ abilities to respond to medical emergencies. The Malawi Prison Inspectorate noted during its 2018 report that about 25 prisons did not have in-house clinics. In the recent report in 2021, it reported that clinics had been constructed at Mwanza, Chikhwawa, Kasungu and Nkhotakota.[[25]](#footnote-25)
		3. Further, 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. During the 75th session of the Committee against Torture, representatives from Malawi confirmed that there was only one licensed doctor in the entire prison system.[[26]](#footnote-26)
		4. Second, there is an inadequate supply of drugs in prison clinics. While there has been some improvement in the supply of essential drugs in prison clinics over the past three years, the inspection by the Prison Inspectorate revealed that drug shortages remain a serious problem in prison clinics.[[27]](#footnote-27) Often prisoners report having to find money to buy medicines, usually by relying on family members. Those that cannot afford the medicine often go without.
		5. Prisoners with HIV provide a case in point. In 2018, people who were incarcerated with HIV reported that prison overcrowding meant that they were not able to take antiretroviral drugs due to a lack of private space to keep their drugs. People also reported that HIV/AIDS easily spreads due to sexual assault and sharing of razor blades and gloves.[[28]](#footnote-28)
		6. Third, there is an unaddressed mental health crisis in Malawian prisons. Incarcerated people with mental illnesses or other mental health challenges are treated in a manner that violates the prohibition on torture and ill-treatment. Many people on death row are kept in de facto solitary confinement in some prisons. Solitary confinement for a period of up to twenty-five days can also be ordered if a person is found guilty of a prison offence.[[29]](#footnote-29) Prolonged solitary confinement amounts to psychological torture[[30]](#footnote-30) and can lead to intense feelings of isolation.
		7. Populations with special needs suffer disproportionately in these conditions. Older prisoners, for example, are deeply affected and there are no legal safeguards to protect them.[[31]](#footnote-31) 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 must 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.
		8. Women also suffer from inadequate healthcare that is not adapted to their needs. Women who are menstruating do not have 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 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.
		9. An example that illustrates the tragic consequences of inadequate healthcare can be found in the story of one of our clients, Nedson Mailosi, who died while incarcerated in 2021. Mr. Mailosi suffered on death row for 12 years and was medically vulnerable with HIV. During his incarceration, he suffered from tuberculosis twice and required treatment for as long as 8 months each time. During the Covid-19 crisis, he was not released or transferred out of prison, despite his weak immune system.
		10. Although Mr. Mailosi suffered from long-term illnesses, he did not receive appropriate medical attention until his health suddenly declined in the fall of 2021. When his health suddenly declined, the prison doctor transferred him to a public hospital, where he was further examined and tested. At the hospital, Mr. Mailosi was in a segregated ward and had to rely on private support to receive nursing care and buy medicine and supplies. Because his illness was not addressed until its advanced stage, Mr. Mailosi’s family had little notice to arrange travel before he died.
		11. While Mr. Mailosi’s counsel stayed in touch with the prison welfare officer during his hospital stay, there is no indication that the prison took any administrative or investigative steps after his death or took any measures to address ill-treatment through lack of healthcare in the prison system.

***Tanzania***

* + 1. We have observed similar conditions in Tanzania. Many of our Tanzanian clients suffer from HIV. In such cases, we have documented instances in which people in prisons have received out-of-date medications or do not have access to medications that are accessible to the general population.
		2. Similarly, 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.
		3. Women who are pregnant or nursing do not receive adequate care in Tanzanian prisons.[[32]](#footnote-32) 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.

***Kenya***

* + 1. In Kenya, too, incarcerated people suffer from poor physical and mental healthcare that renders their conditions of confinement torturous.
		2. Poor mental health is rampant among Kenya’s prison population. A 2022 study found that at least 15 percent of the 671 people surveyed on death row reported that they had been experiencing “mental health problems”, which is higher than the national average.[[33]](#footnote-33) This figure is self-reported and so is likely a severe underestimate of the scope of the problem. Similarly, it does not account for the mental health of the non-death row population.
		3. People with poor mental health and those living with mental illnesses receive no psychosocial support or accommodations to help them endure their conditions of confinement.
	1. **Living on death row amounts to psychological torture.**
		1. While standards of healthcare across the board are poor, we want to shed light on the lack of psychosocial support for people on death row, and to point out the devastating mental health consequences of prolonged confinement on death row.[[34]](#footnote-34)
		2. Not only do death row inmates contend with poor sanitary and nutrition conditions, they also live with the perpetual fear and uncertainty of a looming execution. Thus, the torture that these death row inmates face as a result of their sentence is both physical and mental.
		3. In Malawi, people sentenced to death are confined in Zomba Central Prison. The condemned section at Zomba Central Prison consists of cells roughly 8 x 6 feet (1.8 x 2.4 meters). Each cell contains one window that is no more than one square foot in size, which is located at the top of the door and provides the only ventilation to the cell. The door is thick wood reinforced with metal bars. Each cell is lit by one light bulb that remains on all night. There are no fixtures in the cells and there was nothing attached to the walls of the empty cell. A bucket in the corner is used as a latrine at night. Across from the cellblock are the gallows. Across from the gallows, there are three showers and three toilets, which are shared by everyone living in the condemned section.[[35]](#footnote-35)
		4. Condemned men and women live in similar conditions in Tanzania, though we have had difficulty in getting complete accounts of life in prison from clients because prison guards are typically present during counsel’s meetings with clients. One client at Butimba Central Prison in Mwanza, Tanzania, was able to provide some information during a recent visit with lawyers.
		5. The client described 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. The women are outside of the cell from 7am to 3pm, during which time they work for the prison doing activities such as making sponges or cleaning.[[36]](#footnote-36)
		6. Added to these unsanitary and dilapidated housing facilities is the psychological distress of living in death’s shadow. “Death row phenomenon” is a term that has been adopted to describe the anxiety, dread, fear and psychological anguish that may accompany long-term incarceration on death row. It is difficult to overstate the psychological damage caused by existing for years under a constant fear of death, without knowing precisely when death will come. People on death row have spent years near the gallows—a physical reminder of the uncertainty of looming death.
		7. Importantly, we do not know of any condemned men and women who have received any mental health treatment to alleviate trauma from death row phenomenon. And due to the nature of their sentence, condemned people in Malawi and Tanzania cannot participate in educational programming or occupational training, where such programmes exist. As such, they are left to suffer in isolation.
		8. This lack of mental healthcare causes our clients’ conditions to deteriorate with each passing day. We find it unsurprising, therefore, that the majority of our clients on death row manifest clear signs of mental health issues when we visit them. For the most part, these mental health challenges are traceable to post-conviction trauma. We submit that the conditions of incarceration on death row in and of themselves amount to torture.
	2. **The food crisis in prisons leaves incarcerated people starving.**
		1. We are deeply concerned about the lack of adequate nutrition in prisons across the three countries in this input and submit that the lack of food violates the prohibition on torture and ill-treatment.

***Malawi***

* + 1. Lack of adequate food has persistently plagued Malawian prisons for years. Prisoners receive a single meal per day. Despite a ruling stating that diverse food should be provided more than once each day,[[37]](#footnote-37) prisons continue to serve only one meal per day of nsima and beans or peas. Being primarily comprised of starchy foods, this meal lacks much nutritional value.
		2. Prisoners only have one opportunity a day to eat. If they are taken to court, they may spend the day there without eating and will have missed their opportunity to eat in prison and thereby must survive without food for 24 hours.
		3. In spite of the diverse health needs of older persons, people with medical conditions, and pregnant and nursing women, prisoners have no opportunity to adapt the prison diet to their needs, eat at different times, or to request additional food.
		4. This has resulted in health problems for older people, some of whom have had trouble digesting the nutritionally sparse and monotonous diet of cereals and beans. Some older clients have reported to us that they experience stomach ulcers, which go untreated for years.
		5. Moreover, people in Malawian prisons frequently suffer from 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.[[38]](#footnote-38)
		6. The food crisis came to a head in October 2022, when The Times Group Malawi reported that people in prisons were going up to two or three days without food.[[39]](#footnote-39) Over the next few weeks, multiple news outlets and the Malawi Human Rights Commission (MHRC) reported that many people in prisons had gone without food for at least five days.[[40]](#footnote-40) Reprieve and CHREAA were able to confirm these reports and visited clients in prison who had gone without food for several days.[[41]](#footnote-41) A Reprieve lawyer also learned from prison officers that at least one prison could not serve full meals because it was rationing its depleted food stores.[[42]](#footnote-42)
		7. The Times Group Malawi reported that the shortage was due to a disagreement on prices between food suppliers and the government.[[43]](#footnote-43) While the Malawi Prison Service (MPS) had requested a budget of approximately K2.8 billion for the current fiscal year, it was allocated only K1.3 billion, which led to insufficient funds for prisons to pay food suppliers.[[44]](#footnote-44)
		8. The food crisis persisted throughout late 2022 and into 2023. On 15 November 2022, it was reported that the food shortage was affecting all 32 prisons in Malawi.[[45]](#footnote-45) The Daily Times also reported that the remaining MPS budget of K99 million was meant to last until March 2023, but that it had no more funds to provide firewood, salt or vegetables.[[46]](#footnote-46) On 8 December 2022, the Parliament of Malawi ordered that the prisons budget be increased by about K989 million. However, prisons are still struggling to provide adequate nutrition to people in prisons. On 21 December 2022, Chichiri Prison reported that it was failing provide food for people in prison because it had no funds to maintain electric cooking pots to cook food and that no other cooking methods were available.[[47]](#footnote-47)
		9. The lack of adequate nutrition in prison exacerbates the above-mentioned physical and mental health problems. The lack of nutrition also results in malnutrition and increased susceptibility to communicable and opportunistic diseases. There are many reported examples of victims who lost their lives due to inadequate nutrition in Malawi prisons, and these devastating examples are accompanied by reports of incarcerated people who suffer serious health consequences as a result of malnutrition.
		10. Malawian prisons’ failure to provide adequate food and nutrition for detainees means that children in prison are also not receiving an adequate level of food.[[48]](#footnote-48) Often, female detainees with dependent children must share their food portion with the child rather than receive adequate portions. At Domasi Prison, for example, Irish Rule of Law 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. Moreover, the Malawian Prison Services do not meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables.
		11. We submit that failure to provide sufficient food and water to prisoners is contrary to the right to dignity and the prohibition of torture and cruel, inhuman or degrading treatment and constitutes a threat to the right to life protected under sections 19(1), 19(3) and 16 of the Malawi Constitution.

***Tanzania***

* + 1. Prisoners in Tanzania similarly suffer from food shortages. Clients have reported to us that they receive only one or two meals of porridge per day and that access to protein, fruit, and vegetables is scarce.
		2. In 2018, the President announced the government would no longer feed people housed in prisons and suggested that they should cultivate their own food. Subsequently, some detained persons “reported receiving no food from the prison authorities, relying solely on what family members provided.”[[49]](#footnote-49)
		3. These conditions are the same whether a person is ill, elderly, or has gender-specific needs. For example, we have been in close contact with a client who recently gave birth in prison. Despite the United Nations Bangkok Rules requiring prisons to provide dietary accommodations to women who are pregnant or breastfeeding to support the growth of the child,[[50]](#footnote-50) Chato Prison provided no additional support to our client throughout her pregnancy or nursing period. Rather, she 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, and the prison doctor gave her a multivitamin.[[51]](#footnote-51)
	1. **Malawian prisoners lack access to water.**
		1. In the past few years, prisons in Malawi have experienced frequent water shortages. During the recent food crisis, on 20 October 2022, Times 360 Malawi reported that Zomba Central Prison had gone without water for five days due to an unpaid bill.[[52]](#footnote-52) Reprieve and CHREAA were able to confirm these reports.
		2. On 24 October 2022, people imprisoned at Zomba Central Prison reported that they still had no access to running water. That same day, a Reprieve lawyer was unable to meet with a client who was suffering from diarrhoea, which was likely caused by the lack of food and water at the prison.
		3. Zomba Central Prison faces frequent water disruptions due to unpaid water bills, likely caused by underfunding and an inability to access funds.[[53]](#footnote-53) During water shortages, the inability to observe hygiene practices leads to an increase of cholera and other illnesses, often with devastating consequences.[[54]](#footnote-54) During the Covid-19 pandemic, Maula Prison went at least a week without water, exposing people in prison to a higher risk of Covid-19.[[55]](#footnote-55)
		4. Reprieve clients also report that water is rationed, even during times when the system is not in crisis, and that there is not always enough water to wash clothes. They also report that toilets are not directly connected to running water, which often causes blockages that are sometimes not cleared up for at least a week.[[56]](#footnote-56)
		5. These problems persist today. As recently as October 2023, a Reprieve lawyer who visited with clients in Zomba Central Prison reported that they had not had water for a week.[[57]](#footnote-57)
	2. **Incarcerated people, particularly incarcerated women, are cut off from their children and families.**
		1. Prisoners in Malawi, Tanzania, and Kenya are frequently incarcerated far from their communities due to disorganised and congested prison systems, impeding incarcerated people’s contact with family and community members.
		2. Family visits are not only important for maintaining family bonds – particularly bonds with children – but can be frequently a source of food in a time when prisons are experiencing a food crisis. Lack of familial contact is particularly detrimental to most detainees who come from poverty-stricken backgrounds – the cost and availability of travel for family members is often not feasible and this has a direct impact on prisoners’ sense of isolation, as well as their nutrition and contact with the outside world.
		3. The lack of familial contact is pronounced for people sentenced to death, since there are limited maximum security prisons in the country – and only one such prison in Malawi. When we have visited families of people in prison, some families were surprised to hear that their loved one was still alive. Many expressed their wish to be able to see their family member in prison and stated that they were prevented from doing so due the cost of traveling and interruption in work. Since many of our clients come from impoverished backgrounds, their family members often do not have phones to call their family member in prison.
		4. This lack of access to family is particularly acute for women, who remain the primary caregivers of children in many societies across our counties of work and who frequently have children before they are incarcerated. Being suddenly deprived of contact with her children is often devastating for a mother who was a primary caregiver.
		5. 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 been able to have 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.[[58]](#footnote-58)
		6. 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.[[59]](#footnote-59)
		7. At the other end of the scale, when young children are incarcerated with their mothers, the Malawian Prison Services frequently violate their rights. As mentioned above, there is no adequate food for children and mothers are forced to share their meagre provisions with their children. Further, the mental health development of young children and babies is severely affected by the traumatic surroundings and experiences that they witness in prisons. Prison authorities do not take adequate protective measures to ensure a safe and nurturing environment for the children of detainees, which is a violation of their constitutional rights under Section 23 of the Malawi Constitution.[[60]](#footnote-60) In the 10th General Report, the Committee for the Prevention of Torture made general recommendations on ante‐ and post-natal care, which prison authorities are not following.
		8. What is more, incarcerated people are frequently moved with no notice to counsel or to their families. A lawyer at Reprieve learned in October 2023 that his client of three years is being transferred to another prison that is much further away for him to travel. The decision was made without any consultation with counsel. In moving this client, the government is effectively depriving her of her access to counsel, as counsel will be able to visit with far less frequency and will be hindered in the preparation of her defence.
	3. **LGBTQI+ people suffer discrimination in prison.**
		1. There is a dearth of information regarding LGBTQI+ people’s experiences of prison in Malawi, Tanzania, and Kenya, but the little information we have indicates a culture of discrimination and mental suffering for incarcerated LGBTQI+ people.
		2. In December 2021, a transgender woman was arrested in Mangochi (Malawi) and charged for having “sexual intercourse against the order of the nature” under a statute that is no longer in effect.[[61]](#footnote-61) The Senior Resident Magistrate convicted and sentenced her to eight years’ imprisonment with hard labour. Throughout her pre-trial and post-conviction incarceration, this client was – and is – detained in the male section of the prison, where she is likely to suffer both sexual and physical abuse.[[62]](#footnote-62)
	4. **There are no opportunities for rehabilitation for condemned people.**
		1. Finally, we wish to note with concern that incarcerated people in Malawi, Tanzania, and Kenya are deprived of any meaningful opportunity for rehabilitation.
		2. Educational programs provide opportunities for rehabilitation and reform. Without education programs and occupational training, people in prisons are deprived of key tools that would enable them to successfully re-integrate into their communities post-release. Similarly, community engagement programmes and religious programming provide essential opportunities for incarcerated people to develop necessary social adjustment skills, while simultaneously providing a sense of community and activity for those in prison.
		3. In Malawian prisons, however, incarcerated people are often denied the right to education. In 2021, the Prison Inspectorate found that “[t]he educational system in all the prisons leaves a lot to be desired and amounts to a serious breach of the right to education.”[[63]](#footnote-63)
		4. People in the condemned section at Zomba Central Prison, a maximum-security prison, are deliberately segregated from the rest of the prison population. Due to this forced isolation, they are unable to take part in any activities that might occur at the prison, including educational classes and cultural activities.
		5. Similarly, people incarcerated on death row in Tanzania are deprived of any opportunity to engage in educational programmes.
1. **Good practices**
	1. We are pleased to report two good practices in the prison systems of our countries of work.
		1. First, prisons in Malawi and Kenya provide counsel with easy access to incarcerated people. The prisons facilitate an open relationship with counsel and do not present unnecessary hurdles when lawyers seek to meet with their clients, thereby respecting incarcerated people’s right to the assistance of legal counsel. We have also found it easy to bring experts who are part of the defence team, such as mental health experts, into the prisons to meet with incarcerated people. We note, however, that these visits are rarely conducted in privacy, which creates serious obstacles to an incarcerated person’s ability to communicate candidly with their lawyer or to receive confidential information about their case.

The same cannot be said in Tanzania, where impenetrable and ever-changing procedural hurdles have seen Reprieve lawyers denied access to prisons and have therefore deprived clients of their ability to meet with counsel.

* + 1. Second, we are pleased to see that Malawi is currently in the process of reforming its Prisons Act. Nonprofit and intergovernmental groups have long advocated for the reform of the Prisons Act, which was enacted during colonial oppression and focused predominantly on punishment and retribution. The new Prisons Bill seeks to incorporate rehabilitation and reformation of incarcerated persons in line with constitutional values and international standards. It will enable the Minister for Constitutional and Home Affairs to build open prisons, grant further powers to the Prison Inspectorate, create a parole system, grant further powers of release to various duty-bearers, and create house detention as a sentence.[[64]](#footnote-64) The government is currently engaging with stakeholders as part of the democratic process, and press reports on parliamentarians’ response to the new Prisons Bill have been positive.[[65]](#footnote-65) We would like to see similar reform efforts to address conditions of confinement in Tanzania and Kenya.
1. Constitution of Malawi, §§ 19(3), 45(2)(b). [↑](#footnote-ref-1)
2. Prison Act, Ch. 9:02, §§ 18-19, 43(xii), (xiv), (xxxiii). [↑](#footnote-ref-2)
3. Id. at §§ 46-47, 51. [↑](#footnote-ref-3)
4. Constitution of Malawi, §§ 169-70. [↑](#footnote-ref-4)
5. Malawi, 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) at p. 9; Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons and Police Service Cells Conducted by the Malawi Inspectorate of Prisons in March 2018* (2018) at p. 2. [↑](#footnote-ref-5)
6. Legal and Human Rights Centre, *Tanzania Human Rights Report 2022*, LHRC (March 2023) at pp.125-26, available at https://humanrights.or.tz/en/post/resources-center/TZHumanRightsReport2022. [↑](#footnote-ref-6)
7. African Charter on Human and Peoples’ Rights, Article 5. [↑](#footnote-ref-7)
8. African Charter on the Rights and Welfare of the Child, Article 16(1). [↑](#footnote-ref-8)
9. Law of the Child Act, CAP. 13 R.E. 2019, Article 13. [↑](#footnote-ref-9)
10. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) (2003), Article 14. [↑](#footnote-ref-10)
11. 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*, LHRC (2020) at p.20, available at https://humanrights.or.tz/en/post/resources-center/tanzania-human-rights-report-2019. Since then, LHRC has documented a further 30 death sentences handed down in 2020, 24 in 2021, and 44 in 2022. *See* Legal and Human Rights Centre, *Tanzania Human Rights Report 2022*, LHRC (March 2023) at p. 37. [↑](#footnote-ref-11)
12. Penal Reform International (PRI) in partnership with Foundation for Human Rights Initiative (FHRI), *The abolition of the death penalty and its alternative sanction in East Africa: Kenya and Uganda* (March 2012), p. 19, available at https://cdn.penalreform.org/wp-content/uploads/2013/05/East-Africa-research-report-on-death-penalty-and-life-imprisonment.pdf. [↑](#footnote-ref-12)
13. *See* Carolyn Hoyle & Lucrezia Rizelli, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, The Death Penalty Project (2022), p.23. [↑](#footnote-ref-13)
14. We focus on the situation in Malawi because we have the most data on Malawian prisons, in spite of the dearth of data on the prison system as a whole. The problems explained herein are also relevant to prison overcrowding in Tanzania and Kenya. [↑](#footnote-ref-14)
15. Information current as of October 2023. [↑](#footnote-ref-15)
16. *See Gable Masangano v Attorney General and Others*, Constitutional Case No. 15 of 2007, [2009] MWSC 31 (08 November 2009). [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. Prison Inspectorate of Malawi, *The Report of the Inspection of Prions and Police Cells Conducted by the Malawi Inspectorate of Prisons in March 2018*, (Sept. 2019). [↑](#footnote-ref-18)
19. Lameck Masina, *Malawi President Pardons Prisoners to Reduce COVID-19 Spread*, VOA, (15 August 2020), available at https://www.voanews.com/a/covid-19-pandemic\_malawi-president-pardons-prisoners-reduce-covid-19-spread/6194474.html. [↑](#footnote-ref-19)
20. Owen Khamula, *Chakwera pardons 499 prisoners to decongest Malawi jails as Covid-19 cases surge*, Nyasa Times, (14 August 2020), available at https://www.nyasatimes.com/chakwera-pardons-499-prisoners-to-decongest-malawi-jails-as-covid-19-cases-surge/. [↑](#footnote-ref-20)
21. Data from the World Bank (2021). [↑](#footnote-ref-21)
22. *Republic v Baison Kaula*, High Court of Malawi, Homicide Case No. 5 of 2015 (20 February 2015) (unreported). [↑](#footnote-ref-22)
23. Data from the World Bank (2020). [↑](#footnote-ref-23)
24. Carolyn Hoyle & Lucrezia Rizelli, *Living With a Death Sentence in Kenya: Prisoners’ Experiences of Crime, Punishment and Death Row*, The Death Penalty Project, (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-24)
25. Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons and Police Service Cells Conducted by the Malawi Inspectorate of Prisons in March 2018* (September 2019), p. 20. [↑](#footnote-ref-25)
26. *See* United Nations, *1944th Meeting, 75th Session, Committee Against Torture (CAT)*, UN Web TV, 3 November 2022, available at https://media.un.org/en/asset/k1c/k1c0prvjkq. [↑](#footnote-ref-26)
27. Id. at p. 21. [↑](#footnote-ref-27)
28. Austrida Gondwe and others, *Prisoners’ access to HIV services in southern Malawi: a cross-sectional mixed methods study*, *BMC Public Health*, vol. 21, No. 813 (2021), available at https://doi.org/10.1186/s12889-021-10870-1. [↑](#footnote-ref-28)
29. Prisons Act, Chap. 9:02, sect. 91(1)(b). [↑](#footnote-ref-29)
30. For additional information on solitary confinement, see United Nations Human Rights Office of the High Commissioner, *United States: prolonged solitary confinement amounts to psychological torture, says UN expert*, press release (28 February 2020), available at https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture. [↑](#footnote-ref-30)
31. 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-31)
32. *See* 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). [↑](#footnote-ref-32)
33. Joseph Gitonga Riungu, *Factors Affecting Access to Justice and Human Rights for Persons Living with Disabilities in Kenya*, University of Nairobi, Thesis, (2019) p. 8, available at http://erepository.uonbi.ac.ke/bitstream/handle/11295/109461/Riungu\_Factors%20Affecting%20Access%20to%20Justice%20and%20Human%20Rights%20for%20Persons%20Living%20With%20Disabilities%20in%20Kenya.pdf?sequence=1&isAllowed=y. Further, Reprieve has conducted a survey of people on Kenya’s death row. Out of 850 people surveyed by Reprieve on Kenya’s death row, there were at least 14 people with mental health and/or intellectual challenges, 11 people with physical or sensory challenges, and 6 people with uncategorised disabilities. [↑](#footnote-ref-33)
34. To our knowledge, and again noting the lack of data on incarcerated persons, there are hundreds of people on death row in Tanzania and Kenya. The Legal and Human Rights Centre documented that over 480 persons were on death row in Tanzania in 2019, and there are at least 850 people on death row in Kenya by Reprieve’s count. While the Malawian executive commuted the sentences of the country’s death row population in 2022, our colleague who regularly visits Zomba Central Prison – where the men’s death row is held – reports that the conditions of confinement for these men has not changed at all since the commutation of their sentences. [↑](#footnote-ref-34)
35. Reprieve, *Submissions by Stakeholders at the Parliamentary Legal Affairs Committee Public Consultations on the Death Penalty, Mzuzu Consultations*, (May 2022). [↑](#footnote-ref-35)
36. Information current as of February 2021; on file with Reprieve. [↑](#footnote-ref-36)
37. *Gable Masangano v Attorney General and Others*, Constitutional Case No. 15 of 2007, [2009] MWSC 31 (08 November 2009). [↑](#footnote-ref-37)
38. Jameson Chauluka, *Food crisis in prisons*, The Times Group Malawi, (16 October 2022), available at https://times.mw/food-crisis-in-prisons/. [↑](#footnote-ref-38)
39. Jameson Chauluka, *Food crisis in prisons*, The Times Group Malawi, (16 October 2022), available at https://times.mw/food-crisis-in-prisons/. [↑](#footnote-ref-39)
40. “Times 360 Malawi”, Facebook, (20 October 2022) available at https://www.facebook.com/times.mw/; Malawi Human Rights Commission, Press Statement, *Hunger Crisis in Malawi’s Prisons: A Call for Urgent Action*, (20 October 2022), available at https://twitter.com/HumanRightsMW/status/1583132045743513600/photo/1. [↑](#footnote-ref-40)
41. Information on file with Reprieve and CHREAA. [↑](#footnote-ref-41)
42. Information on file with Reprieve. [↑](#footnote-ref-42)
43. Jameson Chauluka, *Food crisis in prisons*, The Times Group Malawi, (16 October 2022), available at https://times.mw/food-crisis-in-prisons/. [↑](#footnote-ref-43)
44. Lloyd Chitsulo, *Prisons face K1.5bn budget deficit*, The Nation, (27 October 2022) available at https://mwnation.com/prisons-face-k1-5bn-budget-deficit/. [↑](#footnote-ref-44)
45. Wezzie Gausi, *Prisoners’ Nightmare*, Daily Times, (15 November 2022). [↑](#footnote-ref-45)
46. Id. [↑](#footnote-ref-46)
47. Information on file with authors. [↑](#footnote-ref-47)
48. In the 10th General Report, the Committee for the Prevention of Torture (CPT) made general recommendations on ante‐ and post-natal care. Every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), document CPT/Inf (2000) 13, para. 26. Available at https://rm.coe.int/1680696a74. [↑](#footnote-ref-48)
49. The Advocates for Human Rights, *Tanzania: Death Penalty*, Submission to the 39th Session of the Working Group for the UPR (5 November 2021), p. 2. [↑](#footnote-ref-49)
50. 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), Rule 48. [↑](#footnote-ref-50)
51. 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). [↑](#footnote-ref-51)
52. “Times 360 Malawi”, Facebook, (20 October 2022) available at https://www.facebook.com/times.mw/. [↑](#footnote-ref-52)
53. *Prisoners Run Out of Food Essentials*, The Nation, (6 March 2022) available at https://mwnation.com/prisoners-run-out-of-food-essentials/. [↑](#footnote-ref-53)
54. Information on file with Reprieve. [↑](#footnote-ref-54)
55. Malawi Voice, *Oops! Water Crisis at Maula Prison, 200 Inmates Hit By Covid-19*, (27 July 2021) available at https://www.malawivoice.com/2021/07/27/oopswater-crisis-at-maula-prison-200-inmates-hit-by-covid-19/. [↑](#footnote-ref-55)
56. Information on file with Reprieve. [↑](#footnote-ref-56)
57. Information on file with Reprieve. [↑](#footnote-ref-57)
58. Information on file with Reprieve. [↑](#footnote-ref-58)
59. 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). [↑](#footnote-ref-59)
60. *See Mw prisons housing under-5 children*, The Times Group, (8 December 2021), available at https://times.mw/mw-prisons-housing-under-5-children/; Memory Kutengule-Mana, *Babies behind bars: 12 children serve time with mothers in Malawi prisons*, Nyasa Times, (17 January 2018) available at https://www.nyasatimes.com/babies-behind-bars-12-children-serve-time-mothers-malawi-prisons/. [↑](#footnote-ref-60)
61. The woman in question was charged under section 153(c) of the Penal Code. There has been a moratorium on the use of section 153 since 2012. Moreover, during the client’s trial, the court seemed to rely on the fact that she dressed as a woman and that she traded in sex to secure her conviction, none of which is necessary to prove the offence charged. [↑](#footnote-ref-61)
62. Case details on file with Irish Rule of Law International. [↑](#footnote-ref-62)
63. Malawi, Inspectorate of Prisons, *The Report of the Inspection of Prisons*, p. 6. [↑](#footnote-ref-63)
64. Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant, Initial reports of States parties, Malawi*, UN Doc CCPR/C/MWI/1 (13 July 2021), para. 28. [↑](#footnote-ref-64)
65. Brenda Buliyani, *Govt Commits to Speedy Review of Prisons Act*, The Nation (27 Oct. 2023). [↑](#footnote-ref-65)