



**SOUTHERN AFRICA
LITIGATION CENTRE**

Joint Stakeholder Submission to the UN Committee Against Torture

Pre-session review of Malawi

(62th session – November to December 2017)

Submitted by:

A. Centre for Human Rights Education, Advice and Assistance (CHREAA); and

B. Southern Africa Litigation Centre (SALC)

1. Introduction

1.1 The Malawi Centre for Human Rights Education, Advice and Assistance (CHREAA) and the Southern Africa Litigation Centre (SALC) submit this information to the Committee against Torture (CAT Committee) for the drafting of the list of issues prior reporting (LOIPR) ahead of the upcoming State party's review of Malawi.

1.2 CHREAA was established as a not-for-profit non-governmental organisation dedicated to the promotion and protection of human rights. The establishment of the organisation followed Malawi's history of oppression and human rights abuse. In the past years CHREAA's work has focused mainly on key populations. In the past, the organisation documented serious violations of Malawi's international obligations, including the breach of international standards on the prohibition on torture and other forms of ill-treatment.

1.3 SALC is a non-governmental organisation based in Johannesburg, South Africa and operating in 11 Southern African countries including Malawi. SALC promotes and advances human rights and the rule of law in southern Africa, primarily through strategic litigation support and capacity building. It aims to provide support to human rights and public interest initiatives undertaken by domestic lawyers and local civil society organisations. SALC has worked on transitional justice and regional human rights concerns related to South Africa, Malawi and other countries in the region since 2005, including through litigation.

2. METHODOLOGY

2.1 The content of this briefing is based on information obtained by the CHREAA and SALC in the course of their work. The document highlights some of the main areas of human rights concerns of these partner organisations in Malawi in relation to the provisions of the Convention against Torture (CAT). In particular, it highlights the problem of lack of comprehensive laws to

address torture in Malawi, the question of impunity and lack of adequate investigation to deal with acts of torture. It also speaks to the use of confessions extracted under torture, the problem of overcrowding in prisons, lack of adequate nutrition for inmates, inadequate treatment for inmates with mental illness, as well as the problem of lack of accountability when torture is committed. These concerns are reflected in a series of individual complaints expounded in the various sections below. Recommendations are made for Malawi to improve the system and ensure that the country lives up to its obligations prescribed under CAT.

3. Normative framework

(Articles 1 and 2)

A. Scope of international obligations

3.1 The Convention against Torture enjoins State parties to take effective legislative measures to prevent acts of torture in any territory under their respective jurisdictions.¹ It is commended that at the international level, Malawi ratified the CAT and its Optional Protocol (OP-CAT). Malawi also ratified the International Covenant on Civil and Political Rights (ICCPR) the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as well as the Convention on the Rights of Persons with Disabilities (CRPD), all of which prohibit torture. At the regional level, Malawi is a State party to the African Charter on Human and Peoples' Right (African Charter). The Charter establishes a peremptory norm banning State parties from derogating against torture.

3.2 Despite ratifying the above instruments, there are several instances when Malawi breached its international obligations under CAT, some of which are highlighted below.

B. Constitutional and legislative framework

3.3 Section 19(3) of the Constitution of Malawi bans the use of torture or cruel, inhuman and degrading treatment or punishment. The standard in section 19(3) is complemented by section 44 of the Constitution which bars the State from derogating from torture or any other form of cruel, inhuman and degrading treatment or punishment. Sections 19 and 44 are to be made fully operational by statutory norms speaking to the prevention of torture. However, we note with concern that persistent legislative gaps which impact negatively on the full prevention of torture in Malawi.

3.4 Thus, the Penal Code lacks comprehensive provisions addressing torture. The law does not criminalise mental or psychological torture, and it is silent in cases where torture is used to obtain confessions/information. In Malawi, a person who commits torture is often charged with assault or assault with intent to conduct grievous bodily harm. It is submitted the current gap limits the extent to which complaints can be brought to court for alleged cases involving mental or psychological torture. This gap violates Malawi's international obligations under the Convention which enjoins State parties to enact effective domestic laws that prohibit the negative practice.

¹ See Article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1984 and entered into force in 1987 (herein after CAT).

4. Impunity and lack of adequate investigations

(Article 12)

4.1 In Article 12 of CAT, State parties are required to ensure prompt and impartial investigation when there are reasonable grounds to believe that an act of torture was committed in their jurisdictions. We are concerned about the lack of investigation in some torture related matters in Malawi. A street vendor who sells samosa's at Limbe Market in Blantyre was arrested and taken to a nearby police station (Limbe Police Station) on 6 September 2016. The following day, 7 September 2016, he asked to use the toilet located outside the cell. On his return he was accused of attempting to escape the police premises as he was found standing outside the police cell while he waited for the officers to open it for him. The victim was then taken to a separate compartment within the station where he was assaulted, brutally. He was beating, placed in handcuffs and strangled, severely.

4.2 The victim sustained serious injuries to his head. His eyes, arms, and lips were also affected. The matter was brought to the attention of senior officers who decided to release the victim to prevent the matter being raised with authorities. It has been a while since a complaint was brought to the attention of the relevant authorities. However, investigation efforts remain stark.

5. Confessions extracted under torture

(Articles 1, 4)

5.1 In many instances the Committee against Torture has explained that CAT outlaws the use of torture to obtain evidence to be used in the courts. This ban includes the prohibition of acts of torture to obtain confession. Despite these pronouncements, systematic violations continue to take course. Reportedly, Malawi police officers used torture to obtain evidence to substantiate allegations that the victims had committed the crime of armed robbery.

5.2 The victims alleged that they were ill-treated. They said that they were taken from their homes and brought to a place called Kameza where they were blindfolded, removed from police vehicles and told that they were going to be shot. They also claimed that, several minutes later, they were taken to Limbe Police Station where they were assaulted or beaten, repeatedly.

5.3 There are accounts that victims were transferred to Bangwe Police Station where they were beaten further and forced to confess to the crime and to surrender the weapon (gun) used during the robbery. Allegedly, some metal rods were used on the occasion of the assaults against the victims. In the course of events a metal rod was placed through the knee of one of the victims and an iron was used on their back and buttocks. It is said that torture escalated to the extent that victims were forced into a tub full of water and periodically electrocuted. The abuse occurred over a period of two days before the victims were brought before the court.

6. Overcrowding and inadequate conditions in prisons

(Articles 11, 12, 13, 14 and 16)

6.1 The bulk of Malawi's prisons are severely overcrowded with an overall population of about 14,200 prisoners in the system against an overall prison capacity of 5,610. We have received reports

that some prisoners have to sleep in a kneeling position due to the lack of space. The lack of adequate sleeping places is tantamount to torture as inmates suffer from long-term knee problems and other ailments that are related to being placed in a confined space for prolonged periods.

6.2 In 2007, a Malawi court² found that prison overcrowding and poor ventilation in prison facilities were inconsistent with human dignity. The court said, 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 it happens in most prisons. The court ordered the government to reduce the prison population by half, within 18 months, and thereafter eliminate overcrowding periodically. We are concerned that many years have passed and the problem of congestion in Malawi's prisons still persists.

7. Deprivation of adequate nutrition

(Articles 1, 11, 12, 13, 14)

7.1 We are concerned about the lack of sufficient food for prisoners, which results in inmates becoming susceptible to communicable and opportunistic diseases. In 2016, we received reports that there were food shortages in the country's prisons and inmates were malnourished, risking death, illness, and severe suffering. With other civil society partners, we implemented advocacy actions (including making statements and addressed letters to the President) envisaging the provision of suitable food supplies to prisons in the country.

7.2 Our calls were partially addressed with the countries prisons remaining overcrowded. Inmates continue receiving one meal per day. Often the single meal per day lacks the recommended nutrients. The denial of adequate food as specified in Malawi Prison Regulation 53 is a violation of the State's obligations under the Constitution and the Common Law to protect the lives and wellbeing of inmates. We submit that failure to provide sufficient food and water to prisoners is contrary to the right to dignity and the prohibition against torture, inhuman and degrading treatment and it constitutes a threat to the right to life protected under sections 19(1), 19(3) and 16 of the Malawi Constitution and in general international law standards³.

7.3 Inmates have suffered devastating consequences under Malawi's one meal per day policy. There are many reported examples of victims who lost their lives due to inadequate nutrition in Malawi prisons. A 26-years male was incarcerated at the Maula Prison on 20 June 2015. At the time incarceration the victim did not suffer from any terminal illness. About a year later, in May 2016, he was diagnosed with malnutrition and pellagra. In December 2016, the victim was diagnosed with psychosis. The then medical diagnosis stated that victim showed signs of strange behaviour. It also said that he showed signs of restlessness, mutism, confusion, and suspiciousness (paranoia).

7.4 On 28 February 2017 the victim was assessed by a doctor who said that he showed features of progressive dementia, which was likely caused by malnutrition and pellagra and the lack of vitamin B3/niacin. The doctor also said that the victim was severely malnourished with large pelvic bedsores, and unkempt with faecal and urinary incontinence. Speaking about the mental state of

² *Gable Masangano vs Attorney General Constitutional Case no. 15 of 2007.*

³ This also seems to be the view of the United Nations Special Rapporteur on the Right to Food who confirmed that budget constraints cannot justify non-compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

the victim, the doctor noted that there were signs of confusion and lack of orientation to time, place and persons. The medical expert also highlighted that the victim was slow to respond and he showed signs of incoherent or confused speech. The doctor recommended his release from the prison facility and immediate transfer to a chronic care or mental health facility. Alternatively the victim should have been released to the care of his family as he was not able to care of himself (hygiene, cleaning, feeding), and required a full time caregiver and medical attention where not available at the place where he was being held. The victim was taken to Kamuzu Central Hospital a few days before he passed away while still in police custody at the hospital on the 14th March 2017. The medical report in the prison file highlights that he died of severe malnutrition, Pellagra, Psychosis and Pervicasesores.

8. Inadequate treatment for inmates with mental illnesses

(Article 2, 10, 11, 12, 13)

8.1 Inmates suffering from mental illnesses are usually neglected in prisons. There are reported cases where remand officers used restraints measures as control mechanism against these inmates. We submit that the use of such restraint measures is against the prohibition of torture. We are also concerned that Malawi is failing undertake proper investigations for crimes that are committed by people who suffer from mental illness.

8.2 Reportedly, a victim was arrested for breaking windows and causing disruptions in his family home and in the homes of his neighbours. While he was being held he was examined by a doctor who found that his behaviour was disorganised (unkempt, talking to self, aggressive). The doctor also found that the victim displayed psychotic features including disturbances in perception (hallucinations), delusions, and disorganised circumstantial speech. Moreover, it was found that the victim was previously diagnosed and treated for schizophrenia at Zomba Mental Hospital, and he had continued treatment for his mental illness at another health facility. The facts showed that he needed extra care, which was not available where he was been held. It was also highlighted that the victim was convicted of a minor offence that he most likely committed due to his mental illness. In conclusion, the doctor recommended the transfer of the victim to Zomba Mental Hospital for care. The Ministry of Justice has, however, denied to release the victim on parole.

8.3 The above shows a clear breach of Malawi's obligation under CAT to prohibit torture, cruel and inhuman or degrading forms of treatment or punishment in relation to inmates suffering from mental illnesses.

9. Lack of accountability

(Article 10, 11, 12, 13)

9.1 CAT places a duty upon State parties to educate public officials regarding the prohibition against torture and to hold them accountable were a breach has been committed. We are concerned about the lack of accountability and oversight by government over City Council employees when they are removing street vendors from the so call "illegal" trading locations. City Rangers have unfettered powers and they use excessive force when they are attempting to apprehend the alleged wrong doers.

9.2 A street vendor was assaulted by Blantyre City Assembly Rangers while selling newspapers in Malawi streets. The victim sold newspapers at the place of assault for several years. As a result of the assault the victim sustained injuries and lost three teeth. It is submitted that the treatment given to the vendor amounts to torture to the extent that it culminated in pain inflicted against the victim by state officials who were attempting to stop him from selling newspapers at the streets.

9.3 The situation is aggravated by the fact that there were about 8-10 officials who assaulted the victim, but only two who could be identified were charged. Late on the two officials were acquitted leaving a clear margin for city Assembly Rangers to continue abusing ordinary citizens.

Recommendations

We respectfully ask the CAT Committee to take the above into account in preparing the List of Issues (LIO) to be addressed by Malawi.

We further ask the Committee to consider:

1. Asking the government of Malawi to review the training of police and prison officers in an effective way to ensure adherence to human rights standards by these institutions, particularly standards speaking to the prohibition of torture. The government should not only recognise that the police and the prisons have a role in ensuring that human rights are adhered to, but should also ensure that these institutions are exemplary in dealing with human rights violations. Where the government must investigate and follow up reported cases of violation of human rights duties by state officers and activate accountability mechanisms;
2. Impressing upon the government of Malawi to explain what steps have been taken to investigate all reported allegations torture in the country, included the documented above, The information should include details about the status of investigations and, if any, their results.
3. Requesting Malawi government to explain the status of the establishment of the Independent Complaints Commission, which is supposed to investigate complaints of brutality, deaths or misconduct at the hands of the police.
4. Urging the government to set up an adequate mechanism for reporting incidents of alleged torture either at the hands of police officers or at the hands of prison authorities.
5. Asking the government of Malawi to fast track the implementation of a Lay Visitors Scheme under the police with the mandate to act as a community oversight initiative to inspect conditions of detention in police stations. The Committee should also consider asking the government to present evidence supporting that the scheme is operational, if alleged it exists,
6. Asking the government to provide evidence of the number of cases concluded and resulted in disciplinary actions for police or other officials accused of committing torture against suspects or inmates;
7. Impress the government to release, immediately and unconditionally all inmates suffering from mental illnesses that are still incarcerated and undertake independent and thorough investigations into allegations of ill-treatment committed against these inmates (including denial of appropriate medical care);
8. Recommend Malawi government to review and take immediate action over the excessive use of powers by City Rangers;
9. Urge the government to enact specific legislation on torture to fill the gaps under the Penal Code as explained in the body of this briefing; and

10. Urge the government to address the problems of prison overcrowding and improve conditions of detention for inmates.