

**Mandates of the Independent Expert on the enjoyment of human rights by persons with albinism; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Independent Expert on the enjoyment of human rights by persons with albinism; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 37/5, 44/10, 44/5 and 43/20.

In this connection, we would like to bring to the attention of Your Excellency's Government information we have received concerning the increased use of the death penalty against persons accused of involvement in attacks against persons with albinism, and the alleged torture and extra-judicial killings of suspects in crimes committed against persons with albinism, namely: **Mr. Buleya Lule; Mr. Kumbilani Patson; Mr. Sainani Kalekeni; Mr. Douglas Mwale; Mr. Pontino Folsani; Mr. Medson Madzialenga; Mr. Gerald Phiri; Mr. Steven Chin'ombe; Mr. Jezimond Baluwa; Mr. White Chilumpa; Mr. James Moses Kanjiru; Mr. Herbert Maloni and Mr. Donald Msafiri.**

According to the information received:

***a) Torture of accused persons under investigation for crimes against persons with albinism***

Torture by the police in Malawi has been reportedly prevalent in cases involving alleged perpetrators of attacks against persons with albinism, which are documented below.

Buleya Lule, Kumbilani Patson and Sainani Kalekeni

In 2019, the Malawi Human Rights Commission (MHRC) investigated the torture and murder of Mr. Buleya Lule by police officers in Dedza and Lilongwe. Mr. Buleya Lule was a Malawian national, aged 44, who died in police custody on 20 February 2019, after having been arrested in the early hours of 18 February 2019. The MHRC concluded that "*it is an undeniable fact that the victim was tortured in police custody*" and that this torture caused his death. The post-mortem examination conducted at the request of the MHRC concluded that the cause of death was electrocution.

Mr. Lule's co-accused, Mr. Kumbilani Patson and Mr. Sainani Kalekeni, are Malawian nationals aged 52 and 45 respectively. They were allegedly severely beaten into making confessions. Mr. Lule, Mr. Patson and Mr. Kalekeni were detained together at Chitsime Police Unit on the night of 18 February 2020, during which time, the police allegedly beat all three. Mr. Patson and

Mr. Kalekeni claimed that Mr. Lule was taken to a separate investigation room and then returned again to the cell looking “thoroughly beaten”.

#### Douglas Mwale and Pontino Folsani

On December 2015, Mr. Douglas Mwale and Mr. Pontino Folsani were arrested for the murder of a person with albinism along with their co-accused, Ms. Sophia Jere, in Mchinji. Mr. Mwale and Mr. Folsani alleged that while they were in police custody they were beaten by the police, who threatened to kill them unless they confessed to the crime. Despite these allegations of torture, both men were sentenced to death on 16 December 2019 by the High Court sitting in Mchinji (Criminal Case 109 of 2018). Both men are currently imprisoned at Zomba Prison in the Eastern Region.

#### Medson Madzialenga, Gerald Phiri, Steven Ching’ombe, Jezimond Baluwa

Mr. Medson Madzialenga, Mr. Gerald Phiri, Mr. Steven Ching’ombe and Mr. Jezimond Baluwa were arrested and detained by the police in Mponela district. All four men alleged that they were severely beaten by the police both before and after they confessed to their involvement in the crime. The men alleged that the police used hot metal irons, *panga* knives and wood to beat them and that they were whipped using a “sjambok” (a heavy leather whip). No medical examination was carried out. Despite the allegations of torture, the men were sentenced to death by the High Court sitting in Dowa on 29 November 2019 (Criminal Case 109 of 2018).

#### White Chilumpha and James Moses Kanjiru

Mr. White Chilumpha and Mr. James Kanjiru were arrested respectively in Kasungu and Nkhotakota in April 2016 and accused of the murder of a child with albinism. While in police custody, Mr. Chilumpha and Mr. Kanjiru were allegedly beaten and burned with hot irons. They both claimed that the police threatened to shoot them. Both men were convicted and sentenced to death by the High Court sitting in Kasungu on 21 September 2020. A notice of appeal has been filed by their counsel.

#### ***b) Alleged deaths in detention and extrajudicial killing by officers of the State in the context of crimes against persons with albinism***

In the past few years, three cases have been reported alleging extra-judicial killings of detainees who were under investigation for crimes against persons with albinism, as detailed below.

#### Buleya Lule

As set out above, in 2019, the Malawi Human Rights Commission documented the torture and murder of Mr. Buleya Lule by police officers in Dedza and Lilongwe. Reportedly, in July 2020, 13 police officers, including the Commissioner of Police for the Central Region, were arrested and charged. All 13 police officers were granted bail at the end of July 2020. The prosecution has reportedly not progressed beyond this to date.

Herbert Maloni

On 27 October 2020, it was reported that Mr. Herbert Maloni, a man imprisoned in Ntcheu Prison awaiting sentence following his conviction for the murder of a person with albinism, had been killed outside the prison building. Leading figures in the albinism community have expressed their concerns that he may have been deliberately killed by the authorities. Police are said to be “probing” the matter but no cause of death has been made public to date. It appears that no further action has been taken by the authorities.

Donald Msafiri

On 1 February 2019, it was reported that Mr. Donald Msafiri, aged 61, a suspect in the abduction of an 18-month-old baby with albinism in Karonga district, had committed suicide the day after he was interrogated. No further investigation into his death has been reported.

*c) Increased use of the death penalty*

In the last 18 months, 12 people have reportedly been sentenced to death in Malawi, breaking a three-year hiatus and representing a 1200% increase in death sentences between 2016 and 2020. These death sentences have all been issued in cases relating to persons with albinism.

We are deeply concerned at the alleged torture, deaths in detention and extra-judicial killings of accused persons under investigation for crimes against persons with albinism. We underline the importance of securing justice for the killings of people with albinism and are concerned that these particular incidents will contribute to obstructing true justice for the victims of these violations.

Furthermore, we are concerned by the increased use of the death penalty in Malawi and reports that 100% of death penalty cases since May 2019 have reportedly involved confessions obtained through torture, risking innocent people being sentenced to death for crimes they possibly did not commit. We highlight that only full respect for stringent due process guarantees distinguishes capital punishment from an arbitrary execution. In the context of prosecutions against persons with albinism, death penalties seem to have exclusively been given to scapegoats and low-level perpetrators, giving rise to concerns that the orchestrators of these crimes remain at large and undetected. We further highlight that there is no credible evidence that the death penalty is a deterrent to crimes.

Notably, the torture, killings and death sentences meted to those accused of crimes against persons with albinism by no means reflect the wishes of the albinism community, who wishes to see perpetrators go through the proper judicial channels to ensure that justice and the appropriate remedies are obtained for victims. The albinism community reportedly desires to also see the measures stipulated within the Regional Action Plan on albinism and the National Action Plan on albinism be respected and implemented, including with regard to ensuring safeguards against torture and the application of the death penalty.

While we do not wish to prejudge the accuracy of these facts we would like to draw the attention of your Excellency’s Government to the relevant international

norms and standards that are applicable to the issues brought forth by the situation described above. In connection with the above information and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide specific information concerning the status of judicial proceedings against 13 police personnel who have been arrested in relation to the torture and killings of Mr. Buleya Lule in custody.
2. Please provide information on the investigations carried out in relation to the death in detention of Mr. Donald Msafiri and the alleged extrajudicial killing of Mr. Herbert Maloni. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Malawi.
3. Please provide information relating to any investigation, medical examinations, judicial or other inquiries which may have been carried out, or which are foreseen, in relation to the allegations of torture of those detained for crimes against persons with albinism. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Malawi.
4. Please also provide information on measures taken to ensure that the death penalty is only handed down following legal proceedings which fully comply with fair trial guarantees and not on the basis of forced confessions.
5. Please provide an update on the implementation of measures in the National Action Plan on albinism.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we encourage your Excellency's Government to continue applying due diligence in investigating and prosecuting the above allegations, as well as to take all necessary interim measures to prevent the re-occurrence of such alleged violations, protect the life, physical and mental integrity of persons with albinism, and to fight against the trafficking of body parts.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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Independent Expert on the enjoyment of human rights by persons with albinism

Gerard Quinn  
Special Rapporteur on the rights of persons with disabilities

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we wish to draw your Excellency's Government's attention to article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights, to which Malawi acceded on 22 December 1993, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

We would also like to draw the attention of your Excellency's Government to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Malawi acceded to on 11 June 1996. Article 15 of the CAT provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

We would like to refer to the reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the "Mandela Rules") and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. We recall that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. We also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

We would also like to draw the attention of your Excellency's Government to Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "(l)aw enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened." (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). We further note that lethal force cannot be used in order to prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others (Human Rights Committee, General Comment 36).

Human Rights Committee, General Comment 36, also notes that loss of life occurring in custody creates a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations under article 6 and that investigations into allegations of violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent.

In relation to the death penalty, General Comment 36 of the Human Rights Committee states that the "violation of the fair trial guarantees provided for in article

14 of the Covenant in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6 of the Covenant. Such violations might involve the use of forced confessions...”