

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Independent Expert on the enjoyment of human rights by persons with albinism; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Working Group on discrimination against women and girls**

Ref.: UA MWI 4/2022  
(Please use this reference in your reply)

23 September 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on the enjoyment of human rights by persons with albinism; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/5, 46/12, 42/22, 42/16 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the imposition of death penalty in the case of Ms. **Sofia Jere**, following trial proceedings which have allegedly failed to adequately consider Ms. Jere's experience of gender-based violence, including sexual abuse, as well as her intellectual disability and allegedly deteriorating mental health condition.

Previous communications expressed concerns in relation to the increased use of the death penalty in cases relating to attacks against persons with albinism ([AL MWI 2/2021](#)). We regret that no reply has been received to date. We reiterate our concerns regarding the continued attacks against persons with albinism in the country and once again underline the importance of protecting them and for ensuring proper justice for the killings of these persons. We remain concerned that in the context of prosecutions for such killings, 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 reiterate the importance of implementing the measures contained in the National Action Plan on albinism, including prevention measures, as well as ensuring effective investigations. We further highlight that there is no credible evidence that the death penalty is a deterrent to crimes.

According to the information received:

Ms. Sofia Jere is a 57-year-old woman who reportedly has an intellectual disability and suffered gender-based violence over an extended period of her life. Ms. Jere's first husband allegedly subjected her to regular physical violence throughout the duration of their marriage between 1984 and 2000.

Ms. Jere married when she was 20 years old. Her husband reportedly suffered from an alcohol addiction, on which he spent all of the couple's money. In one

incident, he allegedly beat Ms. Jere so severely that she lost consciousness. He also repeatedly assaulted her in front of their children and other family members, including during her pregnancy. Ms. Jere reportedly lacked the opportunity to receive treatment for her injuries, although she was hospitalized twice. As a result of the years of abuse and untreated injuries, Ms. Jere continues to suffer from migraines, blurred vision, and a persistent deterioration of her hearing.

Ms. Jere received limited schooling since childhood due to a severe learning disability, which prevented her from completing her schoolwork and eventually led to her dropping out of school. Ms. Jere frequently experiences states in which she loses consciousness or becomes unaware of her surroundings, signs that would be characteristic to dissociation, one of the symptoms of complex trauma.

*Circumstances leading to the imposition of the death penalty against Ms. Jere*

On 10 August 2015, persons associated with Ms. Jere approached her while she was selling *nsima* in the local market. They asked her to take a person with albinism to their house in Manja Village T/A Chikweo in Mchinji District, on the ground that they had found a wife for this person. According to her own account, Ms. Jere complied with this request for help, as she perceived no compelling reason not to do so, and returned to the market. Subsequently, the person with albinism was killed in the said house reportedly for the purpose of selling human tissue in local markets.

On 28 August 2015, when Ms. Jere learned about the police investigation into the disappearance of a person with albinism, she went to the local police office on her own initiative to report when she had last seen him. She told the police that she had taken that person to the house of individuals who had approached her at the market.

On 30 August 2015, acting on Ms. Jere's information, the police found the human remains of the victim in the garden of the said house. At that time, Ms. Jere was considered a suspect.

On 24 December 2015, Ms. Jere was arrested and taken to the Mchinji police station, where she was questioned by police officers about the events leading up to the alleged killing. During the interrogation proceedings, she admitted to taking the deceased person to the house where the killing took place, but maintained that she was not involved in the killing. At this occasion, she signed a confession. Ms. Jere's request to recant her confession at the later trial proceedings was not granted by the court.

Her intellectual disability resulted in her being unaware that she had been sentenced to death until February 2022. Three years after her conviction, Ms. Jere was reportedly still under the impression that she was in a 90-day

post-conviction period and that she could be released and go home within a few weeks.

#### *Irregularities during Ms. Jere's trial proceedings*

On 4 June 2019, Ms. Jere, along with several co-defendants, was found guilty of murder, under Section 209 of the Penal Code, Cap 7:01 of the Laws of Malawi, and for conspiracy to harm a person with a disability under Section 224(B)(a) of the Penal Code (Cap 7:01) of the Laws of Malawi. She was acquitted on a third count for lack of evidence.

It is alleged that Ms. Jere did not participate in the crime for which she was sentenced to death. In her testimony, Ms. Jere repeatedly stated that she had no knowledge of her co-defendants' intentions or a plan of murder with respect to the person with albinism. Ms. Jere's trial counsel, who also represented the co-defendants, reportedly never interacted with any witnesses at the market who could have corroborated her version of the events leading up to the killing.

Ms. Jere's experience of gender-based violence in conjunction with her intellectual disability made her particularly vulnerable to manipulation by others, especially male authority figures. This condition could explain (a) why she complied with the request to take the victim to the said house; (b) why she would have been vulnerable to manipulation by the two men who allegedly carried out the killing; and (c) why, while interrogated by two male police officers, she signed an allegedly false confession, prepared by the police and which she was unable to read and therefore could not understand.

During Ms. Jere's trial proceedings, her defense counsel allegedly failed to bring to the court's attention Ms. Jere's long-term experience of sexual and gender-based violence or her intellectual disability, which could have been considered as mitigating factors in relation to her conviction. Financial resources were not available to prepare an expert report on Ms. Jere's mental condition.

#### *Inadequate detention conditions in Ms. Jere's case*

Ms. Jere is detained in the women's prison in Domasi, Zomba. She is reportedly held in a 12 square meter cell without a toilet, which she shares with 18 other women with only very poor sanitary conditions. She is confined there for over sixteen hours a day, even during the time of year with the highest temperatures. Ms. Jere receives only one meal per day. All prisons in Malawi reportedly experience severe food shortages, with the result that she suffers from hunger on a regular basis. In addition, Ms. Jere has no access to medical health care or psychological support.

Domai Prison is located 380 km from Ms. Jere's home, where her other family members live who cannot afford to visit her. Due to the remoteness of the prison, coupled with the ban on using phones of any kind in prison, Ms. Jere has not seen or had contact with her family members since her sentencing in

2019.

*Context of the imposition of the death penalty on women in Malawi*

Ms. Jere's case is one among a series of cases in which the death penalty has been imposed for crimes committed by women whose experiences of gender-based violence were allegedly the catalyst for the very crimes for which they were sentenced to death. All five women who have been sentenced to death in Malawi in the last twenty years have reportedly suffered gender-based, including sexual, violence and have intellectual disabilities or face deteriorating mental health conditions. However, these factors were reportedly not taken into account in their trial proceedings, which ultimately led to the imposition of the death sentence in their cases.

This situation reportedly stems from the fact that defense attorneys would face extreme limitations at trial proceedings and sentencing when it comes to presenting mitigating circumstances that would warrant a sentence lower than the death penalty. These constraints are often compounded by a lack of financial resources to conduct timely and effective investigations with the assistance of expert witnesses. These restrictions place a particularly heavy burden on women whose criminal cases are inextricably linked to the abuse, violence, and mental health conditions they suffered prior to the crime they are alleged to have committed and often continue to suffer while being held in custody.

After the Malawi Supreme Court struck down the mandatory death penalty in 2007 and abolished the death penalty in its entirety in April 2021 as a result of extensive litigation by a coalition of Malawian and international non-governmental organizations,<sup>1</sup> Malawian courts reduced the sentences of four of the five women held on death row, who subsequently were released. In August 2021, the Supreme Court reversed this decision and reinstated the death penalty. Ms. Jere is the only woman in the country still held on death row.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern that the death penalty may have been imposed on Ms. Sofia Jere following a judicial process that does not seem to meet the most basic judicial requirements guaranteeing a fair trial, for the following reasons:

- Ms Jere's alleged offense and imputed complicity does not meet the threshold of "most serious crime" to warrant capital punishment under international human rights law;
- Given her poverty, Ms. Jere does not seem to have had the opportunity to prepare her defence properly and present exculpatory evidence, including from witnesses' testimonies ;

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<sup>1</sup> *Kafatayeni v. Attorney General*, Constitutional Case 12 of 2005, [2007] MWHC 1.

- The judicial proceedings do not seem to have taken into consideration her intellectual disability – a vulnerability that may have been abused to lure her in good faith into helping to contribute to a crime the commission of which she was not aware of;
- The court proceedings do not seem either to have taken into consideration her history of gender-based violence, including sexual abuse, as a mitigating factor.

We are equally appalled by the reported conditions of her detention, far away from her home and family, which do not meet the most basic minimum standards with regard to access to food, hygiene, medical care and family visits.

Should the facts described above be accurate, they would be in contravention of the rights of every individual to life, to liberty and security, to fair trial guarantees, and to equal and effective protection against discrimination on any ground, including gender, as set out in article 6, 7, 9, 14 and 26 of the International Covenant on Civil and Political Rights (ICCPR), which Malawi acceded on 22 December 1993. They would also contravene the right of everyone to the enjoyment of the highest attainable standard of physical and mental health enshrined in article 12 and 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by Malawi on 22 December 1993. They may further contravene the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Malawi on 11 June 1996, on 12 March 1987, and on 27 August 2009 respectively.

*Imposition of the death penalty only for most serious crimes*

The *United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty* (the “Safeguards”) state that, in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, meaning intentional crimes with lethal or other extremely grave consequences. In light of Ms. Jere’s case, we emphasize that “a limited degree of involvement or of complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder, cannot justify the imposition of the death penalty” (CCPR/C/GC/36, para. 35).

*Fair trial and due process guarantees and gender-based violence*

We note with concern that Ms. Jere does not appear to have received effective legal representation during her trial proceedings, as relevant witness statements that could have corroborated her version of events were not taken. Furthermore, concerns arose that the evidence presented regarding her involvement in the killing of a person with albinism lacked conclusiveness. In particular, the fact that she apparently signed a confession that she was unable to read and allegedly did not understand, and that her motion to withdraw that confession was denied, raises serious concerns about the probative value of the evidence upon which she was convicted of murder.

Paragraph 5 of the Safeguards provides that capital punishment may only be carried out pursuant to legal procedures which give all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR. This provision is violated by the inability of the accused to question relevant witnesses and by the use of forced confessions (CCPR/C/GC/36, para. 41). We recall that according to paragraph 4 of the Safeguards, capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts. Only full respect for the most stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

Under universal standards of due process and fair trial, the imposition of the death penalty is always arbitrary and unlawful when the court ignores or discounts essential facts that may have significantly influenced a capital defendant's motivations, situation and conduct, including their exposure to gender-based violence and other abuse. We are alarmed that the information received indicates a lack of understanding of the trauma and mental health issues associated with gender-based violence, well documented by experts, on the part of law enforcement and judges during Ms. Jere's interrogation and trial process. In this regard, we underline that the death penalty must not be imposed in a discriminatory manner and the element of non-discrimination applies both procedurally and substantively.

Experiences of gender-based violence, especially in cultural contexts that may refer to traditional gender roles in a marriage, can cause victims of abuse to become particularly deferential to male authority figures. In its General Recommendation 33 on women's access to justice, the CEDAW Committee stressed that stereotyping and gender bias in the justice system have far-reaching consequences for women's full enjoyment of their human rights. They impede women's access to justice in all areas of law. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. In this connection, we recall that the Special Rapporteur on extrajudicial, summary or arbitrary executions called on States in 2017 to review laws, criminal procedures and judicial practices to ensure that they take full account of women's backgrounds, including histories of prior abuse, noting that such considerations are particularly crucial in cases involving capital punishment (A/HRC/35/23). In her report on the situation of women deprived of liberty, the Special Rapporteur on violence against women noted that being victims of gender-based violence may be a cause of women's involvement in criminal offences and subsequent imprisonment. Consequently, States have a duty to address the structural causes that contribute to women's incarceration, and to recognize women's histories of victimization. The Rapporteur reminded States of their due

diligence obligation under international law to prevent, respond to, protect against, and provide redress for all forms of gender-based violence (A/68/340). Lack of income and wealth limits women's access to quality legal representation, negatively impacting their ability to obtain favourable outcomes in the court system. In this connection, the Working Group on discrimination against women and girls has recommended that States take steps to address women's deprivation of liberty and all of its root causes, including intersectional forms of discrimination, such as women with disabilities and/or other marginalized women, by making available effective gender-specific interventions that aim primarily to divert women away from the criminal justice system, by integrating into the national system the standards provided in the Bangkok Rules, and by addressing the underlying factors leading to women coming into contact with the criminal justice system. The experts called to end incarceration of women with intellectual disabilities and mental health concerns (A/HRC/41/33).

#### *Intellectual disability and deterioration of Ms. Jere's mental health condition*

We are alarmed by the sentencing of Ms. Jere to death despite her intellectual disability and claimed worsening mental health condition, which based on the information available to us constitutes a gross violation of Malawi's human rights obligations. Particularly referring to women with disabilities, Article 6,1 of the Convention on the Rights of Persons with Disabilities itself recognizes that women and girls with disabilities are subject to multiple discrimination and determines that in this regard States shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. According to paragraph 3 of the Safeguards, in countries which have not abolished the death penalty, capital punishment may never be implemented against persons with psycho-social disabilities. The Human Rights Committee has emphasized that States parties should "refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psycho-social and intellectual disabilities impeded their effective defense" and from executing persons that have diminished ability to understand the reasons for their sentence (CCPR/C/GC/36, para. 49). We would like to stress that the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, also indicated that "deprivation of liberty has adverse effects on mental health, which may amount to violations of the right to health".<sup>2</sup> In addition, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), that your Excellency's Government ratified on 20 May 2005, in its article 23 emphasizes right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity. Ms. Jere's conditions require that all the legal safeguards are in place.

#### *Detention Conditions in Ms. Jere's case*

In light of the allegedly dire conditions at the facility where Ms. Jere is being held, we underscore that the right to life is inseparable from ensuring the basic

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<sup>2</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, paragraph 46.

conditions necessary to sustain life (HRI/GEN/1/Rev.1, Part I). We recall that when States arrest, detain, imprison or otherwise deprive persons of their liberty, they assume the responsibility to care for the lives of detained persons, for their health and physical integrity, and should not invoke lack of financial resources or other logistical problems to evade this responsibility. The duty to protect the lives of all detained persons includes providing them with necessary medical care, adequate regular monitoring of their health condition, and ensuring reasonable accommodation for persons with disabilities (CCPR/C/GC/36, para. 25).

*Death penalty as a cruel, inhuman or degrading punishment*

We would like to draw your attention to an emerging international customary norm prohibiting the death penalty as a form of cruel, inhuman, or degrading punishment and trending towards its eventual abolition worldwide (see Report of the Secretary-General, Question of the death penalty, A/HRC/27/23). The cruelty of the death penalty goes beyond the execution itself. The concept of the “death row phenomenon” explains that prisoners on death row may experience severe mental trauma and physical deterioration, which may cross into the territory of degrading, cruel or inhuman treatment or punishment, or even torture. The Human Rights Committee clarified that the right to security of persons protects individuals from intentional infliction of bodily or mental harm (General Comment 35, CCPR/C/GC/35). The Committee added that the right to security of persons may overlap with the right to life guaranteed by article 6 of the ICCPR. We further recall that domestic violence amounts to ill-treatment or torture whenever States acquiesce in the prohibited conduct by failing to protect victims and prevent prohibited acts, of which they knew or should have known, in the private sphere (A/HRC/74/148).

We are deeply concerned about the reversal in August 2021 of the decision of the Supreme Court of Malawi to abolish the death penalty definitively and under all circumstances, and about the agony caused to those on death row by the reinstatement of the death penalty, despite the fact that a *de facto moratorium* on capital punishment has been in place in Malawi since 1992. We recall that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life (see Human Rights Committee, General Comment No. 6). This means that, conversely, a resumption of executions leads to less protection of the right to life (see Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/69/265), as guaranteed by Article 6 of the ICCPR. We stress that when executions have been suspended for an extended period of time, it is unlikely that their resumption may be justified by objective reasons and that there exists no evidence that the death penalty has a deterrent effect against crime. We encourage your Excellency's Government to immediately reinstate the Supreme Court's April 2021 decision to fully abolish the death penalty in Malawi.

Finally, Article 6(4) of the ICCPR and article 7 and 8 of the above-mentioned safeguards establish that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that amnesty, pardon or commutation of the sentence of death may be granted.



**In view of the above elements, we call upon your Excellency's Government to ensure that Ms. Jere's is not executed and that she is re-tried and afforded renewed opportunity to defend herself against the criminal complicity imputed to her, in compliance with the most stringent international standards relating to due process and fair trial in cases involving capital punishment. We are issuing this appeal in order to safeguard the rights of Ms. Sofia Jere from irreparable harm and without prejudicing any eventual legal determination.**

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on how Ms. Sofia Jere 's trial proceedings comply with all international law standards relating to and guaranteeing due process of law and the fairest possible trial. In particular, we would welcome information about the extent to which she was afforded the possibility to fully and properly prepare her defence, including through the calling of witnesses or the production of witness testimonies.
3. Please indicate how mitigating factors such as gender-based violence, her intellectual disability and reportedly deteriorating health condition have been considered when imposing and upholding the death penalty. In this regard, please also provide information on the reasons why witnesses and experts were not summoned during the trial proceedings and on the availability of training for members of the judiciary in the areas of gender-based discrimination and domestic violence.
4. Please provide information on whether an independent psychological assessment was conducted regarding Ms. Jere's deterioration of mental health and the type of treatment and medical care provided to her. Please also provide detailed information about steps that have been or will be taken to facilitate contact between Ms. Sofia Jere and her family members. Please provide information on your Excellency's Government's special measures - legal, institutional, procedural – ensure due process for women with disabilities and PWD that responds to their special needs or situation in compliance with IHRL, elimination/prevention of discrimination against women in the justice system based on disability.
5. Please also provide information on whether investigations into the causes and circumstances of the killing of a person with albinism have been carried out in compliance with the *Revised United Nations*

*Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)).*<sup>3</sup>

6. Please provide information on your Excellency's Government's policy and practical measures - legal, institutional, procedural - to ensure that all women are protected from domestic violence, and all authors of abuse are identified and held accountable.
7. Please provide further information on the reasoning concerning the reversal of the decision by the Malawi Supreme Court to abolish the death penalty and to what extent this decision complies with Malawi's international human rights obligations.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

While awaiting a reply, we recommend that prompt steps be taken to stop the execution of the death penalty against Ms. Sofia Jere, that her case be thoroughly reviewed by a separate court, considering the multiple mitigating factors referred to in this communication, and which seem to have been disregarded to date. In the light of this case, we also recommend that similar judicial process in capital punishment cases be thoroughly reviewed to prevent any future risk of arbitrary death sentences and executions and to improve overall prison conditions in Malawi by bringing them in line with international standards.

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.

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

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Mumba Malila

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<sup>3</sup> <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

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standard of physical and mental health

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