



## PRESS RELEASE

### ABOLITION OF DEATH PENALTY IN MALAWI

On 28<sup>th</sup> April 2021, the Supreme Court of Malawi delivered a landmark ruling in the matter of *Khoviwa versus the Republic* (MSCA Miscellaneous Criminal Appeal Number 12 of 2017) in which it abolished the death penalty. The Human Rights Commission (the Commission) is convinced that by abolishing death penalty, Malawi has taken the right step towards the promotion and protection of human rights. The Commission commends the judiciary for this bold decision and applauds the President, His Excellency Dr Lazarus McCarthy Chakwera for rallying behind the decision of the Supreme Court. The decision of the Supreme Court is in line with international human rights standards as spelt out in a number of instruments both at the Africa region as well as the United Nations.

For the past two sessions of the Universal Periodic Review, the Human Rights Committee of the United Nations has recommended to the Malawi Government to consider abolishing the death penalty by signing the Optional Protocol to the International Covenant on Civil and Political Rights. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that every person has the inherent right to life and that the right must be protected by law. The ICCPR is premised on the presumption that all countries must abolish death penalty. That is why Article 6(6) of the same Covenant provides that “**Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant**”. What the Supreme Court has done, therefore takes Malawi towards the desired status in the international community.

This landmark ruling follows yet another landmark ruling in 2007 when the Constitutional Court declared that the mandatory death sentence in capital offences was unconstitutional. This was in the case of *Francis Kafantayeni and others vs the Attorney General* (Constitutional Case No. 12 of 2005). In the case of *McLemonce Yacini versus the Republic* (MSCA CRIMINAL APPEAL NO. 29 of 2005) the Constitutional Court ordered that all inmates that had been sentenced to death before the abolition of the mandatory death sentence should have their sentences reheard by the High Court. Following that ruling, the Commission coordinated a Sentence Rehearing Project which facilitated the rehearing of sentences for 154 inmates. Of these, 50 inmates were immediately released while 62 received definite sentences of varying lengths but which resulted in their immediate release. Thus, in total 112 inmates were immediately released through the sentence rehearing project and many more have been released since then after serving their custodial sentences.

The Commission remains grateful to all institutions that worked with it in that project. These include the Judiciary, the office of the Director of Public Prosecutions (DPP), Legal Aid Bureau, Malawi Law Society (MLS) and the Paralegal Advisory Services Institute (PASI). The Commission also enjoyed support from international partners such as Cornell Law School of the USA and Reprieve of the United Kingdom. The project was funded by Tilitonse Fund.

At the end of the Resentencing Project, the case of *Charles Khoviwa versus the Republic* was already in the Supreme Court and therefore did not undergo a rehearing process in the High Court. All cases that were already in the Supreme Court were not subjected to a rehearing process.

The Commission welcomes the decision of the Supreme Court which upholds the right to life as a cardinal right. The Commission believes that the execution of the death penalty is a violation of the right to human dignity. The Commission is cognizant of the fact that Malawi has had a moratorium on the application of the death penalty since 1994. No executions have been conducted in Malawi since the dawn of multi-party democracy which ushered in a new Constitution based on human rights principles and values. Although a number of convicts have been sentenced to death during this period, none of them has been executed. The uncertainty that such convicts face on daily basis is not only traumatizing but also amounts to torture, cruel, inhuman and degrading punishment or treatment.

Section 16 of the Constitution provides for the right to life. Without the right to life, no other right can be enjoyed. Abolition of death penalty has been on the trend in the whole world for many years now. We note that more countries are abolishing the death sentence now. This is in realization that the imposition of the death penalty is inhumane and infringes on the right to human dignity. In a number of instances, it has also been observed that the fact that death penalty is not reversible, it becomes impossible to correct the situation when someone has been wrongly convicted.

In the *Kafantayeni Resentencing Project* that was referred to earlier on, many examples were noted where the High Court released some death row inmates upon finding that they were wrongly convicted. Another argument against the death penalty is that it gives uniform sentences for crimes that vary in many aspects such as motive and mitigating factors. There are many reasons therefore, for welcoming this landmark ruling by the Supreme Court.

In line with the judgment of the Supreme Court, the Commission calls upon Government to ensure that all those persons who were recently sentenced to death and are on death row, should have their sentences commuted to life.



**Ms. Habiba Osman**  
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