



## **International Day Against the Death Penalty**

### **A call on the Tonse administration to abolish the death penalty**

Youth and Society (YAS) joins human rights campaigners across the globe in commemorating the International day against the death penalty, a global day of activism against the death penalty which falls on 10 October, every year. As a human rights watchdog, YAS opposes the death penalty in all cases without exception, as a violation of the right to life and urges the Government of Malawi to consider repealing all laws giving effect to the death penalty in Malawi in line with the Second Optional Protocol to the International Covenant on Civil and Political Rights. While Malawi has not ratified the Second Optional Protocol, practice in Malawi reflects a commitment to abolish the death penalty.

In this light, we acknowledge that since 1994, Malawi has had a *de facto* moratorium on the execution of the death penalty. Since the establishment of democracy, no person sentenced to death has been executed. Malawi has made clear its commitment to this moratorium in its interactions with the African Commission on Human and Peoples' Rights and United Nations Human Rights bodies, for instance in its engagement with the United Nations Human Rights Council's Universal Periodic Review (UPR), Malawi signaled its intent to continue the moratorium. In its second UPR cycle in 2015, Malawi accepted three crucial recommendations on the death penalty: (1) to continue the moratorium on death penalty; (2) to continue its efforts to review the cases of persons sentenced to death, to commute all death sentences, and put in place a moratorium with a view to the death penalty's future abolition; and (3) to review and provide appropriate re-sentencing decisions for those sentenced under the now-abolished mandatory death penalty.

Most significantly, in December 2016, Malawi voted in favor of the UN General Assembly Resolution "Moratorium on the Use of the Death Penalty." This was the first time Malawi had voted in favor of this Resolution. The resolution states that the signing nations are "convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights." Further, the resolution calls upon all states "to ensure that those facing the death penalty can exercise their right to apply for pardon or commutation." By voting in favor of this

resolution, Malawi had made clear its commitment to refrain from carrying out executions. Remarkably, in respect to the Kafantayeni Judgment, Malawi has made a tremendous progress in re-sentencing prisoners who were on death-row.

Despite progressive steps Malawi has taken towards abolition of death penalty, it is of grave concern that it still retains death penalty in its supreme law and statutes. YAS holds that it is not safe for the country to continue relying on a moratorium and the goodwill of those in the office of the President on death penalty as the case is now. Furthermore, Malawian Courts continue to mete out death sentences in some capital offence cases. For instance, in August 2019, the High Court sitting in Mchinji district sentenced to death three people namely Douglas Mwale, Sophie Jere and Fontino Folosani – they had been found guilty of murder. We wish to stress that there is no credible evidence that the death penalty deters crime more effectively than long terms of imprisonment. Evidence shows that countries that have death penalty laws do not have lower murder rates than countries without such laws. To reduce murder rates, the Government must invest heavily in security to protect citizens from criminals, and not by executing people. Death penalty laws falsely convince the public that government has taken effective measures to combat crime. In reality, such laws do nothing to protect citizens or our communities from the acts of dangerous criminals.

In light of the foregoing, we commend the Government of Malawi for being progressive in practice and commitments and call for the undertaking of the following steps:

- 1) To abolish the death penalty through amending section 16 of the Constitution and repealing all laws giving effect to the death penalty in Malawi.
- 2) To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- 3) To commute the sentences of the prisoners remaining on death row.

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