

## Malawi Resentencing Project: A Triumph of Collaboration and Community Decision-Making

As one of the poorest countries in the world, Malawi's justice system operates on a shoestring budget. As a result, it has long been characterised by inefficiency, delays, and severe overcrowding in prisons. In this context, the implementation of a 2007 High Court Judgment striking down the mandatory death penalty posed a formidable challenge. But today, as a result of the Malawi Resentencing Project, Malawi serves as an inspiration to other countries seeking to reform their systems of capital punishment.

Prior to 2007, every person convicted of homicide in Malawi was automatically sentenced to death without consideration of their life history or circumstances of the offence. This sentencing scheme was struck down as unconstitutional in *Kafantayeni v. Attorney General*. As a result of the *Kafantayeni* decision, every man and woman given a mandatory death sentence was entitled to a new sentencing proceeding where they could present mitigating evidence such as good character, youth, mental illness, or any other factor that diminished their moral blameworthiness. At the time, however, Malawian lawyers lacked the training and resources to gather mitigating evidence. Moreover, Malawi lacked psychiatrists qualified to conduct mental health assessments to determine whether any of the prisoners were intellectually disabled or mentally ill—conditions that would preclude the imposition of the death penalty.

The Malawi Resentencing Project was launched in 2014 to address these challenges and bring justice to the men and women who had languished for years on Malawi's death row. A coalition including the Malawi Human Rights Commission (MHRC), Paralegal Advisory Service Institute (PASI), Centre for Human Rights Education, Advice and Assistance (CHREAA), the Legal Aid Bureau, the Director of Public Prosecutions, the judiciary, the prison service, Chancellor College, the Malawi Law Society, the Cornell Center on the Death Penalty Worldwide, and Reprieve devised an innovative plan to train paralegals regarding the investigation of mitigating evidence. With the support of the Tilitonse Fund, lawyers and judges were trained in topics such as mental health, trauma, and fetal alcohol syndrome. Psychiatrists from the United States and South Africa trained Malawian mental health workers in the administration of a non-verbal test to screen for intellectual disability. At the same time, working with the judiciary, the project proposed creative strategies to streamline the re-sentencing process and conserve resources.

The results of the Malawi Resentencing Project speak for themselves. To date, the courts have held 158 resentencing hearings. After hearing the life stories of those prisoners and weighing the circumstances of the offences, the courts reduced the sentences of every single prisoner. None were resentenced to death. A total of 138 prisoners have been released into the care of their families and communities. One of those prisoners is now a group village headman—a position of leadership that reflects the trust and respect of his community.

To facilitate the reintegration of prisoners, paralegals conducted “community sensitisation” sessions with villagers to educate them about the resentencing project. Village leaders were consulted about the reception that each prisoner would likely receive in their village. The most vulnerable prisoners were provided training and counselling at Malawi's sole halfway house. The engagement of the community in the resentencing project is unique to Malawi, and has reduced the risk of recidivism. To date, none of the prisoners has re-offended. The success of this project has led to a wider conversation about the unfairness of the death penalty, the risk of executing the innocent, and the possibility for rehabilitation of every person, no matter the crime he has committed. In this sense, the project has helped pave the road for abolition of the death penalty. It has also served as a model for Kenya, which recently abolished the death penalty and has adopted the lessons learned from Malawi to guide the resentencing process.