MALAWI HUMAN RIGHTS COMMISSION

AN INVESTIGATION REPORT INTO THE DEATH OF KONDWANI HARRY AT BVUMBWE YOUNG OFFENDERS’ REHABILITATION CENTRE

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EXECUTIVE SUMMARY

Background

On 6th November 2023, the Malawi Human Rights Commission (the Commission) received reports about the death of a young prisoner at Bvumbwe Young Offenders Rehabilitation Centre. Following this report, the Commission decided to investigate the matter of its own volition. This report presents findings of the investigation and recommendations.

Objectives of the investigation

The main objective of the investigation was to establish the cause of the alleged death of Kondwani Harry. The investigation was conducted with the following specific objectives in mind:

a) To ascertain whether there was indeed an incident of death at Bvumbwe Young Offenders Rehabilitation Centre.

b) To establish the actual circumstances that caused the death of the prisoner.

c) To establish if any other human rights violations had occurred to the victim and other inmates.

d) To make appropriate recommendations in respect of the findings of the investigation.

Findings of the Investigation

Based on the facts and evidence, as well as analysis of the same, the Commission makes the following findings:

a) That a prison break incident happened at Bvumbwe Young Offenders Rehabilitation Centre on 3rd November 2023 involving two escapees, Kondwani Harry and Omar Bashir.

b) That both were recaptured and brought back to the facility and the two were subjected to varied degrees of torture within the prison’s premises. The perpetrators ranged from officers, fellow prisoners and community members.

c) That Kondwani Harry’s situation worsened on the wee hours of 6th November 2023, upon which he was pronounced dead upon arrival at Thyolo District Hospital.
d) Postmortem examination conducted by Thyolo District Hospital confirmed that the deceased did not die of natural causes. He died as a result of injuries sustained during his re-arrest and in the prison facility.
e) That the other escapee, Omar Bashir, sustained a deep cut on his foot during the time he was escaping from the prison.

Recommendations

a) Family members must seek compensation for loss of life to the Malawi Prison Service. As indicated in the cases of People’s Union for Civil Liberties v Union of India\(^1\) and Salman v Turkey\(^2\), the state has a duty to prevent deprivation of life occasioned by its agents. This duty requires the state to provide plausible explanation when a person sustains injuries or dies while in custody. In as much as the escapee identified no individual, it has been properly explained that the beating of the two happened within the realm of prison authority and concluding from the medical body examination report, the death of the deceased was as a result of being exposed to some physical forces. The Prison authorities either sanctioned the torture or neglected their duty to protect the recaptured escapees which resulted in death.

b) The Malawi Police should institute a criminal investigation to identify the actual individuals who beat up the deceased. It has been asserted by the surviving escapee that the beatings happened in Cells No. 3 and 5 on instructions by the Cell Leaders responsible for the two aforementioned cells.

c) The Malawi Prison Service should properly regulate the powers granted to the Cell Leaders to prevent the abuse of the position and victimization of their fellow inmates.

d) The Malawi Prison Service should explain how the objects mentioned by the surviving escapee that were used to beat them found their way into the facility.

Chikondi Chijozi
CHAIRPERSON

\(^1\) Supra
\(^2\) Supra
1.0 INTRODUCTION

1.1 Background

On 6th November 2023, the Malawi Human Rights Commission (the Commission) received reports from various sources about the death of a young prisoner at Bvumbwe Young Offenders Rehabilitation Centre. Following this report, the Commission decided to commence investigations into the matter on its own volition.

1.2 Mandate of the Commission

Section 129 of the Republic of Malawi Constitution establishes the Commission with the mandate of protecting and investigating violations of human rights. Section 130 of the Republic of Malawi Constitution empowers the Human Rights Commission to conduct investigations by way of applications of an individual or class of persons or on its own motion. Further, Section 12 of the Human Rights Commission Act provides that the Commission shall be competent in every respect to protect and promote human rights in Malawi in the broadest sense possible and to investigate violations of human rights on its own motion or upon complaints received from any person, class of persons or body.

1.3 Human Rights Issues

The matter raised prima facie violations of the right to life, right to human dignity and right of detained persons.

1.3.1 The Right to Life

Section 16 of the Constitution stipulates that Every person has the right to life and no person shall be arbitrarily deprived of his or her life. This right is also provided for under Article 6(1) of the International Covenant on Civil and Political Rights provides that every human being has the inherent right to life. This right shall be protected by law. No one shall be deprived of his life.

1.3.2 The Right to Human Dignity and the Treatment of detained persons

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3 Adopted by the General Assembly of the United Nations on 16 December 1966, came into force in 1976 and Malawi ratified the Convention on 22 December 1993
Section 19(3) of the Constitution states as follows:\(^4\):

_No person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment._

Further, Article 10(1) of the International Covenant on Civil and Political Rights provides that All persons deprived of their liberty shall be treated with human dignity and with respect for the inherent dignity of the human person.

2.0 OBJECTIVES OF THE INVESTIGATION

2.1 The main objective of the investigation was to establish the cause of the alleged death of Kondwani Harry. Specifically, the investigation was conducted in order -

i. To ascertain whether there was indeed an incident of death at Bvumbwe Young Offenders Rehabilitation Centre.

ii. To establish the actual circumstances that caused the death of the prisoner.

iii. To establish if any other human rights violations had occurred to the victim and other inmates.

3.0 METHODOLOGY

3.1 The investigation was conducted through face-to-face interview and site visits. The list of informants that were interviewed is attached under Appendix 1.

4.0 FACTS AND EVIDENCE

This Section presents information that was obtained from Prison Officers at Bvumbwe Reformatory Centre for young officers, Police officers from Bvumbwe, fellow inmates and other witnesses from the nearby Community

4.1 Evidence from Senior Supt. Foster Kamuyanja (Station Officer)

4.1.1 During the lock up of 3\(^{rd}\) November 2023, the officers who were conducting routine count around 15:00-16:00 Hours, discovered that two prisoners were missing. No one was able to know their identities at that moment. A search was ordered involving officers

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and fellow prisoners. They visited the education section of the prison which has a library, where they discovered that the ceiling had been tampered with.

4.1.2 Later the people who were outside noticed a person running towards a stream which lies close to the prison premises. The shouting attracted the attention of the community members who helped in trying to catch him. He was caught and brought back to the prison. This escapee is the deceased, Kondwani Harry.

4.1.3 The other prisoner had not yet been spotted. But the group of searchers noticed blood stains on the ground. They started following that trail of blood which led them to a certain residential house. When they arrived there, they found a woman who denied harboring the escapee. She insisted that the person did not enter her house even though there were stains of fresh blood on her door mat. Her husband arrived and found the searchers. He allowed them to go into the house and check. The team observed blood in the toilet and some trails leading to the ceiling which had a hole. They also noted some water dripping from the ceiling which they suspected to be urine. It was suspected that the escapee had drenched himself with urine. When they checked the ceiling, they found the escapee hiding in the ceiling with blood oozing from his left foot. The Station Officer protected him from the angry people who wanted to beat him up.

4.1.4 He was immediately taken to the prison dispensary where the Prison Nurse sutured his wounds and gave him some painkillers. This escapee was identified as Omar Bashir.

4.2 ACP Ellen Banda Officer In-Charge for Bvumbwe Reformatory Centre

4.2.1 At around 5:32 am of 6th November 2023, she got a call from the General Duties Officer informing her that one of the prisoners who attempted to escape was not feeling well and that they were looking for transport to take him to hospital.

4.2.2 They managed to acquire transport from Police and took him to Thyolo District Hospital in the company of the Nurse, Inspector, Mumbuwa. At around 11:00 hours she got a report that the prisoner had been pronounced dead.

4.2.3 The deceased is Kondwani Harry who was serving a 15 months sentence for the offence of breaking into a building and committing a Felony therein contrary to section 311(a) of the Penal Code. He was admitted at the prison on 21 September 2023.

5 Assistant Commissioner of Prisons
4.3  **Omar Bashir (Re-Arrested Escapee)**

4.3.1 He was aged 18 years and came from Banana, a place in Bangwe Township, Blantyre and was admitted into the institution on or about the 13\textsuperscript{th} of September 2023 to serve a sentence of 24 months on the offence of breaking into a building and committing a felony therein.

4.3.2 He was a Form II student at the prison and had time to visit the prison library upon which he and the deceased, Kondwani Harry, made a plan three days before the 3rd of November 2023 to escape. On 3rd November, the two remained in the library until all the people had gone out. They tampered the ceiling and hid there waiting to go out through the windows during the night. Unfortunately, the authorities discovered during lock up that they were missing.

4.3.3 When the searchers came into the library to look for them, the two got scared and decided to remove an iron sheet above them, jumped over the wall and escaped. The iron sheet cut the upper side of his left foot and was heavily bleeding. He ran to a certain house where he found a woman and children outside. He pleaded with her to hide him in the house, but she refused. She told him to sit down and started asking what he was running away from. But then he heard the searchers approaching the house and he immediately ran into the house and hid in the ceiling. He was later captured. Some of them wanted to beat him but the Station Officer protected him because he was bleeding heavily and was taken to the prison dispensary where the wound was sutured.

4.3.4 During the night, his cellmates, on instructions from the Nyapala (Cell Leader) beat him up and was denied food. His friend, Kondwani Harry, confided in him the next morning that he too was beaten in his cell. This was Cell No. 5. He said that he was tied on both hands and legs and beaten with wooden bed pieces, wheelbarrow handles and shovels. It was the Nyapala who ordered his cellmates to beat him. The next day, the deceased was accommodated in Cell No. 3 where he was also beaten by the cellmates on instructions from the Nyapala (Cell Leader)

4.4  **Biliati Hauya (informant)**
4.4.1 He is the owner of the house where one of the escapees, Omar Bashir, was found hiding in the ceiling. He is a House Caretaker at a house of Chinese National and on 3rd November 2023 he was at work when he was approached by some prison officers with the news that they suspected that a prisoner who had escaped was hiding at his house.

4.4.2 When he went home, he found another group of searchers at the house talking to his wife about the same issue. He allowed them to enter the house where they found the escapee hiding in the ceiling. Some of the searchers started beating him out of anger but the Station Officer controlled them and was taken away.

4.5. Insp. Thomas Mumbuwa (Prison Nurse)

4.5.1 He is a nurse, and has worked for six years at the facility. On 3rd November 2023 at around 15:00 hours, there was some commotion within the prison premises. He learnt that some prisoners had escaped. About thirty minutes later, one of them was brought to the dispensary. His name was Kondwani Harry. He observed that he was weak and was bleeding from the lower arm and right thigh respectively.

4.5.2 He dressed the wound and gave him painkillers but did not ask how he got the wounds. The wound at the lower arm seemed to have been caused by a piercing instrument. The other wound appeared to have been caused by forcing himself to go out of a small hole.

4.5.3 Four minutes later, another escapee by the name of Omar Bashir was captured and brought to the dispensary. He had a big cut at the top of his left foot which was bleeding heavily. He also had a minor cut above the knee. Both wounds were sutured, and painkillers provided.

4.5.4 The following day he went to check on the two and they complained of body pains upon which he advised them to continue taking the painkillers he had given them the previous day.

4.5.5 He did not report for duties on Sunday. However, on Monday morning he got a call informing him that one of the escapees was not feeling well. Upon checking him, he noted that he had weak pulse and needed to be taken to hospital. The prison authorities called for the Bvumbwe Police vehicle as the facility had no functioning vehicle.
4.5.6 Upon reaching the hospital and being checked by the clinical officer, he was pronounced dead. When he asked what the cause of death could be, the clinical officer told him it was due to head injuries and blunt trauma.

5.0 LIMITATIONS OF THE INVESTIGATION
5.1 The Commission has not been able to access the postmortem examination report that was conducted by health officials from Thyolo District Hospital. The Commission wrote the Inspector General of Police to request for a copy of the report in December, 2023 but at the time of finalizing this report, the Inspector General of Police had not furnished the Commission with a copy of the report, despite several reminders.

5.2 The investigation team also failed to interview the woman in whose house’s ceiling the other escapee (Omar Bashir) was found hiding. She was not around when the team of investigators wanted to interview her. However, the team of investigators was able to interview her husband.

6.0 ANALYSIS OF FACTS AND EVIDENCE
8.1 The Death of Kondwani Harry and the Right to Life

6.1.1 It is not in dispute that a life was lost. On the morning of 6th November 2023, one Kondwani Harry, a prisoner at Bvumbwe Young Offenders Rehabilitation Centre, was declared dead by the Thyolo District hospital. The right to life or to be alive is the most basic and fundamental right that every person is entitled to enjoy. It is the prerequisite for the enjoyment by an individual of the other rights guaranteed under Chapter IV of the Republic of Malawi Constitution. It is specifically provided for under section 16 of the Constitution.

6.1.2 It should be acknowledged that death is inevitable. Factually, dying per se does not entail a violation of one’s right to life. The key word in section 16 of the Constitution which guarantees a right to life is ‘arbitrary deprivation of life.’ So, arbitrariness, in the context of the aforementioned provision, is the determining factor as to whether a right to life has been violated or not. The phraseology of Article 6(1) of the ICCPR, though not identically styled, is fashioned in a similar manner as section 16 of the Constitution by containing the prohibition of ‘arbitrary deprivation of life.’ In this regard, for a
declaration of the violation of the right to life to be made, not only the circumstances of death but also its actual cause must be taken into consideration. Hence the need for medical evidence.

6.1.3 It has been established that on 3rd November 2023, there was a prison break incident at Bvumbwe Young Offenders Rehabilitation Centre involving two convicts, Kondwani Harry, now deceased and Omar Bashir. The two were manhandled by others who got angry with their failed plan. These were people in the search team which comprised prison officers, fellow inmates, and community members. According to Omar Bashir, he was beaten but could not properly identify who was doing it as it was a mob. He further indicated that the deceased confided in him before his demise that he too was also beaten. On the night of 3rd November, he was tied and beaten by his cell mates in Cell No. 5 on instruction from the Nyapala. The next day, he was transferred into Cell No. 3 where he was also beaten on instructions from the Nyapala as well.

6.1.6 During the postmortem examination conducted by officers from Thyolo District Hospital, the health officials opined that the body had no open wounds and that there were signs of head injuries and blunt trauma. This medical opinion confirms the facts narrated by the deceased’s fellow escapee, Omar Bashir, as highlighted above.

6.2 The Right to Human Dignity and the Beating of the Two Escapees

6.2.1 Escaping from lawful custody is a criminal offence punishable at law. The two escapees were caught flagrante delicto in the midst of committing a crime. In the opinion of the team of searchers they were guilty until proven innocent. This conclusion emanates from the conduct of the team of searchers when the two were caught. They were punished even without being accorded a right to be heard. In Malawi Human Rights Commission v Attorney General, Nyirenda J (as he was then) stated that “human rights by the very expression, are bestowed on human beings. It is the human being who is the intended beneficiary of human rights.” In as much as the two were caught red handed in the course of committing a crime, they never lost their humanity; they deserved a dignified treatment. They were not supposed to be condemned without a hearing.

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6 Miscellaneous Civil Cause No. 119 of 2000(unreported)
6.2.2 Section 19(3) of the Constitution states that; ‘No person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment’. And Article 10(1) of the ICCPR states as follows: ‘All persons deprived of their liberty shall be treated with human dignity and with respect for the inherent dignity of the human person.’ The right to human dignity has been described as the most important of all human rights and the source of all other personal rights in the Bill of Rights.

7.0 SUMMARY OF INVESTIGATION FINDINGS.

Based on the facts and evidence, as well as analysis of the same, the Commission makes the following findings:

7.1 That a prison break incident happened at Bvumbwe Young Offenders Rehabilitation Centre on 3rd November 2023 involving two escapees, Kondwani Harry and Omar Bashir.

7.2 That both were recaptured and brought back to the facility and the two were subjected to a varied degree of torture within the prison’s premises. The perpetrators ranged from officers, fellow prisoners and community members.

7.3 That Kondwani Harry’s situation worsened on the wee hours of 6th November 2023, upon which he was pronounced dead upon arrival at Thyolo District Hospital.

7.4 Postmortem examination conducted by Thyolo district Hospital confirmed that the deceased did not die of natural causes. He died as a result of injuries sustained during his re arrest and in the prison facility.

7.5 That the other escapee, Omar Bashir, sustained a deep cut on his foot during the time he was escaping from the prison.

8.0 RECOMMENDATIONS

Pursuant to Section 130 of the Constitution and Section 22 of the Human Rights Commission Act, the Commission makes the following recommendations to the Complainant and other concerned parties: -
8.1 Family members must seek compensation for loss of life to the Malawi Prison Service. As indicated in the cases of *People’s Union for Civil Liberties v Union of India*\(^7\) and *Salman v Turkey*\(^8\), the state has a duty to prevent deprivation of life occasioned by its own agents. This duty requires the state to provide plausible explanation when a person sustains injuries or dies while in custody. In as much as there is no individual identified by the escapee, it has been properly explained that the beating of the two happened within the realm of prison authority and concluding from the medical body examination report, the death of the deceased was as a result of being exposed to some physical forces. The Prison authorities either sanctioned the torture or neglected their duty to protect the recaptured escapees which resulted into death.

8.2 The Inspector General of Police must institute criminal investigation to identify the actual individuals who beat up the deceased. It has been asserted by surviving escapee that the beatings happened in Cells No. 3 and 5 on instructions by the Cell Leaders responsible for the two aforementioned cells. The scope of the criminal investigation should cover identifying how the objects mentioned by the surviving escapee that were used to beat them found their way into the prison facility.

8.3 The Malawi Prison Service should properly regulate the powers granted to the Cell Leaders to prevent the abuse of the position and victimization of their fellow inmates.

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APPENDIX 1: LIST OF INFORMANTS THAT WERE INTERVIEWED

1. Dr. Jumbe : Thyolo Director of Health and Social Services (Interview)
2. Dr. Denis Solomoni : Thyolo District Medical Officer (Telephone Interview)
3. Victor Ngwalangwa : Senior Clinical Officer (Interaction)
4. Sr. Supt. Kamuyanja : Station Officer, Bvumbwe Young Offenders Rehabilitation Centre.
5. Ellen Banda ACP : Officer In-Charge, Bvumbwe Young Offenders Rehabilitation Centre
6. Inspector Mumbuwa : Nurse, Bvumbwe Young Offenders Rehabilitation Centre
7. Omar Bashir : Prison Escapee
8. Mr. Gladson Chipumphula: Officer In-Charge, Limbe Police Station