



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the initial report of Malawi*

Specific information on the implementation of articles 1–16 of the Convention

Articles 1 and 4

1. Please provide detailed information on the measures taken to adopt a definition of torture in domestic criminal law that is consistent with article 1 of the Convention and that includes appropriate penalties, taking into account the grave nature of such acts. Please include information on measures taken to explicitly criminalize attempts to commit torture and acts constituting complicity or participation in torture and to define them as acts of torture. If there is no such definition, please provide information on criminal or legislative provisions covering all cases of torture and the associated penalties.¹ Has the State party taken steps to ensure that acts amounting to torture are not subject to any statute of limitations? Please indicate whether the Convention can be directly invoked before domestic courts. Please provide specific examples and statistical data on cases, if any, in which the provisions of the Convention have been invoked before the courts.

Article 2²

2. Please provide information on measures taken by the State party and on the procedures in place to ensure that:

(a) All detainees enjoy in law and in practice all legal safeguards from the outset of their deprivation of liberty, in particular the rights to have access to a lawyer, to request and receive an examination by an independent physician of their choice, to be informed of their rights and of the charges against them, to notify a relative or any other person of their choice of their arrest, and to be brought promptly before a judge, regardless of the reasons for their arrest;

(b) Detention registers are kept scrupulously up to date;

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

¹ See CCPR/C/MWI/1, para. 29.

² The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligation to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.



(c) Legal aid is available to the most disadvantaged.³

3. Please provide information on the mandate and composition of the Malawi Human Rights Commission and describe the measures taken to ensure that it operates in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), so as to guarantee its operational independence, and that adequate resources are assigned to it.⁴

4. Please provide information on the legislative, administrative and other measures taken to eliminate all forms of violence against women, including domestic violence⁵ and rape,⁶ in particular marital rape.⁷ Please also provide information on the protection and support services available to victims of gender-based violence in the State party. Please include statistical data, disaggregated by the victims' age and ethnic origin or nationality, on the number of complaints of gender-based violence and the investigations, prosecutions, convictions and punishments resulting from those complaints since the entry into force of the Convention for the State party.

5. Please provide up-to-date statistics on complaints, investigations, prosecutions, convictions and sentences imposed on perpetrators of criminal acts relating to harmful traditional practices, and on the assistance and compensation afforded to victims. In addition, please indicate the measures that the State party has taken to strengthen its efforts to combat harmful traditional practices.⁸

6. Please provide up-to-date information, broken down by the victims' age and ethnic origin or nationality, on the number of complaints, investigations, prosecutions, convictions and sentences in relation to cases of human trafficking during the reporting period.⁹ Please also provide additional information on:

(a) Any new legislation or measure that has been adopted to prevent, combat and criminalize human trafficking, including the Trafficking in Persons Act 2015;¹⁰

(b) The measures adopted to ensure that victims of human trafficking have access to effective remedies and repatriation;¹¹

(c) The signature of bilateral or subregional agreements with other countries, including neighbouring countries, to prevent and combat human trafficking.

Article 3

7. Please describe the measures taken during the period under review to ensure that no person is returned to a country where he or she would be in danger of torture.¹² Please indicate the procedure followed when a person invokes this right and whether individuals

³ See CEDAW/C/MWI/CO/7, paras. 12 and 13 (c).

⁴ See CCPR/C/MWI/CO/1/Add.1, para. 6; and CEDAW/C/MWI/CO/7, paras. 16–17.

⁵ See CCPR/C/MWI/CO/1/Add.1, para. 14; CEDAW/C/MWI/CO/7, paras. 22–23; and A/HRC/30/5, paras. 110.83, 110.88, 110.92 and 113.41.

⁶ See A/HRC/30/5, paras. 112.13 and 113.41.

⁷ Ibid., paras. 113.40–113.41; and CEDAW/C/MWI/CO/7, paras. 22–23.

⁸ See on female genital mutilation, CCPR/C/MWI/CO/1/Add.1, para. 8; CEDAW/C/MWI/CO/7, paras. 20–21; and A/HRC/30/5, paras. 37, 46, 113.12 and 113.38; on child/early marriage, A/HRC/30/5, paras. 99, 102, 110.23, 110.95 and 111.1; CEDAW/C/MWI/CO/7, paras. 20–21; and CCPR/C/MWI/CO/1/Add.1, para. 25; on polygamy, A/HRC/30/5, para. 90; and CEDAW/C/MWI/CO/7, paras. 20–21; on “sexual cleansing” rituals, CCPR/C/MWI/CO/1/Add.1, para. 8; and CEDAW/C/MWI/CO/7, paras. 20–21; on “widow inheritance”, CCPR/C/MWI/CO/1/Add.1, para. 8; CEDAW/C/MWI/CO/7, paras. 20–21; and United Nations country team in Malawi, “United Nations in Malawi calls for renewed, concerted action to eliminate harmful cultural practices affecting women and girls”, 25 July 2016. Available at www.mw.one.un.org/united-nations-in-malawi-calls-for-renewed-concerted-action-to-eliminate-harmful-cultural-practices-affecting-women-and-girls/.

⁹ See CCPR/C/MWI/CO/1/Add.1, para. 17; and CEDAW/C/MWI/CO/7, paras. 22–23.

¹⁰ See A/HRC/30/5, paras. 19, 39, 52, 63, 65–66, 72, 80, 91, 110.99–110.101, 110.107, 111.2 and 111.10.

¹¹ See CCPR/C/MWI/CO/1/Add.1, para. 17.

¹² See CEDAW/C/MWI/CO/7, paras. 48–49.

facing expulsion, return or extradition are informed that they have the right to seek asylum and to appeal a deportation decision. If so, please indicate whether such an appeal has suspensive effect.

8. Please provide information about the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin.¹³ Please indicate the measures taken by the State party to reduce the backlog of asylum applications. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled during the period under review. Please provide details on the grounds on which they were sent back, including the list of countries to which individuals were returned. Please provide updated information on the type of appeal mechanisms that may exist, any appeals that have been made and the outcome of those appeals.

9. Please indicate the number of refoulements, extraditions and expulsions carried out by the State party during the reporting period on the basis of the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances in which the State party has offered such diplomatic assurances or guarantees. What are the minimum contents of any such assurances or guarantees, whether given or received, and what measures have been taken in such cases with regard to subsequent monitoring?

Articles 5–9

10. Please provide information on the legislative or other measures taken to implement article 5 of the Convention. Please indicate whether acts of torture are considered universal crimes under national law, wherever they occur and whatever the nationality of the perpetrator or the victim.

11. Please inform the Committee of any extradition agreements concluded with other States and specify whether the offences referred to in article 4 of the Convention are included as extraditable offences in such agreements.

12. Please clarify what mutual judicial assistance treaties or agreements the State party has entered into with other entities, such as countries, international tribunals or international institutions, and whether such treaties or agreements have led, in practice, to the transfer of any evidence in connection with prosecution concerning torture or ill-treatment. Please provide examples.

Article 10

13. Please provide up-to-date information on educational programmes developed by the State party to ensure that all enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention and know that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted.¹⁴ Please indicate whether the State party has developed methodology to assess the effectiveness of training and educational programmes in reducing cases of torture and ill-treatment and, if so, please provide information on the methodology.

14. Please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on detecting and documenting physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)?

¹³ See CCPR/C/MWI/CO/1/Add.1, para. 27.

¹⁴ See A/HRC/30/5, paras. 12, 97 and 99.

Article 11

15. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any interrogation rules, instructions, methods and practices or any arrangements for custody, in particular that may have been introduced, reviewed or revised since the entry into force of the Convention for the State party. Please indicate the frequency with which they are reviewed. Please also provide information on the review of the Prison Act by the Law Commission, as well as on the finalization of the Sentencing Guidelines.

16. Please describe the measures taken to reduce prison overcrowding, including measures to increase the use of alternatives to imprisonment, both before and after trial.¹⁵ Please provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention. Please inform the Committee of the measures taken to address concerns regarding conditions of detention and health-care provision in prisons, including for prisoners with HIV/AIDS or tuberculosis.¹⁶ Please inform the Committee about the measures taken to put an end to prolonged pretrial detention.¹⁷

17. Please provide information on efforts by the State party to meet the special needs of minors, women and persons with mental disorders and psychosocial disabilities in detention. Please clarify the current policy regarding the use of solitary confinement and the application of means of restraint to prisoners. Please also provide information on the specific measures taken by the State party to address concerns about food and water shortages and the unsanitary conditions in places of detention, including “reformatory centres” for juveniles.¹⁸ Please indicate the measures taken to ensure that men are separated from women, pretrial detainees from convicted prisoners and adults from minors in all places of detention.¹⁹

18. Is the State party considering the possibility of increasing the minimum age of criminal responsibility in line with international standards?²⁰

19. Please provide information on the frequency of inter-prisoner violence, including any cases involving possible negligence on the part of law enforcement personnel, the number of complaints made in this regard and their outcomes. What preventive measures have been taken?

20. Please provide statistical data regarding deaths in custody during the period under consideration, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased and cause of death. Please provide information on the manner in which these deaths were investigated, the results of the investigations and the measures taken to prevent similar cases from occurring in the future. Please indicate whether relatives received compensation in any of the cases.

Articles 12–13

21. Please provide updated statistical data, disaggregated by sex, age, ethnic origin or nationality, and place of detention, on complaints of acts of torture, ill-treatment and excessive use of force recorded during the reporting period. Please include information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanctions applied. Please provide examples of relevant cases and/or judicial decisions.²¹ Please also provide information on the measures taken to ensure the effective implementation of the recommendations contained in the final report of the Presidential Commission of Inquiry into the demonstrations, deaths, injuries, riots, looting, arson, public disorder and loss of property that took place on 20 and 21 July 2011.

¹⁵ See A/HRC/30/5, paras. 11, 110.80 and 110.82.

¹⁶ *Ibid.*, paras. 89, 110.75 and 110.78–110.81; and CCPR/C/MWI/CO/1/Add.1, para. 16.

¹⁷ See A/HRC/30/5, paras. 90, 110.25, 110.78 and 110.103; and CCPR/C/MWI/CO/1/Add.1, para. 15.

¹⁸ See A/HRC/30/5, paras. 11, 110.78–110.79 and 110.82.

¹⁹ See CCPR/C/MWI/CO/1/Add.1, para. 15.

²⁰ *Ibid.*, para. 18.

²¹ *Ibid.*, para. 13.

22. Please indicate whether the State party plans to set up an independent and impartial body to investigate allegations of acts of torture and ill-treatment by members of the security forces and prison personnel, such as the Independent Police Complaints Commission established under the Police Act.²² Please also provide information on the measures taken to establish an effective complaints mechanism for persons deprived of their liberty.

Article 14

23. Please provide information on redress and compensation measures, including means of rehabilitation ordered by the courts and actually provided to the victims of torture or their families during the period under review. That should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

Article 15

24. Please provide information on the concrete measures taken to ensure respect, both in law and in practice, for the principle of inadmissibility of evidence obtained through torture. Please provide examples of any cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained through torture or ill-treatment.

Article 16

25. Please explain whether acts of cruel, inhuman or degrading treatment or punishment are defined or otherwise dealt with in domestic law.

26. Please provide information on the steps taken to protect human rights defenders and journalists, to investigate crimes committed against them and to punish the perpetrators of acts of violence and intimidation directed at them.²³

27. Please provide information on any measures taken to combat attacks against people with albinism.²⁴ What concrete measures have been taken to ensure that all crimes and acts of violence that target people with albinism are properly and promptly investigated and prosecuted? Please describe the implementation of the national response plan to improve the security and well-being of people with albinism and the results achieved.²⁵

28. Please provide information on the measures taken to combat vigilante attacks and mob killings on alleged criminals in Malawi, as well as the measures taken to investigate and prosecute perpetrators of such attacks.²⁶

29. Please indicate the measures taken to prevent and combat corporal punishment of children.

30. Please provide information on the measures taken to ensure that all crimes and acts of violence that target persons on the basis of their sexual orientation or gender expression or identity are properly and promptly investigated and prosecuted.²⁷

Other issues

31. Please provide updated information on the measures taken by the State party to respond to threats of terrorism, and describe if and how those anti-terrorism measures have affected human rights safeguards in law and in practice. Please explain how the State party

²² See CCPR/C/MWI/1, para. 25; and A/HRC/30/5, paras. 12, 110.34 and 110.39.

²³ See A/HRC/30/5, paras. 89, 105, 110.109–110.110 and 112.8; CCPR/C/MWI/CO/1/Add.1, para. 22.

²⁴ See A/HRC/34/59/Add.1; and A/HRC/30/5, paras. 89, 103, 110.48, 110.74 and 111.11.

²⁵ See A/HRC/30/5, para. 110.74; and CEDAW/C/MWI/CO/7, paras. 20–21 and 44–45.

²⁶ See United Nations News centre, “Surge in mob killings in Malawi draws serious concern of UN human rights office”, 5 April 2016.

²⁷ See A/HRC/30/5, para. 110.93; and CCPR/C/MWI/CO/1/Add.1, para. 10.

has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with the relevant Security Council resolutions, in particular resolution 1624 (2005). Please provide information on the relevant training given to law enforcement officers; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons suspected of terrorism or other security-related offences; whether there have been any complaints of non-observance of international standards; and the outcome of those complaints.

General information on the other measures and developments relating to the implementation of the Convention in the State party

32. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken to implement the provisions of the Convention or the Committee's recommendations. Such measures may include institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party may considers relevant.
