



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

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Committee against Torture Seventy-fifth session

Summary record of the 1941st meeting*

Held at the Palais Wilson, Geneva, on Wednesday, 2 November 2022, at 10 a.m.

Chair: Mr. Heller

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* No summary records were issued for the 1940th meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Initial report of Malawi (CAT/C/MWI/1; CAT/C/MWI/QPR/1)

1. *At the invitation of the Chair, the delegation of Malawi joined the meeting.*
2. **Mr. Kayuni** (Malawi), introducing his country's initial report (CAT/C/MWI/1), said that the report had been prepared following data collection activities and consultations in all four regions of Malawi. The ratification of the Convention against Torture had demonstrated his country's unequivocal commitment to combating torture and cruel, inhuman and degrading treatment and punishment, which were expressly prohibited under the Constitution. Although a specific definition of torture consistent with article 1 of the Convention had not been introduced into criminal law, various criminal offences amounting to torture were covered under national laws, and the Law Commission continued to hold consultations on means of eliminating any remaining legislative shortcomings in that connection.
3. A number of relevant legislative developments had taken place since the report had been submitted to the Committee. The Law Commission's report following its review of the Prisons Act had been endorsed by the Cabinet Committee on Legal and Parliamentary Affairs. That report included proposals for the adoption of a rights-based approach to prison management and for the establishment of a new parole system, open prisons and halfway houses. Furthermore, the Access to Information Act had come into force in September 2020. As a result, citizens and residents of Malawi could now access all information on them held by the State, which helped to increase the transparency of the work of public officials and their accountability for their actions. Lastly, a proposed amendment to the Penal Code aimed at strengthening the legal framework on terrorism and sexual offences against children and persons with mental disabilities had also been brought before Parliament.
4. Prison overcrowding remained a problem in Malawi. To address the issue, the Malawi Prisons Service had added 2,635 more square metres of floor space for cells spread across eight prisons since 2018, while a new maximum-security prison was under construction in Lilongwe. The Prisons Act provided for the presence at all prisons of a medical officer charged with overseeing the health of inmates; nurses, pharmacists, nutritionists and midwives were also available to address the needs of vulnerable prisoners, including pregnant women, women with children and prisoners with mental disabilities. In order to control the spread of communicable diseases, the Prisons Service conducted regular health education sessions and had improved ventilation at half of the country's prisons since 2018. Furthermore, as a specific measure to reduce overcrowding during the coronavirus disease (COVID-19) pandemic, 499 prisoners had been granted presidential pardons.
5. The Independent Police Complaints Commission had become operational in January 2021. Since then, it had received 105 complaints. The Commission was currently investigating 4 cases related to deaths of persons while in police custody or at the hands of the police and 17 cases involving excessive use of force by police officers. Two of those cases had already been recommended for prosecution.
6. The Malawi Human Rights Commission had been granted category A status by the Global Alliance of National Human Rights Institutions (GANHRI). In 2019, it had investigated the role of the police in the death of a man named Buleya Lule. The Commission had concluded that the deceased had been tortured to death using electricity. Following its recommendation, criminal proceedings against the police officers had been initiated in 2020. The High Court had subsequently ruled that 13 police officers should stand trial and had awarded damages to the widow of the deceased.
7. As part of its wider efforts to ensure that victims of torture had access to justice, the Government had also strengthened the Legal Aid Bureau. Since the report had been submitted to the Committee, the number of lawyers working for the Bureau had increased from 13 to 41, and the number of paralegals from 19 to 58. The Government was committed to ensuring that the Bureau had offices in all districts in the country and that there were enough lawyers and paralegals to support all pretrial detainees and prisoners in need of its assistance.

8. In parallel to its specific efforts to implement the Convention, the Government continued to take legislative and policy measures aimed at protecting vulnerable groups in Malawi. Over the previous three years, those efforts had included: the launch of the Spotlight Initiative, a project aimed at strengthening capacity for data collection on sexual and gender-based violence; the adoption of a national strategy for putting an end to child marriages and a national action plan on women and peace and security; the adoption of a national referral mechanism to identify trafficking victims; and the organization, in cooperation with international partners, of capacity-building activities for employees of the police force and prison service. To ensure that acts of torture were investigated and that perpetrators were prosecuted, Malawi had also signed extradition treaties, mutual legal assistance treaties and memorandums of understanding with various countries, including Mozambique, Tanzania, Zambia and Zimbabwe.

9. Despite the progress made, the Government still faced various challenges in its efforts to implement the Convention. There was not enough funding available to implement progressive laws and policies, and the country's data collection capabilities remained inadequate. The training provided to law enforcement officers, judicial officers and medical practitioners on torture was still insufficient, and greater efforts were also required to strengthen coordination between law enforcement agencies and to raise awareness of the Convention. The Government was nonetheless firmly resolved to meet those challenges and to ensure that the provisions of the Convention were fully implemented at the national level.

10. **Ms. Racu** (Country Rapporteur) said that, although the use of torture or cruel, inhuman and degrading treatment or punishment was prohibited under the Constitution, it was concerning that torture had still not been defined as a separate offence under domestic law. As a result, people who committed acts of torture were often charged with other offences such as assault or assault with intent to inflict grievous bodily harm. In addition, it was difficult to bring charges of mental or psychological torture, since those offences were completely absent from the State party's criminal laws. She wished to know whether any progress had been made in that respect and whether any plans were in place to introduce a definition of torture into law that covered all the elements contained in article 1 of the Convention. It would also be helpful to understand whether any discussions on that subject were being held at the national level. The State party should ensure that, in accordance with the Convention, the absolute prohibition of torture was non-derogable and that acts amounting to torture were not subject to any statute of limitations.

11. She would appreciate an update on implementation of the recommendations made by the GANHRI Subcommittee on Accreditation in 2016 regarding the Malawi Human Rights Commission. She would like to have updated information on the Commission's budget and staffing and to know whether the Commission's budget allocation enabled it to conduct monitoring visits to all places of detention and fulfil its new gender equality mandate. Information on the visits that it did conduct and the action taken pursuant to its visit reports would be appreciated. She would like to receive more details about the recommendations made to the Commission by State and international authorities as well. It would, in addition, be interesting to know what proportion of the complaints submitted to the Commission related to torture and ill-treatment.

12. She invited the delegation to comment on the State party's efforts to publicly disseminate the reports of the Inspectorate of Prisons. She would like to know how many visits the Inspectorate carried out annually and what their outcome was. She wondered whether the national authorities had engaged with the Subcommittee on Prevention of Torture and whether ratification of the Optional Protocol to the Convention was envisaged.

13. In view of the concerns raised about the situation of persons in pretrial detention, which focused on such problems as a failure to keep track of the length of detention, inform detainees of their right to bail, ensure prompt trials or keep accurate detention records, she would like to have clarification on whether the State party had or intended to establish a single centralized detention register. She would like to know whether lawyers, human rights organizations and the Human Rights Commission had access to the existing detention registers.

14. In view of reported shortfalls in the provision of legal assistance, she wished to know how the State party intended to uphold the right of access to a lawyer for all persons deprived of their liberty, including those under administrative arrest and those in police custody. She would like to know what steps would be taken to ensure the effectiveness of the system for free legal representation throughout criminal proceedings and would appreciate updated statistics on the number of lawyers and paralegals in the country.

15. She wished to know whether video surveillance systems had been installed in places of detention. She would also be interested to hear about any recent progress in ensuring that suspects and accused persons were notified of their rights by means of a clearly worded written handout available in an appropriate range of languages.

16. She would appreciate information on efforts to ensure that detainees underwent a medical examination upon admission to police detention units and on any recent initiatives to improve the way that medical personnel conducted clinical assessments and physical inspections of inmates. She wished to know whether doctors performing medical examinations upon admission to pretrial detention centres or prisons reported to the prison authorities or to a health authority. It would be helpful to have further information on internal regulations on the reporting of cases of possible torture and ill-treatment and on how many cases had been reported during the previous two years and how many had been investigated and prosecuted. She would like to hear about steps taken to ensure that medical staff were trained on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). She would be grateful for information on steps taken to improve the recording of traumatic injuries and signs of torture among detainees, especially in police custody, including the establishment of any specific registers for that purpose, and on any newly introduced measures to ensure that recorded injuries were immediately brought to the attention of the authorities and that a preliminary investigation was initiated regardless of the injured party's wishes.

17. She wished to know whether the State party would consider reversing its decision to ban the registration of lesbian, gay, bisexual, transgender, queer, and intersex asylum-seekers. She would appreciate the delegation's comments on reports that police routinely detained refugees found outside the Dzaleka refugee camp, including those with proper identity documents, and that refugees engaged in survival sex to supplement their food rations. Incidents of gender-based violence in the camp had also apparently been reported. It would be useful to receive an update on conditions in the Dzaleka camp with respect to overcrowding and access to education and health services, water, sanitation facilities and food. She would be interested in the delegation's comments on reports that law enforcement capacity in the camp was extremely limited and that no systematic approach was taken to the identification of vulnerable persons, including victims of torture, ill-treatment and sexual violence.

18. It would be useful to have an update on any recent changes in legislation or practices intended to improve the situation of migrants and asylum-seekers, including unaccompanied children. She would be interested in any initiatives for improving the protection of migrant children and ensuring that detained unaccompanied migrant children were not kept in the same room as adult males.

19. She wished to know whether a complaints mechanism for refugees existed and, if so, how many complaints had been submitted and investigated and which State authorities handled those complaints. She would like to have information on the measures taken to ensure that refugees were not subjected to torture or ill treatment when returned to their countries of origin and whether the State party had procedures for identifying victims of torture among the refugee population.

20. She would welcome statistics on domestic violence, including the numbers of recorded cases, complaints, protective orders issued and criminal cases initiated. She would appreciate an explanation of the reasons underlying the substantial increase in cases of gender-based violence since 2005 and of what was being done to address the underreporting of domestic violence and improve compliance with international recommendations concerning victims of gender-based violence. She would like to hear the delegation's comments on concerns that violence against women remained widespread, that marital rape

was not a criminal offence, that witness testimony was required for conviction in sexual offence cases and that insufficient protection, support and rehabilitation services were available to female victims of violence. She also wished to have an update on criminal proceedings in the case of the alleged rape of 18 women and girls by police officers in October 2019 in what was known as “the Msundwe incident”.

21. She would be interested to hear about any government coordination mechanism for dealing with violence against women, and she wondered what measures had been taken to encourage women to report incidents of violence, to build the capacity of judges, prosecutors, and law enforcement officials to enforce criminal laws on violence against women and to raise public awareness about the criminal nature of such acts. She would appreciate an update on the number of fully functional shelters for victims of domestic violence that provided legal aid, psychosocial assistance and other support services.

22. She would like to receive statistics on suicides and incidents of self-harm in prisons over the previous four years. She would welcome information on the applicable regulations and procedures for investigating and preventing violent incidents in prison. She would also be grateful for information on the mechanisms in place for reporting violent incidents and providing protection from reprisals for victims and other vulnerable inmates.

23. She would appreciate information on the amount of time that violent prisoners with mental disorders could be held in solitary confinement before being transferred to a psychiatric institution. Comments on reports of the use of restraints on such prisoners would be of interest. She would like to know whether all categories of prisoners, including minors, could be placed in solitary confinement for disciplinary purposes and whether any legal provision allowed for appeals against such punishments. She wondered whether the State party envisaged reducing the maximum allowable duration of solitary confinement and whether persons placed in solitary confinement could receive family visits. It would be helpful to have disaggregated data on the frequency with which solitary confinement was used, its duration and the types of conduct that resulted in that form of punishment.

24. She would be interested to know why the number of deaths in custody was much higher in some prisons than others and would appreciate receiving statistics on deaths in custody, disaggregated by cause of death. She wished to know whether the statistics provided in the State party’s initial report on deaths in custody included deaths in police custody and, if not, to receive those statistics as well. She would like to know whether an investigation had been initiated into the incident in which an inmate had reportedly been beaten to death by guards in Zomba prison in 2017 and, if so, its outcome. She would also appreciate information on any other investigations into deaths of persons in police or prison custody and their outcomes. She would be interested to learn of the findings of any analysis of the main factors contributing to deaths in custody and about any new measures for preventing violence in prisons, including self-mutilation and suicides.

25. The insufficiency of budget allocations for reformatory centres for children in conflict with the law reportedly jeopardized those children’s safety and well-being, and it appeared that some children were being held in adult prisons, despite provisions to the contrary in the country’s child protection laws. She therefore invited the delegation to comment on the situation of juvenile detainees in the country. As minors made up almost 8 per cent of the prison population, she also wondered whether any alternatives to detention for minors were provided for under national law and whether prison staff were properly trained to work with children in detention.

26. She would welcome details on the detention conditions and regimes for women, including mothers and pregnant women; on any steps taken to improve those conditions; on their access to health services, sanitation, education and work opportunities; and on the number of female detainees in the country, including those on remand.

27. It appeared that prison conditions and overcrowding had been worsened by an increase in the number of prisoners and a decrease in the budget for the prison system, which, in combination with inflation and the grain supply crisis, had exacerbated the inadequacy of prisoners’ diets. The delegation’s comments in that connection would be appreciated.

28. She wondered what administrative, legislative and judicial measures existed to provide for alternatives to detention in Malawi. It would also be useful to know what plans were in place for renovating outdated prison infrastructure and improving conditions in police detention units. Statistics on capacity rates per prison, the average number of prisoners per cell and the average living space per person in each prison would be welcome.

29. The Committee was appreciative of the State party's efforts to eliminate trafficking in persons through the adoption of such measures as the Trafficking in Persons Act and capacity-building activities for investigators. Nevertheless, it was apparent that Malawi faced great difficulties in that regard due to its location on a major migration route. The need to strengthen the implementation of the Trafficking in Persons Act had been highlighted by the recent discovery of 28 bodies, presumed to belong to migrants, in a mass grave in the north of the country. She would like to know whether there was sufficient capacity for an investigation into the case and what measures would be taken to prevent similar incidents from happening in the future.

30. She would welcome information on the number of investigations, prosecutions and convictions of government officials who had been complicit in trafficking offences and on the steps taken to establish victim identification procedures in line with national law and the Convention. It would also be useful to know how the State party was monitoring the implementation and effectiveness of victim protection services and the measures taken to prevent sex trafficking, including child sex trafficking.

31. **Mr. Liu** (Country Rapporteur) said that he welcomed the delegation of Malawi and hoped that the review of the State party's initial report under the Convention would provide a new starting point for efforts to strengthen its implementation in the country. He wished to commend the State party on the progress it had made in the protection of human rights and the prohibition of torture, including its improved legislative framework, its use of policy tools, its open approach to national human rights institutions and non-governmental organizations, and its active participation in the United Nations system. As Malawi was one of the least developed countries in the world, a holistic approach encompassing the rule of law, development efforts and human rights protection would be necessary in addressing the challenges faced by the country.

32. The Committee noted that, since 1994, no judicial executions had taken place in the country and a de facto moratorium had resulted in the commutation of the death penalty to life imprisonment. However, the provision for capital punishment still existed in the Penal Code, death sentences were still being handed down in several courts, and a recent ruling by the Supreme Court had upheld the death penalty in law. Sentences of capital punishment reportedly often relied on forced confessions, which would indicate that an increased risk of torture would exist so long as the death penalty remained in place. He therefore wished to know if the State party planned to abolish the death penalty formally in law.

33. Despite the existence of laws under which several types of harmful traditional practices, such as child marriage, were prohibited, it appeared that those practices were not defined as criminal offences in the country's Penal Code. He would appreciate any information about plans to introduce such offences in a subsequent revision of the Penal Code. The treatment of a recent case involving harmful traditional practices had drawn criticism because of the lenient sentence handed down to the perpetrator. The Committee therefore wished to know if there was any provision in place to ensure that harmful traditional practices would be classified as felonies. It would also be useful to know what efforts had been made to work with traditional leaders to discourage harmful traditional practices and what the outcomes of such efforts had been.

34. Measures taken to put an end to attacks against people with albinism, such as the launch of a national action plan to address the issue, were laudable. However, those measures had not led to a reduction in such attacks, and the prosecution of perpetrators of such offences was often delayed. Law enforcement agencies were ill-equipped to deal with such crimes, and a shortage of government resources for investigating killings of people with albinism for ritualistic, superstitious or other reasons often resulted in impunity. He would appreciate statistics on the situation of persons with albinism in the country and the results of any measures taken to reduce discrimination against them. It would also be useful to know what

measures were being taken to strengthen the implementation of the National Action Plan on Persons with Albinism in Malawi and to ensure that they and their families benefited from protective measures.

35. He applauded the fact that the age of criminal responsibility in Malawi had been raised from 7 to 10 years of age and from 12 to 14 years of age in cases where a child had unwittingly broken the law. It would be useful to know if the State party planned to increase the age of criminal responsibility further and to establish an appropriate juvenile correctional programme to protect the rights and interests of children.

36. There had been reports of extrajudicial executions of prisoners by police officers at the time of the prisoners' release, especially in the case of those who had served sentences for armed robbery. In addition, a total of 57 deaths as a result of mob "justice" had been reported between 2015 and 2017. The Committee would be awaiting information on the results and impact of the planned inquiry into the causes and scope of the problem. The Committee would also like to know what mechanisms were in place for countering mob justice. Given that sociocultural factors such as a lack of faith in the police and unfamiliarity with criminal justice processes often contributed to mob violence, information about any sociocultural strategies in place for tackling that problem would be welcome.

37. He would be interested to learn what evidence would be considered sufficient for a court to find that a confession was voluntary and accurate and whether the State party would consider repealing section 176 of the Criminal Procedure and Evidence Code, which addressed the conditions under which courts could take confessions into account but did not expressly prohibit the use of confessions obtained under torture. He wished to learn about any steps being taken to introduce advanced investigative tools and build the forensic evidence-gathering capacity of the police in order to reduce their reliance on confessions and witness testimony. Information would be appreciated on the number of cases in which allegations of torture had been made and the number of confessions that had been thrown out of court because they had been obtained under torture; the judicial procedures in place for the investigation of claims of torture or cruel, inhuman or degrading treatment or punishment; the impact, if any, that the human rights training provided to police officers and prison officials had had on the incidence of torture and ill-treatment; and any relevant awareness-raising activities carried out for the general public.

38. It would be helpful to know what the State party was doing in practice to ensure the well-being of human rights defenders and to protect their right to free speech, whether the State party would consider enacting specific legislation to protect them and what forms of redress had been provided to journalists who had been wrongfully detained. He also wished to find out what steps were being taken to allow non-governmental organizations (NGOs) to participate in inspections of places of deprivation of liberty and in the activities of the Malawi Human Rights Commission.

39. He wished to know whether the State party planned to decriminalize consensual same-sex activities and what steps, if any, it had taken to set up task forces to protect the rights of LGBTIQ+ persons, raise awareness of violence against LGBTIQ+ persons as a form of torture, establish effective methods for collecting data and documenting reports concerning such violence and ensure that police officers acted without prejudice when receiving and investigating complaints from LGBTIQ+ persons.

The meeting was suspended at 12.25 p.m. and resumed at 12.40 p.m.

40. **Mr. Kayuni** (Malawi) said that the Law Commission would review the question of whether a definition of torture should be incorporated into the domestic laws of Malawi and prepare a report on the matter. The report would then be sent to the Cabinet and, if approved, a bill would be drafted by the Ministry of Justice. If the bill received Cabinet approval, it would then be sent to Parliament. As the process involved multiple stakeholders and various stages of consultations, it was difficult to estimate how much time would be required for a bill to be prepared and adopted.

41. The Inspectorate of Prisons visited prisons an average of four times a year, and additional visits were conducted as the need arose. Visit reports were made public and indicated the number of visits that had been carried out. For example, a report issued in

February 2021 described the visits conducted in February, May and August 2020 and February 2021. Stakeholders would have to be consulted before a decision could be made as to whether Malawi would consider acceding to the Optional Protocol.

42. A number of measures had been taken to ensure that pretrial custody limits were observed. The Legal Aid Bureau regularly visited prisons in order to determine whether any individuals had been in pretrial detention for prolonged periods, and similar visits were also sometimes carried out by judges and magistrates on their own initiative. In addition, law enforcement officers received training on the pretrial custody limits established under the Criminal Procedure and Evidence Code, and mobile courts were available to help resolve detainees' cases quickly.

43. **Mr. Iscan** said that he wished to receive the information on redress and compensation measures requested in paragraph 23 of the list of issues, which had been provided to Malawi prior to its submission of its initial report ([CAT/C/MWI/QPR/1](#)).

The meeting rose at 1 p.m.