



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Concluding observations on the initial report of
Malawi**

Addendum

**Information received from Malawi on follow-up to
the concluding observations***

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* The present document is being issued without formal editing.

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Paragraph 12: Extrajudicial Killing

The committee was concerned with reports of extrajudicial killings in which alleged perpetrators had not yet been prosecuted.

1. Kindly take note that Police completed investigations of officers suspected to have used excessive force during the national wide protests of July 2011. A total of 9 police officers were charged of homicide related offences out of which about 4 of them their cases commenced in courts. The rest of the suspects files are with the office of the Director of Public Prosecutions (DPP) for prosecutions. In one of the cases, the suspect has been found with a case to answer; the case is at defence stage.
2. On the compensation part of it; the Attorney General's office is in the process of setting out mechanisms to ensure that real victims of the events receive compensation.

Paragraph 13: Prohibition of Torture

Expediently establish the Independent Police Complaints Commission and allocate adequate resources to it.

3. The process of setting up the Independent Police Complaints Commission is underway with support from the European Union Democratic Governance (Programme Estimate 4) in collaboration with the Ministry of Justice Technical Facilitation Unit. Currently two expatriates have been selected one external from South Africa and another from the University of Malawi. The expatriates are expected to start consultation processes with key stakeholders and this started from September, 2015. The project is currently being coordinated by the Ministry of Home Affairs and Internal Security other than Police in order to guarantee total independence of the Institution.

Establish a central system to keep track of all complaints publicly accessible; and investigate all cases of torture, prosecute the alleged perpetrators and compensate victims.

4. Section 124 of the Police Act of 2010 provides for the establishment of the Independent Complaints Commission (IPCC). The IPCC will be an Independent body that will be responsible for investigating complaints by the public against police officers. Three key objectives of the commission as stipulated in the Police Act include: to receive and investigate complaints by the public against police officers and the Police Service; to investigate death or injury as a result of police action; and to investigate all deaths and injuries which occur in police custody.
5. However, noting that the IPCC has not yet been instituted so that it carries out its accountability and oversight function over the police. Enquiries into serious acts of misconduct against the police have so far been carried out by the Professional Standards Unit (PSU) within the police. The Government of Malawi is highly committed to ensure that rights of detained persons under police custody are respected. This viewpoint is expressly indicated in the Malawi Growth and Development Strategy II and it is well demonstrated in the institution of commissions of enquiry in the death of citizens purportedly caused by the police. Depending on the outcome of investigations; some culprits are either prosecuted or face disciplinary actions which may even result into dismissal from the Police Service depending on the gravity of the matter. The PSU which was initially centralised at Police Headquarters has since May 2015 been decentralised such that it is now found in all the four policing regions. Reports from the regions will begin to

flow to headquarters where they may be accessible to the public in accordance with the Malawi Police policies and procedures on access to information.

Ensure that the Police Act comply with the Basic Principles on the use of Force and Firearms by police officers and strengthen its efforts to train police officers on Human Rights.

6. The use of force and firearms is guided under separate provisions under the Police Act. Under section 44 of the Police Act; firearms may be used against persons in lawful custody who is charged with or convicted of a felony and is escaping or attempting to escape; any person who by force rescues or attempts to rescue any person from lawful custody; or by force prevents the arrest of himself or another person. In all such cases, a warning is first given to the person that firearm is about to be used and resort to use of firearm is the last option after other alternatives have been explored. Use of firearm in such cases is for purposes of disabling and not to kill.

7. Further, under section 105(4); the Police Act provides for use force or firearm during riots, assemblies or demonstrations. This is applicable to persons who kills or seriously injures or attempts to do the same; or shows a manifest intention of killing or injuring another person; or to persons who destroys, does serious damage; or attempts to do so or shows a manifest intention to do the same to any property considered valuable. The degree of force used here is for purposes of preventing the concerned actions from taking place. In this case, firearm or other weapon may be used.

8. The use of firearms is for purposes of disabling and not killing. In view of the above; we are of the view that the above provisions do not contradict Basic Principles on the use of Force and Firearms.

9. As regards training; the Police Human Rights manual contains principles on the use of force. In fact; the training manual uses the Basic Principles on the use of Force and Firearms as part of the syllabus. These are taught at the basic police training at recruitment stage and the cadet courses.

Paragraph 24 (b): Sexual abuse of children

Ensure that all perpetrators are brought to justice and all cases are not unduly withdrawn, rehabilitate and compensate victims.

10. Police is only relevant when it comes to withdrawal of such cases in court. Police officers (prosecutors) are taught during their prosecution in take courses (this also applies to CID officers) that in any criminal trial; the complainant is formally the state. However, behind the state there is a victim who is supposed to be accorded full respect of his/her victims' rights. No case is withdrawn solely at the instance of the state unless on account of insufficient evidence.

11. Generally cases may be withdrawn by the state at the request of the victim. In such cases; the decision to withdraw the case is brought before the presiding court to ensure transparency. The court in this case has the power to refuse or grant the request. However police officers are trained to interrogate the reasons behind any such withdrawals to avoid undue influences; or power dynamics that are usually involved in such cases.

12. The victim support unit plays an important role in the rehabilitation of such victims because the unit provides basic counselling services. For advanced counselling services; the Social welfare under Ministry of Gender or indeed the One Stop centre (in Blantyre) offers such services. Non-governmental organisations also comes in to play a crucial role when on comes to counselling.
