



International Covenant on Civil and Political Rights

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Human Rights Committee

List of issues prior to submission of the second periodic report of Malawi**

A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please report on any significant developments in the legal and institutional framework within which human rights under the Covenant are promoted and protected that have taken place since the adoption of the previous concluding observations.¹ Please indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol and to raise awareness about the Optional Protocol, in particular among those who believe that their human rights under the Covenant may have been violated.

B. Specific information on the implementation of articles 1 to 27 of the Covenant

Constitutional and legal framework within which the Covenant is implemented (art. 2)

2. With reference to the Committee's previous concluding observations (para. 5),² please provide information regarding the measures taken to give full effect to the provisions of the Covenant in the legislation and to raise awareness of the Covenant among judges, lawyers and prosecutors. Please provide examples of cases in which the Covenant has been invoked or applied by national courts.

3. Please provide information on the measures taken by the State party to enable the Malawi Human Rights Commission to discharge its functions fully and in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by: (a) providing the Commission with sufficient human and financial resources; (b) ensuring its independence and the transparent selection of its members; and (c) providing the Commission with a mandate and mechanisms enabling it to engage in all human rights issues. Please also provide information on whether the State party intends to amend the Human Rights Commission Act (No. 27 of 1998) to ensure the full independence of the Commission.

Anti-corruption measures (arts. 2 and 25)

4. Please report on the measures taken to prevent and combat corruption effectively. Please provide statistical information on the number of investigations, prosecutions and

* Reissued for technical reasons on 9 June 2021.

** Adopted by the Committee at its 131st session (1–26 March 2021).

¹ CCPR/C/MWI/CO/1/Add.1.

² Unless otherwise indicated, paragraph numbers in parentheses refer to CCPR/C/MWI/CO/1/Add.1.



convictions in corruption cases during the reporting period and, in particular, information about cases involving high-level public officials, judges, prosecutors and law enforcement officers. Please describe the mandates of the Anti-corruption Bureau and other relevant bodies instituted in the State party to combat corruption and report on the measures taken to ensure their independence and efficacy in fighting corruption. Given the prevalence of corruption, which has discouraged victims from seeking legal redress, please outline the steps that the State party envisages taking to counter the problem specifically among police officers, government officials and members of the judiciary.

Non-discrimination (arts. 2, 20 and 26)

5. Please provide information on the measures taken to ensure that the State party's anti-discrimination legal framework provides: (a) full and effective protection against direct, indirect and multiple discrimination in all spheres, including in the private sphere, and on all the grounds prohibited under the Covenant, including sexual orientation and gender identity; and (b) effective remedies in judicial and administrative proceedings for victims of discrimination. Please provide statistical data on complaints of discrimination brought before the courts during the past three years, along with an indication of the basis of discrimination, the nature of investigations conducted and their outcome, and any forms of redress provided to victims.

6. Please indicate all the legislative and other measures taken to combat and prevent hate crimes, hate speech and other acts of discrimination, stigmatization and violence, particularly against women, persons with disabilities, persons living with HIV/AIDS, persons with albinism and on the basis of a person's real or perceived sexual orientation or gender identity, as well as measures taken to combat and prevent their social stigmatization and social exclusion.

7. With reference to the Committee's previous concluding observations (para. 10), please provide information on steps taken to repeal provisions that criminalize homosexuality and other consensual sexual activities among adults. Please also provide information on measures taken to: (a) introduce a mechanism to monitor cases of violence against persons on the basis of their sexual orientation or gender identity and enable the prosecution of perpetrators and the provision of compensation for the victims; (b) combat violence and raise awareness to eliminate stereotyping and discrimination; and (c) provide access to health services, including HIV/AIDS treatment, for lesbian, gay, bisexual, transgender and intersex persons.

Gender equality (arts. 3 and 25–26)

8. Please report on measures taken to: (a) allocate adequate financial and human resources for the implementation of the Gender Equality Act (No. 3 of 2013), train relevant stakeholders on its provisions and raise awareness among the population at large; (b) monitor the situation of women by collecting sex-disaggregated data; (c) amend laws that discriminate against women, directly or indirectly, including land laws; and (d) adopt legal provisions governing matrimonial property rights between spouses during marriage and after its dissolution. Please provide information on the impact of the adoption of the Malawi Citizenship (Amendment) Act (No. 11 of 2019), in particular whether the discriminatory sections (sects. 9 and 16) of the Malawi Citizenship Act (No. 28 of 1966) have been amended to ensure the equal applicability of nationality rights to men and women.

Violence against women and girls and harmful practices (arts. 2–3, 6–8, 24 and 26)

9. Please describe the measures taken to combat harmful practices such as child marriage, witchcraft, polygamy, female genital mutilation, widow cleansing rites and initiation rituals or ceremonies for girls involving sexual abuse. Please provide details on steps taken to: (a) criminalize the practice of female genital mutilation, widow cleansing rites and sexual initiation rituals or ceremonies; (b) reduce polygamy with a view to its abolition; (c) adopt a strategy to address such practices through training and awareness-raising activities; and (d) investigate cases of traditional harmful practices and provide victims with access to effective remedies, adequate protection, rehabilitation and reintegration. Please provide information

on the review of the Witchcraft Act, including the timeline for the adoption of its amendment and how it complies with the Covenant.

10. With reference to the previous concluding observations (para. 14), please: (a) outline the efforts undertaken to review the Prevention of Domestic Violence Act, including the work of the special Law Commission on the Technical Review of the Prevention of Domestic Violence Act; and (b) provide information on whether the State party intends to establish a system for the collection of disaggregated data on cases of domestic violence. Please provide information on the implementation of the National Plan of Action to Combat Gender-based Violence in Malawi (2014–2020) and on whether any provision has been made for carrying out awareness-raising campaigns on domestic violence among children, teachers, women, men, traditional leaders and the population at large, as well as for providing specific training to law enforcement officers, judges, prosecutors and lawyers.

Voluntary termination of pregnancy and sexual and reproductive rights (arts. 3 and 6–7)

11. Taking into account the Committee’s previous concluding observations (para. 9) and considering the high rates of maternal and infant mortality rates in the State party, please provide updated statistical data and information on efforts undertaken to reduce mortality rates. Please report on the measures taken to: (a) review the State party’s legislation on abortion and provide for additional exceptions in cases of pregnancy resulting from rape or incest and when the pregnancy poses a risk to the health of the pregnant woman; (b) provide access to reproductive health services to all, particularly women and adolescents, including in rural areas; (c) provide adequate sexual and reproductive health services; and (d) impart education and implement awareness-raising programmes, both formal and informal, on the importance of using contraceptives and on sexual and reproductive health rights.

State of emergency and response to the coronavirus disease (COVID-19) pandemic (arts. 2, 4 and 6–7)

12. Please describe the main restrictions on the exercise of rights protected under the Covenant that have been put in place in connection with the COVID-19 pandemic, the legal basis on which those restrictions are founded and their compatibility with the Covenant. In this regard, please provide information on whether other States parties have been notified, through the Secretary-General, of the measures taken by the State party. Please also comment on information received on: (a) the excessive use of violence by the police during the COVID-19 pandemic, particularly against lesbian, gay, bisexual, transgender and intersex persons and sex workers; and (b) the number of detentions carried out in the context of the COVID-19 pandemic.

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 6–7)

13. Please provide information on the measures taken to counter the abduction, ritual killing, infanticide, mutilation and exhumation of the remains of persons with albinism. In this regard, please outline the steps that the State party envisages taking, in the criminal justice system, to combat impunity and effectively address such cases by collecting data on their status and on related investigations, prosecutions and convictions.

14. Referring to the Committee’s report on follow-up to its concluding observations,³ and considering that cases of extrajudicial killings continue to be reported, please describe the prosecution status of the remaining cases referred to the Director of Public Prosecutions and the measures taken to prosecute alleged perpetrators, punish those convicted and protect, rehabilitate and compensate victims.

15. Taking into account the previous concluding observations (para. 11), please report on the progress made towards abolishing the death penalty, the remaining barriers to abolition and the formal commutation of death sentences pursuant to the de facto moratorium on executions. Please inform the Committee on: (a) the status of the plan to accede to the Second

³ CCPR/C/121/2.

Optional Protocol to the Covenant, aiming at the abolition of the death penalty; (b) the review of the Penal Code to ensure that the death penalty, if imposed at all, is applicable only to the most serious crimes as defined by article 6 (2) of the Covenant and in accordance with the Committee's general comment No. 36 (2018); (c) the provision of adequate funds for resentencing prisoners who have received a mandatory death penalty; and (d) efforts to ensure prisoners' right to seek pardon or the commutation of the death sentence. Please comment on information received that some death penalty sentences have been handed down in trials that failed to comply with the due process guarantees set out in article 14 of the Covenant.

16. With reference to the Committee's report on follow-up to its concluding observations, please report on: (a) the timeline envisaged to establish the independent police complaints commission and a central system to keep track of all complaints; (b) the number and outcome of investigations into cases of torture, including the number of prosecutions, convictions, criminal sanctions and disciplinary actions and dismissals under the Professional Standards Unit of the Malawi Police Service; and (c) measures taken to ensure that the Police Act complies with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and to train police officers in human rights.

Liberty and security of person (arts. 9–10)

17. In light of the Committee's previous concluding observations (para. 15), please report on the impact of the measures taken to reduce the number of persons in pretrial detention. In this regard, please also provide information on remedies and compensation for those unlawfully held in custody. Please report on the efforts made to: (a) separate convicted persons and pretrial detainees; and (b) to increase the use of non-custodial measures and penalties in line with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

Treatment of persons deprived of their liberty (arts. 7 and 10)

18. With reference to the Committee's previous concluding observations (para. 16), please describe the steps taken to: (a) review the Prison Act in line with international standards; (b) increase the capacity and independence of the Malawi Inspectorate of Prisons; and (c) facilitate complaints from detainees. Please also describe all measures taken to prevent the spread of COVID-19 in places of detention.

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7–8, 24 and 26)

19. In light of the Committee's previous concluding observations (para. 17) and regarding the adoption of the Trafficking in Persons Act (No. 3 of 2015), please outline the efforts made to: (a) ensure the implementation of and transparency in the management of the Anti-Trafficking in Persons Fund, including in respect of its utilization for shelters for victims, which should have been established pursuant to section 45 (1) of the Act but have yet to become available; (b) organize trainings and awareness-raising programmes for police officers, border personnel, judges, prosecutors, lawyers, other relevant personnel, children, teachers, parents, women and the population at large; and (c) compile disaggregated data on the scale of the problem of trafficking.

Access to justice, independence of the judiciary and a fair trial (art. 14)

20. Given the backlog in cases in the judicial system, please report on the measures taken to: (a) develop a national policy for reducing the backlog by strengthening the appeals procedure and increasing the number of judges, prosecutors and judicial officers, in particular in rural areas; and (b) allocate financial and human resources to ensure the implementation of both the Legal Aid Act (No. 7 of 2011) and the Legal Education and Legal Practitioners Act (No. 31 of 2018). Please comment on information received that many convicted persons are unable to afford legal representation and end up serving their sentences without review. Please report on measures taken to strengthen the provisions on the independence of judges and the autonomy of prosecutors.

Right to privacy (art. 17)

21. Please provide information on the status of legislation or the policy framework to strengthen personal data protection, particularly in relation to the online collection of national identity documents and other users' information. Given the reports indicating that searches without warrants are authorized and practised under the Police Act and some sections of the Penal Code in a manner that interferes with personal liberty and privacy, please provide information on the steps taken to repeal section 35 of the Police Act and other relevant legal provisions. Please provide information on the HIV and AIDS (Prevention and Management) Act (No. 9 of 2018) and on whether it complies with the Covenant. In particular, please provide information on measures taken to review the provisions allowing health-service providers to disclose a person's HIV status and order compulsory testing in certain circumstances.

Right to freedom of religion (art. 18)

22. With reference to the Committee's previous concluding observations (para. 21), please provide information on measures taken to ensure equal access to education and employment for Rastafarians. Please comment on the information received on interreligious tensions, including between an Anglican parish and Muslims in Balaka district over the wearing of the hijab by Muslim female students, which led to four government-funded schools being closed for eight weeks in 2019.

Right to freedom of opinion and expression (arts. 9 and 19–20)

23. Considering the reports of an increase in the number of threats, attacks and incidents of harassment and intimidation against human rights defenders and journalists, please outline the measures taken to protect them, prosecute those responsible and compensate the victims. Regarding the adoption of the Access to Information Act (No. 3 of 2017), please comment on information received that the Act has not yet been fully implemented in the State party and report on measures taken to improve accessibility and affordability in relation to technology and communications, including for marginalized groups and groups facing discrimination.

Right to freedom of peaceful assembly (art. 21)

24. Please comment on information received pointing to an escalation of political violence in the aftermath of the March 2019 elections and in the context of the rerun of the elections in June 2020 in the State party, during which organizers of demonstrations, protesters and human rights defenders were attacked and intimidated, with women and girls being subjected to disproportionate impacts and victimization. Please also provide information on steps taken to prosecute and convict the persons allegedly responsible of such crimes and provide relevant statistics.

Rights of the child (arts. 3, 7 and 23–24)

25. With reference to the Committee's previous concluding observations (para. 8), as well as its report on follow-up to its concluding observations, please report on the steps taken to: (a) amend the Penal Code to criminalize all forms of sexual abuse of children; (b) provide justice in cases of sexual abuse and rehabilitate and compensate the victims; and (c) revise and remove the "corroboration rule" when adjudicating cases of sexual violence to avoid impunity. Please provide details on the status of a study on the scope and causes of the phenomenon of children in street situations. Please describe the measures taken to mobilize funds for the National Strategy on Children Living and Working in the Streets (2014–2018) and additional actions envisaged to reduce the prevalence of street children and child labour in the State party.

Treatment of aliens, including migrants, refugees and asylum seekers (arts. 6–7, 9, 12–14 and 24)

26. Please describe the measures taken to comply with the principle of non-refoulement and the efforts made to address the backlog in cases awaiting a decision on refugee status

determination. Please respond to reports indicating that an increasing number of asylum seekers and migrants are being detained without judicial oversight or access to legal aid. Please provide information on the average length of time served in immigration detention centres and on the provisions in place to regulate the detention of children, particularly unaccompanied children.

27. Please provide information on measures taken to improve the situation in the Dzaleka refugee camp, which is heavily overcrowded and lacks sufficient water and sanitation facilities. Please also provide information on measures taken to counter the spread of COVID-19 in refugee camps, particularly in the Dzaleka refugee camp.

28. Please provide updated information on measures taken by the State party to prevent the internal displacement of persons and to ensure that adequate and effective protection is provided for internally displaced persons in camp and non-camp situations.

Participation in public affairs (arts. 25–26)

29. Please report on the legislative and other measures taken to ensure the holding of free, reliable and transparent elections and please provide information on the role and status of the Malawi Electoral Commission in this respect. With regard to the State party's elections in 2019 and 2020, please respond to reports indicating that the Commission lacks the resources and capacity, such as safety for its staff, to carry out and monitor elections and that State resources allocated to the election processes were misused.
