



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

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**Committee against Torture**

**Initial report submitted by Malawi under article  
19 of the Convention pursuant to the simplified  
reporting procedure, due in 1997\***

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\* The present document is being issued without formal editing.

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**List of abbreviations**

AIDS	Acquired Immune Deficiency Syndrome
ARPCOF	African Policing Civilian Oversight Forum
ART	Anti-Retroviral Therapy
CCPJA	Child Care Protection and Justice Act
CEDEP	Centre for the Development of People
CHAM	Christian Health Association in Malawi
CHREAA	Centre for Human Rights Education, Advice and Assistance
CONGOMA	Council for Non-Governmental Organizations in Malawi
CP & EC	Criminal Procedure and Evidence Code
CSOs	Civil Society Organisations
EGPAF	Elizabeth Glaser Paediatric AIDS Foundation
GEA	Gender Equality Act
HIV	Human Immunodeficiency Virus
HRC	Human Rights Commission
HRH	Human Resources for Health
IPCC	Independent Police Complaints Commission
LAB	Legal Aid Bureau
LC	Law Commission
LGBTI	Lesbians, Gays, Bisexual Transgender and Intersex
MDAs	Government Ministries, Department and Agencies
MDFR	Marriage Divorce and Family Relations Act
MoEST	Ministry of Education, Science and Technology
MoGCDSW	Ministry of Gender, Children, Disability and Social Welfare
MoJCA	Ministry of Justice and Constitutional Affairs
MPS	Malawi Police Service
MSF	Medicines Sans Frontiers
NGOs	Non-Governmental Organisations
NPACGBV	National Plan of Action to Combat Gender-Based Violence in Malawi
NTF	National Task Force
PDVA	Prevention of Domestic Violence Act
PVSUs	Police Victim Support Units
SADC	Southern Africa Development Community
SARPCCO	Southern African Regional Police Chiefs Cooperation Organisation
UNHCR	United Nations High Commissioner for Refugees
VSO	Voluntary Services Organisation
YONECO	Youth Net and Counselling

## Introduction

1. The Government of Malawi is pleased to submit responses to the list of issues prior to the initial report under the optional reporting procedure as stipulated under article 19 of the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (Convention against Torture). This report therefore, is Malawi's initial and combined report under the treaty. The report covers the period from 1996 when Malawi acceded to the Convention to March, 2019. The layout of the report follows the order in which the List of Issues was presented to Malawi by the Committee.
2. The report was prepared by the National Task Force (NTF) on the Convention against Torture which is chaired by the Ministry of Justice and Constitutional Affairs (MoJCA). The NTF is comprised of Government Ministries, Department and Agencies (MDAs), governance institutions and civil society organisations (CSOs). The full list of the members of the NTF is attached hereto as Annex 1. Malawi looks forward to further engagement with the Committee during the review of this report.
3. We refer the Committee to Malawi's Common Core Document which gives a narration on Malawi's historical, political, constitutional, legal and social set up.

## Article 1

### Reply to paragraph 1 of the list of issues (CAT/C/MWI/QPR/1)

4. Malawi's criminal law does not have a specific definition of torture consistent with Article 1 of the Convention against Torture. Section 19 (3) of the Constitution of Malawi states that; *no person shall be subject to torture of any kind or cruel, inhuman or degrading treatment or punishment*. Section 19 (4) prohibits corporal punishment in connexion with any judicial proceedings or in any other proceedings before any organ of the State. The rights stipulated under section 19 sub-sections (3) and (4) are non-derogable as provided for in section 45 (2) of the Constitution which states that; *there shall be no derogation with regard to - (b) the prohibition of torture and cruel, inhuman or degrading treatment or punishment*. The Penal Code (Cap. 7:01) of the Laws of Malawi criminalises acts that could amount to torture as per the definition provided in article 1 of the Convention against Torture. Chapter XXII of the Penal Code provides for criminalisation of acts which would endanger the life and health of a person. Such offences include acts intended to cause grievous harm under section 235 (whose penalty is imprisonment for life), grievous harm under section 238 (whose penalty is up to fourteen years imprisonment), section 239 (attempting to injure by explosive substances (whose penalty is imprisonment for fourteen years), section 240 maliciously administering poison with intent to harm (whose penalty is imprisonment for fourteen years), and section 241 unlawful wounding (whose penalty is imprisonment for seven years). Other sections of the Penal Code which also criminalise acts that could amount to torture in accordance with article 1 of the Convention are section 254 on assaults occasioning actual bodily harm (whose penalty is imprisonment for five years) and section 263 on kidnapping or abducting in order to subject person to grievous harm, ransom, slavery, etc. (whose penalty is imprisonment for ten years). These offences are not subject to any statute of limitation. The prosecution of the offences is only subject to general provisions of the criminal procedure in the Criminal Procedure and Evidence Code (CP & EC). The most recent amendments to the Penal Code did not consider including the definition of torture. The issue will therefore be considered by the MoJCA in collaboration with the Law Commission (LC).
5. Malawi follows a dualist system of domesticating international instruments. This entails that there are separate processes of ratification and domestication of any international instrument. The Convention against Torture cannot be directly invoked before domestic courts. Section 211 (1) of the Constitution of the Republic of Malawi stipulates that *any international agreement entered into after the commencement of the Constitution shall form part of the law of the Republic if so provided by an Act of Parliament*. However, courts of law are empowered under section 11 (3) of the Constitution of the Republic of Malawi to have recourse to current norms of public international law and comparable foreign case law.

6. The High Court of Malawi had recourse to the Convention against Torture in the case of *Gable Masangano v Attorney General and others Constitutional Case No. 15 of 2007*. In this case, a convicted inmate serving a twelve-year sentence, commenced a suit against the Government of Malawi claiming that the conditions of detention violated section 42 (1) (b) of the Constitution which provides that every person who is detained, including every sentenced prisoner shall have the right to be detained under conditions consistent with human dignity, which shall include at least the provision of reading and writing materials, adequate nutrition and medical treatment at the expense of the State and the Prison Regulations which provides for the minimum standards of detention. The Applicant alleged that the prison provided insufficient resources, including insufficient diet and food stuffs, clothing and accessories, cell equipment, and cell space. In the court's analysis, recourse was made to the Convention Against Torture with the court stating:

“... In fact the international community has struggled against torture and other cruel, inhuman or degrading treatment or punishment such that in December 1975 the General Assembly of the United Nations adopted a resolution on the Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. That Declaration preceded the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which defines torture as:

.... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes of obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

7. The court placed on the State an obligation to improve conditions of detention in line with the Constitution of the Republic of Malawi and international norms within 18 months from the date the judgment was issued (this expired in May, 2011).

## Article 2

### Reply to paragraphs 2, 3, 4, 5 and 6 of the list of issues

8. All detainees enjoy legal safeguards under the Constitution of Malawi. Section 42 provides among other rights for the right to have access to a legal practitioner, 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 within 48 hours or shortly thereafter or be released on bail. The protection of persons in detention therefore is solidly founded in the Constitution of Malawi: The enjoyment of these rights however faces many challenges. The courts have time and again been called upon to protect enjoyment of the rights enshrined under section 42. For instance, in the case of *In Re: S 42 (2) (e) of the Constitution of the Republic of Malawi and Republic v Leveleve (195 of 2000 ) [2000] MWHC 20 (09 August 2000)*; the court was called upon to interpret section 42 (2) (b) which states that as soon as it is reasonably possible, but not later than 48 hours after the arrest, or if the period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, a detainee must be brought before an independent and impartial court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be released. The Complainant in this case was not brought before court for 10 months. The court decided that the State violated the Complainant's right to be brought to a court of law within forty-eight hours. After the forty-eight hours there is a continuous breach of the right. The Complainant was therefore granted bail. Regulation 146 (2) of the Prisons Act (Cap 9:02) of the Laws of Malawi exempts the communication between the prisoner and legal practitioner and/ or visits to a prisoner by the legal representative from any restriction the officer in charge may impose. Regulation 151 permits a visit of the legal practitioner to his client or the other party's client. On the other hand, Regulation 155 expressly prohibits forfeiture of a visit by a legal practitioner.

9. In order to address prolonged pre-trial detention, the Prison Service has trained its own paralegal officers to provide in-house legal clinics to the newly admitted inmates which would facilitate speedy trials. They are also a link between inmates in need of legal support and the Legal Aid Bureau (LAB). They further follow-up with the prosecuting authorities and the court in order to ensure that pre-trial detainees are promptly brought before court. Currently 17 Malawi Prison Service officers have been trained in paralegal studies and have been deployed to different prison stations and are working in reception (admission) offices as part of the offender assessment and classification team. Data for the number of lawyers who have been visiting the prisons is not readily available because as per practice, prison visitor's books do not recognise professions of the persons but their physical location and contact details only.

10. On its part, the MPS maintains detention registers. A custody register is maintained and updated on capturing the pertinent details of all suspects in police custody at any given time. The MPS also maintains remand register which keeps records of all detainees.

11. Legal aid is available to the most disadvantaged people. The Legal Aid Act (Cap. 4:01) of the Laws of Malawi makes provision for the granting of legal aid in civil and criminal matters to persons whose means are insufficient to enable them to engage private legal practitioners and to other categories of persons where the interests of justice so require. The Act also establishes the Legal Aid Bureau which has offices in the Southern, Central, Northern and Eastern regions of the country. As of May, 2018, the Bureau had 13 lawyers and 19 paralegals. This is however considered inadequate, and measures are being taken to increase the capacity of the Bureau.

12. The Human Rights Commission (HRC) is a National Human Rights Institution (NHRI) established under section 129 of the Constitution of the Republic of Malawi. The Commission has powers of investigation and making recommendations as are reasonably necessary for the effective promotion of the rights conferred by the Constitution, or any other written law. The Commission is composed of Commissioners appointed from time to time by the President on the recommendation of the Law Commissioner and the Ombudsman. The Commission is also governed by the Human Rights Commission Act (Cap 3:08) of the Laws of Malawi which elaborates on the composition and mandate of the Commission. The Commission is by virtue of the Constitution and its enabling statute an independent body expected to conduct its affairs independently without any impartiality. In addition, the recruitment of staff to run the operations of the Commission is done independently. The Commission's operations are funded by the Government. It is categorised as an "A" status NHRI in accordance with the Paris Principles. In its annual reporting 2017 to 2018 the Commission reported that it handled a total of 262 complaints in 2015, a decrease of 26.8% from 358 complaints in 2014. In 2016, the Commission handled 324 complaints.

13. In 2016, the Human Rights Commission's Act was amended to implement recommendations from various human rights treaty bodies. The amendment of Section 26 means that the Law Commissioner and the Ombudsman have no voting rights in the proceedings of the Commission.

14. In the last few years the Commission has held inquiries on status of persons with albinism, access to justice by victims of gender based violence, corporal punishment in public schools, and preparatory work on an inquiry on Lesbians, Gays, Bisexual Transgender and Intersex (LGBTI) community. While the Commission consistently produces annual reports, no such report has been discussed in Parliament.

**Legislative, judicial and other measures taken to eliminate violence against women, support services available to victims and statistical data**

15. Malawi has put in place various measures in order to eliminate all forms of violence against women. In terms of legislative measures, the Prevention of Domestic Violence Act (PDVA) (Cap. 7:05) of the Laws of Malawi, the Penal Code, the Marriage Divorce and Family Relations Act (Cap. 25:01) of the Laws of Malawi, Gender Equality Act (Cap. 25:06) of the Laws of Malawi, and the HIV and AIDS (Prevention and Management) Act contain provisions that criminalise forms of violence against women. The PDVA makes provision for the prevention of domestic violence and the protection of persons affected by domestic violence through issuance of inter alia; protection orders. Other than the PDVA,

provisions of the Penal Code such as grievous harm, assault and unlawful wounding quoted above, rape and attempted rape (sections 132 and 133) respectively also criminalise forms of violence that may be inflicted against women. The Penal Code does not criminalise marital rape. The Special Law Commission during the last review of the Penal Code recommended that marital rape should not be criminalised. However, the Marriage Divorce and Family Relations Act under section 62, stipulates that a husband commits the offence of rape if he has sexual intercourse with the wife without her consent during judicial separation.

16. The Gender Equality Act also prohibits the practice of harmful cultural practices under section 5. The section criminalises such acts and if found guilty, the perpetrator shall serve up to five (5) years imprisonment and a fine of one million Malawi Kwacha (K1,000,000.00). The Act also criminalises sexual harassment and if found guilty, the perpetrator shall serve up to five (5) years imprisonment and a fine of one million Malawi Kwacha (K1, 000,000.00).

17. The HIV and AIDS (Prevention and Management) Act under section 4 also prohibits harmful cultural practices. Such practices attract a fine of K5, 000,000 and imprisonment for 5 years.

18. The HIV/AIDS Prevention and Management Act also prohibits harmful practices which include cultural practices that are likely to put a person at risk of contracting an HIV infection or may re-catalyze progression of HIV infection to AIDS. The Act in the first schedule lists the following harmful practices as prohibited; Chimwanamaye, Fisi, Hlazi, Chijuramphinga, Kuchotsafumbi, Chiharo, Kuikamwanakumalo, Kujuranthowa, Kulowa or Kupitakufa, Kulowa or kupitangozi, Kupimbira, Kuponderaguwa, Kusamalamlendo, Kutsukamwana, Mbirigha, Gwamula, Mwanaakule and Bulangete la mfumu.

19. In the case of Eric Aniva of 2016 an HIV positive man was accused of having unprotected sex with widows in a harmful cultural practice called "widow cleansing". He was charged with indulging in a harmful cultural practice and an attempt to commit the same offence contrary to Section 5 sub-sections 1 and 2 of Gender Equality Act of 2013. He was convicted and sentenced to 24 months in prison with hard labour.

20. Besides the Legislative and policy measures taken, the Government is also sensitizing communities to modify societal attitude towards harmful traditional practices. In this regard, the Government has developed guidelines to standardize by-laws' applicability in the district councils. Through these by-laws, some harmful traditional practices and early marriages have been reduced. There is also recognition that there is a need for programs that empower men and women/female guardians to ensure that gender stereotypes and harmful traditional practices at local level are eradicated. In addition, many traditional leaders are working hand in hand with Government to challenge community systems that promote harmful traditional practices and are enforcing by-laws within their communities. Many by-laws are addressing child marriage by imposing fines on families that perpetrate the practice, as well as penalizing chiefs that are failing to enforce the by-laws in their communities.

21. There is also political will to combat harmful traditional practices. On 25 July 2014, the State President, Professor Arthur Peter Mutharika became the first SADC Head of State to sign a commitment to end child marriages, which currently affect a high number of girls below the age of 18. In addition, on 26 February 2015, the President led fellow men in Malawi in the signing of a commitment to the He4She campaign, and declared himself as one of the champions of the campaign. The MoGDCSW in collaboration with a private radio station called Zodiak and the United Nations Population Fund (UNFPA) are running a mass media campaign to end child marriages. The media campaign is aimed at sensitizing the public of the dangers of harmful traditional practices. In the school settings, Mother Groups have been an instrumental tool in reducing the numbers of child marriages and further encouraging the young brides and grooms to return to school.

### **Complaints, investigations, prosecutions, convictions and sentences in human trafficking cases and other measures adopted**

22. At policy level, the National Plan of Action to Combat Gender-Based Violence in Malawi (NPACGBV) (2014–2020) was adopted. The Plan of Action is the blueprint for all actions taken by Government to reduce the prevalence and prevent violence against women.

23. Victims of gender based violence are provided with support. There are one stop centres aimed at assisting victims which provide counselling, medical and psycho-social needs. There are about 18 one stop centres in major hospitals all over Malawi. In addition, the MPS has Police Victim Support Units (PSVUs) within the Community Policing Services Branch. These units provide victims with emergency safety and protection as well as providing initial care and support to victims before being referred to a hospital or any relevant authority. There are also Community Victim Support Units (CVSUs) in rural and remote areas. Victims or friends and relatives of victims of gender based violence can also use the toll free line (116) to report a case. This toll free line is run by the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW) in conjunction with a Non-Governmental Organisation (NGO), Youth Net and Counselling (YONECO). Further, the MoGCDSW through district social welfare officers, available in every district in Malawi, operate as service points. They handle cases of gender based violence by not only referring the case to other relevant authorities, but also providing some psychosocial support. At the community level, Mother Groups and Child Protection Committees in schools also play a vital role in providing psychosocial assistance to victims of gender based violence.

24. The Malawi Police Service handles gender based violence through its VSU. The Table below represents the number of cases reported since 2005.

Table 1  
**Gender Based Violence: 2005 to 2018**

<i>Year</i>	<i>Physical</i>	<i>Emotional</i>	<i>Sexual</i>	<i>Economical</i>	<i>Totals</i>
2005	6 411	42	478	394	7 325
2006	8 284	52	519	525	9 380
2007	6 112	62	282	403	6 859
2008	6 451	50	336	358	7 195
2009	8 880	91	299	310	9 580
2010	28 891	308	1 333	888	31 420
2011	23 716	233	1 447	966	26 362
2012	17 258	10 450	990	790	29 488
2013	20 400	900	841	400	22 541
2014	11 639	869	1 400	1 248	15 156
2015	11 000	823	1 438	1 245	14 506
2016	9 971	990	1 960	1 890	14 811
2017	8 975	7 957	944	1 488	19 364
2018	0	0	0	0	0
<b>Totals</b>	<b>167 988</b>	<b>22 827</b>	<b>12 267</b>	<b>10 905</b>	<b>213 987</b>

25. The Trafficking in Persons Act of 2015 is the principal legislation that deals with issues concerning trafficking in persons. The Act provides for the prevention and elimination of trafficking in persons. The Act establishes the National Coordination Committee. The Committee oversees the effective implementation of provisions of the Act. In August, 2017, Malawi launched the National Plan of Action against Trafficking in Persons (2017–2022). The Plan of Action sets concrete and specific time-bound measures. It sets the target of reducing trafficking in persons' cases by 50% by 2022.

26. The Child Care Protection and Justice Act (CCPJA) (Cap. 26:03) of the Laws of Malawi also criminalizes trafficking in persons but specifically relating to children under section 79.

27. In 2017, the Malawi Police registered cases in the districts of Mulanje, Mwanza, Phalombe, Mchinji, Nkhotakota, Mangochi and Chitipa. All districts are on the border with various neighbouring countries. The tables below show further information on trafficking cases.

**Trafficking in person cases per district 2013 – 2017**



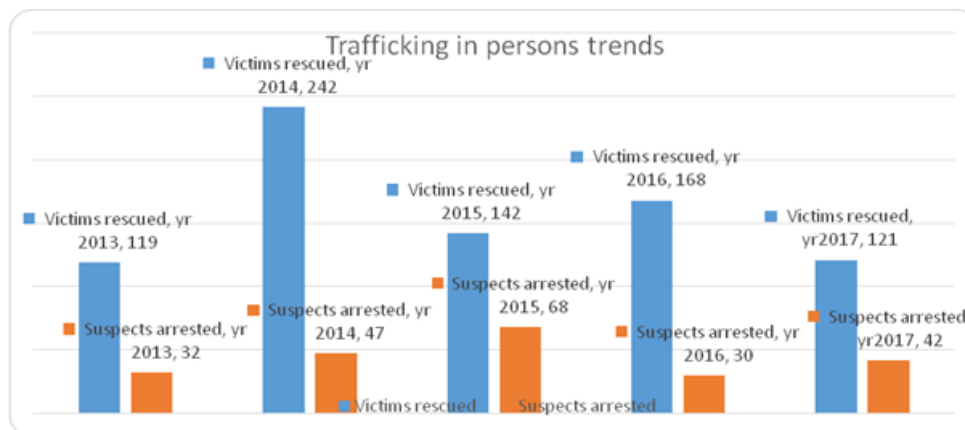
Source: Malawi Police Service.

**Malawians trafficked outside Malawi 2013–2017**



Source: Malawi Police Service.

**Trafficking in persons trends between 2013 and 2017**

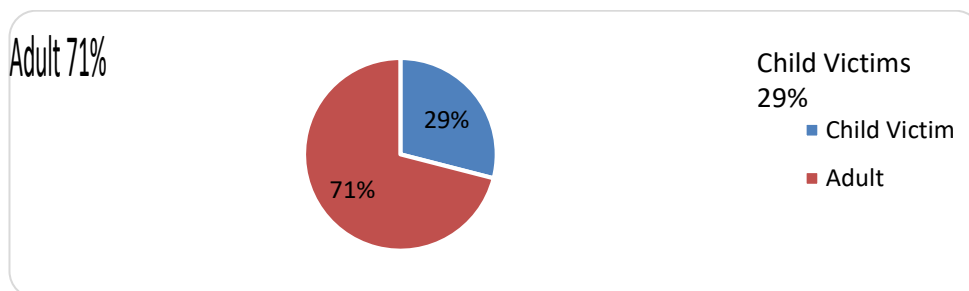


Source: Malawi Police Service.



28. In the year 2013, a total of 15 suspects were prosecuted and convicted representing conviction rate of 47% whilst in the year 2014 the rate of prosecution was 51% depicting an increase by 4%. In the year 2015 total number of 142 victims was rescued, 68 suspects arrested and 58 of them convicted representing conviction rate of 85%. There was an increase in the prosecution rate in the year 2016 by 2%. In the year 2017 total number of 121 victims were rescued, 42 suspects arrested and 26 of them convicted representing conviction rate of 62%, representing an increase of 2% during same period of the year 2016.

#### Trafficking in Persons according to age



Source: Malawi Police Service.

29. Traditional leaders, members of the public and community policing structures are also playing a vital role in identifying trafficking perpetrators and rescuing victims. Phalombe and Mchinji are among the districts with strengthened community policing structures assisting in curbing trafficking in persons.

30. Cooperation and information exchange mechanisms have also been established with neighbouring countries. There is an annual SADC Forum where countries meet to share trafficking in person's information. The MPS also makes use of mechanisms such as Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) and INTERPOL. INTERPOL has played very vital role to rescue victims and arrest perpetrators outside borders of Malawi. In addition, in order to respond to the rising number of cases of trafficking of Malawian women to Kuwait, the Government of Malawi and the Government of Kuwait have entered into a bilateral agreement to ensure that they strengthen the safeguards in place to ensure that if a Malawian is granted a visa to work in Kuwait, it should be for that intended purpose and not otherwise.

31. In order to further give effect to the Trafficking in Persons Act, a Child Protection Section in the Community Policing Services Branch of MPS was established with the aim of contributing towards the provision of a protective environment for residents of Malawi.

### Article 3

#### Reply to paragraphs 7, 8 and 9 of the list of issues

32. Section 10 of the Refugee Act (Cap. 15:04) of the Laws of Malawi confirms the principle of non-refoulement. In addition, the Government of Malawi, through the Refugee Department within the Ministry of Home Land Security; ensures that asylum seekers have access to refugee status determination procedures from the point of entry. Persons who claim asylum at the border are screened and then cleared by an immigration officer before they are moved to the transit centre where they submit their asylum applications. The Department conducts quarterly training workshops for border officials and the principle of non-refoulement is emphasised.

33. In 2017, United Nations High Commissioner for Refugees (UNHCR) in conjunction with the Government conducted training workshops in border districts of Mwanza, Karonga and Chitipa where 106 officials were trained; of which 43 were immigration officers and 31 police officers. The other 32 officers were drawn from the District Councils, the District Social Welfare Offices, the District Health Offices and the Refugees Department.

34. The Department also carries out border monitoring exercises to ensure that no persons of concern are being denied entry and that the human rights of the asylum seekers

are protected. There have not been any cases of refoulement of asylum seekers/refugees in Malawi.

35. Since 1998, Malawi has received 36,852 asylum applications of which 12, 240 have been recognized as refugees, 1080 have been rejected applicants and 7, 466 applications are being considered by the Refugee Committee. 20,014 are yet to be interviewed. All decisions are communicated to the applicants in writing. If an asylum seeker is not satisfied with the decision made by the Committee, the decision can be appealed to the Minister within 14 days of receipt of the decision. To reduce the backlog of asylum applications, the Department has employed an accelerated procedure to deal with Congolese and Burundian cases, considering the current humanitarian situation in both countries. The Department has also recruited an additional reviewer to review cases pending review. The tables new low present information on refugees and asylum seekers.

**Table 2**

Nationality	Population as at May 2018		With Status		New Arrivals Photo taken		Departures		New Babies		Death		Age group										Total
													0-4		5-11		12-17		18-59		60+		
	Fms	Indiv	Fms	Indiv	Fms	Indiv	Fms	Indiv	Fms	Indiv	Fms	Indiv	M	F	M	F	M	F	M	F	M	F	
Somali	41	104	14	39	0	0	0	0	0	0	0	0	11	17	8	2	5	6	27	25	1	2	104
Congolese	5 289	21 435	1 661	4 814	28	90	0	0	0	15	0	4	2 770	2 668	2 221	2 126	1 672	1 362	4 947	3 542	32	95	21 435
Burundise	2 326	8 322	327	680	8	22	0	0	0	3	0	0	1 002	991	831	786	584	507	2 120	1 411	33	57	8 322
Rwandese	1 784	6 445	344	586	5	9	0	0	0	3	0	0	583	603	622	625	449	517	1 580	1 350	60	56	6 445
Uganda	4	8	0	0	0	0	0	0	0	0	0	0	0	1	1	0	1	0	4	1	0	0	8
Sudanese	4	7	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	3	2	0	0	7
Ethiopian	36	42	5	5	0	0	0	0	0	0	0	0	3	3	0	0	0	0	33	3	0	0	42
Eretria	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2
Bel	1	4	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	2	0	0	0	4
Kenyans	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2
Zimbabwe	3	8	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	2	5	0	0	8
Zambians	2	6	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	1	3	0	0	6
Ivorian	1	3	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1	1	0	0	3
Brazil	1	2	1	2	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	2
Tanzania	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
Angola	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>9 497</b>	<b>36 391</b>	<b>2 353</b>	<b>6 127</b>	<b>41</b>	<b>121</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>21</b>	<b>0</b>	<b>4</b>	<b>4 370</b>	<b>4 286</b>	<b>3 684</b>	<b>3 542</b>	<b>2 712</b>	<b>2 392</b>	<b>8 725</b>	<b>6 344</b>	<b>126</b>	<b>210</b>	<b>36 391</b>

Source: Refugee Determination Unit.

Table 3  
Number of asylum seekers as at May, 2018

Nationality	Population as at May 2018		New Arrivals for the Month		New Arrivals Photo captured		New Babies Photo taken		NBB for Month	Death	Age group										Total
	Fms	Indiv			Fms	Indiv	M	F			Indiv	Indiv	0-4		5-11		12-17		18-59		
											M	F	M	F	M	F	M	F	M	F	
Somali	1	1	0	0	0	0	0	2	0	0	0	0	0	0	0	0	1	0	0	0	1
Congolese	1 521	3 388	139	283	28	90	6	9	73	1	304	378	240	180	220	182	1 200	667	8	9	3 388
Burundise	547	837	75	101	8	22	0	3	22	0	48	46	44	38	49	33	435	143	1	0	837
Rwandese	180	200	13	34	5	9	2	1	12	0	32	7	9	5	12	11	51	67	6	0	200
Eth	0	1	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	1
Uganda	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Zimbabwe	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kenya	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>2 250</b>	<b>4 428</b>	<b>227</b>	<b>418</b>	<b>41</b>	<b>121</b>	<b>8</b>	<b>15</b>	<b>108</b>	<b>1</b>	<b>385</b>	<b>431</b>	<b>293</b>	<b>223</b>	<b>281</b>	<b>226</b>	<b>1 688</b>	<b>877</b>	<b>15</b>	<b>9</b>	<b>4 428</b>

36. Regarding the repatriation of refugees, this process is ongoing and it is either spontaneous (where the applicants return is not facilitated by relevant authorities), or voluntary (where the applicant's return is formalized). Following tripartite agreements, voluntary repatriation has been conducted for instance, for Rwandan nationals. The voluntary repatriation of 3,371 Mozambican nationals from Luwani refugee camp, who expressed the desire to return home in March 2017, is still awaiting agreement between the Governments of Malawi and Mozambique and the UNHCR.

37. The measures that Malawi has put in place to ensure that no one is expelled or extradited to a country where he or she is at risk of being subjected to torture or ill-treatment are found within the law relating to extradition. Extradition of a person to a country which has an extradition agreement with Malawi is governed by the Extradition Act (Cap. 8:03) of the Laws of Malawi. Malawi has also entered into separate bilateral extradition agreements with some States.

38. During the extradition process, the person to be extradited has the right to challenge the application by way of appeal to the High Court and even to the Supreme Court of Appeal. Judicial oversight is designed to ensure that persons to be extradited will be treated fairly and that their extradition is based on proper legal grounds. Under section 7 (1) and (3) of the Extradition Act, the Minister responsible makes an application to a Resident Magistrate Court for the extradition of a named person and issues an authority to proceed in respect of a person to be extradited. The person to be extradited can challenge the application by way of appeal to the High Court. The extradition case of Vincent Murekezi, a Rwandan national, is on point.

39. Malawi is a State party to the Southern African Development Community (SADC) Protocol on Extradition. Under Article 4 (f) of the Protocol, Malawi has a mandatory obligation to refuse extradition of a person to a State Party if that person has been, or would be subjected to torture or cruel, inhuman or degrading treatment or punishment in that State Party.

## Articles 5–9

### Reply to paragraphs 10, 11 and 12 of the list of issues

40. As mentioned above, Malawi does not have a specific definition of torture consistent with article 1 of the Convention. Malawi does criminalise certain acts which could amount to torture consistent with article 1. These offences have been stated above. Chapter III of the Penal Code. Sections 5 and 6 stipulates that when an act which, if wholly done within the jurisdiction of the court, would be an offence against the Penal Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or takes any part in such act may be prosecuted and punished under the Penal Code in the same manner as if such act had been done wholly within the jurisdiction and any Malawian citizen being a person employed in the public service of Malawi who commits, in any other country, when acting or purporting to act in the course of his employment, any offence which, if committed in Malawi, would be punishable in Malawi, shall be guilty of an offence of the same nature, and subject to the same punishment, as if the offence had been committed in Malawi respectively. Malawi recognises the prohibition of torture as a peremptory international norm.

41. In 2002, Malawi signed the South African Development Community (SADC) Protocol on Extradition. Malawi is yet to ratify and domesticate the Protocol. Following from this, Malawi has entered or is in the process of concluding a number of bilateral agreements on extradition. In 2004, Malawi began negotiations with the Republic of Zambia to conclude an extradition treaty. The negotiations are still underway. In 2017, Malawi concluded an extradition agreement with the Republic of Rwanda. In this agreement, extraditable offences are offences that are punishable under the laws of the both parties by imprisonment or other deprivation of liberty for a period of at least one year. Malawi has also commenced negotiations to conclude extradition agreements with the Republic of India, and the Republic of Egypt.

## Article 10

### Reply to paragraphs 13 and 14 of the list of issues

42. The MPS runs training schools for police offices and recruits. In its curriculum, there is a human rights course which also covers the provisions of the Convention. The Malawi Human Rights Commission has developed a manual which is used in various Police Training Schools.

43. The same applies to newly recruited prison officers that are trained in schools run by the Malawi Prisons Service. The Department has reviewed its training curriculum and it now incorporates both domestic and international human rights instruments. Among the books used, the Department has developed a separate human rights trainer's manual and human rights handbook for both instructors and trainees which are even issued to trainees as working materials when graduating from the Training School. Additionally, the department also distributed at least three copies of the Penal Code, CP & EC and GEA to each prison station for the officers in charge to be used during the staff lecture sessions to emphasise that torture is criminalised under the State party's statutes. The Department monitors the effectiveness of training and educational programmes in reducing cases of torture and ill-treatment through daily, weekly and monthly situation reports which are submitted to the office of the Chief Commissioner which consequently directs the affected prison station to take action.

44. The Human Rights Section in the Ministry of Justice and Constitutional Affairs, in corroboration with the Malawi Prisons and other key stakeholders is developing an implementation tool kit for both the Robben Island Guidelines and the Luanda Guidelines. CSOs such as Centre for Human Rights Education, Advice and Assistance (CHREAA) also trains police and prison officials on human rights including provisions of the Convention. African Policing Civilian Oversight Forum (ARPCOF) has also conducted training sessions with police officers on the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines).

## Article 11

### Reply to paragraphs 15, 16, 17, 18, 19 and 20 of the list of issues

45. The Law Commission has concluded the review of the Prisons Act. A report has been issued with detailed findings and a proposed prison's Bill. The Bill requires approval by Cabinet before presentation in Parliament.

46. The Law Commission has also submitted a proposed legislation on sentencing guidelines. The table below shows prison population in Malawi as at September 2018.

Table 4

**Prison Population versus design capacity**

Station	Convicted & Sex		Pre-Trial Detainees & Sex		Total	Initial Design Capacity	New Cell	Excess Bodies
	M	F	M	F				
Chitipa	182	2	25	1	210	60	0	
Karonga	55	0	0	0	55	20	0	35
Rumphi	135	1	31	0	177	80	0	97
Mzuzu	695	0	122	0	817	90		
Mzimba	269	3	125	3	500	400	0	100
Nkhatabay	183	0	33	1	217	80	0	137
Nkhotakota	290	0	70	0	368	120	0	248
Kasungu	334	2	93	4	407	240	0	167
Ntchisi	286	0	41	0	327	60	2 (30)	207
Lilongwe	2 056	39	582	26	2 708	480	4 (200)	1 428

Station	Convicted & Sex		Pre-Trial Detainees & Sex		Total	Initial Design Capacity	New Cell	Excess Bodies
	M	F	M	F				
Dedza	182	7	108	8	305	120	2 (40)	105
Ntcheu	144	0	58	0	202	80	2 (40)	42
Mangochi	150	0	69	0	219	90	0	129
Domasi	304	0	30	0	334	240	0	94
Mpyupyu	243	0	0	0	243	200	0	43
Mikuyu 1	337	0	0	0	337	240	0	97
Zomba Central	1 887	0	184	0	2 071	756	0	1 315
Blantyre	1 295	20	480	22	1 819	570	0	1 249
Mwanza	178	0	23	0	201	160	2 (30)	-19
Luwani	57	0	0	0	57	60	0	-3
Thyolo	88	0	70	0	158	90	0	68
Makande	244	0	0	0	244	120	0	124
Mulanje	324	9	23	2	425	240	0	185
Chikhwawa	424	4	60	2	510	240	0	270
Bangula	16	0	0	0	16	12	0	4
Nsanje	116	1	24	3	144	120	0	24
BzyanziYorc	117	0	0	0	117	30	2 (30)	8 727
KachereYorc	140	0	27	0	167	54	0	113
MikuyuYorc	198	0	18	0	216	210	0	6
BvumbweYorc	221	0	9	0	230	90	2	60
<b>Total</b>	<b>11 150</b>	<b>88</b>	<b>2 305</b>	<b>72</b>	<b>13 801</b>		<b>16 Cells</b>	
							<b>Accommodating</b>	
							<b>Extra 560</b>	

YORC Stands for Young Offenders Rehabilitation Centre – *Source*: Malawi Prison Service.

47. As of September 2018, there were 13 circumstantial children in all prisons, 97 foreign pre-trial detained foreign nationals and 37 convicted foreign nationals.

48. The Government of Malawi has employed several measures in order to reduce prison overcrowding. The legislative measures taken include the requirement provided under section 42 (2) (b) of the Constitution that a person should be released on bail if they have not been brought before a judge within 48 hours or as soon as practically possible. The CP & EC under Part IVA provides for pre-trial custody time limits in order to ensure that a detainee is not on remand for a long period. In addition to the legal requirements, other measures taken include the administration of mobile courts all over Malawi in order to dispose of cases of detainees on remand for long periods and to re-sentence other detainees to mete out non-custodial sentences. In addition, the High Court has established a criminal division in order to facilitate the speedy disposal of criminal matters. Further, in the training of magistrates, they are being encouraged to mete out non-custodial sentences such as community service or suspended sentences. The Malawi Prisons Service is also constructing new prison cells in Lilongwe and Mzuzu to reduce overcrowding at Maula Prison and Mzuzu Prison respectively. The Malawi Prisons Service is further working on constructing half-way houses to house detainees with shorter prison sentences. In exercise of powers provided to the Minister for Home Land Security to promulgate Regulations under section 121 of the Prisons Act, Parole Regulations have been developed, they are yet to be vetted and gazetted before they come into force. The Parole Regulations also intend to reduce prison overcrowding by allowing the release of prisoners on parole under specific circumstances.

49. In the order to encourage alternatives to imprisonment before trial, the Government of Malawi in conjunction with CSOs and chiefs are encouraging avenues of access to

justice as primary justice. In addition, village mediation is being encouraged to make use of structures within communities. In the 2017/18 fiscal year the Department carried out the following activities aimed at reducing overcrowding in prisons:

Table 5 A  
**Measures Employed to Address Overcrowding in Prisons**

<i>Activity</i>	<i>No. Of prisoners released</i>
Prisoners Records Review for early release	333
Facilitating holding of Camp Courts	142
Prison monitoring and inspection by the Inspectorate of Prisons	760
Support the confirmation exercise by the Courts	47
Releasing people from prison and committing the same to Chance for Change as an attendance centre order	24
<b>Total</b>	<b>1 306</b>

Table 5 B  
**Presidential Pardons**

<i>2012</i>	<i>Easter</i>	<i>Republic</i>	<i>Christmas</i>
Normal Pardon	0	377	279
Chronically and Terminally Ill Prisoners	0	0	0
<b>2013</b>			
Normal Pardon	0	396	288
<b>2014</b>			
Normal Pardon	280	403	216
<b>2015</b>			
Normal Pardon		268	230
Chronically and Terminally Ill Prisoners			10
<b>2016</b>			
Normal Pardon	209	224	282
Chronically and Terminally Ill Prisoners		19	
<b>2017</b>			
Normal Pardon	234	297	279
Chronically and Terminally Ill Prisoners	14	09	
Female prisoners		56	
Elderly		16	
<b>2018</b>			
Normal Pardon	234	172	279
Chronically and Terminally Ill Prisoners		03	
<b>Total</b>	<b>737</b>	<b>2 240</b>	<b>1 584</b>

*Source:* Malawi Prison Service.

50. In order to improve the conditions of detention, the Department has constructed two cell blocks at Maula prison in central Malawi, with the capacity of accommodating 800 persons. These new cell blocks are human rights compliant in all respects.



51. Section 42 of the Constitution provides that every person who is detained, including every sentenced prisoner, shall have the right to be held under conditions consistent with human dignity which shall include at least the provision of medical treatment at the expense of the state. Section 42 (1) (d) says every person who is detained, including every sentenced prisoner, shall have right to be given the means and opportunity to communicate with, and to be visited by a medical practitioner of his or her choice. Section 25 of the Prisons Act provides that the Minister may appoint as medical officer of a prison any registered medical practitioner. It further says that the Minister may appoint a Government medical officer resident within a place where a prison is situated. In practice a prisoner who needs the services of a private doctor or having a family doctor is allowed to utilise the services of the medical practitioner.

52. On Human Immunodeficiency Virus (HIV) and Tuberculosis (TB) treatment, the Department uses a three stages screening model. Every inmate undergoes TB/HIV screening on (1) entry into prison (2) Staying in prison while serving his custodial sentence (3) on exiting the prison. Whilst in prison the Department conducts mass screening for TB at least every 6 months whereby both inmates and prison staff undergo testing for TB. Upon being detected with TB the person is immediately placed on treatment.

53. In terms of HIV/AIDS, the Department has acquired gene-expert machines which are placed in three regional prisons where prisoners from the district prisons are referred to for any serious illness. Those on Anti-Retroviral Therapy (ART) are given supplementary fortified foods to boost their immunity. The Department has introduced the peer-education programme whereby prisoners and prison staff teach their peers on the best HIV/TB prevention and mitigating practices.

54. It has also entered into partnership with a number of local and international organisations namely Elizabeth Glaser Paediatric AIDS Foundation (EGPAF), DIGNITAS International, Light House Trust, United Kingdom Voluntary Services Organisation (VSO), Sexual Reproductive Health and Rights in Southern Africa Trust - Malawi Office (SAT - Malawi), Medicines sans Frontiers (MSF), Human Resources for Health 2030 (HRH 2030), Umunthu Foundation, Challenge TB, and Christian Health Association in Malawi (CHAM) which are supporting the Department in HIV/TB prevention and treatment. The support ranges from capacity development, healthcare workers engagement, and material and equipment provision. The Table below shows the number of medical practitioners working in prisons.

Table 6  
**Medical practitioners working in prisons**

<i>Medical Practitioner</i>	<i>Number</i>
Medical doctor	1
Clinical officers	10
Medical Assistant	4
Nurses	12
Public/Environmental Health officers	3
Pharmacy Technician	1
Laboratory Assistant	1

*Source:* Malawi Prison Service.

Table 7  
**Death of Prisoners January 2014 to September 2018. The Table below show numbers of cases where people have died while in prison from 2014 to 2018**

<i>Prison station</i>	<i>Number of persons who died</i>
Blantyre	48
Chitipa	3
Chikhwawa	6

<i>Prison station</i>	<i>Number of persons who died</i>
Dedza	1
Karonga	3
Kasungu	11
Kachere	5
Mangochi	6
Lilongwe	98
Mzimba	21
Mzuzu	36
Mwanza	4
Mulanje	19
Nkhatabay	2
Nkhotakota	19
Ntcheu	26
Rumphu	3
Thyolo	12
Zomba Central	91

*Source:* Malawi Prison Service.

55. Where a prisoner dies at the hospital, a medical report certifying the death as well as cause is prepared by a medical officer. But where a person dies in prison, the law requires that an inquest presided over by a Coroner (judicial officer) should be held. This however does not always happen.

56. Regarding measures taken to address health care provisions in prisons, including prisoners with HIV/AIDS or tuberculosis; the Malawi Prisons Service has health personnel, headed by a General Practitioner at every prison who gives immediate health assistance to prisoners. Three (3) prison officers were also specifically trained in mental health. If the sickness cannot be dealt with by the medical personnel at the prison, the patient prisoner is transferred to a main hospital in the district of city the prison is located. In addition, the Malawi Prisons Service also makes provision for doctors to visit the prison some patient prisoners who due to the state of illness cannot be transferred to hospital immediately. With regard to prisoners with HIV/AIDS, they are provided with the appropriate medication and are put on a special diet. Prisoners suffering from tuberculosis are also provided with the appropriate medication, special diet and have separate accommodation from the rest of the prisoners. There are routine mass screenings done in all prisons tuberculosis and HIV/AIDS.

57. Minors, are accorded with separate reformatory centres. Section 42(2)(g) provides that may person under the age of eighteen years shall be separated from adults when imprisoned, the CCPJA under section 97 also provides that no child, while in detention in a safety home or reformatory centre or while being conveyed to or from any court or while awaiting before or after attending a criminal court, shall be permitted to associate with an adult, not being a relative, who is charged with an offence other than the offence with which the child is jointly charged with the adult. There are three detention centres run for this purpose namely, Byanzi, Kachere and Bvumbwe reformatory centres. There are two further reformatory centres run by the MoGCDSW, namely Chilwa and Mpemba reformatory centres. All the centres work towards rehabilitation and re-integration of the children into society. All the reformatory centres are not fenced which ensures that the children maintain an active engagement with members of their community. In addition, even though the reformatory centres provide education facilities, in order to ensure smooth re-integration of the children into society children from standards 7 are allowed to learn in public schools with other children. In addition, the children are encouraged to participate in sporting activities in their community in order to engage with their community in a positive manner.

58. However, the practice of detaining minors at Kachere and Bvumbwe Prisons will be on the decline and ultimately stop following a recent judgment of the High Court (The

Republic v Children in detention at Bvumbwe and Kachere Prisons, Criminal Review Case No. 21 of 2017, delivered on 5th June, 2018) ordering the release of all children who were waiting for trials. The judgment ordered sending all children who have been found guilty of any offence to reformatory centres of Chilwa and Mpemba.

59. Persons with mental disorders and psychosocial disabilities, are transferred to a psychiatric hospital. The Government in corroboration with CHREAA are running a pilot project which is aimed at providing psychosocial services to inmates such as initial mental screening and detection systems aimed at removing prisoners with mental disorders from the criminal justice system and litigate for their release or where possible facilitate their transfer to mental hospital. The project also aims at training magistrates, police and prison officers on mental health issues in order to better handle prisoners with mental health issues. The project also provides counselling to the prisoners with an intention of reforming them into valuable citizens before reintegrating into the society. The prisons targeted in the pilot project are Bvumbwe, Zomba and Chichiri.

60. Solitary confinement is used on prisoners who have been found guilty of a prison offence as defined in section 89 of the Prisons Act. In such cases solitary confinement is meted out for periods not exceeding fifteen days. Nowadays, solitary confinement is only administered to prisoners who are violent as a result of a mental disorder; before they are taken to a mental institution for treatment.

61. The Government of Malawi is working towards addressing food shortages and improving sanitary conditions in Prisons. With regard to food shortages, the Prisons run farms in order to supplement the food allocation normally provided.

62. With regard to separation of detainees, the Prisons Act under section 64 provides that male and female prisoners shall be separated and confined in separate parts of the prison. The section further states that there should be a further classification of remandees; convicted prisoners, young prisoners, adults, first offenders, prisoners with previous convictions and prisoners suspected or certified as being of unsound mind. However, due to challenges of space in prisons in some cases, remandees, convicted prisoners, first offenders and prisoners with previous convictions are not separated. However, prisoners suspected or certified as being of unsound mind are separated to other prisoners in order to provide them with the appropriate care commensurate with their condition.

63. At the moment, there are no plans of increasing the minimum age of criminal responsibility. The Law Commission report of 2000 on the review of the Penal Code recommended the increase of the age of criminal responsibility from 7 years to 10 years. This amendment was passed in 2011.

## **Articles 12–13**

### **Reply to paragraphs 21 and 22 of the list of issues**

64. There have been allegations of torture of prisoners. In the 2014 there were two allegations of torture one at Rumphu Prison and another one at Thyolo Prison. The Rumphu matter was referred to police for criminal prosecution while for the Thyolo case, a disciplinary inquiry was conducted which led to the fining of the rank through loss of pay. In 2017 at Kasungu prison, a prisoner was beaten to death by a prison warder due to the breaking away from the working party. The suspected prison warder is now on remand awaiting criminal prosecution.

65. On complaints handling mechanism regarding allegations of torture by prison officers, the established practice is that every prison cell has an in charge amongst the inmates. One of his tasks is to collect complaints and concerns from his fellow inmates and transmit the same to prisoners' social welfare officers who subsequently transmits the same to the officer in charge of the prison. The officer in charge using the Station's Discipline Officer then institutes a formal inquiry into the allegation of torture. If the allegations have substance, the matters are referred to an appropriate office for action.

66. However, the main challenge being faced by the Malawi Prisons Service in the fight against torture is the unwillingness of complainant prisoners to testify for cases which they themselves lodged. The Department in collaboration with other criminal justice stakeholders is developing an elaborate complaints handling mechanism which would like

to address the bottlenecks chocking prisoners from complaining against torture perpetrated by prison officers. It has therefore set up a complaints handling mechanism development task team. Currently the task team is conducting countrywide prisons consultative meeting with both prisoners and prison staff. No inter prisoner violence was recorded so far during the reporting period.

67. On its part, the Malawi Police Service has the following statistics on cases of torture, excessive use of force and the implementation of the 20th July Commission of Inquiry recommendations.

- (a) One officer was prosecuted and convicted for murder;
- (b) Three officers are still being prosecuted;
- (c) In a case of shooting dead a truck driver carrying charcoal one officer was prosecuted and convicted of manslaughter and his two colleagues were acquitted by High Court;
- (d) Presently there are no statistics on person who have died in police custody.

68. The Police Act of 2010 (Cap. 13:01) of the Laws of Malawi provides for the establishment of the Independent Police Complaints Commission (IPCC). The IPCC's mandate includes investigating any misconduct or offence allegedly committed by the Police; investigating any death or injury in police custody or as a result of police action; and investigating any complaints against police officers or against the Police Service. However, this Commission has not yet been operationalized. It is envisaged that such a body will have more impact due to a structured legal and independent system of handling cases dealing with the police. Currently, the Malawi Police Service has a Professional Standards Unit which handles inquiries into serious acts of police misconduct where officers can be prosecuted or face disciplinary actions, including dismissal. The Police Act also provides for a Lay Visitors Scheme under sections 124 to 126. The objective of the Scheme is to enable members of the community to assess and report on the conditions of detention in police stations. This is also supplemented by the MHRC's constitutional mandate to investigate violations of human rights of by the police.

## **Article 15**

### **Reply to paragraph 24 of the list of issues**

69. Section 42(2) (c) of the Constitution of Malawi stipulates that every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights he or she has as a detained person, have the right not to be compelled to make a confession or admission which could be used in evidence against him or her. However, The Criminal Procedure and Evidence Code under section 176 does not expressly prohibit the use of confession evidence obtained under torture, cruel or inhuman and degrading treatment or punishment. It would be expected that evidence so obtained would generally violate the broader rights to fair trial. This is how the courts in practice have interpreted it. In the High Court decision of Republic v Chinthiti Criminal Case No. 17 of 1997; the court concluded that section 176 of the Criminal Procedure and Evidence Code violated the right not to self incriminate in section 42 (2) (c) of the Constitution. The court never considered the relationship between the admission of involuntary confession evidence and absolute prohibition of torture, cruel and inhuman, degrading treatment. However, in the Malawi Supreme Court of Appeal decision of Thomson Fulaye Bokhobokho and Another v The Republic Malawi Supreme Court of Appeal, Criminal Appeal No. 10 of 2000; the Court stated that section 176 settles the law regarding admission of confession statements, this entails that confession evidence is admissible regardless of allegations of torture, and upon admission of such evidence, if the Judge is convinced beyond reasonable doubt that the confession is materially true.

## Article 16

### Reply to paragraph 25 of the list of issues

70. Acts of cruel, inhuman and degrading treatment or punishment are not defined in Malawi's statute books. However, as explained above, cruel, inhuman and degrading treatment or punishment is prohibited in the Constitution. The Penal Code also criminalises acts that could amount to cruel, inhuman and degrading treatment or punishment.

### Reply to paragraph 26 of the list of issues

71. Human rights defenders exercise their rights freely in Malawi. Human rights defenders are also allowed to freely express themselves and are not subjected to arbitrary arrests. In addition, the human rights defenders working within the setting of civil society organisations are protected by law. The Non- Governmental Organizations (NGO) Act (Cap 5:05) established the NGO Board which advises the Government on issues concerning NGOs. In addition, the Act established an NGO coordinating body called Council for Non-Governmental Organizations in Malawi (CONGOMA).

### Reply to paragraph 27 of the list of issues

72. In order to combat the attacks against people with albinism, the Government of Malawi in collaboration with various stakeholders, has been implementing the following special measures:

- Establishment of multi-sectoral National Technical Committee on Abuse of Persons with Albinism in Malawi that has been discussing with all concerned stakeholders on the initiatives and strategies to end the increased and gross violations of human rights of persons with albinism;
- The adoption of 13th June as an International Albinism Awareness Day (IAAD) and the implementation of the multimedia awareness programmes to educate and sensitize the general public on albinism issues in the country;
- Training of police prosecutors and magistrates across the country in prosecuting cases of attacks against persons with albinism;
- Review of the Penal Code and the Anatomy Act to make provisions of new offences and meting out stiffer penalties;
- Placement of a Practice Direction by the Chief Justice that all albinism related cases must solely be handled by professional magistrates;
- Development of a handbook for prosecutors, magistrates and judges to guide prosecution of albinism cases;
- Strengthening of community protection and cross boarder systems using inter-country and regional cooperation;
- Placement of learners with albinism in schools with boarding facilities where the police are providing security;
- Mapping of persons with albinism across the country to identify their population size and where they live in order to arrange for proper security measures;
- Launched a National Action Plan (2018 to 2022) aimed at ending the attacks against people with albinism.

### Reply to paragraph 28 of the list of issues

73. Mob Justice is another disturbing phenomenon. MPS statistics show that between 2015 and 2017, 57 deaths have been reported on account of mob justice. The Ministry of Justice and Constitutional Affairs, the Malawi Police Service and Malawi Human Rights Commission are considering an inquiry into the causes, scope and possible remedies on this issue.

**Reply to paragraph 29 of the list of issues**

74. The Constitution of the Republic of Malawi prohibits corporal punishment in connexion with any judicial proceedings or in any other proceedings before any organ of the State. There is no explicit legislation on the prohibition of corporal punishment. In the Education Sector, the Education Act (Cap. 30:01) of the Laws of Malawi stipulates that the National Curriculum promotes respect for human rights. Further, the Free Primary Education Guidelines have prohibited corporal punishment and provide that learners who breach school rules shall be informed of their offence and be given the right to be heard. The Ministry of Education, Science and Technology (MoEST) is addressing school related violence against girls and boys through several measures that are part of the implementation of the Education Act. It has trained teacher counsellors; established a Teachers' Code of Conduct whose existence is made aware to both teachers and learners; school rules and regulations are available in all schools and made known to both parents and learners and it has close linkages with community victim support units as well as health centres. Child Protection Committees and Mother Groups at school level are other critical structures where learners report issues of abuse or violence.

**Reply to paragraph 30 of the list of issues**

75. Homosexual acts are prohibited in Malawi. Most alleged cases of violence against persons on the basis of their sexual orientation or gender expression or identity are not reported to either to Police or Human Rights Commission. However, civil society organisations such as the Centre for the Development of People (CEDEP) are engaging police officers in order to change attitudes and remove prejudices towards persecuting persons on the basis of their sexual orientation or gender expression or identity.

76. The Human Rights Commission has been requested by Ministry of Justice and Constitutional Affairs to conduct an inquiry on issues related to the LGBTI community.

**Conclusion**

77. Malawi reiterates her commitment to fully implement the Convention Against Torture. This has been ably demonstrated in the report. It is noted that there are still gaps mainly in the legislative and institutional administrative set up in the prevention of torture. Malawi will continue to progressively review her laws, polices and initiate policy reforms to ensure we have a robust anti torture framework. In that regard, Malawi requests technical assistance from the Committee and other UN agencies. We look forward to continued engagement particularly during the review of this report.

## **Annexes**

### **Annex I**

#### **List of Members of National Task Force**

1. Ministry of Justice and Constitutional Affairs (Chair)
2. Ministry of Gender, Children, Disability and Social Welfare
3. Ministry of Homeland Security
4. Ministry of Foreign Affairs and International Cooperation
5. Ministry of Health and Population
6. Ministry of Education, Science and Technology
7. Ministry of Labour and Vocational Training
8. Malawi Police Service
9. Malawi Prisons Service
10. Malawi Human Rights Commission
11. Law Commission
12. The Office of the Ombudsman
13. The Department of Immigration
14. National Statistical Office
15. National Registration Bureau
16. Malawi Judiciary
17. Legal Aid Bureau
18. University of Malawi, Chancellor College Law School
19. Paralegal Advisory Service (PASI)
20. Centre for Human Rights Education Advice and Assistance (CHREAA)
21. Youth and Society
22. Saccode Trust
23. Article III

## Annex II

### Penal Code Extracts

#### 235. Acts intended to cause grievous harm or prevent arrest

- Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person –
  - Unlawfully wounds or does any grievous harm to any person by any means whatever; or
  - Unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon; or
  - Unlawfully causes any explosive substance to explode; or
  - Sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
  - Causes any such substance or thing to be taken or received by any person; or
  - Puts any corrosive fluid or any destructive or explosive substance in any place; or
  - Unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person, shall be guilty of a felony, and shall be liable to imprisonment for life.

#### 238. Grievous harm

- Any person who unlawfully does grievous harm to another shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

#### 239. Attempting to injure by explosive substances

- Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, shall be guilty of a felony and shall be liable to imprisonment for fourteen years.

#### 240. Maliciously administering poison with intent to harm

- Any person who unlawfully, and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him some grievous harm, shall be guilty of a felony, and shall be liable to imprisonment for fourteen years.

#### 241. Wounding and similar acts

- Any person who –
  - Unlawfully wounds another; or
  - Unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any person, shall be guilty of a felony, and shall be liable to imprisonment for seven years.

#### 254. Assaults occasioning actual bodily harm

- Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour, and shall be liable to imprisonment for five years with or without corporal punishment.



**263. Kidnapping or abducting in order to subject person to grievous harm, slavery, etc.**

- Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be guilty of a felony and shall be liable to imprisonment for ten years.
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