
ADVANCE UNEDITED VERSION

Human Rights Committee

Concluding observations on the initial periodic report of Malawi

1. The Committee considered the Initial report submitted by Malawi (CCPR/C/MWI/1) at its 3072nd and 3073rd meetings (CCPR/C/SR.3072 and CCPR/C/SR.3073), held on 9 and 10 July 2014. At its 3090th and 3091st meeting (CCPR/C/SR.3090 and CCPR/C/SR.3091), held on 22 and 23 July 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Malawi, albeit somewhat late, and the information presented therein. The Committee recalls that it had previously adopted provisional concluding observations under rule 70, paragraph 1, of its rules of procedure (CCPR/C/MWI/CO/1). It expresses appreciation for the opportunity to engage in constructive dialogue with the State party's high level delegation on the measures taken by the State party to implement the provisions of the Covenant since the ratification of the Covenant in 22 December 1993. The Committee appreciates the written replies (CCPR/C/MWI/Q/1/Add.2) to the list of issues, which were supplemented by the oral responses provided by the delegation during the dialogue, and the additional information that was provided in writing.

B. Positive aspects

3. The Committee welcomes the following legislative measures taken by the State party:

- (a) The adoption of the Prevention of Domestic Violence Act, in 2006;
- (b) The adoption of the Child Care, Protection and Justice Act, in 2010;
- (c) The adoption of the Deceased Estates, in 2011;
- (d) The adoption of the Disability Act, in 2012;
- (e) The adoption of the Gender Equality Act, in 2013;

4. The Committee welcomes the ratification by the State party of most of the core international human rights treaties, including the following instruments:

- (a) The Convention on the Rights of the Child, on 2 January 1991 and its Optional Protocols;
- (b) The Convention on the Elimination of All Forms of Discrimination against Women, on 12 March 1987;
- (c) The International Covenant on Economic, Social and Cultural Rights, on 22 December 1993;
- (d) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 11 June 1996;
- (e) The Convention of the Rights of Persons with Disabilities, on 27 August 2009.

C. Principal matters of concern and recommendations

Applicability of the Covenant in domestic courts

5. The Committee is concerned that the provisions of the Covenant are not given full effect in the legislation of the State party. It also regrets the lack of steps taken to raise awareness of the Covenant among judges, lawyers and prosecutors (art. 2).

The State party should take all appropriate measures to give full effect to the provisions of the Covenant in the legislation. It should also raise awareness of the Covenant among judges, lawyers and prosecutors and ensure that the domestic law is applied and interpreted in accordance with the Covenant.

National Human Rights Institution

6. The Committee is concerned that the Malawi Human Rights Commission does not function fully independently and is not yet adequately funded. The reluctance of the Commission to engage on issues related to the rights of LGBTI persons is also a source of concern for the Committee. The Committee further notes the absence of adequate mechanisms in place for the effective consideration of the Commission's recommendations (art. 2).

The State party should amend the Human Rights Commission Act to ensure that it enjoys full independence, in line with the Paris Principles (General Assembly resolution 48/134, annex). The State party should also provide the Commission with adequate financial and human resources and establish mechanisms for the consideration and implementation of the Commission's recommendations. The Commission should fully comply with its mandate and engage on all human rights issues, including those related to the rights of LGBTI persons.

Equality between men and women

7. While welcoming the adoption of the Gender Equality Act, the Committee regrets that there are still laws in force which discriminate against women. The Committee is particularly concerned that women are denied by law equal rights as men with respect to nationality (arts. 2, 3 and 26).

The State party should:

- (a) **Allocate adequate financial and human resources to the implementation of the Gender Equality Act, train relevant stakeholders on its provisions and raise awareness among population at large;**

(b) Strengthen efforts to monitor the situation of women by collecting sex-disaggregated data related to all the rights covered by the Covenant;

(c) Amend all laws that still discriminate against women, directly or indirectly. In particular, the State party should repeal or amend Sections 9 and 16 of the Citizenship Act so as to ensure that all nationality provisions apply equally to men and women. It should also explicitly provide by law that, in cases of divorce, courts fully recognize the value of non-financial contributions with regard to the acquisition of property during marriage.

Harmful traditional practices

8. The Committee is concerned about the persistence of some traditional practices targeting widows. It is also concerned about reports on the prevalence of the practice of Female Genital Mutilation in some regions. It is further concerned about the practice of ceremonies for girls, which *inter alia* lead to sexual abuse. (arts. 2, 3, 7, 24 and 26)

The State party should:

(a) Undertake a study on the scope of these practices and establish a mechanism to regularly monitor them;

(b) Explicitly criminalize the practices of female genital mutilation, "sexual cleansing" rituals, "widow inheritance", ceremonies which lead to sexual abuse and any other specific harmful traditional practice that discriminates against women and girls;

(c) Adopt a comprehensive strategy to address such practices which includes trainings and awareness-raising activities targeting children, women, teachers, parents, police, judges, lawyers, prosecutors, traditional leaders and population at large;

(d) Proactively investigate cases of traditional harmful practices and ensure that victims have access to effective remedies and adequate protection, rehabilitation and reintegration mechanisms.

Maternal mortality, teenage pregnancies and abortion

9. The Committee is deeply concerned about the high rates of maternal mortality and, in particular, at the high percentage of unsafe abortion-related maternal deaths. It is concerned at the general criminalization of abortion, except to save the life of the woman, which obliges pregnant women to seek clandestine abortion services that put their lives and health at risk. While taking note of the special commission set up to review the abortion law in 2013, the Committee is concerned about the excessive delays in reforming the law. The Committee also finds the high rate of teenage pregnancies to be regrettable (arts. 2, 3, 6, 7, 17, 24 and 26).

The State party should:

(a) Urgently review its 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 women. The law should ensure that reproductive health services are accessible for all women and adolescents, including in rural areas;

(b) Increase efforts to reduce maternal mortality and teenage pregnancies by providing adequate sexual and reproductive health services;

(c) Increase education and awareness-raising programmes, both formal (at educational institutions) and informal (in the mass media), on the importance of using contraceptives and on sexual and reproductive health rights.

Sexual orientation

10. The Committee is concerned that consensual same-sex sexual activity among consenting adults is still criminalized. It is also concerned about reports of cases of violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and that, due to the stigma, LGBTI persons do not enjoy effective access to health services (arts. 2 and 26).

The State party should:

(a) Review its legislation to explicitly include sexual orientation and gender identity among the prohibited grounds of discrimination and repeal the provisions that criminalises homosexuality and other consensual sexual activities among adults (arts. 137 (A), 153, 154 and 156 of the Penal Code);

(b) Introduce a mechanism to monitor cases of violence against LGBTI and undertake all necessary measures to prevent those cases, prosecute the perpetrators and compensate the victims;

(c) Ensure that public officials refrain from using language that may encourage violence and raise awareness to eliminate stereotyping and discrimination;

(d) Guarantee effective access to health services, including HIV/AIDS treatment, for LGBTI persons.

Death penalty

11. While welcoming the *de facto* moratorium on executions in the State party, the Committee is still concerned that death sentences are still imposed and that these are not only applicable to the most serious crimes. The Committee is also concerned about the fact that the right to seek a pardon is not effectively ensured (art. 6).

The State party should:

(a) Consider abolishing the death penalty and acceding to the Second Optional Protocol, on the occasion of the 25th anniversary of the Protocol;

(b) Review the Penal Code and ensure that the death penalty, if imposed at all, is applicable only to the most serious crimes as defined by article 6, paragraph 2 of the ICCPR, a category to which aggravated robbery, for example, does not belong.

(c) Provide adequate funds for a prompt process of resentencing of prisoners who received a mandatory death penalty and ensure the right to seek pardon or commutation of the death sentence.

Extrajudicial killings

12. The Committee is concerned about reports of cases of extrajudicial killings where the alleged perpetrators have not yet been prosecuted or where the prosecutions are not progressing expeditiously (art. 6).

The State party should prosecute all alleged perpetrators of extrajudicial killings, complete expeditiously all the process that have been already initiated, punish those who are convicted, and protect, rehabilitate and compensate the victims.

Prohibition of torture

13. The Committee is concerned at the high number of reported cases of torture by law enforcement officers. It is also concerned that the law does not comply with international standards in regard to the use of firearms by police officers (arts.7 and 10).

The State party should

(a) **Establish expeditiously the Independent Police Complaints Commission and allocate adequate human and financial resources to it;**

(b) **Establish a central system to keep track of all complaints publicly accessible;**

(c) **Investigate all cases of torture, prosecute the alleged perpetrators and compensate the victims;**

(d) **Ensure that the Police Act comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers and strengthen its efforts to train police officers in human rights.**

Domestic violence

14. The Committee is concerned that domestic violence remains widespread in the State party. It regrets the lack of official data available concerning the extent of the problem and the number of prosecutions that have been undertaken (arts. 2, 3, 7, 24 and 26).

The State party should:

(a) **Expedite the review of the Prevention of Domestic Violence Act to address its flaws;**

(b) **Ensure that spousal rape is explicitly criminalized;**

(c) **Establish a central system of disaggregated data collection related to domestic violence cases;**

(d) **Bring the alleged perpetrators to justice, strengthen the mechanisms aiming to protect, compensate, rehabilitate and reintegrate the victims and ensure that quality shelters are available for them;**

(e) **Continue providing training to relevant professional groups and conduct awareness raising campaigns among children, teachers, women, men, traditional leaders and population at large.**

Pretrial detention

15. The Committee is concerned about the high number of persons in pre-trial detention and that pre-trial detainees are not always held separately from convicted prisoners. It is also concerned that the alternative measures to detention are not adequately applied in practice (arts. 9 and 10).

The State party should:

(a) **Take immediate action to reduce the number of persons in pre-trial detention and provide effective remedies and compensation for those unlawfully held in custody;**

(b) **Take appropriate action to ensure that convicted persons are not detained with pre-trial detainees;**

(c) Increase the use of non-custodial penalties taking into account the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45/110.

Conditions of detention

16. The Committee is concerned about the conditions of detention in prisons. It is also concerned about the capacity of the Prison Inspectorate to adequately discharge its functions (arts. 7 and 10).

The State party should:

(a) Expedite the adoption of the Prison Bill in conformity with international standards;

(b) Strengthen the capacity and independence of the Prison Inspectorate and establish mechanisms to consistently consider its recommendations and make them public;

(c) Facilitate complaints from detainees.

Trafficking in persons

17. The Committee is concerned about the prevalence of trafficking in persons in the State party and the lack of official data available on its extent. It is also concerned about delays in adopting specific legislation on trafficking. It deeply regrets the lack of adequate programs to protect and support victims of trafficking (art. 8).

The State party should:

(a) Expedite the adoption of a law on trafficking in persons providing for the criminalization of all forms of trafficking, sanctions and adequate assistance for victims;

(b) Provide training for police officers, border personnel, judges, lawyers and other relevant personnel and raise awareness among children, teachers, parents, women and population at large;

(c) Increase efforts to bring alleged perpetrators to justice and ensure that all victims are adequately protected, assisted, rehabilitated and compensated;

(d) Compile disaggregated data on the scale of the problem.

Administration of justice

18. The Committee is concerned about the lack of sufficient judges, judicial officers and lawyers needed to address the backlog of court cases. It is also concerned that the Legal Aid Office is under-resourced and understaffed. It is concerned that the age of criminal responsibility for children, set at ten years in 2010, is still too low (art. 14).

The State party should:

(a) Develop a national policy for reducing the backlog of cases, strengthening the appeals procedure and increasing the number of judges and judicial officers, in particular in rural areas;

(b) Allocate adequate financial and human resources to ensure the implementation of both the Legal Aid Act and the Legal Education and Legal Practitioners Act;

(c) Raise the age of criminal responsibility for children in accordance to international standards.

Rights of persons with disabilities/Persons with albinism.

19. The Committee is concerned about delays in adequately implementing the Disability Act. It is also concerned about the absence of programmes addressing the specific needs of persons with albinism (arts. 2 and 26).

The State party should:

(a) Allocate sufficient financial and human resources to the implementation of the Disability Act and ensure effective remedies in case of violations of its provisions;

(b) Strengthen efforts to raise awareness of the Act among persons with disabilities and the population at large and train relevant stakeholders;

(c) Implement programmes specifically addressing the needs of persons with albinism.

Right to privacy.

20. The Committee is concerned that the legal provision expanding the authorization of searches without warrant is still in force. It is also concerned that the draft Bill on HIV/AIDS contains provisions which are not in conformity with the Covenant such as those allowing a health service provider to disclose a person's HIV status and providing for compulsory testing in certain circumstances (art. 17).

The State party should:

(a) Reconsider repealing Section 35 of the Police Act to prevent arbitrary searches and interference with liberty and privacy;

(b) Review the Draft Bill on HIV/AIDS to make all its provisions fully compliant with the Covenant and international standards and expedite its adoption.

Freedom of religion

21. The Committee is concerned about reports that Rastafarians do not enjoy equal access to employment and their children are sometimes denied access to public school (arts. 2 and 18).

The State party should undertake measures to ensure equal access to education and employment for the Rastafarians.

Freedom of opinion and expression

22. The Committee notes with satisfaction that the State party repealed Section 46 of the Penal Code that empowered the Minister of Information to ban newspapers. However it remains concerned about reports of journalists and human rights defenders being harassed and/or arrested by police. It is also concerned about delays in the adoption of the Access to Information Bill and about the potential to limit freedom of expression of the draft E-Bill (art. 9 and 19)

The State should expedite the adoption of the Access to Information Bill and to ensure that its provisions and those of the "E-Bill" are in conformity with the Covenant. It should also protect journalists and human rights defenders from harassment and arbitrary arrests, prosecute those responsible and compensate the victims.

Freedom of assembly

23. While noting that the Commission of Inquiry set up to investigate the handling of demonstrations in July 2011 presented its findings in July 2012, the Committee is concerned that prosecutions have not yet taken place (art. 21).

The State party should expeditiously prosecute all persons allegedly responsible for arrests, killings and ill-treatment in relation to the demonstrations, which occurred in July 2011 and adequately compensate the victims.

Sexual abuse of children

24. The Committee is concerned about the high prevalence of sexual abuse of children in the State party. The Committee is concerned that the Penal Code does not criminalize all forms of sexual abuse of boys. It is also concerned about the "corroboration rule" practiced by courts in cases of sexual abuse, which frequently results in impunity for the perpetrators. It is further concerned about reports according to which offenders pay the victims so they withdraw the cases against them (arts. 7 and 24).

The State party should:

- (a) Amend the Penal Code so as to criminalize all forms of sexual abuse of children regardless the sex of the child;**
- (b) Ensure that all perpetrators are brought to justice and the cases are not unduly withdrawn, and rehabilitate and compensate the victims;**
- (c) Ensure, in law and practice, that the "corroboration rule", according to which the testimony of a witness is required, is not applied in such a way so as to produce impunity when adjudicating sexual violence cases.**

Forced and child marriages

25. The Committee is concerned about the persistent practice of forced and child marriages in the State party (arts. 3, 23 and 24).

The State party should:

- (a) Expedite the adoption of the Marriage, Divorce and Family Relations Bill and ensure that it explicitly criminalizes forced and child marriages and sets the minimum age of marriage in accordance with international standards;**
- (b) Provide training to relevant stakeholder and conduct awareness raising campaigns aimed at preventing forced and child marriages;**
- (c) Prosecute alleged perpetrators, punish those convicted and compensate the victims.**

Child labour and children in street situations

26. The Committee is concerned about the high prevalence of child labour. The Committee regrets the lack of information received from the State party with regard to children in street situations (art. 24).

The State party should:

- (a) Strengthen its efforts in eliminating child labour by allocating adequate financial and human resources to the effective implementation of laws and relevant treaties;**
- (b) Conduct a study on the scope and causes of the phenomenon of children in street situations and develop a policy to reduce and prevent it.**

Asylum seekers and refugees

27. The Committee is concerned that no asylum seeker has been granted refugee status since 2011. It is also concerned at reports of denial of entry into the State party to persons in need of international protection (arts. 7, 10 and 13).

The State party should fully comply with the principle of *non-refoulement* and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, and that decisions on refugee status determination are dealt with expeditiously.

28. The State party should widely disseminate the Covenant, the first Optional Protocol to the Covenant, the text of its initial periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The report and the concluding observations should be translated into the other official language of the State party.

29. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 12, 13, 24 and 25 above.

30. The Committee requests the State party to provide in its next periodic report, due for submission on 31 July 2018 specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult civil society and non-governmental organizations operating in the country.
